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MIRNA NUNEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

MIRNA NUNEZ, individually, and on behalf of
other members of the general public similarly
situated;

Plaintiff,

vs.

CREATIVE DRY PROCESS, INC., a
California Corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 20STCV15787

*Assigned for all purposes to: Hon. Elihu M.
Berle, Dept. 6*

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

- (1) Violation of California Labor Code §§ 510 And 1198 (Unpaid Overtime)
- (2) Violation of California Labor Code §§ 226.7 And 512(A) (Unpaid Meal Period Premiums)
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums)
- (4) Violation of California Labor Code §§ 1194, 1197 And 1197.1 (Unpaid Minimum Wages)
- (5) Violation of California Labor Code §§ 201, 202 And 203 (Final Wages Not Timely Paid)
- (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment)
- (7) Violation of California Labor Code § 226(A) (Non-Complaint Wage Statements)
- (8) Violation of California Labor Code § 1174 (D) (Failure to Keep Requisite Payroll Records)

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- (9) Violation of California Business
And Professions Code § 17200, Et
Seq.
- (10) Private Attorney General Act, Labor
Code §2698 et seq.

1 Plaintiff MIRNA NUNEZ (“Plaintiff”) individually and on behalf of other similarly
2 situated current and former employees of Defendants CREATIVE DRY PROCESS, INC.
3 (“Creative”) and UNITED WASH AND DYE INC. (“United”), based upon facts that either
4 have evidentiary support or are likely to have evidentiary support after a reasonable opportunity
5 for further investigation and discovery, alleges as follows:

6 **JURISDICTION AND VENUE**

7 1. Plaintiff’s First through Ninth Causes of Action are brought as a class action on behalf
8 of herself and other similarly situated current and former employees of Defendants (hereinafter
9 collectively referred to as the “Class” or “Class Members”, as defined more fully in paragraph
10 17, below) pursuant to California Code of Civil Procedure section 382. The monetary damages
11 and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court
12 and will be established according to proof at trial.

13 2. Plaintiff brings the Tenth Cause of Action as a representative action under the
14 California Labor Code § 2698, *et seq.* (“PAGA”) to recover civil penalties that are owed to
15 Plaintiff, the State of California, and Class Members who worked during the relevant period
16 (hereinafter referred to as the “Aggrieved Employees”).

17 3. The monetary damages and restitution sought by Plaintiff exceeds the minimal
18 jurisdiction limits of the Superior Court and will be established according to proof at trial.

19 4. This Court has jurisdiction over this action pursuant to the California Constitution,
20 Article VI, Section 10, which grants the superior court "original jurisdiction in all other causes"
21 except those given by statute to other courts. The statutes under which this action is brought do
22 not specify any other basis for jurisdiction.

23 5. This Court has jurisdiction over Defendants because, upon information and belief,
24 Defendants are citizens of California, have sufficient minimum contacts in California, or
25 otherwise intentionally avails themselves of the California market so as to render the exercise
26 of jurisdiction over it by California courts consistent with traditional notions of fair play and
27 substantial justice.

28 6. Venue is proper in this Court because, upon information and belief, Defendants
maintain offices, have agents, employ individuals, and/or transact business in the State of

1 California, County of Los Angeles. The majority of acts and omissions alleged herein relating
2 to Plaintiff and the other class members took place in the State of California, including the
3 County of Los Angeles.

4 **PARTIES**

5 7. Plaintiff MIRNA NUNEZ is an individual residing in the State of California.

6 8. Defendant Creative, at all times therein mentioned, was and is, upon information
7 and belief, a California corporation and, at all times herein mentioned, whose employees are
8 engaged in work throughout the State of California, including the County of Los Angeles.

9 9. Defendant United, at all times therein mentioned, was and is, upon information
10 and belief, a California corporation and, at all times herein mentioned, whose employees are
11 engaged in work throughout the State of California, including the County of Los Angeles.

12 10. At all relevant times, Defendants, were the “employer” of Plaintiff within the
13 meaning of all applicable California laws and statutes.

14 11. At all times herein relevant, Defendants and DOES 1 through 100, and each of
15 them, were the agents, partners, joint venturers, joint employers, representatives, servants,
16 employees, successors-in-interest, co-conspirators and/or assigns, each of the other, and at all
17 times relevant hereto were acting within the course and scope of their authority as such agents,
18 partners, joint venturers, joint employers, representatives, servants, employees, successors, co-
19 conspirators and/or assigns, and all acts or omissions alleged herein were duly committed with
20 the ratification, knowledge, permission, encouragement, authorization and/or consent of each
21 defendant designated as a DOE herein.

22 12. The true names and capacities, whether corporate, associate, individual or
23 otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sue said
24 defendants by such fictitious names. Plaintiff is informed and believes, and based on that
25 information and belief alleges, that each of the defendants designated as a DOE is legally
26 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
27 the injuries and damages to Plaintiff and the other class members as alleged in this Complaint.
28 Plaintiff will seek leave of court to amend this Complaint to show the true names and capacities
when the same have been ascertained.

13. Defendant Creative and Defendant United and DOES 1 through 100 will

hereinafter collectively be referred to as "Defendants."

14. Plaintiff further alleges that Defendants directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiff and the other class members so as to make each of said Defendants employers liable under the statutory provisions set forth herein.

CLASS ACTION ALLEGATIONS

15. Plaintiff bring this action on her own behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class certification under California Code of Civil Procedure section 382.

16. The proposed class is defined as follows:

All current and former hourly-paid and non-except employees who worked for any of the Defendants within the State of California at any time during the period from four years preceding the filing of Plaintiff's original Complaint to final judgment.

17. Plaintiff reserves the right to establish subclasses as appropriate.

18. The class is ascertainable and there is a well-defined community of interest in the litigation:

a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

b. Typicality: Plaintiff's claims are typical of all other class members' as demonstrated herein. Plaintiff will fairly and adequately protect the interests of the other class members with whom he has a well-defined community of interest.

c. Adequacy: Plaintiff will fairly and adequately protect the interests of each class member, with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to the other class members. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery,

1 certification, and settlement. Plaintiff has incurred, and during the pendency
2 of this action will continue to incur, costs and attorneys' fees, that have been,
3 are, and will be necessarily expended for the prosecution of this action for the
4 substantial benefit of each class member.

5 d. Superiority: A class action is superior to other available methods for the fair
6 and efficient adjudication of this litigation because individual joinder of all
7 class members is impractical.

8 e. Public Policy Considerations: Certification of this lawsuit as a class action will
9 advance public policy objectives. Employers of this great state violate
10 employment and labor laws every day. Current employees are often afraid to
11 assert their rights out of fear of direct or indirect retaliation. However, class
12 actions provide the class members who are not named in the complaint
13 anonymity that allows for the vindication of their rights.

14 19. There are common questions of law and fact as to the class members that
15 predominate over questions affecting only individual members. The following common
16 questions of law or fact, among others, exist as to the members of the class:

- 17 a. Whether Defendants' failure to pay wages, without abatement or reduction, in
18 accordance with the California Labor Code, was willful;
- 19 b. Whether Defendants' had a corporate policy and practice of failing to pay their
20 hourly-paid or non-exempt employees within the State of California for all hours
21 worked and missed (short, late, interrupted, and/or missed altogether) meal
22 periods and rest breaks in violation of California law;
- 23 c. Whether Defendants required Plaintiff and the other class members to work over
24 eight (8) hours per day and/or over forty (40) hours per week and failed to pay
25 the legally required overtime compensation to Plaintiff and the other class
26 members;
- 27 d. Whether Defendants deprived Plaintiff and the other class members of meal
28 and/or rest periods or required Plaintiff and the other class members to work
during meal and/or rest periods without compensation;
- e. Whether Defendants failed to pay minimum wages to Plaintiff and the other

- 1 class members for all hours worked;
- 2 f. Whether Defendants failed to pay all wages due to Plaintiff and the other class
- 3 members within the required time upon their discharge or resignation;
- 4 g. Whether Defendants failed to timely pay all wages due to Plaintiff and the other
- 5 class members during their employment;
- 6 h. Whether Defendants complied with wage reporting as required by the California
- 7 Labor Code; including, *inter alia*, section 226;
- 8 i. Whether Defendants kept complete and accurate payroll records as required by
- 9 the California Labor Code, including, *inter alia*, section 1174(d);
- 10 j. Whether Defendants' conduct was willful or reckless;
- 11 k. Whether Defendants engaged in unfair business practices in violation of
- 12 California Business & Professions Code section 17200, et seq.;
- 13 l. The appropriate amount of damages, restitution, and/or monetary penalties
- 14 resulting from Defendants' violation of California law; and
- 15 m. Whether Plaintiff and the other class members are entitled to compensatory
- 16 damages pursuant to the California Labor Code.

16 **GENERAL ALLEGATIONS**

17 20. At all relevant times set forth herein, Defendants employed Plaintiff and other

18 persons as hourly-paid or non-exempt employees within the State of California, including the

19 County of Los Angeles.

20 21. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-

21 exempt employee in the State of California, County of Los Angeles.

22 22. Defendants hired Plaintiff and the other class members, classified them as hourly-

23 paid or non-exempt employees, and failed to compensate them for all hours worked and missed

24 meal periods and/or rest breaks.

25 23. Defendants had the authority to hire and terminate Plaintiff and the other class

26 members, to set work rules and conditions governing Plaintiff's and the other class members'

27 employment, and to supervise their daily employment activities.

28 24. Defendants exercised sufficient authority over the terms and conditions of

Plaintiff's and other class members' employment for them to be joint employers of Plaintiff and

1 the other class members.

2 25. Defendants directly hired and paid wages and benefits to Plaintiff and the other
3 class members.

4 26. Defendants continue to employ hourly-paid or non-exempt employees within the
5 State of California.

6 27. Plaintiff and the other class members worked over eight (8) hours in a day, and/or
7 forty (40) hours in a week during their employment with Defendants.

8 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt
10 employees within the State of California. This pattern and practice involved, *inter alia*, failing
11 to pay them for all regular and/or overtime wages earned and for short, late, interrupted, and/or
12 missed meal periods and rest breaks in violation of California law.

13 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 knew or should have known that Plaintiff and the other class members were entitled to receive
15 certain wages for overtime compensation and that they were not receiving accurate overtime
16 compensation for all overtime hours worked.

17 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 failed to provide Plaintiff and the other class members all required rest and meal periods during
19 the relevant time period as required under the Industrial Welfare Commission Wage Orders and
20 thus they are entitled to any and all applicable penalties.

21 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants
22 knew or should have known that Plaintiff and the other class members were entitled to receive
23 all meal periods or payment of one additional hour of pay at Plaintiff's and the other class
24 member's regular rate of pay when a meal period was missed, and they did not receive all meal
25 periods or payment of one additional hour of pay at Plaintiff's and the other class member's
26 regular rate of pay when a meal period was missed.

27 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
28 know or should have known that Plaintiff and the other class members were entitled to receive
all rest periods or payment of one additional hour of pay at Plaintiff's and the other class
member's regular rate of pay when a rest period was missed, and they did not receive all rest

1 periods or payment of one additional hour of pay at Plaintiff's and the other class members'
2 regular rate of pay when a rest period was missed.

3 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
4 knew or should have known that Plaintiff and the other class members were entitled to receive
5 at least minimum wages for compensation and that they were not receiving at least minimum
6 wages for all hours worked.

7 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 knew or should have known that Plaintiff and the other class members were entitled to receive
9 all wages owed upon discharge or resignation, including overtime and minimum wages and
10 meal and rest premiums, and they did not, in fact, receive all wages owed to them at the time
11 their discharge or resignation.

12 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
13 knew or should have known that Plaintiff and the other class members were entitled to receive
14 all wages owed to them during their employment. Plaintiff and the other class members did not
15 receive payment of all wages, including earned, but unpaid, overtime and minimum wages and
16 meal and rest period premiums, within any time permissible under California Labor Code
section 204.

17 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 knew or should have known that Plaintiff and the other class members were entitled to receive
19 complete and accurate wage statements in accordance with California law, but, in fact, they did
20 not receive complete and accurate wage statements from Defendants. The deficiencies included,
21 *inter alia*, the failure to include the accurate total number of hours worked by Plaintiff and the
22 other class members.

23 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 knew or should have known that Defendants had to keep complete and accurate payroll records
25 for Plaintiff and the other class members in accordance with California law, but, in fact, did not
26 keep complete and accurate payroll records.

27 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
28 knew or should have known that Plaintiff and the other class members were entitled to
reimbursement for necessary business-related expenses.

1 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that they had a duty to compensate Plaintiff and the other class
3 members pursuant to California law, and that Defendants had the financial ability to pay such
4 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented
5 to Plaintiff and the other class members that they were properly denied wages, all in order to
6 increase Defendants' profits.

7 40. During the relevant time period, Defendants failed to pay overtime wages to
8 Plaintiff and the other class members for all overtime hours worked. Plaintiff and the other class
9 members were required to work more than eight (8) hours per day and/or forty (40) hours per
10 week without overtime compensation for all overtime hours worked.

11 41. During the relevant time period, Defendants failed to provide all requisite
12 uninterrupted, off-duty meal and rest periods to Plaintiff and the other class members.

13 42. During the relevant time period, Defendants failed to pay Plaintiff and the other
14 class members at least minimum wages for all hours worked.

15 43. During the relevant time period, Defendants failed to pay Plaintiff and the other
16 class members all wages owed to them upon discharge or resignation.

17 44. During the relevant time period, Defendants failed to pay Plaintiff and the other
18 class members all wages within any time permissible under California law, including, *inter alia*,
19 California Labor Code section 204.

20 45. During the relevant time period, Defendants failed to provide complete or accurate
21 wage statements to Plaintiff and the other class members.

22 46. During the relevant time period, Defendants failed to keep complete or accurate
23 payroll records for Plaintiff and the other class members.

24 47. During the relevant time period, Defendants failed to properly compensate
25 Plaintiff and the other class members pursuant to California law in order to increase Defendants'
26 profits.

27 48. California Labor Code section 218 states that nothing in Article 1 of the Labor
28 Code shall limit the right of any wage claimant to "sue directly ... for any wages or penalty due
to him [or her] under this article."

 49. On or about September 29, 2020, Plaintiff notified Defendants via certified mail

1 and filed an online PAGA claim notice with the California Labor and Workforce Development
2 Agency ("LWDA") identifying Defendants' violations of the California Labor Code identified
3 in this Complaint and Plaintiff's intent to bring a claim for civil penalties under California Labor
4 Code section 2698 et seq.

5 **FIRST CAUSE OF ACTION**

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

7 **(Against All Defendants)**

8 50. Plaintiff incorporates by reference the allegations contained above, and each and
9 every part thereof with the same force and effect as though fully set forth herein.

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

14 52. Specifically, the applicable IWC Wage Order provides that Defendants are and
15 were required to pay Plaintiff and the other class members employed by Defendants, and
16 working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the
17 rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than
18 forty (40) hours in a workweek.

19 53. The applicable IWC Wage Order further provides that Defendants are and were
20 required to pay Plaintiff and the other class members overtime compensation at a rate of two
21 times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

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

27 55. During the relevant time period, Plaintiff and the other class members worked in
28 excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

56. During the relevant time period, Defendants intentionally and willfully failed to
pay overtime wages owed to Plaintiff and the other class members and failed to pay class

members overtime in the amount of one-and-one half time their correct regular rate of pay.

57. Defendants' failure to pay Plaintiff and the other class members the unpaid balance of overtime compensation, as required by California laws, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

58. Pursuant to California Labor Code section 1194, Plaintiff and the other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

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

(Against All Defendants)

59. Plaintiff incorporates by reference the allegations contained above, and each and every part thereof with the same force and effect as though fully set forth herein.

60. At all relevant times, the IWC Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiffs and the other class members' employment by Defendants.

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

62. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) provide that an employer may not require, cause or permit an employee to work for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is no more than six (6) hours, the meal period may be waived by mutual consent of both the employer and employee.

63. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) further provide that an employer may not require, cause or permit an employee to work for a work period of more than ten (10) hours per day without providing the employee with a second uninterrupted meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not

1 waived.

2 64. During the relevant time period, Plaintiff and the other class members who were
3 scheduled to work for a period of time no longer than six (6) hours, and who did not waive their
4 legally-mandated meal periods by mutual consent, were required to work for periods longer than
5 five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or
6 rest period.

7 65. During the relevant time period, Plaintiff and the other class members who were
8 scheduled to work for a period of time in excess of six (6) hours were required to work for
9 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty
10 (30) minutes and/or rest period.

11 66. During the relevant time period, Defendants intentionally and willfully required
12 Plaintiff and the other class members to work during meal periods and failed to compensate
13 Plaintiff and the other class members the full meal period premium for work performed during
14 meal periods.

15 67. During the relevant time period, Defendants failed to pay Plaintiff and the other
16 class members the full meal period premium due pursuant to California Labor Code section
17 226.7.

18 68. Defendants' conduct violates applicable IWC Wage Order and California Labor
19 Code sections 226.7 and 512(a).

20 69. Pursuant to applicable IWC Wage Order and California Labor Code section
21 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one
22 additional hour of pay at the employee's regular rate of compensation for each work day that the
23 meal or rest period is not provided.

24 **THIRD CAUSE OF ACTION**

25 **(Violation of California Labor Code § 226. 7)**

26 **(Against All Defendants)**

27 70. Plaintiff incorporates by reference the allegations contained above, and each and
28 every part thereof with the same force and effect as though fully set forth herein.

71. At all times herein set forth, the applicable IWC Wage Order and California Labor
Code section 226.7 were applicable to Plaintiffs and the other class members' employment by

Defendants.

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

73. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "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" unless the total daily work time is less than three and one-half (3 ½) hours.

74. During the relevant time period, Defendants required Plaintiff and other class members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

75. During the relevant time period, Defendants willfully required Plaintiff and the other class members to work during rest periods and failed to pay Plaintiff and the other class members the full rest period premium for work performed during rest periods.

76. During the relevant time period, Defendants failed to pay Plaintiff and the other class members the full rest period premium due pursuant to California Labor Code section 226.7.

77. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

78. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one additional hour of pay at the employees' regular hourly rate of compensation for each work day that the rest period was not provided.

FOURTH CAUSE OF ACTION

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

(Against All Defendants)

79. Plaintiff incorporates by reference the allegations contained above, and each and every part thereof with the same force and effect as though fully set forth herein.

80. All relevant times, California Labor Code sections 1194, 1197, and 1197.1 provide

1 that the minimum wage to be paid to employees, and the payment of a lesser wage than the
2 minimum so fixed is unlawful.

3 81. During the relevant time period, Defendants failed to pay minimum wage to
4 Plaintiff and the other class members as required, pursuant to California Labor Code sections
5 1194, 1197, and 1197.1.

6 82. Defendants' failure to pay Plaintiff and the other class members the minimum
7 wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to
8 those sections Plaintiff and the other class members are entitled to recover the unpaid balance
9 of their minimum wage compensation as well as interest, costs, and attorney's fees, and
10 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

11 83. Pursuant to California Labor Code section 1197.1, Plaintiff and the other class
12 members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each
13 employee minimum wages, and \$250.00 for each subsequent failure to pay each employee
14 minimum wages.

15 84. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class
16 members are entitled to recover liquidated damages in an amount equal to the wages unlawfully
17 unpaid and interest thereon.

18 **FIFTH CAUSE OF ACTION**

19 **(Violation of California Labor Code §§ 201 202 and 203)**

20 **(Against All Defendants)**

21 85. Plaintiff incorporates by reference the allegations contained above, and each and
22 every part thereof with the same force and effect as though fully set forth herein.

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

87. During the relevant time period, Defendants intentionally and willfully failed to
pay Plaintiff and the other class members who are no longer employed by Defendants their

wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

88. Defendants' failure to pay Plaintiff and the other class members who are no longer employed by Defendants' their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

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

90. Plaintiff and the other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code § 204)

(Against All Defendants)

91. Plaintiff incorporates by reference the allegations above and each and every part thereof with the same force and effect as though fully set forth herein.

92. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed.

93. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

94. At all times herein set forth, California Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

95. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members all wages due to them, within any time period permissible under California Labor Code section 204.

1 96. Plaintiff and the other class members entitled to recover all remedies available for
2 violations California Labor Code section 204.

3 **SEVENTH CAUSE OF ACTION**
4 **(Violation of California Labor Code§ 226(a))**
5 **(Against All Defendants)**

6 97. Plaintiff incorporates by reference the allegations contained above, and each and
7 every part thereof with the same force and effect as though fully set forth herein.

8 98. At all material times set forth herein, California Labor Code section 226(a)
9 provides that every employer shall furnish each of his or her employees an accurate itemized
10 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
11 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid
12 on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of
13 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
14 dates of the period for which the employee is paid, (7) the name of the employee and his or her
15 social security number, (8) the name and address of the legal entity that is the employer, and (9)
16 all applicable hourly rates in effect during the pay period and the corresponding number of hours
17 worked at each hourly rate by the employee. The deductions made from payments of wages
18 shall be recorded in ink or other indelible form, properly dated, showing the month, day, and
19 year, and a copy of the statement or a record of the deductions shall be kept on file by the
20 employer for at least three years at the place of employment or at a central location within the
State of California.

21 99. Defendants have intentionally and willfully failed to provide Plaintiff and the
22 other class members with complete and accurate wage statements. The deficiencies include, but
23 are not limited to: the failure to include the accurate total number of hours worked by Plaintiff
24 and the other class members.

25 100. As a result of Defendants' violation of California Labor Code section 226(a),
26 Plaintiff and the other class members have suffered injury and damage to their statutorily-
27 protected rights.

28 101. More specifically, Plaintiff and the other class members have been injured by
Defendants' intentional and willful violation of California Labor Code section 226(a) because

1 they were denied both their legal right to receive, and their protected interest in receiving,
2 accurate and itemized wage statements pursuant to California Labor Code section 226(a).

3 102. Plaintiff and the other class members are entitled to recover from Defendants the
4 greater of their actual damages caused by Defendants' failure to comply with California Labor
5 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

6 103. Plaintiff and the other class members are also entitled to injunctive relief to ensure
7 compliance with this section, pursuant to California Labor Code section 226(h).

8 **EIGHTH CAUSE OF ACTION**

9 **(Violation of California Labor Code§ 1174(d))**

10 **(Against All Defendants)**

11 104. Plaintiff incorporates by reference the allegations contained above, and each and
12 every part thereof with the same force and effect as though fully set forth herein.

13 105. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a
14 central location in the state or at the plants or establishments at which employees are employed,
15 payroll records showing the hours worked daily by and the wages paid to, and the number of
16 piece-rat units earned by any applicable piece rate to, employees employed at the respective
17 plants or establishments. These records shall be kept in accordance with rules established for
18 this purpose by the commission, but in any case shall be kept on file for not less than two years.

19 106. Defendants have intentionally and willfully failed to keep accurate and complete
20 payroll records showing the hours worked daily and the wages paid, to Plaintiff and the other
21 class members.

22 107. As a result of Defendants' violation of California Labor section 1174(d), Plaintiff
23 and the other class members have suffered injury and damage to their statutorily-protected
24 rights.

25 108. More specifically, Plaintiff and the other class members have been injured by
26 Defendants' intentional and willful violation of California Labor Code section 1174(d) because
27 they were denied both their legal right and protected interest, in having available, accurate and
28 complete payroll records pursuant to California Labor Code section 1174(d).

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1 **NINTH CAUSE OF ACTION**

2 **(Violation of California Business & Professions Code §§ 17200, et seq.)**

3 **(Against All Defendants)**

4 109. Plaintiff incorporates by reference the allegations contained above and each and
5 every part thereof with the same force and effect as though fully set forth herein.

6 110. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
7 unlawful and harmful to Plaintiff, other class members, to the general public, and Defendants'
8 competitors. Accordingly, Plaintiff seeks to enforce important rights affecting the public interest
9 within the meaning of Code of Civil Procedure section 1021.5.

10 111. Defendants' activities as alleged herein are violations of California law, and
11 constitute unlawful business acts and practices in violation of California Business & Professions
12 Code section 17200, et seq.

13 112. A violation of California Business & Professions Code section 17200, et seq. may
14 be predicated on the violation of any state or federal law. In this instant case, Defendants'
15 policies and practices of requiring employees, including Plaintiff and the other class members,
16 to work overtime without paying them proper compensation violate California Labor Code
17 sections 510 and 1198. Additionally, Defendants' policies and practices of requiring employees,
18 including Plaintiff and the other class members, to work through their meal and rest periods
19 without paying them proper compensation violate California Labor Code sections 226.7 and
20 512(a). Defendants' policies and practices of failing to pay minimum wages violate California
21 Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendants' policies and practices of
22 failing to timely pay wages to Plaintiff and the other class members violate California Labor
23 Code sections 201, 202 and 204. Defendants also violated California Labor Code sections 226(a),
24 1174(d), 2800 and 2802.

25 113. As a result of the herein described violations of California law, Defendants
26 unlawfully gained an unfair advantage over other businesses.

27 114. Plaintiff and the other class members have been personally injured by Defendants'
28 unlawful business acts and practices as alleged herein, including but not necessarily limited to
the loss of money and/or property.

115. Pursuant to California Business & Professions Code sections 17200, et seq.,

1 Plaintiff and the other class members are entitled to restitution of the wages withheld and
2 retained by Defendants during a period that commences four (4) years preceding the filing of
3 Plaintiff's complaint up until the time that notice of the class action is provided to the class; an
4 award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other
5 applicable laws; and an award of costs.

6 **TENTH CAUSE OF ACTION**

7 **(Violation of California Labor Code § 2699, Et Seq.)**

8 **(Against All Defendants)**

9 116. Plaintiff incorporates by reference the allegations contained above and each and every
10 part thereof with the same force and effect as though fully set forth herein.

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

14 118. On or about September 29, 2020, Plaintiff notified Defendants via certified mail and
15 filed an online PAGA claim notice with the California Labor and Workforce Development
16 Agency ("LWDA") identifying Defendants' violations of the California Labor Code identified
17 in this Complaint and Plaintiff's intent to bring a claim for civil penalties under California Labor
18 Code section 2698 et seq. The LWDA assigned Plaintiff's case number LWDA-CM- 808092-
19 20. Plaintiff also submitted a filing fee of seventy-five (\$75.00) to the LWDA in accordance
20 with Labor Code section 2699.3(a)(1)(B). Sixty-five days have passed from the date of
21 Plaintiff's notice to the LWDA, and thus Plaintiff has exhausted her administrative remedies,
22 thereby allowing Plaintiff to commence a civil action against Defendants pursuant to Labor
23 Code section 2699.

24 119. During all relevant times for this action, Defendants regularly required Plaintiff and
25 Aggrieved Employees to work more than eight (8) hours per day and forty (40) hours per week.
26 However, Plaintiff and Aggrieved Employees were not paid wages, including minimum wages
27 and/or overtime wages, for such time worked. Instead, Plaintiff and Aggrieved Employees
28 were paid for just eight (8) hours in a day or forty (40) hours in a week.

120. During all relevant times for this action, Defendants failed to provide uninterrupted
meal periods to Plaintiff and Aggrieved Employees when they worked more than five (5) hours

per day and ten (10) hours per day because Defendants required Plaintiff and Aggrieved Employees to stay on duty and never provided an uninterrupted first or second meal break.

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

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

123. In addition, Defendants failed to provide Plaintiff and Aggrieved Employees with properly itemized wage statements including because Defendants failed to include the actual hours worked, the correct rate of pay and the meal and rest period premiums owed.

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

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

126. Failing to pay Plaintiff and other similarly Aggrieved Employees all earned minimum wage compensation in violation of Labor Code §§ 1194 and 1198 *et seq.*;

127. Failing to pay Plaintiff and other similarly Aggrieved Employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 1194, and 1198 *et seq.*;

128. Failing to pay Plaintiff and other similarly Aggrieved Employees an additional hour of premium pay for meal period violations in violation of Labor Code §§ 226.7 and 512;

129. Failing to pay Plaintiff and other similarly Aggrieved Employees an additional hour of premium pay for rest period violations in violation of Labor Code §§ 226.7 and 512;

130. Failing to timely pay Plaintiff and other similarly Aggrieved Employees all wages at end of employment in violation of Labor Code § 203;

131. Failing to timely pay Plaintiff and other similarly Aggrieved Employees all wages owed during employment;

132. Failing to furnish Plaintiff and other similarly Aggrieved Employees with complete, accurate, itemized wage statements in violation of Labor Code § 226; and

133. Failing to maintain accurate records relating to Plaintiff and other similarly Aggrieved Employees work periods, meal periods, total daily hours, hours per pay period, and applicable pay rates; and for

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of other members of the general public similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiff be appointed as the representative of the Class;
3. That counsel for Plaintiff be appointed as Class Counsel; and
4. That Defendants provide to Class Counsel immediately the names and most current/last known contact information (address, e-mail and telephone numbers) of all class members.

As to the First Cause of Action

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and the other class members;

6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194; and

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

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiff and the other class members;

11. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

12. For all actual, consequential, and incidental losses and damages, according to proof;

13. For premium wages pursuant to California Labor Code section 226.7(b);

14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15. For reasonable attorneys' fees and costs of suit incurred herein; and

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

As to the Third Cause of Action

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the other class members;

18. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

19. For all actual, consequential, and incidental losses and damages, according to

1 proof;

2 20. For premium wages pursuant to California Labor Code section 226.7(b);

3 21. For pre-judgment interest on any unpaid wages from the date such amounts were
4 due; and

5 22. For such other and further relief as the Court may deem just and proper.

6 **As to the Fourth Cause of Action**

7 23. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to
9 Plaintiff and the other class members;

10 24. For general unpaid wages and such general and special damages as may be
11 appropriate;

12 25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for
13 Plaintiff and the other class members in the amount as may be established according to proof at
14 trial;

15 26. For pre-judgment interest on any unpaid compensation from the date such
16 amounts were due;

17 27. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
18 California Labor Code section 1194(a);

19 28. For liquidated damages pursuant to California Labor Code section 1194.2; and

20 29. For such other and further relief as the Court may deem just and proper.

21 **As to the Fifth Cause of Action**

22 30. That the Court declare, adjudge and decree that Defendants violated California
23 Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the
24 time of termination of the employment of Plaintiff and the other class members no longer
25 employed by Defendants;

26 31. For all actual, consequential, and incidental losses and damages, according to
27 proof;

28 32. For statutory wage penalties pursuant to California Labor Code section 203 for
Plaintiff and the other class members who have left Defendants' employ;

33. For pre-judgment interest on any unpaid compensation from the date such

amounts were due; and

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

As to the Sixth Cause of Action

35. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to pay all compensation owed at the time required by California Labor Code section 204 to Plaintiff and the other class members;

36. For all actual, consequential, and incidental losses and damages, according to proof;

37. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

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

As to the Seventh Cause of Action

39. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and the other class members, and willfully failed to provide accurate itemized wage statements thereto;

40. For actual, consequential and incidental losses and damages, according to proof;

41. For statutory penalties pursuant to California Labor Code section 226(e);

42. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(h); and

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

As to the Eighth Cause of Action

44. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 1174(d) by willfully failing to keep accurate and complete payroll records for Plaintiff and the other class members as required by California Labor Code section 1174(d);

45. For actual, consequential and incidental losses and damages, according to proof;

46. For statutory penalties pursuant to California Labor Code section 1174.5; and

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

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As to the Ninth Cause of Action

48. That the Court decree adjudge and decree that Defendants violated California Business and Professions Code sections 17200 et seq. by failing to provide Plaintiff and the other class members all overtime compensation due to them failing to provide all meal and rest periods to Plaintiff and the other class members, failing to pay at least minimum wages to Plaintiff and the other class members failing to pay Plaintiffs and the other class members wages timely as required by California Labor Code section 201 202 and 204 and by violating California Labor Code sections 226(a), 1 I 74(d) 2800 and 2802.

49. For restitution of unpaid wages to Plaintiff and all the other class members and all pre-judgment interest from the day such amounts were due and payable.

50. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violation of California Business and Professions Code section 17200, et seq.;

51. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

52. For injunctive relief to ensure compliance with this section, pursuant to California Business and Professions Code sections 17200 et eq.; and

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

As to the Tenth Cause of Action

54. For statutory attorneys' fees and costs pursuant to Labor Code section 2668 et seq., and as allowed by law and according to proof;

55. For statutory civil penalties pursuant to Labor Code section 2668 et seq., and as allowed by law and according to proof;

56. For costs of suit incurred herein;

57. For pre- and post-judgment interest at the maximum legal rate on all amounts claimed; and

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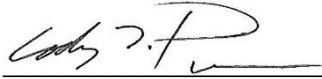
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58. For such other and further relief as the Court may deem just and proper.

Dated: December 23, 2020

PAYNE NGUYEN, LLP

By: 

CODY PAYNE
KIM NGUYEN
Attorneys for Plaintiff
MIRNA NUNEZ