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13 on behalf of themselves and all others similarly situated

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

VERONICA JAUREGUI SILVA,
individually, and on behalf of other members
of the general public similarly situated;

Plaintiffs,

v.

BEN MYERSON CANDY CO., INC. d/b/a
WINE WAREHOUSE, a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 20STCV21665

CLASS ACTION

Assigned for All Purposes To:
Hon. Amy D. Hogue
Dept.: 7

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

- (1) Failure to Pay Wages and Overtime Under Labor Code § 510;
- (2) Meal Period Liability Under Labor Code § 226.7;
- (3) Rest-Break Liability Under Labor Code § 226.7;
- (4) Failure to Pay Minimum Wages Under Labor Codes §§ 1194 and 1197
- (5) Violation of Labor Code § 203;
- (6) Violation of Labor Code § 226(a);
- (7) Violation of Business & Professions Code § 17200 *et seq*; and
- (8) Penalties Pursuant to Labor Code § 2699, *et seq*

DEMAND FOR JURY TRIAL

Complaint Filed: June 4, 2020
Amended Complaint: January 25, 2021
Cross-Complaint: January 22, 2021
Trial Date: None Set

COMES NOW, Plaintiffs VERONICA JAUREGUI SILVA and MATTHEW YOUNG (“Plaintiffs,” “Plaintiff Silva” “Plaintiff Young”), individually, and on behalf of other members of the general public similarly situated and on behalf of aggrieved employees pursuant to the Private Attorneys General Act (“PAGA”), and alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiffs exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

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

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

4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, including the County of Los Angeles. The majority of the acts and omissions alleged herein relating to Plaintiffs took place in the State of California.

PARTIES

5. Plaintiff VERONICA JAUREGUI SILVA (“Silva”) is an individual residing in the State of California, County of Alameda. Plaintiff Silva performed work for BEN MYERSON CANDY CO., INC. through the staffing agency SILICON VALLEY TECHNICAL STAFFING during the applicable statute of limitations period.

6. Plaintiff MATTHEW YOUNG (“Young”) is an individual residing in the State of California. Plaintiff Young performed work for BEN MYERSON CANDY CO., INC.

1 during the applicable statute of limitations period.

2 7. Defendant BEN MYERSON CANDY CO., INC. d/b/a WINE WAREHOUSE, at
3 all times herein mentioned, was and is, upon information and belief, a California corporation,
4 and at all times herein mentioned, was and is, an employer whose employees are engaged
5 throughout the State of California, including the County of Los Angeles.

6 8. Defendant SILICON VALLEY TECHNICAL STAFFING, at all times herein
7 mentioned, was and is, upon information and belief, a California corporation, and at all times
8 herein mentioned, was and is, an employer whose employees are engaged throughout the State
9 of California, including the County of Los Angeles.

10 9. At all times herein relevant, Defendants BEN MYERSON CANDY CO., INC.,
11 SILICON VALLEY TECHNICAL STAFFING, and DOES 1 through 100, and each of them,
12 were the agents, partners, joint venturers, joint employers, representatives, servants,
13 employees, successors-in-interest, co-conspirators and assigns, each of the other, and at all
14 times relevant hereto were acting within the course and scope of their authority as such agents,
15 partners, joint venturers, joint employers, representatives, servants, employees, successors, co-
16 conspirators and assigns, and all acts or omissions alleged herein were duly committed with the
17 ratification, knowledge, permission, encouragement, authorization, and consent of each
18 defendant designated herein.

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

27 11. Defendants BEN MYERSON CANDY CO., INC., SILICON VALLEY
28 TECHNICAL STAFFING, and DOES 1 through 100 will hereinafter collectively be referred

to as “Defendants.” Defendants BEN MYERSON CANDY CO., INC. and DOES 1 through 100 will hereinafter collectively be referred to as the “Hiring Entity.” Defendants SILICON VALLEY TECHNICAL STAFFING and DOES 1 through 100 will hereinafter collectively be referred to as “SVS.”

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

CLASS ACTION ALLEGATIONS

13. Plaintiff Silva brings 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 Code of Civil Procedure section 382.

14. Plaintiff Silva intends to certify following class: All current and former hourly-paid or non-exempt employees (either directly or through a staffing agency or labor contractor) of Hiring Entity within the State of California at any time during the period from June 4, 2016 to final judgment.

15. Plaintiff Silva reserves the right to establish additional subclasses as appropriate.

16. Each of the foregoing classes and subclasses is ascertainable and there is well-defined community of interest in the litigation:

a. Numerosity: The members of each of the classes and subclasses are so numerous that joinder of all class members is impracticable. The membership of the foregoing classes and subclasses are presently unknown to Plaintiffs at this time; however, the classes and subclasses are estimated to be greater than forty (40) individuals and the identity of such membership is readily ascertainable by inspection of Defendants’ employment records.

b. Typicality: Plaintiff Silva’s claims are typical of all other members of the Class’ claims as demonstrated herein. Plaintiff Silva will fairly and adequately protect the interests of the other class members with whom they have a well-defined community of

1 interest.

2 c. Adequacy: Plaintiff Silva will fairly and adequately protect the interests
3 of each class member, with whom they have a well-defined community of interest and
4 typicality of claims, as demonstrated herein. Plaintiffs have no interest that is antagonistic to
5 the other class members. Plaintiffs' attorneys, the proposed class counsel, are versed in the
6 rules governing class action discovery, certification, and settlement. Plaintiffs have incurred,
7 and during the pendency of this action will continue to incur, costs and attorneys' fees, that
8 have been, are, and will be necessarily expended for the prosecution of this action for the
9 substantial benefit of each class member.

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

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

18 17. There are common questions of law and fact as to the class members that
19 predominate over questions affecting only individual members. The following common
20 questions of law or fact, among others, exist as to the members of each of the foregoing
21 subclasses:

22 a. Whether Defendants' failure to pay wages, without abatement or
23 reduction, in accordance with the California Labor Code, was willful;

24 b. Whether Defendants failed to pay their hourly-paid or non-exempt
25 employees within the State of California for all hours worked, missed
26 meal periods and rest breaks in violation of California law;

27 c. Whether Defendants required Plaintiffs and other class members to work
28 over eight (8) hours per day and/or over forty (40) hours per week and

1 failed to pay the legally required overtime compensation to Plaintiffs and
2 the other class members;

3 d. Whether Defendants properly calculated the regular rate for Plaintiffs
4 and the other class members to work overtime and earned bonuses and/or
5 incentive pay;

6 e. Whether Defendants deprived Plaintiffs and other class members of meal
7 and/or rest periods or required Plaintiffs and the other class members to
8 work during meal and/or rest periods without compensation;

9 f. Whether Defendants failed to pay minimum wages to Plaintiffs and other
10 class members for all hours worked;

11 g. Whether Defendant maintained an illegal rounding policy;

12 h. Whether Defendants failed to pay all wages due to Plaintiffs and other
13 class members within the required time upon their discharge or
14 resignation;

15 i. Whether Defendants failed to timely pay all wages due to Plaintiffs and
16 other class members during their employment;

17 j. Whether Defendants complied with wage reporting as required by the
18 California Labor Code, including, inter alia, section 226;

19 k. Whether Defendants failed to reimburse class members for necessary
20 business-related expenses and costs;

21 l. Whether Defendants' conduct was willful or reckless;

22 m. Whether Defendants engaged in unfair business practices in violation of
23 California Business & Professions Code section 17200, *et seq.*;

24 n. The appropriate amounts of damages, restitution, and/or monetary
25 penalties resulting from Defendants' violation of California law; and

26 o. Whether Plaintiffs and other class members are entitled to compensatory
27 damages pursuant to the California Labor Code.

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GENERAL ALLEGATIONS

18. During the relevant time period set forth herein, Defendants employed Plaintiffs and other persons as hourly-paid or non-exempt employees within the State of California.

19. Defendants, jointly and severally, employed Plaintiff Silva as an hourly-paid, non-exempt employee from in or about July of 2017 to August of 2018 in the State of California, County of Contra Costa.

20. Defendant Hiring Entity employed Plaintiff Young on a commissioned basis from 2019 to 2020 in the State of California, County of Los Angeles.

21. Defendants Hiring Entity and SVS employed Plaintiff Silva and other class members and classified them as hourly-paid, non-exempt employees, and failed to compensate them for all hours worked, missed meal periods, and/or missed rest breaks; Defendant Hiring Entity employed Plaintiff Young and other aggrieved employees and failed to compensate them for all hours worked, missed meal periods, and/or missed rest breaks.

22. Defendants Hiring Entity and SVS had the authority to hire and terminate Plaintiff Silva and other class members; to set work rules and conditions governing Plaintiff Silva's and the other class members' employment; and to supervise their daily employment activities; Defendants Hiring Entity had the authority to hire and terminate Plaintiff Young and other aggrieved employees; to set work rules and conditions governing Plaintiff Young's and the other aggrieved employees' employment; and to supervise their daily employment activities.

23. Defendant Hiring Entity and SVS exercised sufficient authority over the terms and conditions of Plaintiff Silva and other class members' employment for them to be joint employers of Plaintiff Silva and other class members. Defendant Hiring Entity exercised sufficient authority over the terms and conditions of Plaintiff Young and other aggrieved employees' employment for them to be joint employers of Plaintiff Young and other aggrieved employees.

24. Defendant Hiring Entity and SVS employed and paid wages and benefits to Plaintiff Silva and other class members. Defendant Hiring Entity employed and paid wages

1 and benefits to Plaintiff Young and other aggrieved employees.

2 25. Defendants continue to employ hourly-paid or non-exempt employees within the
3 State of California.

4 26. Plaintiffs and other class members worked over eight (8) hours in a day, and/or
5 forty (40) hours in a week during their employment with Defendants.

6 27. Plaintiffs are informed and believe, and based thereon alleges, that Defendants
7 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt
8 employees within the State of California. This scheme involved, inter alia, failing to pay them
9 for all hours worked, missed meal periods, and missed rest breaks in violation of California
10 law.

11 28. Plaintiffs are informed and believe, and based thereon alleges, that Defendants
12 knew or should have known that Plaintiffs and other class members were entitled to receive
13 certain wages for overtime compensation and that they were not receiving wages for overtime
14 compensation.

15 29. Plaintiffs are informed and believe, and based thereon alleges, that Defendants
16 failed to provide Plaintiffs and other class members the required rest and meal periods during
17 the relevant time period as required under the Industrial Welfare Commission Wage Orders
18 and thus they are entitled to any and all applicable penalties.

19 30. In addition, Defendant Hiring Entity regularly increased the workload of
20 Plaintiff Silva and/or caused Plaintiff Silva and other class members to take meal periods after
21 the start of their fifth hour of work. Despite Defendant SVS' knowledge that Plaintiff Silva
22 was regularly taking her meal periods after the start of her fifth hour of work, Defendant SVS
23 failed to compensate Plaintiff with meal period premium pay.

24 31. Plaintiffs are informed and believe, and based thereon alleges, that Defendants
25 knew or should have known that Plaintiffs and other class members were entitled to receive all
26 timely and complete meal periods or payment of one additional hour of pay at Plaintiffs' and
27 other class members' regular rate of pay when a meal period was missed, late or interrupted,
28 and they did not receive all timely and proper meal periods or payment of one additional hour

1 of pay at Plaintiffs' and other class members' regular rate of pay when a meal period was
2 missed.

3 32. Plaintiffs are informed and believe, and based thereon alleges, that Defendants
4 knew or should have known that Plaintiffs and other class members were entitled to receive all
5 timely rest periods without interruption or payment of one additional hour of pay at Plaintiffs'
6 and the other class members' regular rate of pay when a rest period was missed, late or
7 interrupted, and they did not receive all rest periods or payment of one additional hour of pay
8 at Plaintiffs' and the other class members' regular rate of pay when a rest period was missed.

9 33. Plaintiffs are informed and believe, and based thereon alleges, that Defendants
10 knew or should have known that Plaintiffs and other class members were entitled to receive at
11 least minimum wages for compensation and that they were not receiving at least minimum
12 wages for all hours worked.

13 34. Plaintiffs are informed and believe, and based thereon alleges, that Defendants
14 knew or should have known that Plaintiffs and other class members were entitled to receive the
15 wages owed to them upon discharge or resignation, including overtime and minimum wages
16 and meal and rest period premiums, and they did not, in fact, receive such wages owed to them
17 at the time of their discharge or resignation.

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

24 36. Plaintiffs are informed and believe, and based thereon alleges, that Defendants
25 knew or should have known that Defendants had to keep complete and accurate payroll records
26 for Plaintiffs and other class members in accordance with California law, but, in fact, did not
27 keep complete and accurate payroll records.

28 37. Plaintiffs are informed and believe, and based thereon alleges, that Defendants

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

6 38. As a pattern and practice, during the relevant time period set forth herein,
7 Defendants failed to pay overtime wages to Plaintiffs and other class members for all hours
8 worked. Plaintiffs and other class members were required to work more than eight (8) hours
9 per day and/or forty (40) hours per week without overtime compensation.

10 39. As a pattern and practice, during the relevant time period set forth herein,
11 Defendants failed to provide the requisite uninterrupted and timely meal and rest periods to
12 Plaintiffs and other class members.

13 40. As a pattern and practice, during the relevant time period set forth herein,
14 Defendants failed to pay Plaintiffs and other class members at least minimum wages for all
15 hours worked.

16 41. As a pattern and practice, during the relevant time period set forth herein,
17 Defendants failed to pay Plaintiffs and other class members the wages owed to them upon
18 discharge or resignation.

19 42. As a pattern and practice, during the relevant time period set forth herein,
20 Defendants failed to provide complete or accurate wage statements to Plaintiffs and other class
21 members.

22 43. As a pattern and practice, during the relevant time period set forth herein,
23 Defendants failed to keep complete or accurate payroll records for Plaintiffs and other class
24 members.

25 44. As a pattern and practice, during the relevant time period set forth herein,
26 Defendants failed to properly compensate Plaintiffs and other class members pursuant to
27 California law in order to increase Defendants' profits.

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45. California Labor Code section 218 states that nothing in Article 1 of the Labor 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.”

FIRST CAUSE OF ACTION

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

(By Plaintiff Silva Against All Defendants and DOES 1 through 100)

46. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 46, and each and every part thereof with the same force and effect as though fully set forth herein.

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

48. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiffs and other class members employed by Defendants, who work(ed) more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

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

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

51. During the relevant time period set forth herein, Plaintiff Silva and other class members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

52. As a pattern and practice, during the relevant time period set forth herein, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff Silva and other class members.

53. Defendants' pattern and practice of failing to pay Plaintiff Silva and 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.

54. Pursuant to California Labor Code section 1194, Plaintiff Silva and 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))

(By Plaintiff Silva Against All Defendants and DOES 1 through 100)

55. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 55, and each and every part thereof with the same force and effect as though fully set forth herein.

56. During the relevant time period set forth herein, the IWC Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiff Silva and other class members' employment by Defendants.

57. During the relevant time period set forth herein, 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.

58. During the relevant time period set forth herein, 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

1 without providing the employee with a meal period of not less than thirty (30) minutes, except
2 that if the total work period per day of the employee is no more than six (6) hours, the meal
3 period may be waived by mutual consent of both the employer and employee.

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

11 60. As a pattern and practice, during the relevant time period set forth herein,
12 Plaintiff Silva and other class members who were scheduled to work for a period of time no
13 longer than six (6) hours, and who did not waive their legally-mandated meal periods by
14 mutual consent, were required to work for periods longer than five (5) hours without an
15 uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

16 61. As a pattern and practice, during the relevant time period set forth herein,
17 Plaintiff Silva and other class members who were scheduled to work for a period of time in
18 excess of six (6) hours were required to work for periods longer than five (5) hours without an
19 uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

20 62. As a pattern and practice, during the relevant time period set forth herein,
21 Defendants intentionally and willfully required Plaintiff Silva and other class members to work
22 during meal periods and failed to compensate Plaintiff Silva and the other class members the
23 full meal period premium for work performed during meal periods.

24 63. As a pattern and practice, during the relevant time period set forth herein,
25 Defendants failed to pay Plaintiff Silva and other class members the full meal period premium
26 due pursuant to California Labor Code section 226.7.

27 64. Defendants' conduct violates applicable IWC Wage Order and California Labor
28 Code sections 226.7 and 512(a).

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

THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(By Plaintiff Silva Against All Defendants and DOES 1 through 100)

66. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 66, and each and every part thereof with the same force and effect as though fully set forth herein.

67. During the relevant time period set forth herein, the applicable IWC Wage Order and California Labor Code section 226.7 were applicable to Plaintiff Silva and other class members' employment by Defendants.

68. During the relevant time period set forth herein, 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.

69. During the relevant time period set forth herein, 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.

70. As a pattern and practice, during the relevant time period set forth herein, Defendants required Plaintiff Silva 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.

71. As a pattern and practice, during the relevant time period set forth herein, Defendants willfully required Plaintiff Silva and the other class members to work during rest

1 periods and failed to pay Plaintiff Silva and the other class members the full rest period
2 premium for work performed during rest periods.

3 72. As a pattern and practice, during the relevant time period set forth herein,
4 Defendants failed to pay Plaintiff Silva and the other class members the full rest period
5 premium due pursuant to California Labor Code section 226.7

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

8 74. Pursuant to the applicable IWC Wage Orders and California Labor Code section
9 226.7(b), Plaintiff Silva and other class members are entitled to recover from Defendants one
10 additional hour of pay at the employees' regular hourly rate of compensation for each workday
11 that the rest period was not provided.

12 **FOURTH CAUSE OF ACTION**

13 **(Violation of California Labor Code §§ 1194 and 1197)**

14 **(By Plaintiff Silva Against All Defendants and DOES 1 through 100)**

15 75. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
16 through 75 and each and every part thereof with the same force and effect as though fully set
17 forth herein.

18 76. During the relevant time period set forth herein, California Labor Code sections
19 1194 and 1197 provide that the minimum wage to be paid to employees, and the payment of a
20 lesser wage than the minimum so fixed, is unlawful.

21 77. As a pattern and practice, during the relevant time period set forth herein,
22 Defendants failed to pay minimum wages to Plaintiff Silva and other class members as
23 required, pursuant to California Labor Code sections 1194 and 1197.

24 78. Defendants' failure to pay Plaintiff Silva and other class members the minimum
25 wage as required violates California Labor Code sections 1194 and 1197. Pursuant to those
26 sections, Plaintiff Silva and other class members are entitled to recover the unpaid balance of
27 their minimum wage compensation as well as interest, costs, and attorney's fees, and
28 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

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

FIFTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201 and 202)

(By Plaintiff Silva Against All Defendants and DOES 1 through 100)

80. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 80, and each and every part thereof with the same force and effect as though fully set forth herein.

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

82. As a pattern and practice, during the relevant time period set forth herein, Defendants intentionally and willfully failed to pay Plaintiff Silva and 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.

83. Defendants' pattern and practice of failing to pay Plaintiff Silva and 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.

84. 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.

85. Plaintiff Silva and 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 § 226(a))

(By Plaintiff Silva Against All Defendants and DOES 1 through 100)

86. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 86, and each and every part thereof with the same force and effect as though fully set forth herein.

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

88. As a pattern and practice, Defendants have intentionally and willfully failed to provide Plaintiff Silva and other class members with complete and accurate wage statements. The deficiencies include but are not limited to: the failure to include the total number of hours worked by Plaintiff Silva and other class members.

89. As a result of Defendants' violation of California Labor Code section 226(a),

1 Plaintiff Silva and other class members have suffered injury and damage to their statutorily
2 protected rights.

3 90. More specifically, Plaintiff Silva and other class members have been injured by
4 Defendants' intentional and willful violation of California Labor Code section 226(a) because
5 they were denied both their legal right to receive, and their protected interest in receiving,
6 accurate and itemized wage statements pursuant to California Labor Code section 226(a).

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

11 92. Plaintiff Silva and other class members are also entitled to injunctive relief to
12 ensure compliance with this section, pursuant to California Labor Code section 226(g).

13 **SEVENTH CAUSE OF ACTION**

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

15 **(By Plaintiff Silva Against All Defendants and DOES 1 through 100)**

16 93. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
17 through 93, and each and every part thereof with the same force and effect as though fully set
18 forth herein.

19 94. Defendants' conduct, as alleged herein, has been, and continues to be unfair,
20 unlawful and harmful to Plaintiff Silva, other class members, to the general public, and
21 Defendants' competitors. Accordingly, Plaintiff Silva seeks to enforce important rights
22 affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

23 95. Defendants' activities as alleged herein are violations of California law, and
24 constitute unlawful business acts and practices in violation of California Business &
25 Professions Code section 17200, *et seq.*

26 96. A violation of California Business & Professions Code section 17200, *et seq.*
27 may be predicated on the violation of any state or federal law. In this instant case, Defendants'
28 pattern and practice of requiring Plaintiff Silva and other class members work overtime hours

1 without paying them proper compensation violate California Labor Code sections 510 and
2 1198. Additionally, Defendants' pattern and practice of requiring Plaintiff Silva and other
3 class members, to work through their meal and rest periods without paying them proper
4 compensation violate California Labor Code sections 226.7 and 512(a). Moreover, Defendants'
5 pattern and practice of failing to timely pay wages to Plaintiff Silva and other class members
6 violate California Labor Code sections 201 and 202. Defendants also violated California Labor
7 Code sections 226(a), 1194, 1197, 2800 and 2802.

8 97. As a result of the herein described violations of California law, Defendants
9 unlawfully gained an unfair advantage over other businesses.

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

13 99. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
14 Plaintiff Silva and other class members are entitled to restitution of the wages withheld and
15 retained by Defendants during a period that commences four years prior to the filing of this
16 Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure section
17 1021.5 and other applicable laws; and an award of costs.

18 **Eighth Cause of Action**

19 **(Violation of Labor Code Section 2698, *et seq.* ("PAGA"))**

20 **(By Plaintiff Young Against Defendant Hiring Entity and DOES 1 through 100)**

21 100. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
22 through 100, and each and every part thereof with the same force and effect as though fully set
23 forth herein.

24 101. PAGA expressly establishes that any provision of the California Labor Code
25 which provides for a civil penalty to be assessed and collected by the Labor and Workforce
26 Development Agency ("LWDA"), or any of its departments, divisions, commissions, boards,
27 agencies or employees for a violation of the California Labor Code, may be recovered through
28 a civil action brought by an aggrieved employee on behalf of himself or herself, and other

1 current or former employees.

2 102. On September 24, 2020, Plaintiff Young provided written notice to the LWDA
3 and Defendant Hiring Entity of the specific provisions of the Labor Code he contends were
4 violated, and the theories supporting his contentions. Attached hereto as **Exhibit 1** and
5 incorporated by reference is a copy of the written notice to the LWDA. Plaintiff Young
6 believes that on or about November 28, 2020, the sixty-five (65) day notice period expired as
7 to Defendants, and the LWDA did not take any action to investigate or prosecute this matter.
8 Therefore, Plaintiff Young has exhausted the statutory time period to bring this action.

9 103. Plaintiff Young and the other hourly-paid, commission-based, non-exempt
10 and/or exempt employees are “aggrieved employees” as defined by California Labor Code §
11 2699(c) in that they are all current or former employees of Defendant Hiring Entity who
12 worked for Defendant Hiring Entity at any time during the period from September 11, 2019 to
13 the present, and one or more of the alleged violations was committed against them.

14 **Failure to Pay Minimum and Overtime Wages**

15 104. At all times relevant herein, Defendant Hiring Entity was required to
16 compensate its non-exempt employees minimum wages for all hours worked and overtime
17 wages for all hours worked in excess of eight (8) hours in a day or forty (40) hours in a
18 workweek, pursuant to the mandate of Labor Code §§ 510, 1194, 1197, and 1198.

19 105. As a pattern and practice, Defendant Hiring Entity failed to compensate Plaintiff
20 Young and other aggrieved current and former employees for all hours worked, resulting in a
21 failure to pay all minimum wages and overtime wages, where applicable.

22 **Failure to Provide Meal Periods and Rest Breaks**

23 106. In accordance with the mandates of Labor Code §§ 226.7 and 512, Defendant
24 Hiring Entity was required to authorize and permit their non-exempt employees to take a 10-
25 minute rest break for every four (4) hours worked or major fraction thereof and were further
26 required to provide their non-exempt employees with a 30-minute meal period for every five
27 (5) hours worked.

28 ///

1 107. As a pattern and practice, Defendant Hiring Entity failed to provide Plaintiff
2 Young and other aggrieved current and former employees with legally-mandated meal periods
3 and rest breaks and failed to pay proper compensation for this failure.

4 **Failure to Timely Pay Wages During Employment**

5 108. At all times relevant herein, Defendant Hiring Entity was required to pay its
6 employees within a specified time period pursuant to the mandate of Labor Code § 204.

7 109. As a pattern and practice, Defendant Hiring Entity failed to pay Plaintiff Young
8 and other aggrieved current and former employees all wages due and owing them within the
9 required time period.

10 **Failure to Timely Pay Wages Upon Termination**

11 110. At all times relevant herein, Defendant Hiring Entity was required to pay their
12 employees all wages owed in a timely fashion at the end of employment pursuant to California
13 Labor Code §§ 201 to 204.

14 111. As a result of Defendant Hiring Entity's Labor Code violations alleged above,
15 Defendant failed to pay Plaintiff Young and other aggrieved former employees their final
16 wages pursuant to Labor Code §§ 201 to 204 and accordingly owe waiting time penalties
17 pursuant to Labor Code § 203.

18 **Failure to Provide Complete and Accurate Wage Statements**

19 112. At all times relevant herein, Defendant Hiring Entity was required to keep
20 *accurate* records regarding their California employees pursuant to the mandate of Labor Code
21 §§ 226 and 1174.

22 113. As a result of Defendant Hiring Entity's various Labor Code violations,
23 Defendant failed to keep accurate records regarding Plaintiff Young and other aggrieved
24 current and former employees. For example, Defendant Hiring Entity failed in its affirmative
25 obligation to keep accurate records regarding Plaintiff Young and other aggrieved current and
26 former employees' gross wages earned, total hours worked, all deductions, net wages earned,
27 and all applicable hourly rates and the number of hours worked at each hourly rate.

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Failure to Reimburse Business Expenses

114. At all times relevant herein, Defendant Hiring Entity was required to reimburse its employees for any and all necessary expenditures or losses incurred by the employees in direct consequences of the discharge or his or her duties pursuant to the mandate of Labor Code §§ 2800 and 2802.

115. As a pattern and practice, Defendant Hiring Entity failed to pay Plaintiff Young and other aggrieved current and former aggrieved employees all business expenses incurred and owing them within the required time period.

Penalties

116. Pursuant to California Labor Code § 2699, Plaintiff Young, individually, and on behalf of other current and former aggrieved employees, requests and are entitled to recover from Defendant Hiring Entity, and each of them, civil penalties, interest, attorneys' fees and costs pursuant, as well as all statutory penalties against Defendant, and each of them, including but not limited to:

- a. Penalties under California Labor Code § 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under California Code of Regulations Title 8 § 11040 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under California Labor Code § 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- d. Penalties under Labor Code § 1197.1 in the amount of a hundred dollars (\$100) for

1 each aggrieved employee per pay period for the initial violation, and two hundred
2 fifty dollars (\$250) for each aggrieved employee per pay period for each
3 subsequent violation;

4 e. An amount sufficient to recover unpaid wages under Labor Code § 558;

5 f. An amount sufficient to recover unpaid wages under Labor Code § 1197.1;

6 g. Any and all additional penalties as provided by the Labor Code and/or other
7 statutes; and

8 h. Attorneys' fees and costs pursuant to Labor Code §§ 210, 1194, and 2699, and any
9 other applicable statute.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiffs, individually, and on behalf of other members of the general public similarly
12 situated and on behalf of aggrieved employees pursuant to PAGA, requests a trial by jury.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs, individually and on behalf of all other members of the
15 general public similarly situated and on behalf of aggrieved employees pursuant to PAGA,
16 pray for relief and judgment against Defendants, jointly and severally, as follows:

17 **Class Certification**

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

23 **As to the First Cause of Action**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 19. For all actual, consequential, and incidental losses and damages, according to
2 proof;

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

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

6 22. For such other and further relief as the court may deem just and proper.

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

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

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

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

15 26. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
16 California Labor Code section 1194(a);

17 27. For liquidated damages pursuant to California Labor Code section 1194.2; and

18 28. For such other and further relief as the court may deem just and proper.

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

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

24 30. For all actual, consequential, and incidental losses and damages, according to
25 proof;

26 31. For statutory wage penalties pursuant to California Labor Code section 203 for
27 the other class members who have left Defendants' employ;

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

3 33. For such other and further relief as the court may deem just and proper.

4 **As to the Sixth Cause of Action**

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

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

10 36. For injunctive relief to ensure compliance with this section, pursuant to
11 California Labor Code section 226(g); and

12 37. For such other and further relief as the court may deem just and proper.

13 **As to the Seventh Cause of Action**

14 38. That the Court declare, adjudge and decree that Defendants violated California
15 Business and Professions Code sections 17200, *et seq.* by failing to provide Plaintiff Silva and
16 Young and other class members all overtime compensation due to them, failing to provide all
17 meal and rest periods to Plaintiff Silva and Young and the other class members, failing to pay
18 at least minimum wages to Plaintiff Silva and Young and the other class members, failing to
19 pay Plaintiff Silva and Young and other class members' wages timely as required by California
20 Labor Code section 201, 202.

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

23 40. For the appointment of a receiver to receive, manage and distribute any and all
24 funds disgorged from Defendants and determined to have been wrongfully acquired by
25 Defendants as a result of violation of California Business and Professions Code sections
26 17200, *et seq.*;

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

1 42. For injunctive relief to ensure compliance with this section, pursuant to
2 California Business and Professions Code sections 17200, *et seq.*; and

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

4 **As to the Eighth Cause of Action**

5 44. For the eight cause of action, for civil penalties pursuant to statute as set forth in
6 Labor Code § 2698 *et seq.*, for Defendants' violations of Labor Code §§ 201, 202, 203, 204,
7 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800
8 and 2802.

9 45. For costs and attorneys' fees pursuant to Labor Code §§ 210, 218.5, 1194, and
10 2699, and any other applicable statute; and

11 46. For such other and further relief the court may deem just and proper.

12
13 Dated: November 12, 2021

JUSTICE LAW CORPORATION

14
15
16 By: 

Douglas Han
Shunt Tatavos-Gharajeh
Daniel J. O'Neil-Ortiz
Attorneys for Plaintiff Veronica Jauregui
Silva, *et al.*, on behalf of themselves and all
others similarly situated

EXHIBIT 1

September 24, 2020

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: BEN MYERSON CANDY CO., INC. d/b/a WINE WAREHOUSE

Dear Representative:

We have been retained to represent Matthew Young against Ben Myerson Candy Co., Inc. d/b/a Wine Warehouse (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20¹ for violations of California wage-and-hour laws (hereinafter collectively referred to as "BMCC").

Mr. Young is pursuing his California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Mr. Young may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Ben Myerson Candy Co., Inc. d/b/a Wine Warehouse is California corporation located at 6550 E. Washington Blvd., Commerce, California 90040.

BMCC employs Mr. Young as a commissioned-based exempt Sales Representative in the State of California. BMCC directly controls the wages, hours and working conditions of Mr. Young and other aggrieved employees' employment.

The "aggrieved employees" that Mr. Young may seek penalties on behalf of are all current and former hourly-paid, commission-based, non-exempt and/or exempt employees (whether hired directly or through staffing agencies) of BMCC within the State of California.

¹ Mr. Young does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Mr. Young will amend this notice when the true names and capacities are known. Mr. Young is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Mr. Young and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

BMCC failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

BMCC misclassified Mr. Young and other exempt employees (including but not limited to, on the basis of the Outside Salespersons Exemption, despite sales representatives spending more than fifty percent of their time engaging in non-sales activities like taking inventory and stocking products) and failed to properly pay them for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. Young has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at BMCC, regardless of their classification, job title, locations, or whether they were hired directly or through a staffing agency.

BMCC has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates.

During the relevant time period, BMCC misclassified Mr. Young and other aggrieved employees as exempt from overtime and failed to compensate them overtime for work performed in excess of 8 hours in a day and/or 40 hours in a week.

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During the relevant time period, non-exempt aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. BMCC failed to compensate non-exempt aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, waiting in line to clock in and out, donning and doffing uniforms, while travelling, and during meal breaks. BMCC also failed to factor non-discretionary bonuses and incentives in non-exempt aggrieved employees' regular rate of pay for purposes of overtime compensation. Moreover, BMCC implemented alternative workweek schedules and required non-exempt aggrieved employees to work alternative schedules without following the proper election procedures, including proposing an alternative workweek schedule in a written agreement, conducting secret elections and providing timely and adequate disclosures, and failed to pay them overtime for all hours worked in excess of 8 hours in a day. Lastly, BMCC automatically deducted meal breaks for non-exempt aggrieved employees regardless whether they were provided the breaks. Therefore, Mr. Young and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided.

During the relevant time period, BMCC misclassified Mr. Young and other aggrieved employees as exempt and failed to provide them legally mandated meal and rest breaks.

During the relevant time period, BMCC routinely required non-exempt aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with BMCC's policies and expectations and meet production goals. For example, BMCC assigned drivers to high volume routes with strict delivery windows, forcing them to forego legally compliant meal and rest breaks to ensure they complete their deliveries in a timely manner. Also, BMCC neither scheduled meal/rest breaks for non-exempt aggrieved employees nor affirmatively relieved them of all work duties so they may take legally compliant breaks, instead shifting the onus on non-exempt aggrieved employees to find the time to take non-compliant breaks. Additionally, BMCC failed to adequately staff its operations to provide coverage to non-exempt aggrieved employees so they may be relieved of all work duties and take legally compliant meal and rest breaks. Moreover, BMCC's designated break area was not located in the vicinity of the work area, forcing non-exempt aggrieved employees to waste a portion of their meal and rest breaks travelling between the two areas. Lastly, BMCC failed to authorize and permit non-exempt aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, BMCC failed to compensate Mr. Young and other aggrieved employees all the premium wages they were owed.

California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, 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 therefor is commenced; but the wages shall not continue for more than 30 days. During the relevant time period, BMCC failed to pay Mr. Young and other aggrieved employees all wages due to them within any time period specified by California Labor Code sections 201 and 203, including for all hours worked, uncompensated off-the-clock work, uncompensated overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks, and therefore is liable under California Labor Code section 203.

California Labor Code section 204 requires 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, and 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. California Labor Code section 204 also requires 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. During the relevant time period, BMCC failed to pay Mr. Young and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including for all hours worked, uncompensated off-the-clock work, uncompensated overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, BMCC did not provide Mr. Young and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from BMCC were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Mr. Young and other aggrieved employees, (2) total hours worked by Mr. Young and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Mr. Young and other aggrieved employees (4) all deductions for Mr. Young and other aggrieved employees, (5) net wages earned by Mr. Young and other aggrieved employees, (6) the inclusive dates of

the period for which Mr. Young and other aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Mr. Young and other aggrieved employees. BMCC also failed to itemize deductions from monthly commissions earned to cover draws against commission on wage statements BMCC issued to Mr. Young and other commissioned based aggrieved employees.

California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Mr. Young and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, BMCC failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Mr. Young and other aggrieved employees.

California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, BMCC did not provide non-exempt aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of failing to pay them for all hours worked and off-the-clock work, including pre- and post-shift, waiting in line to clock in and out, donning and doffing uniforms, while travelling and during meal breaks.

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California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Mr. Young and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by BMCC, including for using their personal cellular phones to communicate with customers and management, using their personal vehicles for work mandated travel, and purchasing gear (like gloves, masks, pants and steel toed boots) they were required to wear while working.

We believe that Mr. Young and other current and former California-based hourly-paid, commission-based, non-exempt and/or exempt employees are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Young will seek these penalties and wages on his behalf and on behalf of other similarly situated California-based hourly-paid, commission-based, non-exempt and/or exempt employees of BMCC within one year of the date of this letter, as allowed by law.

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LWDA
September 24, 2020
Page 7 of 7

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read 'D. Han', with a long horizontal stroke extending to the right.

Douglas Han, Esq.

CC: (By Certified U.S. Mail Only):

Keith Smith
c/o Ben Myerson Candy Co., Inc. d/b/a Wine Warehouse
6550 E. Washington Blvd.
Commerce, California 90040
Agent for Service of Process for Ben Myerson Candy Co., Inc. d/b/a Wine Warehouse

CC: (By Electronic Mail Only):

William O. Stein, Esq.
WStein@ebglaw.com
Kevin Sullivan, Esq.
KSullivan@ebglaw.com

EPSTEIN BECKER GREEN

Counsel of Record for Ben Myerson Candy Co., Inc. d/b/a Wine Warehouse

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address award@justicelawcorp.com

On November 16, 2021, I served the foregoing document described as

SECOND AMENDED CLASS ACTION COMPLAINT FOR DAMAGES

for the following case: **Silva v. Ben Myerson Candy Co., Inc. d/b/a Wine Warehouse**
LWDA/Court Case No.: **LWDA Case No.: CM-807643-20**
Court Case No.: 20STCV21665
Los Angeles County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[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 16, 2021, at Pasadena, California.



Alex Ward