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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

HILDA ORELLANA, individually, on behalf
of all others similarly situated, and on behalf
of the State of California, as a private
attorney general,

PLAINTIFF,

v.

TORTILLERIA EL TORO II, INC., a
California Corporation, and DOES 1 to 50,
inclusive,

DEFENDANTS.

ELECTRONICALLY FILED
Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
12/9/2020 8:06 AM
By: Ninette Height, Deputy

CASE NO. 20CV04199

**CLASS AND PAGA REPRESENTATIVE
ACTION COMPLAINT FOR:**

1. Failure to pay for all time worked and minimum wage
2. Failure to pay overtime
3. Failure to provide compliant rest periods and premium pay
4. Waiting time penalties
5. Failure to provide itemized wage statements
6. Failure to reimburse business expenses
7. Failure to provide personnel records
8. Violation of Business & Professions Code § 17200
9. Private Attorneys General Act Penalties

DEMAND FOR JURY TRIAL

1 Plaintiff HILDA ORELLANA (hereinafter “ORELLANA”), on behalf of herself, and on
2 behalf of all other similarly situated employees pursuant to California Code of Civil Procedure
3 section 382, and on behalf of the people of the State of California and as “Aggrieved Employees”
4 acting as private attorneys general under the Labor Code Private Attorneys General Act of 2004,
5 § 2698, *et seq.*, complain and allege against Defendant TORTILLERIA EL TORO II, INC.
6 (hereinafter “El Toro”), and the DOE Defendants, (hereinafter collectively “Defendants”), as
7 follows:

8 **I. NATURE OF ACTION**

9 1. This is a class-action and Labor Code Private Attorneys General Act of 2004, §
10 2698, *et seq.*, (“PAGA”) representative action, and an individual action, arising out of
11 Defendants’ systematic scheme and practice of engaging in wage and hour violations against their
12 employees in California.

13 2. By and through the acts and omissions alleged herein, Defendants required and/or
14 permitted Plaintiff to work “off-the-clock” without providing compensation for all hours worked,
15 failed to provide Plaintiff overtime compensation due, denied Plaintiff the opportunity to take
16 uninterrupted, duty free rest breaks as required by California law, failed to provide Plaintiff
17 premium pay for the denial of compliant rest breaks, failed to provide reimbursement to Plaintiff
18 for business expenses, failed to timely provide all wages due and owing, failed to provide
19 accurate and complete wage statements, and failed pay all final wages due and owing at
20 separation.

21 3. Accordingly, Plaintiff seeks relief on a class-wide and PAGA representative basis
22 for unpaid wages, penalties and damages.

23 4. Defendants also failed to make work-related records available to ORELLANA
24 pursuant to California Labor Code sections 226, 234, and 1198.5 and pursuant to IWC Wage
25 Order 5-2001 section 7(c).

26 **II. PAGA NOTICE**

27 5. Plaintiff provided notification of her PAGA claims to Defendants and to the Labor
28 and Workforce Development Agency (“LWDA”) on September 1, 2020. Plaintiff has received no

1 notice from the LWDA stating its intent to investigate pursuant to Labor Code section
2 2269.3(a)(2)(A).

3 III. PARTIES

4 6. At all times relevant hereto, ORELLANA, resided in California State while
5 working for Defendants. At all times relevant hereto, ORELLANA was employed by Defendants
6 to work at Defendants' restaurant located at 1135 W. Main Street, Santa Maria, California 93458
7 from in or about May 2019 to on or about July 18, 2020.

8 7. On information and belief, at all times relevant hereto, Defendants
9 TORTILLERIA EL TORO II, INC. is and was a California Corporation with its headquarters in
10 Commerce, California. On information and belief, Defendants operates at least two restaurants in
11 Santa Barbara County, California, one located in tat 1135 W. Main St., Santa Maria, California
12 (the "Santa Maria" restaurant), and another located in or near the city of Guadalupe, California.

13 8. Each of the Defendants fictitiously named as DOES 1-50 participated in the acts
14 alleged in this Complaint. The true names and capacities of the Defendants named as DOES 1
15 through 50, inclusive, are presently unknown to Plaintiff. Plaintiff will amend this Complaint,
16 setting forth the true names and capacities of the fictitious Defendants, if and when their true
17 names and capacities are ascertained. Plaintiff and all other similarly situated employees are, and
18 at all relevant times were, jointly employed by all Defendants, including DOES 1 through 50,
19 within the meanings set forth in the California Labor Code and applicable IWC Wage Order 5-
20 2001. At all relevant times, each Defendant, whether named or fictitious, was the agent, employee
21 or other person acting on behalf of every other Defendant, and, in participating in the acts alleged
22 in this Complaint, acted within the scope of such agency or employment and ratified the acts of
23 each other Defendant. Each Defendant, whether named or fictitious, exercised control over
24 Plaintiff's and other similarly situated employees' wages, hours and/or working conditions. At all
25 relevant times, each Defendant, whether named or fictitious, acted as the agent for the other
26 Defendants, carried out a joint scheme, business plan or policy, and the acts of each Defendant
27 are legally attributable to the other Defendants.

28 9. Each Defendant, whether named or fictitious, was the alter ego of each of the other

1 Defendants at all relevant times herein. A unity of interest and ownership between each
2 Defendant, whether named or fictitious, exists such that all Defendants acted as a single employer
3 of Plaintiff and all other similarly situated employees.

4 **IV. JURISDICTION AND VENUE**

5 10. This Court has personal jurisdiction over Defendants because they are residents
6 and/or doing business in, and have caused injuries in, the State of California.

7 11. This Court has subject matter jurisdiction over any and all causes of action
8 asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of
9 Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in
10 controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted
11 arises under the laws of the State of California or is subject to adjudication in the courts of the
12 State of California. The total amount at issue, including attorney's fees, is less than \$5 million.

13 12. Venue as to each Defendant is proper in Los Angeles County pursuant to
14 California Code of Civil Procedure section 395(a) because Defendants, or some of them reside in
15 and/or are doing business in Los Angeles County.

16 **V. CLASS ALLEGATIONS**

17 13. ORELLANA brings the claims alleged herein as a class action pursuant to
18 California Rule of Civil Procedure section 382 on behalf of a Class consisting of the following
19 similarly situated individuals:

20 The "Class":

21 all individuals who were employed by Defendants in the State of California to work at one
22 of Defendants' restaurants/tortilleria as hourly, non-exempt employees and who worked at
23 least one shift of 3.51 hours or more from four years prior to the filing date of this lawsuit
and until the class is certified.

24 14. Plaintiff is informed and believe and, on that basis, allege that there are at least 42
25 current employees and an unknown number of former employees, estimated to be at least an
26 additional 40 as current employees, in the Class. Given Defendants' systemic failure to comply
27 with California Labor Code and Wage Orders regarding the payment for all time worked and
28 payment of at least minimum wage for all time worked, payment of overtime, provision of rest

1 breaks, incomplete and inaccurate wage statements, untimely payment of wages, and failure to
2 reimburse business expenses, the members of the Class are so numerous that joinder of all
3 members is impractical. Moreover, the disposition of the claims of the Class in a single action
4 will provide substantial benefit to all Parties and the Court.

5 15. ORELLANA's claims are typical of the claims of the members of Class because
6 she was hired by Defendants to work at Defendants' restaurants, and she suffered damages and
7 violations of rights as a result of Defendants' common and systemic policies and practices as
8 alleged herein. Defendants subjected all hourly, non-exempt workers at its restaurants to those
9 same common policies and practices. ORELLANA's claims and the Class claims arise out of the
10 same common course of conduct by Defendants and are based on the same legal and remedial
11 theories.

12 16. ORELLANA will fairly and adequately represent the interests of the Class.
13 Neither ORELLANA nor her counsel have any conflict of interest with any member of the Class.
14 ORELLANA has retained competent and experienced counsel with significant experience in
15 complex and class action litigation. ORELLANA and her counsel are committed to prosecuting
16 this action vigorously on behalf of the Class and have the expertise and financial resources to
17 adequately represent the interests of the Class.

18 17. Common questions of law and fact exist as to all members of the Class and
19 predominate over any questions solely affecting individual members of the Class. Among the
20 questions of law and fact common to ORELLANA and the Class are the following:

- 21 a. Whether Defendants' common course of requiring workers at its
22 tortilleria/restaurants to begin working without compensation before their
23 recorded work start time violated California law requiring pay for all hours
24 worked and pay of minimum wage for all hours worked;
- 25 b. Whether Defendants' common course of failing to pay workers at its
26 tortilleria/restaurants for all time work before the start of a shift violated
27 California law requiring pay at overtime rates for all hours in excess of eight
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(8) hours in a shift, twelve (12) hours in a shift, forty (40) hours in a week, or eight (8) hours on a seventh consecutive day of work;

- c. Whether Defendants' common course of barring Plaintiff and Class Members from the leaving the premises during rest breaks, discouraging Plaintiff from closing market/restaurants when working alone at a location in order to take a rest break, subjecting Plaintiff's rest breaks to actual and potential interruption by customers or coworkers, and/or preventing Plaintiff and Class Members from stopping work in order to take rest breaks violated California law requiring Defendants to provide Plaintiff and Class Members uninterrupted, duty-free rest breaks lasting at least 10 minutes for every major fraction of four hours worked;
- d. Whether Defendants' had a common course of failing to provide rest break premium pay for the denial, interruption or on duty requirements of rest breaks; and
- e. Whether Defendants' common course of failed to indemnify or reimburse Plaintiff and Class Members, or improperly deducting from their wages, the costs of purchasing and maintain uniform shirts violated California law requiring Defendants to provide and maintain such uniform items; and
- f. The nature and extent of class-wide injury and the measure of damages for the injury.

18. Class action treatment is superior to any alternative to ensure the fair and efficient adjudication of the controversies alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without duplication of effort and expense that numerous individuals would entail. Absent a class action, most Class Members likely would find the costs of litigating their claims individually prohibitive. Class treatment is superior to multiple individual suits or piecemeal litigation because it conserves judicial resources, promotes consistency and efficiency of

1 adjudication, provides a forum for claimants with small value individual claims, and deters illegal
2 activities. No difficulties are likely to be encountered in the management of this class action that
3 would preclude its maintenance as a class action, and no superior alternative exists for the fair and
4 efficient adjudication of this controversy. The Class Members are readily identifiable from
5 Defendants' employee rosters and/or payroll records.

6 19. Prosecution of separate actions by individual members of each Class creates the
7 risk of inconsistent or varying adjudications of the issues presented herein, which, in turn, would
8 establish incompatible standards of conduct for Defendant.

9 20. Because joinder of all members is impractical, a class action is superior to other
10 available methods for the fair and efficient adjudication of this controversy. Furthermore, the
11 amounts at stake for many members of the Class, while substantial, may not be sufficient to
12 enable them to maintain separate suits against Defendant.

13 VI. FACTUAL ALLEGATIONS

14 21. In or about May 2019, Defendants hired ORELLANA to work as a server at
15 Defendants' restaurant located in Santa Maria, California. Defendants terminated ORELLANA's
16 employment on or about July 18, 2020.

17 22. At all times relevant hereto, Defendants paid ORELLANA as an hourly, non-
18 exempt employee.

19 23. Plaintiff is informed and believes, and on that basis alleges, that at all relevant
20 times hereto, all Class Members and Aggrieved Employees were paid as hourly, non-exempt
21 employees working for Defendants in Defendants' California tortilleria/restaurants.

22 24. Plaintiff's tortilleria/restaurant employee duties included taking orders, processing
23 payments, and other typical tasks associated with food service.

24 25. At all times relevant hereto, Defendants required all employees at its California
25 tortilleria/restaurants to wear uniform shirts but provided only two such shirts at the time of
26 hiring. Thereafter, Defendants required all employees at its California restaurants to purchase
27 uniform shirts at their own expense for \$10.11 each. Defendants failed to provide for the
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1 maintenance, including laundering, of such uniform items.

2 26. At all times relevant hereto, Defendants maintained a uniform policy and practice
3 requiring employees at its California restaurants to arrive and begin working before the scheduled
4 start of their shifts.

5 27. Specifically, all times relevant hereto, Defendants' employee handbook for
6 restaurant employees required employees to "punch at your check-in time at least 5 minutes
7 before" the scheduled start of a shift.

8 28. Defendants had an additional uniform practice of managers to disregard the punch
9 times and instead use the scheduled start times for pay and payroll purposes. Thus, Defendants
10 maintained a uniform policy and practice requiring their restaurant/tortilleria employees to start
11 working before the scheduled start of their shifts, and Plaintiff and Class Members did in fact start
12 working before the scheduled start of their shifts., but to pay only for scheduled shift times.

13 29. At all times relevant hereto, Defendants' uniform policies and practices failed to
14 provide all overtime compensation due to Plaintiff and Class Members where accurate recording
15 of Plaintiff's unrecorded and uncompensated time would have resulted in compensable time in
16 excess of eight (8) hours in a shift, twelve (12) hours in a shift, forty (40) hours in a week, or
17 eight (8) hours on a seventh consecutive day of work.

18 30. At all times relevant hereto, Defendants maintained a uniform policy and practice
19 of scheduling restaurant employees to work shifts of more than three and one-half hours on each
20 day worked. Plaintiff and Class Members regularly worked shifts in excess of three and one-half
21 hours on days that they worked.

22 31. At all times relevant hereto, Defendants maintained a uniform policy and practice
23 of failing to explain, or notify restaurant employees of, their rights to take uninterrupted, duty-free
24 rest breaks, including but not limited to off premises rest breaks lasting at least 10 minutes for
25 every major fraction of four hours worked.

26 32. At all times relevant hereto, Defendants maintained uniform policies and practices
27 that prevented restaurant employees from taking fully compliant, uninterrupted, duty-free rest
28 breaks, as evidenced by the facts that:

- a. Defendants' employee handbook for restaurant/tortilleria employees specifically provided that "you are not allowed to leave the company's premises" during rest periods.
- b. Defendants' restaurant/tortilleria employees' rest breaks were frequently subject to interruption by customers, coworkers, and/or members of the public regardless of how busy the restaurant was or how many other employees were working at the same time.
- c. Defendants maintained a uniform policy and practice barring restaurant employees from taking rest breaks when a restaurant was busy, and Defendants' restaurants regularly were busy for more than a major fraction of four hours at a time during Plaintiff's shifts.
- d. Defendants maintained a uniform policy and practice barring employees who were working alone at tortilleria/restaurant from taking a rest break unless they closed the restaurant during the break, but also strongly discouraged restaurant employees from closing restaurants.

33. Defendants maintained a uniform policy and practice of failing to provide Plaintiff and Class Members with one hour of premium pay at the employee's regular rate for each precluded, interrupted, on-duty, or insufficiently long rest break pursuant to California Labor Code section 226.7 and IWC Wage Order 5-2001 section 12.

34. Plaintiff is informed and believes, and on that basis, alleges, that Defendants subjected all Class Members and Aggrieved Employees to the same conditions, policies, and practices alleged herein resulting in the denial of compensation for all time worked, denial of overtime compensation, denial of compliant rest breaks, denial of premium pay for missed or non-compliant rest breaks, and failure to reimburse (and/or improper deductions for) uniform expenses. Plaintiff is informed and believe and, on that basis, allege that Defendants' policies and practices alleged herein, as well as the conditions at the work locations, were uniform across Defendants' tortilleria/restaurant locations.

35. Plaintiff is informed and believes, and on that basis, alleges, that Defendants were

1 on notice of the improprieties alleged herein and intentionally refused to rectify their improper
2 policies and practices.

3 36. Plaintiff is informed and believes, and on that basis alleges, that Defendants'
4 violations alleged herein were willful and deliberate.

5 37. On July 29, 2020, ORELLANA sent Defendants a letter demanding production of
6 her personnel records pursuant to California Labor Code sections 226, 432, and 1198.5 as well as
7 the applicable IWC Wage Order. As of November 6, 2020, Defendants had not provided any such
8 records, nor had they responded to ORELLANA's July 29, 2020 letter in any other way.

9 38. On September 1, 2020, ORELLANA sent Defendants a letter by express mail once
10 again demanding production of records relating to her employment pursuant to California Labor
11 Code sections 226, 432, and 1198.5 as well as IWC Wage Order 5-2001 section 7(c).
12 ORELLANA received confirmation from the US Postal Service that her September 1, 2020 letter
13 was delivered to Defendants on September 3, 2019. As of November 6, 2020, Defendants had not
14 provided any such records, nor had they responded to ORELLANA's September 3, 2020 letter in
15 any other way.

16 39. On October 6, 2020, more than 30 days after delivery of the September 3, 2020
17 request, ORELLANA sent Defendants another letter expressly: (a) advising that Defendants that
18 they had failed to respond to the September 3, 2020 request, (b) reiterating the prior request for
19 records pursuant to California Labor Code sections 226, 432, and 1198.5 as well as IWC Wage
20 Order 5-2001 section 7(c), and (c) warning Defendants that they would be subject to penalties, as
21 well as injunctive relief with an award of attorney fees and costs, should they continue to refuse
22 to provide the requested records. ORELLANA received confirmation from the US Postal Service
23 that her October 6, 2020 letter was delivered to Defendants on October 8, 2020.

24 40. As of November 6, 2020, Defendants still had not provided any records to
25 ORELLANA pursuant to California Labor Code sections 226, 432, and 1198.5 as well as IWC
26 Wage Order 5-2001 section 7(c); nor had Defendants provided ORELLANA with any
27 explanation for their lack of production pursuant to California law.

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1 **VII. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **FAILURE TO PAY FOR ALL TIME WORKED AND MINIMUM WAGE**

4 **(Cal. Labor Code §§ 1194, 1194.2, 1197, & 1197.1**

5 **and IWC Wage Order 5-2001 § 4)**

6 (By Plaintiff individually and on behalf of the Class against all Defendants)

7 41. Plaintiff hereby realleges and incorporates by reference as though fully set forth
8 herein all prior paragraphs of this Complaint.

9 42. By and through the acts and omissions alleged herein, Defendants denied Plaintiff
10 and the Class compensation for all time worked and denied Plaintiff and the Class payment of at
11 least the minimum wage for all time worked.

12 43. By and through the acts and omissions alleged herein, Defendants have violated
13 and continue to violate Labor Code sections 1194 and 1197 and the applicable Industrial Wage
14 Commission Orders in effect at the relevant times, which required Defendants to pay their
15 workers at least the minimum wage fixed by the Commission for each hour that Defendants
16 suffered or permitted such workers to work, and to pay their workers the agreed upon wage for
17 each hour Defendants suffered or permitted such workers to work.

18 44. Defendants' failure to pay Plaintiff and the Class for all time worked and to pay
19 minimum wage for each hour worked was willful.

20 45. As a direct and proximate cause of Defendants' unlawful acts and omissions
21 alleged herein, Plaintiff and the Class have suffered damages, including loss of earnings for all
22 time worked and loss of minimum wage for all hours worked, in amounts to be established at
23 trial.

24 46. Plaintiff and the Class seek and are entitled to all damages plus interest, liquidated
25 damages, penalties, attorney fees and costs, including but not limited to pursuant to Labor Code
26 sections 1194, 1194.2, and 1197.1, in amounts to be proven at trial, as well as any other legal or
27 equitable relief the Court finds just and proper.

28 47. Plaintiff and the Class also request relief as described below.

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SECOND CAUSE OF ACTION
FAILURE TO PAY OVERTIME COMPENSATION
(Cal. Labor Code §§ 510, 1194, 1197.1 and 1198
and IWC Wage Order 5-2001 § 3)

(By Plaintiff individually and on behalf of the Class against all Defendants)

48. Plaintiff hereby realleges and incorporates by reference as though fully set forth herein all prior paragraphs of this Complaint.

49. By and through the acts and omissions alleged herein, Defendants denied Plaintiff and the Class overtime compensation where accurate recording of Plaintiff's and the Class Members' unrecorded and uncompensated time would have resulted in worked time in excess of: eight (8) hours in a shift, twelve (12) hours in a shift, forty (40) hours in a week, or eight (8) hours on a seventh consecutive day of work.

50. By and through the acts and omissions alleged herein, Defendants violated and continue to violate Labor Code sections 510, 1194, 1198 and the applicable Industrial Wage Commission Orders in effect at the relevant times, which required Defendants to pay their workers at one and a half times the worker's regular rate of pay for all time worked in excess of eight (8) hours in one day or forty hours in one work week, and at two times the worker's regular rate of pay for all time in excess of twelve hours in one day or in excess of eight hours on a seventh consecutive day of work.

51. Defendants' failure to pay Plaintiff and the Class at the required rates for all overtime worked was willful.

52. As a direct and proximate cause of Defendants' unlawful acts and omissions alleged herein, Plaintiff and the Class have suffered damages, including loss of overtime compensation, in amounts to be established at trial.

53. Plaintiff and the Class seek and are entitled to all damages plus interest, penalties, attorney fees and costs, including but not limited to pursuant to Labor Code sections 1194 and 1197.1, in amounts to be proven at trial, as well as any other legal or equitable relief the Court finds just and proper.

54. Plaintiff and the Class also request relief as described below.

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE COMPLIANT REST BREAKS
(Cal. Labor Code § 226.7 and IWC Wage Order 5-2001 § 12)
(By Plaintiff individually and on behalf of the Class against all Defendants)

55. Plaintiff hereby realleges and incorporates by reference as though fully set forth herein all prior paragraphs of this Complaint.

56. By and through the acts and omissions alleged herein, Defendants failed, and continue to fail, to notify Plaintiff and the Class of their rights to uninterrupted, duty free rest breaks of at least 10 minutes for every major fraction of four hours worked, in violation of Labor Code section 226.7 and the applicable Wage Orders in effective at the relevant times herein.

57. By and through the acts and omissions alleged herein, Defendants denied, and continue to deny, Plaintiff and the Class 10 minutes of uninterrupted, duty free time for rest breaks for every major fraction of four hours worked, in violation of Labor Code section 226.7 and the applicable Wage Orders in effective at the relevant times herein.

58. By and through the acts and omissions alleged herein, Defendants failed, and continue to fail, to provide Plaintiff and the Class with premium pay of one hour of pay at the employee's regular rate for each precluded, interrupted, on-duty, or insufficiently long rest break in violation of Labor Code section 226.7, and the applicable Wage Orders in effective at the relevant times herein.

59. Defendants' failure to explain the rights to or provide the required rest breaks and premium pay to Plaintiff and the Class was willful.

60. As a direct and proximate cause of Defendants' unlawful acts and omissions alleged herein, Plaintiff and the Class have suffered damages, including loss of rest breaks and loss of premium pay for non-compliant rest breaks.

61. Plaintiff and the Class seek and are entitled to all premium pay and damages plus interest, penalties, attorney fees and costs, including but not limited to pursuant to Labor Code section 226.7, in amounts to be proven at trial, as well as any other legal or equitable relief the Court finds just and proper.

62. Plaintiff and the Class also request relief as described below.

1 **FOURTH CAUSE OF ACTION**
2 **WAITING TIME PENALTIES**
3 **(Cal. Labor Code §§ 201, 202, 203)**

4 (By Plaintiff individually and on behalf of the Class against all Defendants)

5 63. Plaintiff hereby realleges and incorporate by reference as though fully set forth
6 herein all prior paragraphs of this Complaint.

7 64. By and through the acts and omissions alleged herein, Defendants failed, and
8 continue to fail, to pay Plaintiff and members of the Class who are former employees all wages
9 due and owing at the time of separation from employment, in violation of Labor Code sections
10 201 and 202.

11 65. Defendants' failure to pay all wages due and owing at the time of separation was
12 willful.

13 66. As a direct and proximate cause of Defendants' unlawful acts and omissions
14 alleged herein, Plaintiff members of the Class who are former employees have suffered damages
15 in amounts to be established at trial.

16 67. Pursuant to Labor Code section 203, Plaintiff and members of the Class who are
17 former employees are entitled to continuation of their wages for up to 30 days after separation
18 from employment, plus interest, and reasonable attorney fees and costs.

19 **FIFTH CAUSE OF ACTION**
20 **INACCURATE WAGE STATEMENTS**
21 **(Cal. Labor Code §§ 226(a)(1)(2) & (5), 226.3)**

22 (By Plaintiff individually and on behalf of the members of the Class who worked within one year
23 prior to the filing of the complaint ("wage statement subclass") against all Defendants)

24 68. Plaintiff hereby realleges and incorporates by reference as though fully set forth
25 herein all prior paragraphs of this Complaint.

26 69. By and through the acts and omissions alleged herein, Defendants failed, and
27 continue to fail, to provide Plaintiff and the wage statement subclass accurate, itemized wage
28 statements identifying all gross and net wages earned, total hours worked, and all applicable
hourly rates of pay during the pay period in violation of Labor Code section 226(a).

70. Defendants' failure to provide Plaintiff and the wage statement subclass with
accurate, itemized wage statements was willful.

71. As a direct and proximate cause of Defendants' unlawful acts and omissions alleged herein, Plaintiff and the wage statement subclass have suffered damages, including but not limited to not being paid all wages due, not knowing total hours each employee worked and the rate of pay for all time worked, in amounts to be established at trial.

72. Pursuant to Labor Code § 226, Plaintiff and the wage statement subclass are entitled to recover the greater of actual damages or civil penalties pursuant to that provision, as well as interest, reasonable attorney fees and costs, in amounts to be proven at trial.

SIXTH CAUSE OF ACTION
FAILURE TO REIMBURSE BUSINESS EXPENSES
(Cal. Labor Code §§ 2802 and IWC Wage Order 5-2001 § 9)
 (By Plaintiff individually and on behalf of the Class against all Defendants)

73. Plaintiff hereby realleges and incorporates by reference as though fully set forth herein all prior paragraphs of this Complaint.

74. By and through the acts and omissions alleged herein, Defendants required Plaintiff and the Class to purchase and maintain at Plaintiff's own expense uniform shirts as specified by Defendants.

75. By and through the acts and omissions alleged herein, Defendants denied Plaintiff and the Class indemnification or reimbursement for, and/or improperly deducted wages for, uniform expenses, including but not limited to the costs of purchasing, laundering, and otherwise maintaining the shirts required by Defendants.

76. By and through the acts and omissions alleged herein, Defendants violated and continue to violate Labor Code section 2802 and the applicable Industrial Wage Commission Orders in effect at the relevant times, which require Defendants to provide and maintain the uniforms Defendants required Plaintiff to wear at work.

77. Defendants' failure to indemnify or reimburse Plaintiff and the Class, and or improper deduction of wages, for uniform expenses as alleged herein was willful.

78. As a direct and proximate cause of Defendants' unlawful acts and omissions alleged herein, Plaintiff and the Class have suffered damages, including the costs of purchasing and maintaining uniform shirts, in amounts to be established at trial.

1 79. Plaintiff and the Class are entitled to recover their damages, including uniform
2 expenses, interest thereon, and reasonable attorney fees and costs, in amounts to be proven at
3 trial.

4 **SEVENTH CAUSE OF ACTION**
5 **FAILURE TO PROVIDE PERSONNEL RECORDS**
6 **(Cal. Labor Code §§ 226, 432, & 1198.5 and**
7 **IWC Wage Order 5-2001 section 7(c))**
8 **(By ORELLANA individually against all Defendants)**

9 80. Plaintiff ORELLANA hereby realleges and incorporates by reference as though
10 fully set forth herein all prior paragraphs of this Complaint.

11 81. By and through the acts and omissions alleged herein, Defendants failed to provide
12 records to ORELLANA within 21 days of her request pursuant to Labor Code section 226.

13 82. By and through the acts and omissions alleged herein, Defendants failed to provide
14 records and/or an opportunity to inspect records to ORELLANA within 30 days of her request
15 pursuant to Labor Code section 1198.5.

16 83. By and through the acts and omissions alleged herein, Defendants failed to provide
17 records and/or an opportunity to inspect records to ORELLANA pursuant to Labor Code section
18 432.

19 84. By and through the acts and omissions alleged herein, Defendants failed to make
20 records available to ORELLANA for inspection pursuant to IWC Wage Order 5-2001 section
21 7(c).

22 85. Pursuant to Labor Code sections 226(f) and (h) and 1198.5(k) and (l),
23 ORELLANA is entitled to an award of civil penalties, injunctive relief, and attorney fees and
24 costs.

25 **EIGHTH CAUSE OF ACTION**
26 **UNLAWFUL BUSINESS PRACTICES**
27 **(Business & Prof. Code § 17200 - 17208)**
28 **(By Plaintiff individually and on behalf of the Class against all Defendants)**

86. Plaintiff hereby realleges and incorporates by reference as though fully set forth
herein all prior paragraphs of this Complaint.

87. Plaintiff brings this action on behalf of herself and all similarly situated, seeking
restitution of unpaid wages for unpaid time worked off the clock, unpaid minimum wage, and

1 unpaid overtime, as well as unpaid rest break premium pay, as alleged herein, including interest
2 for the four-year period preceding filing of this complaint.

3 88. By and through the acts and omissions alleged herein, Defendants engaged in an
4 unlawful, unfair, and/or fraudulent business practice, in violation of Business and Profession
5 Code section 17200. Defendants conducted business activities while failing to comply with the
6 legal mandates alleged herein. Plaintiff and others similarly situated suffered injury in fact and
7 lost money as a result of Defendants' unfair competition.

8 89. Pursuant to Business and Professions Code 17200 et seq., Plaintiff and the Class
9 are entitled to restitution and other appropriate relief on their own behalf and on behalf of others
10 similarly situated.

11 **NINTH CAUSE OF ACTION**
12 **PRIVATE ATTORNEYS GENERAL ACT PENALTIES**
13 **(Cal. Labor Code §§ 2698 & 2699)**

14 (By Plaintiff on behalf of all Aggrieved Employees against all Defendants)

15 90. Plaintiff hereby realleges and incorporates by reference as though fully set forth
16 herein all prior paragraphs of this Complaint.

17 91. Pursuant to Labor Code sections 2698 – 2699.5, an Aggrieved Employee may
18 recover penalties under any provision of the Labor Code providing for civil penalties on behalf of
19 herself or himself and all others aggrieved.

20 92. By and through the acts and omissions alleged herein, Defendants have committed,
21 and continue to commit, numerous violations of law for which the Labor Code provides penalties,
22 including but not limited to violations of sections: 201- 204, 210, 226, 226.3, 226.7, 510,1194,
23 1194.2, 1197, 1197.1, 1198 and 2802 and IWC Wage Order No. 5 -2001.

24 93. As a direct result of Defendants' acts and omissions as alleged herein, Plaintiff is
25 entitled to recover on behalf of herself and others aggrieved the maximum civil penalties
26 permitted under the PAGA for violations of Labor Code sections 201- 204, 210, 226, 226.3,
27 226.7, 510,1194, 1194.2, 1197, 1197.1,1198 and 2802 and IWC Wage Order No. 5 -2001, as well
28 as reasonable attorney fees and costs.

///

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. An order that the relevant claims in this action may proceed and be maintained as a class action and certifying the Class as defined herein;
2. An order declaring that Defendants are financially responsible for notifying all Class members of their violations of law;
3. An order appointing ORELLANA as representative of the Class and appointing the undersigned counsel as counsel for the Class;
4. An order enjoining and directing Defendants to immediately produce to ORELLANA all records required to be provided by California Labor Code sections 226, 432, and 1198.5, including but not limited to pursuant to California Labor Code sections 226(h) and 1198.5(l);
5. An order enjoining Defendants from engaging in the unlawful and wrongful conduct alleged herein, including but not limited to pursuant to California Labor Code sections 226(h) and 1194.5;
6. An award of all general and compensatory damages allowable by law in amounts according to proof, including but not limited to pursuant to California Labor Code sections 226.7, 1194, 510, 1197.1, 226.7 and 2802;
7. An award of all liquidated damages allowable by law in amounts according to proof, including but not limited to pursuant to California Labor Code sections 1194.2, and 1197.1;
8. An award of restitution of all moneys due to ORELLANA and the Class and all others similarly situated pursuant to Business and Professions Code 17200 for the four years preceding filing of this complaint;
9. For pre- and post-judgement interest to the extent permitted by law including, but not limited to, Labor Code §§ 218.6 and 1194;
10. An award of all penalties allowable by law, including but not limited to pursuant to Labor Code sections 203, 226(e), 226(f), 226.3, 1197.1, and 1198.5(k);

1 11. An award of all penalties and other relief allowable under Labor Code § 2699, *et*
2 *seq.* for Plaintiff and all other Aggrieved Employees, based on Defendants' violation of Labor
3 Code sections, including but not limited to Sections 201-204, 210, 226, 226.3, 226.7, 510, 1194,
4 1194.2, 1197, 1198, 2802, and IWC Wage Order No. 5 -2001;

5 12. An award of all costs of suit allowable by law, including but not limited to
6 pursuant to California Labor Code sections 218.5, 226(e) and (h), 1194, 1198.5(l) and 2699, and
7 Code of Civil Procedure section 1021.5;

8 13. An award of all reasonable attorneys' fees and costs allowable by law, including
9 but not limited to pursuant to: Labor Code sections 218.5, 226(e) and (h), 1194, 1198.5(l) and
10 2699, and Code of Civil Procedure section 1021.5;

11 14. An award of all prejudgment and post-judgment interest allowable by law,
12 including but not limited to pursuant to Labor Code sections 218.6, 1194, 1197.1 and 2802, and
13 Business and Profession Code section 17203;

14 15. An order granting Plaintiff leave to amend the Complaint to conform to the
15 evidence presented at trial; and

16 16. Such other and further relief as this Court may deem proper and just.

17 **VIII. DEMAND FOR JURY TRIAL**

18 Plaintiff demands a trial by jury for all issues so triable.

19
20 Dated: December 8, 2020

ACKERMANN & TILAJEF, P.C.
LAW OFFICE OF TATIANA HERNANDEZ, P.C.

21
22 By: _____

Craig J. Ackermann, Esq.

Tatiana Hernandez, Esq.

Attorneys for Plaintiff, the Putative Class, and all
Aggrieved Employees