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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

FANG ZHANG, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

PANROSA ENTERPRISES, INC., a
California Corporation, and DOES 1-10,
inclusive,

Defendant.

CASE NO: CVRI2100391

**PLAINTIFF'S CLASS ACTION AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

**(1) PAGA PENALTIES FOR DEFENDANT'S
WILLFUL MISCLASSIFICATION IN
VIOLATION OF LABOR CODE SECTION 226.8
AND 2698, ET SEQ.;**

**(2) FAILURE TO PAY OVERTIME (LABOR
CODE § 510);**

**(3) FAILURE TO PROVIDE COMPLIANT
REST PERIODS AND PAY MISSED REST
BREAK PREMIUMS (LABOR CODE §§ 226.7;
IWC WAGE ORDER NO. 13);**

**(4) FAILURE TO PROVIDE COMPLETE
WAGE STATEMENTS (LABOR CODE § 226);**

**(5) WAITING TIME PENALTIES (LABOR
CODE § 201 – 203);**

**(6) FAILURE TO PAY TIMELY WAGES
(LABOR CODE §§ 204, 210);**

**(7) UCL VIOLATIONS (BUS. & PROF. CODE §§
17200-17204); AND**

**(8) PAGA AND OTHER PENALTIES (LABOR
CODE §§ 2698 – 2699.5)**

DEMAND FOR JURY TRIAL

1 Plaintiff Fang Zhang (“Plaintiff”), on behalf of herself, the State of California, other
2 aggrieved employees, the California General public, and all others similarly situated (hereinafter
3 “Class Members”), complains and alleges as follows:

4 OVERVIEW OF CLAIMS

5 1. Plaintiff brings this action on behalf of herself and all others similarly situated, as a
6 class action, as a representative action pursuant to Labor Code § 2699, *et seq.*, and on behalf of the
7 California general public and the LWDA, against Defendant Panrosa Enterprises, Inc.
8 (“Defendant”) for (1) its willful misclassification of Plaintiff and other Class Members and
9 Aggrieved Employees as independent contractors; (2) its failure to pay overtime wages; (3) its
10 failure to provide compliant rest breaks and pay missed rest break premiums to its current and
11 former employees in California; (4) its failure to provide complete wage statements to its current
12 and former employees in California within the one year prior to the filing of this Complaint; (5) its
13 failure to pay all wages due to former employees based on the foregoing; (6) its failure to pay
14 timely wages to employees based on the foregoing; (7) unfair business practices based on the
15 foregoing; and (8) PAGA and other penalties based on the foregoing. As a result of the foregoing,
16 Defendant has violated California statutory laws as described below.

17 2. The “Class Period” is designated as the period from four years prior to the filing of
18 this action through the trial date. The PAGA Period is one year from the sending of the PAGA
19 letter to the LWDA through the present and on-going. Defendant’s violations of California’s wage
20 and hour laws and unfair competition laws, as described more fully below, have been ongoing
21 throughout the Class Period and the PAGA Period.

22 VENUE

23 3. Venue is proper in this county under section 395.5 of the California Code of Civil
24 Procedure. Many of the putative Class Members and Aggrieved Employees were employed by
25 Defendant in Riverside County and/or performed work for Defendant in Riverside County during
26 the Class Period and the PAGA Period. Defendant operates a large packaging and distribution
27 facility in the county of Riverside. Many of the acts alleged herein including Defendant’s willful
28 misclassification of its packaging crew, its failure to pay overtime pay, its failure to provide Labor

1 Code compliant rest breaks, and its failure to pay missed rest break premiums occurred in
2 Riverside County. Moreover, the majority of the business conducted by Defendant in California is
3 located in Riverside county. Venue is therefore proper in Riverside County.

4 **JURISDICTION**

5 4. Defendant is within the jurisdiction of this Court. Defendant transacts millions of
6 dollars of business by providing packaging and distribution services in California. Thus,
7 Defendant has obtained the benefits of the laws of the State of California. In addition, Plaintiff
8 asserts no claims arising under federal law. Rather, Plaintiff brings causes of action based solely
9 on, and arising from, California law. The claims of the class are also based solely on California
10 law described herein. Furthermore, the total amount at issue in this case, inclusive of attorneys'
11 fees, is less than \$5 million. Thus, jurisdiction is proper in Riverside County Superior Court.

12 **THE PARTIES**

13 5. Plaintiff is a California resident and, from November 2017 through October 2020
14 was misclassified as an independent contractor but was actually an employee of Defendant in the
15 position of packaging worker in California performing packaging and assembly work. From at
16 least four years prior to the filing of this complaint through the present, and on-going, Defendant's
17 packaging and distribution crew, including Plaintiff during her employment, were willfully
18 misclassified as independent contractors; were not provided compliant rest periods; were not paid
19 overtime wages; did not receive premium payments for not being provided compliant rest periods;
20 were not provided accurate and/or complete wage statements; did not receive timely wages; and
21 did not receive all of their wages due upon termination of employment.

22 6. Plaintiff represents the state of California and the following group of aggrieved
23 employees defined as:

24 All individuals who were classified as 1099 independent contractors for tax purposes and
25 whose wages were reported on an IRS Form 1099, instead of an IRS Form W2, and who
26 worked for Defendant in California as "packers" during the PAGA period (hereinafter
referred to as "Aggrieved Employees").

27 7. By way of this action, Plaintiff also seeks to represent the following Class
28 Members:

1 All individuals who were classified as 1099 independent contractors for tax purposes and
2 whose wages were reported on an IRS Form 1099, instead of an IRS Form W2, and who
3 worked for Defendant in California as “packers” during the Class period.

4 8. Defendant is a California corporation with its principal place of business in Corona,
5 California. Defendant is a packaging and distribution company that transacts millions of dollars of
6 business by providing packaging and distribution services to businesses throughout California.

7 9. The true names and capacities, whether individual, corporate, associate, or
8 otherwise, of Defendants sued herein as DOES 1 to 100, inclusive, are currently unknown to
9 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure §
10 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
11 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
12 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
13 capacities of the Defendants designated hereinafter as DOES when such identities become known.

14 10. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
15 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
16 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
17 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
18 employer and/or joint employer of Plaintiff, the Class, and the Aggrieved Employees.

19 11. Despite its willful misclassification of Plaintiff, the Class, and the Aggrieved
20 Employees, Defendant was and is the employer of Plaintiff, the Aggrieved Employees, and Class
21 Members for all relevant time periods. In fact, Defendant employed Plaintiff, the Class, and the
22 Aggrieved Employees as packers in California at various times during the Class Period.
23 Defendant employed approximately 80 maintenance packers in California during the Class Period,
24 who were all willingly misclassified as independent contractors.

25 **FACTUAL ALLEGATIONS**

26 12. Defendant operates and, at all times during the Class Period and PAGA Period, has
27 done and does business in California providing packaging and distribution services in California.
28 Defendant, in the course of operating its business in California during the Class Period, employed

1 Plaintiff, the Class, and the Aggrieved Employees, even though they were misclassified and
2 classified incorrectly as independent contractors.

3 13. During the Class Period, Plaintiff, like the other members of the Class and
4 Aggrieved Employees, typically worked at least eight hours per day and five days per week. Class
5 Members' and Aggrieved Employees' job duties included packaging and distribution services.

6 14. Plaintiff and the other members of the Class were required to show up at work
7 every day at Defendant's site in Corona, California. Plaintiff and the other members of the Class
8 were required to punch in and punch out at the beginning and end of their shift. Plaintiff and the
9 other members of the Class followed the direct instructions of their supervisors.

10 15. Since at least four years prior to the filing of this action, including during the PAGA
11 Period, Defendant has maintained policies and practices based on or including the willful
12 misclassification of the Plaintiff, the Class, and Aggrieved Employees as independent contractors.
13 Under applicable standards of law, Plaintiff, the Class, and Aggrieved Employees are, or were
14 during their employment by Defendant, employees and not independent contractors.

15 16. The California Supreme Court in *Dynamex Operations West, Inc., v. Superior*
16 *Court*, 4 Cal. 5th 903, 956-57 (Cal. 2018) set forth the standard for determining whether an
17 individual performing work is an independent contractor or an employee, as follows:

18 We find merit in the concerns noted above regarding the disadvantages, particularly in
19 the wage and hour context, inherent in relying upon a multifactor, all the circumstances
20 standard for distinguishing between employees and independent contractors. As a
21 consequence, we conclude it is appropriate, and most consistent with the history and
22 purpose of the suffer or permit to work standard in California's wage orders, to interpret
23 that standard as: (1) placing the burden on the hiring entity to establish that the worker
24 is an independent contractor who was not intended to be included within the wage
25 order's coverage; and (2) requiring the hiring entity, in order to meet this burden, to
26 establish *each* of the three factors embodied in the ABC test — namely (A) that the
27 worker is free from the control and direction of the hiring entity in connection with the
28 performance of the work, both under the contract for the performance of the work and
in fact; *and* (B) that the worker performs work that is outside the usual course of the
hiring entity's business; *and* (C) that the worker is customarily engaged in an
independently established trade, occupation, or business of the same nature as the work
performed. (citations omitted).

26 17. This standard – set forth by the California Supreme Court – is commonly referred to
27 as the “ABC test,” and was codified by California Assembly Bill 5 (2019). *See* Cal. Labor Code §
28 2750.3(a) (codifying the ABC test set forth by the California Supreme Court in *Dynamex*). Under

1 the ABC Test, Defendant has the burden of establishing that Plaintiff, the Class, and Aggrieved
2 Employees were independent contractors and not intended to be included within the wage order's
3 coverage. Recently, the Dynamex decision was held to be retroactive. *See Vasquez v. Jan-Pro*
4 *Franchising International Inc., 2021 wc 127201* (Cal. Jan 14, 2021). Further, Defendant must
5 establish that Plaintiff, the Class, and Aggrieved Employees meet all three factors of the ABC
6 Test, which Defendant cannot meet.

7 18. At all times, Defendant has retained the right to control the method and manner of
8 how Plaintiff, the Class, and Aggrieved Employees performed their job duties and retained all
9 necessary control over Plaintiff, the Class, and Aggrieved Employees during their employment.
10 As described above, Plaintiff, the Class, and Aggrieved Employees were required to follow
11 detailed requirements imposed on them by Defendant governing their work performance.

12 19. Further, Defendant unilaterally set pay rates of Plaintiff, the Class, and Aggrieved
13 Employees, without Plaintiff, the Class, and Aggrieved Employees having an opportunity to
14 negotiate pay rates with Defendant, and directed when and where Plaintiff, the Class, and
15 Aggrieved Employees were to perform work by paying per "hour."

16 20. As a result, under applicable law, Plaintiff, the Class, and Aggrieved Employees
17 were employees of Defendant and they were willfully misclassified with their pay reported on an
18 IRS Form 1099 basis. *See* Labor Code section 226.8; *see also Dynamex Operations West, Inc., v.*
19 *Superior Court*, 4 Cal. 5th 903, 956-57 (Cal. 2018); *Ayala v. Antelope Valley Newspapers, Inc.* 59
20 Cal.App.4th 522 (2014); *Ruiz v. Affinity Logistics, Corp.*, 754 F. Supp. 3d 1093 (9th Cir. 2014)
21 (employer's right to control detail of employees' work supports finding of employer-employee
22 relationship); *Alexander v. FedEx Ground Package System, Inc.* 765 F. Supp. 3d 381 (9th Cir.
23 2014) (independent contractors were deemed employees as a matter of law where Defendant
24 controlled times employees worked and controlled aspects of employees' work). *See also*
25 *Villapando v. Excel Direct, Inc.*, 2015 WL 15179486 (N.D. Cal. 2015) (granting summary
26 judgment to Plaintiff on Defendant's defense that the employees at issue were independent
27 contractors).

28 21. Through the performance of their job duties, Plaintiff, the Class, and Aggrieved

1 Employees performed an integral and entirely essential aspect of Defendant's business.
2 Defendant's business includes packaging services only in the warehouse. Plaintiff, the Class, and
3 the Aggrieved Employees were individuals performing the work that was the customary function
4 of Defendant's practice. As such, there can be no doubt that Plaintiff, the Class, and Aggrieved
5 Employees performed work in the usual course of Defendant's business.

6 22. Plaintiff, the Class, and Aggrieved Employees do not operate as independent
7 businesses. Rather, they provided packaging services to Defendant's customers and in compliance
8 with Defendant's policies, practices, and procedures. Plaintiff, the Class, and Aggrieved
9 Employees did not provide packaging services for any other company or entity. In short, Plaintiff,
10 the Class, and Aggrieved Employees held themselves out to Defendant's customers and to the
11 public as employees of Defendant, and not as an independent business.

12 23. Because Defendant cannot meet any part of the ABC test, it is clear that Defendant
13 intentionally and willfully misclassified Plaintiff, the Class, and PAGA Aggrieved Employees as
14 independent contractors in violation of Labor Code § 226.8(a). Moreover, the willful
15 misclassification of Plaintiff, the Class, and PAGA Aggrieved Employees was part of a pattern or
16 practice of Defendant willfully misclassifying their packaging contractors. Accordingly, the
17 stepped-up penalties in Section 226.8 should be recoverable here.

18 24. Labor Code § 1197 states the California requirement that employees must be paid at
19 least the minimum wage fixed by the Commission, and any payment of less than the minimum
20 wage is unlawful. Similarly, Labor Code § 1194 entitles "any employee receiving less than the
21 legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this
22 minimum wage." IWC Wage Order No. 13 also obligates employers to pay each employee
23 minimum wages for all hours worked.

24 25. These minimum wage standards apply to each hour employees worked for which
25 they were not paid. Therefore, an employer's failure to pay for any particular hour of time worked
26 by an employee is unlawful, ***even if averaging an employee's total pay over all hours worked,***
27 ***paid or not, results in an average hourly wage above minimum wage.*** *Armenta v. Osmose,*
28 *Inc.*, 135 Cal.App.4th 314, 324 (2005).

1 26. Labor Code § 1194.2 authorizes employees to recover liquidated damages in any
2 action under Labor Code § 1194 to recover unpaid minimum wages. Where an employee, such as
3 Plaintiff, was not paid for all hours worked under Labor Code § 1194, the employee may recover
4 minimum wages for the time worked for which they received no compensation. *See Sillah v.*
5 *Command Int'l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing
6 for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed
7 they were paid less than minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*, 2016 U.S.
8 Dist. LEXIS 172319, at *20-21 (N.D. Cal. Dec. 12, 2016).

9 27. Labor Code § 510 requires an employer to compensate an employee who works
10 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight
11 (8) hours worked on the seventh consecutive day no less than one and one-half times the regular
12 rate of pay for an employee. In accordance with Labor Code § 1194, Plaintiff, the Class, and the
13 Aggrieved Employees could not then agree to work for a lesser wage than the amount proscribed
14 by Labor Code §§ 510 and 1194.

15 28. Further, because Plaintiff, the Class, and the Aggrieved Employees were wrongfully
16 classified as independent contractors, they did not receive the overtime premium pay rates
17 applicable to employees under California law for working in excess of eight hours in a day, or
18 more that forty hours in a workweek, in violation of IWC Wage Order 13-2001, and Labor Code
19 §§ 1194 and 510. On multiple occasions, Plaintiff, the Class, and the Aggrieved Employees
20 worked shifts that were longer than 8 hours in length.

21 29. Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to
22 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
23 applicable regulation, standard, or order of the Industrial Welfare Commission. . . .”

24 30. Section 12 of IWC Wage Order No. 13 states in pertinent part: “Every employer
25 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be
26 in the middle of each work period. The authorized rest period time shall be based on the total
27 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
28 thereof.”

1 31. The California Supreme Court explained in the context of rest breaks that employer
2 liability attaches from adopting an unlawful policy: “An employer is required to authorize and
3 permit the amount of rest break time called for under the wage order for its industry. If it does
4 not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for
5 employees working a seven-hour shift when two are required—***it has violated the wage order and***
6 ***is liable.***” *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1033 (2012) (emphasis added).

7 32. Following *Brinker*, the Courts of Appeal have confirmed that liability for on-duty
8 breaks arises when an employer adopts a uniform policy that fails to provide off-duty breaks. For
9 example, in *Faulkinbury v. Boyd & Associates, Inc.*, the California Court of Appeals
10 applied *Brinker*: “In *Faulkinbury I*, we concluded that even if [defendant]’s on-duty meal break
11 policy was unlawful, [defendant] would be liable only when it actually failed to provide a required
12 off-duty meal break. *Brinker* leads us now to conclude [defendant] would be liable upon a
13 determination that [defendant]’s uniform on-duty meal break policy was unlawful.” *Faulkinbury*,
14 216 Cal. App. 4th 220, 235 (2013). The Court further explained: “the employer’s liability arises by
15 adopting a uniform policy that violates the wage and hour laws. Whether or not the employee was
16 able to take the required break goes to damages...” *Id.* (citations omitted); *see also Benton v.*
17 *Telecom Network Specialists, Inc.*, 220 Cal. App. 4th 701, 728 (2013).

18 33. Here, not only did Defendant fail to promulgate a compliant rest period policy and
19 fail to provide compliant rest periods to Plaintiff, the Class, and the Aggrieved Employees, but
20 Defendant in fact has a policy that effectively penalized and subjected Plaintiff, the Class, and the
21 Aggrieved Employees to potential reprimand and/or discipline if Plaintiff, the Class, and the
22 Aggrieved Employees took rest breaks, which would often cause Plaintiff, the Class, and the
23 Aggrieved Employees to be late in completing projects Defendant. Further, because of the time-
24 pressure nature of the work schedules of Plaintiff, the Class, and the Aggrieved Employees,
25 Plaintiff, the Class, and the Aggrieved Employees were never relieved of all duties while working
26 for Defendant.

27 34. In addition to failing to authorize and permit compliant rest periods, Plaintiff, the
28 Class, and the Aggrieved Employees were not compensated with one (1) hour’s worth of pay at

1 their regular rate of compensation when they were not provided with a compliant rest period in
2 accordance with Labor Code § 226.7(b).

3 35. Furthermore, by virtue of the misclassification, Defendant did not and does not
4 issue adequate wage statements to Plaintiff, the Class, and the Aggrieved Employees, under Labor
5 Code Sections 226(a) and 226.2.

6 36. Plaintiff, the Class, and the Aggrieved Employees did not receive any wage
7 statements, let alone compliant wage statements, from Defendant. Plaintiff, the Class, and the
8 Aggrieved Employees received a check on a bi-monthly basis which was for \$13.00 per hour in
9 total. There was no paystub or wage statement attached to the check or any description of the
10 number of the hours that each employee worked. Furthermore, Plaintiff, the Class, and the
11 Aggrieved Employees did not use any clock-in and clock-out system, so Defendant did not track
12 their actual hours worked. They were required to finish every single project on a daily basis.

13 37. Due to, *inter alia*, Defendant's failure to pay Plaintiff, the Class, and the Aggrieved
14 Employees overtime payments and rest break premiums, as well as Defendant's failure to track
15 actual hours worked, the wage statements issued by Defendants to Plaintiff, the Class, and the
16 Aggrieved Employees do not indicate the correct amount of gross wages earned, total hours
17 worked, net wages earned, hours worked, or the applicable hourly rates in effect during the pay
18 period and the corresponding number of hours worked at each hourly rate in violation of Labor
19 Code § 226(a)(1), (2), (5) and (9).

20 38. Defendant's violation of Labor Code § 226 was knowing and intentional. *See*
21 *Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the
22 defendant knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew
23 that it was not providing total hours worked to plaintiff or other employees paid on commission"
24 even though it believed that employees paid solely on commission or commission and salary "are
25 exempt and therefore we do not record hours on a wage statement").

26 39. Defendant's failure to furnish accurate itemized wage statements has caused
27 Plaintiff, the Class, and the Aggrieved Employees to incur economic damages in that they were not
28 aware that they were owed and not paid compensation for their time spent on overtime work. *See*

1 *Cicairos v. Summit Logistics*, 133 Cal.App.4th 949, 954 (“If it is left to the employee to add up the
2 daily hours shown on the time cards or other records so that the employee must perform arithmetic
3 computations to determine the total hours worked during the pay period, the requirements of
4 section 226 would not be met”); *McKenzie v. Federal Express Corp.*, 765 F. Supp. 2d 1222 (C.D.
5 Cal. 2011) (wage statements violated California Labor Code by not including, inter alia, total
6 hours worked giving rise to claims under both Section 226 and for PAGA penalties); *Cicairos v.*
7 *Summit Logistics, Inc.*, 133 Cal.App.4th 949, 960-961 (2005) (reversing summary judgment for
8 defendants where wage statements did not “give an accurate report of the hours plaintiff worked, at
9 least not on its face”); Labor Code § 226(e)(2)(B) (clarifying that injury is established where the
10 wage statement violated Section 226(a)(1), (2), or (5), among other provisions, and where
11 employees cannot easily determine the gross or net wages earned by the employee during the pay
12 period).

13 40. Aggrieved Employees will prevail on their claim for PAGA penalties under Labor
14 Code § 226(a). *See Lopez v. Friant & Assoc. LLC*, 15 Cal. App.5th 773, 788 (2017) (a plaintiff
15 seeking PAGA penalties for a violation of Labor Code section 226(a) does not have to show injury
16 or a knowing and intentional violation); *Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136
17 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, “all [plaintiff] needs to establish is a
18 violation of section 226(a), which she has done, as discussed above.”); *McKenzie v. Fed. Exp.*
19 *Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that “for the purposes of recovering
20 PAGA penalties, one need only prove a violation of Section 226(a), and need not establish a
21 Section 226(e) injury.”); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28
22 (C.D. Cal. July 3, 2013) (“Plaintiffs do not need to establish a Cal. Lab. Code § 226(e) injury to
23 recover penalties under § 2699(f) of PAGA.”).

24 41. Labor Code § 201(a) provides in pertinent part: “If an employer discharges an
25 employee, the wages earned and unpaid at the time of discharge are due and payable
26 immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written
27 contract for a definite period quits his or her employment, his or her wages shall become due and
28 payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice

1 of his or her intention to quit, in which case the employee is entitled to his or her wages at the time
2 of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement
3 or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of
4 an employee who is discharged or who quits, the wages of the employee shall continue as a
5 penalty from the due date thereof at the same rate until paid or until an action therefor is
6 commenced; but the wages shall not continue for more than 30 days.”

7 42. Following Plaintiff’s separation of employment from Defendant, she, like other
8 members of the Class and Aggrieved Employees who are former employees of Defendant, did not
9 receive all wages due, including wages due for overtime and her unpaid rest break premiums
10 during the Class Period, in violation of Labor Code Sections 201-203, triggering waiting time
11 penalties under those provisions.

12 43. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any
13 employment are due and payable twice during each calendar month, on days designated in advance
14 by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these requirements are
15 “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the
16 wages are paid not more than seven calendar days following the close of the payroll period.”

17 44. Due to Defendant’s failure to pay Plaintiff, the Class, and the Aggrieved Employees
18 all overtime wages and rest period premiums, Defendant failed to timely pay Plaintiff, the Class,
19 and the Aggrieved Employees within seven (7) days of the close of the payroll period in
20 accordance with Labor Code § 204 on a regular and consistent basis. *See Parson v. Golden State*
21 *FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016)
22 (finding that a failure to pay rest period premiums can support claims under Labor Code §§ 203
23 and 204).

24 45. Pursuant to Labor Code Section 210, as amended,

25 (a) In addition to, and entirely independent and apart from, any other penalty
26 provided in this article, every person who fails to pay the wages of each employee as
27 provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5,
28 shall be subject to a penalty as follows:

(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
employee.

(2) For each subsequent violation, or any willful or intentional violation, two hundred

1 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount
2 unlawfully withheld.

3 (b) The penalty shall either be recovered by the employee as a statutory penalty
4 pursuant to Section 98 or by the Labor Commissioner as a civil penalty through the
5 issuance of a citation or pursuant to Section 98.3. The procedures for issuing,
6 contesting, and enforcing judgments for citations issued by the Labor Commissioner
7 under this section shall be the same as those set forth in subdivisions (b) through (k),
8 inclusive, of Section 1197.1.

9 (c) An employee is only entitled to either recover the statutory penalty provided for in
10 this section or to enforce a civil penalty as set forth in subdivision (a) of Section
11 2699, but not both, for the same violation.

12 46. Here, Plaintiff seeks to recover all penalties available under Labor Code Section
13 210 for Defendant's violations of Labor Code Section 204.

14 47. The administrative prerequisites of PAGA were satisfied after 65 days elapsed from
15 October 28, 2020 (i.e., 65 days since Plaintiff's mailing of the PAGA notice with no further
16 communication from the LWDA to Plaintiff's counsel, which occurred on or around January 4,
17 2021). Plaintiff has paid the \$75.00 fee and has otherwise satisfied the administrative prerequisites
18 of PAGA, as amended.

19 48. Plaintiff by this action seeks to recover, on behalf of themselves and all other
20 current and former Aggrieved Employees of Defendant, the civil penalties provided by PAGA, as
21 specified in Labor Code § 2699(f). Plaintiff seeks to recover the PAGA civil penalties through a
22 representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior*
23 *Court*, 46 Cal. 4th 969 (2009). Class certification of the PAGA claims is not required.

24 **CLASS ACTION ALLEGATIONS**

25 49. Plaintiff brings this action, on behalf of herself and all others similarly situated, as a
26 class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class
27 composed of and defined as: All individuals who were classified as 1099 independent contractors
28 for tax purposes and whose wages were reported on an IRS Form 1099, instead of an IRS Form
W2, and who worked for Defendant in California as "packers" during the Class period (hereinafter
"Class Members"). All such Class Members were subject to Defendant's unlawful
misclassification, and, as a result, were not paid overtime, and were not provided compliant rest
breaks.

1 50. This action has been brought and may properly be maintained as a class action
2 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
3 litigation, the proposed class is easily ascertainable, and Plaintiff is a proper representative of the
4 Class:

5 a. Numerosity: The potential members of the Class as defined are so
6 numerous that joinder of all the members of the Class is impracticable. While the precise number
7 of Class Members has not been determined at this time, Plaintiff is informed and believes that
8 Defendant has employed approximately 80 Class Members as packers in California who were
9 subject to Defendant's unlawful misclassification. The Class Members are dispersed throughout
10 California. Joinder of all members of the proposed classes is therefore not practicable.

11 b. Commonality: There are questions of law and fact common to Plaintiff and
12 the Class that predominate over any questions affecting only individual members of the Class.
13 These common questions of law and fact include, without limitation:

14 i. Whether Defendant violated Section 226.8 of the Labor Code by willfully
15 misclassifying Plaintiff and Class Members as independent contractors, and whether Defendant
16 engaged in a pattern and practice of such wrongful misclassification;

17 ii. Whether Defendant violated Section 510 of the Labor Code by failing to pay
18 overtime to Plaintiff and the Class during the Class Period;

19 iii. Whether Defendant violated Section 12 of IWC Wage Order No. 13 by
20 failing to provide compliant rest periods to Plaintiff and the members of the Class in California
21 during the Class Period;

22 iv. Whether Defendant violated Labor Code section 226.7 and section 12 of
23 IWC Wage Order No. 13 by failing to pay one hour of premium pay to each member of the Class for
24 each day that a compliant rest break was not provided during the Class Period;

25 v. Whether Defendant failed to provide Plaintiff and the members of the Class
26 complete wage statements in violation of Labor Code Section 226(a);

27 vi. Whether Defendant violated Section 201-203 of the Labor Code by failing
28 to pay all wages owed to former employees upon separation of employment during the Class

1 Period;

2 vii. Whether Defendant violated Sections 204 and 210 of the Labor Code by
3 failing to pay member of the Class all wages due on a timely basis;

4 viii. Whether Defendant engaged in an unfair practice and violated section 17200
5 of the California Business and Professions Code by failing to provide compliant rest breaks to
6 members of the Class in violation of Section 12 of IWC Wage Order No. 13;

7 ix. Whether Defendant engaged in an unfair practice and violated section 17200
8 of the California Business and Professions Code by failing to provide Plaintiff and members of the
9 Class with rest period premiums for each day they were not provided a compliant rest break;

10 x. Whether Plaintiff and the Class are entitled to restitution under Business and
11 Professions Code § 17200;

12 xi. The proper formula(s) for calculating damages, interest, and restitution
13 owed to Plaintiff and the Class Members;

14 xii. The nature and extent of class-wide damages.

15 c. Typicality: Plaintiff's claims are typical of the claims of the Class. Both
16 Plaintiff and Class Members sustained injuries and damages, and were deprived of property rightly
17 belonging to them, arising out of and caused by Defendant's common course of conduct in
18 violation of law as alleged herein, in similar ways and for the same types of unpaid wages.

19 d. Adequacy of Representation: Plaintiff is a member of the Class and will
20 fairly and adequately represent and protect the interests of the Class and Class Members.
21 Plaintiff's interests do not conflict with those of Class and Class Members. Counsel who represent
22 Plaintiff are competent and experienced in litigating large wage and hour class actions, including
23 numerous cases virtually identical to this one (i.e., misclassification cases), and other employment
24 class actions, and will devote sufficient time and resources to the case and otherwise adequately
25 represent the Class and Class Members.

26 e. Superiority of Class Action: A class action is superior to other available
27 means for the fair and efficient adjudication of this controversy. Individual joinder of all Class
28 Members is not practicable, and questions of law and fact common to the Class predominate over

1 any questions affecting only individual members of the Class. Each Class Member has been
2 damaged or may be damaged in the future by reason of Defendant's unlawful policies and/or
3 practices. Certification of this case as a class action will allow those similarly situated persons to
4 litigate their claims in the manner that is most efficient and economical for the parties and the
5 judicial system. Certifying this case as a class action is superior because it allows for efficient and
6 full disgorgement of the ill-gotten gains Defendant has enjoyed by maintaining its unlawful
7 misclassification, compensation, and rest break policies, and will thereby effectuate California's
8 strong public policy of protecting employees from deprivation or offsetting of compensation
9 earned in their employment. If this action is not certified as a Class Action, it will be impossible
10 as a practical matter, for many or most Class Members to bring individual actions to recover
11 monies unlawfully withheld from their lawful compensation due from Defendant's, due to the
12 relatively small amounts of such individual recoveries relative to the costs and burdens of
13 litigation.

14 **FIRST CAUSE OF ACTION**
15 **PAGA PENALTIES FOR WILLFUL MISCLASSIFICATION OF ALL OF**
16 **DEFENDANT'S PACKERS**
17 **[Cal. Labor Code §§ 2698 *et seq.* and 226.8(a)(1) and 226.8(b) or 226.8(c)]**
18 **On behalf of Plaintiff, the LWDA and the PAGA Aggrieved Employees**

19 51. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
20 in the preceding paragraphs.

21 52. Plaintiff and similarly situated employees are "Aggrieved Employees" under the
22 PAGA as they were employed by Defendant during the applicable statutory period and suffered
23 the Labor Code violation alleged herein. At all times relevant hereto, Plaintiff and Aggrieved
24 Employees were employees for purposes of the California Labor Code, although they were
25 willfully misclassified as independent contractors.

26 53. In violation of the Labor Code provisions cited herein and in willful violation of
27 California law and public policy, Defendant intentionally misclassified Plaintiff and Aggrieved
28 Employees as independent contractors in violation of Labor Code § 226.8(a). This was part of a
pattern as practice of willful misclassification of all, or virtually all, of Defendant's packers

1 thereby triggering heightened penalties under sections 226.8(b) and (c).

2 54. The administrative prerequisites of PAGA will be satisfied after 66 days have
3 elapsed from October 28, 2020 (i.e., 60 days since Plaintiff's mailing of the PAGA notice with no
4 further communication from the LWDA to Plaintiff's counsel). The actionable period is one year
5 prior to the sending of the LWDA letter through the present. Plaintiff has paid the \$75.00 fee and
6 has otherwise satisfied the administrative prerequisites of PAGA, as amended.

7 55. Plaintiff by this action seeks to recover, on behalf of himself and all other current
8 and former Aggrieved Employees of Defendant, the civil penalties provided by PAGA, as
9 specified in Labor Code § 2699(f). Plaintiff seeks to recover the PAGA civil penalties through a
10 representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior*
11 *Court*, 46 Cal. 4th 969(2009). Therefore, class certification of the PAGA claims is not required.

12 **SECOND CAUSE OF ACTION**
13 **FAILURE TO PAY OVERTIME WAGES**
14 **[Cal. Labor Code § 510]**
On behalf of Plaintiff and the Class

15 56. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
16 in the preceding paragraphs.

17 57. The actionable period for this cause of action is three years prior to the filing of the
18 Complaint through the present, and on-going until the violations are corrected, or the Class is
19 certified.

20 58. Labor Code § 510 provides that any work in excess of eight hours on any day, as
21 well as all hours worked on the seventh consecutive day of a workweek, shall be compensated at
22 the rate of no less than 1.5 times the regular rate of pay. See also Section 3(A) of IWC Wage Order
23 No. 16.

24 59. Here, Defendant hired Plaintiff and the Class to work as packers in California and
25 to work as packer for Defendant and in its business. Plaintiff and the Class often worked in excess
26 of 8 hours and over 40 hours per week. On average, Plaintiff and the Aggrieved Employees
27 worked between 8 to 10 hours on a daily basis. Defendant only paid Plaintiff and the Class the
28 regular hourly rate per each project. To make matters worse, Defendant just issued an invoice

1 sheet and a check for all the hours worked by Plaintiff and the Class. Plaintiff and the Class did
2 not receive any compensation for the hours that they worked beyond eight hours per day.

3 60. Concerning Labor Code section 510 and Section 3(A) of IWC Wage Order No. 13,
4 Defendant did not pay Plaintiff and the Class any overtime wages corresponding to one and a half
5 time of Plaintiff and the Class' hourly rates of pay. Plaintiff and the Class often worked eight hours
6 per day and often worked over 40 hours per week. Defendant violated Labor Code § 510 by failing
7 to pay Plaintiff and the Class their overtime wages at the applicable overtime rates, including daily
8 overtime and weekly overtime, and instead merely paid Plaintiff and the Class straight time wages
9 for all hours worked.

10 **THIRD CAUSE OF ACTION**
11 **FAILURE TO PROVIDE COMPLIANT REST PERIODS**
12 **AND PAY MISSED REST BREAK PREMIUMS**
13 **[Cal. Labor Code §§ 226.7; Section 12 of IWC Wage Order No. 13]**
14 **On behalf of Plaintiff and the Class**

15 61. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
16 in the preceding paragraphs.

17 62. The actionable period for this cause of action is three years prior to the filing of the
18 Complaint through the present, and on-going until the violations are corrected, or the Class is
19 certified.

20 63. California Labor Code § 226.7(a) provides, "No employer shall require any
21 employee to work during any meal or rest period mandated by an applicable order of the Industrial
22 Welfare Commission."

23 64. Section 12 of IWC Wage Order No. 13 provides: "(A) Every employer shall
24 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
25 middle of each work period. The authorized rest period time shall be based on the total hours
26 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
27 thereof. However, a rest period need not be authorized for employees whose total daily work time
28 is less than three and one-half (3 1/2) hours. *Authorized rest period time shall be counted as hours
worked for which there shall be no deduction from wages.*" (emphasis added).

1 65. As alleged herein, although misclassified, Plaintiff and the Class were employees of
2 Defendant. By failing to provide its packers compliant rest periods of 10 minutes for each 4 hours
3 of work, Defendant has violated California Labor Code § 226.7, and is liable to Plaintiff and the
4 Class.

5 66. As a result of the unlawful acts of Defendant, Plaintiff and the Class were not
6 provided compliant rest breaks and are entitled to recovery under Cal. Labor Code §226.7 in the
7 amount of one additional hour of pay at the employee's regular rate of compensation for each work
8 period during each day in which Defendant failed to provide compliant rest periods as required by
9 California law.

10 **FOURTH CAUSE OF ACTION**
11 **FAILURE TO PROVIDE COMPLIANT WAGE STATEMENTS**
12 **[Cal. Labor Code § 226(a)]**
 On behalf of Plaintiff and the Wage Statement and Penalty Subclass

13 67. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
14 in the preceding paragraphs.

15 68. The actionable period for this cause of action is one year prior to the filing of this
16 Complaint through the present, and on-going until the violations are corrected, or the subclass is
17 certified.

18 69. Section 226(a) of the California Labor Code provides, in relevant part:

19 Every employer shall...furnish each of his or her employees...an accurate
20 itemized statement in writing showing (1) gross wages earned, (2) total hours
21 worked by the employee, except for any employee whose compensation is
22 solely based on a salary and who is exempt from payment of overtime under
23 subdivision (a) of Section 515 or any applicable order of the Industrial
24 Welfare Commission, (3) the number of piece-rate units earned and any
25 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
26 deductions, provided that all -deductions made on written orders of the
27 employee may be aggregated and shown as one item, (5) net wages earned,
28 (6) the inclusive dates of the period for which the employee is paid, (7) the
name of the 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 the employee...

70. As set forth above, through the Class Period, due to misclassification, Defendant

1 failed to issue wage statements to its packers in California, including Plaintiff, that complied with
2 Labor Code Section 226(a).

3 71. Defendants' violation of Labor Code § 226 was knowing and intentional. *See*
4 *Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the
5 defendant knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew
6 that it was not providing total hours worked to plaintiff or other employees paid on commission"
7 even though it believed that employees paid solely on commission or commission and salary "are
8 exempt and therefore we do not record hours on a wage statement") and/or the passage of Section
9 226.2.

10 72. As a result of Defendant's failure to issue itemized wage statements to Plaintiff and
11 members of the wage statement and penalty subclass (i.e., those members of the class who were
12 employed by Defendant during the actionable period for this cause of action) in violation of
13 section 226(a) of the California Labor Code, Plaintiff and the Class are each entitled to recover an
14 initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an
15 aggregate penalty of \$4,000 per Plaintiff and per every member of the Class from Defendant
16 pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys' fees.

17 **FIFTH CAUSE OF ACTION**
18 **WAITING TIME PENALTIES FOR**
19 **FAILURE TO PAY WAGES DUE ON TERMINATION**
20 **[Cal. Labor Code §§ 201-203]**
21 **On Behalf of Plaintiff and the Waiting Time Penalty Subclass**

22 73. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
23 in the preceding paragraphs.

24 74. The actionable period for this cause of action is three years prior to the filing of the
25 Complaint through the present, and on-going until the violations are corrected, or the subclass is
26 certified.

27 75. Sections 201 and 202 of the California Labor Code require Defendant to pay all
28 compensation due and owing to former maintenance workers and electrical contractors in the Class
during the actionable period for this cause of action, at or around the time that their employment is

1 terminated.

2 76. Section 203 of the California Labor Code provides that if an employer willfully
3 fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and
4 202, then the employer is liable for penalties in the form of continued compensation up to thirty
5 (30) workdays.

6 77. By virtue of its willful misclassification packers, Defendant willfully failed to pay
7 Plaintiff and other members of the waiting time penalty Subclass (i.e., those members of the Class
8 whose employment with Defendant ended the actionable period for this cause of action) who are
9 no longer employed by Defendant overtime wages and rest break premiums as required by
10 California Labor Code §§ 201 and 202.

11 78. As a result, Defendant is liable to Plaintiff and other members of the waiting time
12 penalty subclass who are no longer employed by Defendant for waiting time penalties amounting
13 to thirty (30) days wages for Plaintiff and each such subclass member pursuant to California Labor
14 Code § 203. See, e.g., DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination
15 entitles an employee to recover waiting time penalties).

16 **SIXTH CAUSE OF ACTION**
17 **FAILURE TO PAY WAGES ON A TIMELY BASIS**
18 **[Cal. Labor Code §§ 204, 210]**
On behalf of Plaintiff and the Class

19 79. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
20 in the preceding paragraphs.

21 80. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in
22 any employment are due and payable twice during each calendar month, on days designated in
23 advance by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these
24 requirements are “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly
25 payroll if the wages are paid not more than seven calendar days following the close of the payroll
26 period.

27 81. Due to Defendant’s failure to pay Plaintiff and the other Class Members for
28

1 overtime wages rest period premiums owed,¹ Defendant violated Labor Code § 204 by failing to
2 pay all wages due within seven (7) days of the close of the payroll period on a regular and
3 consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL
4 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period
5 premiums can support claims under Labor Code §§ 203 and 204).

6 82. Labor Code § 210 provides that “in addition to, an entirely independent and apart
7 from, any other penalty provided in this article, every person who fails to pay the wages of each
8 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any
9 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
10 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
11 failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the
12 faulty compensation policies and practices described in detail above, Plaintiff and the Class are
13 entitled to recover penalties under Labor Code § 210.

14 **SEVENTH CAUSE OF ACTION**
15 **UNFAIR COMPETITION LAW VIOLATIONS**
16 **(BUS. & PROF. CODE § 17200, ET SEQ.)**
On Behalf of Plaintiff and the Class

17 83. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
18 in the preceding paragraphs.

19 84. Section 17200 of the California Business & Professions Code prohibits any
20 unlawful, unfair, or fraudulent business practices. Business & Professions Code § 17204 allows

21
22 ¹ Courts have routinely found that employees who do not receive meal/rest periods premiums are entitled to waiting
23 time penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal.
24 Aug. 10, 2016) (denying the defendant’s motion for summary judgment on the plaintiff’s claim for waiting time
25 penalties based upon the failure to provide rest period premiums and finding that the California Court of Appeals
26 decision in *Ling vs. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 “concerned only whether ‘a
27 section 203 waiting time claim based on section 226.7 premium pay is an action brought for the non-payment of wages
28 under section 218.5”); *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5
(N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor
Code §§ 203 and 204); *Brewer v. Gen. Nutrition Corp.* (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19 [denying
defendant’s motion for summary judgment because “the premium payments due under section 226.7 are to be
considered “wages” for purposes of sections 203 and 226.”]; *Abad v. Gen. Nutrition Centers, Inc.* (C.D. Cal. Mar. 7,
2013) 2013 WL 4038617, at *3–4 [distinguishing *Kirby*, and finding “Plaintiffs’ section 203 claim for failure to pay
wages...can be based on amounts owed under section 226.7.”). The issue is currently before the California Supreme
Court in the *Naranjo* case. *See Naranjo v. Spectrum Security Services, Inc.*, Cal. Supreme Court Case No. S258966.

1 “any person who has suffered injury in fact and has lost money or property” to prosecute a civil
2 action for violation of the UCL. Such a person may bring such an action on behalf of himself and
3 others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

4 85. Under section 17208 of the California Business and Professions Code, the statute of
5 limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for
6 this cause of action is four years prior to the filing of this Complaint through the present, and on-
7 going until the violations are corrected, or the Class is certified.

8 86. Section 90.5(a) of the Labor Code states that it is the public policy of California to
9 enforce vigorously minimum labor standards in order to ensure employees are not required to work
10 under substandard and unlawful conditions, and to protect employers who comply with the law
11 from those who attempt to gain competitive advantage at the expense of their workers by failing to
12 comply with minimum labor standards.

13 87. As a direct and proximate result of Defendant’s unlawful business practices,
14 Plaintiff and the Class Members have suffered economic injuries. Defendant has profited from its
15 unlawful, unfair, and/or fraudulent acts and practices.

16 88. Plaintiff and similarly situated Class Members are entitled to monetary relief
17 pursuant to Business & Professions Code §§ 17203 and 17208 for all unpaid overtime, and unpaid
18 rest period premiums, from at least four years prior to the filing of this complaint through to the
19 date of such restitution, at rates specified by law. Defendant should be required to disgorge all the
20 profits and gains it has reaped and restore such profits and gains to Plaintiff and Class Members,
21 from whom they were unlawfully taken.

22 89. Through its actions alleged herein, Defendant has engaged in unfair competition
23 within the meaning of section 17200 of the California Business & Professions Code, because
24 Defendant’s conduct, as herein alleged has damaged Plaintiff and the Class Members by
25 wrongfully denying them overtime and wrongfully denying them missed rest period premiums,
26 and therefore was substantially injurious to Plaintiff and the Class Members.

27 90. Defendant engaged in unfair competition in violation of sections 17200 et seq. of
28 the California Business & Professions Code by violating Section 1194 of the California Labor

Code, and Section 12 of the IWC Wage Order No. 13.

91. Defendant's course of conduct, act, and practice in violation of the California laws mentioned above constitute independent violations of sections 17200 et seq. of the California Business and Professions Code.

92. Plaintiff and similarly situated Class Members are entitled to enforce all applicable penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

93. Plaintiff has assumed the responsibility of enforcement of the laws and public policies specified herein by suing on behalf of themselves and other similarly situated Class Members previously or presently employed by Defendant in California. Plaintiff's success in this action will enforce important rights affecting the public interest. Plaintiff will incur a financial burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is appropriate pursuant to Code of Civil Procedure §1021.5.

EIGHTH CAUSE OF ACTION
LABOR CODE PRIVATE ATTORNEY GENERAL ACT
PAGA PENALTIES FOR LABOR CODE VIOLATIONS OTHER THAN
MISCLASSIFICATION
(Labor Code §§ 2698-2699.5)
On Behalf of Plaintiff and the PAGA Aggrieved Employees and LWDA

94. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

95. Plaintiff and those members of the class who were employed by Defendant within the last year are, "aggrieved employees" under PAGA as they were employed by Defendant during the applicable statutory period and suffered the Labor Code violations alleged herein; specifically, violations of §§ 226, 226.7, 510, 201-203, 204, and 210 of the Labor Code. Plaintiff was employed by Defendant during the one year preceding the submission of a PAGA letter to the LDWA on or around September 5, 2020. As such, she seeks to recover, on behalf of himself and all other current and former aggrieved employees of Defendant, the civil penalties provided by PAGA.

96. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial

1 subject to the following formula:

2 \$100 for the initial violation per employee per pay period; and

3 \$200 for each subsequent violation per employee per pay period.

4 These penalties will be allocated 75% to the Labor Workforce Development Agency and 25% to
5 the affected employees.

6 97. The aggrieved employees are all individuals who hold or held the title of packer or
7 in any other similar capacity, and who are or have been classified as independent contractors by
8 Defendant in California during the PAGA Period. These employees were subject to the
9 aforementioned Labor Code violations, during the period of time from one year prior to the
10 submission of Plaintiff's letter to the LDWA on September 5, 2020 through the present and on-
11 going.

12 98. In addition, as set forth above, Defendant failed to provide Plaintiff and all
13 aggrieved employees with accurate itemized wage statements in compliance with Labor Code §
14 226(a). Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section
15 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
16 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
17 each violation in a subsequent citation, for which the employer fails to provide the employee a
18 wage deduction statement or fails to keep the required in subdivision (a) of Section 226."

19 99. Pursuant to Labor Code § 226.3, for PAGA penalties associated with the Section
20 226 claim, Plaintiff and the Aggrieved Employees for the Section 226 claim are entitled to \$250
21 for each initial pay period with a violation and \$1,000 for each subsequent pay period with a
22 violation. See *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal. App. 5th 667, 674-675
23 (2018) (finding that Labor Code § 226.3 applies to all violations of Labor Code § 226(a)); see also
24 *Magadia v. Wal-Mart Assocs.*, 384 F. Supp. 3d. 1058, 1109 (N.D. Cal. 2019) ("the Court finds
25 that Cal. Lab. Code § 226.3 penalties are applicable as the appropriate measure of civil penalties
26 under PAGA" for the violation of Labor Code § 226(a).

27 100. Further, Plaintiff, as an Aggrieved Employee, need not demonstrate or prove that
28 Defendant's conduct in refusing to provide accurate and itemized wage statements was knowing,

1 intentional, or willful. *Lopez v. Friant & Assocs., LLC*, cited above; *see also Willner v. Manpower*
2 *Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, “all
3 [plaintiff] needs to establish is a violation of section 226(a), which she has done, as discussed
4 above.”); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that
5 “for the purposes of recovering PAGA penalties, one need only prove a violation of Section
6 226(a), and need not establish a Section 226(e) injury.”); *Aguirre v. Genesis Logistics*, 2013 U.S.
7 Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) (“Plaintiff do not need to establish a Cal. Lab.
8 Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.”).

9 101. Plaintiff seeks to recover the PAGA civil penalties through a representative action
10 as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009), 46
11 Cal.4th 969. Therefore, class certification hereby of the PAGA claims is not required, but Plaintiff
12 may choose to seek certification of the PAGA claims.

13 102. Pursuant to Labor Code § 2699.3 (a), on September 5, 2020, Plaintiff gave written
14 notice by certified mail to Defendant, and to the Labor and Workforce Development Agency
15 (“LWDA”) of his claims, including the facts and theories supporting all claims outlined in this
16 Complaint. Accordingly, Plaintiff fulfilled all administrative prerequisites to the pursuit of her
17 PAGA claim on behalf of herself and all other current and former aggrieved employees of
18 Defendant after 60 days have elapsed from September 5, 2020.

19 JURY DEMAND

20 103. Plaintiff hereby demands trial by jury of her and the Class’s claims against
21 Defendant, except for her PAGA and UCL claims which are properly tried to the Court.

22 PRAYER FOR RELIEF

23 Wherefore, Plaintiff, on behalf of herself and the members of the Class, prays for judgment
24 against Defendant as follows:

25 1. An Order than this action may proceed and be maintained as a class action;

26 2. On the First Cause of Action:

27 a. That the Court find that Defendant violated California Labor Code §§ 226.8(a)(1)
28 by willfully misclassifying Plaintiff and Aggrieved Employees as independent contractors.

1 b. That Plaintiff and other Aggrieved Employees be awarded penalties, at a minimum,
2 as specified in Labor Code §226.8(b).

3 c. That the Court find, additionally, the Defendant engaged in a pattern or practice of
4 willful misclassification of Plaintiff and the Aggrieved Employees.

5 d. That Plaintiff and other Aggrieved Employees be awarded penalties, upon a finding
6 of a pattern or practice, as specified in Labor Code § 226.8(c) in lieu of the penalties in 226.8(b).

7 e. That the Court award attorneys' fees and costs pursuant to Labor Code §
8 2699(g)(1).

9 3. On the Second Cause of Action:

10 a. A Declaratory judgment that Defendant has violated California Labor Code
11 § 510;

12 b. An award to Plaintiff and the other members of the Class in the amount of
13 their unpaid overtime compensation for worked performed, plus interest and/or liquidated damages
14 during the Class Period;

15 4. On the Third Cause of Action:

16 a. A declaratory judgment that Defendant has violated California Labor Code
17 § 226.7, and Section 12 of IWC Wage Order No. 13-2001;

18 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the Class
19 Members for an hour of pay for each day that a compliant rest period was not provided during the
20 Class Period;

21 5. On the Fourth Cause of Action:

22 a. A declaratory judgment that Defendant violated California Labor Code §226
23 by issuing inaccurate and/or incomplete wage statements that failed to include total hours worked
24 and all applicable hourly rates in effect during the pay period and the corresponding number of
25 hours worked at each hourly rate to Plaintiff and the wage statement and penalty subclass
26 members;

27 b. An award to Plaintiff and Class Members of \$50 for each initial pay period
28 in which a violation of Section 226 occurred and \$100 for each subsequent pay period in which a

violation of Section 226 occurred, not to exceed \$4,000 for each member of the Class, as well as an award of costs and reasonable attorney's fees, pursuant to Labor Code § 226(e).

9. On the Fifth Cause of Action:

a. A declaratory judgment that Defendant violated California Labor Code §§201 through 203;

b. Pursuant to Cal. Labor Code §§ 201 through 203, an award to Plaintiff and the waiting time penalty subclass members for waiting time penalties in the amount of 30 days' wages per waiting time penalty subclass Class Member.

10. On the Sixth Cause of Action:

a. A declaratory judgment that Defendant violated California Labor Code §§ 204 and 210;

b. Pursuant to Labor Code §§ 204 and 210, an award to Plaintiff and the Class for penalties pursuant to Labor Code § 210.

11. On the Seventh Cause of Action:

a. That the Court find and declare that Defendants have violated the UCL and committed unfair and unlawful business practices by misclassifying Plaintiff and Class Members, by failing to pay overtime and by failing to pay missed rest break premiums;

b. Restitution, including, but not limited to, the relief permitted by sections 1194, 510, 226.7 of the California Labor Code (i.e., pay as specified for overtime and rest period premiums to Plaintiff and the members of the Class during the Class Period);

11. On the Eighth Cause of Action:

a. A civil penalty against Defendant in the amount of \$100 for the initial violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor Code for Plaintiff and for member of the Wage Statement and PAGA Penalty Subclass during all of the pay periods in the one year preceding the filing of this Complaint through the present and on-going until the violations are corrected, or this subclass is certified;

b. Pursuant to Labor Code § 226.3, for PAGA penalties associated with the Section 226 claim, Plaintiff is entitled to \$250 for each initial pay period with a violation and

1 \$1,000 for each subsequent pay period with a violation. See *Raines v. Coastal Pacific Food*
2 *Distributors, Inc.*, 23 Cal. App. 5th 667, 674-675 (2018) (finding that Labor Code § 226.3 applies
3 to all violations of Labor Code § 226(a)); see also *Magadia v. Wal-Mart Assocs.*, 384 F. Supp. 3d.
4 1058, 1109 (N.D. Cal. 2019) (“the Court finds that Cal. Lab. Code § 226.3 penalties are applicable
5 as the appropriate measure of civil penalties under PAGA” for the violation of Labor Code §
6 226(a).

7 c. An award of reasonable attorney’s fees against Defendant as specified in
8 Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection
9 with the PAGA claims;

10 d. An award of all costs incurred by the undersigned counsel for Plaintiff in
11 connection with Plaintiff’s and Class Members’ PAGA claim against Defendant, as provided for in
12 Labor Code § 2699(g)(1);

13 12. All other relief as this Court deems proper.

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15 Dated: January 27, 2021

Respectfully,

16 ACKERMANN & TILAJEF, P.C.
17 EMPLOYMENT RIGHTS LAW GROUP, APC

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19 By: _____

Craig Ackermann, Esq.

Amir Seyedfarshi, Esq.

20 *Counsel for Plaintiff, the Class, and the*
21 *Aggrieved Employees*
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