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Attorneys for Plaintiffs
RIDEL LOPEZ

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

RIDEL LOPEZ, as an individual and on behalf
of all others similarly aggrieved,

Plaintiffs,

vs.

FRITO-LAY, INC., a Delaware corporation;
and DOES 1 to 100, inclusive,

Defendants.

CASE NO. **21STCV01652**

**PRIVATE ATTORNEYS GENERAL
ACT ("PAGA") REPRESENTATIVE
COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiff RIDEL LOPEZ (“Plaintiff”), an individual, on behalf himself and all other
2 similarly aggrieved employees (“Aggrieved Employees”), hereby files this Complaint against
3 Defendants FRITO-LAY, INC., a Delaware corporation and DOES 1 to 100, inclusive
4 (collectively referred to herein as “Defendants”). Plaintiff alleges as follows:

5 **THE PARTIES**

6 1. Plaintiff is, and at relevant times was, an individual domiciled in the State of California
7 and a citizen of the State of California who worked as a non-exempt employee for Defendants in
8 the State of California, for approximately eight (8) months until his last day worked, on or about
9 November 18, 2019.

10 2. Defendant FRITO-LAY, INC. (“FRITO-LAY”) is a Delaware corporation that, at all
11 relevant times, was authorized to do business within the State of California and is doing business
12 in the State of California.

13 3. The true names and capacities of the DOE Defendants sued herein as DOES 1 through
14 100, inclusive, are currently unknown to Plaintiff, who therefore sues each such Defendants by
15 said fictitious names. Each of the Defendants designated herein as a DOE is legally responsible
16 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to
17 reflect the true names and capacities of the Doe Defendants when such identities become known.

18 4. Plaintiff is further informed and believes that, at all relevant times, each Defendant
19 was the principal, agent, partner, joint venturer, joint employer, officer, director, controlling
20 shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in
21 interest of some or all of the other Defendants, and was engaged with some or all of the other
22 defendants in a joint enterprise for profit, and bore such other relationships to some or all of the
23 other Defendants so as to be liable for their conduct with respect to the matters alleged in this
24 complaint. Plaintiff is further informed and believes and thereon alleges that each Defendant
25 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
26 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
27 controlled, aided and abetted the conduct of all other Defendants.

28 5. At all relevant times, Defendants were and are legally responsible for all of the unlawful

1 conduct, policies, practices, acts and omissions complained of herein. Further, Defendants are
2 responsible for each of the unlawful acts or omissions complained of herein under the doctrine of
3 respondent superior. The conduct of Defendants' managers and supervisors was at all relevant
4 times undertaken as employees of Defendants, acting within the scope of their employment or
5 authority in all of the unlawful activities described herein.

6 6. Whenever and wherever reference is made in this complaint to any act or failure to act by
7 a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the
8 acts and/or failures to act by each Defendant acting individually, jointly and severally.

9 **JURISDICTION AND VENUE**

10 7. This court possesses original subject matter jurisdiction over this matter. Venue is proper
11 in Los Angeles County, California, because Defendant transacts business in Los Angeles County
12 and some of the complained of conduct occurred in this judicial district.

13 **FACTUAL ALLEGATIONS**

14 8. During the one-year and sixty-five day period preceding filing of this Complaint,
15 Plaintiff was employed by Defendants as a non-exempt employee in the State of California.
16 Defendants, at all relevant times, exercised control over Plaintiff and suffered and/or permitted
17 them to work.

18 9. Plaintiff worked for Defendants as a non-exempt warehouse worker. Plaintiff's job duties
19 included but were not limited to, loading and unloading tractor-trailers outdoors, transferring
20 materials throughout Defendant's warehouse, and general upkeep of Defendant's warehouse.
21 Plaintiff typically worked four (4) days a week and approximately thirty hours per week. Plaintiff
22 was paid an hourly rate plus shift differential pay.

23 10. Plaintiff was not always provided proper meal periods during his employment. Plaintiff
24 was often forced to work through his meal periods or take late, shortened, interrupted and/or on-
25 duty meal periods due to his workload/commentary from supervisors pressuring Plaintiff to take
26 improper meal periods or skip meal periods completely. Second meal periods were never
27 provided for those shifts that Plaintiff worked more than ten (10) hours. Defendants also failed to
28 pay Plaintiff an additional hour of wages at his regular rate of pay for each workday a meal period

1 was not provided and/or any meal period premium paid was improper due to Defendant's failure
2 to incorporate all non-discretionary remuneration, including but not limited to, shift differential
3 pay, into the regular pay rate for purposes of calculating the owed premium.

4 11. Plaintiff did not receive compliant, timely 10 (ten)- minute rest periods every four
5 (4) hours or major fraction thereof. Plaintiff was often required to work through all or part of his
6 rest periods due to his workload/commentary from supervisors pressuring Plaintiff to take
7 improper rest periods or skip his rest periods completely. Based on information and belief,
8 Plaintiff was required to remain on the work premises during any rest periods and thus remained
9 under employer control during any rest periods, thereby rendering said rest periods improper.
10 Also, Defendants did not authorize nor permit Plaintiff to take a third rest period for shifts lasting
11 over ten hours. Plaintiff was not paid rest period premiums for these missed/improper rest
12 periods.

13 12. Defendants did not compensate Plaintiff for all hours worked by virtue of, among
14 other things, Defendants requiring that Plaintiff perform pre-shift and/or post-shift off-the-clock
15 work and work through uncompensated meal periods. This failure to compensate Plaintiff for all
16 time worked resulted in record-keeping violations as well as violations of California's minimum
17 and overtime wage laws.

18 13. Defendants further failed to compensate Plaintiff all due overtime wages by failing to
19 incorporate all non-discretionary remuneration into the regular pay rate for purposes of
20 calculating the owed overtime rate. Defendants sometimes paid Plaintiff multiple rates of pay (ie
21 shift differential pay) in one pay period for the same kind of work but failed to average the rates
22 of pay when calculating overtime. Under California law, "[w]here two rates of pay are paid
23 during a workweek, the California method for determining the regular rate of pay for calculating
24 overtime in that workweek mirrors the federal method, based upon the weighted average of all
25 hourly rates paid." DLSE Manual 49.2.5 (citing 29 CFR § 778.115). This "weighted average"
26 method provides, "[w]here an employee in a single workweek works at two or more different
27 types of work for which different non-overtime rates of pay (of not less than the applicable
28 minimum wage) have been established, their regular rate for that week is the weighted average of

1 such rates. That is, the total earnings (except statutory exclusions) are computed to include his
2 compensation during the workweek from all such rates, and are then divided by the total number
3 of hours worked at all jobs. . . " 29 CFR § 778.115. Defendant's failure to average the rates of pay
4 when calculating overtime resulted in underpaid overtime at times, as well as inaccurate and
5 incomplete wage statements.

6 14. Upon information and belief, Defendants failed to provide proper paid sick leave to
7 Plaintiff and failed to maintain accurate records of used sick leave and the balance of paid sick
8 leave left to Plaintiff. Notably, where an employer compensates an employee with non-
9 discretionary remuneration, such as shift differential pay (as Defendants did here), any sick leave
10 pay calculation must incorporate the value of the non-discretionary remuneration; upon
11 information and belief, Defendants' sick leave pay calculation did not properly incorporate all
12 non-discretionary remuneration owed to Plaintiff, including but not limited to, shift differential
13 pay, into the regular rate of pay for purposes of calculating the sick leave pay rate. Defendants
14 failure to so incorporate resulted in an underpayment of sick leave pay to Plaintiff. Defendants
15 further failed to provide notice of the correct sick leave amount balance left for Plaintiff, thus
16 affecting the intelligent exercise of his paid sick leave benefits. But for this failure, Plaintiff
17 would have used his paid sick leave at least prior to his termination date. This illegal retention of
18 paid sick leave is unlawful.

19 15. Section 15(A-B) of all applicable Industrial Wage Commission ("IWC") Wage Orders
20 states that the temperature maintained in each work area shall provide reasonable comfort and
21 requires employers to "take all feasible means" to reduce excessive heat or humidity to a degree
22 "providing reasonable comfort." Defendants violated Section 15(A-B) by requiring Plaintiff to
23 work in extreme heat conditions during the summer months without taking "all feasible means" to
24 reduce excessive heat. Plaintiff reports that from June through August, the warehouse
25 temperature was typically 95 plus degrees. Defendants did not equip the warehouse with artificial
26 air conditioning whatsoever and required all doors and windows of the warehouse to remain
27 closed at all times to avoid any potential contamination of the product. Plaintiff reports being
28 regularly required to load and unload big-rig trailers outdoors, with temperatures reaching over

1 100 degrees in the summer months. Moreover, during the winter months, when temperatures
2 would drop to around 40 degrees, Defendants failed to provide a heated room to which employees
3 could retire for warmth, in violation of Section 15(B) of all applicable IWC Wage Orders.
4 Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee
5 under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to
6 comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174,
7 1197, and 1198, or order or ruling of the commission. Therefore, Defendants' violations with
8 respect to excessive heat and cold result in separate violations of sections 1198 and 1199, which
9 subject Defendants to civil penalties under Labor Code sections 1197.1 and 2699.

10 16. Defendants also denied Plaintiff recovery periods/cool-down periods in violation of Labor
11 Code section 226.7. Despite requiring Plaintiff to work in extreme heat conditions during the
12 summer months, Defendants failed to authorize or permit Plaintiff to take recovery periods to
13 prevent heat illness as required by law. Plaintiff is entitled to one additional hour of pay at the
14 employee's regular rate of compensation for each workday that a recovery period was not
15 provided.

16 17. Additionally, Defendants failed to provide wage statements in compliance with Labor
17 Code section 226. Among other things, Plaintiff's paystubs did not accurately reflect, inter alia,
18 gross wages earned, total hours worked, net wages earned, sick time pay, all applicable hourly
19 rates in effect during each pay period and all hours worked at each applicable hourly. Notably,
20 Defendant's wage statements do not provide an accurate overtime rate because instead of
21 multiplying the regular rate of pay by one and one-half, the pay stubs provide two overtime rate
22 categories with each provide corresponding rates that are either the same as the regular rate or list
23 no separate rate for the overtime requiring Plaintiff to perform extensive calculations to determine
24 what his pay rate was for each corresponding hour worked. See, e.g., *McKenzie v. Fedex*, 765 F.
25 Supp. 2d 1222 (C.D. Cal. 2011). Accordingly, Defendants have violated Labor Code section 226
26 as to Plaintiff.

27 18. Upon termination, Defendants failed to furnish Plaintiff with his final paycheck
28 containing all earned and owed wages. Plaintiff's final pay checks did not include all

1 remuneration owed to Plaintiff as it was devoid of all owed minimum and overtime wages and all
2 meal, rest, and recovery period premiums owed.

3 19. Plaintiff brings this complaint under the Private Attorneys General Act of 2004, Labor
4 Code sections 2698, *et seq.*, (“PAGA”), as a representative action on behalf of the State of
5 California, regarding violations of the Labor Code as to all similarly aggrieved individuals
6 employed by Defendants in the State of California as a non-exempt employee. This action is
7 brought solely pursuant to PAGA and seeks no relief beyond that available under PAGA.

8 20. During the period beginning one-year period preceding the filing of the required PAGA
9 notice with the Labor Workforce and Development Agency, and continuing through the present, as
10 alleged herein, Defendants violated Labor Code sections 201-202, 204, 216, 221-223, 226,
11 226.2, 226.7, 245-248.5, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, 1199, 2810, 2810.5 and
12 all relevant sections of the applicable Wage Orders, including but not limited to Section 15(A)-
13 (B), as to Plaintiff and all Aggrieved Employees employed by Defendants who worked as non-
14 exempt employees. These violations subject Defendants to civil penalties as set forth in the
15 foregoing statutes as well as other provisions of the Labor Code, including without limitation
16 Labor Code sections 203, 225.5, 256, 210, 1174.5, 1197.1 and 2699.

17 **THE “AGGRIEVED EMPLOYEES”**

18 21. Plaintiff brings this action on behalf of himself and all similarly situated aggrieved
19 employees. The other Aggrieved Employees shall be defined as follows: “All persons employed
20 by Defendants and/or any staffing agencies and/or any other third parties in hourly or non-exempt
21 positions in California during the period of one year and sixty-five days from filing of the
22 Complaint.”

23 **FIRST CAUSE OF ACTION**

24 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT,**
25 **LABOR CODE SECTIONS 2698, ET SEQ.**

26 22. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

27 23. Under the Labor Code and IWC Wage Orders, Defendants were required to provide
28 Plaintiff and the Aggrieved Employees with one 30-minute meal break free from all duties for all

1 shifts longer than 5 hours, and a second 30-minute meal break free from all duties for all shifts
2 longer than 10 hours. Meal periods can be waived, but only under the following circumstances:
3 (1) if an employee's total work period in a day is over five (5) hours but no more than six (6)
4 hours, the required meal period may be waived by mutual consent of the employer and employee,
5 and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve
6 (12) hours, the required second meal period may be waived by mutual consent of the employer
7 and employee, but only if the first meal period was not waived. Employers covered by the Wage
8 Orders have an obligation to both (1) relieve their employees for at least one meal period for
9 shifts over five hours (see above), and (2) to record having done so. If the employer fails to
10 properly record a valid meal period, it is presumed no meal period was provided.

11 24. Plaintiff and the Aggrieved Employees regularly worked periods of more than five hours
12 in a workday without being provided a mandatory thirty-minute, duty-free meal period, and
13 regularly worked periods of more than ten and/or twelve hours in a workday without being
14 provided a mandatory second thirty-minute, duty-free meal period. Plaintiff and the Aggrieved
15 Employees were often forced to work through their meal periods or take late, shortened,
16 interrupted and/or on-duty meal periods due to their workload/commentary from supervisors
17 pressuring Plaintiff and the Aggrieved Employees to take improper meal periods or skip meal
18 periods completely. Second meal periods were never provided for those shifts that Plaintiff and
19 the Aggrieved Employees worked more than ten (10) hours. Defendants also failed to pay
20 Plaintiff and the Aggrieved Employees an additional hour of wages at their regular rate of pay for
21 each workday a proper meal period was not provided and/or any meal period premium paid was
22 improper due to Defendant's failure to incorporate all non-discretionary remuneration into the
23 regular pay rate for purposes of calculating the owed premium.

24 25. Defendants failed to provide Plaintiff and the Aggrieved Employees all required and/or
25 fully compliant rest periods, or compensation in lieu thereof. Defendants employed policies and
26 procedures that ensured Plaintiff and the Aggrieved Employees would not receive all legally
27 required rest periods, as Defendants did not authorize and permit all required rest periods in
28 compliance with the timing requirements of all applicable Wage Orders. Defendants similarly

1 employed policies and procedures that rendered rest breaks non-compliant with the requirements
2 of California law by, *inter alia*, failing to relieve Plaintiff and the Aggrieved Employees of all
3 duties and all employer control. Defendants further employed policies and procedures ensuring
4 Plaintiff and the Aggrieved Employees did not receive premium wages to compensate them for
5 workdays they did not receive all legally required and fully compliant rest periods.

6 26. California law provides employees in California must be paid for all hours worked, up to
7 40 per week or eight (8) per day, at a regular time rate no less than the mandated minimum wage.
8 California law also provides employees in California must be paid overtime, equal to 1.5 times
9 the employee's regular rate of pay, for all hours worked in excess of 40 per week or eight (8) per
10 day. Plaintiff and the Aggrieved Employees regularly worked time for which they were not
11 compensated. Notably, Plaintiff and the Aggrieved Employees were required to work through
12 meal periods they were not paid for and were required to perform pre-shift and/or post-shift work
13 for which they were not compensated. This off-the-clock work resulted in not only record-
14 keeping violations but also minimum and overtime wage violations.

15 27. Defendants further violated California's overtime laws by not paying proper overtime
16 rates due to Defendants' failure to incorporate all forms of non-discretionary remuneration,
17 including but not limited to, shift differential pay, into the regular rate of pay for purposes of
18 calculating the owed overtime wages. Defendants sometimes paid Plaintiff and the Aggrieved
19 Employees multiple rates of pay (ie shift differential pay) in one pay period for the same kind of
20 work but failed to average the rates of pay when calculating overtime. Under California law,
21 "[w]here two rates of pay are paid during a workweek, the California method for determining the
22 regular rate of pay for calculating overtime in that workweek mirrors the federal method, based
23 upon the weighted average of all hourly rates paid." DLSE Manual 49.2.5 (citing 29 CFR §
24 778.115). This "weighted average" method provides, "[w]here an employee in a single workweek
25 works at two or more different types of work for which different non-overtime rates of pay (of not
26 less than the applicable minimum wage) have been established, their regular rate for that week is
27 the weighted average of such rates. That is, the total earnings (except statutory exclusions) are
28 computed to include their compensation during the workweek from all such rates and are then

1 divided by the total number of hours worked at all jobs. . ." 29 CFR § 778.115. Defendant's
2 failure to average the rates of pay when calculating overtime resulted in underpaid overtime at
3 times, as well as inaccurate and incomplete wage statements.

4 28. California law provides that, at the time of each payment of wages, the employer must
5 provide each employee with an itemized statement showing, *inter alia*, gross wages earned, total
6 hours worked, all deductions taken, net wages earned, the inclusive dates for which the employee
7 is being paid, the employee's name and last four digits of their social security number, the name
8 and address of the legal entity that it is the employer, and all applicable hourly rates in effect
9 during the pay period and all hours worked at each rate. Defendants knowingly and intentionally
10 failed to provide Plaintiff and the Aggrieved Employees with proper, itemized wage statements as
11 the wage statements provided by Defendants do not accurately reflect, *inter alia*, all gross wages
12 earned, all net wages earned, and all applicable hourly rates in effect during each pay period and
13 all hours worked at each applicable hourly rate. Notably, Defendants' wage statements do not
14 provide an accurate overtime rate because instead of multiplying the regular rate of pay by one
15 and one-half, the pay stubs provide two overtime rate categories with each providing
16 corresponding rates that are either the same as the regular rate or list no separate rate for the
17 overtime requiring Plaintiff and the Aggrieved Employees to perform extensive calculations to
18 determine what their pay rate was for each corresponding hour worked. Accordingly, Defendants
19 have violated Labor Code section 226 as to Plaintiff and the Aggrieved Employees. See, e.g.,
20 *McKenzie v. Fedex*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011). These violations subject Defendants
21 to civil penalties under the Labor Code, including without limitation Labor Code sections 226 and
22 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved
23 employee, results in a separate civil penalty.

24 29. California law requires employers to keep "accurate and complete" payroll records
25 showing, among other things, the hours worked daily by all non-exempt employees. Section 7 of
26 all applicable IWC Wage Orders similarly requires employers to keep time records showing, *inter*
27 *alia*, when the employees begin and end each work period and reflecting the times during which
28 all owed meal periods are provided each day. At all relevant times, Defendants have failed, and

1 continue to fail, to keep the required time records, as Defendants did not record the true start and
2 stop times of Plaintiff and the Aggrieved Employees' workdays and failed to record employee
3 meal periods. Defendants' failure to keep "accurate and complete" payroll records for Plaintiff
4 and the Aggrieved Employees violates Labor Code sections 1174, 1198-99, and Section 7 of all
5 applicable IWC Wage Orders. These violations subject Defendants to civil penalties under the
6 Labor Code, including without limitation sections 1174.5 and 2699. Each violation of each Labor
7 Code section and Wage Order provision, for each aggrieved employee, results in a separate civil
8 penalty.

9 30. Section 15(A-B) of all applicable Industrial Wage Commission ("IWC") Wage Orders
10 states that the temperature maintained in each work area shall provide reasonable comfort and
11 requires employers to "take all feasible means" to reduce excessive heat or humidity to a degree
12 "providing reasonable comfort." Defendants violated Section 15(A-B) by requiring Plaintiff and
13 the Aggrieved Employees to work in extreme heat conditions during the summer months without
14 taking "all feasible means" to reduce excessive heat. Plaintiff reports that from June through
15 August, the warehouse temperature was typically 95 plus degrees. Defendants did not equip the
16 warehouse with artificial air conditioning whatsoever and required all doors and windows of the
17 warehouse to remain closed at all times to avoid any potential contamination of the product.
18 Plaintiff reports being regularly required to load and unload big-rig trailers outdoors, with
19 temperatures reaching over 100 degrees in the summer months. Moreover, during the winter
20 months, when temperatures would drop to around 40 degrees, Defendants failed to provide a
21 heated room to which employees could retire for warmth, in violation of Section 15(B) of all
22 applicable IWC Wage Orders. Together, Labor Code sections 1198 and 1199 make unlawful any
23 employment of any employee under conditions of labor prohibited by the Wage Orders, and any
24 violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor
25 Code, including sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore,
26 Defendants' violations with respect to excessive heat and cold result in separate violations of
27 sections 1198 and 1199, which subject Defendants to civil penalties under Labor Code sections
28 1197.1 and 2699.

1 31. California law requires employer to authorize and permit recovery periods, i.e. cool-down
2 periods afforded an employee to prevent heat illness when working in extreme heat conditions.
3 Defendants denied Plaintiff and the Aggrieved Employees recovery period(s) in violation of
4 Labor Code section 226.7. Despite requiring Plaintiff and the Aggrieved Employees to work in
5 extreme heat conditions during the summer months, Defendants failed to authorize or permit
6 Plaintiff and the Aggrieved Employees to take recovery periods to prevent heat illness as required
7 by law. Plaintiff and the Aggrieved Employees are entitled to one additional hour of pay at their
8 regular rate of compensation for each workday that a due recovery period was not provided.

9 32. California Labor Code section 204 requires an employer to pay employees all wages due
10 and payable at least twice each calendar month. Defendants failed to comply with Labor Code
11 section 204 by failing to timely pay twice during each calendar month all wages due and payable
12 to Plaintiff and the Aggrieved Employees. Defendants' violations of Labor Code section 204
13 subject DefendantS to civil penalties, including but not limited to the penalties set forth in
14 California Labor Code sections 210 and 2699. Each violation results in a separate civil penalty,
15 for each Aggrieved Employee for each pay period during which the statutory provisions were
16 violated.

17 33. Labor Code section 201 requires employers to pay all wages earned and unpaid at the time
18 of discharge, immediately upon discharge. Labor Code section 202 states similar provisions with
19 respect to employees who resign. For all Aggrieved Employees no longer employed by
20 Defendants, Defendants still have not paid such aggrieved employees all wages earned and
21 unpaid at the time of discharge, in that Defendants have not paid for, *inter alia*, all owed
22 minimum and overtime wages and all owed meal and rest period premiums. These violations
23 subject Defendants to civil penalties under the Labor Code, including without limitation Labor
24 Code sections 203, 256 and 2699. Each violation results in a separate civil penalty, for each
25 Aggrieved Employee for each pay period during which the statutory provisions were violated.

26 34. Labor Code section 216 declares unlawful an employer's refusal to pay wages due and
27 payable and/or denial of the validity of any claim to wages due. Defendants violated/violates this
28 section by failing to pay Plaintiff and the Aggrieved Employees for all hours worked at the proper

1 wage rate and by failing to pay Plaintiff and the Aggrieved Employees an additional hour of pay
2 for each meal/rest period not provided/that was invalid. These violations subject Defendants to
3 civil penalties under Labor Code section 225.5. Each violation results in a separate civil penalty,
4 for each aggrieved employee, for each pay period during which the statute provisions were
5 violated.

6 35. California Labor Code section 223 makes it unlawful for an employer to secretly pay
7 wages lower than required by statute while purporting to pay legal wages. As described above,
8 Defendants willfully and systematically denied Plaintiff and the Aggrieved Employees minimum
9 and overtime wage compensation for all hours worked which resulted in the payment of less than
10 statutorily required wages to them. Defendants acted with the intent to deprive them of statutory
11 wages, including, but not limited to, overtime wages and minimum wages, to which they were
12 entitled to under California law.

13 36. Defendants failed to provide Plaintiff and the Aggrieved Employees paid sick days in
14 accordance with Labor Code sections 245 through 248.5, further failing to put them on notice of
15 their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code
16 section 2810.5 notice. Defendants failed to maintain accurate records documenting the hours
17 worked and paid sick days accrued and used by employees in violation of Labor Code section
18 247.5, permitting the presumption that Plaintiff was entitled to the maximum number of hours
19 accruable under this article at the time of her termination. Moreover, by not incorporating the
20 additional rates of pay/non-discretionary remunerations, including but not limited to, shift
21 differential pay, into the sick leave rates of pay, Defendants unlawfully retained and continue to
22 retain paid sick leave that should have been paid and was not. Accordingly, Defendants have
23 violated Labor Code sections 233 and 234 as to Plaintiff and the Aggrieved Employees. These
24 violations subject Defendants to civil penalties under the Labor Code, including without
25 limitation Labor Code sections 233 and 234 and 2699. Each violation of each Labor Code section
26 and Wage Order provision, for each aggrieved employee, results in a separate civil penalty.

27 37. Under the provisions of PAGA and Labor Code sections 201-202, 204, 216, 221-223, 226,
28 226.2, 226.7, 245-248.5, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, 1199, 2810, 2810.5 and

1 all relevant sections of the applicable Wage Orders, as well as all interpretations of these laws by
2 California Courts and administrative bodies, as well as any other law that is enforceable through
3 PAGA, Defendants are liable for all statutorily-specified penalties recoverable under PAGA as
4 enumerated in the relevant California Labor Code provisions listed herein, or for default PAGA
5 penalties under Labor Code Section 2699(f) for any violation of a Labor Code section without a
6 specified civil penalty.

7 38. Plaintiff complied with the procedures for bringing suit specified in Labor Code sections
8 2699.3 and 2699.5. Plaintiff gave written notice to the California Labor and Workforce
9 Development Agency (“LWDA”) via electronic mail at PAGAfilings@dir.ca.gov and to
10 Defendants via certified mail 65 days prior to this Complaint of the specific provisions of the
11 Labor Code and Wage Orders allegedly violated, including the facts and theories to support the
12 alleged violations.

13 39. Under Labor Code section 2699.3, the LWDA must give written notice by certified mail
14 to the parties it intends to investigate the alleged violations within 65 days of the date of
15 Plaintiff’s written notice. As of the expiration of the statutory exhaustion period, the LWDA has
16 not provided the parties any notice of its intention to investigate Plaintiff’s claims on behalf of the
17 State of California and the Aggrieved Employees. As of the filing of this Complaint, Defendants
18 have not responded to Plaintiff’s PAGA notice in an attempt to cure. Accordingly, Plaintiff has
19 exhausted all administrative remedies required by law.

20 40. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
21 Plaintiff is entitled to recover civil penalties, costs, plus reasonable attorney’s fees and costs, all
22 in an amount to be proved.

23 **PRAYER**

24 WHEREFORE, Plaintiff prays for judgment against each Defendants, jointly and
25 severally, as follows:

- 26 1. For civil penalties according to proof;
27 2 For reasonable attorney’s fees and costs of suit; and

28 ///

3. For such other and further relief as the Court deems just and proper.

Dated: January 14, 2021

CROSNER LEGAL, P.C.

Zuk

Michael R. Crosner
Zachary M. Crosner
Blake R. Jones
Attorneys for Plaintiff RIDEL LOPEZ

DEMAND FOR JURY TRIAL

Plaintiff RIDEL LOPEZ demand a trial by jury on all claims so triable.

Dated: January 14, 2021

CROSNER LEGAL, P.C.

 Zuk

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Attorneys for Plaintiff RIDEL LOPEZ