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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

ANA MIRANDA MENDOZA, an individual,
on behalf of herself, the state of California,
and all others similarly situated,

Plaintiff,

vs.

RICH & FAMOUS, INC. dba BIG GREEN
CLEANING COMPANY, a California
Corporation, BIG GREEN CLEANING
COMPANY, a business of unknown
formation, and DOES 1 through 20, inclusive;

Defendants.

ELECTRONICALLY FILED
Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
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CASE NO.: 20CV04009

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

1. FAILURE TO PAY MINIMUM WAGES (LABOR CODE §§ 1194, 1194.2, 1197; IWC WAGE ORDER);
2. FAILURE TO PAY OVERTIME WAGES (LABOR CODE §§ 510, 1197, 1198; IWC WAGE ORDER);
3. FAILURE TO PROVIDE COMPLIANT REST PERIODS AND/OR PAY MISSED REST PERIOD PREMIUMS (LABOR CODE § 226.7; IWC WAGE ORDER);
4. FAILURE TO PROVIDE COMPLIANT MEAL PERIODS AND/OR PAY MEAL PERIOD PREMIUMS (LABOR CODE §§ 512, 226.7; IWC WAGE ORDER)
5. FAILURE TO REIMBURSE BUSINESS EXPENSES (LABOR CODE § 2802);
6. FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS AND WRITTEN NOTICE OF SICK LEAVE (LABOR CODE §§ 226, 246(i));
7. WAITING TIME PENALTIES (LABOR CODE § 201-203);
8. FAILURE TO PAY TIMELY WAGES (LABOR CODE § 204);
9. UCL VIOLATIONS (BUS. & PROF. CODE §§ 17200-17204); and
10. CIVIL PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT (LABOR CODE § 2699 *ET SEQ.*)

DEMAND FOR JURY TRIAL

1 Plaintiff ANA MIRANDA MENDOZA (“Plaintiff”), on behalf of herself and all others
2 similarly situated, and the State of California, complains and alleges of Defendants RICH &
3 FAMOUS, INC. dba BIG GREEN CLEANING COMPANY, BIG GREEN CLEANING
4 COMPANY, and DOES 1 through 20 (referred to collectively as “Defendants”), as follows.

5 **I. INTRODUCTION**

6 1. This is a Class Action, pursuant to California Code of Civil Procedure section 382,
7 on behalf of Plaintiff and all other current and former similarly situated employees employed by
8 Defendants within the State of California.

9 2. Through this class action, Plaintiff seeks to represent the following Class Members:
10 *All individuals who are or were employed by Defendants in California as a non-exempt employee*
11 *December 3, 2016 through the date of trial* (the “Class Members”).

12 3. The “Class Period” as used herein, is defined as the period from December 3, 2016
13 and continuing into the present and ongoing.

14 4. This is also a PAGA representative action brought pursuant to Labor Code § 2698, *et*
15 *seq.*, on behalf of the State of California and: *all individuals who are or were employed as hourly,*
16 *non-exempt employees by Defendant in California from December 3, 2019 through the date of trial*
17 (the “Aggrieved Employees”).

18 5. The “PAGA Period” as used herein is defined as the period from December 3, 2019
19 and continuing into the present and ongoing.

20 6. During the Class Period, Defendants have had a consistent policy of failing to pay
21 Class Members for all hours worked, failing to pay overtime wages, failing to authorize or permit
22 compliant rest periods, failing to pay missed rest period premiums, failing to provide compliant
23 meal periods, failing to pay missed meal period premiums, failing to reimburse business expenses,
24 failing to issue accurate/complete wage statements and provide written notice of sick leave, failing
25 to pay timely wages, and failing to pay all wages due upon termination and/or resignation from
26 employment.

27 7. Plaintiff further brings this action on behalf of herself and all other similarly situated
28 employees, pursuant to California Business and Professions Code sections 17200 through 17208.

1 **II. JURISDICTION AND VENUE**

2 8. This Court has subject matter jurisdiction over all causes of action asserted herein
3 pursuant to Article VI, section 10 of the California Constitution and California Code of Civil
4 Procedure section 410.10 by virtue of the fact that this is a civil action in which the matter in
5 controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises
6 under the law of the State of California or is subject to adjudication in the courts of the State of
7 California.

8 9. This Court has personal jurisdiction over Defendants because each has caused
9 injuries in Santa Barbara County and the State of California through their acts, and by their
10 violation of the California Labor Code, California state common law, and California Business &
11 Professions Code sections 17200, *et seq.* Defendants also transact business throughout California
12 and has obtained the benefits of law of the United States and the State of California and are
13 therefore subject to the personal jurisdiction of this Court.

14 10. Venue as to each Defendant is proper in this Court, pursuant to Code of Civil
15 Procedure § 395(a). Defendants operate within California and do business within Santa Barbara
16 County. The unlawful acts alleged herein have a direct effect on Plaintiff, the Class Members, and
17 the Aggrieved Employees within the State of California and Santa Barbara County.

18 11. This case should be classified as complex according to California Rules of Court,
19 Rule 3.400 and assigned to a complex litigation judge and department, as it is a class action, will
20 involve substantial documentary evidence, a large number of witnesses, and is likely to involve
21 extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
22 and would require substantial post judgment judicial supervision.

23 **III. PARTIES**

24 12. Plaintiff Ana Miranda Mendoza is a resident of California and was employed by
25 Defendants during the Class Period as a non-exempt employee in Santa Barbara County, California.

26 13. Plaintiff seeks to represent the Classes, as defined herein.

27 14. Plaintiff is informed and believes and thereon alleges that Defendant Rich &
28 Famous, Inc. dba Big Green Cleaning Company is a California corporation authorized to and doing

1 business in Santa Barbara County, California, and is and/or was the legal employer of Plaintiff, the
2 Class Members, and the Aggrieved Employees during the applicable statutory periods.

3 15. Plaintiff is informed and believes and thereon alleges that Defendant Big Green
4 Cleaning Company is a business of unknown formation authorized to and doing business in Santa
5 Barbara County, California, and is and/or was the legal employer of Plaintiff, the Class Members,
6 and the Aggrieved Employees during the applicable statutory periods.

7 16. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
8 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
9 inclusive, but on information and belief allege that those Defendants are legally responsible for the
10 payment of wages and penalties and damages to Plaintiff, the Class Members, and the Aggrieved
11 Employees by virtue of Defendants' unlawful actions and practices and therefore sues these
12 Defendants by such fictitious names. Plaintiff will amend this complaint to allege the true names
13 and capacities of the DOE Defendants when ascertained.

14 17. Plaintiff alleges that at all relevant times herein the Defendants sued herein as DOES
15 1-20 had the authority, in the interest of certain Defendants, to exercise independent judgment to
16 hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Plaintiff,
17 and were in Plaintiff's chain of command at the time of and direct participants in the wrongful
18 conduct which constitutes the basis of Plaintiff's complaint herein. Plaintiff also alleges that the
19 Defendants sued herein as DOES 1-20 and certain Defendants are the agents, servants, employees,
20 partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned,
21 acting within the course, scope, and purpose of such relationship(s) and with the knowledge,
22 consent and/or ratification of each other. Furthermore, in conducting themselves in the manner
23 described herein, the Defendants sued herein as DOES 1-20 and certain Defendants were acting in
24 active concert with on another such that the acts of each were fully attributable to the other in all
25 material respects. Plaintiff also alleges that certain Defendants were merely the alter ego of the
26 Defendants sued herein as DOES 1-20 in that there existed a unity of interest and ownership such
27 that any separateness between them ceased to exist and the Defendants sued herein as DOES 1-20
28 exercised undue dominance, control, influence, and management over certain Defendants. Plaintiff

1 further alleges that, at all relevant times, certain Defendants have been inadequately capitalized to
2 conduct business, have failed to follow appropriate corporate formalities, and have simply been a
3 shell and instrumentality through which the Defendants sued herein as DOES 1-20 have conducted
4 their personal affairs. Accordingly, the corporate veil should be pierced, and any liability attached
5 to certain Defendants should be imposed jointly and severally against the Defendants sued herein as
6 DOES 1-20. Adherence to the fiction of the separate existence of these corporate entities would
7 permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice.

8 **IV. SUMMARY OF FACTS**

9 18. Labor Code § 1197 states the California requirement that employees must be paid at
10 least the minimum wage fixed by the Commission, and any payment of less than the minimum
11 wage is unlawful. Similarly, Labor Code § 1194 entitles “any employee receiving less than the legal
12 minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum
13 wage.”

14 19. These minimum wage standards apply to each hour employees worked for which
15 they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked
16 by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid
17 or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005)
18 135 Cal.App.4th 314, 324.

19 20. Labor Code § 1194.2 authorizes employees to recover wages to recover liquidated
20 damages for violations of Labor Code § 1194. Where an employee, such as Claimant, was not paid
21 for all hours worked under Labor Code § 1194, the employee may recover minimum wages for the
22 time associated with the time for which they received no compensation. See *Sillah v. Command*
23 *Int'l Sec. Servs.* (N.D. Cal. 2015) 154 F. Supp. 3d 891 [holding that employees suing for failure to
24 pay overtime could recover liquidated damages under § 1194.2 if they also showed they were paid
25 less than minimum wage]; accord *Andrade v. Arby's Rest. Grp., Inc.* (N.D. Cal. Dec. 12, 2016)
26 2016 U.S. Dist. LEXIS 172319, at *20-21.

27 21. At all relevant times herein, Defendants failed to conform their pay practices to the
28 requirements of the law. Plaintiff, the Class Members, and the Aggrieved Employees were not

1 compensated for all hours worked including, but not limited to, all hours they were subject to the
2 control of Defendants and/or suffered or permitted to work under the California Labor Code and the
3 applicable Wage Orders.

4 22. Because Defendants failed to provide Plaintiff, the Class Members, and the
5 Aggrieved Employees with compensation for all hours worked, each are entitled to recover
6 liquidated damages under Labor Code § 1194.2.

7 23. Labor Code § 510 requires an employer to compensate an employee who works
8 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8)
9 hours worked on the seventh consecutive day no less than one and one-half times the regular rate of
10 pay for an employee. Further, Labor Code § 510 obligates employers to compensate employees at
11 no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a
12 day or more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor
13 Code § 1194, Plaintiff and the Class Members could not then agree and cannot now agree to work
14 for a lesser wage than the amount proscribed by Labor Code §§ 510 and 1194. Further, the
15 applicable IWC Wage Order provides that “employees shall not be employed more than eight (8)
16 hours in any workday or more than 40 in a workweek unless the employee receives one and one
17 half (1 1/2) times such employee’s regular rate of pay for all hours worked over 40 hours in the
18 workweek.”

19 24. Defendants failed to compensate Plaintiff, the Class Members, and the Aggrieved
20 Employees for all hours worked, including all overtime wages. Further, when overtime wages were
21 paid to Plaintiff, the Class Members, and the Aggrieved Employees they were not paid at the
22 proper rate and were paid at less than one and one half times their regular rate of pay. Specifically,
23 Defendants often miscalculated the overtime rates paid to Plaintiff, the Class Members, and the
24 Aggrieved Employees resulting in underpayments of overtime wages.

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

28 26. Pursuant to Labor Code § 226.7, and the applicable IWC Wage Order, Defendants

1 failed to provide Plaintiff and the Class Members with compensated, duty-free rest periods of not
2 less than ten (10) minutes for every major fraction of four hours worked.

3 27. The applicable IWC Wage Order states in pertinent part: “Every employer shall
4 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
5 middle of each work period. The authorized rest period time shall be based on the total hours
6 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
7 thereof.”

8 28. Here, Plaintiff, the Class Members, and the Aggrieved Employees were not provided
9 with legally complaint and timely rest periods of at least ten (10) ten minutes for each four (4) hour
10 work period, or major fraction thereof due to Defendants’ unlawful rest period policies/practices.

11 29. In addition to failing to authorize and permit compliant rest periods, Plaintiff, the
12 Class Members, and the Aggrieved Employees were not compensated with one (1) hour’s worth of
13 pay at their regular rate of compensation when they were not provided with a compliant rest period
14 in accordance with Labor Code § 226.7(b) and the applicable IWC Wage Order.

15 30. Under California Labor Code Section 512 and the applicable IWC Wage Order, no
16 employer shall employ any person for a work period of more than five (5) hours without providing
17 a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty
18 (30) minutes, the employee is to be completely free of the employer’s control and must not perform
19 any work for the employer. If the employee does perform work for the employer during the thirty
20 (30) minute meal period, the employee has not been provided a meal period in accordance with the
21 law. Also, the employee is to be compensated for any work performed during the thirty (30) minute
22 meal period. Finally, an employer may not employ an employee for a work period of more than ten
23 (10) hours a day without providing the employee with another meal period of not less than thirty
24 (30) minutes.

25 31. Plaintiff, the Class Members, and the Aggrieved Employees were denied legally
26 complaint and timely off-duty meal periods of at least thirty (30) minutes due to Defendants’
27 unlawful meal period policy/practices. As a result of Defendants’ uniform meal period policies and
28 practices, Plaintiff, the Class Members, and the Aggrieved Employees routinely were not permitted

1 to take complaint first meal periods before the end of the fifth hour of work, and second meal
2 periods before the end of the tenth hour of work. Plaintiff, the Class Members, and the Aggrieved
3 Employees were also not permitted to take second meal periods for shifts in excess of ten (10)
4 hours.

5 32. Under California Labor Code Section 226.7, if the employer does not provide an
6 employee a meal period in accordance with these requirements, the employer shall pay the
7 employee one (1) hour of pay at the employee's regular rate of compensation for each workday that
8 the meal period is not provided. Here, Despite the fact that its Plaintiff, the Class Members, and the
9 Aggrieved Employees were not provided timely 30-minute duty-free meal periods, on or before the
10 fifth and tenth hours of time shifts, Defendants failed to pay missed meal period premiums to
11 Plaintiff, the Class Members, and the Aggrieved Employees.

12 33. Pursuant to Labor Code § 2802, "[a]n employer shall indemnify his or her employee
13 for all necessary expenditures or losses incurred by the employee in direct consequence of the
14 discharge of his or her duties, or of his or her obedience to the directions of the employer..." and
15 pursuant to Labor Code 2802(c) "[f]or purposes of this section, the term "necessary expenditures or
16 losses" shall include all reasonable costs, including, but not limited to, attorney's fees incurred by
17 the employee enforcing the rights granted by this section."

18 34. Defendants failed to sufficiently reimburse Plaintiff, the Class Members, and the
19 Aggrieved Employees for necessary expenditures incurred as a direct consequence and requirement
20 of performing their job duties, including but not limited to the costs associated with using their
21 personal cell phones. See *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal. App. 4th 1137
22 (the Court of Appeal held that an employer that required its customer service managers to use their
23 personal cell phones for business tasks must reimburse the managers for a reasonable percentage of
24 their cell phone bills); see also DLSE Bulletin 84-7.) Consequently, Defendants failed to comply
25 with Labor Code § 2802 and applicable Wage Orders.

26 35. Labor Code § 226(a) requires an employer to provide its employees with itemized
27 wage statements accurately stating (1) gross wages earned, (2) total hours worked by the employee,
28 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a

1 piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the
2 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates
3 of the period for which the employee is paid, (7) the name of the employee and only the last four
4 digits of his or her social security number or an employee identification number other than a social
5 security number, (8) the name and address of the legal entity that is the employer, and (9) all
6 applicable hourly rates in effect during the pay period and the corresponding number of hours
7 worked at each hourly rate by the employee.

8 36. Here, based on Defendants' failure provide employees with lawful off-duty meal and
9 rest periods and pay meal and rest period premiums, and failure to pay all minimum and overtime
10 wages at the proper rates for all hours worked, the wage statements did not indicate correct amount
11 of gross wages earned, the correct number of hours worked, the correct total hours worked, the
12 correct net wages earned, in violation of Labor Code Section 226(a) (1, 2, 5, and 9). Further,
13 Defendants failed to include the correct name and address of the legal entity that is the employer, in
14 violation of Labor Code Section 226(a)(8).

15 37. Defendants also failed to include the accrued sick hours on Plaintiff's, the Class
16 Members' and the Aggrieved Employees' wage statements as required by Labor Code section
17 246(i).

18 38. In addition to violating Labor Code § 226(a), Defendants also knowingly and
19 intentionally failed to provide Plaintiff, the Class Members, and the Aggrieved Employees with
20 accurate itemized wage statements in violation of Labor Code § 226(e). Defendants undeniably
21 knew that it was not providing Plaintiff, the Class Members, and the Aggrieved Employees with
22 wage statements required by California law. *See Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131
23 (E.D. Cal. Oct. 6, 2015) (finding that the defendant knowingly and intentionally violated Labor
24 Code § 226 because the "[d]efendant knew that it was not providing total hours worked to plaintiff
25 or other employees paid on commission" even though it believed that employees paid solely on
26 commission or commission and salary "are exempt and therefore we do not record hours on a wage
27 statement.").

28 39. Pursuant to Labor Code section 246, "An employee who, on or after July 1, 2015,

1 works in California for the same employer for 30 or more days within a year from the
2 commencement of employment is entitled to paid sick days... at the rate of not less than one hour
3 per every 30 hours worked, beginning at the commencement of employment or the operative date of
4 this article, whichever is later, subject to the use and accrual limitations set forth in this section.”

5 40. Labor Code section 246(i) states that “[a]n employer shall provide an employee with
6 written notice that sets forth the amount of paid sick leave available, or paid time off leave an
7 employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement
8 described in Section 226 or in a separate writing provided on the designated pay date with the
9 employee’s payment of wages.”

10 41. Labor Code § 201(a) provides in pertinent part: “If an employer discharges an
11 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”
12 Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a
13 definite period quits his or her employment, his or her wages shall become due and payable not
14 later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her
15 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”
16 Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in
17 accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who
18 is discharged or who quits, the wages of the employee shall continue as a penalty from the due date
19 thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not
20 continue for more than 30 days.”

21 42. Here, Defendants failed to pay Plaintiff, the Class Members, and the Aggrieved
22 Employees all wages that were due and owing (all minimum and overtime wages owed at the
23 proper rates, all meal and rest period premiums owed, etc.) within the required time following the
24 end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Class
25 Members are entitled to 30 days of wages as a “waiting time penalty.”

26 43. Labor Code § 204 expressly requires employers who pay employees on a weekly,
27 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the
28 close of the payroll period.” Due to Defendants’ failure to pay to Plaintiff, the Class Members, and

1 the Aggrieved Employees all minimum and overtime wage compensation, and meal and rest period
2 premiums as described above, Defendants failed to timely pay its employees within seven calendar
3 days following the close of payroll in accordance with Labor Code § 204 on a regular and
4 consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL
5 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling vs. P.F. Chang's China Bistro, Inc.*
6 that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

7 44. Labor Code § 210 provides that “in addition to, an entirely independent and apart
8 from, any other penalty provided in this article, every person who fails to pay the wages of each
9 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any
10 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
11 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
12 failure to pay each employee, plus 25% of the amount unlawfully withheld.”

13 **V. CLASS ACTION ALLEGATIONS**

14 45. Plaintiff brings this action on behalf of herself and all others similarly situated as a
15 class action pursuant to Code of Civil Procedure § 382. Plaintiff also seeks to represent the
16 following Classes:

17 **The Class:** *All individuals who are or were employed by Defendants in California as a non-*
18 *exempt employee December 3, 2016 through the date of trial (the “Class Members”)*

19 **The Waiting Time Penalty Subclass:** *all Class Members whose employment with*
20 *Defendants ended from December 3, 2017 through the date of trial.*

21 46. Plaintiff reserves the right to amend or modify the class descriptions with greater
22 specificity or further division into subclasses or limitation to particular issues as appropriate.

23 47. Plaintiff, as Class Representative, is a member of the Classes that he seeks to
24 represent.

25 48. This action has been brought and may properly be maintained as a class action under
26 Code of Civil Procedure § 382 because there is a well-defined community of interest in the
27 litigation and the proposed Class is easily ascertainable from Defendants’ personnel and payroll
28 records.

49. **Numerosity:** The potential members of the Class as defined are so numerous that a

joinder of all Class Members is impracticable. Although the exact number is currently unknown to Plaintiff, this information is easily ascertainable from Defendants' payroll and personnel records.

50. **Commonality:** There are questions of law and fact common to the class which predominate over any questions affecting only individual members of the Class, including without limitation:

i. Whether Defendants violated the California Labor Code and the applicable IWC Wage Order by failing to pay wages to Plaintiff and the Class for all hours worked;

ii. Whether Defendants violated the California Labor Code and the applicable IWC Wage Order by failing to overtime wages to Plaintiff and the Class for all overtime hours worked;

iii. Whether Defendants violated the California Labor Code and the applicable IWC Wage Order by failing to overtime wages at the correct rate to Plaintiff and the Class for all overtime hours worked;

iv. Whether Defendants violated the California Labor Code and the applicable IWC Wage Order by failing to provide compliant rest periods to Plaintiff and the Class and whether Defendants failed to compensate Plaintiff and the Class with one additional hour of premium pay for each instance when a compliant rest period was not provided;

v. Whether Defendants violated the California Labor Code and the applicable IWC Wage Order by failing to provide compliant meal periods to Plaintiff and the Class and whether Defendants failed to compensate Plaintiff and the Class with one additional hour of premium pay for each instance when a compliant meal period was not provided;

vi. Whether Defendants violated the California Labor Code by failing to sufficiently reimburse Plaintiff and the Class Members for the cost of using their personal cell phones for work-related purposes;

vii. Whether Defendants violated the California Labor Code by failing to pay all wages due upon separation of employment between Defendants and Plaintiff and the Waiting Time Penalty Subclass, whether such separation was voluntary or involuntary;

viii. Whether Defendants violated the California Labor Code by failing to pay

1 timely wages to the Class;

2 ix. Whether Defendants violated the California Labor Code by failing to provide
3 Plaintiff and the Class with complete, accurate, itemized wage statements;

4 x. Whether Defendants violated the California Labor Code by failing to provide
5 Plaintiff and the Class with written notice of sick leave;

6 xi. Whether Defendants violated California Business & Professions Code §§
7 17200 *et seq.* due to the: failure to pay minimum wages; failure to pay overtime wages, failure to
8 authorize or permit mandated paid rest periods; failure to provide missed rest period premiums;
9 failure to provide compliant meal periods; failure to pay missed meal period premiums; failure to
10 reimburse for business expenses; and failure to timely pay final wages;

11 xii. Whether Defendants violated § 17200 *et seq.* of the California Business and
12 Professions Code and, without limitation, California Labor Code §§ 201, 202, 203, 204, 210, 226,
13 226.3, 226.7, 246, 510, 512, 1194, 1194.2, 1197, 1198, 2802, among possibly other sections
14 inadvertently omitted, and the IWC Wage Order, which violations constitute false, fraudulent,
15 unlawful, unfair and deceptive business practices; and

16 xiii. Whether Plaintiff and the Class are entitled to equitable relief pursuant to
17 California Business & Professions Code §§ 17200, *et seq.*

18 xiv. Whether Class Members are entitled to costs and attorneys fees;

19 xv. Whether Class Members are entitled to interest; and

20 xvi. The proper formula(s) for calculating damages, restitution, and interest owed
21 to Plaintiff and Class Members.

22 51. **Typicality:** Plaintiff's claims, as Class Representative, are typical of the claims of
23 the Class and the Subclasses. Plaintiff, like other members of the Class, was subjected to
24 Defendants' ongoing Labor Code and Wage Order violations including pertaining to Defendants'
25 failing to pay at least minimum wages, failing to pay overtime wages, failing to authorize or permit
26 compliant rest periods, failing to pay missed rest period premiums, failing to provide compliant
27 meal periods, failing to pay missed meal period premiums, failing to reimburse business expenses,
28 failing to issue accurate/complete wage statements and written notice of sick leave, failing to pay

1 timely wages, and failing to pay all wages due upon termination and/or resignation from
2 employment.

3 52. **Adequacy of Representation.** Plaintiff, as Class Representative, will fairly and
4 adequately represent and protect the interests of the Class. Plaintiff's interests are not in conflict
5 with those of the Class. Plaintiff's counsel are competent and experienced in litigating wage and
6 hour employment class actions in state and federal courts and other complex litigation matters.

7 53. **Superiority of Class Action.** Class certification is appropriate because a class action
8 is superior to other available means for the fair and efficient adjudication of this controversy.
9 Individual joinder of all Class Members is not practicable, and questions of law and fact common to
10 the Class predominate over any questions affecting only individual members of the Class. Each
11 Class Member has been damaged and is entitled to recovery by reason of Defendants' illegal
12 policies and practices set forth above. Class action treatment will allow those similarly situated
13 persons to litigate their claims in the manner that is most efficient and economical for the parties
14 and the judicial system.

15 **FIRST CAUSE OF ACTION**

16 **FAILURE TO PAY FOR ALL HOURS WORKED**

17 [Labor Code §§ 1194, 1194.2, 1197, and the applicable IWC Wage Order]

18 *Plaintiff and the Class Members Against All Defendants*

19 54. Plaintiff re-alleges and incorporates by reference the allegations contained in the
20 paragraphs above, as though fully set forth herein.

21 55. Plaintiff and the Class Members are and/or were not exempt from the requirement to
22 be paid at least the applicable California minimum wage throughout the statutory period for each
23 hour worked.

24 56. At all relevant times herein, Defendants failed to conform their pay practices to the
25 requirements of the law. Plaintiff and members of the Class were not compensated for all hours
26 worked including, but not limited to, all hours they were subject to the control of Defendants and/or
27 suffered or permitted to work under the California Labor Code and the applicable Wage Orders.

28 57. Consequently, Defendants violated California Labor Code laws and minimum wage
laws, *inter alia*, Labor Code §§ 1194, 1194.2, 1197, and the IWC Wage Order.

1 58. Plaintiff is informed and believes and thereon alleged that Defendants intentionally,
2 willfully, and improperly failed to pay wages to Plaintiff and Class Members.

3 59. Defendants' conduct was willful, as Defendants knew that Plaintiff and Class
4 Members were entitled to be paid wages throughout the statutory period for each hour worked,
5 including proper minimum wages, yet Defendants chose not to pay them in accordance thereto.

6 60. As a result of Defendants' wrongful conduct, Plaintiff and the Class Members have
7 been damages in amounts to be proven at trial.

8 61. Plaintiff, on behalf of herself and the Class seeks recovery of all unpaid minimum
9 wages, liquidated damages, penalties, interest, attorneys' fees and costs of suit, pursuant to Labor
10 Code §§ 1194, 1194.2, 1197, against Defendants in an amount to be proven at trial.

11 **SECOND CAUSE OF ACTION**
12 **FAILURE TO PAY OVERTIME WAGES**
13 [Labor Code §§ 510, 1197, 1198; IWC Wage Order]
 Plaintiff and Class Members Against All Defendants

14 62. Plaintiff re-alleges and incorporates by reference the allegations contained in the
15 paragraphs above, as though fully set forth herein.

16 63. Labor Code § 510 requires an employer to compensate an employee who works
17 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8)
18 hours worked on the seventh consecutive day no less than one and one-half times the regular rate of
19 pay for an employee. Further, Labor Code § 510 obligates employers to compensate employees at
20 no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a
21 day or more than eight (8) hours on the seventh consecutive day of work.

22 64. Furthermore, pursuant to Labor Code § 1198, "[t]he maximum hours of work and the
23 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
24 standard conditions of labor for employees. The employment of any employee for longer hours than
25 those fixed by the order or under conditions of labor prohibited by the order is unlawful."

26 65. At all times relevant herein, Defendants were required to properly pay Plaintiff and
27 members of the Class for all overtime wages earned pursuant to California Labor Code § 1194 and
28 applicable Wage Orders. Section 3 of the applicable Wage Orders require an employer to pay an

1 employee “one and one-half (1 1/2) times the employee’s regular rate of pay” for work in excess of
2 eight (8) hours per workday and/or in excess of 40 hours of work in the workweek. The same
3 section also requires an employer to pay an employee double the employee’s regular rate of pay for
4 work in excess of twelve hours each workday and/or for work in excess of eight (8) hours on the
5 seventh consecutive day of work in the workweek. Defendants caused Plaintiff and the Class
6 Members to work overtime hours but did not compensate Plaintiff and the Class Members at one
7 and one-half times their regular rate of pay for such hours in accordance with California law.

8 66. Plaintiff and the Class Members suffered and continue to suffer losses related to the
9 use and enjoyment of compensation due and owing to them as a direct result of Defendants’
10 unlawful acts and Labor Code violations in an amount to be shown according to proof at trial and
11 within the jurisdictional limitations of this Court.

12 67. Plaintiff seeks all available remedies for Defendants’ violations including, but not
13 limited to any and all wages due, monies, interest, attorney’s fees, and costs to the extent permitted
14 by law.

15 **THIRD CAUSE OF ACTION**
16 **FAILURE TO PROVIDE REST PERIODS**

17 [Labor Code § 226.7; IWC Wage Order]

18 *Plaintiff and the Class Members Against All Defendants*

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

21 69. Plaintiff and Class Members are and/or were “non-exempt” employees of
22 Defendants who did not receive proper protections and benefits of the laws governing mandatory
23 rest periods.

24 70. Labor Code § 226.7 requires employers, including Defendants, to provide rest
25 periods to its non-exempt employees as mandated by Order of the Industrial Welfare Commission.

26 71. The applicable IWC Wage Order states, in part, that every employer shall authorize
27 and permit all employees to take rest periods, which insofar as practicable shall be in the middle of
28 each work period. Employees shall receive a 10-minute rest period every four hours or major
fraction thereof that they are required to work. Authorized rest period time shall be counted, as

1 hours worked, for which there shall be no deduction from wages.

2 72. Pursuant to Labor Code § 226.7(b) and the IWC Wage Order, Defendants shall pay
3 Plaintiff and Class Members one additional hour of pay at their regular rate of compensation for
4 each day that the rest period is not provided.

5 73. Here, Defendants failed to authorize or permit Plaintiff and the Class Members to
6 take duty-free rest periods of not less than ten (10) minutes for every major fraction of four (4)
7 hours worked. Specifically, Defendants failed to have any lawful rest period policy in place that
8 informed Plaintiff and the Class Members of their right to take off duty rest periods for shifts that
9 were a major fraction of a four (4) hour work period and to make off-duty rest breaks available to
10 these employees.

11 74. In addition, Plaintiff and the Class Members were not compensated with one (1)
12 hours' worth of pay at their regular rate of compensation when they were not provided with a
13 compliant rest period

14 75. By their failure to provide Plaintiff and Class Members with rest periods as required
15 by California law, and failing to pay one hour of additional wages in lieu of each rest break not
16 provided, Defendants willfully violated Labor Code §§ 226.7 and the applicable IWC Wage Order.
17 Accordingly, Defendants are liable for one hour of additional wages at the employee's regular rate
18 of compensation for each work day that a paid rest break was not lawfully provided in an amount to
19 be proven at time of trial.

20 76. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and the
21 applicable IWC Wage Order, Defendants, and each of them, are liable to Plaintiff and Class
22 Members for unpaid wage premiums, penalties, costs, and interest.

23 **FOURTH CAUSE OF ACTION**
24 **FAILURE TO PROVIDE MEAL PERIODS**
25 [Labor Code §§ 226.7, 512; IWC Wage Order]
26 *On Behalf of Plaintiff and the Class Against All Defendants*

27 77. Plaintiff re-alleges and incorporates by reference the allegations contained in the
28 paragraphs above, as though fully set forth herein.

78. Plaintiff and the Class Members are and/or were "non-exempt" employees of

1 Defendants who did not receive proper protections and benefits of the laws governing mandatory
2 meal periods.

3 79. Labor Code § 512(a), in part, provides that employers, including Defendants, may
4 not employ an employee for a work period of more than five hours per day without providing an
5 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes, except
6 that if the total work period per day of the employee is no more than six hours, the meal period may
7 be waived by mutual consent of both the employer and the employee. Employers may not employ
8 an employee for a work period more than 10 hours per day without providing the employee with a
9 second meal period of not less than 30 minutes.

10 80. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order, Defendants
11 shall pay an employee one additional hour of pay at the employee's regular rate of compensation
12 for each meal period that is missed.

13 81. At all relevant times herein, Plaintiff and the Class Members were denied the 30-
14 minute off-duty meal periods to which they were entitled.

15 82. Defendants failed to provide Plaintiff and the Class Members with all required meal
16 periods in accordance with the mandates of the California Labor Code and applicable Wage Orders,
17 for the reasons set forth herein above.

18 83. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Order
19 every pay period with respect to Plaintiff and the Class Members because Plaintiff and the Class
20 Members were not provided with all mandatory meal periods and Defendants failed to pay Plaintiff
21 and the Class Members one additional hour of compensation in lieu thereof.

22 84. On information and belief, Plaintiff and the Class Members did not voluntarily or
23 willfully waive the mandated meal periods. Any expressed or implied waivers obtained from
24 Plaintiff and the Class Members were not willfully obtained, were not voluntarily agreed to, were a
25 condition of employment, or were a part of a contract of unlawful adhesion. Defendants did not
26 permit or authorize Plaintiff and the Class Members to take meal periods in accordance with
27 California law.

28 85. By their failure to provide Plaintiff and the Class Members with meal periods as

1 required by California law, and failing to pay one hour of additional wages in lieu of each meal
2 period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage
3 Order. Accordingly, Defendants are liable for one hour of additional wages at the employee's
4 regular rate of compensation for each work day that a meal period was not lawfully provided in an
5 amount to be proven at time of trial.

6 86. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
7 and IWC Wage Order, Defendants, and each of them, are liable to Plaintiff and the Class Members
8 for unpaid wage premiums, penalties, costs, and interest.

9 **FIFTH CAUSE OF ACTION**
10 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

[Labor Code § 2802]

11 *Plaintiff and the Class Members Against All Defendants*

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

14 88. Labor Code § 2802 provides that "[a]n employer shall indemnify his or her
15 employee for all necessary expenditures or losses incurred by the employee in direct consequence
16 of the discharge of his or her duties." "Necessary" business expenses is defined to include all
17 "reasonable expenses." See, Labor Code § 2802 (c).

18 89. It was necessary for Plaintiff and the Class Members to incur various expenses are
19 outlined herein above in the discharge of their job duties. Although Plaintiff and the Class Members
20 incurred these expenses at the direction of Defendants and/or in the direct discharge of their job
21 duties, Defendants did not sufficiently reimburse these employees for such necessary work
22 expenditures during the four years preceding the filing of the Complaint.

23 90. Plaintiff and Class Members are entitled to sufficient reimbursement for these
24 necessary expenditures, plus interest and attorneys' fees and costs, under Labor Code § 2802.

25 91. As a result of Defendants' violations of Labor Code § 2802, Defendants are also
26 liable for attorneys' fees and costs under Labor Code § 2802(c).

1 **SIXTH CAUSE OF ACTION**
2 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS AND**
3 **WRITTEN NOTICE OF SICK LEAVE**

4 [Labor Code §§ 226, 246]

5 *Plaintiff and the Class Against All Defendants*

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

8 93. The actionable period for this cause of action is one year prior to the filing of this
9 Complaint through the present, and on-going until the violations are corrected, or the class is
10 certified.

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

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

19 95. Labor Code section 246(i) states that “[a]n employer shall provide an employee
20 with written notice that sets forth the amount of paid sick leave available, or paid time off leave an
21 employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement
22 described in Section 226 or in a separate writing provided on the designated pay date with the
23 employee’s payment of wages.”

24 96. As set forth above, during the Class Period, Defendants issued and continue to issue
25 wage statements to its employees including Plaintiff and the Class which are inadequate under
26 Labor Code Section 226(a). Here, by failing to pay Plaintiff and Class Members for lawful off-duty
27 rest periods and pay rest period premiums, failing to provide compliant meal periods and pay meal
28 period premiums, failing to pay all minimum and overtime wages for all hours worked, Defendants

1 failed to include required information on Plaintiff and the Class' wage statements, including the
2 gross wages earned, the total hours worked, the net wages earned, and all applicable hourly rates in
3 effect during the pay period, and the corresponding number of hours worked at each hourly rate in
4 violation of Labor Code section 226(a)(1, 2, 5 and 9). Further, Defendants failed to include the
5 correct name and address of the legal entity that is the employer, in violation of Labor Code Section
6 226(a)(8).

7 97. Defendants also failed to include the accrued sick hours on Plaintiff's and the Class
8 Members' wage statements as required by Labor Code section 246(i).

9 98. Defendants' failure to comply with section 226(a) of the Labor Code was knowing
10 and intentional.

11 99. Labor Code section 248.5(e) provides that "any person or entity enforcing this article
12 on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled
13 only to equitable, injunctive, or restitutionary relief, and reasonable attorneys' fees and costs."

14 100. As a result of Defendants' issuance of inaccurate itemized wage statements to
15 Plaintiff and Class Members in violation of section 226(a) of the California Labor Code, Plaintiff
16 and the Class are each entitled to recover an initial penalty of \$50, and subsequent penalties of
17 \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per every
18 member of the Class from Defendants pursuant to section 226(e) of the Labor Code, costs and
19 reasonable attorney's fees.

20 **SEVENTH CAUSE OF ACTION**

21 **WAITING TIME PENALTIES**

[Cal. Labor Code §§ 201 – 203]

22 *Plaintiff and the Waiting Time Penalties Subclass Against All Defendants*

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

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

28 103. Sections 201 and 202 of the Labor Code requires Defendants to pay all

1 compensation due and owing to Plaintiff and the Waiting Timeline Penalty Subclass during the
2 actionable period for this cause of action at or around the time that their employment is or was
3 terminated or ended.

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

8 105. Defendants willfully failed to pay Plaintiff and the Waiting Timeline Penalty
9 Subclass for their meal and rest period premiums, unpaid minimum and overtime wages, prior to or
10 upon termination or separation from employment with Defendants as required by California Labor
11 Code §§ 201 and 202.

12 106. As a result, Defendants are liable to Plaintiff and the Waiting Timeline Penalty
13 Subclass for waiting time penalties amounting to thirty (30) days wages for Plaintiff and the
14 Waiting Timeline Penalty Subclass pursuant to California Labor Code § 203. *See, e.g.* DLSE
15 Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to
16 recover waiting time penalties).

17 **EIGHTH CAUSE OF ACTION**
18 **FAILURE TO PAY ALL WAGES WITHIN A TIMELY MANNER**
19 [Labor Code § 204, 210]

20 *Plaintiff and the Class Members Against All Defendants*

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

23 108. Cal. Labor Code § 200 provides that “‘wages’ include all amounts for labor
24 performed by employees of every description, whether the amount is fixed or ascertained by the
25 standard of time, task, pieces, commission basis, or other method of calculation.”

26 109. Cal. Labor Code § 204 states that all wages earned by any person in any employment
27 are payable twice during the calendar month, and must be paid not more than seven days following
28 the close of the period when the wages were earned.

109. Labor Code § 204 expressly requires employers who pay employees on a weekly,

1 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the
2 close of the payroll period.” Due to Defendants’ failure to pay to Plaintiff and the Class Members
3 all minimum and overtime wage compensation and meal and rest period premiums as described
4 above, Defendants failed to timely pay its employees within seven calendar days following the
5 close of payroll in accordance with Labor Code § 204 on a regular and consistent basis. *See Parson*
6 *v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal.
7 May 2, 2016) (finding after *Ling vs. P.F. Chang’s China Bistro, Inc.* that a failure to pay rest period
8 premiums can support claims under Labor Code §§ 203 and 204).

9 111. As discussed in detail above, by failing to pay for all minimum and overtime wages
10 owed, and failing to pay meal and rest period premiums, Defendants failed to pay Plaintiff and the
11 Class at least twice per month in violation of Labor Code § 204. Defendants regularly and
12 consistently failed to pay Plaintiff minimum wages for all of their hours worked, and for meal and
13 rest period premiums.

14 112. As a result, Plaintiff and the Class are entitled to penalties pursuant to Labor Code §
15 210.

16 **NINTH CAUSE OF ACTION**
17 **UNFAIR AND UNLAWFUL COMPETITION**
18 [Cal. Business and Professions Code § 17200 *et seq.*]
 Plaintiff and the Class Members Against All Defendants

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

21 114. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
22 competition, which includes any “unlawful, unfair or fraudulent business act or practice.” The
23 Class Members, including Plaintiff, have suffered and continue to suffer injuries in fact, due to the
24 unfair and unlawful business practices of Defendants as alleged herein.

25 115. Defendants, and each of them, are “persons” as defined under Business &
26 Professions Code § 17021.

27 116. As alleged herein, Defendants engaged in conduct that violated California’s wage
28 and hour laws, including failure to pay minimum wages, failure to pay overtime wages, failure to

1 authorize or permit rest periods, failure to provide meal periods, failure to reimburse business
2 expenses, and failure to timely pay final wages, all in order to decrease their costs and increase their
3 profits.

4 117. At all times relevant herein, Defendants did not pay Plaintiff and Class Members
5 wages and monies and other financial obligations to which they were entitled.

6 118. As a result of Defendants' failure to comply with the Labor Code and IWC Orders,
7 Class Members, including Plaintiff, suffered a loss of wages and monies, all in an amount to be
8 shown according to proof at trial. Defendants' ongoing violations of the foregoing statutes and
9 laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

10 119. Defendants' violations of the California Labor Code and IWC Wage Orders and its
11 scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business practices
12 because it was done in a systematic manner over a period of time to the detriment of the Plaintiff
13 and all others similarly-situated.

14 120. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
15 unlawful, and harmful to Plaintiff, Class Members, and to the general public. Plaintiff seeks to
16 enforce important rights affecting the public interest within the meaning of Code of Civil Procedure
17 § 1021.5.

18 121. A violation of California Business & Professions Code § 17200, *et seq.* may be
19 predicated on the violation of any state or federal law. All of the acts described herein as violations
20 of, among other things, the California Labor Code and IWC Wage Orders, are unlawful and in
21 violation of public policy, and in addition are immoral, unethical, oppressive, fraudulent and
22 unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business practices in
23 violation of California Business and Professions Code §§ 17200, *et seq.*

24 122. Plaintiff, individually, and on behalf of the Class Members, has no plain, speedy,
25 and/or adequate remedy at law to redress the injuries which they have suffered as a consequence of
26 Defendants' unfair, unlawful and/or fraudulent business practices. As a result of the unfair,
27 unlawful and/or fraudulent business practices described above, Plaintiff, individually, and on behalf
28 of the Class Members, have suffered and will continue to suffer irreparable harm unless

1 Defendants, and each of them, are restrained from continuing to engage in said unfair, unlawful
2 and/or fraudulent business practices.

3 123. Plaintiff, individually, and on behalf of the Class Members, are entitled to, and do
4 seek such relief as may be necessary to disgorge the profits which Defendants have acquired, or of
5 which Plaintiff and Class Members have been deprived, by means of the above-described unfair,
6 unlawful and/or fraudulent business practices. Plaintiff and Class Members are not obligated to
7 establish individual knowledge of the unfair practices of Defendants in order to recover restitution.

8 124. Plaintiff, individually, and on behalf of the Class Members, are further entitled to
9 and do seek a declaration that the above described business practices are unfair, unlawful and/or
10 fraudulent, and injunctive relief restraining Defendants, and each of them, from engaging in any of
11 the above-described unfair, unlawful and/or fraudulent business practices in the future.

12 125. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and Class
13 Members are entitled to restitution of the wages withheld and retained by Defendants during a
14 period that commences four years prior to the filing of this complaint; a permanent injunction
15 requiring Defendants to pay all outstanding wages due to Plaintiff and Class Members; an award of
16 attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws;
17 and an award of costs.

18 **NINTH CAUSE OF ACTION**
19 **PENALTIES PURSUANT TO THE CALIFORNIA PRIVATE ATTORNEYS GENERAL**
20 **ACT OF 2004 ("PAGA") AND OTHER PROVISIONS OF THE CALIFORNIA LABOR**
21 **CODE**

22 *(Plaintiff and the Aggrieved Employees Against All Defendants)*

23 126. Plaintiff realleges and incorporates by reference all previous paragraphs.

24 127. Based on the above allegations incorporated by reference, Defendants violated
25 California Labor Code §§ 201-203, 204, 210, 226, 226.3, 226.7, 246(i), 510, 512, 1194, 1194.2,
26 1197, 1197.1, 1198, and 2802 and applicable IWC Wage Orders. As a result of the acts alleged
27 above, Plaintiff seek penalties under California Labor Code §§ 2698-2699.6 because of
28 Defendants' violation of the California Labor Code and applicable IWC Wage Orders.

1 128. Under California Labor Code §§ 2699(f)(2) and 2699.5, for each such violation,
2 Plaintiff and the Aggrieved Employees are entitled to penalties in an amount to be shown at the
3 time of trial subject to the following formula:

4 a. \$100 for the initial violation per employee per pay period; and

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

6 These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce
7 Development Agency (LWDA) and twenty-five percent (25%) to the affected employees. These
8 penalties may be stacked separately for each of Defendants violations of the California Labor Code.
9 See *e.g. Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx) 2012 U.S.Dist. LEXIS
10 86975, at *59, fn. 77 (C.D.Cal. June 22, 2012) (holding that although the plaintiff did not seek
11 stacked PAGA penalties, that “PAGA penalties can be ‘stacked,’ *i.e.*, multiple PAGA penalties can
12 be assessed for the same pay period for different Labor Code violations.”); See *Lopez v. Friant &*
13 *Assocs., LLC*, No. A148849, 2017 Cal. App. LEXIS 839, at *1 (Ct. App. Sep. 26, 2017) (“hold[ing]
14 a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not
15 have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section 226(e)(1) and
16 acknowledging that a Plaintiff could recover separately under PAGA for violations of Labor Code
17 §§ 226(a) and 226(e)).

18 129. In addition, to the extent permitted by law, Defendants failed to provide Plaintiff and
19 all aggrieved employees with accurate itemized wage statements in compliance with Labor Code §
20 226(a). Plaintiff seeks separate PAGA penalties for Defendant’s violations of Labor Code §§ 226(a)
21 and 226(e).

22 130. For violations of Labor Code § 226(a), Plaintiff seeks the default penalty provided
23 by Labor Code § 226.3. Labor Code § 226.3 provides that “[a]ny employer who violates
24 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty
25 dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000)
26 per employee for each violation in a subsequent citation, for which the employer fails to provide the
27 employee a wage deduction statement or fails to keep the required in subdivision (a) of Section
28 226.” Accordingly, through PAGA and to the extent permitted by law Plaintiff and the Aggrieved

1 Employees are entitled to recover penalties for violations of Labor Code § 226.3 and seeks default
2 PAGA penalties for each of Defendants' numerous violations of Labor Code § 226(e).

3 131. Further, Plaintiff, as an Aggrieved Employee, need not demonstrate or prove that
4 Defendants' conduct in refusing to provide accurate and itemized wage statements was knowing,
5 intentional, or willful.

6 132. Labor Code § 210 provides that "in addition to, and 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 other
13 Aggrieved Employees are entitled to recover penalties under Labor Code § 210 through PAGA.

14 133. Plaintiff has complied with the procedures for bringing suit specified in California
15 Labor Code § 2699.3. and will have fully exhausted their administrative remedies under PAGA
16 prior to proceeding with the PAGA claim. On or about December 3, 2020, Plaintiff filed her PAGA
17 Notice online with the Labor Workforce Development Agency ("LWDA") and sent a letter by
18 certified mail to Defendant setting forth the facts and theories of the violations alleged against
19 Defendant, as prescribed by Labor Code § 2698 *et seq.* As required by PAGA, Plaintiff submitted
20 the \$75.00 filing fee with the LWDA by regular mail. Pursuant to Labor Code § 2699.3(a)(2)(A),
21 no notice was and/or will have been received by Plaintiff from the LWDA evidencing its intention
22 to investigate within sixty-five (65) calendar days of the postmark date of the PAGA notice.
23 Plaintiff is therefore entitled to commence and proceed with a civil action pursuant to Labor Code §
24 2699.

25 **VI. PRAYER FOR RELIEF**

26 **WHEREFORE**, Plaintiff prays for the following relief:

- 27 1. For an order certifying this action as a class action;
28 2. For compensatory damages in the amount of the regular rate of compensation made

1 by Plaintiff and the Class for each day of noncompliant rest periods for which premium pay was not
2 properly paid, as may be proven;

3 3. For compensatory damages in the amount of the regular rate of compensation made
4 by Plaintiff and the Class for each day of noncompliant meal periods for which premium pay was
5 not properly paid, as may be proven;

6 4. For compensatory damages in the amount of the unpaid wages for work performed
7 by Plaintiff and the Class, as may be proven;

8 5. For liquidated damages in the amount of the unpaid wages for work performed by
9 Plaintiff and the Class, as may be proven;

10 6. For compensatory damages in the amount of the unpaid overtime wages owed to
11 Plaintiff and the Class, as may be proven;

12 7. For reimbursement of all incurred expenses by the Class on behalf of Defendants;

13 8. For actual damages and/or penalties pursuant to Labor Code § 226(e) for Plaintiff
14 and the Class, as may be proven;

15 9. For penalties pursuant to Labor Code § 203 for Plaintiff and the Class Members
16 whose employment has ended three years prior to the filing of this Complaint and ongoing in an
17 amount equal to their daily wage multiplied by thirty (30) days, as may be proven;

18 10. For restitution for unfair competition pursuant to Business & Professions Code §§
19 17200 *et seq.*, including disgorgement of profits, as may be proven;

20 11. For all civil and statutory penalties described herein;

21 12. For an award of pre-judgment and post-judgment interest;

22 13. For an award providing for the payment of the costs of this suit;

23 14. For an award of attorneys' fees, to the extent provided by law; and

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

25 **DEMAND FOR JURY TRIAL**

26 Plaintiff hereby demands a trial of their claims by jury to the extent authorized by law.
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Dated: February 17, 2021

MELMED LAW GROUP, P.C.

By: Jonathan Melmed
Jonathan Melmed, Esq.
Attorneys for Plaintiff and the Putative Class

PROOF OF SERVICE
STATE OF CALIFORNIA, SANTA BARBARA COUNTY

I am over the age of 18 years and am employed in the county of Los Angeles, State of California. I am not a party to this action. My business address is 1801 Century Park East, Suite 850, Los Angeles, California 90067.

I declare that on the date hereof, March 17, 2021, I served the foregoing document(s) described as:

- PLAINTIFF'S FIRST AMENDED COMPLAINT

By causing a true copy thereof to be sent to the following individuals and/or parties:

Margot Parker
mparker@fmglaw.com
FREEMAN MATHIS & GARY, LLP
400 Continental Blvd., 6th Floor
El Segundo, CA 90245

Attorneys for Defendant

RICH & FAMOUS, INC. dba BIG GREEN CLEANING COMPANY

[XX] BY ELECTRONIC TRANSMISSION. Pursuant to CCP section 1010.6(e), I caused such document to be served on this date by electronic transmission in accordance with standard procedures and to the email address listed. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of California that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on this 17th day of March, 2021, in Los Angeles, California.


Lorie Gutierrez