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RICH & FAMOUS, INC., dba BIG GREEN

CLEANING COMPANY, INC.

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.

Case No.: 20CV04009

**[PROPOSED] ORDER FOR LEAVE TO
FILE PLAINTIFF'S SECOND
AMENDED COMPLAINT**

Date Filed: December 3, 2020

Trial Date: None Set

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[PROPOSED] ORDER

Pursuant to the stipulation of the parties, and GOOD CAUSE APPEARING, **IT IS ORDERED, ADJUDGED AND DECREED**, as follows:

1. Plaintiff is hereby **GRANTED** leave to file and serve a Second Amended Complaint (“SAC”), in the form attached hereto as **EXHIBIT A**. Plaintiff’s SAC is deemed filed, in the form attached hereto as **EXHIBIT A**, as of the date that this **ORDER** is signed by the Court.

2. Defendants may file a responsive pleading to the Second Amended Complaint within thirty (30) days of Plaintiff serving Defendants with a copy of this **ORDER** approving and entering this Stipulation and the FAC.

IT IS SO ORDERED.

DATED: _____, 2022

Hon. Donna D. Geck
Judge for the Superior Court

Exhibit A

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Attorneys for Plaintiffs, the Putative Class, and the Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

ANA MIRANDA MENDOZA, an individual,
MARIA GARCIA, an individual, on behalf of
themselves, 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.

CASE NO.: 20CV04009

**SECOND 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

Plaintiffs ANA MIRANDA MENDOZA and MARIA GARCIA (“Plaintiffs”), on behalf of themselves and all others similarly situated, and the State of California, complain and allege of Defendants RICH & FAMOUS, INC. dba BIG GREEN CLEANING COMPANY, BIG GREEN CLEANING COMPANY, and DOES 1 through 20 (referred to collectively as “Defendants”), as follows.

I. INTRODUCTION

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

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

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

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

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

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

1 7. Plaintiffs further bring this action on behalf of themselves and all other similarly
2 situated employees, pursuant to California Business and Professions Code sections 17200 through
3 17208.

4 **II. JURISDICTION AND VENUE**

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

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

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

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

26 **III. PARTIES**

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

1 13. Plaintiff Maria Garcia is a resident of California and was employed by Defendants
2 during the Class Period as a non-exempt employee in Santa Barbara County, California.

3 14. Plaintiffs seek to represent the Classes, as defined herein.

4 15. Plaintiffs are informed and believe and thereon allege that Defendant Rich &
5 Famous, Inc. dba Big Green Cleaning Company is a California corporation authorized to and doing
6 business in Santa Barbara County, California, and is and/or was the legal employer of Plaintiffs, the
7 Class Members, and the Aggrieved Employees during the applicable statutory periods.

8 16. Plaintiffs are informed and believe and thereon allege that Defendant Big Green
9 Cleaning Company is a business of unknown formation authorized to and doing business in Santa
10 Barbara County, California, and is and/or was the legal employer of Plaintiffs, the Class Members,
11 and the Aggrieved Employees during the applicable statutory periods.

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

19 18. Plaintiffs allege that at all relevant times herein the Defendants sued herein as DOES
20 1-20 had the authority, in the interest of certain Defendants, to exercise independent judgment to
21 hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Plaintiff,
22 and were in Plaintiff's chain of command at the time of and direct participants in the wrongful
23 conduct which constitutes the basis of Plaintiff's complaint herein. Plaintiffs also allege that the
24 Defendants sued herein as DOES 1-20 and certain Defendants are the agents, servants, employees,
25 partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned,
26 acting within the course, scope, and purpose of such relationship(s) and with the knowledge,
27 consent and/or ratification of each other. Furthermore, in conducting themselves in the manner
28 described herein, the Defendants sued herein as DOES 1-20 and certain Defendants were acting in

1 active concert with on another such that the acts of each were fully attributable to the other in all
2 material respects. Plaintiffs also alleges that certain Defendants were merely the alter ego of the
3 Defendants sued herein as DOES 1-20 in that there existed a unity of interest and ownership such
4 that any separateness between them ceased to exist and the Defendants sued herein as DOES 1-20
5 exercised undue dominance, control, influence, and management over certain Defendants.
6 Plaintiffs further allege that, at all relevant times, certain Defendants have been inadequately
7 capitalized to conduct business, have failed to follow appropriate corporate formalities, and have
8 simply been a shell and instrumentality through which the Defendants sued herein as DOES 1-20
9 have conducted their personal affairs. Accordingly, the corporate veil should be pierced, and any
10 liability attached to certain Defendants should be imposed jointly and severally against the
11 Defendants sued herein as DOES 1-20. Adherence to the fiction of the separate existence of these
12 corporate entities would permit abuse of the corporate privilege, thereby sanctioning fraud and
13 promoting injustice.

14 **IV. SUMMARY OF FACTS**

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

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

25 21. Labor Code § 1194.2 authorizes employees to recover wages to recover liquidated
26 damages for violations of Labor Code § 1194. Where an employee, such as Claimant, was not paid
27 for all hours worked under Labor Code § 1194, the employee may recover minimum wages for the
28 time associated with the time for which they received no compensation. See *Sillah v. Command*

1 *Int'l Sec. Servs.* (N.D. Cal. 2015) 154 F. Supp. 3d 891 [holding that employees suing for failure to
2 pay overtime could recover liquidated damages under § 1194.2 if they also showed they were paid
3 less than minimum wage]; *accord Andrade v. Arby's Rest. Grp., Inc.* (N.D. Cal. Dec. 12, 2016)
4 2016 U.S. Dist. LEXIS 172319, at *20-21.

5 22. At all relevant times herein, Defendants failed to conform their pay practices to the
6 requirements of the law. Plaintiffs, the Class Members, and the Aggrieved Employees were not
7 compensated for all hours worked including, but not limited to, all hours they were subject to the
8 control of Defendants and/or suffered or permitted to work under the California Labor Code and the
9 applicable Wage Orders.

10 23. Because Defendants failed to provide Plaintiffs, the Class Members, and the
11 Aggrieved Employees with compensation for all hours worked, each are entitled to recover
12 liquidated damages under Labor Code § 1194.2.

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

25 25. Defendants failed to compensate Plaintiffs, the Class Members, and the Aggrieved
26 Employees for all hours worked, including all overtime wages. Further, when overtime wages were
27 paid to Plaintiffs, the Class Members, and the Aggrieved Employees they were not paid at the
28 proper rate and were paid at less than one and one half times their regular rate of pay. Specifically,

1 Defendants often miscalculated the overtime rates paid to Plaintiffs, the Class Members, and the
2 Aggrieved Employees resulting in underpayments of overtime wages.

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

6 27. Pursuant to Labor Code § 226.7, and the applicable IWC Wage Order, Defendants
7 failed to provide Plaintiffs and the Class Members with compensated, duty-free rest periods of not
8 less than ten (10) minutes for every major fraction of four hours worked.

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

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

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

22 31. Under California Labor Code Section 512 and the applicable IWC Wage Order, no
23 employer shall employ any person for a work period of more than five (5) hours without providing
24 a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty
25 (30) minutes, the employee is to be completely free of the employer’s control and must not perform
26 any work for the employer. If the employee does perform work for the employer during the thirty
27 (30) minute meal period, the employee has not been provided a meal period in accordance with the
28 law. Also, the employee is to be compensated for any work performed during the thirty (30) minute

1 meal period. Finally, an employer may not employ an employee for a work period of more than ten
2 (10) hours a day without providing the employee with another meal period of not less than thirty
3 (30) minutes.

4 32. Plaintiffs, the Class Members, and the Aggrieved Employees were denied legally
5 complaint and timely off-duty meal periods of at least thirty (30) minutes due to Defendants'
6 unlawful meal period policy/practices. As a result of Defendants' uniform meal period policies and
7 practices, Plaintiffs, the Class Members, and the Aggrieved Employees routinely were not
8 permitted to take complaint first meal periods before the end of the fifth hour of work, and second
9 meal periods before the end of the tenth hour of work. Plaintiffs, the Class Members, and the
10 Aggrieved Employees were also not permitted to take second meal periods for shifts in excess of
11 ten (10) hours.

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

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

25 35. Defendants failed to sufficiently reimburse Plaintiffs, the Class Members, and the
26 Aggrieved Employees for necessary expenditures incurred as a direct consequence and requirement
27 of performing their job duties, including but not limited to the costs associated with using their
28 personal cell phones. See *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal. App. 4th 1137

1 (the Court of Appeal held that an employer that required its customer service managers to use their
2 personal cell phones for business tasks must reimburse the managers for a reasonable percentage of
3 their cell phone bills); see also DLSE Bulletin 84-7.) Consequently, Defendants failed to comply
4 with Labor Code § 2802 and applicable Wage Orders.

5 36. Labor Code § 226(a) requires an employer to provide its employees with itemized
6 wage statements accurately stating (1) gross wages earned, (2) total hours worked by the employee,
7 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
8 piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the
9 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates
10 of the period for which the employee is paid, (7) the name of the employee and only the last four
11 digits of his or her social security number or an employee identification number other than a social
12 security number, (8) the name and address of the legal entity that is the employer, and (9) all
13 applicable hourly rates in effect during the pay period and the corresponding number of hours
14 worked at each hourly rate by the employee.

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

22 38. Defendants also failed to include the accrued sick hours on Plaintiffs', the Class
23 Members' and the Aggrieved Employees' wage statements as required by Labor Code section
24 246(i).

25 39. In addition to violating Labor Code § 226(a), Defendants also knowingly and
26 intentionally failed to provide Plaintiffs, the Class Members, and the Aggrieved Employees with
27 accurate itemized wage statements in violation of Labor Code § 226(e). Defendants undeniably
28 knew that it was not providing Plaintiffs, the Class Members, and the Aggrieved Employees with

1 wage statements required by California law. *See Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131
2 (E.D. Cal. Oct. 6, 2015) (finding that the defendant knowingly and intentionally violated Labor
3 Code § 226 because the “[d]efendant knew that it was not providing total hours worked to plaintiff
4 or other employees paid on commission” even though it believed that employees paid solely on
5 commission or commission and salary “are exempt and therefore we do not record hours on a wage
6 statement.”).

7 40. Pursuant to Labor Code section 246, “An employee who, on or after July 1, 2015,
8 works in California for the same employer for 30 or more days within a year from the
9 commencement of employment is entitled to paid sick days... at the rate of not less than one hour
10 per every 30 hours worked, beginning at the commencement of employment or the operative date of
11 this article, whichever is later, subject to the use and accrual limitations set forth in this section.”

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

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

28 ///

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

6 44. Labor Code § 204 expressly requires employers who pay employees on a weekly,
7 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the
8 close of the payroll period.” Due to Defendants’ failure to pay to Plaintiff, the Class Members, and
9 the Aggrieved Employees all minimum and overtime wage compensation, and meal and rest period
10 premiums as described above, Defendants failed to timely pay its employees within seven calendar
11 days following the close of payroll in accordance with Labor Code § 204 on a regular and
12 consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL
13 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling vs. P.F. Chang’s China Bistro, Inc.*
14 that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

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

21 **V. CLASS ACTION ALLEGATIONS**

22 46. Plaintiffs bring this action on behalf of themselves and all others similarly situated as
23 a class action pursuant to Code of Civil Procedure § 382. Plaintiffs also seek to represent the
24 following Classes:

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

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

///

1 47. Plaintiffs reserve the right to amend or modify the class descriptions with greater
2 specificity or further division into subclasses or limitation to particular issues as appropriate.

3 48. Plaintiffs, as Class Representatives, are members of the Classes that they seek to
4 represent.

5 49. This action has been brought and may properly be maintained as a class action under
6 Code of Civil Procedure § 382 because there is a well-defined community of interest in the
7 litigation and the proposed Class is easily ascertainable from Defendants' personnel and payroll
8 records.

9 50. **Numerosity:** The potential members of the Class as defined are so numerous that a
10 joinder of all Class Members is impracticable. Although the exact number is currently unknown to
11 Plaintiffs, this information is easily ascertainable from Defendants' payroll and personnel records.

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

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

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

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

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

27 v. Whether Defendants violated the California Labor Code and the applicable
28 IWC Wage Order by failing to provide compliant meal periods to Plaintiffs and the Class and

1 whether Defendants failed to compensate Plaintiffs and the Class with one additional hour of
2 premium pay for each instance when a compliant meal period was not provided;

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

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

9 viii. Whether Defendants violated the California Labor Code by failing to pay
10 timely wages to the Class;

11 ix. Whether Defendants violated the California Labor Code by failing to provide
12 Plaintiffs and the Class with complete, accurate, itemized wage statements;

13 x. Whether Defendants violated the California Labor Code by failing to provide
14 Plaintiffs and the Class with written notice of sick leave;

15 xi. Whether Defendants violated California Business & Professions Code §§
16 17200 *et seq.* due to the: failure to pay minimum wages; failure to pay overtime wages, failure to
17 authorize or permit mandated paid rest periods; failure to provide missed rest period premiums;
18 failure to provide compliant meal periods; failure to pay missed meal period premiums; failure to
19 reimburse for business expenses; and failure to timely pay final wages;

20 xii. Whether Defendants violated § 17200 *et seq.* of the California Business and
21 Professions Code and, without limitation, California Labor Code §§ 201, 202, 203, 204, 210, 226,
22 226.3, 226.7, 246, 510, 512, 1194, 1194.2, 1197, 1198, 2802, among possibly other sections
23 inadvertently omitted, and the IWC Wage Order, which violations constitute false, fraudulent,
24 unlawful, unfair and deceptive business practices; and

25 xiii. Whether Plaintiffs and the Class are entitled to equitable relief pursuant to
26 California Business & Professions Code §§ 17200, *et seq.*

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

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

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

52. **Typicality:** Plaintiffs' claims, as Class Representatives, are typical of the claims of the Class and the Subclasses. Plaintiffs, like other members of the Class, were subjected to Defendants' ongoing Labor Code and Wage Order violations including pertaining to Defendants' failing to pay at least minimum wages, failing to pay overtime wages, failing to authorize or permit compliant rest periods, failing to pay missed rest period premiums, failing to provide compliant meal periods, failing to pay missed meal period premiums, failing to reimburse business expenses, failing to issue accurate/complete wage statements and written notice of sick leave, failing to pay timely wages, and failing to pay all wages due upon termination and/or resignation from employment.

53. **Adequacy of Representation.** Plaintiffs, as Class Representatives, will fairly and adequately represent and protect the interests of the Class. Plaintiffs' interests are not in conflict with those of the Class. Plaintiffs' counsel are competent and experienced in litigating wage and hour employment class actions in state and federal courts and other complex litigation matters.

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

FIRST CAUSE OF ACTION

FAILURE TO PAY FOR ALL HOURS WORKED

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

Plaintiffs and the Class Members Against All Defendants

55. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs above, as though fully set forth herein.

1 56. Plaintiffs and the Class Members are and/or were not exempt from the requirement
2 to be paid at least the applicable California minimum wage throughout the statutory period for each
3 hour worked.

4 57. At all relevant times herein, Defendants failed to conform their pay practices to the
5 requirements of the law. Plaintiffs and members of the Class were not compensated for all hours
6 worked including, but not limited to, all hours they were subject to the control of Defendants and/or
7 suffered or permitted to work under the California Labor Code and the applicable Wage Orders.

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

10 59. Plaintiffs are informed and believe and thereon alleged that Defendants intentionally,
11 willfully, and improperly failed to pay wages to Plaintiffs and Class Members.

12 60. Defendants' conduct was willful, as Defendants knew that Plaintiffs and Class
13 Members were entitled to be paid wages throughout the statutory period for each hour worked,
14 including proper minimum wages, yet Defendants chose not to pay them in accordance thereto.

15 61. As a result of Defendants' wrongful conduct, Plaintiffs and the Class Members have
16 been damages in amounts to be proven at trial.

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

20 **SECOND CAUSE OF ACTION**
21 **FAILURE TO PAY OVERTIME WAGES**

22 [Labor Code §§ 510, 1197, 1198; IWC Wage Order]
23 *Plaintiffs and Class Members Against All Defendants*

24 63. Plaintiffs re-allege and incorporate by reference the allegations contained in the
25 paragraphs above, as though fully set forth herein.

26 64. Labor Code § 510 requires an employer to compensate an employee who works
27 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8)
28 hours worked on the seventh consecutive day no less than one and one-half times the regular rate of
pay for an employee. Further, Labor Code § 510 obligates employers to compensate employees at

1 no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a
2 day or more than eight (8) hours on the seventh consecutive day of work.

3 65. Furthermore, pursuant to Labor Code § 1198, “[t]he maximum hours of work and the
4 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
5 standard conditions of labor for employees. The employment of any employee for longer hours than
6 those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

7 66. At all times relevant herein, Defendants were required to properly pay Plaintiffs and
8 members of the Class for all overtime wages earned pursuant to California Labor Code § 1194 and
9 applicable Wage Orders. Section 3 of the applicable Wage Orders require an employer to pay an
10 employee “one and one-half (1 1/2) times the employee’s regular rate of pay” for work in excess of
11 eight (8) hours per workday and/or in excess of 40 hours of work in the workweek. The same
12 section also requires an employer to pay an employee double the employee’s regular rate of pay for
13 work in excess of twelve hours each workday and/or for work in excess of eight (8) hours on the
14 seventh consecutive day of work in the workweek. Defendants caused Plaintiffs and the Class
15 Members to work overtime hours but did not compensate Plaintiffs and the Class Members at one
16 and one-half times their regular rate of pay for such hours in accordance with California law.

17 67. Plaintiffs and the Class Members suffered and continue to suffer losses related to the
18 use and enjoyment of compensation due and owing to them as a direct result of Defendants’
19 unlawful acts and Labor Code violations in an amount to be shown according to proof at trial and
20 within the jurisdictional limitations of this Court.

21 68. Plaintiffs seek all available remedies for Defendants’ violations including, but not
22 limited to any and all wages due, monies, interest, attorney’s fees, and costs to the extent permitted
23 by law.

24 **THIRD CAUSE OF ACTION**
25 **FAILURE TO PROVIDE REST PERIODS**

[Labor Code § 226.7; IWC Wage Order]

26 *Plaintiffs and the Class Members Against All Defendants*

27 69. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
28 in the preceding paragraphs.

1 70. Plaintiffs and Class Members are and/or were “non-exempt” employees of
2 Defendants who did not receive proper protections and benefits of the laws governing mandatory
3 rest periods.

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

6 72. The applicable IWC Wage Order states, in part, that every employer shall authorize
7 and permit all employees to take rest periods, which insofar as practicable shall be in the middle of
8 each work period. Employees shall receive a 10-minute rest period every four hours or major
9 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
10 hours worked, for which there shall be no deduction from wages.

11 73. Pursuant to Labor Code § 226.7(b) and the IWC Wage Order, Defendants shall pay
12 Plaintiffs and Class Members one additional hour of pay at their regular rate of compensation for
13 each day that the rest period is not provided.

14 74. Here, Defendants failed to authorize or permit Plaintiffs and the Class Members to
15 take duty-free rest periods of not less than ten (10) minutes for every major fraction of four (4)
16 hours worked. Specifically, Defendants failed to have any lawful rest period policy in place that
17 informed Plaintiffs and the Class Members of their right to take off duty rest periods for shifts that
18 were a major fraction of a four (4) hour work period and to make off-duty rest breaks available to
19 these employees.

20 75. In addition, Plaintiffs and the Class Members were not compensated with one (1)
21 hours’ worth of pay at their regular rate of compensation when they were not provided with a
22 compliant rest period

23 76. By their failure to provide Plaintiffs and Class Members with rest periods as required
24 by California law, and failing to pay one hour of additional wages in lieu of each rest break not
25 provided, Defendants willfully violated Labor Code §§ 226.7 and the applicable IWC Wage Order.
26 Accordingly, Defendants are liable for one hour of additional wages at the employee’s regular rate
27 of compensation for each work day that a paid rest break was not lawfully provided in an amount to
28 be proven at time of trial.

1 77. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and the
2 applicable IWC Wage Order, Defendants, and each of them, are liable to Plaintiffs and Class
3 Members for unpaid wage premiums, penalties, costs, and interest.

4 **FOURTH CAUSE OF ACTION**
5 **FAILURE TO PROVIDE MEAL PERIODS**

6 [Labor Code §§ 226.7, 512; IWC Wage Order]

7 *On Behalf of Plaintiffs and the Class Against All Defendants*

8 78. Plaintiffs re-allege and incorporate by reference the allegations contained in the
9 paragraphs above, as though fully set forth herein.

10 79. Plaintiffs and the Class Members are and/or were "non-exempt" employees of
11 Defendants who did not receive proper protections and benefits of the laws governing mandatory
12 meal periods.

13 80. Labor Code § 512(a), in part, provides that employers, including Defendants, may
14 not employ an employee for a work period of more than five hours per day without providing an
15 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes, except
16 that if the total work period per day of the employee is no more than six hours, the meal period may
17 be waived by mutual consent of both the employer and the employee. Employers may not employ
18 an employee for a work period more than 10 hours per day without providing the employee with a
19 second meal period of not less than 30 minutes.

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

23 82. At all relevant times herein, Plaintiffs and the Class Members were denied the 30-
24 minute off-duty meal periods to which they were entitled.

25 83. Defendants failed to provide Plaintiffs and the Class Members with all required meal
26 periods in accordance with the mandates of the California Labor Code and applicable Wage Orders,
27 for the reasons set forth herein above.

28 84. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Order
every pay period with respect to Plaintiff and the Class Members because Plaintiffs and the Class

1 Members were not provided with all mandatory meal periods and Defendants failed to pay
2 Plaintiffs and the Class Members one additional hour of compensation in lieu thereof.

3 85. On information and belief, Plaintiffs and the Class Members did not voluntarily or
4 willfully waive the mandated meal periods. Any expressed or implied waivers obtained from
5 Plaintiffs and the Class Members were not willfully obtained, were not voluntarily agreed to, were a
6 condition of employment, or were a part of a contract of unlawful adhesion. Defendants did not
7 permit or authorize Plaintiffs and the Class Members to take meal periods in accordance with
8 California law.

9 86. By their failure to provide Plaintiffs and the Class Members with meal periods as
10 required by California law, and failing to pay one hour of additional wages in lieu of each meal
11 period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage
12 Order. Accordingly, Defendants are liable for one hour of additional wages at the employee's
13 regular rate of compensation for each work day that a meal period was not lawfully provided in an
14 amount to be proven at time of trial.

15 87. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
16 and IWC Wage Order, Defendants, and each of them, are liable to Plaintiffs and the Class Members
17 for unpaid wage premiums, penalties, costs, and interest.

18 **FIFTH CAUSE OF ACTION**
19 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
20 [Labor Code § 2802]
Plaintiffs and the Class Members Against All Defendants

21 88. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
22 in the preceding paragraphs.

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

27 90. It was necessary for Plaintiffs and the Class Members to incur various expenses are
28 outlined herein above in the discharge of their job duties. Although Plaintiffs and the Class

1 Members incurred these expenses at the direction of Defendants and/or in the direct discharge of
2 their job duties, Defendants did not sufficiently reimburse these employees for such necessary work
3 expenditures during the four years preceding the filing of the Complaint.

4 91. Plaintiffs and Class Members are entitled to sufficient reimbursement for these
5 necessary expenditures, plus interest and attorneys' fees and costs, under Labor Code § 2802.

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

8 **SIXTH CAUSE OF ACTION**
9 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS AND**
10 **WRITTEN NOTICE OF SICK LEAVE**

[Labor Code §§ 226, 246]

Plaintiffs and the Class Against All Defendants

11 93. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
12 in the preceding paragraphs.

13 94. The actionable period for this cause of action is one year prior to the filing of this
14 Complaint through the present, and on-going until the violations are corrected, or the class is
15 certified.

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

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

26 96. Labor Code section 246(i) states that “[a]n employer shall provide an employee
27 with written notice that sets forth the amount of paid sick leave available, or paid time off leave an
28 employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement

described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages."

97. As set forth above, during the Class Period, Defendants issued and continue to issue wage statements to its employees including Plaintiffs and the Class which are inadequate under Labor Code Section 226(a). Here, by failing to pay Plaintiffs and Class Members for lawful off-duty rest periods and pay rest period premiums, failing to provide compliant meal periods and pay meal period premiums, failing to pay all minimum and overtime wages for all hours worked, Defendants failed to include required information on Plaintiffs and the Class' wage statements, including the gross wages earned, the total hours worked, the net wages earned, and all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate in violation of Labor Code section 226(a)(1, 2, 5 and 9). Further, Defendants failed to include the correct name and address of the legal entity that is the employer, in violation of Labor Code Section 226(a)(8).

98. Defendants also failed to include the accrued sick hours on Plaintiffs' and the Class Members' wage statements as required by Labor Code section 246(i).

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

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

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

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1 **SEVENTH CAUSE OF ACTION**
2 **WAITING TIME PENALTIES**

[Cal. Labor Code §§ 201 – 203]

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

4 102. Plaintiffs re-allege and incorporates by reference each and every allegation set forth
5 in the preceding paragraphs.

6 103. The actionable period for this cause of action is three years prior to the filing of this
7 Complaint through the present, and on-going until the violations are corrected, or the class is
8 certified.

9 104. Sections 201 and 202 of the Labor Code requires Defendants to pay all
10 compensation due and owing to Plaintiffs and the Waiting Timeline Penalty Subclass during the
11 actionable period for this cause of action at or around the time that their employment is or was
12 terminated or ended.

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

17 106. Defendants willfully failed to pay Plaintiffs and the Waiting Timeline Penalty
18 Subclass for their meal and rest period premiums, unpaid minimum and overtime wages, prior to or
19 upon termination or separation from employment with Defendants as required by California Labor
20 Code §§ 201 and 202.

21 107. As a result, Defendants are liable to Plaintiffs and the Waiting Timeline Penalty
22 Subclass for waiting time penalties amounting to thirty (30) days wages for Plaintiffs and the
23 Waiting Timeline Penalty Subclass pursuant to California Labor Code § 203. *See, e.g.* DLSE
24 Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to
25 recover waiting time penalties).

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

Plaintiffs and the Class Members Against All Defendants

108. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

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

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

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

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

113. As a result, Plaintiffs and the Class are entitled to penalties pursuant to Labor Code § 210.

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

114. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

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

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

117. As alleged herein, Defendants engaged in conduct that violated California’s wage and hour laws, including failure to pay minimum wages, failure to pay overtime wages, failure to authorize or permit rest periods, failure to provide meal periods, failure to reimburse business expenses, and failure to timely pay final wages, all in order to decrease their costs and increase their profits.

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

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

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

121. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Plaintiffs, Class Members, and to the general public. Plaintiffs seek to

1 enforce important rights affecting the public interest within the meaning of Code of Civil Procedure
2 § 1021.5.

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

9 123. Plaintiffs, individually, and on behalf of the Class Members, has no plain, speedy,
10 and/or adequate remedy at law to redress the injuries which they have suffered as a consequence of
11 Defendants' unfair, unlawful and/or fraudulent business practices. As a result of the unfair,
12 unlawful and/or fraudulent business practices described above, Plaintiffs, individually, and on
13 behalf of the Class Members, have suffered and will continue to suffer irreparable harm unless
14 Defendants, and each of them, are restrained from continuing to engage in said unfair, unlawful
15 and/or fraudulent business practices.

16 124. Plaintiffs, individually, and on behalf of the Class Members, are entitled to, and do
17 seek such relief as may be necessary to disgorge the profits which Defendants have acquired, or of
18 which Plaintiffs and Class Members have been deprived, by means of the above-described unfair,
19 unlawful and/or fraudulent business practices. Plaintiffs and Class Members are not obligated to
20 establish individual knowledge of the unfair practices of Defendants in order to recover restitution.

21 125. Plaintiffs, individually, and on behalf of the Class Members, are further entitled to
22 and do seek a declaration that the above described business practices are unfair, unlawful and/or
23 fraudulent, and injunctive relief restraining Defendants, and each of them, from engaging in any of
24 the above-described unfair, unlawful and/or fraudulent business practices in the future.

25 126. Pursuant to Business & Professions Code §§ 17200, *et seq.*, Plaintiffs and Class
26 Members are entitled to restitution of the wages withheld and retained by Defendants during a
27 period that commences four years prior to the filing of this complaint; a permanent injunction
28 requiring Defendants to pay all outstanding wages due to Plaintiffs and Class Members; an award of

1 attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws;
2 and an award of costs.

3 **NINTH CAUSE OF ACTION**
4 **PENALTIES PURSUANT TO THE CALIFORNIA PRIVATE ATTORNEYS GENERAL**
5 **ACT OF 2004 ("PAGA") AND OTHER PROVISIONS OF THE CALIFORNIA LABOR**
6 **CODE**

7 *(Plaintiffs and the Aggrieved Employees Against All Defendants)*

8 127. Plaintiffs reallege and incorporate by reference all previous paragraphs.

9 128. Based on the above allegations incorporated by reference, Defendants violated
10 California Labor Code §§ 201-203, 204, 210, 226, 226.3, 226.7, 246(i), 510, 512, 1194, 1194.2,
11 1197, 1197.1, 1198, and 2802 and applicable IWC Wage Orders. As a result of the acts alleged
12 above, Plaintiffs seek penalties under California Labor Code §§ 2698–2699.6 because of
13 Defendants' violation of the California Labor Code and applicable IWC Wage Orders.

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

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

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

19 These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce
20 Development Agency (LWDA) and twenty-five percent (25%) to the affected employees. These
21 penalties may be stacked separately for each of Defendants violations of the California Labor Code.
22 *See e.g. Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx) 2012 U.S.Dist. LEXIS
23 86975, at *59, fn. 77 (C.D.Cal. June 22, 2012) (holding that although the plaintiff did not seek
24 stacked PAGA penalties, that "PAGA penalties can be 'stacked,' i.e., multiple PAGA penalties can
25 be assessed for the same pay period for different Labor Code violations."); *See Lopez v. Friant &*
26 *Assocs., LLC*, No. A148849, 2017 Cal. App. LEXIS 839, at *1 (Ct. App. Sep. 26, 2017) ("hold[ing]
27 a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not
28 have to satisfy the 'injury' and 'knowing and intentional' requirements of section 226(e)(1) and
acknowledging that a Plaintiff could recover separately under PAGA for violations of Labor Code
§§ 226(a) and 226(e)).

1 130. In addition, to the extent permitted by law, Defendants failed to provide Plaintiffs
2 and all aggrieved employees with accurate itemized wage statements in compliance with Labor
3 Code § 226(a). Plaintiffs seek separate PAGA penalties for Defendant’s violations of Labor Code
4 §§ 226(a) and 226(e).

5 131. For violations of Labor Code § 226(a), Plaintiffs seek the default penalty provided
6 by Labor Code § 226.3. Labor Code § 226.3 provides that “[a]ny employer who violates
7 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty
8 dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000)
9 per employee for each violation in a subsequent citation, for which the employer fails to provide the
10 employee a wage deduction statement or fails to keep the required in subdivision (a) of Section
11 226.” Accordingly, through PAGA and to the extent permitted by law Plaintiffs and the Aggrieved
12 Employees are entitled to recover penalties for violations of Labor Code § 226.3 and seeks default
13 PAGA penalties for each of Defendants’ numerous violations of Labor Code § 226(e).

14 132. Further, Plaintiffs, as Aggrieved Employees, need not demonstrate or prove that
15 Defendants’ conduct in refusing to provide accurate and itemized wage statements was knowing,
16 intentional, or willful.

17 133. Labor Code § 210 provides that “in addition to, and entirely independent and apart
18 from, any other penalty provided in this article, every person who fails to pay the wages of each
19 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any
20 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
21 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
22 failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the
23 faulty compensation policies and practices described in detail above, Plaintiffs and the other
24 Aggrieved Employees are entitled to recover penalties under Labor Code § 210 through PAGA.

25 134. Plaintiffs have complied with the procedures for bringing suit specified in California
26 Labor Code § 2699.3. and will have fully exhausted their administrative remedies under PAGA
27 prior to proceeding with the PAGA claim. On or about December 3, 2020, Plaintiff filed her PAGA
28 Notice online with the Labor Workforce Development Agency (“LWDA”) and sent a letter by

1 certified mail to Defendant setting forth the facts and theories of the violations alleged against
2 Defendant, as prescribed by Labor Code § 2698 *et seq.* As required by PAGA, Plaintiff submitted
3 the \$75.00 filing fee with the LWDA by regular mail. Pursuant to Labor Code § 2699.3(a)(2)(A),
4 no notice was and/or will have been received by Plaintiff from the LWDA evidencing its intention
5 to investigate within sixty-five (65) calendar days of the postmark date of the PAGA notice.
6 Plaintiff is therefore entitled to commence and proceed with a civil action pursuant to Labor Code §
7 2699.

8 **VI. PRAYER FOR RELIEF**

9 **WHEREFORE**, Plaintiffs pray for the following relief:

- 10 1. For an order certifying this action as a class action;
- 11 2. For compensatory damages in the amount of the regular rate of compensation made
12 by Plaintiffs and the Class for each day of noncompliant rest periods for which premium pay was
13 not properly paid, as may be proven;
- 14 3. For compensatory damages in the amount of the regular rate of compensation made
15 by Plaintiffs and the Class for each day of noncompliant meal periods for which premium pay was
16 not properly paid, as may be proven;
- 17 4. For compensatory damages in the amount of the unpaid wages for work performed
18 by Plaintiffs and the Class, as may be proven;
- 19 5. For liquidated damages in the amount of the unpaid wages for work performed by
20 Plaintiffs and the Class, as may be proven;
- 21 6. For compensatory damages in the amount of the unpaid overtime wages owed to
22 Plaintiffs and the Class, as may be proven;
- 23 7. For reimbursement of all incurred expenses by the Class on behalf of Defendants;
- 24 8. For actual damages and/or penalties pursuant to Labor Code § 226(e) for Plaintiffs
25 and the Class, as may be proven;
- 26 9. For penalties pursuant to Labor Code § 203 for Plaintiffs and the Class Members
27 whose employment has ended three years prior to the filing of this Complaint and ongoing in an
28 amount equal to their daily wage multiplied by thirty (30) days, as may be proven;

- 1 10. For restitution for unfair competition pursuant to Business & Professions Code §§
2 17200 *et seq.*, including disgorgement of profits, as may be proven;
3 11. For all civil and statutory penalties described herein;
4 12. For an award of pre-judgment and post-judgment interest;
5 13. For an award providing for the payment of the costs of this suit;
6 14. For an award of attorneys' fees, to the extent provided by law; and
7 15. For such other and further relief as the Court may deem proper and just.

8 **DEMAND FOR JURY TRIAL**

9 Plaintiffs hereby demand a trial of their claims by jury to the extent authorized by law.
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11 Dated: August 23, 2022

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