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BRENDA TORRES and
SALVADOR OROZCO

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

BRENDA TORRES, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

vs.

CALIFORNIA RICE CENTER, INC., a
California Corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 20STCV18638

*Assigned for all purposes to: Hon. Elihu M.
Berle, Dept. 6*

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

- (1) Violation of California Labor Code §§ 510 And 1198 (Unpaid Overtime)
- (2) Violation of California Labor Code §§ 226.7 And 512(A) (Unpaid Meal Period Premiums)
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums)
- (4) Violation of California Labor Code §§ 1194, 1197 And 1197.1 (Unpaid Minimum Wages)
- (5) Violation of California Labor Code §§ 201, 202 And 203 (Final Wages Not Timely Paid)
- (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment)
- (7) Violation of California Labor Code § 226(A) (Non-Complaint Wage Statements)
- (8) Violation of California Labor Code § 1174 (D) (Failure to Keep Requisite Payroll Records)
- (9) Violation of California Business And Professions Code § 17200, Et

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Seq.
(10) Private Attorney General Act, Labor
Code § 2698, et seq.

Complaint Filed: May 13, 2020
Trial Date: Not Set

1 Plaintiffs BRENDA TORRES (“Torres”) and SALVADOR OROZCO (“Orozco”)
2 (collectively “Plaintiffs”) individually and on behalf of other similarly situated current and
3 former employees of Defendant CALIFORNIA RICE CENTER, INC. (“Defendant”), based
4 upon facts that either have evidentiary support or are likely to have evidentiary support after a
5 reasonable opportunity for further investigation and discovery, alleges as follows:

6 **JURISDICTION AND VENUE**

7 1. Plaintiffs’ First through Ninth Causes of Action are brought as a class action on
8 behalf of themselves and other similarly situated current and former employees of Defendants
9 (hereinafter collectively referred to as the “Class” or “Class Members”, as defined more fully in
10 paragraph 17, below) pursuant to California Code of Civil Procedure section 382. The monetary
11 damages and restitution sought by Plaintiffs exceeds the minimal jurisdiction limits of the
12 Superior Court and will be established according to proof at trial.

13 2. Orozco brings the Tenth Cause of Action as a representative action under the
14 California Labor Code § 2698, *et seq.* (“PAGA”) to recover civil penalties that are owed to
15 Orozco, the State of California, and Class Members who worked during the relevant period
(hereinafter referred to as the “Aggrieved Employees”).

16 3. The monetary damages and restitution sought by Plaintiffs exceeds the minimal
17 jurisdiction limits of the Superior Court and will be established according to proof at trial.

18 4. This Court has jurisdiction over this action pursuant to the California Constitution,
19 Article VI, Section 10, which grants the superior court "original jurisdiction in all other causes"
20 except those given by statute to other courts. The statutes under which this action is brought do
21 not specify any other basis for jurisdiction.

22 5. This Court has jurisdiction over Defendant because, upon information and belief,
23 Defendant is a citizen of California, has sufficient minimum contacts in California, or otherwise
24 intentionally avails itself of the California market so as to render the exercise of jurisdiction over
25 it by California courts consistent with traditional notions of fair play and substantial justice.

26 6. Venue is proper in this Court because, upon information and belief, Defendant
27 maintains offices, has agents, employ individuals, and/or transact business in the State of
28 California, County of Los Angeles. The majority of acts and omissions alleged herein relating

1 to Plaintiffs and the other class members took place in the State of California, including the
2 County of Los Angeles.

3 **PARTIES**

4 7. Plaintiff BRENDA TORRES is an individual residing in the State of California.

5 8. Plaintiff SALVADOR OROZCO is an individual residing in the State of
6 California.

7 9. Defendant CALIFORNIA RICE CENTER, INC., at all times therein mentioned,
8 was and is, upon information and belief, a California corporation and, at all times herein
9 mentioned, whose employees are engaged in work throughout the State of California, including
10 the County of Los Angeles.

11 10. At all relevant times, Defendant CALIFORNIA RICE CENTER, INC., was the
12 “employer” of Plaintiffs within the meaning of all applicable California laws and statutes.

13 11. At all times herein relevant, Defendant CALIFORNIA RICE CENTER, INC. and
14 DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint
15 employers, representatives, servants, employees, successors-in-interest, co-conspirators and/or
16 assigns, each of the other, and at all times relevant hereto were acting within the course and
17 scope of their authority as such agents, partners, joint venturers, joint employers, representatives,
18 servants, employees, successors, co-conspirators and/or assigns, and all acts or omissions
19 alleged herein were duly committed with the ratification, knowledge, permission,
20 encouragement, authorization and/or consent of each defendant designated as a DOE herein.

21 12. The true names and capacities, whether corporate, associate, individual or
22 otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs who sue said
23 defendants by such fictitious names. Plaintiffs are informed and believe, and based on that
24 information and belief allege, that each of the defendants designated as a DOE is legally
25 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
26 the injuries and damages to Plaintiffs and the other class members as alleged in this Complaint.
27 Plaintiffs will seek leave of court to amend this Complaint to show the true names and capacities
28 when the same have been ascertained.

13. Defendant CALIFORNIA RICE CENTER, INC. and DOES 1 through 100 will
hereinafter collectively be referred to as "Defendants."

1 14. Plaintiffs further allege that Defendants directly or indirectly controlled or
2 affected the working conditions, wages, working hours, and conditions of employment of
3 Plaintiffs and the other class members so as to make each of said Defendants employers liable
4 under the statutory provisions set forth herein.

5 **CLASS ACTION ALLEGATIONS**

6 15. Plaintiffs bring this action on their own behalf and on behalf of all other members
7 of the general public similarly situated, and, thus, seeks class certification under California Code
8 of Civil Procedure section 382.

9 16. The proposed class is defined as follows:

10 All current and former hourly-paid and non-except employees who worked for
11 any of the Defendants within the State of California at any time during the
12 period from four years preceding the filing of Plaintiff's original Complaint to
13 final judgment.

14 17. Plaintiffs reserve the right to establish subclasses as appropriate.

15 18. The class is ascertainable and there is a well-defined community of interest in the
16 litigation:

17 a. Numerosity: The class members are so numerous that joinder of all class
18 members is impracticable. The membership of the entire class is unknown to
19 Plaintiff at this time; however, the class is estimated to be greater than fifty
20 (50) individuals and the identity of such membership is readily ascertainable
21 by inspection of Defendants' employment records.

22 b. Typicality: Plaintiffs claims are typical of all other class members' as
23 demonstrated herein. Plaintiff will fairly and adequately protect the interests
24 of the other class members with whom she has a well-defined community of
25 interest.

26 c. Adequacy: Plaintiffs will fairly and adequately protect the interests of each
27 class member, with whom she has a well-defined community of interest and
28 typicality of claims, as demonstrated herein. Plaintiffs have no interest that is
antagonistic to the other class members. Plaintiffs' attorneys, the proposed
class counsel, are versed in the rules governing class action discovery,
certification, and settlement. Plaintiffs have incurred, and during the pendency

1 of this action will continue to incur, costs and attorneys' fees, that have been,
2 are, and will be necessarily expended for the prosecution of this action for the
3 substantial benefit of each class member.

4 d. Superiority: A class action is superior to other available methods for the fair
5 and efficient adjudication of this litigation because individual joinder of all
6 class members is impractical.

7 e. Public Policy Considerations: Certification of this lawsuit as a class action will
8 advance public policy objectives. Employers of this great state violate
9 employment and labor laws every day. Current employees are often afraid to
10 assert their rights out of fear of direct or indirect retaliation. However, class
11 actions provide the class members who are not named in the complaint
12 anonymity that allows for the vindication of their rights.

13 19. There are common questions of law and fact as to the class members that
14 predominate over questions affecting only individual members. The following common
15 questions of law or fact, among others, exist as to the members of the class:

- 16 a. Whether Defendants' failure to pay wages, without abatement or reduction, in
17 accordance with the California Labor Code, was willful;
- 18 b. Whether Defendants' had a corporate policy and practice of failing to pay their
19 hourly-paid or non-exempt employees within the State of California for all hours
20 worked and missed (short, late, interrupted, and/or missed altogether) meal
21 periods and rest breaks in violation of California law;
- 22 c. Whether Defendants required Plaintiffs and the other class members to work
23 over eight (8) hours per day and/or over forty (40) hours per week and failed to
24 pay the legally required overtime compensation to Plaintiffs and the other class
25 members;
- 26 d. Whether Defendants deprived Plaintiffs and the other class members of meal
27 and/or rest periods or required Plaintiffs and the other class members to work
28 during meal and/or rest periods without compensation;
- e. Whether Defendants failed to pay minimum wages to Plaintiffs and the other
class members for all hours worked;

- 1 f. Whether Defendants failed to pay all wages due to Plaintiffs and the other class
2 members within the required time upon their discharge or resignation;
- 3 g. Whether Defendants failed to timely pay all wages due to Plaintiffs and the other
4 class members during their employment;
- 5 h. Whether Defendants complied with wage reporting as required by the California
6 Labor Code; including, *inter alia*, section 226;
- 7 i. Whether Defendants kept complete and accurate payroll records as required by
8 the California Labor Code, including, *inter alia*, section 1174(d);
- 9 j. Whether Defendants' conduct was willful or reckless;
- 10 k. Whether Defendants engaged in unfair business practices in violation of
11 California Business & Professions Code section 17200, et seq.;
- 12 l. The appropriate amount of damages, restitution, and/or monetary penalties
13 resulting from Defendants' violation of California law; and
- 14 m. Whether Plaintiffs and the other class members are entitled to compensatory
15 damages pursuant to the California Labor Code.

16 **GENERAL ALLEGATIONS**

17 20. At all relevant times set forth herein, Defendants employed Plaintiffs and other
18 persons as hourly-paid or non-exempt employees within the State of California, including the
19 County of Los Angeles.

20 21. Defendants, jointly and severally, employed Plaintiffs as hourly-paid, non-
21 exempt employees in the State of California, County of Los Angeles.

22 22. Defendants hired Plaintiffs and the other class members, classified them as hourly-
23 paid or non-exempt employees, and failed to compensate them for all hours worked and missed
24 meal periods and/or rest breaks.

25 23. Defendants had the authority to hire and terminate Plaintiffs and the other class
26 members, to set work rules and conditions governing Plaintiffs' and the other class members'
27 employment, and to supervise their daily employment activities.

28 24. Defendants exercised sufficient authority over the terms and conditions of
Plaintiffs' and other class members' employment for them to be joint employers of Plaintiffs
and the other class members.

1 25. Defendants directly hired and paid wages and benefits to Plaintiffs and the other
2 class members.

3 26. Defendants continue to employ hourly-paid or non-exempt employees within the
4 State of California.

5 27. Plaintiffs and the other class members worked over eight (8) hours in a day, and/or
6 forty (40) hours in a week during their employment with Defendants.

7 28. Plaintiffs are informed and believe, and based thereon allege, that Defendants
8 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt
9 employees within the State of California. This pattern and practice involved, *inter alia*, failing
10 to pay them for all regular and/or overtime wages earned and for short, late, interrupted, and/or
11 missed meal periods and rest breaks in violation of California law.

12 29. Plaintiffs are informed and believe, and based thereon allege, that Defendants
13 knew or should have known that Plaintiffs and the other class members were entitled to receive
14 certain wages for overtime compensation and that they were not receiving accurate overtime
15 compensation for all overtime hours worked.

16 30. Plaintiffs are informed and believe, and based thereon allege, that Defendants
17 failed to provide Plaintiffs and the other class members all required rest and meal periods during
18 the relevant time period as required under the Industrial Welfare Commission Wage Orders and
19 thus they are entitled to any and all applicable penalties.

20 31. Plaintiffs are informed and believe, and based thereon allege, that Defendants
21 knew or should have known that Plaintiffs and the other class members were entitled to receive
22 all meal periods or payment of one additional hour of pay at Plaintiff's and the other class
23 member's regular rate of pay when a meal period was missed, and they did not receive all meal
24 periods or payment of one additional hour of pay at Plaintiff's and the other class member's
25 regular rate of pay when a meal period was missed.

26 32. Plaintiffs are informed and believe, and based thereon allege, that Defendants
27 know or should have known that Plaintiffs and the other class members were entitled to receive
28 all rest periods or payment of one additional hour of pay at Plaintiffs' and the other class
member's regular rate of pay when a rest period was missed, and they did not receive all rest
periods or payment of one additional hour of pay at Plaintiffs' and the other class members'

1 regular rate of pay when a rest period was missed.

2 33. Plaintiffs are informed and believe, and based thereon allege, that Defendants
3 knew or should have known that Plaintiffs and the other class members were entitled to receive
4 at least minimum wages for compensation and that they were not receiving at least minimum
5 wages for all hours worked.

6 34. Plaintiffs are informed and believe, and based thereon allege, that Defendants
7 knew or should have known that Plaintiffs and the other class members were entitled to receive
8 all wages owed upon discharge or resignation, including overtime and minimum wages and
9 meal and rest premiums, and they did not, in fact, receive all wages owed to them at the time
10 their discharge or resignation.

11 35. Plaintiffs are informed and believe, and based thereon allege, that Defendants
12 knew or should have known that Plaintiffs and the other class members were entitled to receive
13 all wages owed to them during their employment. Plaintiffs and the other class members did not
14 receive payment of all wages, including earned, but unpaid, overtime and minimum wages and
15 meal and rest period premiums, within any time permissible under California Labor Code
section 204.

16 36. Plaintiffs are informed and believe, and based thereon allege, that Defendants
17 knew or should have known that Plaintiffs and the other class members were entitled to receive
18 complete and accurate wage statements in accordance with California law, but, in fact, they did
19 not receive complete and accurate wage statements from Defendants. The deficiencies included,
20 *inter alia*, the failure to include the accurate total number of hours worked by Plaintiffs and the
21 other class members.

22 37. Plaintiffs are informed and believe, and based thereon allege, that Defendants
23 knew or should have known that Defendants had to keep complete and accurate payroll records
24 for Plaintiffs and the other class members in accordance with California law, but, in fact, did not
25 keep complete and accurate payroll records.

26 38. Plaintiffs are informed and believe, and based thereon allege, that Defendants
27 knew or should have known that Plaintiffs and the other class members were entitled to
28 reimbursement for necessary business-related expenses.

39. Plaintiffs are informed and believe, and based thereon allege, that Defendants

1 knew or should have known that they had a duty to compensate Plaintiffs and the other class
2 members pursuant to California law, and that Defendants had the financial ability to pay such
3 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented
4 to Plaintiffs and the other class members that they were properly denied wages, all in order to
5 increase Defendants' profits.

6 40. During the relevant time period, Defendants failed to pay overtime wages to
7 Plaintiffs and the other class members for all overtime hours worked. Plaintiffs and the other
8 class members were required to work more than eight (8) hours per day and/or forty (40) hours
9 per week without overtime compensation for all overtime hours worked.

10 41. During the relevant time period, Defendants failed to provide all requisite
11 uninterrupted, off-duty meal and rest periods to Plaintiffs and the other class members.

12 42. During the relevant time period, Defendants failed to pay Plaintiffs and the other
13 class members at least minimum wages for all hours worked.

14 43. During the relevant time period, Defendants failed to pay Plaintiffs and the other
15 class members all wages owed to them upon discharge or resignation.

16 44. During the relevant time period, Defendants failed to pay Plaintiffs and the other
17 class members all wages within any time permissible under California law, including, *inter alia*,
18 California Labor Code section 204.

19 45. During the relevant time period, Defendants failed to provide complete or accurate
20 wage statements to Plaintiffs and the other class members.

21 46. During the relevant time period, Defendants failed to keep complete or accurate
22 payroll records for Plaintiffs and the other class members.

23 47. During the relevant time period, Defendants failed to properly compensate
24 Plaintiffs and the other class members pursuant to California law in order to increase Defendants'
25 profits.

26 48. California Labor Code section 218 states that nothing in Article 1 of the Labor
27 Code shall limit the right of any wage claimant to "sue directly ... for any wages or penalty due
28 to him [or her] under this article."

49. On or about January 8, 2021, Plaintiff Orozco notified Defendants via certified
mail and filed an online PAGA claim notice with the California Labor and Workforce

1 Development Agency ("LWDA") identifying Defendants' violations of the California Labor
2 Code identified in this Complaint and Plaintiff's intent to bring a claim for civil penalties under
3 California Labor Code section 2698 et seq.

4 **FIRST CAUSE OF ACTION**

5 **(Violation of California Labor Code §§ 510 and 1198)**

6 **(Against All Defendants)**

7 50. Plaintiffs incorporate by reference the allegations contained above, and each and
8 every part thereof with the same force and effect as though fully set forth herein.

9 51. California Labor Code section 1198 and the applicable Industrial Welfare
10 Commission ("IWC") Wage Order provide that it is unlawful to employ persons without
11 compensating them at a rate of pay either time-and-one-half or two-times that person's regular
12 rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

13 52. Specifically, the applicable IWC Wage Order provides that Defendants are and
14 were required to pay Plaintiffs and the other class members employed by Defendants, and
15 working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the
16 rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than
17 forty (40) hours in a workweek.

18 53. The applicable IWC Wage Order further provides that Defendants are and were
19 required to pay Plaintiffs and the other class members overtime compensation at a rate of two
20 times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

21 54. California Labor Code section 510 codifies the right to overtime compensation at
22 one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in
23 a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of
24 work, and to overtime compensation at twice the regular hourly rate for hours worked in excess
25 of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

26 55. During the relevant time period, Plaintiffs and the other class members worked in
27 excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

28 56. During the relevant time period, Defendants intentionally and willfully failed to
pay overtime wages owed to Plaintiffs and the other class members and failed to pay class
members overtime in the amount of one-and-one half time their correct regular rate of pay.

1 57. Defendants' failure to pay Plaintiffs and the other class members the unpaid
2 balance of overtime compensation, as required by California laws, violates the provisions of
3 California Labor Code sections 510 and 1198, and is therefore unlawful.

4 58. Pursuant to California Labor Code section 1194, Plaintiffs and the other class
5 members are entitled to recover unpaid overtime compensation, as well as interest, costs, and
6 attorneys' fees.

7 **SECOND CAUSE OF ACTION**

8 **(Violation of California Labor Code §§ 226.7 and 512(a))**

9 **(Against All Defendants)**

10 59. Plaintiffs incorporate by reference the allegations contained above, and each and
11 every part thereof with the same force and effect as though fully set forth herein.

12 60. At all relevant times, the IWC Order and California Labor Code sections 226.7
13 and 512(a) were applicable to Plaintiffs' and the other class members' employment by
14 Defendants.

15 61. At all relevant times, California Labor Code section 226.7 provides that no
16 employer shall require an employee to work during any meal or rest period mandated by an
17 applicable order of the California IWC.

18 62. At all relevant times, the applicable IWC Wage Order and California Labor Code
19 section 512(a) provide that an employer may not require, cause or permit an employee to work
20 for a work period of more than five (5) hours per day without providing the employee with a
21 meal period of not less than thirty (30) minutes, except that if the total work period per day of
22 the employee is no more than six (6) hours, the meal period may be waived by mutual consent
23 of both the employer and employee.

24 63. At all relevant times, the applicable IWC Wage Order and California Labor Code
25 section 512(a) further provide that an employer may not require, cause or permit an employee
26 to work for a work period of more than ten (10) hours per day without providing the employee
27 with a second uninterrupted meal period of not less than thirty (30) minutes, except that if the
28 total hours worked is no more than twelve (12) hours, the second meal period may be waived
by mutual consent of the employer and the employee only if the first meal period was not
waived.

1 64. During the relevant time period, Plaintiffs and the other class members who were
2 scheduled to work for a period of time no longer than six (6) hours, and who did not waive their
3 legally-mandated meal periods by mutual consent, were required to work for periods longer than
4 five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or
5 rest period.

6 65. During the relevant time period, Plaintiffs and the other class members who were
7 scheduled to work for a period of time in excess of six (6) hours were required to work for
8 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty
9 (30) minutes and/or rest period.

10 66. During the relevant time period, Defendants intentionally and willfully required
11 Plaintiffs and the other class members to work during meal periods and failed to compensate
12 Plaintiffs and the other class members the full meal period premium for work performed during
13 meal periods.

14 67. During the relevant time period, Defendants failed to pay Plaintiffs and the other
15 class members the full meal period premium due pursuant to California Labor Code section
16 226.7.

17 68. Defendants' conduct violates applicable IWC Wage Order and California Labor
18 Code sections 226.7 and 512(a).

19 69. Pursuant to applicable IWC Wage Order and California Labor Code section
20 226.7(b), Plaintiffs and the other class members are entitled to recover from Defendants one
21 additional hour of pay at the employee's regular rate of compensation for each work day that the
22 meal or rest period is not provided.

23 **THIRD CAUSE OF ACTION**

24 **(Violation of California Labor Code § 226. 7)**

25 **(Against All Defendants)**

26 70. Plaintiffs incorporate by reference the allegations contained above, and each and
27 every part thereof with the same force and effect as though fully set forth herein.

28 71. At all times herein set forth, the applicable IWC Wage Order and California Labor
Code section 226.7 were applicable to Plaintiffs' and the other class members' employment by
Defendants.

1 72. At all relevant times, California Labor Code section 226.7 provides that no
2 employer shall require an employee to work during any rest period mandated by an applicable
3 order of the California IWC.

4 73. At all relevant times, the applicable IWC Wage Order provides that "[e]very
5 employer shall authorize and permit all employees to take rest periods, which insofar as
6 practicable shall be in the middle of each work period" and that the "rest period time shall be
7 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
8 hours or major fraction thereof" unless the total daily work time is less than three and one-half
9 (3 ½) hours.

10 74. During the relevant time period, Defendants required Plaintiffs and other class
11 members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest
12 period per each four (4) hour period worked.

13 75. During the relevant time period, Defendants willfully required Plaintiffs and the
14 other class members to work during rest periods and failed to pay Plaintiffs and the other class
15 members the full rest period premium for work performed during rest periods.

16 76. During the relevant time period, Defendants failed to pay Plaintiffs and the other
17 class members the full rest period premium due pursuant to California Labor Code section 226.7

18 77. Defendants' conduct violates applicable IWC Wage Orders and California Labor
19 Code section 226.7.

20 78. Pursuant to the applicable IWC Wage Orders and California Labor Code section
21 226.7(b), Plaintiffs and the other class members are entitled to recover from Defendants one
22 additional hour of pay at the employees' regular hourly rate of compensation for each work day
23 that the rest period was not provided.

24 **FOURTH CAUSE OF ACTION**

25 **(Violation of California Labor Code §§ 1194, 1197, and 1197.1)**

26 **(Against All Defendants)**

27 79. Plaintiffs incorporate by reference the allegations contained above, and each and
28 every part thereof with the same force and effect as though fully set forth herein.

 80. All relevant times, California Labor Code sections 1194, 1197, and 1197.1 provide
that the minimum wage to be paid to employees, and the payment of a lesser wage than the

1 minimum so fixed is unlawful.

2 81. During the relevant time period, Defendants failed to pay minimum wage to
3 Plaintiffs and the other class members as required, pursuant to California Labor Code sections
4 1194, 1197, and 1197.1.

5 82. Defendants' failure to pay Plaintiffs and the other class members the minimum
6 wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to
7 those sections Plaintiffs and the other class members are entitled to recover the unpaid balance
8 of their minimum wage compensation as well as interest, costs, and attorney's fees, and
9 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

10 83. Pursuant to California Labor Code section 1197.1, Plaintiffs and the other class
11 members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each
12 employee minimum wages, and \$250.00 for each subsequent failure to pay each employee
13 minimum wages.

14 84. Pursuant to California Labor Code section 1194.2, Plaintiffs and the other class
15 members are entitled to recover liquidated damages in an amount equal to the wages unlawfully
16 unpaid and interest thereon.

17 **FIFTH CAUSE OF ACTION**

18 **(Violation of California Labor Code §§ 201 202 and 203)**

19 **(Against All Defendants)**

20 85. Plaintiffs incorporate by reference the allegations contained above, and each and
21 every part thereof with the same force and effect as though fully set forth herein.

22 86. At all relevant times herein set forth, California Labor Code sections 201 and 202
23 provide that if an employer discharges an employee, the wages earned and unpaid at the time of
24 discharge are due and payable immediately, and if an employee quits his or her employment,
25 his or her wages shall become due and payable not later than seventy-two (72) hours thereafter,
26 unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in
27 which case the employee is entitled to his or her wages at the time of quitting.

28 87. During the relevant time period, Defendants intentionally and willfully failed to
pay Plaintiffs and the other class members who are no longer employed by Defendants their
wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

1 88. Defendants' failure to pay Plaintiffs and the other class members who are no longer
2 employed by Defendants' their wages, earned and unpaid, within seventy-two (72) hours of their
3 leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

4 89. California Labor Code section 203 provides that if an employer willfully fails to
5 pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall
6 continue as a penalty from the due date thereof at the same rate until paid or until an action is
7 commenced; but the wages shall not continue for more than thirty (30) days.

8 90. Plaintiffs and the other class members are entitled to recover from Defendants the
9 statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum
10 pursuant to California Labor Code section 203.

11 **SIXTH CAUSE OF ACTION**

12 **(Violation of California Labor Code § 204)**

13 **(Against All Defendants)**

14 91. Plaintiffs incorporate by reference the allegations above and each and every part
15 thereof with the same force and effect as though fully set forth herein.

16 92. At all times herein set forth, California Labor Code section 204 provides that all
17 wages earned by any person in any employment between the 1st and the 15th days, inclusive, of
18 any calendar month, other than those wages due upon termination of an employee, are due and
19 payable between the 16th and the 26th day of the month during which the labor was performed.

20 93. At all times herein set forth, California Labor Code section 204 provides that all
21 wages earned by any person in any employment between the 16th and the last day, inclusive, of
22 any calendar month, other than those wages due upon termination of an employee, are due and
23 payable between the 1st and the 10th day of the following month.

24 94. At all times herein set forth, California Labor Code section 204 provides that all
25 wages earned for labor in excess of the normal work period shall be paid no later than the payday
26 for the next regular payroll period.

27 95. During the relevant time period, Defendants intentionally and willfully failed to
28 pay Plaintiffs and the other class members all wages due to them, within any time period
permissible under California Labor Code section 204.

96. Plaintiffs and the other class members entitled to recover all remedies available

1 for violations California Labor Code section 204.

2 **SEVENTH CAUSE OF ACTION**

3 **(Violation of California Labor Code§ 226(a))**

4 **(Against All Defendants)**

5 97. Plaintiffs incorporate by reference the allegations contained above, and each and
6 every part thereof with the same force and effect as though fully set forth herein.

7 98. At all material times set forth herein, California Labor Code section 226(a)
8 provides that every employer shall furnish each of his or her employees an accurate itemized
9 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
10 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid
11 on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of
12 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
13 dates of the period for which the employee is paid, (7) the name of the employee and his or her
14 social security number, (8) the name and address of the legal entity that is the employer, and (9)
15 all applicable hourly rates in effect during the pay period and the corresponding number of hours
16 worked at each hourly rate by the employee. The deductions made from payments of wages
17 shall be recorded in ink or other indelible form, properly dated, showing the month, day, and
18 year, and a copy of the statement or a record of the deductions shall be kept on file by the
19 employer for at least three years at the place of employment or at a central location within the
20 State of California.

21 99. Defendants have intentionally and willfully failed to provide Plaintiffs and the
22 other class members with complete and accurate wage statements. The deficiencies include, but
23 are not limited to: the failure to include the accurate total number of hours worked by Plaintiff
24 and the other class members.

25 100. As a result of Defendants' violation of California Labor Code section 226(a),
26 Plaintiffs and the other class members have suffered injury and damage to their statutorily-
27 protected rights.

28 101. More specifically, Plaintiffs and the other class members have been injured by
Defendants' intentional and willful violation of California Labor Code section 226(a) because
they were denied both their legal right to receive, and their protected interest in receiving,

accurate and itemized wage statements pursuant to California Labor Code section 226(a).

102. Plaintiffs and the other class members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

103. Plaintiffs and the other class members are also entitled to injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(h).

EIGHTH CAUSE OF ACTION

(Violation of California Labor Code§ 1174(d))

(Against All Defendants)

104. Plaintiffs incorporate by reference the allegations contained above, and each and every part thereof with the same force and effect as though fully set forth herein.

105. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rat units earned by any applicable piece rate to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

106. Defendants have intentionally and willfully failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Plaintiff and the other class members.

107. As a result of Defendants' violation of California Labor section 1174(d), Plaintiffs and the other class members have suffered injury and damage to their statutorily-protected rights.

108. More specifically, Plaintiffs and the other class members have been injured by Defendants' intentional and willful violation of California Labor Code section 1174(d) because they were denied both their legal right and protected interest, in having available, accurate and complete payroll records pursuant to California Labor Code section 1174(d).

NINTH CAUSE OF ACTION

(Violation of California Business & Professions Code §§ 17200, et seq.)

(Against All Defendants)

1 109. Plaintiffs incorporate by reference the allegations contained above and each and
2 every part thereof with the same force and effect as though fully set forth herein.

3 110. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
4 unlawful and harmful to Plaintiffs, other class members, to the general public, and Defendants'
5 competitors. Accordingly, Plaintiffs seek to enforce important rights affecting the public interest
6 within the meaning of Code of Civil Procedure section 1021.5.

7 111. Defendants' activities as alleged herein are violations of California law, and
8 constitute unlawful business acts and practices in violation of California Business & Professions
9 Code section 17200, et seq.

10 112. A violation of California Business & Professions Code section 17200, et seq. may
11 be predicated on the violation of any state or federal law. In this instant case, Defendants'
12 policies and practices of requiring employees, including Plaintiffs and the other class members,
13 to work overtime without paying them proper compensation violate California Labor Code
14 sections 510 and 1198. Additionally, Defendants' policies and practices of requiring employees,
15 including Plaintiffs and the other class members, to work through their meal and rest periods
16 without paying them proper compensation violate California Labor Code sections 226.7 and
17 512(a). Defendants' policies and practices of failing to pay minimum wages violate California
18 Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendants' policies and practices of
19 failing to timely pay wages to Plaintiffs and the other class members violate California Labor
20 Code sections 201, 202 and 204. Defendants also violated California Labor Code sections 226(a),
21 1174(d), 2800 and 2802.

22 113. As a result of the herein described violations of California law, Defendants
23 unlawfully gained an unfair advantage over other businesses.

24 114. Plaintiffs and the other class members have been personally injured by
25 Defendants' unlawful business acts and practices as alleged herein, including but not necessarily
26 limited to the loss of money and/or property.

27 115. Pursuant to California Business & Professions Code sections 17200, et seq.,
28 Plaintiffs and the other class members are entitled to restitution of the wages withheld and
retained by Defendants during a period that commences four (4) years preceding the filing of
Plaintiff's complaint up until the time that notice of the class action is provided to the class; an

award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable laws; and an award of costs.

TENTH CAUSE OF ACTION

(Violation of California Labor Code § 2699, Et Seq.)

(Against All Defendants)

116. Plaintiffs incorporate by reference the allegations contained above and each and every part thereof with the same force and effect as though fully set forth herein.

117. Plaintiff Orozco brings this claim as an individual employee and in his capacity as a private attorney general pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, et seq. ("PAGA").

118. On or about January 8, 2021, Orozco notified Defendants via certified mail and filed an online PAGA claim notice with the California Labor and Workforce Development Agency ("LWDA") identifying Defendants' violations of the California Labor Code identified in this Complaint and Plaintiff's intent to bring a claim for civil penalties under California Labor Code section 2698 et seq. The LWDA assigned Orozco's case number LWDA-CM-818158-21. Orozco also submitted a filing fee of seventy-five (\$75.00) to the LWDA in accordance with Labor Code section 2699.3(a)(1)(B). Sixty-five days have passed from the date of Orozco's notice to the LWDA, and thus Orozco has exhausted her administrative remedies, thereby allowing Orozco to commence a civil action against Defendants pursuant to Labor Code section 2699.

119. During all relevant times for this action, Defendants regularly required Orozco and Aggrieved Employees to work more than eight (8) hours per day and forty (40) hours per week. However, Orozco and Aggrieved Employees were not paid wages, including minimum wages and/or overtime wages, for such time worked. Instead, Orozco and Aggrieved Employees were paid for just eight (8) hours in a day or forty (40) hours in a week.

120. During all relevant times for this action, Defendants failed to provide uninterrupted meal periods to Orozco and Aggrieved Employees when they worked more than five (5) hours per day and ten (10) hours per day because Defendants required Orozco and Aggrieved Employees to stay on duty and never provided an uninterrupted first or second meal break.

1 121. In addition, Defendants failed to permit Orozco and Aggrieved Employees to take
2 uninterrupted rest breaks for any shift exceeding four (4) hours of work or a major fraction
3 thereof.

4 122. Although Defendants failed to provide uninterrupted meal and rest breaks as
5 required by California law, Defendants failed to pay Orozco and Aggrieved Employees premium
6 pay for those days in which they were not permitted to take a meal and/or rest break which was
7 duty free.

8 123. In addition, Defendants failed to provide Orozco and Aggrieved Employees with
9 properly itemized wage statements including because Defendants failed to include the actual
10 hours worked, the correct rate of pay and the meal and rest period premiums owed.

11 124. Further, during Orozco and Aggrieved Employees' employment, Defendants were
12 required to pay all wages earned for labor in excess of the normal work period not later than the
13 payday for the next regular payroll period. However, Defendants failed to pay Orozco and
14 Aggrieved Employees all wages due to them within the time period specified by California
15 Labor Code section 204, including premiums owed.

16 125. Orozco, as an "Aggrieved Employee" within the meaning of Labor Code § 2698
17 *et seq.*, acting on behalf of herself and other similarly Aggrieved Employees, brings this
18 representative action against Defendants to recover the civil penalties due to Orozco, other
19 similarly Aggrieved Employees, and the State of California according to proof pursuant to Labor
20 Code § 2699 (a) and (f) including, but not limited to \$100.00 for each initial violation and
21 \$200.00 for each subsequent violation per employee per pay period for the following Labor
22 Code violations:

23 126. Failing to pay Orozco and other similarly Aggrieved Employees all earned
24 minimum wage compensation in violation of Labor Code §§ 1194 and 1198 *et seq.*;

25 127. Failing to pay Orozco and other similarly Aggrieved Employees all earned
26 overtime compensation in violation of Labor Code §§ 204, 510, 1194, and 1198 *et seq.*;

27 128. Failing to pay Orozco and other similarly Aggrieved Employees an additional
28 hour of premium pay for meal period violations in violation of Labor Code §§ 226.7 and 512;

29 129. Failing to pay Orozco and other similarly Aggrieved Employees an additional
30 hour of premium pay for rest period violations in violation of Labor Code §§ 226.7 and 512;

1 130. Failing to timely pay Orozco and other similarly Aggrieved Employees all wages
2 at end of employment in violation of Labor Code § 203;

3 131. Failing to timely pay Orozco and other similarly Aggrieved Employees all wages
4 owed during employment;

5 132. Failing to furnish Orozco and other similarly Aggrieved Employees with
6 complete, accurate, itemized wage statements in violation of Labor Code § 226; and

7 133. Failing to maintain accurate records relating to Orozco and other similarly
8 Aggrieved Employees work periods, meal periods, total daily hours, hours per pay period, and
9 applicable pay rates; and for

10 134. Orozco was compelled to retain the services of counsel to file this court action to
11 protect her interests and other similarly aggrieved employees, and to assess and collect the civil
12 penalties owed by Defendants. Orozco has thereby incurred attorneys' fees and costs, which
13 they are entitled to recover under California Labor Code § 2699.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff, individually, and on behalf of other members of the general
16 public similarly situated, prays for relief and judgment against Defendants, jointly and severally,
17 as follows:

18 **Class Certification**

- 19 1. That this action be certified as a class action;
- 20 2. That Plaintiff be appointed as the representative of the Class;
- 21 3. That counsel for Plaintiff be appointed as Class Counsel; and
- 22 4. That Defendants provide to Class Counsel immediately the names and most
23 current/last known contact information (address, e-mail and telephone numbers) of all
24 class members.

25 **As to the First Cause of Action**

26 5. That the Court declare, adjudge and decree that Defendants violated California Labor
27 Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all
28 overtime wages due to Plaintiff and the other class members;

 6. For general unpaid wages at overtime wage rates and such general and special damages
as may be appropriate;

1 7. For pre-judgment interest on any unpaid overtime compensation commencing from the
2 date such amounts were due;

3 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
4 Labor Code section 1194; and

5 9. For such other and further relief as the Court may deem just and proper.

6 **As to the Second Cause of Action**

7 10. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to
9 provide all meal periods (including second meal periods) to Plaintiff and the other class
10 members;

11 11. That the Court make an award to Plaintiffs and the other class members of one (1)
12 hour of pay at each employee's regular rate of compensation for each workday that a meal period
13 was not provided;

14 12. For all actual, consequential, and incidental losses and damages, according to
15 proof;

16 13. For premium wages pursuant to California Labor Code section 226.7(b);

17 14. For pre-judgment interest on any unpaid wages from the date such amounts were
18 due;

19 15. For reasonable attorneys' fees and costs of suit incurred herein; and

20 16. For such other and further relief as the Court may deem just and proper.

21 **As to the Third Cause of Action**

22 17. That the Court declare, adjudge and decree that Defendants violated California
23 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all
24 rest periods to Plaintiff and the other class members;

25 18. That the Court make an award to Plaintiffs and the other class members of one (1)
26 hour of pay at each employee's regular rate of compensation for each workday that a rest period
27 was not provided;

28 19. For all actual, consequential, and incidental losses and damages, according to
proof;

20. For premium wages pursuant to California Labor Code section 226.7(b);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

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

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the other class members;

24. For general unpaid wages and such general and special damages as may be appropriate;

25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiffs and the other class members in the amount as may be established according to proof at trial;

26. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

27. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194(a);

28. For liquidated damages pursuant to California Labor Code section 1194.2; and

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

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiffs and the other class members no longer employed by Defendants;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiffs and the other class members who have left Defendants' employ;

33. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

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

As to the Sixth Cause of Action

35. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to pay all compensation owed at the time required by California Labor Code section 204 to Plaintiff and the other class members;

36. For all actual, consequential, and incidental losses and damages, according to proof;

37. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

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

As to the Seventh Cause of Action

39. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and the other class members, and willfully failed to provide accurate itemized wage statements thereto;

40. For actual, consequential and incidental losses and damages, according to proof;

41. For statutory penalties pursuant to California Labor Code section 226(e);

42. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(h); and

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

As to the Eighth Cause of Action

44. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 1174(d) by willfully failing to keep accurate and complete payroll records for Plaintiffs and the other class members as required by California Labor Code section 1174(d);

45. For actual, consequential and incidental losses and damages, according to proof;

46. For statutory penalties pursuant to California Labor Code section 1174.5; and

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

As to the Ninth Cause of Action

48. That the Court decree adjudge and decree that Defendants violated California Business and Professions Code sections 17200 et seq. by failing to provide Plaintiffs and the

1 other class members all overtime compensation due to them failing to provide all meal and rest
2 periods to Plaintiff and the other class members, failing to pay at least minimum wages to
3 Plaintiffs and the other class members failing to pay Plaintiffs and the other class members
4 wages timely as required by California Labor Code section 201 202 and 204 and by violating
5 California Labor Code sections 226(a), 1 I 74(d) 2800 and 2802.

6 49. For restitution of unpaid wages to Plaintiff and all the other class members and all
7 pre-judgment interest from the day such amounts were due and payable.

8 50. For the appointment of a receiver to receive, manage and distribute any and all
9 funds disgorged from Defendants and determined to have been wrongfully acquired by
10 Defendants as a result of violation of California Business and Professions Code section 17200,
11 et seq.;

12 51. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
13 California Code of Civil Procedure section 1021.5;

14 52. For injunctive relief to ensure compliance with this section, pursuant to California
15 Business and Professions Code sections 17200 et eq.; and

16 53. For such other and further relief as the Court may deem just and proper.

17 **As to the Tenth Cause of Action**

18 54. For statutory attorneys' fees and costs pursuant to Labor Code section 2668 et
19 seq., and as allowed by law and according to proof;

20 55. For statutory civil penalties pursuant to Labor Code section 2668 et seq., and as
21 allowed by law and according to proof;

22 56. For costs of suit incurred herein;

23 57. For pre- and post-judgment interest at the maximum legal rate on all amounts
24 claimed; and

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

Dated: March 15, 2021

PAYNE NGUYEN, LLP

By:

Colby P.

CODY PAYNE

KIM NGUYEN

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