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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF YOLO**

CRISTINA CONTRERAS, an individual, on
behalf of herself and others similarly situated,
and as a private attorney general on behalf of
the State of California,

PLAINTIFF,

v.

YIN MANAGEMENT, INC., a California
Corporation, JOHN DOE, an individual, and
DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO.: CV2021-0581

**CLASS ACTION AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay Minimum Wages In Violation of Labor Code §§ 1194 and 1194.2
2. Failure to Pay Overtime Wages In Violation of Labor Code § 510
3. Failure to Provide Lawful Meal Periods And Pay Meal Period Premiums Pursuant to Labor Code §§ 226.7 and 512
4. Failure to Provide Lawful Rest Periods And Pay Rest Period Premiums Pursuant to Labor Code § 226.7
5. Violations of Labor Code § 226(e)
6. Waiting Time Penalties Pursuant to Labor Code § 203
7. Violation of Business & Professions Code § 17200
8. Penalties Pursuant to Labor Code § 2699, et seq. for violations of Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226(e), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, and IWC Wage Order No. 5-2001

1 Plaintiff CRISTINA CONTRERAS, an individual, on behalf of herself and others
2 similarly situated, and on behalf of the State of California as a private attorney general pursuant to
3 Labor Code section 2698 *et seq.* (“PAGA”) complains of Defendant YIN MANAGEMENT,
4 INC., Defendant JOHN DOE who is an individual and managing agent within the meaning of
5 Labor Code section 558.1 and responsible for the violations of Labor Code sections 203, 226,
6 226.7, and 1194, and the other Doe Defendants (collectively hereafter the “Defendants”) and each
7 of them, as follows:

8 I.

9 **INTRODUCTION AND FACTUAL BACKGROUND**

10 1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of
11 Plaintiff and the following classes and subclasses:

- 12 (1) all non-exempt, hourly employees who were employed by YIN
13 MANAGEMENT, INC. or its predecessor, merged or related entities in
14 California as an employee at any point from January 29, 2017 and continuing
15 into the present. (the “Non-Exempt Class”);¹
- 16 (2) all individuals who were employed by YIN MANAGEMENT, INC. or its
17 predecessor or merged entities in California as a non-exempt, hourly employee
18 or other similar position and who worked a shift of more than eight (8) hours in
19 a day and/or forty (40) hours in a week during a pay period from January 29,
20 2017 and continuing into the present. (the “Overtime Subclass”);
- 21 (3) all individuals who were employed by YIN MANAGEMENT, INC. or its
22 predecessor, merged or related entities in California who worked one or more
23 shifts of more than six (6) hours as a non-exempt, hourly employee or other
24 similar position from January 29, 2017 and continuing into the present. (“More
25 than Six Hours First Meal Period Subclass”);
- 26 (4) all individuals who were employed by YIN MANAGEMENT, INC. or its
27 predecessor, merged or related entities in California who worked one or more
28 shifts of more than five (5) hours, but less than six (6) hours as a non-exempt,
hourly employee or other similar position from January 29, 2017 and continuing
into the present. (“Less than Six Hours First Meal Period Subclass”);

¹ The statute of limitations were tolled for at least sixty (60) days due to Emergency Rule 9 of the California Rules of Court also referred to as the “Emergency Rules Related to COVID-19”).

Collectively, subclasses three (3) and four (4) may be referred to as the “First Meal Period Subclass.”

- (5) all individuals who were employed by YIN MANAGEMENT, INC. or its predecessor, merged or related entities in California who worked one or more shifts of more than ten (10) hours as a non-exempt, hourly employee or other similar position from January 29, 2017 and continuing into the present. (“Second Meal Period Subclass”);

Collectively, subclasses three (3), four (4), and five (5) may be referred to as the “Meal Period Subclass.”

- (6) all individuals who were employed by YIN MANAGEMENT, INC. or its predecessor, merged or related entities in California as a non-exempt hourly employee, or other similar position, who worked one or more shifts of more than six (6) hours in length, but less than eight (8) hours in length from January 29, 2017 and continuing into the present. (“Second Rest Period Subclass”);

- (7) all individuals who were employed by YIN MANAGEMENT, INC. or its predecessor, merged or related entities in California as a non-exempt hourly employee, or other similar position, who worked one or more shifts of more than ten (10) hours in length from January 29, 2017 and continuing into the present. (“Third Rest Period Subclass”);

Collectively, subclasses six (6) and seven (7) may be referred to as the “Rest Period Subclass.”

- (8) all individuals who were employed by YIN MANAGEMENT, INC. or its predecessor, merged or related entities in California as a non-exempt, hourly employee or other similar position for one or more pay periods from January 29, 2020 and continuing into the present (“Wage Statement Subclass”);

- (9) all individuals who were employed by YIN MANAGEMENT, INC. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and whose employment concluded at any time between January 29, 2018 and continuing into the present; (“Late Payment Subclass”);

Collectively, these Classes/Subclasses may also all collectively be referred to herein as the Classes or Class Member(s).²

² Plaintiff reserves the right to redefine the Classes and Subclasses identified herein.

2. This is also a representative action brought pursuant to Labor Code § 2698, *et seq.*, on behalf of the State of California and several groups of aggrieved employees defined as follows:

- (1) all non-exempt, hourly employees who were employed by Yin Management, Inc. or its predecessor, merged or related entities³ in California at any point from March 26, 2020 and continuing into the present. (“Non-Exempt Aggrieved Employees”);
- (2) all individuals who were employed by Yin Management, Inc. or its predecessor or merged entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from March 26, 2020 and continuing into the present. (“Overtime Aggrieved Employees”);
- (3) all individuals who were employed by Yin Management, Inc. or its predecessor, merged or related entities in California who worked one or more shifts of more than six (6) hours as a non-exempt, hourly employee or other similar position from March 26, 2020 and continuing into the present. (“First Meal Period Aggrieved Employees”);
- (4) all individuals who were employed by Yin Management, Inc. or its predecessor, merged or related entities in California who worked one or more shifts of more than ten (10) hours as a non-exempt hourly employee or other similar position from March 26, 2020 and continuing into the present. (“Second Meal Period Aggrieved Employees”);

Collectively, aggrieved employee groups three (3) and four (4) may be referred to as the “Meal Period Aggrieved Employees.”

- (5) all individuals who were employed by Yin Management, Inc., or its predecessor, merged or related entities in California as a non-exempt hourly employee, or other similar position, who worked one or more shifts of more than four (4) hours in length or major fraction thereof from March 26, 2020 and continuing into the present. (“Rest Period Aggrieved Employee”);
- (6) all individuals who were employed by Yin Management, Inc. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and whose employment concluded at any time between March 26, 2020 and continuing into the present. (“Late Payment Aggrieved Employees”).

³ Yin Management, Inc. for the purposes of the definition of aggrieved employees shall also include any companies doing business as Yin McDonald’s.

1 These groups may all collectively be referred to herein as aggrieved employees and/or all
2 aggrieved employees where appropriate.

3 3. Plaintiff, the Classes, and the aggrieved employees were employed by Defendant
4 Yin Management, Inc., and any subsidiaries or affiliated companies (other than Yin Organization
5 or Golden Arch Enterprises, Inc.) and Does 1 through 50 (who include individuals acting on
6 behalf an employer within the meaning of Labor Code § 558.1) within the State of California as a
7 non-exempt, hourly employees between January 29, 2017 and continuing into the present.

8 4. At all times relevant hereto, Defendants, except for John Doe, operated as a single
9 integrated enterprise, including but not limited to using the same officers or business locations,
10 procuring labor for each other, sharing a common corporate headquarters.

11 5. Labor Code § 558.1 provides that “[a]ny employer or other person acting on behalf
12 of an employer, who violates, or causes to be violated, any provision regulating minimum wages
13 or hours and days of work in any order of the Industrial Welfare Commission, or violates, or
14 causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the
15 employer for such violation.” Plaintiff alleges, based upon information and belief, that John Doe
16 and any Doe Defendants who are individuals were/are persons acting on behalf of an employer
17 within the meaning of Labor Code § 558.1 as it relates to all of the alleged allegations in this
18 action.

19 6. At all times relevant hereto, Defendant John Doe was a managing agent of
20 Defendants within the meaning of Labor Code section 558.1 and violated and/or caused Plaintiff,
21 the Class, and the aggrieved employees to experience violations of Labor Code §§ 203, 226,
22 226.7, and/or 1194 among others.

23 7. At all times relevant hereto, Defendants—except for John Doe—served as alter
24 egos of each other.

25 8. Plaintiff is a former employee of Defendants who worked for Defendants and/or
26 experienced Labor Code violations that were caused by Defendants from in or around June 8,
27 2016 until in or around late 2020.

1 9. At times throughout her employment with Defendants between January 29, 2017
2 and within the past year, Plaintiff, the Classes, and the aggrieved employees worked shifts in
3 excess of five (5) hours per day, but less than six (6) hours in a day, shifts in excess of eight (8)
4 hours in a day, and shifts in excess of ten (10) hours in a day.

5 10. At times between January 29, 2017 and the present and within the past year,
6 Plaintiff, the Classes, and the aggrieved employees worked more than forty (40) hours per week.

7 11. Defendants hire employees to work within the state of California who are covered
8 by California Industrial Welfare Commission Occupational Wage Order No. 5-2001. Based upon
9 information and belief, Defendants classified Plaintiff, the Classes, and the aggrieved employees
10 as non-exempt for the purposes of overtime, meal periods, and rest periods.

11 12. Plaintiff and the Wage Statement Class received at least one wage statement
12 between March 29, 2020 and continuing into the present.

13 13. Labor Code § 1197 states the California requirement that employees must be paid
14 at least the minimum wage fixed by the Commission or by any applicable state or local law, and
15 any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles
16 “any employee receiving less than the legal minimum wage...to recover in a civil action the
17 unpaid balance of the full amount of this minimum wage.” IWC Wage Order No. 5-2001
18 obligates employers to pay each employee minimum wages for all hours worked.

19 14. Labor Code § 510 requires an employer to compensate an employee who works
20 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight
21 (8) hours worked on the seventh consecutive day no less than one and one-half times the regular
22 rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate
23 employees at no less than twice the regular rate of pay when an employee works more than
24 twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.
25 In accordance with Labor Code § 1194, Plaintiff and the other aggrieved employees could not
26 agree to work for a lesser wage.

27 15. In addition, Labor Code § 1198 provides that “the maximum hours of work and the
28 standard conditions of labor fixed by the commission shall be the maximum hours of work and

1 the standard conditions of labor for employees. The employment of any employee for longer
2 hours than those fixed by the order or under conditions of labor prohibited by the order is
3 unlawful.”

4 16. Defendants engaged in a common policy and practice since the onset of the
5 COVID-19 pandemic of requiring Plaintiff and the aggrieved employees to undergo temperature
6 checks and other medical screening while off-the-clock for which they did not receive
7 compensation in violation of Labor Code §§ 1194 and 510. This include, but is not limited, to
8 requiring Plaintiff, the Class, and the aggrieved employees to undergo temperature checks before
9 the start of their shifts for which they did not receive compensation.

10 17. Based upon information and belief, during the COVID-19 pandemic Defendants
11 also maintained a written policy whereby Plaintiff, the Class, and the aggrieved employees were
12 required to “agree to doing wellness/temperature checks in order to be at work.” The time
13 associated with the temperature/wellness checks was not *de minimis* as due to the number of
14 employees undergoing such checks at one time, there were typically 3-4 Class Members or
15 aggrieved employees in line at a time waiting to undergo such checks and it could take up to ten
16 (10) minutes or more to complete the temperature check.

17 18. Defendants conduct in failing to pay Plaintiff, the Classes, and the aggrieved
18 employees for such time was willful. The Department of Industrial Relations issued guidance on
19 July 28, 2020 advising that employers that they must compensate employees for the time
20 associated with medical checks before shifts (including temperature checks):

21 **Medical Checks**

22 **9. Q: Must my employer pay me for time spent at my employer’s worksite completing
23 certain medical checks (including temperature checks) before beginning a shift?**

24 A: Yes. Employers must pay workers for all “hours worked,” including time that a worker is
25 under the control of the employer. Employers that require their workers to complete a
26 medical check in order to begin a shift, even if it is recommended under public health
27 orders, must compensate workers for that time worked.

28 The term “hours worked” means the time during which a worker is subject to the control of
an employer, and includes all the time the worker is suffered or permitted to work,
whether or not required to do so. Under this definition, one way to determine whether
time a worker spends performing a task is compensable—that is, whether it is time

1 “worked”—is whether the employer exercised control over the worker by requiring the
2 worker to perform that task.

3 If an employer requires that all workers perform a medical check (such as a temperature
4 check) onsite before beginning a shift, the time completing the medical check, including
5 any time waiting in line, would constitute time worked. This requirement applies even if
6 such tasks were performed pursuant to a state or local public health guideline, because
7 the check is done at the request, and thus under the control, of the employer.

8 **10. Q: Is my employer required to pay workers for required medical checks (including**
9 **temperature checks) at the employer’s worksite, even if the medical checks take very**
10 **little time?**

11 A: Yes, an employer is required to compensate for all hours worked in California even if a
12 required task takes only a small amount of time. There is no “de minimis” rule under
13 California law. Therefore, if an employer requires medical checks (such as a temperature
14 check) at the employer’s worksite, the employer must compensate a worker for that time
15 worked, even if the temperature check takes only a small amount of time to complete and
16 record.

17 19. In addition to the foregoing, at times between January 29, 2017 and the present
18 and within the past year, Defendants also failed to pay Plaintiff, the Class, and the aggrieved
19 employees for all hours worked. When Plaintiff raised this issue with Defendants’ supervisory
20 employees, she was advised, among other specious claims, that the time clocks did not work
21 properly. This caused Plaintiff, the Class, and the other aggrieved employees not to receive
22 compensation for all hours worked in violation of Labor Code §§ 1194, 1197, 1197.1, and 1198.

23 20. At times between January 29, 2017 and the present and within the past year,
24 Defendants also failed to pay Plaintiff and the other aggrieved employees who worked a split
25 shift, a split shift premium at the rate of one hour’s pay at the minimum wage in violation of
26 Labor Code sections 1194, 1197, 1198, and IWC Wage Order No. 5-2001. Such a payment is
27 considered a minimum wage as part of the workday under IWC Wage Order No. 5-2001, Section
28 4.

21. Defendant is also legally responsible for ensuring the accuracy of its time records
and cannot rely upon time records that it knew were false and/or statements by employees as the
California Supreme Court explained. *Donohue v. Amn Servs.*, No. S253677, 2021 Cal. LEXIS
1294, at *45 (Feb. 25, 2021) (“It is the employer's duty to maintain accurate time records” and

1 that the employer could not rely upon certifications from employees where the information
2 provided to the employees was inaccurate and/or incomplete); *accord Feaver v. Kaiser Found.*
3 *Health Plan, Inc.*, No. 15-cv-00890-EMC, 2016 U.S. Dist. LEXIS 9778, at *8 (N.D. Cal. Jan. 27,
4 2016) (conditionally certifying a class under the Fair Labor Standards Act where the employees
5 could show that they received and/or sent emails off-the-clock despite the fact that the employer
6 had a policy requiring all time to be recorded.); *Troester v. Starbucks Corp.*, 5 Cal.5th 829
7 (2018). As such Defendants were obligated to maintain accurate time records and their failure to
8 do so result in the underpayment of Plaintiff, the Class, and the aggrieved employees.

9 22. Labor Code § 1197.1 authorizes employees who are paid less than the minimum
10 fixed by an applicable state or local law, or by an order of the commission a civil penalty,
11 restitution of wages, and liquidate damages as follows: (1) for any initial violation that is
12 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
13 period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the
14 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
15 period for which the employee is underpaid regardless of whether the initial violation is
16 intentionally committed. As set forth above, Defendants failed to compensate Plaintiff and all
17 aggrieved employees for all overtime wages at the proper rates. Accordingly, through PAGA and
18 to the extent permitted by law Plaintiff and all aggrieved employees are entitled to recover
19 liquidated damages for violations of Labor Code § 1197.1.

20 23. Labor Code § 510 requires an employer to compensate an employee who works
21 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight
22 (8) hours worked on the seventh consecutive day no less than one and one-half times the regular
23 rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate
24 employees at no less than twice the regular rate of pay when an employee works more than
25 twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.
26 In accordance with Labor Code § 1194, Plaintiff, the Class, and the aggrieved employees could
27 not agree to work for a lesser wage.
28

1 24. In addition, Labor Code § 1197 states the California requirement that employees
2 must be paid at least the minimum wage fixed by the Commission or by any applicable state or
3 local law, and any payment of less than the minimum wage is unlawful.

4 25. Similarly, Labor Code § 1198 provides that “the maximum hours of work and the
5 standard conditions of labor fixed by the commission shall be the maximum hours of work and
6 the standard conditions of labor for employees. The employment of any employee for longer
7 hours than those fixed by the order or under conditions of labor prohibited by the order is
8 unlawful.”

9 26. As discussed above, during the COVID-19 pandemic, Defendants engaged in a
10 common policy and practice since the onset of the COVID-19 pandemic of requiring Plaintiff, the
11 Class, and the aggrieved employees to undergo temperature checks and other medical screening
12 while off-the-clock for which they did not receive compensation in violation of Labor Code §§
13 1194 and 510. Since Plaintiff, the Class, and many of the aggrieved employees had already
14 worked shifts of eight (8) hours at the time that without including the time associated with
15 temperature checks, the off-the-clock time that Plaintiff, the Class, and the aggrieved employees
16 worked during temperature checks frequently included overtime hours. Moreover, since
17 Defendants failed to record the time associated with temperature/wellness checks, Defendants
18 regularly and consistently misclassified overtime hours as regular hours leading to the
19 underpayment of wages in violation of Labor Code § 510.

20 27. Separate and independent of the foregoing, at times between January 29, 2017 and
21 the present and within the past year, Defendants also failed to pay Plaintiff, the Class and the
22 aggrieved employees for all hours worked. When Plaintiff raised this issue with Defendants’
23 supervisory employees, she was advised among other specious claims that the time clocks did not
24 work properly. This caused Plaintiff and the other aggrieved employees not to receive
25 compensation for all hours worked and/or at the proper rates including causing the
26 misclassification of overtime hours as regular hours. As a result, Plaintiff, the Class, and the
27 aggrieved employees did not receive overtime pay at the rate of one-and-one half hours worked
28 for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week.

1 28. At times between January 29, 2017 and the present and within the past year,
2 Defendants also engaged in a common policy and practice of failing to pay aggrieved employees
3 for all hours worked at the proper rates of pay required by Labor Code § 510 and IWC Wage
4 Order No. 5-2001 when employees worked split shifts within the same day. Instead, Defendants
5 regularly and consistently classified overtime hours on split shifts as regular hours and/or failed to
6 provide compensation for such time at all in violation of Labor Code § 510.

7 29. This include, but is not limited, to requiring Plaintiff and the other aggrieved
8 employees to undergo temperature checks before the start of their shifts for which they did not
9 receive compensation. Defendants maintained a written policy whereby Plaintiff and the other
10 aggrieved employees were required to “agree to doing wellness/temperature checks in order to be
11 at work.” The time associated with the temperature/wellness checks was not *de minimis* as due to
12 the number of employees undergoing such checks at one time, there were typically 3-4 aggrieved
13 employees in line at a time waiting to undergo such checks and it could take up to ten (10)
14 minutes or more to complete the temperature check.

15 30. Labor Code § 558 imposes a penalty upon employers “who violates, or causes to
16 be violated...any provision regulating hours and days of work in any order of the Industrial
17 Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation,
18 fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was
19 underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each
20 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
21 period for which the employee was underpaid in addition to an amount sufficient to recover
22 underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected
23 employee.” For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only
24 the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and
25 not any underpaid wages through Labor Code section 558.

26 31. Labor Code § 1197.1 authorizes employees who are paid less than the minimum
27 fixed by an applicable state or local law, or by an order of the commission a civil penalty,
28 restitution of wages, and liquidate damages as follows: (1) for any initial violation that is

1 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
2 period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the
3 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
4 period for which the employee is underpaid regardless of whether the initial violation is
5 intentionally committed. As set forth above, Defendant failed to compensate Plaintiff and all
6 aggrieved employees for all overtime wages at the proper rates. Accordingly, through PAGA and
7 to the extent permitted by law Plaintiff and all aggrieved employees are entitled to recover civil
8 penalties for violations of Labor Code § 1197.1.

9 32. Labor Code § 512 requires employers to provide employees with thirty (30)
10 minute uninterrupted and duty-free meal period within the first five (5) hours of work. Moreover,
11 an employee who works more than ten (10) hours per day is entitled to receive a second thirty
12 (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512, an employer
13 may not employ an employee for a work period of more than ten (10) hours, without providing
14 the employee with a second meal period of not less than thirty (30) minutes. Moreover, the
15 second meal period may not be waived if the total hours worked is more than twelve (12) hours.

16 33. Similarly, IWC Wage Order No. 5-2001 prohibits an employer from “employ[ing]
17 any person for a work period of more than five (5) hours without a meal period of not less than 30
18 minutes. IWC Wage Order No. 5-2001 further obligates employers to provide an employee to
19 “pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each
20 workday that the meal period is not provided. Labor Code section 1198 prohibits an employer
21 from requiring an employee to work beyond the “standard conditions of labor fixed by the
22 commission...or under conditions of labor prohibited by the order.”

23 34. At times between January 29, 2017 and the present and within the past year,
24 Defendants failed to authorize and permit Plaintiff, the Class, and the aggrieved employees to
25 receive lawful meal periods, failed to advise them of their right to such meal periods, failed to
26 authorize and permit them to take timely first meal periods within the first five (5) hours, failed to
27 authorize and permit them to take a meal period when working a shift in excess of five (5) hours,
28

1 but less than six (6) hours, and failed to authorize and permit them to take a second meal period
2 when working a shift in excess of ten (10) hours.

3 35. At times between January 29, 2017 and the present and within the past year,
4 Defendants' meal period policies and practices also disincentivized and discouraged Plaintiff, the
5 Class, and the other aggrieved employees from taking timely first meal periods within the first
6 five (5) hours of their shift and/or second meal periods. Defendants' understaffing policies and
7 practices also pressured, coerced, and forced employees to take untimely first meal periods and/or
8 forgo meal periods due to a lack of sufficient coverage.

9 36. Labor Code § 226.7 provides "an employer shall not require an employee to work
10 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
11 regulation, standard, or order of the Industrial Welfare Commission ("IWC").

12 37. Similarly, IWC Wage Order No. 5-2001, prohibits an employer from "employ[ing]
13 any person for a work period of more than five (5) hours without a meal period of not less than 30
14 minutes. IWC Wage Order No. 5-2001 further obligate employers to provide an employee to "pay
15 the employee one (1) hour of pay at the employee's regular rate of compensation for each
16 workday that the meal period is not provided.

17 38. At times between January 29, 2017 and the present and within the past year,
18 Defendants also failed to pay Plaintiff, the Class, and the aggrieved employees meal period
19 premiums for each workday that the employees did not receive a compliant meal period and/or at
20 the proper rate. Accordingly, for each day that Plaintiff and all aggrieved employees did not
21 receive compliant meal periods, they are entitled to receive meal period premiums pursuant to
22 Labor Code § 226.7 and IWC Wage Order No. 5-2001. Unfortunately, Plaintiff, the Class, and the
23 aggrieved employees were not compensated with one (1) hours' worth of pay at their regular rate
24 of compensation when they were not provided with a compliant rest period in violation of Labor
25 Code § 226.7 and IWC Wage Order No. 5-2001.

26 39. Labor Code § 558 imposes a penalty upon employers "who violates, or causes to
27 be violated...any provision regulating hours and days of work in any order of the Industrial
28 Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation,

1 fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was
2 underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each
3 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
4 period for which the employee was underpaid in addition to an amount sufficient to recover
5 underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected
6 employee.” For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only
7 the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and
8 not any underpaid wages.

9 40. Labor Code § 226.7 provides “an employer shall not require an employee to work
10 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
11 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage
12 Order No. 5-2001, an employer must authorize and permit all employees to take ten (10) minute
13 duty free rest periods for every major fraction of four hours worked. *See Augustus v. ABM*
14 *Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that “during rest periods employers
15 must relieve employees of all duties and relinquish control over how employees spend their
16 time.”).

17 41. At times between January 29, 2017 and the present and within the past year,
18 Defendant failed to provide Plaintiff, the Class, and the aggrieved employees with rest periods of
19 not less than ten (10) minutes for every major fraction of four (4) hours worked. Instead,
20 Defendant regularly and consistently required Plaintiff, the Class, and the aggrieved employees to
21 forgo a second rest period when they worked shifts in excess of six (6) hours—including, but not
22 limited to when Plaintiff, the Class, and the aggrieved employees worked shifts in excess of six
23 (6) hours, but less than eight (8) hours—and failed to authorize and permit employees who
24 worked more than ten (10) hours a third rest period.

25 42. In addition to failing to authorize and permit compliant rest periods, Plaintiff, the
26 Class, and the aggrieved employees were not compensated with one (1) hours’ worth of pay at
27 their regular rate of compensation when they were not provided with a compliant rest period
28 and/or their rest period was interrupted in accordance with Labor Code § 226.7(b).

1 43. As to Plaintiff, the Wage Statement Class, and the aggrieved employees,
2 Defendants also failed to provide accurate itemized wage statements in accordance with Labor
3 Code § 226(a)(1, 2, 5, and 9). Labor Code § 226 obligates employers, semi-monthly or at the time
4 of each payment to furnish an itemized wage statement in writing showing:

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

18 Similarly, Labor Code § 226(e) provides:

19 (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an
20 employer to comply with subdivision (a) is entitled to recover the greater of all actual
21 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
22 one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
23 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
24 award of costs and reasonable attorney's fees.

25 (2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the
26 employer fails to provide a wage statement.

27 (B) An employee is deemed to suffer injury for purposes of this subdivision if the
28 employer fails to provide accurate and complete information as required by any one or
29 more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly
30 and easily determine from the wage statement alone one or more of the following:

31 (i) The amount of the gross wages or net wages paid to the employee during the
32 pay period or any of the other information required to be provided on the itemized
33 wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision
34 (a).

35 (ii) Which deductions the employer made from gross wages to determine the net
36 wages paid to the employee during the pay period. Nothing in this subdivision
37 alters the ability of the employer to aggregate deductions consistent with the
38 requirements of item (4) of subdivision (a).

39 (iii) The name and address of the employer and, if the employer is a farm labor
40 contractor, as defined in subdivision (b) of Section 1682, the name and address of
41 the legal entity that secured the services of the employer during the pay period.

42 ⁴ The itemized wage statements issued to Plaintiff and the Itemized Wage Statement Class
43 received itemized wage statements that identified their employer as Yin McDonald's. To the
44 extent that Defendant Yin Management, Inc. contends that it does business by another name,
45 Plaintiff alleges that the itemized wage statements do not include the name of the legal entity that
46 is the employer.

(iv) 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.

44. Due to Defendants' failure to pay Plaintiff, the Itemized Wage Statement Class, and the aggrieved employees all minimum wages, overtime wages, meal period premiums, and rest period premiums, the wage statements issued by Defendants do not indicate the correct amount of gross wages earned, the total hours worked, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendants have violated Labor Code §226(a)(1), (2), (5), and (9) with respect to Plaintiff and all aggrieved employees.

45. Plaintiff, the Wage Statement Class, and the aggrieved employees also suffered legal "injury" for purposes of Labor Code section 226(e) insofar as they were unable to readily and easily determine from the wage statements themselves the information required to be set forth by Section 226(a), the information provided by Defendants was confusing and inaccurate.

46. In addition, Plaintiff, the Wage Statement Class, and the aggrieved employees were unable to determine at all the total hours worked by the employee, the gross wages earned, 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 by the employee for the reasons discussed above.

47. As described in detail above, Defendants willfully failed to pay Plaintiff and the other Class Members whose employment concluded (including the Late Payment Subclass) all wages owed, including but not limited to minimum wages, overtime wages, meal period premiums, and rest period premiums within the time constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation. Thus, as result of Defendants' faulty policies described above, Plaintiff and all Class Members' left their employment with Defendants without being compensated for each and every hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, and 203. At the time of Plaintiff, the other members of the Class, the Late

1 Payment Subclass, and the Late Payment Aggrieved Employees' separation from Defendants,
2 these sums were certain and known to Defendants.

3 48. Labor Code § 204 expressly requires that "[a]ll wages...earned by any person in
4 any employment are due and payable twice during each calendar month, on days designated in
5 advance by the employer as the regular paydays." Defendant pays Plaintiff and all aggrieved
6 employees on a bi-weekly basis

7 49. Due to Defendant's failure to pay Plaintiff and all aggrieved employees all
8 minimum wages, all overtime wages, split shift premiums, meal period premiums, and rest period
9 premiums for the reasons discussed above, Defendants failed to timely pay Plaintiff and all
10 aggrieved employees all wages owed within seven (7) days of the close of the payroll period in
11 accordance with Labor Code § 204(d) on a regular and consistent basis.

12 50. Labor Code § 210 provides that "in addition to, an entirely independent and apart
13 from, any other penalty provided in this article, every person who fails to pay the wages of each
14 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For
15 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
16 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
17 each failure to pay each employee, plus 25% of the amount unlawfully withheld." As a result of
18 the faulty compensation policies and practices described in detail above, Plaintiff and the other
19 aggrieved employees are entitled to recover penalties under Labor Code § 210 through PAGA.
20 *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008) (affirming an award of
21 Labor Code section 210 penalties under PAGA due to the employer's failure to timely pay wages
22 at the proper rate in accordance with a local wage ordinance).

23 51. Labor Code § 1174 provides that each employer shall keep "payroll records
24 showing the hours worked daily by and the wages paid to...employees employed
25 at...establishments." An employer who fails to maintain the records proscribed by Labor Code §
26 1174 is subject to a civil penalty of five hundred (\$500) dollars under Labor Code § 1174.5.

27 52. As previously explained, Defendants failed to maintain accurate records of the
28 total hours worked by employees (including, but not limited to, the time associated with

1 temperature/wellness checks) sent to Plaintiff and the other aggrieved employees while off-the-
2 clock on a regular and consistent basis. Thus, Defendants violated Labor Code §§ 1174 and
3 1174.5.

4 II.

5 **JURISDICTION AND VENUE**

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

11 54. This Court has personal jurisdiction over Defendant YIN MANAGEMENT, INC.
12 because Defendant has caused injuries in the County of Yolo and State of California through their
13 acts, and by their violation of the California Labor Code and California law in Yolo County.

14 55. Defendants also engaged and suffered and/or permitted the Class Members, and
15 aggrieved employees to perform work in Yolo County during the statutory period applicable to
16 their claims resulting in injuries within Yolo County. *Battaglia Enterprises, Inc. v. Sup. Ct.*, 215
17 Cal.App.4th 309, 313 (2013) (holding that if “venue is proper in more than one county, a plaintiff
18 may choose among the available options.”); accord *Crestwood Behavioral Health, Inc. v. Sup.*
19 *Ct.*, No. A160523, 2021 Cal. App. LEXIS 137, at *5 (Ct. App. Feb. 17, 2021) (affirming that the
20 Plaintiff’s choice of venue in a PAGA case was proper in Alameda County even though the
21 employee only worked for the defendant in Solano County and the defendant’s principal office
22 was in Sacramento County).

23 56. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
24 Civil Procedure §395. Defendants operates within California and do business within Yolo
25 County. The unlawful acts alleged herein have a direct effect on the Class, the State of California,
26 and the aggrieved employees within the State of California and Yolo County.

27 57. This case should be classified as complex according to Rule 3.400 of the
28 California Rules of Court, and assigned to a complex litigation judge and department, as it will

1 involve substantial documentary evidence, and is likely to involve extensive motion practice
2 raising difficult or novel issues that will be time-consuming to resolve and would require
3 substantial post judgment judicial supervision.

4 III.

5 **PARTIES**

6 **A. PLAINTIFF**

7 58. Plaintiff CRISTINA CONTRERAS is a former employee of Defendants who
8 worked for Defendants from in or around June 8, 2016 until in or around late 2020.

9 59. Plaintiff and the Class were regularly required to:

10 a. Work without receiving any compensation for hours worked and/or
11 minimum wages for all hours worked;

12 b. Work overtime hours without receiving the proper amount of
13 compensation, and/or the proper amount of overtime compensation;

14 c. Work without being provided lawful meal periods;

15 d. Work without being provided lawful rest periods;

16 e. Work without being provided an accurate itemized wage statement that
17 accurately indicate the gross wages earned, total hours worked by the employee, the net wages
18 earned, as well as all applicable hourly rates in effect during the pay period and the corresponding
19 number of hours worked at each hourly rate by the employee;

20 f. Were deprived of wages that Defendants knew were due and owing, yet
21 failed to pay at the time of termination and/or within 72 hours of resignation for those former
22 employees who did not provide advance notice.

23 **B. DEFENDANTS**

24 60. Defendant YIN MANAGEMENT, INC., is a California corporation, with a current
25 principal place of business of 185 Butcher Road, Vacaville, CA 95687. Upon information and
26 belief, including based upon news articles, Defendant operates McDonald's franchise in Yolo
27 County among others. Defendant employed Class Members in Yolo County and within
28

1 California. Defendant has done and does business throughout the State of California and in Yolo
2 County.

3 61. Defendant, JOHN DOE, is an individual who was a managing agent of Defendants
4 within the meaning of Labor Code section 558.1 and violated and/or caused Plaintiff, the Class,
5 and the aggrieved employees to experience violations of Labor Code §§ 203, 226, 226.7, and/or
6 1194 among others. Defendant JOHN DOE caused injuries to the Class through his conduct in
7 Yolo County.

8 62. The true names and capacities, whether individual, corporate, associate, or
9 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
10 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
11 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
12 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
13 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
14 capacities of the Defendants designated hereinafter as DOES when such identities become
15 known.

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

21 IV.

22 **CLASS ACTION ALLEGATIONS**

23 64. Plaintiff brings this action on behalf of herself and all others similarly situated as a
24 Class Action pursuant to §382 of the Code of Civil Procedure. Plaintiff seeks to represent several
25 Classes and Subclasses composed of and defined as follows:

- 26
27 (1) all non-exempt, hourly employees who were employed by YIN
28 MANAGEMENT, INC. or its predecessor, merged or related entities in

1 California as an employee at any point from January 29, 2017 and continuing
2 into the present. (the “Non-Exempt Class”);⁵

3 (2) all individuals who were employed by YIN MANAGEMENT, INC. or its
4 predecessor or merged entities in California as a non-exempt, hourly employee
5 or other similar position and who worked a shift of more than eight (8) hours in
6 a day and/or forty (40) hours in a week during a pay period from January 29,
2017 and continuing into the present. (the “Overtime Subclass”);

7 (3) all individuals who were employed by YIN MANAGEMENT, INC. or its
8 predecessor, merged or related entities in California who worked one or more
9 shifts of more than six (6) hours as a non-exempt, hourly employee or other
10 similar position from January 29, 2017 and continuing into the present. (“More
than Six Hours First Meal Period Subclass”);

11 (4) all individuals who were employed by YIN MANAGEMENT, INC. or its
12 predecessor, merged or related entities in California who worked one or more
13 shifts of more than five (5) hours, but less than six (6) hours as a non-exempt,
14 hourly employee or other similar position from January 29, 2017 and continuing
into the present. (“Less than Six Hours First Meal Period Subclass”);

15 Collectively, subclasses three (3) and four (4) may be referred to as the “First Meal Period
Subclass.”

16 (5) all individuals who were employed by YIN MANAGEMENT, INC. or its
17 predecessor, merged or related entities in California who worked one or more
18 shifts of more than ten (10) hours as a non-exempt, hourly employee or other
19 similar position from January 29, 2017 and continuing into the present.
 (“Second Meal Period Subclass”);

20 Collectively, subclasses three (3), four (4), and five (5) may be referred to as the “Meal Period
21 Subclass.”

22 (6) all individuals who were employed by YIN MANAGEMENT, INC. or its
23 predecessor, merged or related entities in California as a non-exempt hourly
24 employee, or other similar position, who worked one or more shifts of more
25 than six (6) hours in length, but less than eight (8) hours in length from January
29, 2017 and continuing into the present. (“Second Rest Period Subclass”);

26 (7) all individuals who were employed by YIN MANAGEMENT, INC. or its
27 predecessor, merged or related entities in California as a non-exempt hourly

28 ⁵ The statute of limitations were tolled for at least sixty (60) days due to Emergency Rule 9 of the California Rules of
Court also referred to as the “Emergency Rules Related to COVID-19”).

employee, or other similar position, who worked one or more shifts of more than ten (10) hours in length from January 29, 2017 and continuing into the present. (“Third Rest Period Subclass”);

Collectively, subclasses six (6) and seven (7) may be referred to as the “Rest Period Subclass.”

(8) all individuals who were employed by YIN MANAGEMENT, INC. or its predecessor, merged or related entities in California as a non-exempt, hourly employee or other similar position for one or more pay periods from January 29, 2020 and continuing into the present (“Wage Statement Subclass”);

(9) all individuals who were employed by YIN MANAGEMENT, INC. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and whose employment concluded at any time between January 29, 2018 and continuing into the present; (“Late Payment Subclass”);

Collectively, these Classes/Subclasses may also all collectively be referred to herein as the Classes or Class Member(s).⁶

65. This is also a representative action brought pursuant to Labor Code § 2698, *et seq.*, on behalf of the State of California and several groups of aggrieved employees defined as follows:

(1) all non-exempt, hourly employees who were employed by Yin Management, Inc. or its predecessor, merged or related entities⁷ in California at any point from March 26, 2020 and continuing into the present. (“Non-Exempt Aggrieved Employees”);

(2) all individuals who were employed by Yin Management, Inc. or its predecessor or merged entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from March 26, 2020 and continuing into the present. (“Overtime Aggrieved Employees”);

(3) all individuals who were employed by Yin Management, Inc. or its predecessor, merged or related entities in California who worked one or more shifts of more than six (6) hours as a non-exempt, hourly employee or other similar position from March 26, 2020 and continuing into the present. (“First Meal Period Aggrieved

⁶ Plaintiff reserves the right to redefine the Classes and Subclasses identified herein.

⁷ Yin Management, Inc. for the purposes of the definition of aggrieved employees shall also include any companies doing business as Yin McDonald’s.

Employees”);

- (4) all individuals who were employed by Yin Management, Inc. or its predecessor, merged or related entities in California who worked one or more shifts of more than ten (10) hours as a non-exempt hourly employee or other similar position from March 26, 2020 and continuing into the present. (“Second Meal Period Aggrieved Employees”);

Collectively, aggrieved employee groups three (3) and four (4) may be referred to as the “Meal Period Aggrieved Employees.”

- (5) all individuals who were employed by Yin Management, Inc., or its predecessor, merged or related entities in California as a non-exempt hourly employee, or other similar position, who worked one or more shifts of more than four (4) hours in length or major fraction thereof from March 26, 2020 and continuing into the present. (“Rest Period Aggrieved Employee”);

- (6) all individuals who were employed by Yin Management, Inc. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and whose employment concluded at any time between March 26, 2020 and continuing into the present. (“Late Payment Aggrieved Employees”).

These groups may all collectively be referred to herein as aggrieved employees and/or all aggrieved employees where appropriate.

66. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to amend or modify the class description with greater specificity, by division into subclasses, or by limitation to particular issues.

67. This action has been brought and may properly be maintained as a class action under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the Proposed Classes are easily ascertainable.

A. Numerosity

68. The potential members of the Proposed Classes as defined are each so numerous that joinder of all the members of the Proposed Classes is impracticable. While the precise number of proposed Class Members in each Class has not been determined at this time, Plaintiff is informed and believes that Defendants currently employ, and during the relevant time periods

1 employed to be more than 450 members or more of the Proposed Class and Subclasses at any
2 given time based upon Defendants' PPP application.

3 69. Plaintiff alleges that Defendants' employment records would provide information
4 as to the number and location of all Proposed Class members. Joinder of all members of the
5 Proposed Class and Subclasses is not practicable.

6 **B. Commonality**

7 70. There are questions of law and fact common to the Proposed Classes⁸ that
8 predominate over any questions affecting only individual Proposed Class Members. These
9 common questions of law and fact include, without limitation:

10 a. Whether Defendants failed to pay minimum wages for all hours worked as
11 required by Labor Code §§ 1194, 1194.2, and 1197 as well as IWC Wage Order No.5-2001 to the
12 Non-Exempt Class and;

13 b. Whether Defendants failed to pay wages and/or overtime compensation
14 and at the correct rate as required by Labor Code § 510 to the Non-Exempt Class and the
15 Overtime Subclass;

16 c. Whether Defendants violated Labor Code §§ 226.7 and IWC Wage Order
17 No. 5-2001, by failing to authorize and permit the Non-Exempt Class and the Meal Period
18 Subclass to take a timely meal period within the first five (5) hours of their shift, failed to
19 authorize and permit first meal periods when employees worked shifts in excess of five (5) hours,
20 but less than six (6) hours, and/or failed to authorize and permit second meal periods for shifts
21 worked in excess of ten (10) hours as well as their failure to pay the Meal Period Subclass one
22 additional hour of pay at the employees' at their regular rate of compensation when they did not
23 receive a compliant meal period;

24 d. Whether Defendants violated Labor Code § 226.7 and IWC No. 5-2001, by
25 failing to authorize and permit Plaintiff, the Non-Exempt Class and the Rest Period Subclass of
26 their right to receive a ten (10) minute duty-free rest period for every four hours of work or major

27 _____
28 ⁸ Plaintiff reserves his right to designate subclasses within the Classes including designating an Unfair Competition subclass for each class.

1 fraction thereof, including a second rest period on shifts in excess of six (6) hours, but less than
2 eight (8) hours, failed to authorize and permit them to take a third rest period when they worked
3 shifts in excess of ten (10) hours in a day, and by failing to compensate said employees one (1)
4 additional hour of pay at the employee's regular rate of compensation in lieu of such rest periods;

5 e. Whether Defendants violated Labor Code § 226(a) and (e) by failing to
6 provide the Wage Statement Class with an accurate itemized wage statements that accurately
7 indicate, the gross wages earned, all deductions from wages, the net wages earned, as well as all
8 applicable hourly rates in effect during the pay period and the corresponding number of hours
9 worked at each hourly rate by the employee;

10 f. Whether Defendants violated § 17200 et seq. of the Business & Professions
11 Code by engaging in the acts previously alleged against the Non-Exempt Class;

12 g. Whether Defendants violated §§ 201-203 of the Labor Code by failing to
13 pay compensation due and owing at the time that the Late Payment Classes employment with
14 Defendants concluded;

15 **C. Typicality**

16 71. The claims of Plaintiff are typical of the claims of the Proposed Class and
17 Subclasses. Plaintiff and all members of the Proposed Class and Subclasses sustained injuries
18 and damages arising out of and caused by Defendants' common course of conduct in violation of
19 laws, regulations that have the force and effect of law, and statutes as alleged herein.

20 **D. Adequacy of Representation**

21 72. Plaintiff will fairly and adequately represent and protect the interests of the
22 members of the proposed Classes. Counsel who represents Plaintiff and the Proposed Classes is
23 competent and experienced in litigating large employment class actions, and have the financial
24 resources to litigate the claims at issue.

25 **E. Superiority of Class Action**

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

1 questions affecting only individual members of the Proposed Class. Each member of the
2 Proposed Class has been damaged and is entitled to recovery by reason of Defendants' illegal
3 policy and/or practice of failing to pay all wages due, failing to provide meal periods, failing to
4 provide rest periods, failing to provide accurate itemized wage statements, and failing to pay all
5 wages upon resignation or termination.

6 74. Class action treatment will allow those similarly situated persons to litigate their
7 claims in the manner that is most efficient and economical for the parties and the judicial system.
8 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
9 action that would preclude its maintenance as a class action.

10 V.

11 **FIRST CAUSE OF ACTION**
12 **FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF LABOR CODE §§**
13 **1194, 1194.2 AND IWC WAGE ORDER NO. 7-2001**
14 **[Against All Defendants by Plaintiff and the Non-Exempt Class]**

15 75. Plaintiff, on behalf of herself and the Non-Exempt Class re-alleges and
16 incorporates by reference all previous paragraphs.

17 76. Section 1194 of the Labor Code provides, in relevant part:

18 Notwithstanding any agreement to work for a lesser wage, any employee
19 receiving less than minimum wage...applicable to the employee is entitle to
20 recover in a civil action the unpaid balance of the full amount of this
21 minimum wage ..., including interest thereon, reasonable attorney's fees,
22 and costs of suit.

23 77. Section 1194.2 of the Labor Code provides, in relevant part:

24 In any action under...Section 1194 to recover wages because of the payment
25 of a wage less than the minimum wage fixed by an order of the commission,
26 an employee shall be entitled to recover liquidated damages in an amount
27 equal to the wages unlawfully unpaid and interest thereon.

28 78. As set forth above, Plaintiff and the Non-Exempt Class were not compensated for
all hours worked as a result of Defendants' policies and practices described in detail above.

79. In failing to pay Plaintiff and the Non-Exempt Class for all hours worked, for the
reasons described above, Defendants willfully and intentionally violated Labor Code § 1194 and
acted in bad faith. Accordingly, pursuant to sections 1194 and 1194.2 of the California Labor

1 Code, Plaintiff and the Non-Exempt Class are entitled to recover, either their unpaid hourly
2 wages due, or minimum wage plus interest and/or liquidated damages in an additional amount
3 equal to the total amount of wages unlawfully withheld during the Class Period.

4 **VI.**

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PAY WAGES AND/OR OVERTIME UNDER
LABOR CODE §§ 510, 1194, and 1199**

7 **[Against All Defendants by Plaintiff, the Non-Exempt Class and the Overtime Subclass]**

8 80. Plaintiff, on behalf of herself, the Non-Exempt Class, and the Overtime Subclass
9 realleges and incorporates by reference all previous paragraphs.

10 81. Labor Code § 510 requires an employer to compensate an employee who works
11 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight
12 (8) hours worked on the seventh consecutive day no less than one and one-half times the regular
13 rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate
14 employees at no less than twice the regular rate of pay when an employee works more than
15 twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.
16 In accordance with Labor Code § 1194, Plaintiff, the Non-Exempt Class and the Overtime
Subclass could not agree to work for a lesser wage.

17 82. In addition, Labor Code § 1197 states the California requirement that employees
18 must be paid at least the minimum wage fixed by the Commission or by any applicable state or
19 local law, and any payment of less than the minimum wage is unlawful.

20 83. Similarly, Labor Code § 1198 provides that “the maximum hours of work and the
21 standard conditions of labor fixed by the commission shall be the maximum hours of work and
22 the standard conditions of labor for employees. The employment of any employee for longer
23 hours than those fixed by the order or under conditions of labor prohibited by the order is
24 unlawful.”

25 84. By their common policy of requiring Plaintiffs and members of the Proposed the
26 Non-Exempt Class and the Overtime Subclass to work in excess of eight (8) hours in a workday
27 and/or forty (40) hours in a workweek without compensating them at all for such hours and/or at
28

1 the rate of one-half (1 1/2) their regular rate of pay for the reasons described above, Defendants
2 willfully violated the provisions of Labor Code § 510.

3 85. As a result of the unlawful acts of Defendants, the Non-Exempt Class and the
4 Overtime Subclass have been deprived of wages and/or overtime in amounts to be determined at
5 trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys'
6 fees, and costs.

7 VII.

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PROVIDE LAWFUL MEAL PERIODS PURSUANT TO LABOR CODE §§ 226.7 and 512; IWC WAGE ORDER NO. 5-2001 § 11**

10 **[Against All Defendants by Plaintiff, the Non-Exempt Class, and the Meal Period Subclass]**

11 86. Plaintiff, on behalf of herself, realleges and incorporates by reference all previous
12 paragraphs.

13 87. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
14 compensation for each non-compliant meal period an employer fails to provide. Employees are
15 entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be
16 provided within the first five (5) hours of the shift and a second meal period of at least thirty (30)
17 minutes for shifts over ten (10) hours.

18 88. At points within the past four (4) years including within the past year, Plaintiff, the
19 Non-Exempt Class, and the Meal Period Subclass worked shifts over five (5) hours, but less than
20 six (6) hours, shifts in excess of six (6) hours where were not authorized and permitted to take a
21 meal period within the first five (5) hours, did not receive a timely first meal period within the
22 first five (5) hours of their shift, and worked shifts in excess of ten (10) hours without being
23 authorized and permitted nor receiving a second meal period.

24 89. During the statutory period applicable to their claims, Plaintiff, the Non-Exempt
25 Class, and the Meal Period Subclass were not compensated with one (1) hours' worth of pay at
26 their regular rate of compensation when they were not provided with a compliant meal period or
27 at the proper rate based upon Defendants' unlawful compensation policies detailed above.
28

90. Pursuant to Labor Code §226.7, Plaintiff, the Non-Exempt Class, and the Meal Period Subclass are entitled to damages in an amount equal to one (1) hour of wages per missed meal break, per day in a sum to be proven at trial.

VIII.

FOURTH CAUSE OF ACTION

**FAILURE TO PROVIDE LAWFUL REST PERIODS AND PAY NON-COMPLIANT
REST PERIOD PREMIUMS PURSUANT TO LABOR CODE § 226.7 AND IWC WAGE
ORDER NO. 5-2001, § 12**

[Against All Defendants by Plaintiff, the Non-Exempt Class, and the Rest Period Subclass]

91. Plaintiff, on behalf of herself, the Non-Exempt Class, and the Rest Period Subclass, realleges and incorporates by reference all previous paragraphs.

92. Plaintiff, the Non-Exempt Class, and the Rest Period Subclass, worked shifts more than four (4) hours or a major fraction thereof, including shifts of more than ten (10) hours in a day without receiving rest periods and/or the proper amount of rest periods during the statutory period applicable to their claims.

93. At times between January 29, 2017 and the present and within the past year, Defendant failed to provide Plaintiff, the Class, and the Rest Period Subclass rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked. Instead, Defendant regularly and consistently required Plaintiff, the Class, and the Rest Period Subclass to forgo a second rest period when they worked shifts in excess of six (6) hours—including, but not limited to when Plaintiff, the Class, and the Rest Period Subclass worked shifts in excess of six (6) hours, but less than eight (8) hours—and failed to authorize and permit employees who worked more than ten (10) hours a third rest period.

94. Labor Code § 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage Order No. 5-2001 an employer must authorize and permit all employees to take ten (10) minute duty free rest periods for every major fraction of four hours worked.

95. Defendants also failed to provide Plaintiff, the Non-Exempt Class, and the Rest Period Subclass with rest periods of not less than ten (10) minutes for every major fraction of four

1 (4) hours worked. Instead, Defendants regularly and consistently required Plaintiff, the Non-
2 Exempt Class, and the Rest Period Subclass, to forgo rest periods.

3 96. Moreover, Defendants' understaffing policies and practices also pressured,
4 coerced, and forced employees to take untimely first meal periods due to a lack of sufficient
5 coverage.

6 97. Based upon the foregoing, at all times pertinent hereto, Defendants failed to
7 authorize and permit Plaintiff, the Non-Exempt Class, and the Rest Period Subclass to take duty-
8 free rest periods of not less than ten (10) minutes net for every major fraction of four (4) hours
9 worked. For the same reasons, Defendants also failed to provide such breaks.

10 98. In addition to failing to authorize and permit compliant rest periods, Plaintiff, the
11 Non-Exempt Class and the Rest Period Subclass, were not compensated with one (1) hours'
12 worth of pay at their regular rate of compensation when they were not provided with a compliant
13 rest period and/or their rest period was interrupted in accordance with Labor Code § 226.7(b).

14 99. Pursuant to Labor Code § 226.7, Plaintiff the Non-Exempt Class, and the Rest
15 Period Subclass are entitled to damages in an amount equal to one (1) hour of wages per missed
16 rest period, in a sum to be proven at trial.

17 IX.

18 **FIFTH CAUSE OF ACTION** **VIOLATIONS OF LABOR CODE § 226(e)**

19 **[Against all Defendants on behalf of Plaintiff and the Wage Statement Class]**

20 100. Plaintiff, on behalf of herself and the Wage Statement Class, realleges and
21 incorporates by reference all previous paragraphs and all subsequent paragraphs.

22 101. From one (1) year prior to the filing of this action and continuing into the present,
23 Defendants knowing and intentionally failed to provide accurate itemized wage statements to
24 Plaintiff and the Wage Statement Class in accordance with Labor Code § 226(a)(1, 2, 5, and 9).
25 Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an
26 itemized wage statement in writing showing:

- 27 (1) gross wages earned;
28 (2) total hours worked by the employee;
(3) the number of piece-rate units earned and any applicable piece rate if the

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

11 Similarly, Labor Code § 226(e) provides:

12 (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an
13 employer to comply with subdivision (a) is entitled to recover the greater of all actual
14 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
15 one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
16 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
17 award of costs and reasonable attorney's fees.

18 (2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the
19 employer fails to provide a wage statement.

20 (B) An employee is deemed to suffer injury for purposes of this subdivision if the
21 employer fails to provide accurate and complete information as required by any one or
22 more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly
23 and easily determine from the wage statement alone one or more of the following:

24 (i) The amount of the gross wages or net wages paid to the employee during the
25 pay period or any of the other information required to be provided on the itemized
26 wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision
27 (a).

28 (ii) Which deductions the employer made from gross wages to determine the net
wages paid to the employee during the pay period. Nothing in this subdivision
alters the ability of the employer to aggregate deductions consistent with the
requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor
contractor, as defined in subdivision (b) of Section 1682, the name and address of
the legal entity that secured the services of the employer during the pay period.

(iv) 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.

102. Due to Defendants' failure to pay Plaintiff and the Wage Statement Class all
minimum wages, all overtime wages, all rest period premiums, and meal period premiums, the
wage statements issued by Defendants do not indicate the correct amount of gross wages earned,
the total hours worked, the net wages earned, all applicable hourly rates in effect during the pay
period and the corresponding number of hours worked at each hourly rate. Thus, Defendant has
violated Labor Code §226(a)(1), (2), (5), and (9) with respect to Plaintiff and the Wage Statement
Class.

1 103. Defendants also knowingly and intentionally failed to pay Plaintiff and the Classes
2 minimum wages, overtime wages owed, meal period premiums, and rest periods premiums.
3 Moreover, Plaintiff and the Wage Statement Class also suffered legal “injury” for purposes of
4 Labor Code section 226(e) insofar as they were unable to readily and easily determine from the
5 wage statements themselves the information required to be set forth by Section 226(a), the
6 information provided by Defendants was confusing and inaccurate, Plaintiff and the Itemized
7 Wage Statement Class were unable to determine at all the total hours worked by the employee,
8 the gross wages earned, the net wages earned, and all applicable hourly rates in effect during the
9 pay period and the corresponding number of hours worked at each hourly rate by the employee
10 for the reasons discussed above.

11 104. Moreover, Defendants undeniably knew when paying that the wage statements it
12 issued did not include the gross wages earned, the net wages earned, and all applicable hourly
13 rates in effect during the pay period and the corresponding number of hours worked at each
14 hourly rate by the employee for the reasons discussed above. *See Garnett v. ADT LLC* 139 F.
15 Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant knowingly and
16 intentionally violated Labor Code § 226 because the “[d]efendant knew that it was not providing
17 total hours worked to plaintiff or other employees paid on commission” even though it believed
18 that employees paid solely on commission or commission and salary “are exempt and therefore
19 we do not record hours on a wage statement.”).

20 105. Defendants also failed to both comply with and create a policy that complied with
21 Labor Code § 226 prior to the filing of this lawsuit. Labor Code § 226(e)(3) provides that when
22 determining whether or not an employer’s violation of Labor Code § 226(a) was knowing and
23 intentional, “the relevant factor [is] whether the employer, prior to an alleged violation, has
24 adopted and is in compliance with a set of policies, procedures, and practices that fully comply
25 with this section.” Accordingly, Defendants’ conduct was knowing and intentional within the
26 meaning of Labor Code § 226(e).

27 106. An employee suffering injury as a result of a knowing and intentional failure by an
28 employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual

1 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
2 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
3 an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
4 reasonable attorneys' fees. See Lab. Code § 226(e). Plaintiff and the Wage Statement seek
5 penalties under Labor Code § 226(e) in amounts to be determined at trial, and are entitled to
6 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

7 **X.**

8 **SIXTH CAUSE OF ACTION**

9 **WAITING TIME PENALTIES PURSUANT TO LABOR CODE §§201-203**
10 **[Against all Defendants on behalf of Plaintiff and the Late Payment Subclass]**

11 107. Plaintiffs on behalf of herself and the Late Payment Subclass Class re-alleges and
12 incorporates by reference each and every allegation set forth in the preceding paragraphs.

13 108. Sections 201 and 202 of the California Labor Code requires Defendants to pay all
14 compensation due and owing to former employees in the Class during the actionable period for
15 this cause of action, at or around the time that their employment is terminated.

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

20 110. As described in detail above, Defendants failed to pay Plaintiff and the other Class
21 Members whose employment concluded all wages owed, including but not limited to minimum
22 wages, overtime wages, meal period premiums, and rest period premiums within the time
23 constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation. Thus,
24 as result of Defendants' faulty policies described above, Plaintiff and all Class Members' left
25 their employment with Defendants without being compensated for each and every hour worked at
26 the appropriate rate in violation of Labor Code §§ 201, 202, and 203.

27 111. At the time of Plaintiff, the other members of the Late Payment Class' separation
28 from Defendants, these sums were certain and known to Defendants.

112. As a result, Defendants are liable to Plaintiff and the Late Payment Subclass
Members who are no longer employed by Defendants for waiting time penalties amounting to

thirty (30) days wages for Plaintiff and each Class Member pursuant to California Labor Code § 203. See, e.g., DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties).

XI.
SEVENTH CAUSE OF ACTION
UNFAIR COMPETITION PURSUANT TO
BUSINESS & PROFESSIONS CODE § 17200
[Against all Defendants on behalf of Plaintiff, the Class, and all Subclasses except the
Itemized Wage Statement and Late Payment Subclasses]

113. Plaintiff, on behalf of herself, the Class, and the Subclasses except for the Itemized Wage Statement and Late Payment Subclasses realleges and incorporates by reference all previous paragraphs.

114. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of herself, on behalf of the general public, and on behalf of the Proposed Classes, bring this claim pursuant to Business & Professions Code § 17200, et seq. The conduct of Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and the Proposed Classes. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

115. Defendants have engaged in unlawful and unfair business practices that violate fundamental public policies of the state of California and the United States of America As a result of its unlawful and unfair business practices, Defendants have forced employees to work under substandard and unlawful conditions in an effort to gain a competitive advantage over law-abiding employers who comply with California’s Labor Code.

116. Defendants have violated statutes and public policies as alleged herein. Through the conduct alleged in this Complaint, Defendants have acted contrary to these public policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in violation of Business & Profession Code § 17200, et seq., depriving

1 Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and
2 privileges guaranteed to all employees under law.

3 117. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
4 violation of § 17200 et seq. of the Business & Professions Code.

5 118. Defendants, by engaging in the conduct herein alleged, either knew or in the
6 exercise of reasonable care, should have known that the conduct was unlawful. As such it is a
7 violation of § 17200 et seq. of the Business & Professions Code.

8 119. As a proximate result of the above-mentioned acts of Defendants, Plaintiff, the
9 Unfair Competition Class, others similarly situated, other businesses, and the general public have
10 been damaged in a sum as may be proven.

11 120. As part of their claims against Defendant, Plaintiffs seek not only the unpaid
12 wages, but also the market value of the loss of the statutory protections and the cost to other
13 employers of providing proper pay, breaks, reimbursement/tools, and wages for all hours worked.
14 *See e.g. Safeway, Inc. v. Sup. Ct.*, 238 Cal.App.4th 1138, 1162 (2015).

15 121. Unless restrained, Defendants will continue to engage in the unlawful conduct as
16 alleged above. Pursuant to the Business & Professions Code, this court should make such orders
17 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or
18 employment by Defendants, its agents, or employees, of any unlawful or deceptive practices
19 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution
20 and disgorgement of profits which may be necessary to restore Plaintiff and members of the
21 Proposed Classes the money Defendants have unlawfully failed to pay.

22 XII.

23 **SEVENTH CAUSE OF ACTION**

24 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS 25 FOR PENALTIES PURSUANT TO LABOR CODE § 2698, ET SEQ. FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 203, 204, 210, 226(a), 226(e), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, and IWC Wage Order No. 5-2001**

26 122. Plaintiff, on behalf of the State of California, realleges and incorporates by
27 reference all previous paragraphs.

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

9 124. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
10 § 2698, *et seq.* because of Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 210,
11 226(a), 226(e), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, and IWC
12 Wage Order No. 5-2001.

13 125. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and
14 all other aggrieved employees are entitled to penalties in an amount to be shown at the time of
15 trial subject to the following formula unless a civil penalty is already proscribed under the Labor
16 Code:

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

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

19 126. These penalties will be allocated 75% to the Labor Workforce Development
20 Agency and 25% to the affected employees. These penalties may be stacked separately for each
21 of Defendants violations of the California Labor Code. *See e.g. Kaanaana v. Barrett Business*
22 *Services, Inc.*, 29 Cal.App.5th 778, 808 (2018) (acknowledging that the employees could get
23 separate PAGA penalties for interrupted meal periods because interrupted meal periods violated
24 Labor Code sections 1194 and 512 and remanding to the trial court to determine the amount of
25 PAGA penalties to award); *Magadia vs. Wal-Mart*, No. 17-CV-00062-LHK, 2019 U.S. Dist.
26 LEXIS 91792 (N.D. Cal. May 31, 2019) (awarding three sets of PAGA penalties including
27 several during the same pay period); *Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM
28 (JCGx) 2012 U.S.Dist. LEXIS 86975, at *59, fn. 77 (C.D.Cal. June 22, 2012) (holding that

1 although the plaintiff did not seek stacked PAGA penalties, that “PAGA penalties can be
2 ‘stacked,’ i.e., multiple PAGA penalties can be assessed for the same pay period for different
3 Labor Code violations.”); accord *Schiller v. David’s Bridal, Inc.*, No. 1:10-cv-00616 AWI SKO)
4 2010 U.S. Dist. LEXIS 81128, at *17 (E.D. Cal. July 14, 2010); *Pulera v. F & B, Inc.*, No. 2:08-
5 cv-00275-MCE-DAD, 2008 U.S. Dist. LEXIS 72659, 2008 WL 3863489, at * 2-3 (E.D. Cal.
6 Aug. 19, 2008); *Smith v. Brinker Intern, Inc.*, No. C 10-0213 VRW, 2010 U.S. Dist. LEXIS
7 54110, 2010 WL 1838726, at * 2-6 (N.D. Cal. May 5, 2010).

8 127. In addition, Plaintiff and the aggrieved employees seek the default penalty
9 provided by Labor Code § 226.3. Labor Code § 226.3 provides that “[a]ny employer who violates
10 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred
11 fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars
12 (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to
13 provide the employee a wage deduction statement or fails to keep the required in subdivision (a)
14 of Section 226.”

15 128. 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
18 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
19 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
20 each failure to pay each employee, plus 25% of the amount unlawfully withheld.”

21 129. As a result of the faulty compensation policies and practices described in detail
22 above, the State of California is entitled to recover penalties under Labor Code § 210 through
23 PAGA.

24 130. Further, Labor Code § 558 imposes a penalty upon employers “who violates, or
25 causes to be violated...any provision regulating hours and days of work in any order of the
26 Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial
27 violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the
28 employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For

1 each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
2 period for which the employee was underpaid...” Based upon the above factual allegations
3 related to overtime, meal period, and rest period violations, Plaintiff and the aggrieved employees
4 are entitled to recover civil penalties under Labor Code § 558 and not any underpaid wages under
5 PAGA. *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019).

6 131. Labor Code § 1174 provides that each employer shall keep “payroll records
7 showing the hours worked daily by and the wages paid to...employees employed
8 at...establishments.” An employer who fails to maintain the records proscribed by Labor Code §
9 1174 is subject to a civil penalty of five hundred (\$500) dollars under Labor Code § 1174.5.

10 132. Labor Code § 1197.1 authorizes employees who are paid less than the minimum
11 fixed by an applicable state or local law, or by an order of the commission a civil penalty,
12 restitution of wages, and liquidate damages as follows: (1) for any initial violation that is
13 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
14 period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the
15 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
16 period for which the employee is underpaid regardless of whether the initial violation is
17 intentionally committed. As set forth above, Defendants failed to compensate Plaintiff and all
18 aggrieved employees for all overtime wages at the proper rates. Accordingly, through PAGA and
19 to the extent permitted by law Plaintiff and all aggrieved employees are entitled to recover civil
20 penalties for violations of Labor Code § 1197.1.

21 **RELIEF REQUESTED**

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

- 23 1. An Order that this action may proceed and be maintained as a Class Action on
24 behalf of the Classes;
- 25 2. For compensatory damages in the amount of unpaid wages not paid to Plaintiff and
26 the Classes and from four (4) years prior to the filing of this action and continuing into the present
27 as may be proven;

1 3. For compensatory damages in the amount of unpaid overtime wages not paid to
2 Plaintiff, each Class Member, and each Overtime Subclass Member from four (4) years prior to
3 the filing of this action and continuing into the present as may be proven;

4 4. For compensatory damages in the amount of Plaintiff, each Class Member, and
5 each Meal Period Subclass Members' unpaid meal period premiums from four (4) years prior to
6 the filing of this action and continuing into the present as may be proven;

7 5. For compensatory damages in the amount of Plaintiff, each Class Members, and
8 each Rest Period Subclass Members' unpaid rest period premiums from four (4) years prior to the
9 filing of this action and continuing into the present as may be proven;

10 6. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code
11 § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs
12 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not
13 exceeding an aggregate penalty of four thousand dollars (\$4,000) for the inaccurate itemized
14 wage statements issued to Plaintiff and the Wage Statement Class from March 29, 2020 and
15 continuing into the present;

16 7. For restitution for unfair competition pursuant to Business & Professions Code
17 § 17200 to Plaintiff and the Class, and the Subclasses except for the Itemized Wage Statement
18 Subclass and the Late Payment Subclass including disgorgement of profits, in an amount as may
19 be proven;

20 8. An order enjoining Defendants and its agents, servants, and employees, and all
21 persons acting under, in concert with, or for it from providing Plaintiff and the Proposed Class
22 Members proper compensation for minimum wages, overtime hours worked, meal period
23 premiums, rest period premiums, from failing to provide timely first meal periods within the first
24 five (5) hours of an employees shift, from failing to authorize and permit meal periods when
25 employees worked shifts of more than five (5) hours, but less than six (6) hours, to provide
26 second meal periods when employees worked shifts in excess of ten (10) hours, from failing to
27 permit second rest periods when employees work shifts in excess of six (6) hours, but less than
28 eight (8) hours, and third rest periods when employees worked shifts in excess of ten (10) hours;

1 9. For penalties under Labor Code § 2698, et seq. for Plaintiff and all aggrieved
2 employees because of Defendants' violation of Labor Code §§ 201, 202, 203, 204, 210, 226(a),
3 226(e), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, and IWC Wage
4 Order No. 5-2001

5 10. An award to Plaintiff and the Late Payment Subclass of waiting time penalties in
6 the amount of up to 30 days' wages;

7 11. An award of prejudgment and post judgment interest;

8 12. An award providing for payment of costs of suit;

9 13. An award of attorneys' fees; and

10 14. Such other and further relief as this Court may deem proper and just.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiffs hereby demands trial of her claims by jury to the extent authorized by law.

13 DATED: March 29, 2021

WINSTON LAW GROUP, P.C.

14
15 By: David Winston
16 DAVID S. WINSTON
17 Attorneys for Plaintiff, the Proposed
18 Classes, and the aggrieved employees
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Exhibit A

WINSTON LAW GROUP, P.C.

1180 S BEVERLY DR., SUITE 610 • LOS ANGELES, CA 90035 • (424) 288-4568

March 26, 2021

Via Online Filing with the LWDA & by Certified Mail to Defendants

Yin Management, Inc.
185 Butcher Road
Vacaville, CA 95687

Re: Cristina Contreras vs. Yin Management, Inc. and/or other dbas of the above identified entities and/or other names by which these entities and/or businesses are known as Yin Management, Inc. or Yin McDonald's - California Labor Code §2699 Penalties

Gentlepersons:

As you know, this firm represents Cristina Contreras (“Plaintiff” or “Ms. Contreras”) and a proposed group of current and former employees working for Defendant Yin Management, Inc. dba as Yin McDonald’s and/or other entities doing business as Yin Management, Inc. or Yin McDonald’s, (“Defendants”) in California for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226(e), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, and IWC Wage Order No. 5-2001.

- (1) all non-exempt, hourly employees who were employed by Yin Management, Inc. or its predecessor, merged or related entities¹ in California at any point from March 26, 2020 and continuing into the present. (“Non-Exempt Aggrieved Employees”);
- (2) all individuals who were employed by Yin Management, Inc. or its predecessor or merged entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from March 26, 2020 and continuing into the present. (“Overtime Aggrieved Employees”);
- (3) all individuals who were employed by Yin Management, Inc. or its predecessor, merged or related entities in California who worked one or more shifts of more than six (6) hours as a non-exempt, hourly employee or other similar position from March 26, 2020 and continuing into the present. (“First Meal Period Aggrieved Employees”);
- (4) all individuals who were employed by Yin Management, Inc. or its predecessor, merged

¹ Yin Management, Inc. for the purposes of the definition of aggrieved employees shall also include any companies doing business as Yin McDonald’s.

or related entities in California who worked one or more shifts of more than ten (10) hours as a non-exempt hourly employee or other similar position from March 26, 2020 and continuing into the present. (“Second Meal Period Aggrieved Employees”);

Collectively, aggrieved employee groups three (3) and four (4) may be referred to as the “Meal Period Aggrieved Employees.”

- (5) all individuals who were employed by Yin Management, Inc., or its predecessor, merged or related entities in California as a non-exempt hourly employee, or other similar position, who worked one or more shifts of more than four (4) hours in length or major fraction thereof from March 26, 2020 and continuing into the present. (“Rest Period Aggrieved Employee”);
- (6) all individuals who were employed by Yin Management, Inc. or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and whose employment concluded at any time between March 26, 2020 and continuing into the present. (“Late Payment Aggrieved Employees”);

These groups may all collectively be referred to herein as aggrieved employees and/or all aggrieved employees where appropriate. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.* We herein set forth some of the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client and all aggrieved employees.² Specifically, Plaintiff contends that Defendant required and/or suffered and permitted Plaintiff and the other aggrieved employees to perform work off-the-clock without compensation including, but not limited to, the time associated with temperature checks and additional off-the-clock time, failed to pay overtime wages, including, but not limited to, the time associated with temperature checks, misclassifying overtime hours as regular hours, and failing to pay for all hours worked, failing to provide timely first meal periods within the first five (5) hours of an employees shift and failing to authorize and permit aggrieved employees who worked more than five (5) hours, but less than six (6) hours a meal period, failing to provide a second meal period to aggrieved employees who worked more than ten (10) hours in a day, failed to provide a second rest period on shifts worked in excess of six (6) hours, but less than eight (8) hours, failed to provide a second rest period when aggrieved employees worked more than eight (8) hours, failed to provide a third rest period when aggrieved employees worked shifts in excess of ten (10) hours a day, failed to maintain accurate time records, failed to timely pay all wages owed during employment, and failed to timely pay all wages owed upon separation.

² See *Cardenas v. McLane FoodServices, Inc.* (C.D. Cal. Jul. 8, 2011) 796 F. Supp. 2d 1246, 1261; *Moua v. Int'l Bus. Machines Corp.* (N.D. Cal. Jan. 31, 2012) No. 5:10-CV-01070 EJD, 2012 WL 370570, at *5; *York v. Starbucks Corp.*, (C.D. Cal. Nov. 1, 2012) No. CV 08-07919 GAF PJWX, 2012 WL 10890355, at *4.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 1194, 1197, 1197.1, 1198 AND IWC WAGE ORDER NO. 5-2001

Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles “any employee receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage Order No. 5-2001 obligates employers to pay each employee minimum wages for all hours worked.

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

In addition, Labor Code § 1198 provides that “the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Defendants engaged in a common policy and practice since the onset of the COVID-19 pandemic of requiring Plaintiff and the aggrieved employees to undergo temperature checks and other medical screening while off-the-clock for which they did not receive compensation in violation of Labor Code §§ 1194 and 510. This include, but is not limited, to requiring Plaintiff and the other aggrieved employees to undergo temperature checks before the start of their shifts for which they did not receive compensation. Defendants maintained a written policy whereby Plaintiff and the other aggrieved employees were required to “agree to doing wellness/temperature checks in order to be at work.” The time associated with the temperature/wellness checks was not *de minimis* as due to the number of employees undergoing such checks at one time, there were typically 3-4 aggrieved employees in line at a time waiting to undergo such checks and it could take up to ten (10) minutes or more to complete the temperature check.

Defendants conduct in failing to pay Plaintiff and the aggrieved employees for such time was willful. The Department of Industrial Relations issued guidance on July 28, 2020 advising that employers that they must compensate employees for the time associated with medical checks before shifts (including temperature checks):

Medical Checks

9. Q: Must my employer pay me for time spent at my employer’s worksite completing certain medical checks (including temperature checks) before beginning a shift?

A: Yes. Employers must pay workers for all “hours worked,” including time that a worker is under the control of the employer. Employers that require their workers to complete a medical check in order to begin a shift, even if it is recommended under public health orders, must compensate workers for that time worked.

The term “hours worked” means the time during which a worker is subject to the control of an employer, and includes all the time the worker is suffered or permitted to work, whether or not required to do so. Under this definition, one way to determine whether time a worker spends performing a task is compensable—that is, whether it is time “worked”—is whether the employer exercised control over the worker by requiring the worker to perform that task.

If an employer requires that all workers perform a medical check (such as a temperature check) onsite before beginning a shift, the time completing the medical check, including any time waiting in line, would constitute time worked. This requirement applies even if such tasks were performed pursuant to a state or local public health guideline, because the check is done at the request, and thus under the control, of the employer.

10. Q: Is my employer required to pay workers for required medical checks (including temperature checks) at the employer’s worksite, even if the medical checks take very little time?

A: Yes, an employer is required to compensate for all hours worked in California even if a required task takes only a small amount of time. There is no “de minimis” rule under California law. Therefore, if an employer requires medical checks (such as a temperature check) at the employer’s worksite, the employer must compensate a worker for that time worked, even if the temperature check takes only a small amount of time to complete and record.

Defendants conduct in requiring Plaintiff and the other aggrieved employees to undergo temperature checks and wellness screening prior to the start of their shifts violated Labor Code §§ 1194, 1197, 1197.1, and 1198.

In addition to the foregoing, Defendants also failed to pay Plaintiff and the other aggrieved employees for all hours worked. When Plaintiff raised this issue with Defendants’ supervisory employees, she was advised among other specious claims that the time clocks did not work properly. This caused Plaintiff and the other aggrieved employees not to receive compensation for all hours worked in violation of Labor Code §§ 1194, 1197, 1197.1, and 1198. Defendants also failed to pay Plaintiff and the other aggrieved employees who worked a split shift, a split shift premium at the rate of one hour’s pay at the minimum wage in violation of Labor Code sections 1194, 1197, 1198, and IWC Wage Order No. 5-2001. Such a payment is considered a minimum wage as part of the workday under IWC Wage Order No. 5-2001, Section 4.

Defendant is also legally responsible for ensuring the accuracy of its time records and cannot rely upon time records that it knew were false and/or statements by employees as the

California Supreme Court explained. *Donohue v. Amn Servs.*, No. S253677, 2021 Cal. LEXIS 1294, at *45 (Feb. 25, 2021) (“It is the employer's duty to maintain accurate time records” and that the employer could not rely upon certifications from employees where the information provided to the employees was inaccurate and/or incomplete); *accord Feaver v. Kaiser Found. Health Plan, Inc.*, No. 15-cv-00890-EMC, 2016 U.S. Dist. LEXIS 9778, at *8 (N.D. Cal. Jan. 27, 2016) (conditionally certifying a class under the Fair Labor Standards Act where the employees could show that they received and/or sent emails off-the-clock despite the fact that the employer had a policy requiring all time to be recorded.); *Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018). As such Defendants were obligated to maintain accurate time records and their failure to do so result in the underpayment of Plaintiff and the Non-Exempt Aggrieved Employees.

Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution of wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. As set forth above, Defendant failed to compensate Plaintiff and all aggrieved employees for all overtime wages at the proper rates. Accordingly, through PAGA and to the extent permitted by law Plaintiff and all aggrieved employees are entitled to recover civil penalties for violations of Labor Code § 1197.1.

DEFENDANT VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 510, 558, 1197, 1197.1, and 1198 AND WAGE ORDER NO. 5-2001

Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) 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 no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor Code § 1194, Plaintiff and the other aggrieved employees could not agree to work for a lesser wage.

In addition, Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful.

Similarly, Labor Code § 1198 provides that “the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those

fixed by the order or under conditions of labor prohibited by the order is unlawful.”

As discussed in detail above, Defendants engaged in a common policy and practice since the onset of the COVID-19 pandemic of requiring Plaintiff and the aggrieved employees to undergo temperature checks and other medical screening while off-the-clock for which they did not receive compensation in violation of Labor Code §§ 1194 and 510. This include, but is not limited, to requiring Plaintiff and the other aggrieved employees to undergo temperature checks before the start of their shifts for which they did not receive compensation. Defendants maintained a written policy whereby Plaintiff and the other aggrieved employees were required to “agree to doing wellness/temperature checks in order to be at work.” The time associated with the temperature/wellness checks was not *de minimis* as due to the number of employees undergoing such checks at one time, there were typically 3-4 aggrieved employees in line at a time waiting to undergo such checks and it could take up to ten (10) minutes or more to complete the temperature check.

Since Plaintiff and many of the aggrieved employees had already worked shifts of eight (8) hours at the time that they were required to work while off-the-clock, the time associated with temperature checks either included overtime hours for which they received no compensation or resulted in the misclassification of overtime hours as regular hours leading to the underpayment of wages in violation of Labor Code § 510.

Separate and independent of the foregoing, Defendants also failed to pay Plaintiff and the other aggrieved employees for all hours worked. When Plaintiff raised this issue with Defendants’ supervisory employees, she was advised among other specious claims that the time clocks did not work properly. This caused Plaintiff and the other aggrieved employees not to receive compensation for all hours worked and/or at the proper rates including causing the misclassification of overtime hours as regular hours. As a result, Plaintiff and the aggrieved employees did not receive overtime pay at the rate of one-and-one half hours worked for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week.

Defendants also engaged in a common policy and practice of failing to pay aggrieved employees for all hours worked at the proper rates of pay required by Labor Code § 510 and IWC Wage Order No. 5-2001 when employees worked split shifts within the same day. Instead, Defendants regularly and consistently classified overtime hours on split shifts as regular hours and/or failed to provide compensation for such time at all in violation of Labor Code § 510.

Based upon the foregoing, Defendant violated Labor Code § 510 with respect to Plaintiff and all aggrieved employees. Employees, including Plaintiff and the other aggrieved employees who experience a violation of Labor Code § 510 may pursue PAGA penalties under Labor Code § 558. Labor Code § 558 imposes a penalty upon employers “who violates, or causes to be

violated...any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee.” For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages.

Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution of wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. As set forth above, Defendant failed to compensate Plaintiff and all aggrieved employees for all overtime wages at the proper rates. Accordingly, through PAGA and to the extent permitted by law Plaintiff and all aggrieved employees are entitled to recover civil penalties for violations of Labor Code § 1197.1.

DEFENDANTS VIOLATED AND CONTINUE TO VIOLATE LABOR CODE §§ 226.7, 512, 558, and 1198 AS WELL AS IWC WAGE ORDER NO. 5-2001

Labor Code § 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period within the first five (5) hours of work. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512, an employer may not employ an employee for a work period of more than ten (10) hours, without providing the employee with a second meal period of not less than thirty (30) minutes. Moreover, the second meal period may not be waived if the total hours worked is more than twelve (12) hours.

Similarly, IWC Wage Order No. 5-2001 prohibits an employer from “employ[ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order No. 5-2001 further obligates employers to provide an employee to “pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided. Labor Code section 1198 prohibits an employer from requiring an employee to work beyond the “standard conditions of labor fixed by the commission...or under conditions of labor prohibited by the order.”

Under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the amount of meal time called for under the law (as specified in the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

Brinker Rest. Corp. v. Sup. Ct., 53 Cal.4th 1004, 1033 (2012) [emphasis added].

Following *Brinker*, the Courts of Appeal have confirmed that liability for meal period violations arise when an employer adopts a uniform policy that fails to provide off-duty breaks. For example, in *Faulkinbury vs. Boyd & Associates, Inc.*, the California Court of Appeal explained: “the employer’s liability arises by adopting a uniform policy that violates the wage and hour laws. Whether or not the employee was able to take the required break goes to damages” *Ibid.* (citations omitted); see also *Benton v. Telecom Network Specialists, Inc.*, 220 Cal. App. 4th 701, 728 (2013).

In *Alberts v. Aurora Behavioral Health Care*, 241 Cal. App. 4th 388, 410 (2015), the California Court of Appeal emphatically held that a meal period policy must specifically advise employees of the proper timing of meal periods. In *Alberts*, the meal break policy stated employees are entitled to “an unpaid thirty-minute break for a meal period, approximately half way between the beginning and ending of the employee’s shift.” *Id.* The court, in accordance with *Brinker*, found the defendant’s meal break policy violated California law because it did not specify “that a meal break be provided during the first five hours of an employee’s shift.” *Id.* (citing *Brinker*, *supra*, 53 Cal.4th at 1048–1049.³ The California Supreme Court recently held in *Donohue v. Amn Servs.*, No. S253677, 2021 Cal. LEXIS 1294, at *30 (Feb. 25, 2021) that “time records showing noncompliant meal periods raise a rebuttable presumption of meal period violations.” In order to defeat this presumption, an employer must show not only that it advised employees “of his or her legal right to take a meal period and has knowingly and voluntarily decided not to take the meal period.” *Id.* at *33 This presumption applies not only to missed meal periods, but also “to records

³ Assuming *arguendo* Defendants had a compliant meal period—which it did not—even a formal written policy cannot save an employer where an employer or its supervisory employees interfered with meal periods or created a culture which makes taking a 30-minute break during the day infeasible. (*Chand v. Burlington Coat Factory of California, LLC*, No. CV F 13-2008 LJO JLT, 2014 WL 726837, at *5 (E.D. Cal. Feb. 24, 2014) (“The wage orders and governing statute do not countenance an employer’s exerting coercion against the taking of, creating incentives to forego, or otherwise encouraging the skipping of legally protected breaks.”) (citing *Brinker*, 53 Cal.4th at 1040); accord *Boyd v. Bank of Am. Corp.* C.D. Cal. May 6, 2015) No. SA CV 13–0056–DOC, 2015 WL 3650207, at *31; *Ricaldai v. U.S. Investigations Servs. LLC* (C.D. Cal. 2012) 878 F. Supp. 2d 1038, 1045; *Campbell v. Vitran Express Inc.* (C.D. Cal. Nov. 12, 2015) No. CV 11-5029 RGK (SHX), 2015 WL 7176110, at *8.)

showing short and delayed meal periods as well.” *Id.* at *34.

Moreover, an employee who is not advised of their to receive proper meal periods cannot waive their meal period. *Brinker* 53 Cal. 4th at 1033 (“No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it.”); *Bradley*, 211 Cal.App.4th at 1151 (“an employer is obligated to provide the rest and meal breaks, and if an employer does not do so, the fact that an employee did not take the break cannot reasonably be considered a waiver.”). Similarly, recently in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018), the California Court of Appeal affirmed a judgment in favor of employees who had signed first meal period waivers and did not take meal periods by the 5th hour when they were scheduled to work less than six (6) hours, but ultimately worked 6.01 hours or more.

Here, Defendants failed to authorize and permit Plaintiff and the other aggrieved employees to receive lawful meal periods, failed to advise them of their right to such meal periods, failed to authorize and permit them to take timely first meal periods, failed and authorized to permit them to take a second meal period when working a shift in excess of ten (10) hours. Defendants’ meal period policies and practices also disincentivized and discouraged Plaintiff and the other aggrieved employees from taking timely first meal periods within the first five (5) hours of their shift and/or second meal periods. Defendants’ understaffing policies and practices also pressured, coerced, and forced employees to take untimely first meal periods and/or forgo meal periods due to a lack of sufficient coverage. Defendants also failed to authorize and permit aggrieved employees who worked more than five (5) hours, but less than six (6) hours to take a meal period.

Defendants also failed to pay Plaintiff and the other Meal Period Aggrieved Employees’ meal period premiums for each workday that the employees did not receive a compliant meal period and/or at the proper rate. Labor Code § 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”).

Similarly, IWC Wage Order No. 5-2001, prohibits an employer from “employ[ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order No. 5-2001 further obligate employers to provide an employee to “pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided. Accordingly, for each day that Plaintiff and all aggrieved employees did not receive compliant meal periods, they are entitled to receive meal period premiums pursuant to Labor Code § 226.7 and IWC Wage Order No. 5-2001. Unfortunately, Plaintiff and the other aggrieved employees were not compensated with one (1) hours’ worth of pay at their regular rate of compensation when they were not provided with a compliant rest period in violation of Labor Code § 226.7 and IWC Wage Order No. 5-2001.

Based upon the foregoing, Defendants violated Labor Code §§ 226.7, 512, 558, and 1198 as well as IWC Wage Order No. 5-2001 with respect to Plaintiff and all Meal Period Aggrieved Employees. As such, Plaintiff and the Meal Period Aggrieved Employees are entitled to penalties under Labor Code § 558. Labor Code § 558 imposes a penalty upon employers “who violates, or causes to be violated...any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee.” For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages.

DEFENDANTS VIOLATED AND CONTINUE TO VIOLATE LABOR CODE § 226.7 AND IWC WAGE ORDER NO. 5-2001

Labor Code § 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage Order No. 5-2001, an employer must authorize and permit all employees to take ten (10) minute duty free rest periods for every major fraction of four hours worked.

The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

Brinker Rest. Corp. v. Sup. Ct., 53 Cal.4th 1004, 1033 (2012) (emphasis added).

Pursuant to Labor Code § 226.7 and IWC Wage Order No. 5-2001, Defendant failed to provide Plaintiff and all Rest Period Aggrieved Employees with rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked. Instead, Defendant regularly and consistently required aggrieved employees to forgo a second rest period when they worked shifts in excess of six (6) hours—including, but not limited to when the aggrieved employees worked shifts in excess of six (6) hours, but less than eight (8) hours—and failed to authorize and permit employees who worked more than ten (10) hours a third rest period.

Based upon the foregoing, Defendant violated Labor Code § 226.7 and 1198 as well as IWC Wage Order No. 5-2001 with respect to Plaintiff and all aggrieved employees. Employees, including Plaintiff and the other aggrieved employees who experienced a violation of Labor Code § 226.7 may pursue PAGA penalties under Labor Code § 558. Labor Code § 558 imposes a penalty upon employers “who violates, or causes to be violated...any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected employee.” For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages.

DEFENDANTS VIOLATED AND CONTINUE TO VIOLATE LABOR CODE §§ 226(a), 226(e) and 226.3

As to Plaintiff and all aggrieved employees, Defendant also failed to provide accurate itemized wage statements in accordance with Labor Code § 226. Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

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

Similarly, Labor Code § 226(e) provides:

- (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual

damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

(2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682,

Due to Defendants' failure to pay Plaintiff and all aggrieved employees all minimum wages, overtime wages, meal period premiums, and rest period premiums, the wage statements issued by Defendants do not indicate the correct amount of gross wages earned, the total hours worked, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendants have violated Labor Code §226(a)(1), (2), (5), and (9) with respect to Plaintiff and all aggrieved employees.

Plaintiff and the aggrieved employees will prevail on their claim for PAGA penalties under Labor Code § 226(a). *See Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017) ("hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not have to satisfy the 'injury' and 'knowing and intentional' requirements of section 226(e)(1)."); *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667, 679 (2018) (finding that the "requirements for a section 226(e) claim do not apply to a PAGA claim for a violation of section 226(a).").

In addition to violating Labor Code § 226(a), Defendants also knowingly and intentionally failed to pay Plaintiff and all aggrieved employees minimum wages, overtime wages, meal period premiums, and rest periods premiums including at the proper rates. Moreover, Plaintiff and all aggrieved employees also suffered legal "injury" for purposes of Labor Code section 226(e) insofar as they were unable to readily and easily determine from the wage statements themselves the information required to be set forth by Section 226(a), the information provided by Defendants was

confusing and inaccurate. In addition, Plaintiff and the aggrieved employees were unable to determine at all the total hours worked by the employee, the gross wages earned, 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 by the employee for the reasons discussed above. Such conduct can permit the imposition of default PAGA penalties under Labor Code section 2699(f). *See e.g. Gola vs. University of San Francisco*, San Francisco County Superior Court Case No. CGC-18-565018.

Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As explained in detail above, Defendants failed to provide Plaintiff and the other aggrieved employees with accurate itemized wage statements. Accordingly, Plaintiff and the other aggrieved employees may also recover Labor Code § 226.3 penalties for Defendants’ violations of Labor Code § 226(a).

DEFENDANTS VIOLATED AND CONTINUE TO VIOLATE LABOR CODE §§ 204 AND 210

Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Defendant pays Plaintiff and all aggrieved employees on a bi-weekly basis

Due to Defendant’s failure to pay Plaintiff and all aggrieved employees all minimum wages, all overtime wages, split shift premiums, meal period premiums, and rest period premiums for the reasons discussed above, Defendants failed to timely pay Plaintiff and all aggrieved employees all wages owed within seven (7) days of the close of the payroll period in accordance with Labor Code § 204(d) on a regular and consistent basis.

Labor Code § 210 provides that “in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty compensation policies and practices described in detail above, Plaintiff and the other aggrieved employees are entitled to recover penalties under Labor Code § 210 through PAGA. *See Amaral v. Cintas Corp. No. 2, 163 Cal.App.4th 1157, 1209 (2008)* (affirming an award of Labor Code section 210 penalties under PAGA due to the employer’s failure to timely pay wages at the

proper rate in accordance with a local wage ordinance).

DEFENDANTS VIOLATED AND CONTINUE TO VIOLATE LABOR CODE §§ 201-203

Under Labor Code §§ 201-202, an employer must provide an employee wages at the time or discharge or within up to seventy-two (72) hours of their resignation. Labor Code § 203 provides “if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

As described in detail above, Defendant failed to pay Plaintiff and other aggrieved employees whose employment concluded all wages owed, including but not limited to minimum wages, split shift premiums, overtime wages, meal period premiums, and rest period premiums within the time constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation. Thus, as result of Defendants’ faulty policies described above, Plaintiff and all the Late Payment Aggrieved Employees left their employment with Defendants without being compensated for each and every hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, and 203.

DEFENDANTS VIOLATED AND CONTINUES TO VIOLATE LABOR CODE §§ 1174 and 1174.5

Labor Code § 1174 provides that each employer shall keep “payroll records showing the hours worked daily by and the wages paid to...employees employed at...establishments.” An employer who fails to maintain the records proscribed by Labor Code § 1174 is subject to a civil penalty of five hundred (\$500) dollars under Labor Code § 1174.5.

As previously explained, Defendants failed to maintain accurate records of the total hours worked by employees (including, but not limited to, the time associated with temperature/wellness checks) sent to Plaintiff and the other aggrieved employees while off-the-clock on a regular and consistent basis. Thus, Defendants violated Labor Code §§ 1174 and 1174.5.

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency of our intent to pursue a civil class action lawsuit and representative action against Defendants.

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters where possible and beneficial to the aggrieved employees and all putative class members. If Defendant is interested in attempting to resolve this matter on a representative basis, please contact

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us or have any Counsel you choose to retain contact me so that we can discuss an informal discovery plan and the possibility of early mediation on or before **April 21, 2021**.

Very truly yours,

WINSTON LAW GROUP, P.C.

By: *David Winston*
DAVID S. WINSTON

Certified Mail #: 7020 1810 0000 4230 5209