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11 situated

**ENDORSED  
FILED  
ALAMEDA COUNTY**

**JUN 02 2021**

**CLERK OF THE SUPERIOR COURT**

**E. Gallagher**

**RG21100705**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA**

9 MAGGIE CHONG, an individual, individually,  
10 on behalf of the general public, and all others  
11 similarly situated,

12 Plaintiff,

13 v.

14 JINGLEBELLS LLC, a California company;  
15 JINGLE BELLS ENTERPRISES, LLC, a  
16 California company; JINGLEBELLS HOLDING  
17 LLC, a California company; and DOES 1 through  
18 100, inclusive,

19 Defendants.

**CLASS ACTION COMPLAINT**

**1. FAILURE TO PAY MEAL AND  
REST PERIOD COMPENSATION  
(CAL. LAB. CODE §§ 226.7, 512)**

**2. FAILURE TO PAY  
COMPENSATION FOR ALL HOURS  
WORKED AND MINIMUM WAGE  
VIOLATIONS (CAL. LAB. CODE §§  
1194, 1194.2, 1197)**

**3. FAILURE TO PAY OVERTIME  
COMPENSATION (CAL. LAB. CODE  
§§510,1194)**

**4. WAITING TIME PENALTIES  
(CAL. LAB. CODE § 203)**

**5. FAILURE TO PROVIDE  
ACCURATE ITEMIZED  
STATEMENTS (CAL. LAB. CODE §  
226, IWC Wage Order)**

**6. FAILURE TO PAY ALL  
ACCRUED SICK DAYS (CAL. LAB.  
CODE § 233)**

**7. UNFAIR BUSINESS PRACTICES  
(CALIFORNIA BUSINESS AND  
PROFESSIONS CODE § 17200, ET  
SEQ.)**

**8. CIVIL PENALTIES UNDER  
PRIVATE ATTORNEYS GENERAL**

**DEMAND FOR JURY TRIAL**

Plaintiff MAGGIE CHONG (“PLAINTIFF”) individually, and on behalf of herself, all others similarly situated, and the general public, complain and allege on information and belief the following against JINGLEBELLS LLC, a California company; JINGLE BELLS ENTERPRISES, LLC, a California company; JINGLEBELLS HOLDING LLC, a California company; a corporation (collectively, “JINGLEBELLS”) and DOES 1 through 100, inclusive, (collectively and hereinafter to be referred to as “DEFENDANTS”).

**INTRODUCTION**

1. This is a class action lawsuit being brought on behalf of all non-exempt employees who work(ed) for DEFENDANTS in California. PLAINTIFF and members of the PLAINTIFF CLASS (defined below) work(ed) at DEFENDANTS’ various restaurant locations in California. PLAINTIFF and members of the PLAINTIFF CLASS have been subjected to numerous wage and hour violations which are the result of systemic policies and procedures implemented by DEFENDANTS.

2. DEFENDANTS’ actions give rise to violations of state wage and hour laws, including laws mandating the payment of wages. Through this lawsuit, PLAINTIFF, and others similarly situated, seek to recover all wages which they and other employees of DEFENDANTS rightfully earned but have been denied, as well as any penalties associated with DEFENDANTS’ rampant and willful violations of the law, interest on the unpaid wage amounts, and attorneys’ fees.

**JURISDICTION AND VENUE**

3. The Court has personal jurisdiction over DEFENDANTS because they are residents and/or doing business in the state of California.

4. Venue is proper in this Court in accordance with Section 395(a) of the California Code of Civil Procedure because DEFENDANTS, or some of them, reside and/or are doing

1 business in Alameda County. Moreover, DEFENDANTS employed PLAINTIFF and others  
2 similarly situated in Alameda County and the harms occurred in Alameda County.

3 **PARTIES**

4 5. PLAINTIFF MAGGIE CHONG is a resident of Alameda County, California.

5 6. PLAINTIFF is informed and believe and based thereon alleges that  
6 DEFENDANTS', corporations which, at all times relevant herein, employed California persons in  
7 or near the County of Alameda, State of California.

8 7. Section 5 of the applicable Industrial Wage Commission ("IWC") Order No. 5-  
9 2001, which governs persons employed in restaurants, defines an "employer" as any "person as  
10 defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any  
11 other person, employs or exercises control over the wages, hours or working conditions of any  
12 person." PLAINTIFF, and others similarly situated including the PLAINTIFF CLASS (defined  
13 below), are informed and believe and on this basis allege that DEFENDANTS employ or exercise  
14 control over the wages, hours or working conditions of PLAINTIFF and the rest of the PLAINTIFF  
15 CLASS defined below.

16 8. PLAINTIFF is informed and believes and based thereon alleges that she was  
17 employed by DEFENDANTS from in or around 2016 through, and including, the present.

18 9. Whenever in this Complaint reference is made to DEFENDANTS, such allegations  
19 shall be deemed to mean the acts of all defendants acting individually, jointly, and/or severally.

20 10. PLAINTIFF is informed and believes, and on that basis alleges, that  
21 DEFENDANTS and DOES 1 through 100 constitute an integrated enterprise based on their  
22 interrelation of operations, common management, centralized control of labor relations, and  
23 common ownership and financial control. Specifically, PLAINTIFF is informed and believes and  
24 thereon alleges that: each of the DEFENDANTS operate according to uniform policies and  
25 procedures for controlling the work of PLAINTIFF and the PLAINTIFF CLASS (described  
26 below); DEFENDANTS operate as an interrelated operation; DEFENDANTS are operated by a  
27 small group of shared officers and directors; and each of the DEFENDANTS share and control the  
28 management of the premises where PLAINTIFF and members of the PLAINTIFF CLASS work.

1 Thus, adherence to the fiction of the separate existence of each defendant here would permit abuse,  
2 sanction, fraud and promote injustice.

3 11. The true names and capacities of defendants named herein as DOES 1-100,  
4 inclusive, whether individual, corporate, associate, or otherwise, are unknown to PLAINTIFF, who  
5 therefore sue these defendants by such fictitious names. PLAINTIFF will amend this Complaint  
6 to show true names and capacities of these defendants when they are ascertained.

7 12. At all times mentioned herein, DEFENDANTS, and each of them, were the agents,  
8 representatives, employees, successors, assigns, parents, subsidiaries, and/or affiliates, each of the  
9 other, and at all times pertinent hereto were acting within the course and scope of their authority as  
10 such agents, representatives, employees, successors, assigns, parents, subsidiaries and/or affiliates.  
11 PLAINTIFF also alleges that DEFENDANTS were, at all times relevant hereto, the alter egos of  
12 each other. Wherever reference is made to DEFENDANTS herein, it is intended to include all of  
13 the named DEFENDANTS as well as the DOE defendants. Each of the fictitiously named DOE  
14 defendants is responsible for the occurrences herein alleged and proximately caused PLAINTIFF  
15 damages as well as damages of members of the PLAINTIFF CLASS (described below).

16 **CLASS ACTION ALLEGATIONS**

17 13. PLAINTIFF brings this action on behalf of herself, and all others similarly situated  
18 as a class action pursuant to California Code of Civil Procedure section 382. The class that  
19 PLAINTIFF seeks to represent ("PLAINTIFF CLASS") is composed and defined as follows:

20 **All California persons who are or have been non-exempt employees of DEFENDANTS since**  
21 **four (4) years prior to the filing of the initial Complaint until the entry of final judgment in**  
22 **this action (the "CLASS PERIOD").**

23 14. There exists a well-defined community of interests among the PLAINTIFF CLASS  
24 with respect to the claims asserted herein, and the PLAINTIFF CLASS is readily ascertainable for  
25 the following reasons:

26 a. Numerosity and Ascertainability: The members of the class are so numerous that  
27 joinder of all members would be unfeasible and not practicable. While PLAINTIFF does not know  
28 the exact number and identity of all Class members, PLAINTIFF alleges, on information and belief,

1 that the members of the PLAINTIFF CLASS exceed one hundred (100) persons. PLAINTIFF  
2 alleges, on information and belief, that the identity of such membership is readily ascertainable via  
3 inspection of the personnel records and other documents maintained by DEFENDANTS;

4 b. Typicality: The claims of PLAINTIFF pled as class action claims are typical of the  
5 claims of all members of the class as they arise out of the same course of conduct and are predicated  
6 on the same violation(s) of the law. PLAINTIFF and all members of the PLAINTIFF CLASS  
7 sustained injuries and damages arising out of DEFENDANTS' common course of conduct in  
8 violation of laws as complained of herein.

9 c. Commonality: Common issues of fact and law predominate in this action over any  
10 allegedly individual issues. The claims of PLAINTIFF and the PLAINTIFF CLASS members  
11 arise from the same events or patterns or practices and are based on the same legal theories.  
12 Specially, the following issues of fact and law, without limitation, predominate and make this  
13 action superior to individual actions:

14 i. Whether DEFENDANTS failed to pay the required meal and rest break  
15 premiums to PLAINTIFF and members of the PLAINTIFF CLASS for all missed meal and rest  
16 breaks.

17 ii. Whether DEFENDANTS denied PLAINTIFF and members of the  
18 PLAINTIFF CLASS all of the wages to which they are entitled pursuant to the California Labor  
19 Code, California IWC Wage Orders, and all other applicable employment laws and regulations;

20 iii. Whether DEFENDANTS have failed to properly provide accurate itemized  
21 wage statements as well as keep accurate records as required by California Labor Code section 226  
22 and the applicable Industrial Welfare Commission's ("IWC") Wage Order;

23 iv. Whether DEFENDANTS owe PLAINTIFF and members of the  
24 PLAINTIFF CLASS waiting time penalties pursuant to California Labor Code section 203;

25 v. Whether DEFENDANTS violated California Labor Code sections 246 and  
26 233 by failing to provide all sick days earned in a timely manner;

27 vi. Whether DEFENDANTS engaged in unfair business practices under section  
28 17200, *et. seq* of the California Business and Professions Code;

1                   vii.       The effect upon and the extent of damages suffered by PLAINTIFF and  
2 members of the PLAINTIFF CLASS and the appropriate amount of compensation and required  
3 restitution.

4           d.       Adequacy:    PLAINTIFF and the PLAINTIFF CLASS all worked for  
5 DEFENDANTS, share the same interests, and were subjected to DEFENDANTS' unlawful policy  
6 and practice of failing to provide meal and rest breaks and failing to adequately compensate  
7 employees for all time worked. PLAINTIFF and members of the PLAINTIFF CLASS do not have  
8 any conflicts of interest with other members. Given the significance of the deprivation of their  
9 rights, PLAINTIFF will prosecute this action vicariously on behalf of the PLAINTIFF CLASS.  
10 She has retained competent and experienced legal counsel who specialize in employment, wage  
11 and hour, and class action litigation to represent themselves and the proposed PLAINTIFF CLASS;

12           e.       Superiority of Class Action: The disposition of PLAINTIFF and the proposed  
13 PLAINTIFF CLASS members' claims in a class action will provide substantial benefits to both the  
14 parties and the Court. The nature of this action and the nature of the laws available to the  
15 PLAINTIFF CLASS make use of the class action format a particularly efficient and appropriate  
16 procedure to afford relief to the PLAINTIFF CLASS. Further, this case involves a corporate  
17 employer and a large number of individual employees possessing claims with common issues of  
18 law and fact. If each employee were required to file an individual lawsuit, the corporate defendant  
19 would necessarily gain an unconscionable advantage since each defendant would be able to exploit  
20 and overwhelm the limited resources of each individual plaintiff with its vastly superior financial  
21 and legal resources. Requiring each class member to pursue an individual remedy would also  
22 discourage the assertion of lawful claims by employees who would be disinclined to pursue an  
23 action against their present and/or former employer for an appreciable and justifiable fear of  
24 retaliation and permanent damage to their careers at present and/or subsequent employment. Proof  
25 of a common business practice or factual pattern, of which the named PLAINTIFF experienced, is  
26 representative of the class mentioned herein and will establish the right of each of the members of  
27 the class to recovery on the claims alleged herein.

28           The prosecution of separate actions by the individual class members, even if possible,

1 would create: (a) a substantial risk of inconvenient or varying verdicts or adjudications with respect  
2 to the individual class members against the defendants herein; and/or (b) legal determinations with  
3 respect to individual class members which would, as a practical matter, be dispositive of the other  
4 class members' claims who are not parties to the adjudications and/or would substantially impair  
5 or impede the ability of class members to protect their interests. Further, the claims of the  
6 individual members of the class are not sufficiently large to warrant vigorous individual  
7 prosecution considering all of the concomitant costs and expenses attending thereto.

8 15. PLAINTIFF is unaware of any difficulties that are likely to be encountered in the  
9 management of this action that would preclude its maintenance as a class action.

10 16. In addition, pursuant to California Labor Code §2699.3, on April 21, 2021,  
11 PLAINTIFF took the initiative to notify the Labor and Workforce Development Agency  
12 ("LWDA") and DEFENDANTS of these violations, including the facts and theories to support the  
13 violations. To date, more than 65 days have passed and the LWDA has not notified Plaintiff  
14 whether it will investigate the violations detailed in her letter. Accordingly, PLAINTIFF has  
15 followed the appropriate steps to enable her to pursue civil penalties pursuant to California Labor  
16 Code §2699 for DEFENDANTS' California Labor Law violations and violation of California  
17 Business & Professions Code §§17200, 17500 *et seq.*, as alleged herein.

18 **FACTS COMMON TO ALL CAUSES OF ACTION**

19 17. PLAINTIFF and members of the PLAINTIFF CLASS are current or former non-  
20 exempt employees of DEFENDANTS. PLAINTIFF and members of the PLAINTIFF CLASS  
21 have been subjected to a variety of wage and hour violations during their employment with  
22 DEFENDANTS.

23 18. DEFENDANTS furthermore did not pay for all wages due, as the paychecks that  
24 PLAINTIFF and members of the PLAINTIFF CLASS were provided with did not account for all  
25 hours worked. This is because, amongst other unlawful practices, DEFENDANTS did not provide  
26 proper meal and rest breaks to PLAINTIFF and members of the PLAINTIFF CLASS, did not pay  
27 the appropriate missed meal and rest break premiums, and, thus, failed to pay PLAINTIFF and  
28 members of the PLAINTIFF CLASS all wages owed.

1           19. DEFENDANTS also provided inaccurate wage statements to PLAINTIFF and  
2 members of the PLAINTIFF CLASS. The wage statements are inaccurate with respect to the actual  
3 hours worked by employees, the gross wages earned, and the net wages earned, among other  
4 deficiencies. This is due to DEFENDANTS' failure to pay missed meal and rest period premiums,  
5 for failure to pay for all time worked, including overtime premiums, and thus causing PLAINTIFF  
6 and members of the PLAINTIFF CLASS to receive inaccurate wage statements that did not reflect  
7 all earned wages.

8           20. The aforementioned acts constitute unfair and unlawful practices as defined by law  
9 pursuant to California Business and Professions Code section 17200, et seq. By virtue of this  
10 action, PLAINTIFF seeks to restore all wages to PLAINTIFF and members of the PLAINTIFF  
11 CLASS that DEFENDANTS wrongfully took or withheld.

12           21. DEFENDANTS' violations of the law were willful and done according to  
13 DEFENDANTS' established policies and procedures applicable to PLAINTIFF and all members  
14 of the PLAINTIFF CLASS.

15           22. As a direct and proximate result of DEFENDANTS' Labor Code violations and  
16 pursuant to California Labor Code §2699 ("The Private Attorneys General Act, or 'PAGA'"),  
17 PLAINTIFF and members of the PLAINTIFF CLASS are entitled to recover civil penalties in an  
18 amount to be established at trial. Under Labor Code §2699(i), PLAINTIFF and members of the  
19 PLAINTIFF CLASS shall be paid twenty-five percent of such penalties, while the remaining  
20 seventy-five percent shall be paid to the LWDA. As a further direct and proximate result of  
21 DEFENDANTS' unlawful conduct as set forth herein, PLAINTIFF is also entitled to recover  
22 attorneys' fees and litigation costs pursuant to California Labor Code §2699(g) and/or California  
23 Code of Civil Procedure §1021.5.

24           23. PLAINTIFF has complied with the procedures for bringing suit specified in  
25 California Labor Code §2699.3. On April 21, 2021, PLAINTIFF provided notice to LWDA and to  
26 DEFENDANTS of the specific provisions of the California Labor Code alleged to have been  
27 violated, including the facts and theories to support those violations. Notice was provided to the  
28 LWDA via its online filing system and to DEFENDANTS via certified mail.



24. More than 65 days have elapsed since PLAINTIFF provided notice as required under the statute, and Plaintiff's counsel has received no response from LWDA stating its intentions to prosecute PLAINTIFF's PAGA claims. PLAINTIFF has thus adequately exhausted her PAGA administrative remedies. (See *Waisben v. UBS Financial Services, Inc.*, 2008 U.S. Dist. LEXIS 21727, 2008 WL 753896, 1 (N.D. Cal. March 19, 2008); *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4<sup>th</sup> 1157, 1199, 1200, 78 Cal. Rptr. 3d 572 (2008) (relation back doctrine protects plaintiff's PAGA claims from dismissal so long as PAGA claims are filed before expiration of the one-year period)).

**FIRST CAUSE OF ACTION**

## FAILURE TO PAY MEAL AND REST PERIOD COMPENSATION

**(CALIFORNIA LABOR CODE §§226.7 and 512)**

By PLAINTIFF in her individual capacity and in her capacity as representative of all similarly situated members of the PLAINTIFF CLASS against DEFENDANTS.

25. PLAINTIFF realleges and incorporates by reference each and every allegation contained in the foregoing paragraphs as though fully set forth here.

26. DEFENDANTS failed to give PLAINTIFF and members of the PLAINTIFF CLASS meal and rest breaks for shifts lasting four (4) hours or a major fraction thereof as required by law and failed to compensate them for missed meal and rest breaks.

27. PLAINTIFF is informed and believes and alleges that the failure of DEFENDANTS to provide meal and rest breaks and to compensate PLAINTIFF and members of the PLAINTIFF CLASS for these missed meal and rest breaks was willful, purposeful, and unlawful and done in accordance with the policies and practices of DEFENDANTS' operations.

28. As a proximate cause of the aforementioned violations, PLAINTIFF and members of the PLAINTIFF CLASS have been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court. PLAINTIFF and members of the PLAINTIFF CLASS are entitled to recover the unpaid balance of wages owed; penalties, including penalties available pursuant to California Labor Code Sections 226 and 226.7, plus interest; and reasonable attorney's fees and costs of suit according to CCP Section 1021.5.

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY COMPENSATION FOR ALL HOURS WORKED**

3 **(CALIFORNIA LABOR CODE §§1194, 1194.2 and 1197)**

4 By PLAINTIFF in her individual capacity and in her capacity as a representative of all similarly  
5 situated members of the PLAINTIFF CLASS against DEFENDANTS.

6 29. PLAINTIFF realleges and incorporates by reference each and every allegation  
7 contained in the foregoing paragraphs as though fully set forth here.

8 30. PLAINTIFF and members of the PLAINTIFF CLASS bring this action to recover  
9 unpaid compensation for all hours worked as defined by the applicable Industrial Welfare  
10 Commission (“IWC”) wage order as the time during which an employee is subject to the control  
11 of an employer and includes all the time the employee is suffered or permitted to work, whether or  
12 not required to do so.

13 31. DEFENDANTS’ conduct described in this Complaint violates, among other things,  
14 Labor Code sections 1194, 1194.2 and 1197.

15 32. PLAINTIFF and members of the PLAINTIFF CLASS are entitled to recover the  
16 unpaid balance of compensation DEFENDANTS owe PLAINTIFF and members of the  
17 PLAINTIFF CLASS, plus interest on that amount, liquidated damages pursuant to Labor Code  
18 section 1194.2, and reasonable attorney fees and costs of this suit pursuant to Labor Code section  
19 1194.

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PAY OVERTIME COMPENSATION**

22 **(Cal. Lab. Code §§510, 1194)**

23 By PLAINTIFF in her individual capacity and in her capacity as representative of all similarly  
24 situated members of the PLAINTIFF CLASS against DEFENDANTS.

25 33. PLAINTIFF realleges and incorporates by reference each and every allegation  
26 contained in the foregoing paragraphs as though fully set forth here.

27 34. DEFENDANTS, and each of them, required PLAINTIFF and members of the  
28 PLAINTIFF CLASS to work hours that were ultimately not compensated. The failure to account

1 for true hours worked by PLAINTIFF and members of the PLAINTIFF CLASS caused  
2 PLAINTIFF and members of the PLAINTIFF CLASS to not receive all overtime pay owed to them  
3 for working in excess of eight daily hours or forty weekly hours in a workweek. DEFENDANTS  
4 also did not pay one and half times the legally required rate for any and all overtime worked,  
5 causing overtime violations. Therefore, DEFENDANTS, and each of them, failed to compensate  
6 PLAINTIFF and members of the PLAINTIFF CLASS for all wages earned, including overtime  
7 wages.

8 35. PLAINTIFF is informed, believes, and, thereon, alleges, that the failure of  
9 DEFENDANTS, and each of them, to pay PLAINTIFF and members of the PLAINTIFF CLASS  
10 overtime compensation was willful, purposeful, and unlawful and done in accordance with the  
11 policies and practices of DEFENDANTS' operations.

12 36. As a proximate cause of these violations, PLAINTIFF and members of the  
13 PLAINTIFF CLASS have been damaged in an amount according to proof at the time of trial, but  
14 in an amount in excess of the jurisdiction of this Court. PLAINTIFF and members of the  
15 PLAINTIFF CLASS are entitled to recover the unpaid balance of wages owed, penalties, interest,  
16 reasonable attorney fees, and costs of suit.

17 **FOURTH CAUSE OF ACTION**

18 **WAITING TIME PENALTIES**

19 **(CALIFORNIA LABOR CODE SECTION 203)**

20 By PLAINTIFF in her individual capacity and in her capacity as a representative of all similarly  
21 situated members of the PLAINTIFF CLASS against DEFENDANTS.

22 37. PLAINTIFF realleges and incorporates by reference each and every allegation  
23 contained in the foregoing paragraphs as though fully set forth here.

24 38. Pursuant to California Labor Code section 201, if an employer discharges an  
25 employee, the wages earned and unpaid at the time of the discharge are due and payable  
26 immediately. Pursuant to California Labor Code section 202, if an employee quits his or her  
27 employment, the wages earned and unpaid at the time of the discharge are due and payable within  
28 seventy-two (72) hours of the resignation. Pursuant to California Labor Code section 203, if an

1 employer willfully fails to pay compensation upon discharge, then the employer is liable for  
2 waiting time penalties in the form of compensation of up to thirty (30) work days.

3 39. To this day, neither PLAINTIFF nor members of the PLAINTIFF CLASS have  
4 received all the wages and other compensation they rightfully earned.

5 40. DEFENDANTS, and each of them, willfully refused and continue to refuse to  
6 timely pay PLAINTIFF and members of the PLAINTIFF CLASS all wages earned in a timely  
7 manner, as required by California Labor Code section 203. PLAINTIFF therefore requests  
8 restitution and penalties as provided by California Labor Code section 203.

9 41. At all times, PLAINTIFF and members of the PLAINTIFF CLASS have been  
10 ready, willing and available to accept payment of these monies.

11 42. PLAINTIFF and members of the PLAINTIFF CLASS are entitled to compensation  
12 for all forms of wages earned, including, but not limited to, sums for unlawful deductions from  
13 compensation and additional wages, but to date have not received such compensation therefore  
14 entitling PLAINTIFF and the class to penalties under California Labor Code section 203.

15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

17 **(CALIFORNIA LABOR CODE § 226, IWC Wage Order)**

18 By PLAINTIFF in her individual capacity and in her capacity as a representative of all similarly  
19 situated members of the PLAINTIFF CLASS against DEFENDANTS.

20 43. PLAINTIFF realleges and incorporates by reference each and every allegation  
21 contained in the foregoing paragraphs as though fully set forth here.

22 44. California Labor Code section 226(a) and the applicable IWC Wage Order requires  
23 that DEFENDANTS keep accurate records and semimonthly or at the time of payment of wages,  
24 furnish each of his or her employees, itemize in wage statements, among other things, time records  
25 showing when an employee ends and begins, meal periods, split shift intervals and total daily hours  
26 worked shall also be recorded, when a piece rate or incentive plan is in operation, piece rates or an  
27 explanation of the incentive plan formula shall be provided to the employees, an accurate  
28 production record shall be maintained by the employer. Every employer shall also semimonthly

1 or at the time of each payment of wages furnish each employee, an itemized statement showing,  
2 among other things all deductions.

3 45. DEFENDANTS knowingly and intentionally failed to comply with California  
4 Labor Code section 226(a) and the applicable IWC Wage Order by failing to keep required accurate  
5 payroll records and by failing, on each and every wage statement that was provided to PLAINTIFF  
6 and members of the PLAINTIFF CLASS, to accurately reflect the required information under  
7 Labor Code section 226(a).

8 46. PLAINTIFF is informed and believes and alleges that DEFENDANTS knowingly  
9 and intentionally provided inaccurate payroll records to PLAINTIFF and members of the  
10 PLAINTIFF CLASS. PLAINTIFF and members of the PLAINTIFF CLASS have suffered actual  
11 damages as a result of DEFENDANTS' violation of Cal. Labor Code § 226(a) and the applicable  
12 IWC Wage Order. In addition, PLAINTIFF and the PLAINTIFF CLASS have also suffered, and  
13 will continue to suffer, actual damages in the form of additional litigation expenses incurred to  
14 calculate lost wages. These additional litigation expenses include, but are not limited to, attorney's  
15 fees, expert witnesses and other costs attendant to the calculation of lost wages when such costs  
16 would not need to be incurred if DEFENDANTS had provided proper itemized wage statements  
17 to PLAINTIFF and members of the PLAINTIFF CLASS that complied with California Labor Code  
18 section 226(a) and the applicable IWC Wage Order.

19 47. California Labor Code section 226(e) and (g) provide that an employee suffering  
20 injury as a result of a knowing and intentional failure by an employer to comply with subdivision  
21 (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay  
22 period in which a violation occurs and one hundred dollars (\$100) per employee for each violation  
23 in subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) and  
24 is entitled to an award of costs and reasonable attorney's fees.

25 48. PLAINTIFF and members of the PLAINTIFF CLASS are therefore entitled to  
26 recover all amounts for all such wages and expenses and benefits on such wage statements,  
27 penalties, interest, attorney's fees, and other court costs and expenses of suit, according to proof at  
28 trial. PLAINTIFF and members of the PLAINTIFF CLASS are also entitled to recover, in addition

1 to or in lieu of some or all wages and expenses and benefits, nominal, actual and compensatory  
2 damages in amounts according to proof at trial.

3 **SIXTH CAUSE OF ACTION**

4 **FAILURE TO PAY ALL ACCRUED SICK DAYS**

5 **(CALIFORNIA LABOR CODE § 233)**

6 By PLAINTIFF in her individual capacity and in her capacity as a representative of all similarly  
7 situated members of the PLAINTIFF CLASS against DEFENDANTS.

8 49. PLAINTIFF realleges and incorporates by reference each and every allegation  
9 contained in the foregoing paragraphs as though fully set forth here.

10 50. At all times alleged herein, Labor Code section 233 was in full force and effect.  
11 This code section requires employers who provide sick leave for employees to permit an employee  
12 to use in any calendar year the employee's accrued and available sick leave entitlement, in an  
13 amount not less than the sick leave that would be accrued during six months at the employee's then  
14 current rate of entitlement, for the reasons specified in subdivision (a) of Section 246.5.

15 51. DEFENDANTS' violated California Labor Code section 233 by DEFENDANTS'  
16 failure to recognize, and pay wages for, all hours compensable for the reasons specified in Labor  
17 Code Section 246.5 from the amount of sick leave accrued for PLAINTIFF and members of the  
18 PLAINTIFF CLASS.

19 52. Accordingly, PLAINTIFF and members of the PLAINTIFF CLASS are entitled to  
20 recover all damages, attorney's fees, penalties and other remedies available for violation of Labor  
21 Code section 233.

22 **SEVENTH CAUSE OF ACTION**

23 **UNFAIR BUSINESS PRACTICES**

24 **(CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200, ET SEQ.)**

25 By PLAINTIFF in her individual capacity and in her capacity as a representative of all similarly  
26 situated members of the PLAINTIFF CLASS against DEFENDANTS.

27 53. PLAINTIFF realleges and incorporates by reference each and every allegation  
28 contained in the foregoing paragraphs as though fully set forth here.

1           54.     DEFENDANTS' violations of the Employment Laws and Regulations, as alleged,  
2 include, among other things: (1) DEFENDANTS' failure and refusal to pay all wages earned by  
3 PLAINTIFF and the PLAINTIFF CLASS pursuant to DEFENDANTS' illegal pay practices  
4 described above; (2) DEFENDANTS' failure to timely pay wages for all hours worked and/or for  
5 each workweek, including meal and rest break premiums due and owing; (3) DEFENDANTS'  
6 failure to pay overtime compensation where it was due; and (4) Defendants' failure to pay for sick  
7 leave earned and owed in accordance to Labor Code Sections 246 and 248.5. Plaintiff brings this  
8 action on behalf of the public and the PLAINTIFF CLASS, and as a public enforcement action as  
9 permitted by the unfair competition laws. The aforementioned violations constitute unfair business  
10 practices in violation of the Unfair Competition Law, California Business and Professions Code  
11 Section 17200, et seq.

12           55.     As a result of DEFENDANTS' unfair business practices, DEFENDANTS have  
13 reaped unfair benefits and illegal profits at the expense of PLAINTIFF, the PLAINTIFF CLASS  
14 and members of the public. DEFENDANTS should be compelled to restore such monies to  
15 PLAINTIFF and the PLAINTIFF CLASS. PLAINTIFF and the PLAINTIFF CLASS are also  
16 entitled to restitution, equitable relief, and injunctive relief.

17           56.     DEFENDANTS' unfair business practices entitle PLAINTIFF and the PLAINTIFF  
18 CLASS to seek preliminary and permanent injunctive relief, including but not limited to, orders  
19 that DEFENDANTS account for and restore to PLAINTIFF and the PLAINTIFF CLASS the  
20 compensation unlawfully withheld from them.

21           57.     PLAINTIFF and members of the PLAINTIFF CLASS are entitled to recover all  
22 damages, attorney's fees, penalties and other remedies available for violation of the  
23 aforementioned Labor Code sections, underlying this action, to the extent that they provide for  
24 attorneys' fees. PLAINTIFF also seeks costs of suit, in addition to attorney's fees pursuant to CCP  
25 Section 1021.5.

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1 **NINTH CAUSE OF ACTION**

2 **PRIVATE ATTORNEY GENERAL ACT**

3 **(Cal. Lab. Code §2699)**

4 58. PLAINTIFF incorporates in this cause of action each and every allegation of the  
5 preceding paragraphs, with the same force and effect as though fully set forth herein.

6 59. California Labor Code §2699(a) states:

7 60. PLAINTIFF and members of PLAINTIFF CLASS are “aggrieved employees,” as  
8 defined by California Labor Code §2699(c), because they were employed by DEFENDANTS and  
9 were among the many employees against whom violations of law were committed.

10 61. PLAINTIFF has met and/or will meet all of the requirements set forth in California  
11 Labor Code §2699.3 necessary to maintain a civil action against DEFENDANTS for violations of  
12 (and/or recovery under) California Labor Code sections including but not limited to 201, 202, 203,  
13 204, 210, 216, 225.5, 226, 226.3, 226.7, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, and  
14 1199; as well as various IWC Wage Orders.

15 62. PLAINTIFF brings this action on behalf of herself and PLAINTIFF CLASS  
16 alleging violations of the California Labor Code sections cited in the preceding paragraph.

17 63. As a direct and proximate result of DEFENDANTS’ unlawful conduct, as set forth  
18 herein, PLAINTIFF is entitled to penalties under California Labor Code Sections 2698 and 2699.

19 64. Pursuant to California Labor Code Section 2699, PLAINTIFF and PLAINTIFF  
20 CLASS should be awarded twenty-five percent (25%) of all penalties due under California law.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, PLAINTIFF and the PLAINTIFF CLASS pray judgment as follows:

23 1. That the Court determine that Causes of Action 1 through 7 may be maintained as  
24 a class action.

25 2. For injunctive relief to stop DEFENDANTS’ illegal practices described above,  
26 including, but not limited to, and to ensure the proper payment of wages, including overtime wages,  
27 inaccurate itemized statements, sick days, compensation for sick days, and other practices;

28 3. For general and compensatory damages, according to proof;

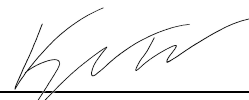


4. For restitution of all monies due to PLAINTIFF and the PLAINTIFF CLASS;
5. For waiting time penalties pursuant to California Labor Code section 203;
6. For penalties pursuant to California Labor Code and all other applicable Labor Code and/or Employment Laws and Regulations;
7. That the Court declare, adjudge, and decree that this action is a proper representative action pursuant to California Labor Code section 2699;
8. That the Court make an award to PLAINTIFF and the PLAINTIFF CLASS of civil penalties for violations of the Labor Code, pursuant to Labor Code section 2699;
9. For reasonable attorneys' fees to the full extent permitted and authorized by law, including but not limited to Labor Code Sections 226, 233, 248.5, 1194, and California Code of Civil Procedure section 1021.5;
10. For interest accrued to date;
11. For costs of the suit incurred herein;
12. For punitive damages as allowed by law; and
13. For such other and further relief that the Court may deem just and proper, including but not limited to equitable relief.

Dated: June 2, 2021

KYLE TODD, P.C.

By:



KYLE TODD, ESQ.

ALFREDO NAVA, ESQ.

Attorney for Plaintiff MAGGIE CHONG  
individually, and on behalf of all others similarly  
situated

**DEMAND FOR JURY TRIAL**

PLAINTIFF and members of the PLAINTIFF CLASS demand a trial by jury on all issues so triable.

Dated: June 2, 2021

KYLE TODD, P.C.

By:



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KYLE TODD, ESQ.

ALFREDO NAVA, ESQ.

Attorney for Plaintiff MAGGIE CHONG  
individually, and on behalf of all others similarly  
situated