

Jonathan M. Lebe (State Bar No. 284605)
Jon@lebelaw.com
Anthony J. Lebe (SBN 205431)
Tony@lebelaw.com
Lebe Law, APLC
777 S. Alameda Street, Second Floor
Los Angeles, CA 90021
Telephone: (213) 358-7046

Attorney for Plaintiff Shelby Lowry,
individually and on behalf of all others similarly situated

FILED
Clerk of the Superior Court

OCT 03 2022

By: B. Orihuela, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

Shelby Lowry, individually and on behalf of
all others similarly situated,

Plaintiff,

vs.

Woodstock's Pizza, Inc.; and Does 1
through 20, inclusive,

Defendants.

Case No.: 37-2021-00018474-CU-OE-CTL

Honorable Kenneth J. Medel – Dept.C-66

[Filed as a matter of right pursuant to Labor
Code § 2699.3(a)(2)(C)]

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Provide Meal Breaks;
3. Failure to Provide Rest Breaks;
4. Failure to Reimburse All Business Expenses;
5. Failure to Provide Accurate Itemized Wage Statements;
6. Unlawful Deductions;
7. Failure to Timely Pay All Wages Due Upon Separation of Employment;
8. Violation of Business and Professions Code §§ 17200, *et seq.*;
9. Enforcement of Labor Code § 2698 *Et. Seq.* ("PAGA"); and
10. Failure to Pay Overtime Wages.

DEMAND FOR JURY TRIAL

1 Plaintiff Shelby Lowry, individually and on behalf of others similarly situated, alleges as
2 follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Shelby Lowry ("Plaintiff") brings this putative class action against
5 Defendants Woodstock's Pizza, Inc. and DOES 1 through 20, inclusive (collectively,
6 "Defendants"), on behalf of himself individually and a putative class of non-exempt employees
7 employed by Defendants.

8 2. Defendant Woodstock's Pizza, Inc. is a restaurant chain doing business in
9 California.

10 3. Through this action, Plaintiff alleges that Defendants have engaged in a
11 systematic pattern of wage and hour violations under the California Labor Code and Industrial
12 Welfare Commission ("IWC") Wage Orders, all of which contribute to Defendants' deliberate
13 unfair competition.

14 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
15 increased their profits by violating state wage and hour laws by, among other things:

- 16 (a) Failing to pay minimum wages;
17 (b) Failing to provide legally compliant meal periods or compensation in lieu thereof;
18 (c) Failing to provide legally compliant rest breaks or compensation in lieu thereof;
19 (d) Failing to reimburse for all business expenses;
20 (e) Failing to provide accurate itemized wage statements;
21 (f) Making unlawful deductions from the compensation paid to Claimant and other
22 aggrieved employees;
23 (g) Failing to timely pay all wages due upon separation of employment; and
24 (h) Failing to pay overtime wages.

25 5. Defendants maintained and enforced against the class the following unlawful
26 practices and policies, in violation of California state wage and hour laws:

- 27 (a) Defendants forced class members to submit to unpaid health screenings at the
28 beginning of their shifts.

1 (b) Although class members were under Defendants' control while waiting in line for
2 and undergoing these health screenings, Defendants did not compensate class
3 members for this time worked.

4 (c) Defendants have failed to reimburse Plaintiff and class members for all business
5 expenses, including cellular telephone costs, uniform, automobile expenses,
6 masks, gloves and any other Personal Protective Equipment ("PPE").

7 6. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf
8 of themselves and all others similarly situated in California to recover, among other things,
9 unpaid wages and benefits, interest, attorneys' fees, costs and expenses and penalties pursuant to
10 Labor Code §§ 201-203, 204, 210, 226, 226.7, 510, 512, 1194, 1194.2, 1197 and 1198.

11 JURISDICTION AND VENUE

12 7. This is a class action, pursuant to California Code of Civil Procedure § 382. The
13 monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits
14 of the Superior Court and will be established according to proof at trial.

15 8. This Court has jurisdiction over this action pursuant to the California Constitution,
16 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
17 given by statutes to other courts. The statutes under which this action is brought do not specify
18 any other basis for jurisdiction.

19 9. This Court has jurisdiction over all Defendants because, upon information and
20 belief, they are citizens of California, have sufficient minimum contacts in California or
21 otherwise intentionally avail themselves of the California market so as to render the exercise of
22 jurisdiction over them by the California courts consistent with traditional notions of fair play and
23 substantial justice.

24 10. Venue is proper in this Court because, upon information and belief, Defendants
25 reside, transact business or have offices in this county and the acts and omissions alleged herein
26 took place in this county.

27 THE PARTIES

28 11. Plaintiff is a citizen of California. Plaintiff was employed by Defendants during

1 the Class Period in California.

2 12. Plaintiff is informed and believes, and thereon alleges, that Defendants at all times
3 hereinafter mentioned, were and are employers as defined in and subject to the Labor Code and
4 IWC Wage Orders, whose employees were and are engaged throughout this county and the State
5 of California.

6 13. Plaintiff is unaware of the true names or capacities of the defendants sued herein
7 under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this
8 Complaint and serve such fictitiously named defendants once their names and capacities become
9 known.

10 14. Plaintiff is informed and believes, and thereon alleges, that each Defendant acted
11 in all respects pertinent to this action as the agent of the other Defendant, carried out a joint
12 scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant
13 are legally attributable to the other defendant. Furthermore, Defendants in all respects acted as
14 the employer and/or joint employer of Plaintiff and the class members.

15 15. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts
16 and omissions alleged herein were performed by, or are attributable to, Defendants and/or Does
17 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the
18 other's behalf. The acts of any and all Defendants were in accordance with, and represent, the
19 official policy of Defendants.

20 16. At all relevant times, Defendants, and each of them, acted within the scope of such
21 agency or employment, or ratified each and every act or omission complained of herein. At all
22 relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each
23 and all the other Defendants in proximately causing the damages herein alleged.

24 17. Plaintiff is informed and believes, and thereon alleges, that each of said
25 Defendants is in some manner intentionally, negligently or otherwise responsible for the acts,
26 omissions, occurrences and transactions alleged herein.

27 **CLASS ACTION ALLEGATIONS**

28 18. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of

1 himself and all others similarly situated who were affected by Defendants' Labor Code, Business
2 and Professions Code §§ 17200 and IWC Wage Order violations.

3 19. All claims alleged herein arise under California law for which Plaintiff seeks relief
4 authorized by California law.

5 20. Plaintiff's proposed Class consists of and is defined as follows:

6 Class

7 All current and former non-exempt employees who worked for
8 Defendants in the State of California from four years plus 179 days
before the filing of this action to the date of trial.¹

9 Plaintiff also seeks to certify the following Subclass of employees:

10 Waiting Time Subclass

11 All members of the Class who separated their employment from Defendants
12 within three years plus 179 days prior to the filing of this action to the date of class
certification.

13 21. Members of the Class and Subclass described above will be collectively referred
14 to as "class members." Plaintiff reserves the right to establish other or additional subclasses, or
15 modify any Class or Subclass definition, as appropriate based on investigation, discovery and
16 specific theories of liability.

17 22. This action has been brought and may properly be maintained as a class action
18 under the California Code of Civil Procedure § 382 because there are common questions of law
19 and fact as to the Class that predominate over questions affecting only individual members
including, but not limited to:

- 20 (a) Whether Defendants paid Plaintiff and class members all minimum wage
21 compensation;
22 (b) Whether Defendants deprived Plaintiff and class members of compliant meal
23 periods or required Plaintiff and class members to work through meal periods
24 without compensation;
25 (c) Whether Defendants deprived Plaintiff and class members of compliant rest breaks;
26 (d) Whether Defendants failed to reimburse Plaintiff and class members for business
27

28 ¹ The statute of limitations for this matter was tolled by 179 days pursuant to Cal. Rules of Court,
Appendix 1, Emergency Rule No. 9.

1 expenses;

2 (e) Whether Defendants failed to furnish Plaintiff and class members with accurate,
3 itemized wage statements;

4 (f) Whether Defendants made unlawful deductions from the compensation paid to
5 Claimant and other aggrieved employees;

6 (g) Whether Defendants failed to timely pay Plaintiff and former class members all
7 wages due upon termination or within 72 hours of resignation;

8 (h) Whether Defendants engaged in unfair business practices in violation of Business
9 & Professions Code §§ 17200, *et seq*; and

10 (i) Whether Defendants paid Plaintiff and class members all overtime compensation.

11 23. There is a well-defined community of interest in this litigation and the Class is
12 readily ascertainable:

13 (a) Numerosity: The members of the Class are so numerous that joinder of all
14 members is impractical. Although the members of the Class are unknown
15 to Plaintiff at this time, on information and belief, the Class is estimated to
16 be greater than 100 individuals. The identity of the class members are
17 readily ascertainable by inspection of Defendants' employment and payroll
18 records.

19 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the
20 claims (or defenses, if any) of the Class because Defendants' failure to
21 comply with the provisions of California wage and hour laws entitled each
22 class member to similar pay, benefits and other relief. The injuries sustained
23 by Plaintiff are also typical of the injuries sustained by the Class because
24 they arise out of and are caused by Defendants' common course of conduct
25 as alleged herein.

26 (c) Adequacy: Plaintiff is qualified to, and will fairly and adequately represent
27 and protect the interests of all members of the Class because it is in his best
28 interest to prosecute the claims alleged herein to obtain full compensation

1 and penalties due to him and the Class. Plaintiff's attorneys, as proposed
2 class counsel, are competent and experienced in litigating large employment
3 class actions and are versed in the rules governing class action discovery,
4 certification and settlement. Plaintiff has incurred and, throughout the
5 duration of this action, will continue to incur attorneys' fees and costs that
6 have been and will be necessarily expended for the prosecution of this action
7 for the substantial benefit of each class member.

8 (d) Superiority: The nature of this action makes the use of class action
9 adjudication superior to other methods. A class action will achieve
10 economies of time, effort and expense as compared with separate lawsuits,
11 and will avoid inconsistent outcomes because the same issues can be
12 adjudicated in the same manner and at the same time for each Class. If
13 appropriate this Court can, and is empowered to, fashion methods to
14 efficiently manage this case as a class action.

15 (e) Public Policy Considerations: Employers in the State of California and
16 other states violate employment and labor laws every day. Current
17 employees are often afraid to assert their rights out of fear of direct or
18 indirect retaliation. Former employees are fearful of bringing actions
19 because they believe their former employers might damage their future
20 endeavors through negative references and/or other means. Class actions
21 provide the class members who are not named in the complaint with a type
22 of anonymity that allows for the vindication of their rights at the same time
23 as affording them privacy protections.

24 FIRST CAUSE OF ACTION

25 FAILURE TO PAY MINIMUM WAGES

26 (Violation of Labor Code §§ 1194, 1194.2, and 1197; Violation of IWC Wage Order § 3)

27 24. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
28 though fully set forth herein.

25. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

26. During the relevant time period, Defendants paid Plaintiff and class members less than minimum wages when, for example, Defendants required Plaintiff and class members to submit to unpaid health screenings when Plaintiff and class members were under Defendants' control. To the extent these hours do not qualify for the payment of overtime or doubletime, Plaintiff and class members were not being paid at least minimum wage for their work.

27. During the relevant time period, Defendants regularly failed to pay at least minimum wage to Plaintiff and class members for all hours worked pursuant to Labor Code §§ 1194 and 1197.

28. Defendants' failure to pay Plaintiff and class members the minimum wage as required violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs and attorney's fees.

29. Pursuant to Labor Code § 1194.2, Plaintiff and class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order)

30. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

31. Labor Code § 226.7 provides that no employer shall require an employee to work during any meal period mandated by the IWC Wage Orders.

32. Section 11 of the applicable IWC Wage Order states, “no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s

1 work the meal period may be waived by mutual consent of the employer and the employee.”

2 33. Labor Code § 512(a) provides that an employer may not require, cause or permit
3 an employee to work for a period of more than five (5) hours per day without providing the
4 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the
5 total work period per day of the employee is not more than six (6) hours, the meal period may be
6 waived by mutual consent of both the employer and the employee.

7 34. Labor Code § 512(a) also provides that an employer may not employ an employee
8 for a work period of more than ten (10) hours per day without providing the employee with a
9 second meal period of not less than thirty (30) minutes, except that if the total hours worked is no
10 more than twelve (12) hours, the second meal period may be waived by mutual consent of the
11 employer and the employee only if the first meal period was not waived.

12 35. During the relevant time period, Plaintiff and class members did not receive
13 compliant meal periods for each five hours worked per day.

14 36. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
15 an employer to pay an employee one additional hour of pay at the employee’s regular rate of
16 compensation for each work day that a meal period is not provided.

17 37. At all relevant times, Defendants failed to pay Plaintiff and class members all meal
18 period premiums due for meal period violations pursuant to Labor Code § 226.7(b) and section
19 11 of the applicable IWC Wage Order.

20 38. As a result of Defendants’ failure to pay Plaintiff and class members an additional
21 hour of pay for each day a meal period was not provided, Plaintiff and class members suffered
22 and continue to suffer a loss of wages and compensation.

23 **THIRD CAUSE OF ACTION**

24 **FAILURE TO PERMIT REST BREAKS**

25 **(Violation of Labor Code §§ 226.7; Violation of IWC Wage Order)**

26 39. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
27 though fully set forth herein.

28 40. Labor Code § 226.7(a) provides that no employer shall require an employee to

1 work during any rest period mandated by the IWC Wage Orders.

2 41. Section 12 of the applicable IWC Wage Order states "every employer shall
3 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
4 the middle of each work period" and the "authorized rest period time shall be based on the total
5 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
6 thereof" unless the total daily work time is less than three and one-half (3½) hours.

7 42. During the relevant time period, Plaintiff and class members did not receive a ten
8 (10) minute rest period for every four (4) hours or major fraction thereof worked.

9 43. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires
10 an employer to pay an employee one additional hour of pay at the employee's regular rate of
11 compensation for each workday that the rest period is not provided.

12 44. At all relevant times, Defendants failed to pay Plaintiff and class members all rest
13 period premiums due for rest period violations pursuant to Labor Code § 226.7(b) and section 12
14 of the applicable IWC Wage Order.

15 45. As a result of Defendants' failure to pay Plaintiff and class members an additional
16 hour of pay for each day a rest period was not provided, Plaintiff and class members suffered and
17 continue to suffer a loss of wages and compensation.

18 **FOURTH CAUSE OF ACTION**

19 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

20 **(Violation of Labor Code §§ 2800, 2802, and the Applicable IWC Wage Order § 9)**

21 46. Plaintiff re-alleges and incorporates by this reference each and every allegation
22 set forth in all previous paragraphs of the Complaint.

23 47. Labor Code § 2800 provides, in pertinent part, "[a]n employer shall in all cases
24 indemnify his employee for losses caused by the employer's want of ordinary care."

25 48. Labor Code § 2802 provides, in pertinent part, "[a]n employer shall indemnify his
26 or her employee for all necessary expenditures or losses incurred by the employee in direct
27 consequence of the discharge of his or her duties..."

28 49. Further, Labor Code § 2802 additionally provides, in pertinent part: "(c)...the

1 term 'necessary expenditures or losses' shall include all reasonable costs, including but not
2 limited to, attorney's fees incurred by the employee enforcing the rights granted by this section."

3 50. The Applicable IWC Wage Order § 9 provides that: "When tools or equipment
4 are required by the employer or are necessary to the performance of a job, such tools and
5 equipment shall be provided and maintained by the employer . . ."

6 51. California Labor Code section 2804 mandates that this statutory right cannot be
7 waived.

8 52. During the relevant time period, Defendants were required to indemnify and
9 reimburse Plaintiff and members of the Plaintiff Class for all expenditures or losses caused by
10 the employer's want of ordinary care and/or incurred in direct consequent of the discharge of
11 their duties, but failed to indemnify and reimburse Plaintiff and members of the Plaintiff Class.

12 53. As a direct and proximate result, Plaintiff and members of the Plaintiff Class have
13 suffered, and continue to suffer, substantial losses, related to the use and enjoyment of such
14 monies to be reimbursed, lost interest on such monies, and expenses and attorney's fees in
15 seeking to compel Defendants to fully perform their obligations under California law, all to their
16 damage in amounts according to proof at the time of trial.

17 54. Accordingly, Plaintiff and members of the Plaintiff Class are entitled to recover,
18 and hereby seek, an amount equal to incurred necessary expenditures, pre- and post-judgment
19 interest, applicable penalties, attorneys' fees and costs, and any further equitable relief this Court
20 may deem just and proper. *See* Cal. Lab. Code § 2802, *see also*, Cal. Civ. Proc. Code § 1021.5.

21 55. Plaintiff, on behalf of himself and members of the Plaintiff Class, request relief
22 as described below.

23 **FIFTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

25 (Violation of Labor Code § 226; Violation of IWC Wage Order)

26 56. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
27 though fully set forth herein.

28 57. Labor Code § 226(a) requires Defendants to provide each employee with an

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

11 58. During the relevant time period, Defendants have knowingly and intentionally
12 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff
13 and class members. The deficiencies include, among other things, the failure to state the address
14 of the legal entity that is the employer and the failure to correctly state the gross and net wages
15 earned by Plaintiff and class members.

16 59. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff
17 and class members have suffered injury and damage to their statutorily protected rights.
18 Specifically, Plaintiff and class members have been injured by Defendants' intentional violation
19 of California Labor Code § 226(a) because they were denied both their legal right to receive, and
20 their protected interest in receiving, accurate itemized wage statements under California Labor
21 Code § 226(a). Plaintiff has had to file this lawsuit in order to determine the extent of the
22 underpayment of wages, thereby causing Plaintiff to incur expenses and lost time. Plaintiff would
23 not have had to engage in these efforts and incur these costs had Defendants provided the accurate
24 wages earned. This has also delayed Plaintiff's ability to demand and recover the underpayment
25 of wages from Defendants.

26 60. California Labor Code § 226(a) requires an employer to pay the greater of all
27 actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred,
28 and one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods,

1 plus attorney's fees and costs, to each employee who was injured by the employer's failure to
2 comply with California Labor Code § 226(a).

3 61. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff and
4 class members from knowing, understanding and disputing the wages paid to them, and resulted
5 in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
6 intentional failure to comply with California Labor Code § 226(a), Plaintiff and class members
7 have suffered an injury, and the exact amount of damages and/or penalties is all in an amount to
8 be shown according to proof at trial.

9 62. Plaintiff and class members are also entitled to injunctive relief under California
10 Labor Code § 226(h), compelling Defendants to comply with California Labor Code § 226, and
11 seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

12 **SIXTH CAUSE OF ACTION**

13 **UNLAWFUL DEDUCTIONS**

14 **(Violation of Labor Code § 221)**

15 63. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
16 though fully set forth herein.

17 64. Labor Code section 221 states: "It shall be unlawful for any employer to collect
18 or receive from an employee any part of wages theretofore paid by said employer to said
19 employee."

20 65. Labor Code Section 221 applied to Defendants' employment of Claimant and the
21 rest of the aggrieved employees. Labor Code Section 221 provides: "It shall be unlawful for any
22 employer to collect or receive from an employee any part of wages theretofore paid by said
23 employer to said employee." Defendants had a policy of deducting and receiving a portion of
24 Claimant and aggrieved employees' tips in violation of Labor Code Section 221.

25 ///

26 ///

27 ///

28 ///

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF**
3 **EMPLOYMENT AND WITHIN THE REQUIRED TIME**

4 (Violation of Labor Code §§ 201, 202 and 203; Violation of IWC Wage Order)

5 66. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
6 though fully set forth herein.

7 67. California Labor Code §§ 201 and 202 provide that if an employer discharges an
8 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,
9 and that if an employee voluntarily leaves his employment, his wages shall become due and
10 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
11 two (72) hours previous notice of his intention to quit, in which case the employee is entitled to
12 his wages at the time of quitting.

13 68. During the relevant time period, Defendants willfully failed to pay Plaintiff and
14 Waiting Time Subclass members all their earned wages upon termination including, but not
15 limited to, proper minimum wages, Reporting Time Pay, and overtime and doubletime
16 compensation, either at the time of discharge or within seventy-two (72) hours of their leaving
17 Defendants' employ.

18 69. Defendants' failure to pay Plaintiff and Waiting Time Subclass members all their
19 earned wages at the time of discharge or within seventy-two (72) hours of their leaving
20 Defendants' employ is in violation of Labor Code §§ 201 and 202.

21 70. California Labor Code § 203 provides that if an employer willfully fails to pay
22 wages owed immediately upon discharge or resignation in accordance with Labor Code §§ 201
23 and 202, then the wages of the employee shall continue as a penalty from the due date at the same
24 rate until paid or until an action is commenced; but the wages shall not continue for more than
25 thirty (30) days.

26 71. Plaintiff and Waiting Time Subclass members are entitled to recover from
27 Defendants the statutory penalty which is defined as Plaintiff' and Waiting Time Subclass
28 members' regular daily wages for each day they were not paid, at their regular hourly rate of pay,

up to a thirty (30) day maximum pursuant to Labor Code § 203.

EIGHTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, *ET SEQ.*

72. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

73. Defendants' conduct, as alleged herein, has been and continues to be unfair, unlawful and harmful to Plaintiff and class members. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

74. Defendants' activities, as alleged herein, violate California law and constitute unlawful business acts or practices in violation of California Business and Professions Code §§ 17200, *et seq.*

75. A violation of Business and Professions Code §§ 17200, *et seq.* may be predicated on the violation of any state or federal law.

76. Defendants' policies and practices have violated state law in at least the following respects:

(a) Failing to pay all minimum wages owed to Plaintiff and class members in violation of Labor Code §§ 1194.2, and 1197;

(b) Failing to provide timely meal periods without paying Plaintiff and class members premium wages for every day said meal periods were not provided in violation of Labor Code §§ 226.7 and 512;

(c) Failing to authorize or permit rest breaks without paying Plaintiff and class members premium wages for every day said rest breaks were not authorized or permitted in violation of Labor Code § 226.7;

(d) Failing to provide Plaintiff and class members with accurate itemized wage statements in violation of Labor Code § 226;

(e) Failing to reimburse all necessary business expenses in violation of Labor Code §§ 2800 and 2802;

(f) Making unlawful deductions from the compensation paid to Claimant and other

1 aggrieved employees in violation of Labor Code § 221; and

2 (g) Failing to timely pay all earned wages to Plaintiff and Waiting Time Subclass
3 members upon separation of employment in violation of Labor Code §§ 201, 202 and 203.

4 77. Defendants intentionally avoided paying Plaintiff and class members' wages and
5 monies, thereby creating for Defendants an artificially lower cost of doing business in order to
6 undercut their competitors and establish and gain a greater foothold in the marketplace.

7 78. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiff and class
8 members are entitled to restitution of the wages unlawfully withheld and retained by Defendants
9 during a period that commences four years prior to the filing of the Complaint; an
10 award of attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and other applicable laws;
11 and an award of costs.

12 NINTH CAUSE OF ACTION

13 ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA").

14 79. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs,
15 as though fully set forth herein.

16 80. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
17 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
18 ("LWDA") or any of its departments, divisions, commissions, boards, agencies or employees for
19 violation of the code may, as an alternative, be recovered through a civil action brought by an
20 aggrieved employee on behalf of himself and other current or former employees pursuant to the
21 procedures specified in Labor Code § 2699.3.

22 81. For all provisions of the Labor Code except those for which a civil penalty is
23 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
24 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
25 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
26 period in which Defendants violated these provisions of the Labor Code.

27 82. Defendants' conduct violates numerous Labor Code sections including, but not
28 limited to, the following:

1 (a) Violation of Labor Code §§ 201, 202, 203, 204, 210, 510, 558, 1194, 1197
2 and 1198 for failure to timely pay all earned wages (including minimum and overtime wages)
3 owed to Plaintiff and other aggrieved employees during employment and upon separation of
4 employment as herein alleged;

5 (b) Violation of Labor Code § 246 for the willful failure to provide mandatory
6 paid sick leave to Plaintiff and other aggrieved employees;

7 (c) Violation of Labor Code §§ 226.7 and 512 for failure to provide meal
8 periods to the aggrieved employees and failure to pay premium wages for missed meal periods
9 as herein alleged;

10 (d) Violation of Labor Code § 226.7 for failure to permit rest breaks to the
11 aggrieved employees and failure to pay premium wages for missed rest periods as herein alleged;

12 (e) Violation of Labor Code §§ 2800, 2802 for failing to reimburse Plaintiff
13 and class members for all necessarily incurred business expenses; and

14 (f) Violation of Labor Code § 226 for failure to provide accurate itemized
15 wage statements to Plaintiff and other aggrieved employees as herein alleged.

16 83. Plaintiff is an "aggrieved employee" because he was employed by the alleged
17 violator and had one or more of the alleged violations committed against him, and therefore is
18 properly suited to represent the interests of all other aggrieved employees.

19 84. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3
20 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all
21 other aggrieved employees under PAGA.

22 85. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
23 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
24 cited above.

25 86. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred
26 herein.

27 ///

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7

3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7

4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7

6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

15
16
17
18
19
20
21
22
23
24
25
26
27

19
20
21
22
23
24
25
26
27

25
26
27

28

1 protections of California Labor Code §§ 510 and 1194.

2 94. During the relevant time period, Defendants failed to pay Plaintiff and Class
3 Members overtime wages for all overtime hours worked when Plaintiff and Class Members
4 worked in excess of eight (8) hours in a day, forty (40) hours in a week and/or for a seventh
5 consecutive day of work in a workweek, or when Plaintiff and Class Members worked in excess
6 of twelve (12) hours in a day and/or in excess of eight (8) hours on the seventh day of work in a
7 work week.

8 95. In violation of state law, Defendants knowingly and willfully refused to perform
9 their obligations and compensate Plaintiff and Class Members for all wages earned and all hours
10 worked.

11 96. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of
12 overtime and double time compensation, as required by California law, violates the provisions
13 of Labor Code §§ 510 and 1198, and is therefore unlawful.

14 97. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to
15 recover their unpaid overtime and double time compensation as well as interest, costs, and
16 attorneys' fees.

17 **PRAYER FOR RELIEF**

18 Plaintiff, on his own behalf and on behalf of all others similarly situated, pray for relief
19 and judgment against Defendants, jointly and severally, as follows:

- 20 1. For certification of this action as a class action, including certifying the Class and
21 Subclass alleged by Plaintiff;
- 22 2. For appointment of Shelby Lowry as the class representative;
- 23 3. For appointment of Lebe Law, APLC as class counsel for all purposes;
- 24 4. For compensatory damages in an amount according to proof with interest thereon;
- 25 5. For economic and/or special damages in an amount according to proof with
26 interest thereon;
- 27 6. For reasonable attorneys' fees, costs of suit and interest to the extent permitted by
28 law, including pursuant to Code of Civil Procedure § 1021.5, Labor Code §§ 226(e) and 1194;

1 7. For statutory penalties to the extent permitted by law, including those pursuant to
2 the Labor Code and IWC Wage Orders;

3 8. For civil penalties under PAGA, 75% of which will be paid to the LWDA and
4 25% of which will distributed to the aggrieved employees;

5 9. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

6 10. For an order requiring Defendants to restore and disgorge all funds to each
7 employee acquired by means of any act or practice declared by this Court to be unlawful, unfair
8 or fraudulent and, therefore, constituting unfair competition under Business and Professions
9 Code §§ 17200, *et seq.*;

10 11. For an award of damages in the amount of unpaid compensation including, but
11 not limited to, unpaid wages, benefits and penalties, including interest thereon;

12 12. For pre-judgment interest; and

13 13. For such other relief as the Court deems just and proper.

14
15 Dated: September 21, 2022

Lebe Law, APLC

16
17 By: _____

Jonathan M. Lebe

Anthony J. Lebe

18 Attorney for Plaintiff Shelby Lowry,
19 Individually and on behalf of all others similarly
20 situated

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

23 Dated: September 21, 2022

Lebe Law, APLC

24
25 By: _____

Jonathan M. Lebe

Anthony J. Lebe

26 Attorney for Plaintiff Shelby Lowry,
27 Individually and on behalf of all others similarly
28 situated