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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SAN BERNARDINO**

ROBERT DE LA HOYA, an individual, and  
MARISAL DOBBINS, an individual, on  
behalf of themselves and others similarly  
situated, and as a private attorney general on  
behalf of the State of California,

PLAINTIFFS,

v.

SIERRA WEST FINISH, INC., a Delaware  
Corporation, and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO.: CIVSB2107351

**FIRST AMENDED CONSOLIDATED  
CLASS ACTION COMPLAINT**

1. Failure to Pay Minimum Wages In Violation of Labor Code §§ 226.2, 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. Violation of Labor Code §§ 201-203
7. Failure to Reimburse Expenses in Violation of Labor Code § 2802

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8. Violation of Business & Professions Code § 17200
9. Penalties Pursuant to Labor Code § 2699, et seq. for violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1197, 1197.1, 1198, and 2802 as well as IWC Wage Order Nos. 1-2001 and 16-2001

**JURY TRIAL DEMANDED**

1 Plaintiffs ROBERT DE LA HOYA and MARISAL DOBBINS<sup>1</sup> (“Plaintiffs”), individuals,  
2 on behalf of themselves and others similarly situated, complain of Defendant SIERRA WEST  
3 FINISH, INC. and the Doe Defendants (“Defendants”) and each of them, as follows:

4 **I.**

5 **INTRODUCTION AND FACTUAL BACKGROUND**

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

- 8 (1) all individuals who were employed by Sierra West Finish, Inc. as a non-exempt,  
9 hourly employee in California for one or more pay periods from four (4) years  
10 prior to the filing of this action and continuing into the present; (Non-Exempt  
11 Class)
- 12 (2) all individuals who were employed by Sierra West Finish, Inc. as a non-exempt,  
13 hourly employee who worked in the field (aka away from the main facility) in  
14 California during at least part of one or more pay periods from four (4) years prior  
15 to the filing of this action and continuing into the present (“Field Non-Exempt  
16 Class”);
- 17 (3) all individuals who were employed by Sierra West Finish, Inc or its predecessor  
18 or merged entities in California as a non-exempt, hourly employee or other similar  
19 position and who worked a shift of more than eight (8) hours in a day and/or forty  
20 (40) hours in a week during a pay period from four (4) years prior to the filing of  
21 this action and continuing into the present. (“Overtime Class”);
- 22 (4) all individuals who were employed by Sierra West Finish, Inc or its predecessor  
23 or merged entities in California as a non-exempt, hourly employee or other similar  
24 position and who worked a shift of more than eight (8) hours in a day and/or forty  
25 (40) hours in a week during a pay period where they also worked on a prevailing  
26 wage job from four (4) years prior to the filing of this action and continuing into  
27 the present. (“Prevailing Wage Overtime Class”);
- 28 (5) all individuals who were employed by Sierra West Finish, 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 received  
a non-discretionary bonus—including, but not limited to quarterly bonuses and or

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<sup>1</sup> Plaintiff Dobbins’s individual claims relate back to the filing of her original complaint, which occurred on April 13, 2021, in Riverside County Superior Court (No. CVRI2101916).

1 production bonuses—and/or profit sharing bonuses from four (4) years prior to  
2 the filing of this action and continuing into the present. (“Incentive Pay Overtime  
3 Class”);

4 Collectively, Classes three (3), four (4), and five (5) may be referred to as the “Overtime Classes.”

5 (6) all individuals who were employed by Sierra West Finish, Inc. or its predecessor,  
6 merged or related entities in California who worked one or more shifts of more  
7 than six (6) hours as a non-exempt hourly employee or other similar position from  
8 four (4) years prior to the filing of this action and continuing into the present.  
9 (“First Meal Period Class”);

10 (7) all individuals who were employed by Sierra West Finish, Inc. or its predecessor,  
11 merged or related entities in California who worked one or more shifts of more  
12 than ten (10) hours as a non-exempt hourly employee or other similar position  
13 from four (4) years prior to the filing of this action and continuing into the present.  
14 (“Second Meal Period Class”);

15 Collectively, Classes six (6) and seven (7) may be referred to as the “Meal Period Classes.”

16 (8) all individuals who were employed by Sierra West Finish, Inc. or its predecessor,  
17 merged or related entities in California as a non-exempt hourly employee, or other  
18 similar position, who worked one or more shifts of more than four (4) hours in  
19 length or major fraction thereof from four (4) years prior to the filing of this action  
20 and continuing into the present. (“Rest Period Class”);

21 (9) all individuals who were employed by Sierra West Finish, Inc. or its predecessor,  
22 merged or related entities in California as a non-exempt, hourly employee or other  
23 similar position for one or more pay periods from one (1) year prior to the filing  
24 of this action and continuing into the present (“Wage Statement Class”);

25 (10) all individuals who were employed by Sierra West Finish, Inc. or its predecessor,  
26 merged or related entities for one or more pay periods in California as a non-  
27 exempt, hourly employee and whose employment concluded at any time between  
28 three (3) years prior to filing of this action and continuing into the present;  
29 (“General Late Payment Class”);

30 (11) all individuals who were employed by Sierra West Finish, Inc. or its predecessor,  
31 merged or related entities for one or more pay periods in California, who received  
32 sick pay, and whose employment concluded at any time between three (3) years  
33 prior to filing of this action and continuing into the present; (“Sick Pay Late  
34 Payment Class”);

Collectively, Classes ten (10) and eleven (11) may be referred to as the “Late Payment Classes.”

(12) all individuals who were employed by Sierra West Finish, Inc. or its predecessor or merged entities in California as a non-exempt, hourly employee from four (4) years prior to the filing of this action and to whom at least one of the following applies: 1) who worked one or more shifts of more than four (4) hours in length or major fraction; 2) who worked one of more shifts of more than six (6) hours in length; 3) who worked a shift of eight (8) hours in a day. (“Unfair Competition Class”).

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

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 individuals who were employed by Sierra West Finish, Inc. as a non-exempt, hourly employee in California for one or more pay periods from March 5, 2020 and continuing into the present (“Non-Exempt Aggrieved Employees”);
- (2) all individuals who were employed by Sierra West Finish, Inc. as a non-exempt, hourly employee who worked in the field (aka away from the main facility) in California during at least part of one or more pay periods from March 5, 2020 and continuing into the present (“Field Non-Exempt Aggrieved Employees”);
- (3) all individuals who were employed by Sierra West Finish, Inc. as an employee in California for one or more pay periods from March 5, 2020, and continuing into the present (“Wage Statement Aggrieved Employee”);
- (4) all individuals who were employed by Sierra West Finish, 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 5, 2020 and continuing into the present. (“Non-Exempt Overtime Aggrieved Employees”);
- (5) all individuals who were employed by Sierra West Finish, 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 where they also worked on a prevailing

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<sup>2</sup> Plaintiffs reserve the right to redefine the Classes and Subclasses identified herein.

1 wage job from March 5, 2020 and continuing into the present. (“Prevailing Wage  
2 Non-Exempt Overtime Aggrieved Employees”);

- 3 (6) all individuals who were employed by Sierra West Finish, Inc. or its predecessor  
4 or merged entities in California as a non-exempt, hourly employee or other similar  
5 position and who worked a shift of more than eight (8) hours in a day and received  
6 a non-discretionary bonus—including, but not limited to quarterly bonuses and or  
7 production bonuses—and/or profit sharing bonuses from March 5, 2020 and  
continuing into the present. (“Incentive Pay Non-Exempt Overtime Aggrieved  
Employees”);

8 Collectively, aggrieved employee groups four (4), five (5), and six (6) may be referred to  
9 as the “Overtime Aggrieved Employees.”

- 10 (7) all individuals who were employed by Sierra West Finish, Inc. or its predecessor,  
11 merged or related entities in California who worked one or more shifts of more  
12 than six (6) hours as a non-exempt hourly employee or other similar position from  
13 March 5, 2020 and continuing into the present. (“Meal Period Aggrieved  
Employees”);

- 14 (8) all individuals who were employed by Sierra West Finish, Inc. or its predecessor,  
15 merged or related entities in California who worked one or more shifts of more  
16 than ten (10) hours as a non-exempt hourly employee or other similar position  
17 from March 5, 2020 and continuing into the present. (“Second Meal Period  
Aggrieved Employees”);

18 Collectively, aggrieved employee groups seven (7) and eight (8) may be referred to as the  
19 “Meal Period Aggrieved Employees.”

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

- 24 (10) all individuals who were employed by Sierra West Finish, Inc. or its predecessor,  
25 merged or related entities for one or more pay periods in California as a non-  
26 exempt, hourly employee and whose employment concluded at any time between  
27 March 5, 2020 and continuing into the present; (“General Late Payment  
28 Aggrieved Employee”);

1 (11) all individuals who were employed by Sierra West Finish, Inc. or its predecessor,  
2 merged or related entities for one or more pay periods in California, who received  
3 sick pay, and whose employment concluded at any time between March 5, 2020  
and continuing into the present; (“Sick Pay Late Payment Aggrieved Employee”);

4 Collectively, aggrieved employee groups ten (10) and eleven (11) may be referred to as the “Late  
5 Payment Aggrieved Employees.”

6 Collectively, these groups, except for the Wage Statement Aggrieved Employees, may all  
7 collectively be referred to herein as aggrieved employees and/or all aggrieved employees where  
8 appropriate

9 3. Plaintiffs, the Classes, and the aggrieved employees were employed by Defendant  
10 Sierra West Finish, Inc., and any subsidiaries or affiliated companies and Does 1 through 50 (who  
11 include individuals acting on behalf an employer within the meaning of Labor Code § 558.1) within  
12 the State of California as a non-exempt, hourly employees within four (4) years of the filing of the  
13 Complaint and continuing into the present.

14 4. Plaintiffs are recent former employees of Defendant Sierra West Finish, Inc. who  
15 worked for Defendants in San Bernardino, Riverside County, and Los Angeles County. At times  
16 throughout their employment with Defendants during the past four (4) years and within the past  
17 year, Plaintiffs, the Classes, and the aggrieved employees worked shifts in excess of six (6) hours  
18 in a day, worked shifts in excess of eight (8) hours in a day, and worked shifts in excess of ten (10)  
19 hours in a day.

20 5. At times throughout their employment with Defendants during the past four (4)  
21 years and within the past year, Plaintiffs, the Classes, and the aggrieved employees worked more  
22 than forty (40) hours per week.

23 6. Defendants hire employees to work within the state of California who are covered  
24 by California Industrial Welfare Commission Occupational Wage Order Nos. 1-2001 and 16-2001.  
25 Based upon information and belief, Defendants classified Plaintiffs, the Classes, and the aggrieved  
26 employees as non-exempt for the purposes of overtime, meal periods, and rest periods.

27 7. Plaintiffs and the Wage Statement Class received at least one wage statement  
28 between one (1) year prior to the filing of this Complaint and continuing into the present.

1           8.       Labor Code § 1197 states the California requirement that employees must be paid  
2 at least the minimum wage fixed by the Commission or by any applicable state or local law, and  
3 any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles  
4 “any employee receiving less than the legal minimum wage...to recover in a civil action the unpaid  
5 balance of the full amount of this minimum wage.” IWC Wage Order No. 1-2001 and 16-2001  
6 obligate employers to pay each employee minimum wages for all hours worked.

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

11          10.      At times during the four (4) years prior to the filing of the Complaint and within the  
12 past year, Defendants adopted an automatic deduction policy and practice whereby it automatically  
13 deducted thirty (30) minutes’ worth of Plaintiffs, the Classes, and the aggrieved employees’ pay  
14 regardless of whether or not the employee took a meal period and/or the full amount of their meal  
15 period. While not limited to Plaintiffs, the Field Non-Exempt Class, and the Field Non-Exempt  
16 Aggrieved Employees, such conduct regularly and consistently occurred when Plaintiffs, the  
17 Classes, and the aggrieved employees worked in the field (aka away from the company’s premises).  
18 As a result of Defendants’ policy and practice of automatically deducting thirty (30) minutes’ worth  
19 of pay regardless of whether or not the employee took a meal period and/or the length of the meal  
20 period, Defendants regularly failed to pay Plaintiffs, the Class, and the aggrieved employees for all  
21 hours worked in violation of Labor Code § 1194 and 1197 including hours that qualified as overtime  
22 hours pursuant to IWC Wage Order Nos. 1-2001 and 16-2001 and Labor Code § 510.

23          11.      Additionally, Defendants’ piece-rate compensation scheme resulted in pay periods  
24 during which Plaintiffs were denied the minimum wage for all hours worked. Defendants paid  
25 Plaintiffs on solely a piece-rate basis, at least during some pay periods, during the relevant time  
26 period. However, Defendants failed to separately compensate for all non-piece rate related  
27 activities/all nonproductive time, including but not limited to, all rest periods. Defendants’ failure  
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1 to separately so compensate resulted in Plaintiffs not being paid for all hours worked in violation  
2 of California minimum wage laws and Labor Code section 226.2.

3 12. At times during the four (4) years prior to the filing of the Complaint and within the  
4 past year, including within one (1) year of the filing of the Complaint, Defendant also frequently  
5 required and/or suffered and permitted or expected Plaintiffs, the Classes, and the aggrieved  
6 employees to perform work-off-the-clock including responding to inquiries before the start of their  
7 shifts. When Employees who clocked in early when they were asked such inquiries received write-  
8 ups from Defendants on occasion for merely trying to get paid for the work that they performed.  
9 Notably, Defendants and its supervisory employees knew that it was suffering and permitting and  
10 requiring Plaintiffs, the Classes, and the aggrieved employees to perform work off-the-clock and  
11 without compensation and/or sufficient compensation.

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

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

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

27 16. At times during the four (4) years prior to the filing of this Action and within the  
28 past year, Defendants paid Plaintiffs, the Overtime Classes, and the Overtime Aggrieved

1 Employees with non-discretionary bonuses and incentive pay—including but not limited to  
2 quarterly bonuses and/or production or gainshare bonuses—that it both failed to include when  
3 calculating and paying overtime wages and failed to provide retroactive payments to cover the  
4 overtime earned during the accrual period in violation of Labor Code section 510. Defendants also  
5 failed to make retroactive overtime payments to Plaintiffs, the Overtime Classes, and the Overtime  
6 Aggrieved Employees based upon the additional incentive pay/non-discretionary bonuses earned  
7 by all aggrieved employees—such as, but not limited to the quarterly bonuses—despite the fact that  
8 they worked overtime hours during at least some of the periods where such bonuses were earned.

9 17. At times during the four (4) years prior to the filing of this Action and within the  
10 past year, Defendants failed to include additional compensation other than Plaintiffs and the other  
11 aggrieved employees' base rate, when calculating and paying overtime. As a result of Defendants'  
12 failure to include such compensation when calculating the regular rate used for overtime purposes  
13 and paying overtime wages, Defendants failed to pay Plaintiffs, the Overtime Class Members, and  
14 the Overtime Aggrieved Employees at one and one-half times their regular rate.

15 18. In addition, at times during the four (4) years prior to the filing of this Action and  
16 within the past year, Defendants adopted an automatic deduction policy and practice whereby it  
17 automatically deducted thirty (30) minutes' worth of an employee's pay regardless of whether or  
18 not the employee took a meal period and/or the full amount of their meal period. While not limited  
19 to Plaintiffs, the Field Non-Exempt Class and the Field Non-Exempt Aggrieved Employees, such  
20 conduct regularly and consistently occurred when Plaintiffs and the other aggrieved employees  
21 worked in the field (aka away from the company's premises). As a result of Defendants' policy and  
22 practice of automatically deducting thirty (30) minutes' worth of pay regardless of whether or not  
23 the Plaintiffs, the Classes, and the aggrieved employees took a meal period and/or the length of the  
24 meal period, Defendants regularly failed to pay Plaintiffs, the Classes, and all aggrieved employees  
25 for all hours worked in violation of Labor Code § 1194 and 1197 including hours that qualified as  
26 overtime hours pursuant to IWC Wage Order Nos. 1-2001 and 16-2001 and Labor Code § 510.

27 19. Moreover, at times during the four (4) years prior to the filing of this Action and  
28 including within one (1) year prior to the filing of this action, Defendants also frequently required

1 and/or suffered and permitted or expected Plaintiffs, the Class, and the aggrieved employees to  
2 perform work-off-the-clock including responding to inquiries before the start of their shifts. This  
3 practice included regular hours, but also led to the misclassification of some overtime hours as  
4 regular hours. Employees who clocked in early when they were asked such inquiries received write-  
5 ups from Defendants on occasion for merely trying to get paid for the work that they performed.  
6 Notably, Defendant and its supervisory employees knew that they were suffering and permitting  
7 and requiring Plaintiffs, the Class Members, and the aggrieved employees to perform work off-the-  
8 clock and without compensation and/or sufficient compensation including for overtime hours.

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

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

23         22. At times during the four (4) years prior to the filing of this Action and within the  
24 past year, Defendants failed to authorize and permit Plaintiffs, the Class Members, and the  
25 aggrieved employees to receive lawful meal periods, failed to advise them of their right to such  
26 meal periods, failed to authorize and permit them to take timely first meal periods within the first  
27 five hours of their shift, and failed to authorize and permit Plaintiffs, the Class Members, and the  
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1 aggrieved employees to take second meal periods when they worked shifts in excess of ten (10)  
2 hours in a day.

3 23. At times during the four (4) years prior to the filing of this Action and within the  
4 past year, Defendants' meal period policies and practices disincentivized and discouraged  
5 Plaintiffs, the Class Members, and the aggrieved employees from taking timely first meal periods  
6 within the first five (5) hours of their shift. This includes, but is not limited to, requiring Plaintiffs  
7 and the other aggrieved employees to take their lunch at noon regardless of the start time of their  
8 shift while working the day shift. However, Defendant also failed to authorize and permit Plaintiffs,  
9 the Class Members, and the aggrieved employees to take timely first meal periods when they  
10 worked evening shifts. Defendants' understaffing policies and practices also pressured, coerced,  
11 and forced employees to take untimely first meal periods due to a lack of sufficient coverage.

12 24. Defendants also failed to pay Plaintiffs, the Class, and the aggrieved employees meal  
13 period premiums for each workday that the employees did not receive a compliant meal period.  
14 Labor Code § 226.7 provides "an employer shall not require an employee to work during a meal or  
15 rest or recovery period mandated pursuant to an applicable statute, or applicable regulation,  
16 standard, or order of the Industrial Welfare Commission ("IWC"). IWC Wage Order Nos. 1-2001  
17 and 9-2001 prohibits an employer from "employ[ing] any person for a work period of more than  
18 five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order Nos. 1-2001  
19 and 9-2001 further obligates employers to provide an employee to "pay the employee one (1) hour  
20 of pay at the employee's regular rate of compensation for each workday that the meal period is not  
21 provided.

22 25. Labor Code § 226.7 provides "an employer shall not require an employee to work  
23 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable  
24 regulation, standard, or order of the Industrial Welfare Commission ("IWC"). Under IWC Wage  
25 Order Nos. 1-2001 and 16-2001, an employer must authorize and permit all employees to take ten  
26 (10) minute duty free rest periods for every major fraction of four hours worked.

27 26. Pursuant to Labor Code § 226.7 and IWC Wage Order Nos. 1-2001 and 16-2001,  
28 Defendant failed to provide Plaintiffs, the Class, and the aggrieved employees with rest periods of

1 not less than ten (10) minutes for every major fraction of four (4) hours worked. Instead, Defendant  
2 regularly and consistently required Plaintiffs, the Class, and the aggrieved employees to forgo rest  
3 periods and/or made it impossible for them to complete their assignments and deliveries and also  
4 take a rest period.

5 27. Moreover, as a result of its understaffing practices and policies with respect to  
6 employees, it was not possible for Plaintiffs, the Class, and the aggrieved employees to take rest  
7 periods.

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

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

- 16  
17 (1) gross wages earned;  
18 (2) total hours worked by the employee;  
19 (3) the number of piece-rate units earned and any applicable piece rate if the  
20 employee is paid on a piece rate;  
21 (4) all deductions, provided that all deductions made on written orders of the employee may  
22 be aggregated and shown as one item;  
23 (5) net wages earned;  
24 (6) the inclusive dates of the period for which the employee is paid;  
25 (7) the name of the employee and only the last four digits of his or her social security number  
26 or an employee identification number other than a social security number;  
27 (8) the name and address of the legal entity that is the employer...;  
28 (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:

- 25 (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an  
26 employer to comply with subdivision (a) is entitled to recover the greater of all actual  
27 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one  
28 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.

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

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

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

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

15 (iv) The name of the employee and only the last four digits of his or her social  
16 security number or an employee identification number other than a social security  
17 number.

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

25 31. Moreover, the wage statements issued to the Non-Exempt Aggrieved Employees,  
26 the Field Non-Exempt Aggrieved Employees, the Overtime Aggrieved Employees, and the  
27 Prevailing Wage Non-Exempt Aggrieved Employees and Wage Statement Class, also improperly  
28 conflated the rates in effect such that they could not determine from their wage statements alone all  
applicable hourly rates in effect during the pay period and the corresponding number of hours  
worked at each hourly rate by the employee. This issue was particularly acute, but not limited to,  
instances where such aggrieved employees worked a prevailing wage and non-prevailing wage  
assignments during the same period. When this occurred, Defendants failed to make any distinction  
between the rates in effect and instead lumped together all "regular compensation" and "overtime  
compensation" instead of distinguishing between the rates. Thus, Defendants violated Labor Code  
§ 226(a)(9).

1           32. Defendants also knowingly and intentionally failed to pay Plaintiffs and the Classes  
2 minimum wages, overtime wages owed, meal period premiums, and rest periods premiums.  
3 Moreover, Plaintiffs 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, Plaintiffs, the Wage Statement  
7 Class, and the aggrieved employees were unable to determine at all the total hours worked by the  
8 employee, the gross wages earned, the net wages earned, and 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 for the reasons discussed above.

11           33. Labor Code §2802 provides that “[a]n employer shall indemnify his or her employee  
12 for all necessary expenditures or losses incurred by the employee in direct consequence of the  
13 discharge of his or her duties, or of his or her obedience to the directions of the employer, even  
14 though unlawful, unless the employee, at the time of obeying the directions, believed them to be  
15 unlawful.”

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

23           35. Separate and independent of the foregoing, Plaintiffs and all Sick Pay Late Pay Class  
24 left their employment with Defendants without having received compensation for sick pay at the  
25 correct rate throughout the duration of their employment. Labor Code § 246 requires employer to  
26 calculate sick leave pay based upon one of the following formulas:  
27  
28

1 (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the  
2 regular rate of pay for the workweek in which the employee uses paid sick time, whether or  
3 not the employee actually works overtime in that workweek.

4 (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's  
5 total wages, not including overtime premium pay, by the employee's total hours worked in  
6 the full pay periods of the prior 90 days of employment.

7 (3) Paid sick time for exempt employees shall be calculated in the same manner as the  
8 employer calculates wages for other forms of paid leave time.

9 Lab. Code § 246.

10 36. Throughout Plaintiffs' and the Sick Pay Late Payment Members' employment,  
11 Defendants failed to include the incentive pay and other non-discretionary bonuses—including but  
12 not limited to quarterly bonuses, incentive pay, gainshare, and production bonuses—profit sharing  
13 pay, and wages earned at prevailing wage rates when calculating and paying sick pay. As a result,  
14 when Plaintiff, the Sick Pay Late Payment Class, and the Sick Pay Late Pay Aggrieved Employees  
15 ended their employment, they left their employment without having received compensation for all  
16 of their sick pay that they were owed under Labor Code § 246 and resulting in a violation of Labor  
17 Code §§ 201-203. As a result of Defendants' willful underpayment of sick pay, Plaintiff, the Sick  
18 Pay Late Payment Class, and the Sick Pay Late Pay Aggrieved Employees experienced a violation  
19 of Labor Code §§ 201-202 upon separation from Defendants. *See Powell v. Walmart Inc.*, No. 3:20-  
20 cv-2412-BEN-LL, 2021 U.S. Dist. LEXIS 20777, at \*6 (S.D. Cal. Feb. 2, 2021) (denying a motion  
21 to dismiss claims under Labor Code section 203 based upon the employer's alleged failure to  
22 include incentive pay when calculating and paying sick pay); *accord Flores v. Dart Container*  
23 *Corp.*, No. 2:19-cv-00083 WBS EFB, 2020 U.S. Dist. LEXIS 93524, at \*7 (E.D. Cal. May 27,  
24 2020).

25 37. As discussed above, Defendants willfully failed to pay Plaintiffs and other members  
26 of the Class who are no longer employed by Defendants, the General Late Payment Class, the Sick  
27 Pay Late Payment Class, and the Late Payment Aggrieved Employees all minimum wages,  
28 overtime wages, meal period premiums, rest period premiums, and underpaid sick pay prior to or

1 upon termination or separation from employment with Defendants as required by California Labor  
2 Code §§ 201 and 202. At the time of Plaintiffs, the other members of the Class, and the Late  
3 Payment Aggrieved Employees' separation from Defendants, these sums were certain and known  
4 to Defendants.

5 38. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any  
6 employment are due and payable twice during each calendar month, on days designated in advance  
7 by the employer as the regular paydays.” Defendants pay Plaintiffs and all aggrieved employees on  
8 a weekly basis.

9 39. Due to Defendants' failure to pay Plaintiffs and all aggrieved employees all  
10 minimum wages, all overtime wages, meal period premiums, and rest period premiums, Defendants  
11 failed to timely pay Plaintiffs and all aggrieved employees all wages owed within seven (7) days  
12 of the close of the payroll period in accordance with Labor Code § 204(d) on a regular and  
13 consistent basis.

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

18 41. As explained in detail above, Defendants failed to maintain accurate records of the  
19 hours worked by Plaintiffs and the other aggrieved employees within the past four (4) years,  
20 including the past year, as required by Labor Code § 1174. Thus, Defendants violated Labor Code  
21 §§ 1174 and 1174.5.

22 42. Labor Code § 2802 provides that “[a]n employer shall indemnify his or her  
23 employee for all necessary expenditures or losses incurred by the employee in direct consequence  
24 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,  
25 even though unlawful, unless the employee, at the time of obeying the directions, believed them to  
26 be unlawful.”

27 43. California law prohibits an employer from failing to reimburse employees from  
28 losses incurred through the use of their own electronic devices even if the use would not cause the

1 employee to exceed their data limit. *See Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th  
2 113 (2014) ("We hold that when employees must use their personal cell phones for work-related  
3 calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees  
4 have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a  
5 reasonable percentage of their cell phone bills."). Additionally, an employer is required to  
6 reimburse employees for costs, such as but not limited to, the cost of gasoline as well as mileage  
7 reimbursement as set by the Internal Revenue Service ("IRS") associated with any on-the-job use  
8 of their personal vehicles.

9 44. At times during the four (4) years prior to the filing of this Action and/or within the  
10 past year, Defendants required and/or expected Plaintiffs, the Field Non-Exempt Class, and the  
11 Field Non-Exempt Aggrieved Employees to use their cell phones in the normal course of their job  
12 duties. This includes requiring the Field Non-Exempt Aggrieved Employees to use their cell phones  
13 to record time entries. Moreover, Defendants required and/or expected Plaintiffs, the Field Non-  
14 Exempt Class, and the Field Non-Exempt Aggrieved Employees to use their personal vehicles to  
15 drive to different job sites during the course of their shifts.

16 45. Defendants' conduct in requiring Plaintiffs, the Field Non-Exempt Class, the Field  
17 Non-Exempt Aggrieved Employees Field to engage in the above described activities caused them  
18 to incur losses as a direct consequence of their duties in violation of Labor Code § 2802. Although  
19 Plaintiffs, the Field Non-Exempt Class, and the Field Non-Exempt Aggrieved Employees were  
20 regularly required to and/or ordered/directed to use their own personal communication devices and  
21 motor vehicles for work purposes, the Field Non-Exempt Aggrieved Employees were not provided  
22 with any reimbursement for the use of their personal cell phones and personal motor vehicles.

## 23 II.

### 24 JURISDICTION AND VENUE

25 46. This Court has subject matter jurisdiction over all causes of action asserted herein  
26 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure  
27 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive  
28

1 of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the  
2 State of California or is subject to adjudication in the courts of the State of California.

3 47. This Court has personal jurisdiction over Defendant Sierra West Finish, Inc. because  
4 Defendant has caused injuries in the County of San Bernardino and State of California through their  
5 acts, and by their violation of the California Labor Code and California law in San Bernardino  
6 County.

7 48. During the statutory period applicable to the claims at issue in this action,  
8 Defendants were headquartered for at least part of the time at 654 S. Lincoln Ave, San Bernardino,  
9 CA 92408. Plaintiffs also performed work in the field (aka away from the main facility) in other  
10 locations in San Bernardino. *Battaglia Enterprises, Inc. v. Sup. Ct.*, 215 Cal. App. 4th 309, 313  
11 (2013) (holding that if “venue is proper in more than one county, a plaintiff may choose among the  
12 available options”); *accord Crestwood Behavioral Health, Inc. v. Sup. Ct.*, No. A160523, 2021 Cal.  
13 App. LEXIS 137, at \*5 (Ct. App. Feb. 17, 2021).

14 49. Venue is also proper in a case involving a PAGA claim in any county where the  
15 defendant conducts any business regardless of where the named Plaintiffs worked. *Crestwood*  
16 *Behavioral Health, Inc. v. Sup. Ct.*, No. A160523, 2021 Cal. App. LEXIS 137, at \*5 (Ct. App. Feb.  
17 17, 2021) (affirming that the Plaintiff’s choice of venue was proper in Alameda County even though  
18 the employee only worked for the defendant in Solano County and the defendant’s principal office  
19 was in Sacramento County).

20 50. Venue as to each Defendant is proper in this judicial district, pursuant to Code of  
21 Civil Procedure §395. Defendants operates within California and do business within San  
22 Bernardino County. The unlawful acts alleged herein have a direct effect on Plaintiffs and the  
23 Classes within the State of California and the County of San Bernardino.

24 51. This case should be classified as complex according to Rule 3.400 of the California  
25 Rules of Court, and assigned to a complex litigation judge and department, as it will involve  
26 substantial documentary evidence, and is likely to involve extensive motion practice raising  
27 difficult or novel issues that will be time-consuming to resolve and would require substantial post  
28 judgment judicial supervision.

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1 business during part of the Class Period was 654 S. Lincoln Ave, San Bernardino, CA 92408. Upon  
2 information and belief, Defendant employed Plaintiffs and the Classes within California and in San  
3 Bernardino County, including in San Bernardino, California. Defendant has done and does business  
4 throughout the State of California and in San Bernardino County.

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

12 57. Plaintiffs are informed and believe, and based thereon allege, that each Defendant  
13 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint  
14 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are  
15 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the  
16 employer and/or joint employer of Plaintiffs and the Class and/or as alter egos of each other.

#### 17 IV.

#### 18 **CLASS ACTION ALLEGATIONS**

19 58. Plaintiffs bring this action on behalf of themselves and all others similarly situated  
20 as a Class Action pursuant to §382 of the Code of Civil Procedure. Plaintiffs seek to represent  
21 several Classes and Subclasses composed of and defined as follows:

- 22 (1) all individuals who were employed by Sierra West Finish, Inc. as a non-exempt,  
23 hourly employee in California for one or more pay periods from four (4) years  
24 prior to the filing of this action and continuing into the present; (Non-Exempt  
25 Class)
- 26 (2) all individuals who were employed by Sierra West Finish, Inc. as a non-exempt,  
27 hourly employee who worked in the field (aka away from the main facility) in  
28 California during at least part of one or more pay periods from four (4) years prior  
to the filing of this action and continuing into the present (“Field Non-Exempt  
Class”);

- 1
- 2 (3) all individuals who were employed by Sierra West Finish, Inc or its predecessor
- 3 or merged entities in California as a non-exempt, hourly employee or other similar
- 4 position and who worked a shift of more than eight (8) hours in a day and/or forty
- 5 (40) hours in a week during a pay period from four (4) years prior to the filing of
- 6 this action and continuing into the present. (“Overtime Class”);
- 7
- 8 (4) all individuals who were employed by Sierra West Finish, Inc or its predecessor
- 9 or merged entities in California as a non-exempt, hourly employee or other similar
- 10 position and who worked a shift of more than eight (8) hours in a day and/or forty
- 11 (40) hours in a week during a pay period where they also worked on a prevailing
- 12 wage job from four (4) years prior to the filing of this action and continuing into
- 13 the present. (“Prevailing Wage Overtime Class”);
- 14
- 15 (5) all individuals who were employed by Sierra West Finish, Inc or its predecessor
- 16 or merged entities in California as a non-exempt, hourly employee or other similar
- 17 position and who worked a shift of more than eight (8) hours in a day and received
- 18 a non-discretionary bonus—including, but not limited to quarterly bonuses and or
- 19 production bonuses—and/or profit sharing bonuses from four (4) years prior to
- 20 the filing of this action and continuing into the present. (“Incentive Pay Overtime
- 21 Class”);

22 Collectively, Classes three (3), four (4), and five (5) may be referred to as the “Overtime Classes.”

- 23
- 24 (6) all individuals who were employed by Sierra West Finish, Inc. or its predecessor,
- 25 merged or related entities in California who worked one or more shifts of more
- 26 than six (6) hours as a non-exempt hourly employee or other similar position from
- 27 four (4) years prior to the filing of this action and continuing into the present.
- 28 (“First Meal Period Class”);
- (7) all individuals who were employed by Sierra West Finish, 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 four (4) years prior to the filing of this action and continuing into the present.
- (“Second Meal Period Class”);

Collectively, Classes six (6) and seven (7) may be referred to as the “Meal Period Classes.”

- (8) all individuals who were employed by Sierra West Finish, 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 four (4) years prior to the filing of this action and continuing into the present. (“Rest Period Class”);

(9) all individuals who were employed by Sierra West Finish, 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 one (1) year prior to the filing of this action and continuing into the present (“Wage Statement Class”);

(10) all individuals who were employed by Sierra West Finish, 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 three (3) years prior to filing of this action and continuing into the present; (“General Late Payment Class”);

(11) all individuals who were employed by Sierra West Finish, Inc. or its predecessor, merged or related entities for one or more pay periods in California, who received sick pay, and whose employment concluded at any time between three (3) years prior to filing of this action and continuing into the present; (“Sick Pay Late Payment Class”);

Collectively, Classes ten (10) and eleven (11) may be referred to as the “Late Payment Classes.”

(12) all individuals who were employed by Sierra West Finish, Inc. or its predecessor or merged entities in California as a non-exempt, hourly employee from four (4) years prior to the filing of this action and to whom at least one of the following applies: 1) who worked one or more shifts of more than four (4) hours in length or major fraction; 2) who worked one of more shifts of more than six (6) hours in length; 3) who worked a shift of eight (8) hours in a day. (“Unfair Competition Class”).

Collectively, these groups may also all collectively be referred to herein as the Classes or Class Member(s).<sup>3</sup>

59. 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 individuals who were employed by Sierra West Finish, Inc. as a non-exempt, hourly employee in California for one or more pay periods from March 5, 2020 and continuing into the present (“Non-Exempt Aggrieved Employees”);

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<sup>3</sup> Plaintiffs reserve the right to redefine the Classes and Subclasses identified herein.

- (2) all individuals who were employed by Sierra West Finish, Inc. as a non-exempt, hourly employee who worked in the field (aka away from the main facility) in California during at least part of one or more pay periods from March 5, 2020 and continuing into the present (“Field Non-Exempt Aggrieved Employees”);
- (3) all individuals who were employed by Sierra West Finish, Inc. as an employee in California for one or more pay periods from March 5, 2020 and continuing into the present (“Wage Statement Aggrieved Employee”);
- (4) all individuals who were employed by Sierra West Finish, 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 5, 2020 and continuing into the present. (“Non-Exempt Overtime Aggrieved Employees”);
- (5) all individuals who were employed by Sierra West Finish, 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 where they also worked on a prevailing wage job from March 5, 2020 and continuing into the present. (“Prevailing Wage Non-Exempt Overtime Aggrieved Employees”);
- (6) all individuals who were employed by Sierra West Finish, 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 received a non-discretionary bonus—including, but not limited to quarterly bonuses and or production bonuses—and/or profit sharing bonuses from March 5, 2020 and continuing into the present. (“Incentive Pay Non-Exempt Overtime Aggrieved Employees”);

Collectively, aggrieved employee groups four (4), five (5), and six (6) may be referred to as the “Overtime Aggrieved Employees.”

- (7) all individuals who were employed by Sierra West Finish, 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 5, 2020 and continuing into the present. (“Meal Period Aggrieved Employees”);
- (8) all individuals who were employed by Sierra West Finish, 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

1 from March 5, 2020 and continuing into the present. (“Second Meal Period  
2 Aggrieved Employees”);

3 Collectively, aggrieved employee groups seven (7) and eight (8) may be referred to as the  
4 “Meal Period Aggrieved Employees.”

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

9 (10) all individuals who were employed by Sierra West Finish, Inc. or its predecessor,  
10 merged or related entities for one or more pay periods in California as a non-  
11 exempt, hourly employee and whose employment concluded at any time between  
12 March 5, 2020 and continuing into the present; (“General Late Payment  
Aggrieved Employee”);

13 (11) all individuals who were employed by Sierra West Finish, Inc. or its predecessor,  
14 merged or related entities for one or more pay periods in California, who received  
15 sick pay, and whose employment concluded at any time between March 5, 2020  
and continuing into the present; (“Sick Pay Late Payment Aggrieved Employee”);

16 Collectively, aggrieved employee groups ten (10) and eleven (11) may be referred to as the “Late  
17 Payment Aggrieved Employees.”

18 Collectively, these groups, except for the Wage Statement Aggrieved Employees, may all  
19 collectively be referred to herein as aggrieved employees and/or all aggrieved employees where  
20 appropriate.

21 60. Plaintiffs reserve the right under Rule 3.765(b) of the California Rules of Court to  
22 amend or modify the class description with greater specificity, by division into subclasses, or by  
23 limitation to particular issues.

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

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1 to pay the Meal Period Classes and the Unfair Competition Class one additional hour of pay at the  
2 employees' at their regular rate of compensation when they did not receive a compliant meal period;

3 d. Whether Defendants violated Labor Code § 226.7 and IWC Nos. 1-2001 and  
4 9-2001, by failing to inform Plaintiffs and the Proposed Rest Period Class and the Unfair  
5 Competition Class of their right to receive a ten (10) minute duty-free rest period for every four  
6 hours of work or major fraction thereof, failing to authorize and permit employees' to leave the  
7 premises during rest periods and/or relieve employees of all control during rest periods, and by  
8 failing to compensate said employees one (1) additional hour of pay at the employee's regular rate  
9 of compensation in lieu of rest periods;

10 e. Whether Defendants violated Labor Code § 226(a) and (e) as well as IWC  
11 Wage Order Nos. 1-2001 and 16-2001 by failing to provide an accurate itemized wage statements  
12 that accurately indicate, the gross wages earned, all deductions from wages, the net wages earned,  
13 as well as all applicable hourly rates in effect during the pay period and the corresponding number  
14 of hours worked at each hourly rate by the employee to the Wage Statement Class;

15 f. Whether Defendants violated §§ 201-203 of the Labor Code by failing to  
16 pay compensation due and owing at the time that the Late Payment Classes employment with  
17 Defendants concluded;

18 g. Whether Defendants violated Labor Code § 2802 by failing to provide  
19 Plaintiffs, the Non-Exempt Class, the Field Non-Exempt Class, and the Unfair Competition Class  
20 with all tools and implements needed to discharge his or her duties;

21 h. Whether Defendants violated § 17200 et seq. of the Business & Professions  
22 Code by engaging in the acts previously alleged against the Unfair Competition Class;

23 **C. Typicality**

24 65. The claims of Plaintiffs are typical of the claims of the Proposed Class and  
25 Subclasses. Plaintiffs and all members of the Proposed Class and Subclasses sustained injuries and  
26 damages arising out of and caused by Defendants' common course of conduct in violation of laws,  
27 regulations that have the force and effect of law, and statutes as alleged herein.  
28

1                   **D. Adequacy of Representation**

2           66.     Plaintiffs will fairly and adequately represent and protect the interests of the  
3 members of the proposed Classes. Counsel who represents Plaintiffs and the Proposed Classes is  
4 competent and experienced in litigating large employment class actions, and have the financial  
5 resources to litigate the claims at issue.

6                   **E. Superiority of Class Action**

7           67.     A class action is superior to other available means for the fair and efficient  
8 adjudication of this controversy. Individual joinder of all Proposed Class Members is not  
9 practicable, and questions of law and fact common to the Proposed Class predominate over any  
10 questions affecting only individual members of the Proposed Class. Each member of the Proposed  
11 Class has been damaged and is entitled to recovery by reason of Defendants' illegal policy and/or  
12 practice of failing to pay all wages due, failing to provide meal periods, failing to provide rest  
13 periods, failing to provide accurate itemized wage statements, and failing to pay all wages upon  
14 resignation or termination.

15           68.     Class action treatment will allow those similarly situated persons to litigate their  
16 claims in the manner that is most efficient and economical for the parties and the judicial system.  
17 Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this  
18 action that would preclude its maintenance as a class action.

19                                   **V.**

20                                   **FIRST CAUSE OF ACTION**  
21                                   **FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF LABOR CODE §§**  
22                                   **226.2, 1194, 1194.2 AND IWC WAGE ORDER NO. 7-2001**  
23                                   **[Against All Defendants by Plaintiff, the Non-Exempt Class, and the Field Non-**  
24                                   **Exempt Class]**

25           69.     Plaintiffs, on behalf of themselves, the Non-Exempt Class, and the Field Non-  
26 Exempt Class re-allege and incorporate by reference all previous paragraphs.

27           70.     Section 1194 of the Labor Code provides, in relevant part:

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



1 accordance with Labor Code § 1194, Plaintiffs and the Non-Exempt Class, the Field Non-Exempt  
2 Class, the Overtime Class, the Prevailing Wage Overtime Class, and the Incentive Pay Overtime  
3 Class could not agree to work for a lesser wage.

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

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

11 78. By their common policy of requiring Plaintiffs and members of the Proposed the  
12 Non-Exempt Class, the Field Non-Exempt Class, the Overtime Class, the Prevailing Wage  
13 Overtime Class, and the Incentive Pay Overtime Class to work in excess of eight (8) hours in a  
14 workday and/or forty (40) hours in a workweek without compensating them at all for such hours  
15 and/or at the rate of one-half (1 1/2) their regular rate of pay, Defendants willfully violated the  
16 provisions of Labor Code § 510.

17 79. As a result of the unlawful acts of Defendants, the Non-Exempt Class, the Field  
18 Non-Exempt Class, the Overtime Class, the Prevailing Wage Overtime Class, and the Incentive  
19 Pay Overtime Class have been deprived of wages and/or overtime in amounts to be determined at  
20 trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys’  
21 fees, and costs.

## 22 VII.

### 23 THIRD CAUSE OF ACTION

#### 24 **FAILURE TO PROVIDE LAWFUL MEAL PERIODS PURSUANT TO LABOR CODE** 25 **§§ 226.7 and 512; IWC WAGE ORDER NOS. 1-2001 and 16-2001 § 11** **[Against All Defendants by Plaintiff, the Non-Exempt Class, the Field Non-Exempt Class,** **the First Meal Period Class, and the Second Meal Period Class ]**

26 80. Plaintiffs reallege and incorporate by reference all previous paragraphs.

27 81. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of  
28 compensation for each non-compliant meal period an employer fails to provide. Employees are

1 entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be  
2 provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30)  
3 minutes for shifts over ten (10) hours.

4 82. At points within the past four (4) years including within the past year, Plaintiffs and  
5 the First Meal Period Class consistently worked shifts over six (6) hours and did not receive timely  
6 first meal periods within the first five (5) hours of their shifts.

7 83. Plaintiffs and the Proposed Second Meal Period Subclass did not receive a second  
8 thirty (30) minute meal period when working shifts in excess of ten (10) hours in a day during the  
9 statutory period applicable to their claims;

10 84. During the statutory period applicable to their claims, Plaintiffs and the Proposed  
11 Meal Period were not compensated with one (1) hours' worth of pay at their regular rate of  
12 compensation when they were not provided with a compliant meal period or at the proper rate based  
13 upon Defendants' unlawful compensation policies detailed above.

14 85. Pursuant to Labor Code §226.7, Plaintiffs and the Proposed Meal Period Classes are  
15 entitled to damages in an amount equal to one (1) hour of wages per missed meal break, per day in  
16 a sum to be proven at trial.

17 **VIII.**  
18 **FOURTH CAUSE OF ACTION**  
19 **FAILURE TO PROVIDE LAWFUL REST PERIODS AND PAY NON-COMPLIANT**  
20 **REST PERIOD PREMIUMS PURSUANT TO LABOR CODE § 226.7 AND IWC WAGE**  
21 **ORDER NOS. 1-2001 AND 16-2001, § 12**  
22 **[Against All Defendants by Plaintiffs, the Non-Exempt Class, the Field Non-Exempt Class,**  
23 **and the Rest Period Class]**

24 86. Plaintiffs, on behalf of themselves, and the Non-Exempt Class, the Field Non-  
25 Exempt Class, and the Rest Period Class, reallege and incorporate by reference all previous  
26 paragraphs.

27 87. Plaintiffs, the Non-Exempt Class, the Field Non-Exempt Class, and the Rest Period  
28 Class, consistently 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.

1           88. Labor Code § 226.7 provides “an employer shall not require an employee to work  
2 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable  
3 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage  
4 Order No. 7-2001 an employer must authorize and permit all employees to take ten (10) minute  
5 duty free rest periods for every major fraction of four hours worked.

6           89. Labor Code § 226.7 provides “an employer shall not require an employee to work  
7 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable  
8 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage  
9 Order No. 1-2001 and 16-2001 an employer must authorize and permit all employees to take ten  
10 (10) minute duty free rest periods for every major fraction of four hours worked.

11           90. Defendants failed to provide Plaintiffs, the Non-Exempt Class, the Field Non-  
12 Exempt Class, and the Rest Period Class, with rest periods of not less than ten (10) minutes for  
13 every major fraction of four (4) hours worked. Instead, Defendants regularly and consistently  
14 required Plaintiffs, the Non-Exempt Class, the Field Non-Exempt Class, and the Rest Period Class,  
15 to forgo rest periods and/or made it impossible for them to complete their assignments and  
16 deliveries and also take a rest period.

17           91. Moreover, Defendants’ understaffing policies and practices also pressured, coerced,  
18 and forced employees to take untimely first meal periods due to a lack of sufficient coverage.

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

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

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

## IX.

## **FIFTH CAUSE OF ACTION**

## **VIOLATIONS OF LABOR CODE § 226(e)**

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

95. Plaintiffs, on behalf of themselves and the Wage Statement Class, reallege and incorporate by reference all previous paragraphs and all subsequent paragraphs.

96. From one (1) year prior to the filing of this action and continuing into the present, Defendants knowing and intentionally failed to provide accurate itemized wage statements to Plaintiffs and the Wage Statement Class in accordance with Labor Code § 226(a)(1, 2, 5, and 9). 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, 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.

97. Due to Defendants' failure to pay Plaintiffs and the Wage Statement Class all minimum wages, all overtime wages, all rest period premiums, meal period premiums, the wage statements issued by Defendant 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 Plaintiffs and the Wage Statement Class.

98. Moreover, the wage statements issued to the Non-Exempt Aggrieved Employees, the Field Non-Exempt Aggrieved Employees, the Overtime Aggrieved Employees, and the Prevailing Wage Non-Exempt Aggrieved Employees and Wage Statement Class, also improperly conflated the rates in effect such that they could not determine from their wage statements alone all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. This issue was particularly acute, but not limited to, instances where such aggrieved employees worked a prevailing wage and non-prevailing wage assignments during the same period. When this occurred, Defendants failed to make any distinction between the rates in effect and instead lumped together all "regular compensation" and "overtime compensation" instead of distinguishing between the rates. Thus, Defendants violated Labor Code § 226(a)(9).

99. Defendants also knowingly and intentionally failed to pay Plaintiffs and the Classes minimum wages, overtime wages owed, meal period premiums, and rest periods premiums. Moreover, Plaintiffs and the Wage Statement Class also suffered legal "injury" for purposes of Labor Code section 226(e) insofar as they were unable to readily and easily determine from the

1 wage statements themselves the information required to be set forth by Section 226(a), the  
2 information provided by Defendants was confusing and inaccurate, Plaintiffs and the Itemized  
3 Wage Statement Class were unable to determine at all the total hours worked by the employee, the  
4 gross wages earned, the net wages earned, and all applicable hourly rates in effect during the pay  
5 period and the corresponding number of hours worked at each hourly rate by the employee for the  
6 reasons discussed above.

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

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

23 102. An employee suffering injury as a result of a knowing and intentional failure by an  
24 employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual damages  
25 or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars  
26 (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate  
27 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable  
28 attorneys’ fees. *See Lab. Code § 226(e)*. Plaintiffs and the Wage Statement seek penalties under

1 Labor Code § 226(e) in amounts to be determined at trial, and are entitled to recovery of such  
2 amounts, plus interest and penalties thereon, attorneys' fees, and costs.

3 **X.**

4 **SIXTH CAUSE OF ACTION**

5 **WAITING TIME PENALTIES PURSUANT TO LABOR CODE §§201-203**

6 **[Against all Defendants on behalf of Plaintiffs, The General Late Payment Class, and the**  
7 **Sick Pay Late Payment Class]**

8 103. Plaintiffs on behalf of themselves, the General Late Payment Class, and the Sick  
9 Pay Late Payment Class re-allege and incorporate by reference each and every allegation set forth  
10 in the preceding paragraphs.

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

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

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

25 107. Separate and independent of the foregoing, Plaintiffs and all Sick Pay Late Payment  
26 Class left their employment with Defendants without having received compensation for sick pay at  
27 the correct rate throughout the duration of their employment. Labor Code § 246 requires employer  
28 to calculate sick leave pay based upon one of the following formulas:

(1) Paid sick time for nonexempt employees shall be calculated in the same manner as the  
regular rate of pay for the workweek in which the employee uses paid sick time, whether or  
not the employee actually works overtime in that workweek.

1  
2 (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's  
3 total wages, not including overtime premium pay, by the employee's total hours worked in  
4 the full pay periods of the prior 90 days of employment.

5 (3) Paid sick time for exempt employees shall be calculated in the same manner as the  
6 employer calculates wages for other forms of paid leave time.

7 Lab. Code § 246.

8 108. Throughout Plaintiffs' and the Sick Pay Late Payment Class Members'  
9 employment, Defendants failed to include the incentive pay and other non-discretionary bonuses--  
10 including but not limited to quarterly bonuses, incentive pay, gainshare, and production bonuses—  
11 profit sharing pay, and wages earned at prevailing wage rates when calculating and paying sick  
12 pay. As a result, when Plaintiff, the Sick Pay Late Payment Class, and the Sick Pay Late Pay  
13 Aggrieved Employees ended their employment, they left their employment without having received  
14 compensation for all of their sick pay that they were owed under Labor Code § 246 and resulting  
15 in a violation of Labor Code §§ 201-203. As a result of Defendants' willful underpayment of sick  
16 pay, Plaintiff, the Sick Pay Late Payment Class, and the Sick Pay Late Pay Aggrieved Employees  
17 experienced a violation of Labor Code §§ 201-202 upon separation from Defendants. *See Powell*  
18 *v. Walmart Inc.*, No. 3:20-cv-2412-BEN-LL, 2021 U.S. Dist. LEXIS 20777, at \*6 (S.D. Cal. Feb.  
19 2, 2021) (denying a motion to dismiss claims under Labor Code section 203 based upon the  
20 employer's alleged failure to include incentive pay when calculating and paying sick pay); *accord*  
21 *Flores v. Dart Container Corp.*, No. 2:19-cv-00083 WBS EFB, 2020 U.S. Dist. LEXIS 93524, at  
22 \*7 (E.D. Cal. May 27, 2020).

23 109. As discussed above, Defendants willfully failed to pay Plaintiffs and other members  
24 of the Class who are no longer employed by Defendants, and the Late Payment Aggrieved  
25 Employees all minimum wages, overtime wages, meal period premiums, rest period premiums, and  
26 underpaid sick pay prior to or upon termination or separation from employment with Defendants  
27 as required by California Labor Code §§ 201 and 202. At the time of Plaintiffs, the other members  
28

1 of the General Late Payment Class and the Sick Pay Late Payment Class' separation from  
2 Defendants, these sums were certain and known to Defendants.

3 110. As a result, Defendants are liable to Plaintiffs, the General Late Payment Class, and  
4 the Sick Pay Late Payment Class who are no longer employed by Defendants for waiting time  
5 penalties amounting to thirty (30) days wages for Plaintiffs and each Class Member pursuant to  
6 California Labor Code § 203. See, e.g., DLSE Manual, 4.3.4 (Failure to pay any sort of wages due  
7 upon termination entitles an employee to recover waiting time penalties).

8 **XI.**  
9 **SEVENTH CAUSE OF ACTION**  
10 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**  
11 **(LABOR CODE § 2802)**

12 **[Against all Defendants on behalf of Plaintiffs, the Non-Exempt Class and the Field Non-**  
13 **Exempt Class]**

14 111. Plaintiffs on behalf of themselves, the Non-Exempt Class and the Field Non-Exempt  
15 Class re-allege and incorporate by reference each and every allegation set forth in the preceding  
16 paragraphs.

17 112. Labor Code § 2802 provides that “[a]n employer shall indemnify his or her  
18 employee for all necessary expenditures or losses incurred by the employee in direct consequence  
19 of the discharge of his or her duties.”

20 113. California law prohibits an employer from failing to reimburse employees for losses  
21 incurred as a direct consequence of their job duties the use of their own electronic devices even if  
22 the use would not cause the employee to exceed their data limit. See *Cochran v. Schwan’s Home*  
23 *Serv., Inc.*, 228 Cal. App. 4th 113 (2014) (“We hold that when employees must use their personal  
24 cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse  
25 them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the  
26 reimbursement owed is a reasonable percentage of their cell phone bills.”).

27 114. Additionally, an employer is required to reimburse employees for costs, such as but  
28 not limited to, the cost of gasoline as well as mileage reimbursement as set by the Internal Revenue  
Service (“IRS”) associated with any on-the-job use of their personal vehicles.

115. At times during the four (4) years prior to the filing of this Action and/or within the past year, Defendants required and/or expected Plaintiffs and the Field Non-Exempt Class to use their cell phones in the normal course of their job duties. This includes requiring the Field Non-Exempt Class to use their cell phones to record time entries.

116. Moreover, Defendants required and/or expected Plaintiffs, the Field Non-Exempt Class, and the Field Non-Exempt Aggrieved Employees to use their personal vehicles to drive to different job sites during the course of their shifts.

117. Defendants' conduct in requiring Plaintiffs and the Field Non-Exempt Class to engage in the above described activities caused them to incur losses as a direct consequence of their duties in violation of Labor Code § 2802. Although Plaintiffs and the Field Non-Exempt Class were regularly required to and/or ordered/directed to use their own personal communication devices, and personal vehicles for work purposes, the Field Non-Exempt Class were not provided with any reimbursement for the use of their personal cell phones or personal vehicles.

118. Defendants failure to pay for or reimburse the work-related business expenses of Plaintiffs and Class Members violated non-waivable rights secured to Plaintiffs and Field Non-Exempt Class by Labor Code §2802. *See* Labor Code §2804. Plaintiffs and the Field Non-Exempt Class are entitled to reimbursement for these necessary expenditures, plus interest and attorneys' fees and costs, under Labor Code § 2802.

**XII.**  
**EIGHTH CAUSE OF ACTION**  
**UNFAIR COMPETITION PURSUANT TO**  
**BUSINESS & PROFESSIONS CODE § 17200**  
**[Against all Defendants on behalf of Plaintiff, the Classes, and the Unfair Competition**  
**Class]**

119. Plaintiffs, on behalf of themselves, the Classes, and the Unfair Competition Class, realleges and incorporates by reference all previous paragraphs.

120. This is a Class Action for Unfair Business Practices. Plaintiffs, on behalf of themselves, 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 Plaintiffs, the

1 general public, and the Proposed Classes. Plaintiffs seek to enforce important rights affecting the  
2 public interest within the meaning of Code of Civil Procedure § 1021.5. Each Plaintiff is a “person”  
3 within the meaning of Business & Professions Code § 17204, and therefore has standing to bring  
4 this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

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

10 122. Defendants have violated statutes and public policies as alleged herein. Through  
11 the conduct alleged in this Complaint, Defendants have acted contrary to these public policies, have  
12 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair  
13 business practices in violation of Business & Profession Code § 17200, et seq., depriving Plaintiffs,  
14 and all persons similarly situated, and all interested persons of rights, benefits, and privileges  
15 guaranteed to all employees under law.

16 123. Defendants’ conduct, as alleged hereinabove, constitutes unfair competition in  
17 violation of § 17200 et seq. of the Business & Professions Code.

18 124. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise  
19 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of  
20 § 17200 et seq. of the Business & Professions Code.

21 125. As a proximate result of the above-mentioned acts of Defendants, Plaintiffs, the  
22 Unfair Competition Class, others similarly situated, other businesses, and the general public have  
23 been damaged in a sum as may be proven.

24 126. As part of their claims against Defendant Galleria Market, LP, Plaintiffs seek not  
25 only the unpaid wages, but also the market value of the loss of the statutory protections and the cost  
26 to other employers of providing proper pay, breaks, reimbursement/tools, and wages for all hours  
27 worked. *See e.g. Safeway, Inc. v. Sup. Ct.*, 238 Cal.App.4th 1138, 1162 (2015).  
28

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

### XIII.

### TENTH CAUSE OF ACTION

**PLAINTIFFS AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS  
FOR PENALTIES PURSUANT TO LABOR CODE § 2698, ET SEQ. FOR VIOLATIONS  
OF LABOR CODE §§ 1. 201, 202, 203, 204, 210, 226, 226.2, 226.3, 226.7, 510, 512, 558,  
1174, 1174.5, 1197, 1197.1, 1198, and 2802 as well as IWC Wage Order Nos. 1-2001 and 16-  
2001**

128. Plaintiffs, on behalf of the State of California, reallege and incorporate by reference all previous paragraphs.

129. Plaintiffs filed their respective PAGA Notices online with the Labor Workforce Development Agency (“LWDA”) and each sent a letter by certified mail to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* **Exhs. A and B.** As required by PAGA, each Plaintiff submitted the requisite \$75.00 filing fee to the LWDA. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received and/or will have been received by Plaintiffs from the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of the postmark date of the PAGA notice. Plaintiffs are therefore, entitled to commence and proceed with a civil action pursuant to Labor Code § 2699.

130. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code § 2698, *et seq.* because of Defendants' violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1197, 1197.1, 1198, and 2802 as well as IWC Wage Order Nos. 1-2001 and 16-2001.

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

\$100 for the initial violation per employee per pay period; and  
\$200 for each subsequent violation per employee per pay period.

132. These penalties will be allocated 75% to the Labor Workforce Development Agency and 25% to the affected employees. These penalties may be stacked separately for each of Defendants violations of the California Labor Code. *See e.g. Kaanaana v. Barrett Business Services, Inc.*, 29 Cal.App.5th 778, 808 (2018) (acknowledging that the employees could get separate PAGA penalties for interrupted meal periods because interrupted meal periods violated Labor Code sections 1194 and 512 and remanding to the trial court to determine the amount of PAGA penalties to award); *Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017) (“hold[ing] a Plaintiffs 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) and acknowledging that a Plaintiffs could recover separately under PAGA for violations of Labor Code §§ 226(a) and 226(e)); *Magadia vs. Wal-Mart*, No. 17-CV-00062-LHK, 2019 U.S. Dist. LEXIS 91792 (N.D. Cal. May 31, 2019) (awarding three sets of PAGA penalties including several during the same pay period); *Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx) 2012 U.S. Dist. LEXIS 86975, at \*59, fn. 77 (C.D. Cal. June 22, 2012) (holding that although the Plaintiffs did not seek stacked PAGA penalties, that “PAGA penalties can be ‘stacked,’ i.e., multiple PAGA penalties can be assessed for the same pay period for different Labor Code violations.”); *accord Schiller v. David's Bridal, Inc.*, No. 1:10-cv-00616 AWI SKO) 2010 U.S. Dist. LEXIS 81128, at \*17 (E.D. Cal. July 14, 2010); *Pulera v. F & B, Inc.*, No. 2:08-cv-00275-MCE-DAD, 2008 U.S. Dist. LEXIS 72659, 2008 WL 3863489, at \* 2-3 (E.D. Cal. Aug. 19, 2008); *Smith v. Brinker Intern, Inc.*, No. C 10-0213 VRW, 2010 U.S. Dist. LEXIS 54110, 2010 WL 1838726, at \* 2-6 (N.D. Cal. May 5, 2010).

133. In addition, Plaintiffs and the aggrieved employees seek the default penalty provided by Labor Code § 226.3. 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

1 employee a wage deduction statement or fails to keep the required in subdivision (a) of Section  
2 226.”

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

9 135. As a result of the faulty compensation policies and practices described in detail  
10 above, the State of California is entitled to recover penalties under Labor Code § 210 through  
11 PAGA.

12 136. Further, Labor Code § 558 imposes a penalty upon employers “who violates, or  
13 causes to be violated...any provision regulating hours and days of work in any order of the  
14 Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial  
15 violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the  
16 employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For  
17 each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay  
18 period for which the employee was underpaid...” Based upon the above factual allegations related  
19 to overtime, meal period, and rest period violations, Plaintiffs and the aggrieved employees are  
20 entitled to recover civil penalties under Labor Code § 558 and not any underpaid wages under  
21 PAGA. *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019).

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

26 138. 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, restitution  
28 of wages, and liquidate damages as follows: (1) for any initial violation that is intentionally

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

9 **RELIEF REQUESTED**

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

- 11 1. An Order that this action may proceed and be maintained as a Class Action on behalf  
12 of the Classes;
- 13 2. For compensatory damages in the amount of unpaid wages not paid to Plaintiffs  
14 and the Classes and from four (4) years prior to the filing of this action and continuing into the  
15 present as may be proven;
- 16 3. For compensatory damages in the amount of unpaid overtime wages not paid to  
17 Plaintiffs, each Class Member from four (4) years prior to the filing of this action and continuing  
18 into the present as may be proven;
- 19 4. For compensatory damages in the amount of Plaintiffs and each Class Members  
20 unpaid meal period premiums from four (4) years prior to the filing of this action and continuing  
21 into the present as may be proven;
- 22 5. For compensatory damages in the amount of Plaintiffs, each Class Members' unpaid  
23 rest period premiums from four (4) years prior to the filing of this action and continuing into the  
24 present as may be proven;
- 25 6. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code  
26 § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs  
27 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not  
28 exceeding an aggregate penalty of four thousand dollars (\$4,000) for the inaccurate itemized

1 wage statements issued to Plaintiffs and the Wage Statement Class from one (1) year prior to the  
2 filing of this action and continuing into the present;

3 7. An award to Plaintiffs, the General Late Payment Class, and the Sick Pay Late  
4 Payment Class of waiting time penalties in the amount of up to 30 days' wages;

5 8. For restitution for unfair competition pursuant to Business & Professions Code  
6 § 17200 to Plaintiffs and the Unfair Competition Class for actions, including disgorgement of  
7 profits, in an amount as may be proven;

8 9. An order enjoining Defendant and its agents, servants, and employees, and all  
9 persons acting under, in concert with, or for it from providing Plaintiffs and the Proposed Class  
10 Members proper compensation for overtime hours worked, meal period premiums, rest period  
11 premiums, from failing to provide timely first meal periods within the first five (5) hours of an  
12 employees shift and second meal periods when employees work more than ten (10) hours in a  
13 day;

14 10. For penalties under Labor Code § 2698, *et seq.* for Plaintiffs and all aggrieved  
15 employees because of Defendants' violation of Labor Code §§ 201, 202, 203, 204, 210, 226,  
16 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1197, 1197.1, 1198, and 2802 as well as IWC  
17 Wage Order Nos. 1-2001 and 16-2001;

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

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

20 13. An award of attorneys' fees; and

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

22 DATED: August 20, 2021  
23 ~~June 3, 2021~~

WINSTON LAW GROUP, P.C.

24 By: David S. Winston  
25 DAVID S. WINSTON  
26 Attorneys for Plaintiff  
27 ROBERT DE LA HOYA and the  
28 Proposed Class

1  
2 Dated: June 21, 2021

CROSNER LEGAL, P.C.

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4 \_\_\_\_\_  
5 Michael R. Crosner  
6 Zachary M. Crosner  
7 Blake R. Jones  
8 Chad A. Saunders  
9 Attorneys for Plaintiff MARISAL DOBBINS and  
10 the Proposed Class

11  
12 **DEMAND FOR JURY TRIAL**

13 Plaintiffs ROBERT DE LA HOYA and MARISAL DOBBINS demand a trial by jury on  
14 all claims so triable.

15 DATED: ~~June 3, 2021~~

August 20, 21

WINSTON LAW GROUP, P.C.

16 By: David S. Winston  
17 DAVID S. WINSTON,  
18 Attorneys for Plaintiffs ROBERT DE LA HOYA  
19 and the Proposed Class

20 Dated: June 3, 2021,

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