

1 Carolyn H. Cottrell (SBN 166977)
2 Ori Edelstein (SBN 268145)
3 Michelle S. Lim (SBN 315691)
4 SCHNEIDER WALLACE
5 COTTRELL KONECKY LLP
6 2000 Powell Street, Suite 1400
Emeryville, California 94608
Telephone: (415) 421-7100
Facsimile: (415) 421-7105
ccottrell@schneiderwallace.com
odelstein@schneiderwallace.com
mlim@schneiderwallace.com

7 *Attorneys for Plaintiff and the Putative Class*

FILED/ENDORSED
Clerk of the Superior Court

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By D. HERTZ
DEPUTY CLERK

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SOLANO**

11 MARIA R. MARTINEZ, on behalf of
12 herself and the Class members,

13 Plaintiff,

14 vs.

15 MARIANI PACKING CO. INC.,

16 Defendant,

Case No. FCS056622

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR VIOLATIONS OF:**

- (1) Failure to Pay for All Hours Worked (Labor Code § 204);
- (2) Failure to Pay Minimum Wages (Labor Code §§ 1182.11, 1182.12, 1194, 1197, and 1197.1);
- (3) Failure to Pay Overtime Wages (Labor Code § 510);
- (4) Failure to Authorize and Permit and/or Make Available Meal Periods (Labor Code §§ 226.7 and 512);
- (5) Failure to Provide Timely and Accurate Itemized Wage Statements (Labor Code § 226);
- (6) Waiting Time Penalties (Labor Code §§ 201-203)
- (7) Unlawful Business Practices (Cal. Bus. & Prof. Code §§ 17200 *et seq.*);
- (8) Penalties Pursuant to § 2699(a) of the Private Attorneys General Act; and
- (9) Penalties Pursuant to § 2699(f) of the Private Attorneys General Act

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. Plaintiff Maria R. Martinez brings this class action on behalf of herself and other
3 similarly situated individuals who have worked for Mariani Packing Co. Inc. (“Mariani” or
4 “Defendant”) as non-exempt, hourly employees, including but not limited to Utility Workers,
5 Packers, Machine Operators, Traffic Planners, IRAs, Shippers & Receivers, Warehouse Workers,
6 and other employees with similar job duties, to challenge Mariani’s violations of California wage
7 and hour laws.

8 2. This is a class action against Mariani to challenge its policies and practices of: (1)
9 failing to compensate Plaintiff and putative Class members for all hours worked; (2) failing to pay
10 Plaintiff and putative Class members minimum wage for all hours worked; (3) failing to pay
11 Plaintiff and putative Class members overtime wages; (4) failing to authorize and permit Plaintiff
12 and the putative Class members to take meal breaks to which they are entitled by law and failing to
13 pay premium compensation for missed meal breaks; (5) failing to provide Plaintiff and putative
14 Class members true and accurate itemized wage statements; (6) failing to pay Plaintiff and putative
15 Class members all wages owed during employment and following separation from employment;
16 and (7) unfair business practices.

17 3. Mariani is the largest independently owned producer and packer of dried fruit
18 worldwide. Mariani produces dried fruits, which are sold in bulk, under private labels and under
19 the Mariani brand to retail food stores and other food manufacturing companies in more than 50
20 countries worldwide. Plaintiff and members of the putative Class are current and former non-
21 exempt hourly employees who worked for Mariani in California. These employees provide support
22 and assistance for Defendant’s production and packaging operations. Among other tasks, Plaintiff
23 and putative Class members are responsible for sorting products, ensuring operation of machinery
24 and mechanical equipment, moving raw materials and finished goods, and performing cycle counts
25 at Mariani’s production facilities.

1 4. Plaintiff and putative Class members work long hours. For example, Plaintiff was
2 routinely scheduled to work, and in fact worked, ten hour shifts for six consecutive days, and
3 regularly worked a seventh shift of at least eight hours.

4 5. Plaintiff and putative Class members are not compensated for all hours worked in
5 excess of eight hours per day and/or forty hours per week.

6 6. Plaintiff and putative Class members are not paid minimum wage for all hours
7 worked and/or overtime rates, as appropriate, for all hours worked above eight per day and/or forty
8 hours per week. Despite their long shifts, Plaintiff and putative Class members are also routinely
9 denied second meal periods.

10 7. Plaintiff and putative Class members do not receive true and accurate, itemized wage
11 statements reflecting the hours they actually work and the amount of wages, including overtime and
12 premium payments for missed second meal breaks, to which they are entitled and for which they
13 should be compensated.

14 8. Consequently, Plaintiff and putative Class members do not receive all wages owed
15 during employment and following separation from employment.

16 9. As a result of these violations, Plaintiff seeks full compensation on behalf of herself
17 and all others similarly situated for all damages, penalties, and interest to the full extent permitted
18 by the California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders.

19 10. Plaintiff seeks full compensation on behalf of herself and all others similarly situated
20 for all unpaid wages, including minimum wages and/or overtime, premium payments for all denied
21 second meal periods, inaccurate wage statement penalties and waiting time penalties.

22 11. Mariani is also liable for violation the Unfair Competition Law, Business and
23 Professions Code §§ 17200 *et seq.* (“UCL”).

24 12. Plaintiff also seeks declaratory and equitable relief, including restitution.

25 13. Finally, Plaintiff seeks reasonable attorneys’ fees and costs under the Labor Code,
26 and California Code of Civil Procedure § 1021.5.

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1 **PARTIES**

2 14. Plaintiff and the putative Class members are current and former hourly non-exempt
3 employees who work for Mariani as, among other positions, Utility Workers, Packers, Machine
4 Operators, Traffic Planners, IRAs, Shippers & Receivers, Warehouse Workers, and other
5 employees with similar job duties, in California.

6 15. Plaintiff is an individual over the age of eighteen, and at all times mentioned in this
7 Complaint was a resident of the State of California.

8 16. Plaintiff has been employed by Defendant for various projects as a Utility Worker
9 from approximately March 2020 through December 2020. Plaintiff worked for Defendant in
10 Vacaville, California.

11 17. Plaintiff is informed, believes, and alleges that Mariani Packing Co. Inc. is a
12 California corporation headquartered in Vacaville, California. Mariani is registered to do business
13 in California, does business in California and employs hourly non-exempt employees, including
14 Plaintiff and the putative Class members, in California.

15 18. At all relevant times, Defendant has done business under the laws of the California,
16 has had places of business in California, including in this judicial district, and has employed
17 Plaintiff and putative Class members in this judicial district. At all relevant times, Defendant is a
18 “person” as defined in Labor Code § 18 and Business and Professions Code § 17201. Defendant is
19 also an “employer” within the meaning of the Labor Code and IWC Wage Orders.

20 **JURISDICTION AND VENUE**

21 19. This Court has jurisdiction over Plaintiff’s claims pursuant to the California Labor
22 Code and Business and Professions Code. The Court also has jurisdiction over Defendant because
23 Defendant is a California corporation registered to do business in California, Defendant’s principal
24 place of business is in California, and because Defendant in fact does business throughout the State
25 of California.

26 20. Venue is proper in this judicial district pursuant to Code of Civil Procedure § 395.5
27 because Defendant’s principal place of business is located in Solano County.

1 **FACTUAL ALLEGATIONS**

2 21. Defendant is the largest independently owned producer and packer of dried fruit
3 worldwide. Mariani produces dried fruits, which are sold in bulk, under private labels and under
4 the Mariani brand to retail food stores and other food manufacturing companies in more than 50
5 countries worldwide. Defendant provides its services throughout the United States, including in
6 California. Defendants employ hundreds of hourly non-exempt workers similarly situated to
7 Plaintiff in California.

8 22. Plaintiff worked for Defendant as a Utility Worker in Vacaville, California, from
9 approximately March 2020 through December 2020. Plaintiff's primary duties include, but are not
10 limited to, sorting products, moving raw materials and finished goods, and performing cycle counts.

11 23. Plaintiff was classified as an hourly non-exempt employee and was paid an hourly
12 rate of \$15.00.

13 24. Plaintiff usually worked ten hours per shift, six shifts per week, and regularly worked
14 an additional seventh shift of at least eight hours. Plaintiff worked at least sixty hours per week and
15 frequently worked sixty-eight hours or more.

16 25. As a matter of policy and practice, Defendant routinely refused to record and/or
17 compensate Plaintiff and putative class members for all hours worked. For instance, despite
18 typically working 60 to 68 hours a week, Defendant only compensated Plaintiff for approximately
19 50 hours per week. Plaintiff and putative Class members are therefore denied compensation for all
20 hours worked, including minimum wages and/or overtime, which they are lawfully owed.

21 26. Plaintiff is informed, believes, and thereon alleges that Defendant's same time
22 recording, and compensation protocols are used across all Defendant's facilities throughout
23 California.

24 27. Plaintiff is informed, believes, and thereon alleges that Defendant utilizes the same
25 or substantially similar timekeeping mechanism throughout all its facilities in California.

26 28. Additionally, Defendant fails to provide Plaintiff and putative Class members
27 compliant second meal breaks when they work shifts lasting at least ten hours, *i.e.*, approximately
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1 six days per week. Defendant's policies, practices, and procedures require Plaintiff and putative
2 Class members to systematically skip their second meal breaks yet, do not provide them with
3 premium payments for such missed second meal breaks.

4 29. Plaintiff and putative Class members are routinely denied second meal breaks for two
5 reasons: (i) Defendant do not authorize, permit, and/or make available timely second meal breaks
6 to Plaintiff and putative Class members; and (ii) Plaintiff and putative Class members are routinely
7 too busy with work during the day to have time to take bona fide second meal breaks.

8 30. Plaintiff is informed, believes, and thereon alleges that Defendant's same second
9 meal breaks policies and practices are used across all Defendant's facilities throughout California.

10 31. Defendant's common course of wage-and-hour abuse includes routinely failing to
11 maintain true and accurate records of the hours worked by Plaintiff and putative Class members. In
12 particular, Defendant has failed to record all hours that Plaintiff and Class members worked in
13 excess of eight hours per day and/or forty hours per week, including overtime, and has failed to
14 record missed second meal periods.

15 32. Further, Plaintiff and putative Class members' wage statements are untrue and
16 inaccurate as they fail to include payment for all hours worked, including minimum wages and
17 overtime premiums, and premium payments for missed second meal breaks.

18 33. Consequently, Plaintiff and putative Class members did not receive all wages during
19 employment and following separation from employment, including minimum wages and/or
20 overtime premium, and premium payments for missed second meal breaks.

21 34. Plaintiff is informed, believes, and thereon alleges that Defendant's policies and
22 practices have at all relevant times been substantially the same for all non-exempt, hourly
23 employees, including Plaintiff and putative Class members, regardless of Defendant's facility
24 locations in California.

25 35. Putative Class members were and are employed by Defendant and performed work
26 materially similar to Plaintiff.

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1 36. Putative Class members report to facilities owned, operated, or managed by
2 Defendant to perform their jobs.

3 37. Putative Class members perform their jobs under Defendant's supervision and using
4 materials and technology approved and supplied by Defendant.

5 38. Putative Class members are required to follow and abide by Defendant's common
6 work, time, and pay policies and procedures in the performance of their jobs.

7 39. At the end of each pay period, putative Class members receive wages from Defendant
8 that are determined by common systems and methods that Defendant selects and controls.

9 40. Defendant pays Class members on an hourly rate basis.

10 41. Defendants' method of paying Plaintiff and Class members is willful and not based
11 on a good faith and reasonable belief that their conduct complied with California law.

12 42. Defendant's unlawful conduct has been widespread, repeated, and consistent
13 throughout its facility's locations in in California. Defendant knew or should have known that its
14 policies and practices have been unlawful and unfair.

15 43. Defendant's conduct is willful, carried out in bad faith, and causes significant
16 damages to non-exempt hourly employees in an amount to be determined at trial.

17 **CCP § 382 CLASS ACTION ALLEGATIONS**

18 44. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
19 herein.

20 45. Plaintiff brings causes of action as a class action on behalf of herself and all others
21 similarly situated pursuant to Civil Code of Procedure § 382. The California Class that Plaintiff
22 seeks to represent is defined as follows:

23 **All current and former hourly, non-exempt workers employed by**
24 **Mariani Packing. Co. Inc. throughout California any time starting**
25 **four years prior to the filing of this Complaint until resolution of**
 this action.

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1 46. This action has been brought and may properly be maintained as a class action under
2 Civil Code of Procedure § 382 there is a well-defined community of interest in the litigation and
3 the proposed putative class is easily ascertainable.

4 47. Numerosity: The potential members of the Class are so numerous that joinder of all
5 the members of the class is impracticable. Plaintiff is informed and believes that the number of
6 Class members exceeds 100. This volume makes bringing the claims of each individual member of
7 the Class before this Court impracticable. Likewise, joining each individual member of the Class
8 as a plaintiff in this action is impracticable. Furthermore, the identities of the Class will be
9 determined from Defendant's records, as will the compensation paid to each of them. As such, a
10 class action is a reasonable and practical means of resolving these claims. To require individual
11 actions would prejudice the Class and Defendant.

12 48. Commonality: There are questions of law and fact common to Plaintiff and the Class
13 that predominate over any questions affecting only individual members of the Class. These common
14 questions of law and fact include, but are not limited to:

- 15 a. Whether Defendant has a policy and/or practice of requiring Class members to be
16 in the control of, spend time primarily for the benefit of, and work for Defendant
17 without compensation;
- 18 b. Whether Defendant fails to compensate Class members for all hours worked,
19 including as minimum wages and/or regular rate wage compensation, in violation
20 of the Labor Code and Wage Orders;
- 21 c. Whether Defendant fails to properly pay overtime compensation to Class members
22 in violation of the Labor Code and Wage Orders;
- 23 d. Whether Defendant fails to authorize and permit, make available, and/or provide
24 Class members with compliant second meal periods to which they are entitled in
25 violation of the Labor Code and Wage Orders;
- 26 e. Whether Defendant fails to provide Class members with timely, accurate itemized
27 wage statements in violation of the Labor Code and Wage Orders;

- 1 f. Whether Defendant fails to pay all wages owed upon Class members' separation
2 of employment;
- 3 g. Whether Defendant violates Business and Professions Code §§ 17200 *et seq.*, by:
- 4 (a) failing to pay Class members minimum wage for all hours worked.
- 5 (b) failing to compensate Class members for all hours worked, including at
6 minimum wage and/or at regular rate;
- 7 (c) failing to properly pay overtime compensation to Class members;
- 8 (d) failing to authorize and permit, make available, and/or provide Class
9 members with compliant second meal periods to which they are entitled;
- 10 (e) failing to provide putative Class members with timely, accurate itemized
11 wage.
- 12 (f) failing to pay Class members for all wages owed upon separation of
13 employment.
- 14 h. The proper formula for calculating restitution, damages and penalties owed to
15 Plaintiff and the Class as alleged herein.

16 49. Typicality: Plaintiff's claims are typical of the claims of the Class. Defendant's
17 common course of conduct in violation of law as alleged herein caused Plaintiff and Class members
18 to sustain the same or similar injuries and damages. Plaintiff's claims are thereby representative of
19 and co-extensive with the claims of the Class.

20 50. Adequacy of Representation: Plaintiff seeks relief for state law violations perpetrated
21 by Defendant. In that sense, Plaintiff does not have any conflicts of interest with other Class
22 members and will prosecute the case vigorously on behalf of the Class. Counsel representing
23 Plaintiff is competent and experienced in litigating complex cases and large class actions, including
24 wage and hour cases. Plaintiff will fairly and adequately represent and protect the interests of the
25 Class members.

26 51. Superiority of Class Action: A class action is superior to other available means for
27 the fair and efficient adjudication of this controversy. Individual joinder of all proposed Class
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1 members is not practicable, and questions of law and fact common to the Class predominate over
2 any questions affecting only individual members of the Class. Each proposed Class member has
3 been damaged and is entitled to recovery by reason of Defendant's illegal policies and/or practices.
4 Class action treatment will allow those similarly situated persons to litigate their claims in the
5 manner that is most efficient and economical for the parties and the judicial system.

6 52. In the alternative, the Class may be certified because the prosecution of separate
7 actions by the individual members of the Class would create a risk of inconsistent or varying
8 adjudication with respect to individual members of the Class which would establish incompatible
9 standards of conduct for Defendant.

10 53. If each individual Class member was required to file an individual lawsuit, Defendant
11 would necessarily gain an unconscionable advantage because Defendant would be able to exploit
12 and overwhelm the limited resources of each member of the Class with Defendant's vastly superior
13 financial and legal resources.

14 54. Requiring each individual Class member to pursue an individual remedy would also
15 discourage the assertion of lawful claims by the Class members who would be disinclined to pursue
16 these claims against Defendant because of an appreciable and justifiable fear of retaliation and
17 permanent damage to their lives, careers and well-being.

18 **FIRST CAUSE OF ACTION**
19 **Failure to Pay for All Hours Worked**
20 **Pursuant to Labor Code § 204**
(On Behalf of the Class)

21 55. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
22 herein.

23 56. Labor Code § 200(a) defines wages as "all amounts for labor performed by
24 employees of every description, whether the amount is fixed or ascertained by the standard of time,
25 task, piece, commission basis or other method of calculation."
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1 57. Labor Code § 204 provides that employers must compensate employees for all hours
2 worked “twice during each calendar month, on days designated in advance by the employer as the
3 regular paydays.”

4 58. Labor Code § 1194(a) provides as follows:

5 Notwithstanding any agreement to work for a lesser wage, any
6 employee receiving less than the legal minimum wage or the legal
7 overtime compensation applicable to the employee is entitled to recover
8 in a civil action the unpaid balance of the full amount of this minimum
wage or overtime compensation, including interest thereon, reasonable
attorneys’ fees, and costs of suit.

9 59. Labor Code § 1198 makes it unlawful for employers to employ employees under
10 conditions that violate the Wage Orders.

11 60. IWC Wage Order 3-2001(2)(H) defines hours worked as “the time during which an
12 employee is subject to the control of an employer, and includes all the time the employee is suffered
13 or permitted to work, whether or not required to do so.”

14 61. Defendant willfully engaged in and continues to engage in a practice of not
15 compensating Plaintiff and putative Class members for all hours worked or spent in its control.

16 62. Defendant regularly schedules Plaintiff and putative Class members to work ten
17 hours shifts or more for six consecutive days, as well as a seventh shift of at least eight hours.
18 However, despite typically working 60 to 68 hours per week, Defendant only compensates Plaintiff
19 and putative Class members for approximately 50 hours per week. Defendant intentionally and
20 willfully refuses to compensate Plaintiff and putative Class members for all the hours they work,
21 including all those hours in excess of eight hours per day and/or forty hours per week.

22 63. Defendant requires Plaintiff and putative Class members to work in excess of eight
23 hours per day and/or forty hours per week without full compensation. In other words, Plaintiff and
24 putative Class members are forced to perform work for the benefit of Defendant without
25 compensation.

26 64. In violation of California law, Defendant knowingly and willfully refuses to perform
27 its obligations to provide Plaintiff and putative Class members with compensation for all time
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1 worked. Defendant regularly fails to track the time Plaintiff and putative Class members actually
2 work and fails to compensate them for all hours worked.

3 65. Therefore, Defendant committed, and continues to commit, the acts alleged herein
4 knowingly and willfully, and in conscious disregard of the Plaintiff and putative Class members'
5 rights. Plaintiff and putative Class members are thus entitled to recover nominal, actual, and
6 compensatory damages, plus interest, attorneys' fees, expenses, and costs of suit.

7 66. As a proximate result of the aforementioned violations, Plaintiff and putative Class
8 members have been damaged in an amount according to proof at time of trial.

9 67. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

10 **SECOND CAUSE OF ACTION**
11 **Failure to Pay Minimum Wages**
12 **Pursuant to California Labor Code §§ 1182.11, 1182.12, 1194, 1197, and 1197.1**
13 **(On Behalf of the Class)**

14 68. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
15 herein.

16 69. During the applicable statutory period, California Labor Code §§, 1182.12 and 1197,
17 and the Minimum Wage Order were in full force and effect and required that Defendant's hourly
18 employees receive the minimum wage for all hours worked irrespective of whether nominally paid
19 on a piece rate, or any other bases, at the rate of ten dollars and fifty cents (\$10.50) per hour
20 commencing January 1, 2017, at the rate of eleven dollars (\$11.00) per hour commencing January
21 1, 2018, at the rate of twelve dollars (\$12.00) per hour commencing January 1, 2019, at the rate of
22 thirteen dollars (\$13.00) per hour commencing January 1, 2020, and at the rate of fourteen dollars
23 (\$14.00) commencing January 1, 2021.

24 70. California Labor Code §1194 states:

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

1 71. IWC Wage Order 3-2001(2)(H) defines hours worked as “the time during which an
2 employee is subject to the control of an employer, and includes all the time the employee is suffered
3 or permitted to work, whether or not required to do so.”

4 72. Labor Code §1194.2 provides that, in any action under Section 1194 to recover wages
5 because of the payment of a wage less than minimum wage fixed by an order of the commission,
6 an employee shall be entitled to recover liquidated damages in an amount equal to the wages
7 unlawfully unpaid and interest thereon. Defendant has maintained procedures and practices which
8 create a working environment where hourly employees are routinely compensated at a rate that is
9 less than the statutory minimum wage. Plaintiffs and putative Class members routinely work 60 to
10 68 hours per week and go uncompensated for a substantial amount of this time.

11 73. As a direct and proximate result of the unlawful acts and/or omissions of Defendant,
12 Plaintiff and putative Class members have been deprived of minimum wages in an amount to be
13 determined at trial, and are entitled to a recovery of such amount, plus liquidated damages, plus
14 interest thereon, attorneys’ fees, and costs of suit pursuant to Labor Code §§ 1194, 1194.2 and
15 1197.1.

16 74. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

17 **THIRD CAUSE OF ACTION**
18 **Failure to Pay Overtime Wages**
19 **Pursuant to Labor Code § 510**
 (On Behalf of the Class)

20 75. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
21 herein.

22 76. Defendant does not compensate Plaintiff and putative Class members with the
23 appropriate overtime rate, as required by California law.

24 77. Labor Code § 510 provides as follows:

25 Eight hours of labor constitutes a day’s work. Any work in excess of
26 eight hours in one workday and any work in excess of 40 hours in any
27 one workweek and the first eight hours worked on the seventh day of
28 work in any one workweek shall be compensated at the rate of no less
than one and one-half times the regular rate of pay for an employee. Any
work in excess of 12 hours in one day shall be compensated at the rate

of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

78. The IWC Wage Order 3-2001(3)(A)(1) states:

The following overtime provisions are applicable ... employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible under the following conditions: . . . Overtime hours shall be compensated at: (a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and ... (b) [d]ouble the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

79. Labor Code § 1194(a) provides as follows:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

80. Labor Code § 200 defines wages as "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or other method of calculation." All such wages are subject to California's overtime requirements, including those set forth above.

81. Defendant regularly requires Plaintiff and putative Class members to work in excess of eight hours per day and forty hours per week but refuses to compensate them at an overtime rate for all this work. In fact, Plaintiff and putative Class members are typically scheduled to work 60 to 68 hours per week and are only compensated for approximately 50 hour per week, inclusive of approximately 10 hours of overtime.

82. Plaintiff and putative Class members have worked a substantial amount of overtime hours for Defendant without being paid overtime premiums in violation of the Labor Code, applicable IWC Wage Orders, and other applicable law.

83. Defendant has knowingly and willfully refused to perform its obligation to provide Plaintiff and putative Class members with premium wages for all overtime work. As a proximate result of the aforementioned violations, Defendant has damaged Plaintiff and putative Class members in amounts to be determined according to proof at time of trial.

84. Defendant is liable to Plaintiff and putative Class members alleged herein for the unpaid overtime and civil penalties, with interest thereon. Furthermore, Plaintiff is entitled to an award of attorneys' fees and costs as set forth below.

85. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

FOURTH CAUSE OF ACTION
Failure to Authorize and Permit and/or Make Available Meal Periods
Pursuant to Labor Code §§ 226.7 and 512
(On Behalf of the Class)

86. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

87. Defendant systematically fails to authorize, permit and/or make available complaint second meal periods to Plaintiff and putative Class members. Despite long workdays often lasting at least ten hours, Plaintiff and putative Class members are routinely denied second meal breaks for two reasons: (i) Defendant do not authorize, permit, and/or make available timely second meal breaks to Plaintiff and putative Class members; and (ii) Plaintiff and putative Class members are routinely too busy with work during the day to have time to take bona fide second meal breaks.

88. Defendant does not provide Plaintiff and putative Class members with duty-free, uninterrupted, and timely thirty-minute second meal periods during which Plaintiff and putative Class members should be completely relieved of any duty, by the end of the tenth hour of work.

89. Plaintiff and putative Class members are not provided with one hour of premium pay for each instance they do not receive a complaint second meal break.

1 90. Labor Code §§ 226.7 and 512 and the applicable Wage Orders require Defendant to
2 authorize and permit meal periods to its employees. In particular, Labor Code §§ 226.7 and 512 and
3 the Wage Orders prohibit employers from employing an employee more than ten hours per day
4 without providing the employee with a second meal period of not less than thirty minutes.

5 91. Under Labor Code § 226.7(b) and the applicable Wage Orders, an employer who fails
6 to authorize, permit, and/or make available a required meal period must, as compensation, pay the
7 employee one hour of pay at the employee's regular rate of compensation for each workday that
8 the meal period was not authorized and permitted.

9 92. Despite these requirements, Defendant has knowingly and willfully refused to
10 perform its obligations to authorize and permit and/or make available to Plaintiff and putative Class
11 members the ability to take the off-duty second meal periods to which they are entitled.

12 93. Defendant has also failed to pay Plaintiff and putative Class members one hour of
13 pay for each day an off-duty second meal period was denied. Defendant's conduct described herein
14 violates Labor Code §§ 226.7 and 512. Therefore, pursuant to Labor Code § 226.7(b), Plaintiff and
15 putative Class members are entitled to compensation for the failure to authorize and permit and/or
16 make available second meal periods, plus interest, attorneys' fees, expenses and costs of suit.

17 94. As a proximate result of the aforementioned violations, Plaintiff and putative Class
18 members have been damaged in an amount according to proof at time of trial.

19 95. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

20 **FIFTH CAUSE OF ACTION**
21 **Failure to Provide Accurate Itemized Wage Statements**
22 **Pursuant to Labor Code § 226**
 (On Behalf of the Class)

23 96. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
24 herein.

25 97. Defendant does not provide Plaintiff and putative Class members with accurate
26 itemized wage statements as required by California law.

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1 98. Labor Code § 226(a) provides:

2 Every employer shall, semimonthly or at the time of each payment of
3 wages, furnish each of his or her employees, either as a detachable part
4 of the check, draft, or voucher paying the employee's wages, or
5 separately when wages are paid by personal check or cash, an accurate
6 itemized statement in writing showing (1) gross wages earned, (2) total
7 hours worked by the employee, except for any employee whose
8 compensation is solely based on a salary and who is exempt from
9 payment of overtime under subdivision (a) of Section 515 or any
10 applicable order of the Industrial Welfare Commission, (3) the number
11 of piece-rate units earned and any applicable piece rate if the employee
12 is paid on a piece-rate basis, (4) all deductions, provided that all
13 deductions made on written orders of the employee may be aggregated
14 and shown as one item, (5) net wages earned, (6) the inclusive dates of
15 the period for which the employee is paid, (7) the name of the employee
16 and his or her social security number, (8) the name and address of the
17 legal entity that is the employer, and (9) all applicable hourly rates in
18 effect during the pay period and the corresponding number of hours
19 worked at each hourly rate by the employee.

20 99. The IWC Wage Orders also establishes this requirement. (See IWC Wage Order 3-
21 2001(7).)

22 100. Labor Code § 226(e) provides:

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

101. Defendant does not provide timely, accurate itemized wage statements to Plaintiff
and putative Class members in accordance with Labor Code § 226(a) and the IWC Wage Orders.
The wage statements Defendant provides its employees, including Plaintiff and putative Class
members, do not accurately reflect all hours actually worked, actual gross wages earned and/or
actual net wages earned, including minimum wages and overtime, and premium payments for
missed second meal periods.

102. Defendant is liable to Plaintiff and the putative Class alleged herein for the amounts
described above in addition to the civil penalties set forth below, with interest thereon.

Furthermore, Plaintiff is entitled to an award of attorneys' fees and costs as set forth below, pursuant to Labor Code § 226(e).

103. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

SIXTH CAUSE OF ACTION
Waiting Time Penalties
Pursuant to Labor Code §§ 201-203
(On Behalf of the Class)

104. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

105. Defendant does not provide putative Class members with their wages when due under California law after their employment with Defendants ends.

106. Labor Code § 201 provides:

If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

107. Labor Code § 202 provides:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

108. Labor Code § 203 provides, in relevant part:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

109. Some of the putative Class members left their employment with Defendants during the statutory period, at which time Defendants owed them unpaid wages. These earned, but unpaid, wages derive from time spent working for the benefit of Defendants, which went unrecorded and/or uncompensated, and from missed second meal periods.

110. Defendant willfully refused and continues to refuse to pay putative Class members all the wages that are due and owing to them, in the form of uncompensated time worked in excess of eight hours per day and/or forty hours per week, including minimum wages and/or overtime premiums, and premium payments for missed second meal periods, upon the end of their employment as a result of Defendants' willful failure to provide Plaintiff and the putative Class members with payment for all hours worked, and failure to provide compliant second meal breaks. As a result of Defendants' actions, Plaintiff and putative Class members have suffered and continue to suffer substantial losses, including lost earnings, and interest.

111. Defendant's willful failure to pay Plaintiff and putative Class members the wages due and owing them constitutes a violation of Labor Code §§ 201-202. As a result, Defendants are liable to Plaintiff and proposed Class members for all penalties owing pursuant to Labor Code §§ 201-203.

112. In addition, Labor Code § 203 provides that an employee's wages will continue as a penalty up to thirty days from the time the wages were due. Therefore, the Plaintiff and putative Class members are entitled to penalties pursuant to Labor Code § 203, plus interest.

113. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

SEVENTH CAUSE OF ACTION
Violation of California Business and Professions Code §§ 17200 *et seq.*
(On Behalf of the Class)

114. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

115. The UCL prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business acts or practices.

116. Business and Professions Code § 17204 allows a person injured by the unfair business acts or practices to prosecute a civil action for violation of the UCL.

117. Labor Code § 90.5(a) states it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt

1 to gain competitive advantage at the expense of their workers by failing to comply with minimum
2 labor standards.

3 118. Beginning at an exact date unknown to Plaintiff, but at least since the date four years
4 prior to the filing of this lawsuit, Defendant has committed acts of unfair competition as defined by
5 the UCL, by engaging in the unlawful, unfair, and fraudulent business acts and practices described
6 in this Complaint, including, but not limited to:

- 7 a. violations of Labor Code § 1194 and IWC Wage Order 3-2001 pertaining to
8 payment of wages, including minimum wage, for all hours worked;
- 9 b. violations of Labor Code § 510 and Wage Order 3-2001 pertaining to payment
10 of overtime premiums;
- 11 c. violations of Labor Code §§ 226.7 and 512 and Wage Order 3-2001 pertaining
12 to meal breaks;
- 13 d. violations of Labor Code § 226 regarding accurate, timely itemized wage
14 statements; and
- 15 e. violations of Labor Code §§ 201-203 pertaining to payment of all wages owed
16 during employment and following separation from employment.

17 119. The violations of these laws and regulations, as well as of the fundamental California
18 public policies protecting wages, serve as unlawful predicate acts and practices for purposes of
19 Business and Professions Code §§ 17200 et seq.

20 120. The acts and practices described above constitute unfair, unlawful, and fraudulent
21 business practices, and unfair competition, within the meaning of Business and Professions Code
22 §§ 17200 et seq. Among other things, the acts and practices have taken from Plaintiff and the Class
23 wages rightfully earned by them, while enabling Defendant to gain an unfair competitive advantage
24 over law-abiding employers and competitors.

25 121. Business and Professions Code § 17203 provides that a court may make such orders
26 or judgments as may be necessary to prevent the use or employment by any person of any practice
27 which constitutes unfair competition.

122. As a direct and proximate result of the aforementioned acts and practices, Plaintiff and putative Class members have suffered a loss of money and property, in the form of unpaid wages, which are due and payable to them.

123. Business and Professions Code § 17203 provides that the Court may restore to any person in interest any money or property which may have been acquired by means of such unfair competition. Plaintiff and putative Class members are entitled to restitution pursuant to Business and Professions Code § 17203 for all wages and payments unlawfully withheld from employees during the four-year period prior to the filing of this Complaint. Plaintiff's success in this action will enforce important rights affecting the public interest and, in that regard, Plaintiff sues on behalf of herself as well as others similarly situated. Plaintiff and putative Class members seek and are entitled to unpaid wage, declaratory relief and all other equitable remedies owing to them.

124. Plaintiff herein takes upon herself enforcement of these laws and lawful claims. There is a financial burden involved in pursuing this action, the action is seeking to vindicate a public right, and it would be against the interests of justice to penalize Plaintiff by forcing her to pay attorneys' fees from the recovery in this action. Attorneys' fees are appropriate pursuant to Code of Civil Procedure §1021.5 and otherwise.

125. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

EIGHTH CAUSE OF ACTION
Penalties Pursuant to § 2699(a) of the Private Attorneys General Act
(Against Defendant)

126. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

127. Labor Code § 2699(a) provides:

Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.

1 128. Labor Code §§ 201 and 202 require employers to immediately pay wages earned and
2 unpaid to an employee that is discharged, and to pay an employee who quits within 72 hours after
3 he or she quits, at the latest.

4 129. Labor Code § 256 provides: “The Labor Commissioner shall impose a civil penalty
5 in an amount not exceeding 30 days’ pay as waiting time under the terms of Section 203.”

6 130. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
7 Defendants, as alleged above, to timely pay all wages owed to Plaintiff and the Aggrieved
8 Employees in compliance with Labor Code §§ 201-202 in the amounts established by Labor Code
9 § 203. Plaintiff seeks such penalties as an alternative to the penalties available under Labor Code §
10 203, as prayed for herein.

11 131. Labor Code § 226(a) provides:

12 Every employer shall, semimonthly or at the time of each payment of
13 wages, furnish each of his or her employees, either as a detachable part
14 of the check, draft, or voucher paying the employee's wages, or
15 separately when wages are paid by personal check or cash, an accurate
16 itemized statement in writing showing (1) gross wages earned, (2) total
17 hours worked by the employee, except for any employee whose
18 compensation is solely based on a salary and who is exempt from
19 payment of overtime under subdivision (a) of Section 515 or any
20 applicable order of the Industrial Welfare Commission, (3) the number
21 of piece-rate units earned and any applicable piece rate if the employee
22 is paid on a piece-rate basis, (4) all deductions, provided that all
23 deductions made on written orders of the employee may be aggregated
24 and shown as one item, (5) net wages earned, (6) the inclusive dates of
25 the period for which the employee is paid, (7) the name of the employee
26 and his or her social security number, (8) the name and address of the
27 legal entity that is the employer, and (9) all applicable hourly rates in
28 effect during the pay period and the corresponding number of hours
worked at each hourly rate by the employee. The deductions made from
payments of wages shall be recorded in ink or other indelible form,
properly dated, showing the month, day, and year, and a copy of the
statement or a record of the deductions shall be kept on file by the
employer for at least four years at the place of employment or at a
central location within the State of California.

124 132. Labor Code § 226.3 provides:

125 Any employer who violates subdivision (a) of Section 226 shall be
126 subject to a civil penalty in the amount of two hundred fifty dollars
127 (\$250) per employee per violation in an initial citation and one thousand
128 dollars (\$1,000) per employee for each violation in a subsequent
citation, for which the employer fails to provide the employee a wage

deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.

133. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendants, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized wage statement in compliance with Labor Code § 226(a) in the amounts established by Labor Code § 226(e). Plaintiff seeks such penalties as an alternative to the penalties available under Labor Code § 226(e), as prayed for herein.

134. Plaintiff also seeks civil penalties pursuant to Sections 225.5, 226.3, and 256 of the California Labor Code.

135. Pursuant to Labor Code § 2699.3(a)(1) and (2), on May 13, 2021, Plaintiff provided the Labor and Workforce Development Agency (“LWDA”) with notice of her intention to file this claim. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

136. Plaintiff seeks the aforementioned penalties on behalf of the State, other aggrieved employees, and himself as set forth in Labor Code § 2699.

137. Defendant is liable to Plaintiff, the putative Class, and the State of California for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys’ fees and costs as set forth below.

138. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

NINTH CAUSE OF ACTION
Penalties Pursuant to § 2699(f) of the Private Attorneys General Act
(Against Defendant)

139. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

140. Labor Code § 2699(f) provides:

For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

1 141. Labor Code § 200 defines wages as “all amounts for labor performed by employees
2 of every description, whether the amount is fixed or ascertained by the standard of time, task, piece,
3 commission basis or method of calculation.”

4 142. Labor Code § 204(a) provides that “[a]ll wages ... earned by any person in any
5 employment are due and payable twice during each calendar month....”

6 143. IWC Wage Orders 3-2001(2)(G) defines hours worked as “the time during which an
7 employee is subject to the control of an employer and includes all the time the employee is suffered
8 or permitted to work, whether or not required to do so.”

9 144. Labor Code § 1198 makes it unlawful for employers to employ employees under
10 conditions that violate the Wage Order.

11 145. Labor Code § 510 provides, in relevant part:

12 Eight hours of labor constitutes a day’s work. Any work in excess of
13 eight hours in one workday and any work in excess of 40 hours in any
14 one workweek and the first eight hours worked on the seventh day of
15 work in any one workweek shall be compensated at the rate of no less
16 than one and one-half times the regular rate of pay for an employee.
17 Any work in excess of 12 hours in one day shall be compensated at the
18 rate of no less than twice the regular rate of pay for an employee. In
19 addition, any work in excess of eight hours on any seventh day of a
workweek shall be compensated at the rate of no less than twice the
regular rate of pay of an employee. Nothing in this section requires an
employer to combine more than one rate of overtime compensation in
order to calculate the amount to be paid to an employee for any hour of
overtime work.

20 146. Labor Code § 1197 provides:

21 The minimum wage for employees fixed by the commission or by any
22 applicable state or local law, is the minimum wage to be paid to
23 employees, and the payment of a lower wage than the minimum so
fixed is unlawful. This section does not change the applicability of local
minimum wage laws to any entity.

24 147. Labor Code § 1194 provides, in relevant part:

25 Notwithstanding any agreement to work for a lesser wage, any
26 employee receiving less than the legal minimum wage or the legal
27 overtime compensation applicable to the employee is entitled to
28 recover in a civil action the unpaid balance of the full amount of this
minimum wage or overtime compensation, including interest thereon,
reasonable attorney’s fees, and costs of suit.

1 148. Labor Code §§ 226.7 and 512 and IWC Wage Orders 3-2001 require Defendants to
2 authorize, permit, and/or make available timely and compliant meal and rest periods to its
3 employees. Labor Code §§ 226.7 and 512 and IWC Wage Orders 3-2001 prohibit employers from
4 employing an employee for more than five hours without a meal period of not less than thirty
5 minutes, and from employing an employee more than ten hours per day without providing the
6 employee with a second meal period of not less than thirty minutes. Unless the employee is relieved
7 of all duty during the thirty-minute meal period and ten-minute rest period, the employee is
8 considered “on duty” and the meal period is counted as time worked under the applicable wage
9 orders.

10 149. To the extent than any violation alleged herein does not carry penalties under Labor
11 Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and
12 Aggrieved Employees each pay period in which he or she was aggrieved, in the amounts established
13 by Labor Code § 2699(f). Plaintiff seeks penalties pursuant to Labor Code § 2699(f) for Plaintiff
14 and Aggrieved Employees for violations of Labor Code provisions including, but not limited, to,
15 Labor Code 510, 1194, 201-203, 204, 226, 226.7, 512, and IWC Wage Orders 3-2001, and any
16 other violation alleged herein does not carry penalties under Labor Code § 2699(a).

17 150. Pursuant to Labor Code § 2699.3(a)(1) and (2), on May 13, 2021, Plaintiff has
18 provided the LWDA with notice of her intention to file this claim. Sixty-five calendar days have
19 passed without notice from the LWDA. Plaintiff satisfied the administrative prerequisites to
20 commence this civil action in compliance with § 2699.3(a).

21 151. Plaintiff seeks the aforementioned penalties on behalf of the State, other aggrieved
22 employees, and themselves as set forth in Labor Code § 2699(g)(1).

23 152. Defendant is liable to Plaintiff, the putative Class, and the State of California for the
24 civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award
25 of attorneys’ fees and costs as set forth below.

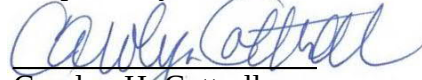
26 153. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.
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- a. Damages and restitution according to proof at trial for all unpaid wages and other injuries, as provided by the California Labor Code and California Business and Professions Code;
- b. For a declaratory judgment that Defendant has violated the California Labor Code and public policy as alleged herein;
- c. For a declaratory judgment that Defendant has violated California Business and Professions Code §§ 17200 *et seq.*, as a result of the aforementioned violations of the California Labor Code and of California public policy protecting wages;
- d. For an equitable accounting to identify, locate, and restore to all current and former employees the wages they are due, with interest thereon;
- e. For an order awarding Plaintiff and putative Class members compensatory damages, including lost wages, earnings, liquidated damages, and other employee benefits, restitution, recovery of all money, actual damages, punitive damages, and all other sums of money owed to Plaintiff and Class members, together with interest on these amounts, according to proof;
- f. For an order awarding civil penalties to the full extent provided for by the PAGA;
- g. For an order awarding Plaintiff and the Class members civil penalties pursuant to the California Labor Code, and provisions cited herein, with interest thereon;
- h. For an award of reasonable attorneys' fees as provided by the California Labor Code, including Labor Code § 2699(g)(1), California Code of Civil Procedure § 1021.5, and/or other applicable law;
- i. For all costs of suit;
- j. For interest on any damages and/or penalties awarded, as provided by applicable law;
- and
- k. For such other and further relief as this Court deems just and proper.

1
2 Dated: July 21, 2021

Respectfully submitted,



Carolyn H. Cottrell

Ori Edelstein

Michelle S. Lim

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

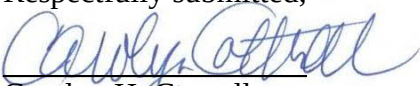
Attorneys for Plaintiff and the Putative Class

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to a jury.

Dated: July 21, 2021

Respectfully submitted,

Carolyn H. Cottrell
Ori Edelstein
Michelle S. Lim
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

Attorneys for Plaintiff and the Putative Class