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14 *and on behalf of the State of*
15 *California and all Aggrieved Employees*

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF SOLANO**

18 MARIA R. MARTINEZ, on behalf of
19 herself and the Class members,

20 Plaintiff,

21 vs.

22 MARIANI PACKING CO. INC.,

23 Defendant,

Case No. FCS056622

**SECOND 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 and Rest 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

FILED
Clerk of the Superior Court

SEP 30 2022

By

DEPUTY CLERK

By Fax

INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

PARTIES

14. Plaintiff and the putative Class members are current and former hourly non-exempt employees who work for Mariani as, among other positions, Utility Workers, Packers, Machine Operators, Traffic Planners, IRAs, Shippers & Receivers, Warehouse Workers, and other

employees with similar job duties, in California.

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

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

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

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

JURISDICTION AND VENUE

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

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

FACTUAL ALLEGATIONS

21. Defendant is the largest independently owned producer and packer of dried fruit worldwide. Mariani produces dried fruits, which are sold in bulk, under private labels and under the Mariani brand to retail food stores and other food manufacturing companies in more than 50 countries worldwide. Defendant provides its services throughout the United States, including in

1 California. Defendant employs hundreds of hourly non-exempt workers similarly situated to
2 Plaintiff in California.

3 22. Plaintiff worked for Defendant as a Utility Worker in Vacaville, California, from
4 approximately March 2020 through December 2020. Plaintiff's primary duties include, but are not
5 limited to, sorting products, moving raw materials and finished goods, donning and doffing personal
6 protective equipment, and performing cycle counts.

7 23. Plaintiff was classified as an hourly non-exempt employee and was paid an hourly
8 rate of approximately \$15.00.

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

12 25. As a matter of policy and practice, Defendant routinely refused to record and/or
13 compensate Plaintiff and putative class members for all hours worked. For instance, despite
14 typically working 60 to 68 hours a week, Defendant only compensated Plaintiff for approximately
15 50 hours per week. Plaintiff and putative Class members are therefore denied compensation for all
16 hours worked, including minimum wages and/or overtime, which they are lawfully owed.

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

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

22 28. Defendant requires that Plaintiff and putative Class members perform substantial
23 work off-the-clock. For example, Defendant requires that Plaintiff and putative Class members
24 access a biometric scanner to gain entry to Defendant's buildings, to don their protective hairnets
25 and/or beard nets, and earplugs, walk to the locker room to drop off their personal effects and to
26 don their required non-slip footwear, walk to the break room to drop off their lunches, then walk to
27 another location to don their protective aprons, all before walking to the production floor to clock
28 in. Defendant requires Plaintiff and putative Class members to don their personal protective

1 equipment, including non-slip footwear, aprons, hairnets and/or beard nets, and earplugs, while they
2 are off-the-clock. Plaintiff, like other putative Class members, spent approximately eight to ten
3 minutes performing this work prior to clocking in for work. As a result of Defendant's policies,
4 Plaintiff and putative Class members are not properly compensated for all hours worked at their
5 regular rate or at the applicable overtime rates.

6 29. Defendant also requires Plaintiff and putative Class members to perform additional
7 off-the-clock work. As a result of the COVID-19 pandemic, since approximately March 2020,
8 Defendant requires Plaintiff and putative Class members to walk to, wait in line for, and undergo
9 temperature checks prior to clocking in for a work shift, taking approximately three to five minutes
10 per day. Plaintiff and putative Class members are not compensated for this time.

11 30. Defendant also requires Plaintiff and putative Class members to perform substantial,
12 additional off-the-clock work after their shifts have ended. After clocking out, Defendant requires
13 Plaintiff and putative Class members to doff their protective anti-slip footwear at the locker room;
14 to doff additional personal protective equipment, including hairnets and/or beard nets, earplugs, and
15 aprons; and drop off their used aprons for cleaning. Prior to approximately November 2020, Ms.
16 Plaintiff and putative Class members spent approximately ten minutes performing this post-shift
17 work after clocking out for their work shifts. Defendant instituted a change in policies and/or
18 practices in approximately November 2020, where Plaintiff and putative Class members were still
19 required to doff while off the clock, however, they no longer had to drop off their used aprons for
20 cleaning after clocking out for their work shift. Since approximately November 2020, Plaintiff and
21 putative Class members have spent approximately five to five and a half minutes performing this
22 post-shift work after clocking out for their work shifts.

23 31. Defendant also fails to provide Plaintiff and putative Class members with timely,
24 legally compliant meal periods and rest breaks. Defendant requires Plaintiff and putative Class
25 members to work during their meal periods and rest breaks. In addition, these breaks are not made
26 available within the times prescribed by statute and are interrupted.

27 32. Defendant requires Plaintiff and putative Class members to doff and re-don their
28 personal protective equipment, including aprons, hairnets and/or beard nets, and earplugs, during

1 these meal and rest breaks. Defendant further disallows Plaintiff and putative Class members to don
2 their personal protective equipment inside their assigned break room, and Plaintiff and putative
3 Class members are not provided additional time to doff and re-don their personal protective
4 equipment during their meal and rest breaks. Putative Class members are not compensated for this
5 time worked.

6 33. Additionally, although Defendant provides Plaintiff and putative Class members
7 fifteen minutes total to take their rest breaks given the distance between the factory lines and the
8 break room, Plaintiff and putative Class members would often take well over five minutes to walk
9 back and forth from the break rooms and would be required to doff and re-don their personal
10 protective equipment during their rest breaks, causing their rest breaks to be shortened.

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

16 35. Defendant does not pay the required one hour of premium pay to Plaintiff and other
17 putative Class members for each missed or non-compliant meal period or rest break. The putative
18 Class members are required to perform work off-the-clock and without pay during meal and rest
19 breaks.

20 36. Plaintiff is informed, believes, and thereon alleges that Defendant's same meal and
21 rest break policies and practices are used across all Defendant's facilities throughout California.

22 37. Defendant's common course of wage-and-hour abuse includes routinely failing to
23 maintain true and accurate records of the hours worked by Plaintiff and putative Class members. In
24 particular, Defendant has failed to record all hours that Plaintiff and Class members worked in
25 excess of eight hours per day and/or forty hours per week, including overtime, and has failed to
26 record noncompliant or missed meal and rest periods.

27 38. Further, Plaintiff and putative Class members' wage statements are untrue and
28 inaccurate as they fail to include payment for all hours worked, including minimum wages and

1 overtime premiums, and premium payments for missed and noncompliant meal and rest breaks.

2 39. Consequently, Plaintiff and putative Class members did not receive all wages during
3 employment and following separation from employment, including minimum wages and/or
4 overtime premium, and premium payments for missed and noncompliant meal and rest breaks.

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

9 41. Putative Class members were and are employed by Defendant and performed work
10 materially similar to Plaintiff.

11 42. Putative Class members report to facilities owned, operated, or managed by
12 Defendant to perform their jobs.

13 43. Putative Class members perform their jobs under Defendant's supervision and using
14 materials and technology approved and supplied by Defendant.

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

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

19 46. Defendant pays Class members on an hourly rate basis.

20 47. Defendant's method of paying Plaintiff and Class members is willful and not based
21 on a good faith and reasonable belief that their conduct complied with California law.

22 48. Defendant's unlawful conduct has been widespread, repeated, and consistent
23 throughout its facility's locations in in California. Defendant knew or should have known that its
24 policies and practices have been unlawful and unfair.

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

27 **CCP § 382 CLASS ACTION ALLEGATIONS**

28 50. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth

1 herein.

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

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

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

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

18 54. **Commonality:** There are questions of law and fact common to Plaintiff and the Class
19 that predominate over any questions affecting only individual members of the Class. These common
20 questions of law and fact include, but are not limited to:

- 21 a. Whether Defendant has a policy and/or practice of requiring Class members to be
22 in the control of, spend time primarily for the benefit of, and work for Defendant
23 without compensation;
- 24 b. Whether Defendant fails to compensate Class members for all hours worked,
25 including as minimum wages and/or regular rate wage compensation, in violation
26 of the Labor Code and Wage Orders;
- 27 c. Whether Defendant fails to properly pay overtime compensation to Class
28 members in violation of the Labor Code and Wage Orders;

- d. Whether Defendant fails to authorize and permit, make available, and/or provide Class members with compliant meal and rest periods to which they are entitled in violation of the Labor Code and Wage Orders;
- e. Whether Defendant fails to provide Class members with timely, accurate itemized wage statements in violation of the Labor Code and Wage Orders;
- f. Whether Defendant fails to pay all wages owed upon Class members' separation of employment;
- g. Whether Defendant violates Business and Professions Code §§ 17200 *et seq.*, by:
- (a) failing to pay Class members minimum wage for all hours worked.
 - (b) failing to compensate Class members for all hours worked, including at minimum wage and/or at regular rate;
 - (c) failing to properly pay overtime compensation to Class members;
 - (d) failing to authorize and permit, make available, and/or provide Class members with compliant meal and rest periods to which they are entitled;
 - (e) failing to provide putative Class members with timely, accurate itemized wage.
 - (f) failing to pay Class members for all wages owed upon separation of employment.
- h. The proper formula for calculating restitution, damages and penalties owed to Plaintiff and the Class as alleged herein.

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

56. **Adequacy of Representation**: Plaintiff seeks relief for state law violations perpetrated by Defendant. In that sense, Plaintiff does not have any conflicts of interest with other Class members and will prosecute the case vigorously on behalf of the Class. Counsel representing Plaintiff is competent and experienced in litigating complex cases and large class actions, including

1 wage and hour cases. Plaintiff will fairly and adequately represent and protect the interests of the
2 Class members.

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

10 58. In the alternative, the Class may be certified because the prosecution of separate
11 actions by the individual members of the Class would create a risk of inconsistent or varying
12 adjudication with respect to individual members of the Class which would establish incompatible
13 standards of conduct for Defendant.

14 59. If each individual Class member was required to file an individual lawsuit, Defendant
15 would necessarily gain an unconscionable advantage because Defendant would be able to exploit
16 and overwhelm the limited resources of each member of the Class with Defendant's vastly superior
17 financial and legal resources.

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

22 **FIRST CAUSE OF ACTION**

23 **Failure to Pay for All Hours Worked**

24 **Pursuant to Labor Code § 204**

25 **(On Behalf of the Class)**

26 61. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
27 herein.

28 62. Labor Code § 200(a) defines wages as "all amounts for labor performed by employees

1 of every description, whether the amount is fixed or ascertained by the standard of time, task, piece,
2 commission basis or other method of calculation.”

3 63. Labor Code § 204 provides that employers must compensate employees for all hours
4 worked “twice during each calendar month, on days designated in advance by the employer as the
5 regular paydays.”

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

7 Notwithstanding any agreement to work for a lesser wage, any employee receiving
8 less than the legal minimum wage or the legal overtime compensation applicable to
9 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.

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

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

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

17 68. Defendant regularly schedules Plaintiff and putative Class members to work ten hours
18 shifts or more for six consecutive days, as well as a seventh shift of at least eight hours. However,
19 despite typically working 60 to 68 hours per week, Defendant only compensates Plaintiff and
20 putative Class members for approximately 50 hours per week.

21 69. Defendant intentionally and willfully requires Plaintiff and putative Class members
22 to complete additional work off-the-clock, resulting in actually-completed work in excess of eight
23 hours per day. Plaintiff and putative Class members are required to complete multiple pre- and
24 post-shift activities off-the-clock, including traveling to and waiting in long lines for temperature
25 checks before their paid shifts, and donning and doffing their personal protective equipment. In
26 addition, Plaintiff and putative Class members routinely work through their meal period and are not
27 compensated for that work. For example, Defendant requires Plaintiff and putative Class members
28 to doff and re-don their personal protective equipment during their rest breaks and meal periods,

1 and to work through their second meal periods. Defendant does not pay Plaintiff or the putative
2 Class members for this additional work time. Defendant also does not pay the required one hour of
3 premium pay to Plaintiff and putative Class members for each missed or non-compliant meal period
4 and rest break.

5 70. Defendant intentionally and willfully refuses to compensate Plaintiff and putative
6 Class members for all the hours they work, including all those hours in excess of eight hours per
7 day and/or forty hours per week.

8 71. Defendant requires Plaintiff and putative Class members to work in excess of eight
9 hours per day and/or forty hours per week without full compensation. In other words, Plaintiff and
10 putative Class members are forced to perform work for the benefit of Defendant without
11 compensation.

12 72. In violation of California law, Defendant knowingly and willfully refuses to perform
13 its obligations to provide Plaintiff and putative Class members with compensation for all time
14 worked. Defendant regularly fails to track the time Plaintiff and putative Class members actually
15 work and fails to compensate them for all hours worked.

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

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

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

23 **SECOND CAUSE OF ACTION**

24 **Failure to Pay Minimum Wages**

25 **Pursuant to California Labor Code §§ 1182.11, 1182.12, 1194, 1197, and 1197.1**

26 **(On Behalf of the Class)**

27 76. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
28 herein.

1 77. During the applicable statutory period, California Labor Code §§, 1182.12 and 1197,
2 and the Minimum Wage Order were in full force and effect and required that Defendant's hourly
3 employees receive the minimum wage for all hours worked irrespective of whether nominally paid
4 on a piece rate, or any other bases, at the rate of ten dollars and fifty cents (\$10.50) per hour
5 commencing January 1, 2017, at the rate of eleven dollars (\$11.00) per hour commencing January
6 1, 2018, at the rate of twelve dollars (\$12.00) per hour commencing January 1, 2019, at the rate of
7 thirteen dollars (\$13.00) per hour commencing January 1, 2020, and at the rate of fourteen dollars
8 (\$14.00) commencing January 1, 2021.

9 78. California Labor Code §1194 states:
10 Notwithstanding any agreement to work for a lesser wage, any employee receiving
11 less than the legal minimum wage or the legal overtime compensation applicable to
12 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 attorney's fees, and costs of suit.

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

16 80. Labor Code §1194.2 provides that, in any action under Section 1194 to recover wages
17 because of the payment of a wage less than minimum wage fixed by an order of the commission,
18 an employee shall be entitled to recover liquidated damages in an amount equal to the wages
19 unlawfully unpaid and interest thereon.

20 81. Defendant has maintained procedures and practices which create a working
21 environment where hourly employees are routinely compensated at a rate that is less than the
22 statutory minimum wage. Plaintiff and putative Class members routinely work 60 to 68 hours per
23 week and go uncompensated for a substantial amount of this time. Plaintiff and members of the
24 putative Class frequently work off-the-clock before and after their paid shifts, and during rest and
25 meal breaks, including traveling to and waiting in long lines for temperature checks before their
26 paid shifts, and donning and doffing their personal protective equipment, which goes
27 uncompensated.

28 82. As a direct and proximate result of the unlawful acts and/or omissions of Defendant,

1 Plaintiff and putative Class members have been deprived of minimum wages in an amount to be
2 determined at trial, and are entitled to a recovery of such amount, plus liquidated damages, plus
3 interest thereon, attorneys' fees, and costs of suit pursuant to Labor Code §§ 1194, 1194.2 and
4 1197.1.

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

6 **THIRD CAUSE OF ACTION**

7 **Failure to Pay Overtime Wages**

8 **Pursuant to Labor Code § 510**

9 **(On Behalf of the Class)**

10 84. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
11 herein.

12 85. Defendant does not compensate Plaintiff and putative Class members with the
13 appropriate overtime rate, as required by California law.

14 86. Labor Code § 510 provides as follows:

15 Eight hours of labor constitutes a day's work. Any work in excess of eight hours in
16 one workday and any work in excess of 40 hours in any one workweek and the first
17 eight hours worked on the seventh day of work in any one workweek shall be
18 compensated at the rate of no less than one and one-half times the regular rate of pay
19 for an employee. Any work in excess of 12 hours in one day shall be compensated at
20 the rate of no less than twice the regular rate of pay for an employee. In addition, any
21 work in excess of eight hours on any seventh day of a workweek shall be compensated
22 at the rate of no less than twice the regular rate of pay of an employee.

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

24 The following overtime provisions are applicable ... employees shall not be employed
25 more than eight (8) hours in any workday or more than 40 hours in any workweek
26 unless the employee receives one and one-half (1 ½) times such employee's regular
27 rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of
28 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.

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

1 Notwithstanding any agreement to work for a lesser wage, any employee receiving
2 less than the legal minimum wage or the legal overtime compensation applicable to
3 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.

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

8 90. Defendant regularly requires Plaintiff and putative Class members to work in excess
9 of eight hours per day and forty hours per week but refuses to compensate them at an overtime rate
10 for all this work. Plaintiff and putative Class members are typically scheduled to work 60 to 68
11 hours per week and are only compensated for approximately 50 hours per week, inclusive of
12 approximately 10 hours of overtime. For example, Plaintiff and putative Class members frequently
13 work off-the-clock before and after their paid shifts, and during rest and meal breaks, including
14 traveling to and waiting in long lines for temperature checks before their paid shifts, and donning
15 and doffing their personal protective equipment , and are uncompensated for this time.

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

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

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

26 94. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.
27
28

1 **FOURTH CAUSE OF ACTION**

2 **Failure to Authorize and Permit and/or Make Available Meal and Rest Periods**

3 **Pursuant to Labor Code §§ 226.7 and 512**

4 **(On Behalf of the Class)**

5 95. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
6 herein.

7 96. Defendant systematically fails to authorize, permit and/or make available complaint
8 meal periods to Plaintiff and putative Class members. Despite long workdays often lasting at least
9 ten hours, Plaintiff and putative Class members are often unable to take a compliant meal break and
10 are required to don and doff their personal protective equipment during their meal breaks.

11 97. Plaintiff and putative Class members are not paid one hour of premium pay for the
12 missed or non-compliant breaks. Plaintiff and putative Class members are routinely required to
13 work through their meal period and are not compensated for that work. For example, Defendant
14 requires Plaintiff and putative Class members to don their personal protective equipment during
15 their rest breaks and meal periods, and to clock in only after they have donned their personal
16 protective equipment.

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

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

22 100. Similar to meal periods, Defendant regularly fails to make rest periods available to
23 Plaintiff and putative Class members. Although Defendant provides Plaintiff and putative Class
24 members fifteen minutes total to take their rest breaks given the distance between the factory lines
25 and the break room, Plaintiff and putative Class members would often take well over five minutes
26 to walk back and forth from the break rooms and would be required to doff and re-don their personal
27 protective equipment during their rest breaks, causing their rest breaks to be shortened. Thus, rest
28 breaks, when they are available, are often not compliant. Instead, they are generally untimely, short,

1 or interrupted. Plaintiff and putative Class members do not receive premium pay for their
2 noncompliant or missed breaks as required by California law.

3 101. Labor Code §§ 226.7 and 512 and the applicable Wage Orders require Defendant to
4 authorize and permit meal and rest periods to their employees. Labor Code §§ 226.7 and 512 and
5 the Wage Orders prohibit employers from employing an employee for more than five hours without
6 a meal period of not less than thirty minutes, and from employing an employee more than ten hours
7 per day without providing the employee with a second meal period of not less than thirty minutes.
8 Labor Code § 226.7 and the applicable Wage Orders also require employers to authorize and permit
9 employees to take ten minutes of net rest time per four hours or major fraction thereof of work, and
10 to pay employees their full wages during those rest periods. Unless the employee is relieved of all
11 duty during the thirty-minute meal period and ten-minute rest period, the employee is considered
12 “on duty” and the meal or rest period is counted as time worked under the applicable Wage Orders.

13 102. Under Labor Code § 226.7(b) and the applicable Wage Orders, an employer who fails
14 to authorize, permit, and/or make available a required meal period must, as compensation, pay the
15 employee one hour of pay at the employee’s regular rate of compensation for each workday that the
16 meal period was not authorized and permitted. Similarly, an employer must pay an employee
17 denied a required rest period one hour of pay at the employee’s regular rate of compensation for
18 each workday that the rest period was not authorized and permitted and/or not made available.

19 103. Despite these requirements, Defendant has knowingly and willfully refused to
20 perform its obligations to authorize and permit and/or make available to Plaintiff and putative Class
21 members the ability to take the off-duty meal and rest periods to which they are entitled.

22 104. Defendant has also failed to pay Plaintiff and putative Class members one hour of
23 pay for each day an off-duty meal or rest period was denied. Defendant’s conduct described herein
24 violates Labor Code §§ 226.7 and 512. Therefore, pursuant to Labor Code § 226.7(b), Plaintiff and
25 putative Class members are entitled to compensation for the failure to authorize and permit and/or
26 make available meal and rest periods, plus interest, attorneys’ fees, expenses and costs of suit.

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

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

FIFTH CAUSE OF ACTION

Failure to Provide Accurate Itemized Wage Statements

Pursuant to Labor Code § 226

(On Behalf of the Class)

107. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

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

109. Labor Code § 226(a) provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (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 his or her social security number, (8) the name and address of the legal entity that is the employer, and (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.

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

111. Labor Code § 226(e) provides:

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 exceeding an aggregate penalty of four thousand dollars (\$4,000) and is entitled to an award of costs and reasonable attorney's fees.

112. 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 and noncompliant meal and rest periods.

113. 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).

114. 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)

115. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

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

117. Labor Code § 201 provides:

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

119. 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.

120. 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.

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

122. 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 and noncompliant meal and rest periods, upon the end of their employment as a result of Defendant's willful failure to provide Plaintiff and the putative Class members with payment for all hours worked, and failure to provide compliant meal and rest breaks. As a result of Defendant's actions, Plaintiff and putative Class members have suffered and continue to suffer substantial losses, including lost earnings, and interest.

123. 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, Defendant is liable to Plaintiff and proposed Class members for all penalties owing pursuant to Labor Code §§ 201-203.

124. 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.

125. 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)

126. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

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

128. Business and Professions Code § 17204 allows a person injured by the unfair business

1 acts or practices to prosecute a civil action for violation of the UCL.

2 129. Labor Code § 90.5(a) states it is the public policy of California to vigorously enforce
3 minimum labor standards in order to ensure employees are not required to work under substandard
4 and unlawful conditions, and to protect employers who comply with the law from those who attempt
5 to gain competitive advantage at the expense of their workers by failing to comply with minimum
6 labor standards.

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

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

21 131. The violations of these laws and regulations, as well as of the fundamental California
22 public policies protecting wages, serve as unlawful predicate acts and practices for purposes of
23 Business and Professions Code §§ 17200, *et seq.*

24 132. The acts and practices described above constitute unfair, unlawful, and fraudulent
25 business practices, and unfair competition, within the meaning of Business and Professions Code
26 §§ 17200, *et seq.* Among other things, the acts and practices have taken from Plaintiff and the Class
27 wages rightfully earned by them, while enabling Defendant to gain an unfair competitive advantage
28 over law-abiding employers and competitors.

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

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

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

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

20 137. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.
21

22 **EIGHTH CAUSE OF ACTION**

23 **Penalties Pursuant to § 2699(a) of the Private Attorneys General Act**

24 **(Against Defendant)**

25 138. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
26 herein.

27 139. Labor Code § 2699(a) provides:

28 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.

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

141. California 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 therefore is commenced; but the wages shall not continue for more than 30 days

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

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

144. Labor Code § 226(a) provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (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 his or her social security number, (8) the name and address of the legal entity that is the employer, and (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. 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.

1 145. Labor Code § 226.3 provides:

2 Any employer who violates subdivision (a) of Section 226 shall be subject to a civil
3 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation
4 in an initial citation and one thousand dollars (\$1,000) per employee for each violation
5 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.

6 146. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure
7 by Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized
8 wage statement in compliance with Labor Code § 226(a) in the amounts established by Labor Code
9 § 226(e). Plaintiff seeks such penalties as an alternative to the penalties available under Labor Code
10 § 226(e), as prayed for herein.

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

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

17 149. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
18 Employees, and herself as set forth in Labor Code § 2699.

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

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

23 **NINTH CAUSE OF ACTION**

24 **Penalties Pursuant to § 2699(f) of the Private Attorneys General Act**

25 **(Against Defendant)**

26 152. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
27 herein.

28 153. Labor Code § 2699(f) provides:

1 For all provisions of this code except those for which a civil penalty is specifically
2 provided, there is established a civil penalty for a violation of these provisions, as
3 follows: . . . (2) If, at the time of the alleged violation, the person employs one or more
4 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.

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

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

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

13 157. Labor Code § 1198 makes it unlawful for employers to employ employees under
14 conditions that violate the Wage Order.

15 158. Labor Code § 510 provides, in relevant part:

16 Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in
17 one workday and any work in excess of 40 hours in any one workweek and the first
18 eight hours worked on the seventh day of work in any one workweek shall be
19 compensated at the rate of no less than one and one-half times the regular rate of pay
20 for an employee. Any work in excess of 12 hours in one day shall be compensated at
21 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. 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.

22 159. Labor Code § 1197 provides:

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

26 160. Labor Code § 1194 provides, in relevant part:

27 Notwithstanding any agreement to work for a lesser wage, any employee receiving
28 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

1 amount of this minimum wage or overtime compensation, including interest thereon,
2 reasonable attorney's fees, and costs of suit.

3 161. Labor Code §§ 226.7 and 512 and IWC Wage Orders 3-2001 require Defendant to
4 authorize, permit, and/or make available timely and compliant meal and rest periods to its
5 employees. Labor Code §§ 226.7 and 512 and IWC Wage Orders 3-2001 prohibit employers from
6 employing an employee for more than five hours without a meal period of not less than thirty
7 minutes, and from employing an employee more than ten hours per day without providing the
8 employee with a second meal period of not less than thirty minutes. Labor Code § 226.7 and the
9 applicable Wage Orders also require employers to authorize and permit employees to take ten
10 minutes of net rest time per four hours or major fraction thereof of work, and to pay employees their
11 full wages during those rest periods. Unless the employee is relieved of all duty during the thirty-
12 minute meal period and ten-minute rest period, the employee is considered "on duty" and the meal
13 period is counted as time worked under the applicable wage orders.

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

21 163. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA
22 with notice of her intention to file this claim. Sixty-five calendar days have passed without notice
23 from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action
24 in compliance with § 2699.3(a).

25 164. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
26 Employees, and herself as set forth in Labor Code § 2699(g)(1).

27 165. Defendant is liable to Plaintiff, the putative Class, and the State of California for the
28 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.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

- 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 preliminary, permanent, and mandatory injunctive relief prohibiting Defendant, its officers, agents, and all those acting in concert with it from committing in the future those violations of law herein alleged;
- e. For an equitable accounting to identify, locate, and restore to all current and former employees the wages they are due, with interest thereon;
- f. 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;
- g. For an order awarding civil penalties to the full extent provided for by the PAGA;
- h. For an order awarding Plaintiff and the Class members civil penalties pursuant to the California Labor Code, and provisions cited herein, with interest thereon;
- i. 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;

- 1 j. For all costs of suit;
- 2 k. For interest on any damages and/or penalties awarded, as provided by applicable law;
- 3 and
- 4 l. For such other and further relief as this Court deems just and proper.
- 5

6 Dated: September 30, 2022

Respectfully Submitted,

7 

8 Carolyn H. Cottrell

9 Ori Edelstein

10 Michelle S. Lim

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

11 *Attorneys for Plaintiff, the Putative Class, and on*

12 *behalf of the State of California and all Aggrieved*

13 *Employees*

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Dated: September 30, 2022

Carolyn Attwell

*Attorneys for Plaintiff, the Putative Class, and on
behalf of the State of California and all Aggrieved
Employees*

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On September 30, 2022 I served the following document(s):

SECOND AMENDED CLASS ACTION COMPLAINT

on the following person(s) listed below, as follows:

on the following person(s) listed below, as follows:

Attorneys for Defendant
ABC PHONES OF NORTH CAROLINA,
INC.

Email: mburks@grsm.com
 Email: skhalsa@grsm.com
 Email: elobaugh@grsm.com
 cc: espiers@grsm.com

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