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FILED
Superior Court of California
County of Los Angeles

12/06/2021

Sherri R. Carter, Executive Officer / Clerk of Court

By: C. Gomez Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

EDGAR MATA and ELVIS OLIVARES,
individually, on behalf of other members of
the general public similarly situated, and on
behalf of aggrieved employees pursuant to
the Private Attorneys General Act
("PAGA");

Plaintiffs,

v.

DAY-LEE FOODS INC., a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 20STCV21664

Assigned for All Purposes to:
Honorable Kenneth R. Freeman
Department 14

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197.1, and 1197 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201, 202, and 203 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (8) Violation of Labor Code §§ 2698, *et seq.* (California Labor Code Private Attorneys General Act of 2004); and
- (9) Violation of California Business &

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiffs EDGAR MATA and ELVIS OLIVARES (“Plaintiffs”), individually, on behalf of other members of the general public similarly situated, and on behalf of aggrieved employees pursuant to the Private Attorneys General Act (“PAGA”), allege as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiffs exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

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

4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, including the County of Los Angeles. The majority of the acts and omissions alleged herein relating to Plaintiffs took place in the State of California. Defendants employed Plaintiffs within the State of California, County of Los Angeles.

PARTIES

5. Plaintiff EDGAR MATA is an individual residing in the State of Nevada, County of Clark.

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1 6. Plaintiff ELVIS OLIVARES is an individual residing in the State of California,
2 County of Los Angeles.

3 7. Defendant DAY-LEE FOODS INC., at all times herein mentioned, was and is,
4 upon information and belief, a California corporation, and at all times herein mentioned, was
5 and is, an employer whose employees are engaged throughout the State of California,
6 including the County of Los Angeles.

7 8. At all times herein relevant, Defendants DAY-LEE FOODS INC. and DOES 1
8 through 100, and each of them, were the agents, partners, joint venturers, joint employers,
9 representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each
10 of the other, and at all times relevant hereto were acting within the course and scope of their
11 authority as such agents, partners, joint venturers, joint employers, representatives, servants,
12 employees, successors, co-conspirators and assigns, and all acts or omissions alleged herein
13 were duly committed with the ratification, knowledge, permission, encouragement,
14 authorization, and consent of each defendant designated herein.

15 9. The true names and capacities, whether corporate, associate, individual or
16 otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs, who sue
17 said defendants by such fictitious names. Plaintiffs are informed and believe, and based on
18 that information and belief allege, that each of the Defendants designated as a DOE is legally
19 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
20 the injuries and damages to Plaintiffs and the other class members as alleged in this Complaint.
21 Plaintiffs will seek leave of court to amend this Complaint to show the true names and
22 capacities when the same have been ascertained.

23 10. Defendants DAY-LEE FOODS INC. and DOES 1 through 100 will hereinafter
24 collectively be referred to as "Defendants."

25 11. Plaintiffs further allege that Defendants directly or indirectly controlled or
26 affected the working conditions, wages, working hours, and conditions of employment of
27 Plaintiffs and the other class members so as to make each of said Defendants employers and
28 employers liable under the statutory provisions set forth herein.

CLASS ACTION ALLEGATIONS

12. Plaintiffs bring this action on her own behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class certification under Code of Civil Procedure section 382.

13. The proposed class is defined as follows:

Any and all persons who have been employed by Defendant as non-exempt employees in California at any time from June 4, 2016 to September 15, 2021.

14. Plaintiffs reserve the right to establish subclasses as appropriate.

15. The class is ascertainable and there is a well-defined community of interest in the litigation:

a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiffs at this time; however, the class is estimated to be greater than six hundred (600) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

b. Typicality: Plaintiffs' claims are typical of all other class members' claims as demonstrated herein. Plaintiffs will fairly and adequately protect the interests of the other class members with whom they have a well-defined community of interest.

c. Adequacy: Plaintiffs will fairly and adequately protect the interests of each class member, with whom they have a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiffs have no interest that is antagonistic to the other class members. Plaintiffs' attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiffs have incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily

1 expended for the prosecution of this action for the substantial benefit of
2 each class member.

3 d. Superiority: A class action is superior to other available methods for the
4 fair and efficient adjudication of this litigation because individual joinder
5 of all class members is impractical.

6 e. Public Policy Considerations: Certification of this lawsuit as a class
7 action will advance public policy objectives. Employers of this great
8 state violate employment and labor laws every day. Current employees
9 are often afraid to assert their rights out of fear of direct or indirect
10 retaliation. However, class actions provide the class members who are
11 not named in the complaint anonymity that allows for the vindication of
12 their rights.

13 16. There are common questions of law and fact as to the class members that
14 predominate over questions affecting only individual members. The following common
15 questions of law or fact, among others, exist as to the members of the class:

16 a. Whether Defendants' failure to pay wages, without abatement or
17 reduction, in accordance with the California Labor Code, was willful;

18 b. Whether Defendants failed to pay their hourly-paid or non-exempt
19 employees within the State of California for all hours worked, missed
20 meal periods and rest breaks in violation of California law;

21 c. Whether Defendants required class members to work over eight (8)
22 hours per day and/or over forty (40) hours per week and failed to pay the
23 legally required overtime compensation to class members;

24 d. Whether Defendants properly calculated the regular rate for class
25 members to worked overtime and earned bonuses and/or incentive pay;

26 e. Whether Defendants deprived Plaintiffs and other class members of meal
27 and/or rest periods or required Plaintiffs and the other class members to
28 work during meal and/or rest periods without compensation;

- 1 f. Whether Defendants failed to pay minimum wages to Plaintiffs and other
2 class members for all hours worked;
- 3 g. Whether Defendant maintained an illegal rounding policy;
- 4 h. Whether Defendants failed to pay all wages due to Plaintiffs and other
5 class members within the required time upon their discharge or
6 resignation;
- 7 i. Whether Defendants failed to timely pay all wages due to Plaintiffs and
8 other class members during their employment;
- 9 j. Whether Defendants complied with wage reporting as required by the
10 California Labor Code, including, inter alia, section 226;
- 11 k. Whether Defendants failed to reimburse Plaintiffs and the other class
12 members for necessary business-related expenses and costs;
- 13 l. Whether Defendants' conduct was willful or reckless;
- 14 m. Whether Defendants engaged in unfair business practices in violation of
15 California Business & Professions Code section 17200, *et seq.*;
- 16 n. The appropriate amount of damages, restitution, and/or monetary
17 penalties resulting from Defendants' violation of California law; and
- 18 o. Whether Plaintiffs and other class members are entitled to compensatory
19 damages pursuant to the California Labor Code.

20 **GENERAL ALLEGATIONS**

21 17. During the relevant time period set forth herein, Defendants employed Plaintiffs
22 and other persons as hourly-paid or non-exempt employees within the State of California.

23 18. Defendants, jointly and severally, employed Plaintiff Edgar Mata as an hourly-
24 paid, non-exempt employee from approximately December 2016 to March 2021 in the State of
25 California, County of Los Angeles.

26 19. Defendants, jointly and severally, employed Plaintiff Elvis Olivares as an
27 hourly-paid, non-exempt employee from approximately 2011 to 2018 in the State of California,
28 County of Los Angeles.

1 20. Defendants, jointly and severally, hired Plaintiffs and other class members and
2 classified them as hourly-paid, non-exempt employees, and failed to compensate them for all
3 hours worked, and/or missed rest periods.

4 21. Defendants had the authority to hire and terminate Plaintiffs and other class
5 members; to set work rules and conditions governing Plaintiffs and the other class members'
6 employment; and to supervise their daily employment activities.

7 22. Defendants hired Plaintiffs and other class members and classified them as non-
8 exempt employees, and failed to compensate them for all hours worked, missed meal periods
9 and/or rest breaks.

10 23. Defendants exercised sufficient authority over the terms and conditions of
11 Plaintiffs and other class members' employment for them to be joint employers of Plaintiffs
12 and other class members.

13 24. Defendants directly hired and paid wages and benefits to Plaintiffs and other
14 class members.

15 25. Defendants continue to employ hourly-paid or non-exempt employees within the
16 State of California.

17 26. Plaintiffs and other class members worked over eight (8) hours in a day, and/or
18 forty (40) hours in a week during their employment with Defendants.

19 27. Plaintiffs are informed and believe, and based thereon allege, that Defendants
20 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt
21 employees within the State of California. This scheme involved, inter alia, failing to pay them
22 for all hours worked, missed meal periods, and missed rest breaks in violation of California
23 law.

24 28. Plaintiffs are informed and believe, and based thereon allege, that Defendants
25 knew or should have known that Plaintiffs and other class members were entitled to receive
26 certain wages for overtime compensation and that Plaintiffs and other class members were not
27 receiving wages for overtime compensation.

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1 29. Plaintiffs are informed and believe, and based thereon allege, that Defendants
2 knew or should have known that it had a rounding policy that was neither fair nor neutral and
3 that Plaintiffs and other class members were underpaid wages owed to them because of
4 Defendant's illegal rounding policy.

5 30. Plaintiffs are informed and believe, and based thereon allege, that Defendants
6 failed to provide Plaintiffs and other class members the required rest and meal periods during
7 the relevant time period as required under the Industrial Welfare Commission Wage Orders
8 and thus they are entitled to any and all applicable penalties.

9 31. Plaintiffs are informed and believe, and based thereon allege, that Defendants
10 knew or should have known that Plaintiffs and other class members were entitled to receive all
11 timely and complete meal periods or payment of one additional hour of pay at Plaintiffs' and
12 the other class members' regular rate of pay when a meal period was missed, late or
13 interrupted, and that Plaintiffs and other class members did not receive all timely and proper
14 meal periods or payment of one additional hour of pay at their regular rate of pay when a meal
15 period was missed.

16 32. Plaintiffs are informed and believe, and based thereon allege, that Defendants
17 knew or should have known that Plaintiffs and other class members were entitled to receive all
18 timely rest periods without interruption or payment of one additional hour of pay at Plaintiffs
19 and the other class members' regular rate of pay when a rest period was missed, late or
20 interrupted, and they did not receive all rest periods or payment of one additional hour of pay
21 at Plaintiffs' and the other class members' regular rate of pay when a rest period was missed.

22 33. Plaintiffs are informed and believe, and based thereon allege, that Defendants
23 knew or should have known that Plaintiffs and other class members were entitled to receive at
24 least minimum wages for compensation and that they were not receiving at least minimum
25 wages for all hours worked.

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1 34. Plaintiffs are informed and believe, and based thereon allege, that Defendants
2 knew or should have known that Plaintiffs and other class members were entitled to receive the
3 wages owed to them upon discharge or resignation, including overtime and minimum wages
4 and meal and rest period premiums, and that Plaintiffs and other class members did not, in fact,
5 receive such wages owed to them at the time of their discharge or resignation.

6 35. Plaintiffs are informed and believe, and based thereon allege, that Defendants
7 knew or should have known that Plaintiffs and other class members were entitled to receive
8 complete and accurate wage statements in accordance with California law, but, in fact, they did
9 not receive complete and accurate wage statements from Defendants. The deficiencies
10 included, inter alia, the failure to include the total number of hours worked by Plaintiffs and
11 other class members.

12 36. Plaintiffs are informed and believe, and based thereon allege, that Defendants
13 knew or should have known that Plaintiffs and the other class members were entitled to
14 reimbursement for necessary business-related expenses.

15 37. Plaintiffs are informed and believe, and based thereon allege, that Defendants
16 knew or should have known that Defendants had to keep complete and accurate payroll records
17 for Plaintiffs and other class members in accordance with California law, but, in fact, did not
18 keep complete and accurate payroll records.

19 38. Plaintiffs are informed and believe, and based thereon allege, that Defendants
20 knew or should have known that they had a duty to compensate Plaintiffs and other class
21 members pursuant to California law, and that Defendants had the financial ability to pay such
22 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
23 represented to Plaintiffs and other class members that they were properly denied wages, all in
24 order to increase Defendants' profits.

25 39. As a pattern and practice, during the relevant time period set forth herein,
26 Defendants failed to pay overtime wages to Plaintiffs and other class members for all hours
27 worked. Plaintiffs and other class members were required to work more than eight (8) hours
28 per day and/or forty (40) hours per week without overtime compensation.

1 40. As a pattern and practice, during the relevant time period set forth herein,
2 Defendant consistently underpaid wages owed to Plaintiffs and other class members due to its
3 illegal rounding policy.

4 41. As a pattern and practice, during the relevant time period set forth herein,
5 Defendants failed to provide the requisite uninterrupted and timely meal and rest periods to
6 Plaintiffs and other class members.

7 42. As a pattern and practice, during the relevant time period set forth herein,
8 Defendants failed to pay Plaintiffs and other class members at least minimum wages for all
9 hours worked.

10 43. As a pattern and practice, during the relevant time period set forth herein,
11 Defendants failed to pay Plaintiffs and other class members the wages owed to them upon
12 discharge or resignation.

13 44. As a pattern and practice, during the relevant time period set forth herein,
14 Defendants failed to provide complete or accurate wage statements to Plaintiffs and other class
15 members.

16 45. As a pattern and practice, during the relevant time period set forth herein,
17 Defendants failed to keep complete or accurate payroll records for Plaintiffs and other class
18 members.

19 46. As a pattern and practice, during the relevant time period set forth herein,
20 Defendants failed to reimburse Plaintiffs and the other class members for necessary business-
21 related expenses and costs.

22 47. As a pattern and practice, during the relevant time period set forth herein,
23 Defendants failed to properly compensate Plaintiffs and other class members pursuant to
24 California law in order to increase Defendants' profits.

25 48. California Labor Code section 218 states that nothing in Article 1 of the Labor
26 Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty
27 due to him [or her] under this article."

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1 **FIRST CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 510 and 1198)**

3 **(Against DAY-LEE FOODS INC. and DOES 1 through 100)**

4 49. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1
5 through 48, and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 50. California Labor Code section 1198 and the applicable Industrial Welfare
8 Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without
9 compensating them at a rate of pay either time-and-one-half or two-times that person’s regular
10 rate of pay, depending on the number of hours worked by the person on a daily or weekly
11 basis.

12 51. Specifically, the applicable IWC Wage Order provides that Defendants are and
13 were required to pay Plaintiffs and other class members employed by Defendants, who
14 work(ed) more than eight (8) hours in a day or more than forty (40) hours in a workweek, at
15 the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more
16 than forty (40) hours in a workweek.

17 52. The applicable IWC Wage Order further provides that Defendants are and were
18 required to pay Plaintiffs and other class members overtime compensation at a rate of two
19 times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

20 53. California Labor Code section 510 codifies the right to overtime compensation
21 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours
22 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day
23 of work, and overtime compensation at twice the regular hourly rate for hours worked in
24 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
25 of work.

26 54. During the relevant time period set forth herein, Plaintiffs and other class
27 members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a
28 week.

55. As a pattern and practice, during the relevant time period set forth herein, Defendants intentionally and willfully failed to pay and/or properly calculate overtime wages owed to Plaintiffs and other class members.

56. As a pattern and practice, during the relevant time period set forth herein, Defendant intentionally and willfully maintained a rounding policy that was neither fair nor neutral that resulted in Plaintiffs and other class members being underpaid wages owed.

57. Defendants' pattern and practice of failing to pay Plaintiffs and other class members the unpaid balance of overtime compensation, as required by California laws, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

58. Pursuant to California Labor Code section 1194, Plaintiffs and other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

(Violation of California Labor Code §§ 226.7 and 512(a))

(Against DAY-LEE FOODS INC. and DOES 1 through 100)

59. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 58, and each and every part thereof with the same force and effect as though fully set forth herein.

60. During the relevant time period set forth herein, the IWC Wage Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiffs' and other class members' employment by Defendants.

61. During the relevant time period set forth herein, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the California IWC.

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1 62. During the relevant time period set forth herein, the applicable IWC Wage
2 Order and California Labor Code section 512(a) provide that an employer may not require,
3 cause or permit an employee to work for a work period of more than five (5) hours per day
4 without providing the employee with a meal period of not less than thirty (30) minutes, except
5 that if the total work period per day of the employee is no more than six (6) hours, the meal
6 period may be waived by mutual consent of both the employer and employee.

7 63. During the relevant time period set forth herein, the applicable IWC Wage
8 Order and California Labor Code section 512(a) further provide that an employer may not
9 require, cause, or permit an employee to work for a work period of more than ten (10) hours
10 per day without providing the employee with a second uninterrupted meal period of not less
11 than thirty (30) minutes, except that if the total hours worked is no more than twelve (12)
12 hours, the second meal period may be waived by mutual consent of the employer and the
13 employee only if the first meal period was not waived.

14 64. As a pattern and practice, during the relevant time period set forth herein,
15 Plaintiffs and other class members who were scheduled to work for a period of time no longer
16 than six (6) hours, and who did not waive their legally mandated meal periods by mutual
17 consent, were required to work for periods longer than five (5) hours without an uninterrupted
18 meal period of not less than thirty (30) minutes and/or without a rest period.

19 65. As a pattern and practice, during the relevant time period set forth herein,
20 Plaintiffs and other class members who were scheduled to work for a period of time no longer
21 than twelve (12) hours, and who did not waive their legally mandated meal periods by mutual
22 consent, were required to work for periods longer than ten (10) hours without an uninterrupted
23 meal period of not less than thirty (30) minutes and/or without a rest period.

24 66. As a pattern and practice, during the relevant time period set forth herein,
25 Plaintiffs and other class members who were scheduled to work for a period of time in excess
26 of six (6) hours were required to work for periods longer than five (5) hours without an
27 uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

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67. As a pattern and practice, during the relevant time period set forth herein, Plaintiffs and other class members who were scheduled to work for a period of time in excess of twelve (12) hours were required to work for periods longer than ten (10) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

68. As a pattern and practice, during the relevant time period set forth herein, Defendants intentionally and willfully required Plaintiffs and other class members to work during meal periods and failed to compensate Plaintiffs and the other class members the full meal period premium for work performed during meal periods.

69. As a pattern and practice, during the relevant time period set forth herein, Defendants failed to pay Plaintiffs and other class members the full meal period premium due pursuant to California Labor Code section 226.7.

70. Defendants' conduct violates applicable IWC Wage Order and California Labor Code sections 226.7 and 512(a).

71. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiffs and other class members are entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against DAY-LEE FOODS INC. and DOES 1 through 100)

72. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 71, and each and every part thereof with the same force and effect as though fully set forth herein.

73. During the relevant time period set forth herein, the applicable IWC Wage Order and California Labor Code section 226.7 were applicable to Plaintiffs' and the other class members' employment by Defendants.

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1 74. During the relevant time period set forth herein, California Labor Code section
2 226.7 provides that no employer shall require an employee to work during any rest period
3 mandated by an applicable order of the California IWC.

4 75. During the relevant time period set forth herein, the applicable IWC Wage
5 Order provides that “[e]very employer shall authorize and permit all employees to take rest
6 periods, which insofar as practicable shall be in the middle of each work period” and that the
7 “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes
8 net rest time per four (4) hours or major fraction thereof” unless the total daily work time is
9 less than three and one-half (3 ½) hours.

10 76. As a pattern and practice, during the relevant time period set forth herein,
11 Defendants required Plaintiffs and other class members to work four (4) or more hours without
12 authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

13 77. As a pattern and practice, during the relevant time period set forth herein,
14 Defendants willfully required Plaintiffs and the other class members to work during rest
15 periods and failed to pay Plaintiffs and the other class members the full rest period premium
16 for work performed during rest periods.

17 78. As a pattern and practice, during the relevant time period set forth herein,
18 Defendants failed to pay Plaintiffs and the other class members the full rest period premium
19 due pursuant to California Labor Code section 226.7

20 79. Defendants’ conduct violates applicable IWC Wage Orders and California
21 Labor Code section 226.7.

22 80. Pursuant to the applicable IWC Wage Orders and California Labor Code section
23 226.7(b), Plaintiffs and the other class members are entitled to recover from Defendants one
24 additional hour of pay at the employees’ regular hourly rate of compensation for each workday
25 that the rest period was not provided.

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1 **FOURTH CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 1194, 1197.1, and 1197)**

3 **(Against DAY-LEE FOODS INC. and DOES 1 through 100)**

4 81. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
5 through 80 and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 82. During the relevant time period set forth herein, California Labor Code sections
8 1194 and 1197 provide that the minimum wage to be paid to employees, and the payment of a
9 lesser wage than the minimum so fixed, is unlawful.

10 83. As a pattern and practice, during the relevant time period set forth herein,
11 Defendants failed to pay minimum wages to Plaintiffs and other class members as required,
12 pursuant to California Labor Code sections 1194, 1197.1, and 1197.

13 84. Defendants' failure to pay Plaintiffs and other class members the minimum
14 wage as required violates California Labor Code sections 1194, 1197.1, and 1197. Pursuant to
15 those sections, Plaintiffs and other class members are entitled to recover the unpaid balance of
16 their minimum wage compensation as well as interest, costs, and attorney's fees, and
17 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

18 85. Pursuant to California Labor Code section 1197.1, Plaintiffs and the other class
19 members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each
20 employee minimum wages, and \$250.00 for each subsequent failure to pay each employee
21 minimum wages.

22 86. Pursuant to California Labor Code section 1194.2, Plaintiffs and other class
23 members are entitled to recover liquidated damages in an amount equal to the wages
24 unlawfully unpaid and interest thereon.

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1 **FIFTH CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 201, 202, and 203)**

3 **(Against DAY-LEE FOODS INC. and DOES 1 through 100)**

4 87. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
5 through 86, and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 88. During the relevant time period set forth herein, California Labor Code sections
8 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid
9 at the time of discharge are due and payable immediately, and if an employee quits his or her
10 employment, his or her wages shall become due and payable not later than seventy-two (72)
11 hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her
12 intention to quit, in which case the employee is entitled to his or her wages at the time of
13 quitting.

14 89. As a pattern and practice, during the relevant time period set forth herein,
15 Defendants intentionally and willfully failed to pay Plaintiffs and other class members who are
16 no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72)
17 hours of their leaving Defendants' employ.

18 90. Defendants' pattern and practice of failing to pay Plaintiffs and other class
19 members who are no longer employed by Defendants their wages, earned and unpaid, within
20 seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor
21 Code sections 201 and 202.

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

26 92. Plaintiffs and other class members are entitled to recover from Defendants the
27 statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum
28 pursuant to California Labor Code section 203.

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97. More specifically, Plaintiffs and other class members have been injured by Defendants' intentional and willful violation of California Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate and itemized wage statements pursuant to California Labor Code section 226(a).

98. Plaintiffs and other class members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

99. Plaintiffs and other class members are also entitled to injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(g).

SEVENTH CAUSE OF ACTION

(Violation of California Labor Code §§ 2800 and 2802)

(Against DAY-LEE FOODS INC. and DOES 1 through 100)

100. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 99, and each and every part thereof with the same force and effect as though fully set forth herein.

101. Pursuant to California Labor Code sections 2800 and 2802, an employer must reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

102. Defendants have intentionally and willfully failed to reimburse Plaintiffs and other class members for all necessary business-related expenses and costs. Plaintiffs and other class members are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

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1 **EIGHTH CAUSE OF ACTION**

2 **(Violation of Labor Code §§ 2698, *et seq.* (“PAGA”))**

3 **(Against DAY-LEE FOODS INC. and DOES 1 through 100)**

4 103. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
5 through 102, and each and every part thereof with the same force and effect as though fully set
6 forth herein.

7 104. PAGA expressly establishes that any provision of the California Labor Code
8 which provides for a civil penalty to be assessed and collected by the California Labor and
9 Workforce Development Agency (“LWDA”), or any of its departments, divisions,
10 commissions, boards, agencies, or employees for a violation of the California Labor Code, may
11 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
12 herself, and other current or former employees.

13 105. On May 12, 2021, Plaintiff Edgar Mata provided written notice to the LWDA
14 and Defendants of the specific provisions of the Labor Code he contends were violated, and the
15 theories supporting his contentions. Plaintiffs believe that on or about July 16, 2021, the sixty-
16 five (65) days’ notice period expired and the LWDA did not take any action to investigate or
17 prosecute this matter. Therefore, Plaintiffs have exhausted the statutory time period to bring
18 this action.

19 106. Plaintiffs and the other non-exempt employees are “aggrieved employees” as
20 defined by California Labor Code section 2699(c) in that they are all current or former
21 employees of Defendants who were employed in California from May 12, 2020 to September
22 15, 2021, and one or more of the alleged violations was committed against them.

23 **Failure to Pay Minimum and Overtime Wages**

24 107. At all times relevant herein, Defendants were required to compensate their non-
25 exempt employees minimum wages for all hours worked and overtime wages for all hours
26 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the
27 mandate of Labor Code sections 510, 1194, 1197, and 1198.

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1 108. As a pattern and practice, Defendants failed to compensate Plaintiffs and other
2 aggrieved current and former employees for all hours worked, resulting in a failure to pay all
3 minimum wages and overtime wages, where applicable.

4 **Failure to Provide Meal Periods and Rest Breaks**

5 109. In accordance with the mandates of Labor Code sections 226.7 and 512,
6 Defendants were required to authorize and permit their non-exempt employees to take a 10-
7 minute rest break for every four (4) hours worked or major fraction thereof and were further
8 required to provide their non-exempt employees with a 30-minute meal period for every five
9 (5) hours worked.

10 110. As a pattern and practice, Defendants failed to provide Plaintiffs and other
11 aggrieved current and former employees with legally mandated meal periods and rest breaks
12 and failed to pay proper compensation for this failure.

13 **Failure to Timely Pay Wages During Employment**

14 111. At all times relevant herein, Defendants were required to pay their employees
15 within a specified time period pursuant to the mandate of Labor Code section 204.

16 112. As a pattern and practice, Defendants regularly failed to pay Plaintiffs and other
17 aggrieved current and former employees all wages due and owing them within the required
18 time period.

19 **Failure to Timely Pay Wages Upon Termination**

20 113. At all times relevant herein, Defendants were required to pay their employees all
21 wages owed in a timely fashion at the end of employment pursuant to California Labor Code
22 sections 201 to 204.

23 114. As a result of Defendants' Labor Code violations alleged above, Defendants
24 failed to pay Plaintiffs and the other aggrieved former employees their final wages pursuant to
25 Labor Code sections 201 to 204 and accordingly owe waiting time penalties pursuant to Labor
26 Code section 203.

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1 **Failure to Provide Complete and Accurate Wage Statements**

2 115. At all times relevant herein, Defendants were required to keep *accurate* records
3 regarding their California employees pursuant to the mandate of Labor Code sections 226 and
4 1174.

5 116. As a result of Defendants' various Labor Code violations, Defendants failed to
6 keep accurate records regarding Plaintiffs and other aggrieved current and former employees.
7 For example, Defendants failed in their affirmative obligation to keep accurate records
8 regarding Plaintiffs and other aggrieved current and former employees' gross wages earned,
9 total hours worked, all deductions, net wages earned, and all applicable hourly rates and the
10 number of hours worked at each hourly rate.

11 **Failure to Reimburse Business Expenses**

12 117. At all times relevant herein, Defendants were required to reimburse their
13 employees for any and all necessary expenditures or losses incurred by the employees in direct
14 consequences of the discharge or his or her duties pursuant to the mandate of Labor Code
15 sections 2800 and 2802.

16 118. As a pattern and practice, Defendants regularly failed to pay Plaintiffs and other
17 aggrieved current and former employees all business expenses incurred and owing them within
18 the required time period.

19 **Penalties**

20 119. Pursuant to California Labor Code section 2699, Plaintiffs, individually, and on
21 behalf of other current and former aggrieved employees, request and are entitled to recover
22 from Defendants, and each of them, civil penalties, interest, attorneys' fees and costs pursuant,
23 as well as all statutory penalties against Defendants, and each of them, including but not
24 limited to:

25 120. Penalties under California Labor Code section 2699 in the amount of a hundred
26 dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two
27 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
28 violation;

121. Penalties under California Code of Regulations Title 8 section 11040 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;

122. Penalties under California Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a 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;

123. Penalties under Labor Code section 1197.1 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;

124. Any and all additional penalties as provided by the Labor Code and/or other statutes; and

125. Attorneys' fees and costs pursuant to Labor Code sections 210, 1194, and 2699, and any other applicable statute.

NINTH CAUSE OF ACTION

(Violation of California Business & Professions Code §§ 17200, *et seq.*)

(Against DAY-LEE FOODS INC. and DOES 1 through 100)

126. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 125, and each and every part thereof with the same force and effect as though fully set forth herein.

127. Defendants' conduct, as alleged herein, has been, and continues to be unfair, unlawful and harmful to Plaintiffs, other class members, to the general public, and Defendants' competitors. Accordingly, Plaintiffs seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

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128. Defendants' activities as alleged herein are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code section 17200, *et seq.*

129. A violation of California Business & Professions Code section 17200, *et seq.* may be predicated on the violation of any state or federal law. In this instant case, Defendants' pattern and practice of requiring Plaintiffs and other class members work overtime hours without paying them proper compensation violate California Labor Code sections 510 and 1198. Additionally, Defendants' pattern and practice of requiring Plaintiffs and other class members, to work through their meal and rest periods without paying them proper compensation violate California Labor Code sections 226.7 and 512(a). Moreover, Defendants' pattern and practice of failing to timely pay wages to Plaintiffs and other class members violate California Labor Code sections 201 and 202. Defendants also violated California Labor Code sections 226(a), 1194, 1197, 2800 and 2802.

130. As a result of the herein described violations of California law, Defendants unlawfully gained an unfair advantage over other businesses.

131. Plaintiffs and other class members have been personally injured by Defendants' unlawful business acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or property.

132. Pursuant to California Business & Professions Code section 17200, *et seq.*, Plaintiffs and other class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable laws; and an award of costs.

DEMAND FOR JURY TRIAL

Plaintiffs, individually, and on behalf of other members of the general public similarly situated, request a trial by jury.

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Class Certification

1. That this action be certified as a class action;
2. That Plaintiffs be appointed as representatives of the class;
3. That counsel for Plaintiffs be appointed as class counsel; and
4. That Defendants provide to Class Counsel immediately the names and most current contact information (address, e-mail, and telephone numbers) of all class members.

5. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;
6. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;
7. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194; and
8. For such other and further relief as the court may deem just and proper.

9. That the Court make an award to Plaintiffs and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;
10. For all actual, consequential, and incidental losses and damages, according to proof;
11. For premium wages pursuant to California Labor Code section 226.7(b);
12. For pre-judgment interest on any unpaid wages from the date such amounts were due;
13. For reasonable attorneys' fees and costs of suit incurred herein; and

1 14. For such other and further relief as the court may deem just and proper.

2 **As to the Third Cause of Action**

3 15. That the Court declare, adjudge, and decree that Defendants violated California
4 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all
5 rest periods to Plaintiffs and the other class members;

6 16. That the Court make an award to Plaintiffs and the other class members of one
7 (1) hour of pay at each employee's regular rate of compensation for each workday that a rest
8 period was not provided;

9 17. For all actual, consequential, and incidental losses and damages, according to
10 proof;

11 18. For premium wages pursuant to California Labor Code section 226.7(b);

12 19. For pre-judgment interest on any unpaid wages from the date such amounts
13 were due; and

14 20. For such other and further relief as the court may deem just and proper.

15 **As to the Fourth Cause of Action**

16 21. That the Court declare, adjudge, and decree that Defendants violated California
17 Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to
18 Plaintiffs and the other class members;

19 22. For general unpaid wages and such general and special damages as may be
20 appropriate;

21 23. For pre-judgment interest on any unpaid compensation from the date such
22 amounts were due;

23 24. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
24 California Labor Code section 1194(a);

25 25. For liquidated damages pursuant to California Labor Code section 1194.2; and

26 26. For such other and further relief as the court may deem just and proper.

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As to the Fifth Cause of Action

27. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of the other class members no longer employed by Defendants;

28. For all actual, consequential, and incidental losses and damages, according to proof;

29. For statutory wage penalties pursuant to California Labor Code section 203 for the other class members who have left Defendants' employ;

30. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

31. For such other and further relief as the court may deem just and proper.

As to the Sixth Cause of Action

32. That the Court declare, adjudge, and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiffs and other class members, and willfully failed to provide accurate itemized wage statements thereto;

33. For actual, consequential, and incidental losses and damages, according to proof;

34. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(g); and

35. For such other and further relief as the court may deem just and proper.

As to the Seventh Cause of Action

36. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiffs and other class members (but not all) for all necessary business-related expenses as required by California Labor Code sections 2800 and 2802;

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1 37. For actual, consequential, and incidental losses and damages, according to
2 proof;

3 38. For the imposition of civil penalties and/or statutory penalties;

4 39. For punitive damages and/or exemplary damages according to proof at trial;

5 40. For reasonable attorneys' fees and costs of suit incurred herein; and

6 41. For such other and further relief as the court may deem just and proper.

7 **As to the Eighth Cause of Action**

8 42. Upon the Eighth Cause of Action, for civil penalties pursuant to statute as set
9 forth in Labor Code sections 2698 *et seq.*, for Defendants' violations of Labor Code sections
10 201, 202, 203, 204, 226(a), 226.2, 226.3, 226.7, 510, 512(a), 1174, 1194, 1197, 1197.1, 1198,
11 2800 and 2802.

12 43. For costs and attorneys' fees pursuant to Labor Code sections 210, 1194, and
13 2699, and any other applicable statute; and

14 44. For such other and further relief that the court may deem just and proper.

15 **As to the Ninth Cause of Action**

16 45. That the Court declare, adjudge, and decree that Defendants violated California
17 Business and Professions Code sections 17200, *et seq.* by failing to pay at least minimum
18 wages to Plaintiffs and other class members all compensation due to them, failing to provide
19 all meal and rest periods to Plaintiffs and the other class members, failing to reimburse
20 Plaintiffs and other class members for business expenses, and failing to pay Plaintiffs' and
21 other class members' wages timely as required by California Labor Code sections 201 and 202.

22 46. For restitution of unpaid wages to Plaintiffs and other class members and all
23 pre-judgment interest from the day such amounts were due and payable;

24 47. For the appointment of a receiver to receive, manage and distribute any and all
25 funds disgorged from Defendants and determined to have been wrongfully acquired by
26 Defendants as a result of violation of California Business and Professions Code sections
27 17200, *et seq.*;

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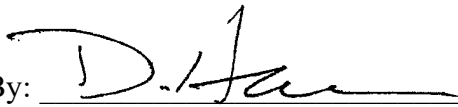
1 48. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
2 California Code of Civil Procedure section 1021.5;

3 49. For injunctive relief to ensure compliance with this section, pursuant to
4 California Business and Professions Code sections 17200, *et seq.*; and

5 50. For such other and further relief as the court may deem just and proper.
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7 Dated: December 6, 2021

JUSTICE LAW CORPORATION

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10 By: 

Douglas Han
Shunt Tatavos-Gharajeh
Haig Hogdanian
Attorneys for Plaintiff

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**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is aokada@justicelawcorp.com

On December 7, 2021, I served the foregoing document described as

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES

for the following case: **Mata, et al. v. Day-Lee Foods Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM- 832069-21**
Court Case No.: 20STCV21664
Los Angeles County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 7, 2021, at Pasadena, California.



Anna Okada