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12 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SAN DIEGO**

14 MARGARITA NIEBLAS on behalf of herself,
15 the State of California, and others similarly-
16 situated,

17 Plaintiffs,

18 vs.

19 BESHAY FOODS, INC., a California
20 Corporation; DAWOOD BESHAY, an individual;
21 and DOES 1-20, inclusive,

22 Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

08/02/2022 at 05:03:50 PM

Clerk of the Superior Court
By Marfil Estrada, Deputy Clerk

Case No.: 37-2022-00030605-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

1. Minimum Wages, LC § 1194 & Wage Orders;
2. Overtime Wages, LC § 510 & Wage Orders;
3. Meal Period Violations, Wage Orders & LC §§ 226.7, 512;
4. Rest Break Violations, Wage Orders & LC § 226.7;
5. Waiting Time Penalties, LC § 203;
6. Wage Statement Penalties, Wage Orders & LC § 226;
7. Unfair Competition Law, Bus. & Prof. Code §§ 17200, *et seq.*

DEMAND FOR JURY TRIAL

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I. INTRODUCTION

1. Margarita Nieblas (“Plaintiff”) brings this action for wages, penalties and injunctive relief against Beshay Foods, Inc., Dawood Beshay, and Does 1 through 20 (collectively “Defendants”). The allegations in this complaint are based on Plaintiff’s personal knowledge and on information and belief. The allegations made on information and belief are supported by evidence or are likely to be supported by evidence obtained through discovery.

2. Plaintiff brings this action on behalf of a class of individuals pursuant to California Code of Civil Procedure section 382.

3. At all times relevant to this action, Defendants have engaged in systematic wage theft, maintaining policies and practices that violate the rights of Plaintiff and the Class. Defendants have failed to compensate workers for all hours worked, in violation of the state’s minimum wage and overtime laws; failed to provide timely, complete and off-duty meal periods, or otherwise pay premium wages in lieu thereof; failed to authorize and permit rest periods in compliance with the Wage Orders and at the requisite rates for the length of shifts, or otherwise pay premium wages in lieu thereof; failed to pay all wages owed upon termination of the employment relationship; failed to furnish timely each pay period accurate, itemized statements separately stating, among other things, total hours worked, gross and net wages earned, all applicable hourly rates, and all premium wages earned; and failed to comply with record keeping requirements of California law.

4. Defendants’ acts and omissions, which violate the Labor Code, constitute predicate unlawful and unfair business practices in violation of California’s Unfair Competition Law (“UCL”), Business & Professions Code sections 17200, *et seq.* Defendants’ violations of the California Labor Code are unlawful acts which have afforded Defendants an unfair competitive advantage. Plaintiff and the Class she seeks to represent are therefore entitled to all remedies provided under the UCL, including restitutionary, injunctive, declaratory and/or other equitable relief for a period of four years from the filing of the original complaint through the date of this action’s final disposition. Plaintiff also seeks reasonable attorneys’ fees and costs pursuant to, *inter alia*, Labor Code sections 226(e) & (h), 1194(a), 1198.5(l), and Code of Civil Procedure section 1021.5.

5. At all times relevant to this action, Defendants’ conduct has been willful and in

reckless disregard of the rights of their workers. Defendants have been on notice of the alleged illegalities but have deliberately continued to exploit workers by enforcing and maintaining the illegal practices described herein. This action is brought not only to recover rightfully earned wages but also to enforce the state's laws, restore ill-gotten gains, and deter Defendants from their illegal conduct. Plaintiff therefore seeks all remedies available to themselves and to the Class.

II. THE PARTIES

6. Plaintiff Margarita Nieblas (aka Berenice Nieblas) is a California resident who was employed by Defendants as part of the restaurant crew for several years within the class period. The employment relationship between Plaintiff and Defendants ended in or around the beginning of February 2021. During her employment, Nieblas was classified as non-exempt, hourly employee. At the time Nieblas's employment ended, she was earning \$13 per hour. Defendants failed to pay Plaintiff Nieblas for all hours worked, including for time that was recorded but was rounded or shaved and not compensated. Plaintiff alleges that the failure to pay for all hours worked violates provisions of the California Wage Order and Labor Code, including minimum wage and overtime provisions of California law. Defendants also violated Plaintiff Nieblas's right to lawful rest breaks and meal periods by failing to provide rest and meal periods and or premium wages in lieu thereof. Defendants failed to provide timely, complete, uninterrupted, off-duty meal periods that were free of the employer's control, and Plaintiff Nieblas was denied premium wages in lieu of lawful meal periods. Defendants unlawfully rounded meal period time resulting in minimum wage and meal period violations. Defendants did not obtain valid and voluntary meal period waivers or on-duty meal period agreements justifying the failure to pay meal premiums. Defendants also failed to authorize and permit paid off-duty rest breaks of at least net-10 minutes at the rate of one rest period for shifts greater than 3.5 hours, two rest periods for shifts greater than six hours and up to 10 hours, and three shifts for shifts greater than 10 hours and up to 14 hours, and so on. Plaintiff Nieblas was denied premium wages in lieu of proper rest breaks. Further, Plaintiff Nieblas was provided inaccurate itemized wage statements that failed to state accurately the gross and net wages owed, applicable rates of pay, total hours, deductions and other statutory items. When Plaintiff Nieblas's employment ended, Defendants failed to pay all wages owed timely, entitling him to waiting tie penalties under Labor Code section

203. Plaintiff Nieblas is an aggrieved employee who has suffered injury in fact and lost money or property.

7. On information and belief, Beshay Foods, Inc. (“Beshay Foods”) is a California corporation that is in the business of owning, operating, and managing restaurant franchises in the United States. Plaintiff is informed and believes and thereon alleges that, at all times relevant to this action, Beshay Foods has owned and operated dozens of restaurants in California, including the two restaurants in California where Nieblas worked for Defendants. Beshay Foods’s principal office is located at 41760 Ivy Street, Suite 201, Murrieta, California, and its agent for service of process is Cogency Global, Inc., # C2003899 with its address at 1325 J Street, Suite 1550, Sacramento, California 95814. Beshay Foods has employed Plaintiff and members of the Class in California and is liable for the violations alleged herein as the employer.

8. On information and belief, Dawood Beshay (aka David Beshay) is a resident of California. Plaintiff is informed and believe and thereon alleges that, at all times relevant to this action, Mr. Beshay has been an owner, officer, and/or managing agent of Beshay Foods and the restaurants Beshay Foods owns and operates, which number in the hundreds. In the Statement of Information for Beshay Foods listed on the state’s website, Mr. Beshay is listed as CEO, CFO, Secretary and Director of Beshay Foods. Mr. Beshay is liable to Plaintiff and the Class pursuant to Labor Code section 558.1 for violating or causing violations of the Labor Code and Wage Orders as alleged herein.

9. At all times relevant to this action, the offending conduct has been willful and in reckless disregard of the rights of workers. Defendants knew or were on notice of the alleged illegalities but deliberately chose to ignore them. The true names and capacities, whether individual, corporate, associates, or otherwise of Defendants sued as Does 1-20, inclusive, are currently unknown to Plaintiff, who therefore sue such Defendants by fictitious names as permitted by law. Plaintiff is informed and believe that each Doe defendant is legally responsible in some manner for the unlawful acts referred to herein as a joint venturer, alter ego, predecessor, successor, sister, parent, subsidiary, or related or affiliated entity. Plaintiff will seek leave of court to amend this complaint to reflect the true names and capacities of the Defendants designated as Does when such identities become known.

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11. Venue is proper in the Superior Court of the County of San Diego pursuant to California Code of Civil Procedure sections 395 and 395.5, because (a) Defendant Beshay Foods, Inc. operates restaurants in San Diego County, (b) San Diego County is a county where the obligation or liability arises, and (c) non-exempt workers, including Plaintiff, have been harmed by Defendants' conduct in San Diego County.

12. At all times relevant to this action, Defendants maintained unlawful employment, labor and compensation policies and practices that affected Plaintiff and, on information and belief, other workers who are members of the putative Class.

14. Defendants failed to pay all overtime wages owed to Plaintiff and, on information and belief, the Class.

16. As a result of Defendants' timekeeping and payroll policies, Plaintiff and, on information and belief, the Class were denied compensation for all hours worked and suffered violations of the minimum wage and overtime laws.

17. Plaintiff and, on information and belief, the Class were denied off-duty, timely and complete meal periods of at least thirty (30) minutes. Plaintiff is informed and believe that they and members of the Class were denied meal premiums for denied and non-compliant meal periods.

18. Plaintiff and, on information and belief, the Class were denied off duty rest breaks of at least net ten (10) minutes of rest time at the rate of one rest period for shifts greater than three and one-half (3½) hours, two rest periods for shifts greater than six (6) hours and up to ten (10) hours, and three rest breaks for shifts greater than ten (10) hours and up to fourteen (14), and so on. Plaintiff is informed and believe that they and members of the Class were denied rest premiums for denied and non-compliant rest periods.

19. Plaintiff and, on information and belief, the Class were not provided accurate, itemized wage statements within the meaning of the Wage Orders and Labor Code section 226, in that they failed to state the correct number of total hours worked, gross and net wages earned, and all applicable hourly rates of pay and corresponding hours at each rate.

20. Plaintiff and, on information and belief, the Class were entitled to receive all wages owed to them periodically each pay period. Nevertheless, Plaintiff and, on information and belief, the Class did not receive payment of all wages, including minimum, overtime, and premium rest and meal period wages each pay period, in violation of Labor Code sections 204, 204b, and 210.

21. Plaintiff is informed and believes that members of the Class whose employment with Defendants has ended were not paid all wages owed timely upon separation from employment, including minimum, overtime, and premium rest and meal period wages owed to them, in violation of Labor Code sections 201 and 202. Plaintiff and Class Members were not paid timely upon separation from employment, including through layoff, termination of seasonal work, resignation, and discharge, are entitled to waiting time penalties pursuant to Labor Code section 203.

V. CLASS ALLEGATIONS

22. Plaintiff brings this action as a class action under Code of Civil Procedure section 382 on behalf of the following class:

All non-exempt employees who work or have worked for Defendants within the State of California during the period four (4) years prior to the filing of the initial complaint in

1 this action through the date of this action's final disposition, plus any applicable tolling,
2 including tolling under California Emergency Rule 9.

3 23. **Reservations of Rights:** Pursuant to California Rules of Court, rule 3.765(b), Plaintiff
4 reserves the right to amend or modify the class definitions with greater specificity, by further division
5 into subclasses, and/or by limitation to particular issues.

6 24. **Numerosity:** The Proposed Class is so numerous that joinder of all members is
7 impracticable. Plaintiff is informed and believes, and on that basis alleges, that during the relevant
8 time period, Defendants have employed hundreds of workers in California who are potential Class
9 Members. These workers have been employed in various regions of the state, and potential Class
10 Members are believed to be geographically dispersed throughout the state. The Class Members are so
11 numerous that joinder of all of them is impracticable. The individuals and the identity of such
12 membership is readily ascertainable by inspection of Defendants' records.

13 25. **Typicality:** Plaintiff's claims are typical of all other Class Members as demonstrated
14 herein. Plaintiff will fairly and adequately protect the interests of the other Class Members with whom
15 Plaintiff has a well-defined community of interest.

16 26. **Adequacy:** Plaintiff will fairly and adequately protect the interests of each class
17 member, with whom she has a well-defined community of interest and typicality of claims, as
18 demonstrated herein. Plaintiff has no interest that is antagonistic to the other Class Members.
19 Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action
20 discovery, certification, and settlement. Plaintiff has incurred, and during the pendency of this action
21 will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily expended
22 for the prosecution of this action for the substantial benefit of each class member. Plaintiff has
23 retained competent counsel experienced in wage and hour class action litigation.

24 27. **Predominant Common Questions:** Common questions of law and fact exist as to all
25 members of the Proposed Class and predominate over any questions solely affecting individual
26 members of the Proposed Class.

27 28. Common questions of fact and law predominate, including the following:
28

- 1 a. Whether Defendants suffered, permitted, and/or required Plaintiff and the Class to work
2 without compensation at the start and end of shifts, or during unpaid meal periods, and failed to
3 compensate them at the statutory and/or agreed-upon wage rates, in violation of the Labor Code
4 and the Wage Orders;
- 5 b. Whether Defendants failed to compensate Plaintiff and members of the Class for all
6 “hours worked,” within the meaning of the applicable Wage Orders;
- 7 c. Whether Defendants suffered, permitted, and/or required Plaintiff and the Class to work
8 in excess of eight (8) hours per day and/or over forty (40) hours per week and failed to pay
9 overtime, in violation of the Labor Code and the Wage Orders;
- 10 d. Whether the burden of proof will shift to Defendants for failing to maintain accurate
11 records of the start and end of work periods, meal periods, total daily hours worked and wages
12 earned, in violation of the Wage Orders, Labor Code sections 226 and 1174, and California
13 law;
- 14 e. Whether Defendants failed to relieve Plaintiff and the Class of all duty for a first net
15 thirty (30) minute meal period within the first five hours of work, in violation of the Labor
16 Code, the Wage Orders, and California law;
- 17 f. Whether Defendants failed to relieve Plaintiff and the Class of all duty for a second net
18 thirty (30) minute meal period for shifts in excess of 10 hours, in violation of the Labor Code,
19 the Wage Orders, and California law;
- 20 g. Whether Defendants failed to authorize and permit Plaintiff and the Class to take net ten
21 (10) minute rest breaks for each four (4) hour work period, or major portion thereof, in
22 violation of the Labor Code, the Wage Orders, and California law;
- 23 h. Whether Defendants failed to make good faith efforts to provide Plaintiff and the Class
24 with rest breaks during the middle of each four (4) hour work period, in violation of the Labor
25 Code, the Wage Orders, and California law;
- 26 i. Whether Defendants failed to pay Plaintiff and the Class premium wages for all
27 unlawfully provided meal periods and rest breaks, in violation of the Labor Code, the Wage
28 Orders, and California law;

- j. Whether Defendants knowingly and intentionally failed to provide Plaintiff and the Class written wage statements that accurately reflect all gross and net wages earned, total hours worked, applicable hourly rates and corresponding hours at each rate, in violation of the Labor Code, the Wage Orders, and California law;
- k. Whether Defendants' conduct as described herein was willful or reckless;
- l. Whether Defendants are liable for failing to pay all wages owed periodically under Labor Code sections 204 and 204b.
- m. Whether Plaintiff and members of the Class whose employment terminated are entitled to waiting time penalties under Labor Code section 203 for Defendants' failure to pay all wages owed timely upon the separation from employment;
- n. Whether Defendants engaged in unlawful and/or unfair business practices in violation of Business & Professions Code sections 17200 *et seq.* ("UCL"); and
- o. Whether Defendants are liable to Plaintiff and the Class pursuant to the UCL for restitution of unpaid or underpaid statutory and/or agreed upon regular, minimum, overtime, double-time, and premium rest and meal period wages.

29. **Superiority:** A class action is superior to other available methods for the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation where an individual Plaintiff lacks the financial resources to vigorously prosecute separate lawsuits against corporate defendants. A class action is superior to other available means for fair and efficient adjudication of class members' claims and offers significant benefits to the parties and the court. A class action will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. The individual monetary amounts due to many class members may not be large enough on their own for individual class members to obtain legal representation and relief. Moreover, a class action will serve important public interests by enabling the non-waivable statutory rights of class members to be effectively asserted, and fundamental public policies to be vindicated, in one proceeding. A class action will also provide a means for vindicating the rights of workers who are less likely to come forward to assert their rights based on fears of

1 reprisal. Finally, a class action will prevent the potential for inconsistent or contradictory judgments
2 inherent in individual litigation and address the problems inherent in random and fragmentary
3 enforcement.

4 30. Plaintiff intends to send notice to all members of the Class to the extent required by
5 Labor Code section 382. The names and addresses of the Class are available from Defendants.

6 **VI. CAUSES OF ACTION**

7 **FIRST CAUSE OF ACTION**

8 **Failure to Pay Legal Minimum Wage**

9 (Violation of the Wage Orders and Labor Code sections 204, 210, 1194, 1194.2 and 1197 and Local
Ordinances)

10 Plaintiff, on Behalf of herself and the Class, Against All Defendants

11 31. Plaintiff re-alleges and incorporate the above allegations above as if fully stated herein.

12 32. At all relevant times, Defendants have been subject to Labor Code and Wage Order
13 provisions requiring compensation at no less than the legal minimum wage. Defendants violated the
14 Wage Orders and Labor Code sections 200, *et seq.*, 1194 and 1197 by failing to compensate Plaintiff
15 and, on information and belief, the Class for all hours worked at the legal minimum rates established in
16 California and various municipalities where employees worked.

17 33. At all times relevant to this action, Plaintiff and the Class were entitled to compensation
18 at rates that were not less than the legal minimum wage, pursuant to the Wage Orders, Labor Code
19 sections 1182.12, 1194 and 1197, and applicable minimum wage ordinances. Defendants violated
20 these provisions by failing to compensate for all hours worked.

21 34. Defendants' conduct violates provisions of the Wage Orders, Labor Code, and
22 applicable local ordinances. Defendants conduct also violates Labor Code section 204 and 204b by
23 failing to pay all wages owed weekly, biweekly, or semi-monthly, entitling Plaintiff and the Class to
24 penalties and damages pursuant to Labor Code section 210.

25 35. Pursuant to Labor Code section 1194.2, because Plaintiffs seeks to recover wages in this
26 action on behalf of herself and the Class resulting from Defendants' payment of a wage less than the
27 minimum wage fixed by an order of the commission or by statute, they are entitled to recover
28 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

36. Wherefore, Plaintiff seeks unpaid wages, interest, costs and attorneys' fees in amounts to be proven at trial on behalf of themselves and the Class.

SECOND CAUSE OF ACTION

Failure to Pay Overtime Wages

(Violation of Wage Orders and Labor Code sections 510, 1194, 1198)

Plaintiff, on Behalf of Herself and the Class, Against All Defendants

37. Plaintiff re-alleges and incorporate the above allegations above as if fully stated herein.

38. At all relevant times, Defendants have been subject to Labor Code and Wage Order provisions requiring overtime compensation, including the applicable Wage Orders and Labor Code sections 510, 1194, 1198. California law requires overtime compensation at the rate of one and one-half (1.5) times the regular rate of pay for hours in excess of eight (8) in a workday and 40 in a workweek. Similarly, these overtime provisions require overtime pay at the rate of twice the regular rate of pay for hours in excess of 12 in a workday and eight (8) on any seventh day of a workweek (i.e., double-time pay).

39. At all times relevant to this action, Plaintiff and, on information and belief, the Class have worked in excess of eight (8) hours in a workday and 40 hours in a workweek without compensation for all hours worked at the required overtime rates.

40. Defendants violated these provisions by failing to compensate for all hours worked in excess of the overtime thresholds at the required premium wage rates. As a result, Defendants' conduct violates provisions of the Wage Orders, Labor Code, and applicable ordinances.

41. Wherefore, Plaintiff seeks unpaid wages, interest, costs and attorneys' fees pursuant to Labor Code section 1194 in amounts to be proven at trial on behalf of themselves and the Class.

THIRD CAUSE OF ACTION

Failure to Provide Meal Periods, or Premium Wages in Lieu Thereof

(Violation of Wage Orders, and Labor Code sections 226.7 and 512)

Plaintiff, on Behalf of Herself and the Class, Against All Defendants

42. Plaintiff re-alleges and incorporate the above allegations above as if fully stated herein.

43. California Labor Code section 512 and the Wage Orders prohibit employers from employing workers for a work period of more than five hours per day without providing the employee with a meal period of at least thirty (30) minutes, or for a work period of more than ten (10) hours

1 without a second meal period of at least thirty (30) minutes. California law requires the meal periods
2 to be off duty, without interruption, and the first meal period of the day must occur within five (5)
3 hours from the start of the shift.

4 44. California Labor Code section 226.7 prohibits any employer from requiring any
5 employee to work during any meal period mandated by the applicable Wage Orders, and states that an
6 employer that fails to provide an employee with a required meal period in compliance with Section 512
7 and the Wage Orders shall pay that employee one additional hour of pay at the employee's regular rate
8 of compensation (*i.e.*, a meal period premium) for each work day that the employer does not provide a
9 compliant meal period.

10 45. The applicable Wage Orders echo the provisions of Sections 226.7 and 512 of the Labor
11 Code governing meal periods. For example, Wage Order 1(11), provides as follows:

12 (A) No employer shall employ any person for a work period of more than five
13 (5) hours without a meal period of not less than 30 minutes, except that when a
14 work period of not more than six (6) hours will complete the day's work the
15 meal period may be waived by mutual consent of the employer and employee.
16 In the case of employees covered by a valid collective bargaining agreement,
the parties to the collective bargaining agreement may agree to a meal period
that commences after no more than six (6) hours of work.

17 (B) An employer may not employ an employee for a work period of more than
18 ten (10) hours per day without providing the employee with a second meal
19 period of not less than 30 minutes, except that if the total hours worked is no
more than 12 hours, the second meal period may be waived by mutual consent
of the employer and the employee only if the first meal period was not waived.

20 (C) Unless the employee is relieved of all duty during a 30 minute meal period,
21 the meal period shall be considered an "on duty" meal period and counted as
22 time worked. An "on duty" meal period shall be permitted only when the nature
23 of the work prevents an employee from being relieved of all duty and when by
24 written agreement between the parties an on-the-job paid meal period is agreed
to. The written agreement shall state that the employee may, in writing, revoke
the agreement at any time.

25 (D) If an employer fails to provide an employee a meal period in accordance
26 with the applicable provisions of this order, the employer shall pay the
27 employee one (1) hour of pay at the employee's regular rate of compensation
for each workday that the meal period is not provided.

28 (E) In all places of employment where employees are required to eat on the

premises, a suitable place for that purpose shall be designated.

46. At all times relevant to this action, Defendants violated the provisions of the Labor Code and Wage Orders regulating meal periods by failing to comply with the requirement of providing to Plaintiff and, on information and belief, the Class with a timely thirty (30) minute meal period within the first five (5) hours of work that was completely off duty, or a second thirty (30) minute meal period when workers worked more than ten (10) hours per day.

47. Plaintiff and, on information and belief, the Class did not waive meal periods, and Plaintiff is informed and believes and thereon alleges that valid meal period waivers were not in place or were not voluntarily consented to.

48. Defendants are therefore liable for meal period premium wages, pursuant to Labor Code section 226.7.

49. Wherefore, Plaintiff seeks unpaid wages, interest, and costs in amounts to be proven at trial on behalf of themselves and the Class.

FOURTH CAUSE OF ACTION

Failure to Provide Rest Breaks, or Premium Wages in Lieu Thereof

(Violation of Wage Orders and Labor Code sections 226.7)

Plaintiff, on Behalf of Herself and the Class, Against All Defendants

50. Plaintiff re-alleges and incorporate the above allegations above as if fully stated herein.

51. California Labor Code section 226.7 prohibits any employer from requiring an employee to work during any rest period mandated by the applicable Wage Orders. For example, Wage Order 1(12) provides as follows:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

52. At all times relevant to this action, Defendants failed to authorize and permit rest periods to Plaintiff and, on information and belief, the Class with of at least 10 minutes of time completely off duty at a rate of one rest period for shifts greater than three and one-half (3½) hours up to six (6) hours, two rest breaks for shifts greater than six (6) hours up to ten (10) hours, and three rest breaks for shifts greater than ten (10) hours up to fourteen (14) hours, and so on.

53. Defendants are therefore liable for rest break premium wages, pursuant to Labor Code section 226.7.

54. Wherefore, Plaintiff seeks unpaid wages, interest, and costs in amounts to be proven at trial on behalf of themselves and the Class.

FIFTH CAUSE OF ACTION

Willful Failure to Pay All Wages Owed Timely Upon Discharge or Resignation

(Violation of Labor Code sections 201 and 202)

Plaintiff, on Behalf of Herself and the Class, Against All Defendants

55. Plaintiff re-alleges and incorporate the above allegations above as if fully stated herein.

56. California Labor Code sections 201 and 202 require immediate payment of all unpaid wages at the time an employee is discharged or resigns from employment.

57. Defendants have willfully failed to pay all wages owed to Plaintiff and, on information and belief, members of the Class timely upon the termination of their employment relationship with Defendants, including wages for all hours worked, overtime wages, meal and rest period premium wages. For Defendants' willful failure to pay all wages timely, wages continue from the due date for up to 30 days at this daily rate, pursuant to Labor Code section 203.

58. Wherefore, Plaintiff seeks waiting time penalties and costs in amounts to be proven at trial on behalf of themselves and the Class.

SIXTH CAUSE OF ACTION

Failure to Provide Accurate Itemized Wage Statements

(Violation of Labor Code section 226 and the Wage Orders)

Plaintiff, on Behalf of Herself and the Class, Against All Defendants

59. Plaintiff re-alleges and incorporates the above allegations above as if fully stated herein.

60. California Labor Code section 226(a) provides, in relevant part, that every employer

1 must furnish each employee with an itemized wage statement that accurately shows the following:

2 (1) gross wages earned, (2) total hours worked by the employee, except as
3 provided in subdivision (j), (3) the number of piece-rate units earned and any
4 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
5 deductions, provided that all deductions made on written orders of the employee
6 may be aggregated and shown as one item, (5) net wages earned, (6) the
7 inclusive dates of the period for which the employee is paid, (7) the name of the
8 employee and only the last four digits of his or her social security number or an
9 employee identification number other than a social security number, (8) the
name and address of the legal entity that is the employer and, if the employer is
a farm labor contractor, as defined in subdivision (b) of Section 1682, the name
and address of the legal entity that secured the services of the employer, 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....

10 61. At all times relevant to this action, Defendants have failed to provide accurate itemized
11 wage statements, in violation of Labor Code section 226. Plaintiff and, on information and belief,
12 other members of the class were given wage statements that failed to state accurately the gross and net
13 wages earned, total hours worked, all applicable rates of pay and corresponding number of hours at
14 each rate of pay.

15 62. Defendants' failure to comply with the requirements of Labor Code section 226 and
16 provide accurate wage statements was knowing and intentional within the meaning of that provision.
17 Plaintiff and members of the putative Class are deemed to have suffered injury pursuant to Labor Code
18 section 226(e).

19 63. Pursuant to Labor Code section 226(e), Plaintiff and Class Members are entitled to
20 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
21 violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not to
22 exceed an aggregate penalty of four thousand dollars (\$4,000).

23 64. Wherefore, Plaintiff seeks damages, penalties, injunctive relief, attorney's fees and cost
24 of suit in amounts to be proven at trial on behalf of themselves and the Class.

25 **SEVENTH CAUSE OF ACTION**

26 **California Unfair Competition Law**

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

27 Plaintiff, on Behalf of Herself and the Class, Against All Defendants

28 65. Plaintiff re-alleges and incorporate the above allegations above as if fully stated herein.

1 66. Business and Professions Code section 17200 defines “unfair competition” to include
2 any unlawful business practice.

3 67. California Business and Professions Code § 17203 allows a person who has lost money
4 or property as a result of unfair competition to bring an action to recover money or property that may
5 have been acquired from similarly situated persons by means of unfair competition.

6 68. Defendants unlawful and unfair business practices resulted in the following violations
7 of California Labor Code and Wage Order provisions:

- 8 a. Failing to maintain accurate time records of the start and end of work periods and meal
9 periods;
- 10 b. Failure to compensate for all hours worked within the meaning of the Wage Orders;
- 11 c. Failure to comply with the legal minimum wage set forth under California law, the Wage
12 Orders, and applicable local ordinances;
- 13 d. Failure to comply with the overtime laws set forth in the Wage Orders, Labor Code and
14 local ordinances;
- 15 e. Failure to pay rest period premiums for non-compliance with the rest period requirements
16 of the Labor Code and Wage Orders;
- 17 f. Failure to pay meal period premiums for non-compliance with the meal period provisions
18 of the Labor Code and Wage Orders;
- 19 g. Failure to pay all wages owed timely upon termination of the employment relationship, as
20 required by Labor Code section 201 and 202;
- 21 h. Failure to maintain accurate payroll records in violation of Labor Code section 1174.

22 69. On information and belief, at all times relevant to this action, Plaintiff and the Class
23 have lost, and Defendants have either acquired, or may have acquired, money or property in the form
24 of earned unpaid wages for all hours worked, unpaid overtime and double-time wages, unpaid meal
25 period and rest break premium wages, and reimbursement of expenses from Plaintiff and the Class by
26 means of unfair competition as a result of Defendants’ unlawful failure to pay those wages, and related
27
28

1 failures to maintain accurate records, in violation of the requirements of the Labor Code and the Wage
2 Orders.

3 70. Pursuant to Business and Professions Code section 17203, Plaintiff seek restitution of
4 all these moneys and property, that Defendants either acquired, and/or may have acquired, from
5 Plaintiff and the Class by means of unfair competition in amounts subject to proof at trial. Plaintiff
6 also seeks to prevent Defendants from continuing to engage in the unlawful and/or unfair business
7 practices alleged herein.

8 71. Defendants, by the acts or omissions alleged of herein, have injured and are injuring the
9 interests of the general public in that other employers who exercise honest compliance with applicable
10 wage and hour laws, including the laws violated by Defendants, are at an unfair competitive
11 disadvantage as a result of Defendants' conduct.

12 72. Wherefore, Plaintiff seeks restitution of wages and the economic value of benefits
13 unlawfully denied to Plaintiff and the Class by Defendants in amounts subject to proof.

14 **VII. PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays for relief as follows:

16 1. For an order awarding compensatory damages for all wages earned but not paid, and all
17 overtime wages earned and not paid, in the amount to be proven at trial, pursuant to Labor Code
18 sections 200, *et seq.*, 510, 511, 1194, 1197, 1198;

19 2. For an order awarding pre-judgment interest of 10 percent on the unpaid wages and
20 overtime compensation owed under Labor Code section 218.6;

21 3. For an order awarding unpaid overtime, minimum wage and a minimum wage
22 liquidated damages under Labor Code sections 1194 and 1194.2;

23 4. For an order awarding attorney's fees pursuant to Labor Code section 1194;

24 5. For an order awarding meal period premium wages pursuant to Labor Code section
25 226.7;

26 6. For an order awarding rest break premium wages pursuant to Labor Code section 226.7;

27 7. For an order awarding "waiting time" penalties under California Labor Code section
28 203;

1 8. For an order awarding penalties, injunctive relief, attorney's fees and costs pursuant to
2 Labor Code section 226;

3 9. For an order awarding earned but unpaid wages as equitable relief to Plaintiff and the
4 Class under the UCL for a period that extends the statute of limitations or recovery period for wages to
5 four years;

6 10. For a declaratory judgment that the actions, conduct, and practices of Defendants
7 complained of herein constitute unfair business practices under the UCL;

8 11. For an injunction and order permanently restraining and enjoining Defendants from
9 engaging in and continuing the unlawful policies and practices complained of herein;

10 12. For an order certifying a class pursuant to Code of Civil Procedure section 382;

11 13. For an order appointing Plaintiff Margarita Nieblas as class representative;

12 14. For an order appointing counsel for Plaintiff as class counsel;

13 15. For an order awarding reasonable attorney's fees and costs, including expert witness
14 fees, pursuant to Code of Civil Procedure section 1021.5 and other provisions of the Labor Code;

15 16. For an order awarding interest to the extent permitted by law;

16 17. For an order awarding costs and expenses of this action; and

17 18. For such other and further relief as the Court deems just and proper.

18 **VIII. DEMAND FOR JURY TRIAL**

19 Plaintiff demands a trial by jury on claims so triable.

20
21 Dated: August 8, 2022

ADVOCATES FOR WORKER RIGHTS LLP

22
23 
24 _____
25 Marco A. Palau
26 Joseph D. Sutton
27 Eric S. Trabucco
28 Attorneys for Plaintiff