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C-16

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

Maria Lopez, Marco Diaz Jimenez and Jesus
Martinez Dominguez, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

Harvest Fresh Market, and DOES 1-50,

Defendants.

CASE NO: 30-2021-01234823-CU-OE-CXC

**CLASS ACTION AND REPRESENTATIVE
ACTION COMPLAINT**

1. FAILURE TO PROVIDE TIMELY,
DUTY-FREE MEAL PERIODS
AND/OR PAY MEAL PERIOD
PREMIUMS FOR LATE MEAL
BREAKS (LABOR CODE §§ 226.7,
512; IWC WAGE ORDER 5-2001;
2. FAILURE TO PROVIDE TIMELY,
DUTY-FREE REST PERIODS
AND/OR PAY REST PERIOD
PREMIUMS (LABOR CODE §
226.7; IWC WAGE ORDER 5-
2001);
3. FAILURE TO PROVIDE
ACCURATE ITEMIZED WAGE
STATEMENTS (LABOR CODE §
226);

4. WAITING TIME PENALTIES (LABOR CODE § 201 – 203);
5. FAILURE TO PAY TIMELY WAGES (LABOR CODE §§ 204, 210);
6. UCL VIOLATIONS (BUS. & PROF. CODE §§ 17200-17204); AND
7. PAGA AND OTHER PENALTIES (LABOR CODE §§ 2698 – 2699.5);

DEMAND FOR JURY TRIAL

Plaintiffs Maria Lopez, Marco Diaz Jimenez and Jesus Martinez Dominguez, on behalf of themselves, the State of California, other aggrieved employees, and all others similarly situated (hereinafter “Class Members”) complain and allege as follows:

OVERVIEW OF CLAIMS

1. Plaintiffs bring this action on behalf of themselves and all others similarly situated, as a class action, and as a representative action pursuant to Labor Code § 2699, *et seq.*, and on behalf of the California general public, against Defendant Harvest Fresh Market, Inc., a California Corporation and DOES 1 to 100 (“Defendant”) for its (1) failure to provide timely and duty-free meal periods within the first five hours and to provide lawful second meal periods for shifts worked in excess of ten hours and/or pay meal period premiums for late meal breaks; (2) failure to provide timely, duty-free rest periods for every four hours of work or major fraction thereof and/or pay rest period premiums; (3) failure to provide accurate itemized wage statements within the one year prior to the filing of this Complaint; (4) failure to pay all wages due to former employees based on the foregoing; (5) failure to pay timely wages based on the foregoing; (6) UCL violations based on the foregoing; and (7) PAGA and other penalties based on the foregoing. As a result of the foregoing, Defendant has violated California statutory laws as described below.

2. The “Class Period” is designated as the period from four years prior to the filing of this action through the date class certification is granted. The “PAGA Period” is designated as the period from one year prior to the sending of the PAGA letter to the LWDA (*i.e.*, on or around June 9, 2020) through the present and through judgment. (“PAGA Period”) Defendant’s violations of California’s wage and hour laws and unfair competition laws, as described more fully below, have

1 been ongoing throughout the Class Period and PAGA Period.

2 **VENUE**

3 3. Venue is proper in this county under section 395.5 of the California Code of Civil
4 Procedure. Plaintiffs and many, if not all, of the putative Class Members were employed and/or
5 performed work during the Class Period by Defendants in Orange County County. All the locations
6 where Plaintiffs worked are located in Orange County as well. Many of the acts alleged herein
7 including Defendant's failure to provide timely and duty-free meal and rest periods and pay meal
8 and rest period premiums, and failure to provide accurate itemized wage statements, occurred in
9 Orange County. Venue is therefore proper in Orange County.

10 **JURISDICTION**

11 4. Defendant is within the jurisdiction of this Court. Defendant transacts millions of
12 dollars of business by managing and operating numerous department stores throughout the State of
13 California, including in the County of Orange. Thus, Defendant has obtained the benefits of the laws
14 of the State of California. In addition, Plaintiffs assert no claims arising under federal law. Rather,
15 Plaintiffs bring causes of action based solely on, and arising from, California law. The claims of the
16 Class and the claims of the aggrieved employees are also based solely on California law described
17 herein. Furthermore, the total amount at issue in this case, inclusive of attorneys' fees, is less than
18 \$5 million. Therefore, jurisdiction is appropriate in Orange County Superior Court.

19 **THE PARTIES**

20 **A. The Plaintiffs**

21 5. Plaintiffs are California residents and were non-exempt employees of Defendant in
22 California during the relevant time period. Plaintiff Maria Lopez worked for Defendants from 2019
23 until February 3, 2021. Plaintiff Marco Diaz Jimenez worked for Defendants from in or about June
24 of 2019 until on or about February 4, 2021. Plaintiff Jesus Martinez Dominguez worked for
25 Defendants from in or about October of 2019 until in or about January of 2021. From at least four
26 years from the filing of this complaint through the present Defendant's non-exempt employees,
27 including Plaintiffs, were not provided timely and duty-free meal and rest periods and/or provided
28 meal and rest period premiums; were not provided accurate and/or complete wage statements; did

1 not receive all of their wages due upon termination of employment, and did not receive all wages
2 timely.

3 6. Plaintiffs represent the state of California and groups of aggrieved employees defined
4 as:

5 All non-exempt individuals who or were employed by Defendant in the State of California
6 during the PAGA Period (hereinafter referred to as “Aggrieved Employees”).
7

8 a. All Aggrieved Employees who were issued one or more wage statements from
9 Defendant during the PAGA Period (hereinafter referred to as “Wage Statement
10 Aggrieved Employees”);
11

12 b. All Aggrieved Employees who did not receive their timely ten-minute, duty-free
13 rest breaks while working for Defendant during the PAGA Period (hereinafter
14 referred to as “Rest Break Aggrieved Employees”);
15

16 c. All Aggrieved Employees who did not receive their timely thirty-minute meal
17 break on or before the fifth hour of work while working for Defendant on shifts
18 greater than five hours or who received a missed or late meal break premium
19 payment during the PAGA Period (hereinafter referred to as “Meal Break
20 Aggrieved Employees”);
21

22 d. All Aggrieved Employees whose employment with Defendant whose
23 employment ended during the PAGA Period (hereinafter referred to “Waiting
24 Time Penalty Aggrieved Employees”);
25

26 7. By way of this action, Plaintiffs also seeks to represent the following Classes:
27
28

- 1 a. All non-exempt individuals who or were employed by Harvest Fresh Market,
2 Inc., in the State of California during the Class Period and ending when a class is
3 certified. (Hereinafter referred to as “Class Members” or the “Class”).
4
5 b. All Class Members who were issued one or more wage statements from
6 Defendant during the period from one year prior to the filing of this Complaint
7 and continuing through class certification (hereinafter referred to as “Wage
8 Statement Sub-Class Members”);
9
10 c. All Class Members who did not receive their timely ten-minute, duty-free rest
11 breaks while working for Defendants during the Class Period (hereinafter referred
12 to as “Rest Break Sub-Class Members”);
13
14 d. All Class Members who did not receive their timely thirty-minute meal break on
15 or before the fifth hour of work while working for Defendants on shifts greater
16 than five hours during the Class Period (hereinafter referred to as “Meal Break
17 Sub-Class Members”); and,
18
19 e. All Class Members whose employment with Defendants ended during the period
20 from three years prior to the filing of this Complaint and continuing through the
21 Class Period (hereinafter referred to “Waiting Time Penalty Sub-Class
22 Members”).
23

24 **B. The Defendant**

25 8. Defendant Harvest Fresh Market Inc. is a California corporation headquartered in
26 Garden Grove, California and is in the business of selling grocery products to customers. To operate
27 their store, Defendant employs non-exempt employees, such as the Plaintiffs, the Class Members,
28 and the Aggrieved Employees.

9. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 100, inclusive, are currently unknown to Plaintiffs, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiffs are informed and believe, and based thereon allege, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

10. Plaintiffs are informed and believe, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiffs, the Class, and the Aggrieved Employees.

11. Defendants were and are the employer of Plaintiffs, the Aggrieved Employees and Class Members for all relevant time periods. During the Class Period, and the PAGA Covered Period, Defendant employed approximately 350 non-exempt individuals in California.

FACTUAL ALLEGATIONS

12. Defendant operated and, at all times during the PAGA Period and the Class Period, has done and does business in California serving the grocery industry in California. Defendant, in the course of operating its business in California during the Class Period and the PAGA Period, employed Plaintiffs, the Aggrieved Employees and the Class Members.

13. Labor Code § 512 requires employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal period within the first five (5) hours of an employee's shift. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period.

14. Under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the amount of duty-free mealtime on or before the fifth hour of work as called for under the law (as specified in the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches

1 from adopting an unlawful policy.

2 15. Here, Defendants violated and continues to violate Labor Code § 512 and IWC Wage
3 Order 4-2001 § 11 or any other applicable Wage Orders by, among other things, failing to provide
4 and schedule duty-free meal breaks on or before the fifth hour of work to Meal Break Aggrieved
5 Employees and Meal Break Class Members and failed to advise all other Meal Break Aggrieved
6 Employees and Meal Break Class Members of their meal break rights with respect to the timing of
7 meal breaks, failed to provide Meal Break Aggrieved Employees and Meal Break Class Members
8 with thirty-minute, uninterrupted meal periods within the first five (5) hours of their shifts, and failed
9 to pay meal break premiums for late meal breaks. Instead, Defendants often required employees to
10 take their meal breaks at the end of their shifts without paying any late meal break premiums. As a
11 result of Defendants' failure to authorize or permit lawful and timely meal periods, Plaintiffs and
12 the other Meal Period Class Members and Meal Period Aggrieved Employees frequently did not
13 receive compliant duty-free meal periods within the first five (5) hours of their work. Furthermore,
14 when Defendants paid missed or late meal break premiums, thereby admitting to 226.7 and 512
15 violations, Defendants failed to make any PAGA penalty payments associated with these violations.

16 16. Under Labor Code § 226.7, if an employer maintains a uniform policy that does not
17 authorize and permit the amount of rest time on the schedule called for under the law (as specified
18 in Section 12 of the applicable Wage Order), "it has violated the wage order and is liable." The
19 *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting
20 an unlawful policy:

21
22 An employer is required to authorize and permit the amount of rest break time called for
23 under the wage order for its industry. If it does not—if, for example, it adopts a uniform
24 policy authorizing and permitting only one rest break for employees working a seven-hour
25 shift when two are required—***it has violated the wage order and is liable.*** (*Brinker Rest.*
26 *Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

27 17. Here, Defendants did not authorize Plaintiffs, the Rest Break Class Members, and the
28 Rest Break Aggrieved Employees to take their ten-minute rest breaks during each 4 hours of work

1 or major fraction thereof during their shifts. Moreover, Defendants' scheduling practices were often
2 rest break preclusive for Rest Break Sub-Class Members and Rest Break Aggrieved Employees.

3 18. Labor Code § 226 obligates employers, semi-monthly or at the time of each payment
4 to furnish an itemized wage statement in writing showing:

- 5 (1) gross wages earned;
- 6 (2) total hours worked by the employee;
- 7 (3) the number of piece-rate units earned and any applicable piece rate if the employee
8 is paid on a piece rate;
- 9 (4) all deductions, provided that all deductions made on written orders of the employee
10 may be aggregated and shown as one item;
- 11 (5) net wages earned;
- 12 (6) the inclusive dates of the period for which the employee is paid;
- 13 (7) the name of the employee and only the last four digits of his or her social security
14 number or an employee identification number other than a social security number;
- 15 (8) the name and address of the legal entity that is the employer...; and,
- 16 (9) all applicable hourly rates in effect during the pay period and the corresponding
17 number of hours worked at each hourly rate by the employee...

18 19. Defendant's wage statements issued fail to include the start date of each pay period
19 in violation of Labor Code § 226(a)(6). Moreover, due to, *inter alia*, Defendant's failure to pay
20 Plaintiffs and the other Aggrieved Employees for all meal and rest break premiums, the wage
21 statements issued by Defendant to Plaintiffs, the Wage Statement Sub-Class Members, and the Wage
22 Statement Aggrieved Employees do not indicate the correct amount of gross wages earned, net
23 wages earned, or the applicable hourly rates in effect during the pay period and the corresponding
24 number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

25 20. Defendant's violation of Labor Code § 226 was knowing and intentional. *See*
26 *Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant
27 knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew that it was
28 not providing total hours worked to plaintiff or other employees paid on commission" even though

1 it believed that employees paid solely on commission or commission and salary “are exempt and
2 therefore we do not record hours on a wage statement”).

3 21. Defendant’s failure to furnish accurate itemized wage statements has caused
4 Plaintiffs, the Wage Statement Sub-Class Members, and the other Wage Statement Aggrieved
5 Employees to incur economic damages in that they were not aware that they were owed and not paid
6 appropriate premiums for their non-compliant statutory rest breaks and meal periods. *See Cicairos*
7 *v. Summit Logistics*, 133 Cal.App.4th 949, 954 (“If it is left to the employee to add up the daily hours
8 shown on the time cards or other records so that the employee must perform arithmetic computations
9 to determine the total hours worked during the pay period, the requirements of section 226 would
10 not be met”); *McKenzie v. Federal Express Corp.*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011) (wage
11 statements violated California Labor Code by not including, inter alia, total hours worked giving
12 rise to claims under both Section 226 and for PAGA penalties); Labor Code § 226(e)(2)(B)
13 (clarifying that injury is established where the wage statement violated Section 226(a)(1), (2), or (5),
14 among other provisions, and where employees cannot easily determine the gross or net wages earned
15 by the employee during the pay period).

16 22. Labor Code § 226(e) provides that an employee is entitled to recover \$50 for initial
17 pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not
18 to exceed \$4,000, as well as an award of costs and reasonable attorney’s fees, for all pay periods in
19 which the employer fails to provide accurate itemized statements to the employee causing the
20 employee to suffer injury.

21 23. Aggrieved Employees will prevail on their claim for PAGA penalties under Labor
22 Code § 226(a). *See Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain
23 judgment on a PAGA claim, “all [plaintiff] needs to establish is a violation of section 226(a), which
24 she has done, as discussed above.”); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D.
25 Cal. 2011) (holding that “for the purposes of recovering PAGA penalties, one need only prove a
26 violation of Section 226(a), and need not establish a Section 226(e) injury.”); *Aguirre v. Genesis*
27 *Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) (“Plaintiffs do not need
28 to establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.”).

1 24. Further and in addition to the penalties outlined above, Labor Code § 226.3 provides
2 that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty
3 in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation
4 and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which
5 the employer fails to provide the employee a wage deduction statement or fails to keep the required
6 in subdivision (a) of Section 226.” As explained in detail above, Defendants failed to provide
7 Plaintiffs, the Wage Statement Class Members, and the other Wage Statement Aggrieved Employees
8 with accurate itemized wage statements. Accordingly, Defendants are additionally liable for Labor
9 Code § 226.3 penalties for their violations of Labor Code § 226(a). *See Finder v. Leprino Foods Co.*
10 (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151, at *7 [“the weight of
11 authority counsels that violations of Section 226.3 may be the basis of a PAGA claim.”]; *Pedroza v.*
12 *PetSmart, Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL 9506073, at *6 (C.D. Cal. June 14, 2012)
13 (“Lab. Code § 226.3 merely provides that failure to perform actions mandated by § 226(a) may
14 trigger civil penalties.”).

15 25. Labor Code § 203 provides “if an employer willfully fails to pay . . . any wages of an
16 employee who is discharged or who quits, the wages of the employee shall continue as a penalty. .
17 .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

18 26. Due to Defendant’s faulty policies described above, including its failure to pay for
19 all meal and rest break premiums due, Defendant violated Labor Code § 203, for those employees
20 whose employment ended within the last three years and ongoing (i.e., the Waiting Time Sub-Class
21 Members and Waiting Time Aggrieved Employees) by willfully failing to pay them all wages due
22 upon the termination of their employment.

23 27. Labor Code § 204 expressly requires that “[a]ll wages . . . earned by any person in any
24 employment are due and payable twice during each calendar month, on days designated in advance
25 by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these requirements are
26 “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the
27 wages are paid not more than seven calendar days following the close of the payroll period.

28 28. Due to Defendant’s failure to pay Plaintiffs, the Class, and the other Aggrieved

1 Employees all meal and rest break period premiums owed,¹ Defendant violated Labor Code § 204
2 by failing to pay all wages due within seven (7) days of the close of the payroll period on a regular
3 and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL
4 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period
5 premiums can support claims under Labor Code §§ 203 and 204).

6 29. Labor Code § 210 provides that “in addition to, an entirely independent and apart
7 from, any other penalty provided in this article, every person who fails to pay the wages of each
8 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any
9 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
10 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
11 failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty
12 compensation policies and practices described in detail above, Plaintiffs, the Class, and the other
13 Aggrieved Employees are entitled to recover penalties under Labor Code § 210.

14 30. On June 9, 2021, Plaintiffs provided notice of the alleged PAGA violations to the
15 Labor and Workforce Development Agency (“LWDA”) and Defendant. (Exhibit A.) The
16 administrative prerequisites of PAGA will be satisfied after 65 days have elapsed (i.e. 65 days since
17 Plaintiffs’ mailing of the PAGA notice with no further communication from the LWDA to Plaintiffs’
18 counsel). Plaintiffs Maria Lopez, Marco Diaz Jimenez, and Jesus Martinez Dominguez have paid
19 the \$75.00 fee and have otherwise satisfied the administrative prerequisites of PAGA.

20 31. Plaintiffs by this action seeks to recover, on behalf of themselves and all other current
21

22 ¹ Courts have routinely found that employees who do not receive meal/rest periods premiums are entitled to waiting
23 time penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal.
24 Aug. 10, 2016) (denying the defendant’s motion for summary judgment on the plaintiff’s claim for waiting time penalties
25 based upon the failure to provide rest period premiums and finding that the California Court of Appeals decision in *Ling*
26 *vs. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 “concerned only whether ‘a section 203 waiting time
27 claim based on section 226.7 premium pay is an action brought for the non-payment of wages under section 218.5”);
28 *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016)
(finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204);
Brewer v. Gen. Nutrition Corp. (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19 [denying defendant’s motion for
summary judgment because “the premium payments due under section 226.7 are to be considered “wages” for purposes
of sections 203 and 226.”]; *Abad v. Gen. Nutrition Centers, Inc.* (C.D. Cal. Mar. 7, 2013) 2013 WL 4038617, at *3–4
[distinguishing *Kirby*, and finding “Plaintiffs’ section 203 claim for failure to pay wages...can be based on amounts
owed under section 226.7.”). The issue is currently before the California Supreme Court in the *Naranjo* case. *See*
Naranjo v. Spectrum Security Services, Inc., Cal. Supreme Court Case No. S258966.

1 and former Aggrieved Employees of Defendant, the civil penalties provided by PAGA, as specified
2 in Labor Code § 2699(f). Plaintiffs seek to recover the PAGA civil penalties through a representative
3 action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal.
4 4th 969 (2009). Class certification of the PAGA claims is not required.

5 **CLASS ACTION ALLEGATIONS**

6 32. Plaintiffs bring this action, on behalf of themselves and all others similarly situated,
7 as a class action pursuant to Code of Civil Procedure § 382. Plaintiffs seek to represent Classes
8 composed of and defined as:

9
10 All non-exempt individuals who or were employed by Harvest Fresh Market Inc., in the State
11 of California during the Class Period and ending when notice to the Class is sent (hereinafter
12 referred to as “Class Members” or the “Class”).

- 13
- 14 a. All Class Members who were issued one or more wage statements from
15 Defendants during the period from one year prior to the filing of this Complaint
16 and continuing into the present (hereinafter referred to as “Wage Statement Sub-
17 Class Members”);
- 18
- 19 b. All Class Members who did not receive their timely ten-minute, duty-free rest
20 breaks while working for Defendants during the Class Period (hereinafter referred
21 to as “Rest Break Sub-Class Members”);
- 22
- 23 c. All Class Members who did not receive their timely thirty-minute meal break on
24 or before the fifth hour of work while working for Defendant on shifts greater
25 than five hours during the Class Period (hereinafter referred to as “Meal Break
26 Sub-Class Members”);
- 27
- 28

1 d. All Class Members whose employment with Defendants terminated during the
2 period from three years prior to the filing of this Complaint and continuing into
3 the present (hereinafter referred to “Waiting Time Penalty Sub-Class Members”).
4

5 33. This action has been brought and may properly be maintained as a class action under
6 Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation,
7 the proposed class is easily ascertainable, and Plaintiffs are proper representatives of the Class:

8 a. Numerosity: The potential members of the Class as defined are so numerous
9 that joinder of all the members of the Class is impracticable. While the precise number of Class
10 Members has not been determined at this time, Plaintiffs are informed and believes that Defendants
11 have, on average, at any one time during the Class Period employed over 350 Class Members as
12 non-exempt employees who were subject to Defendant’s unlawful policies. Plaintiff are informed
13 and believe the total number of Class Members could be more than 465. The Class Members are
14 dispersed throughout California. Joinder of all members of the proposed classes is therefore not
15 practicable.

16 b. Commonality: There are questions of law and fact common to Plaintiffs and
17 the Class that predominate over any questions affecting only individual members of the Class. These
18 common questions of law and fact include, without limitation:

19 i. Whether Defendants violated Labor Code sections 226.7 and 512 and Section
20 11 of IWC Wage Order No. 5 by failing to provide timely, duty-free meal periods to Plaintiffs and
21 the members of the Meal Break Class in California during the Class Period;

22 ii. Whether Defendants violated Labor Code section 226.7 by failing to provide
23 one hour of premium pay to each member of the Meal Break Class for each day that a timely, duty-free
24 meal period was not provided in California during the Class Period;

25 iii. Whether Defendants violated Labor Code section 226.7 and Section 12 of
26 IWC Wage Order No. 5 by failing to provide timely, duty-free rest periods to Plaintiff and the
27 members of the Rest Break Class in California during the Class Period;

28 iv. Whether Defendants violated Labor Code section 226.7 by failing to provide

1 one hour of premium pay to each member of the Rest Break Class for each day that a timely, duty-free
2 rest period was not provided in California during the Class Period;

3 v. Whether Defendants failed to provide Plaintiff and the members of the Wage
4 Statement Class complete wage statements in violation of Labor Code Section 226(a);

5 vi. Whether Defendants violated Section 203 of the Labor Code by failing to pay
6 members of the Waiting Time Class for all wages due to them (including their unpaid meal and rest
7 break premiums) upon their separation of employment from Defendants;

8 vii. Whether Defendants violated Sections 204 and 210 of the Labor Code by
9 failing to pay member of the Class all wages due on a timely basis;

10 viii. Whether Defendants engaged in an unfair practice and violated section 17200
11 of the California Business and Professions Code by failing to provide Plaintiffs and the members of
12 the Meal Break Class with timely, duty-free meal breaks during the Class Period;

13 ix. Whether Defendants engaged in an unfair practice and violated section 17200
14 of the California Business and Professions Code by failing to provide Plaintiffs and members of the
15 Meal Break Class with meal period premiums for each day they were not provided a compliant meal
16 break;

17 x. Whether Defendants engaged in an unfair practice and violated section 17200
18 of the California Business and Professions Code by failing to provide Plaintiffs and the members of
19 the Rest Break Class with timely, duty-free rest breaks during the Class Period;

20 xi. Whether Defendants engaged in an unfair practice and violated section 17200
21 of the California Business and Professions Code by failing to provide Plaintiffs and members of the
22 Rest Break Class with rest period premiums for each day they were not provided a compliant meal
23 break;

24 xii. Whether Plaintiffs and the Class are entitled to restitution under Business and
25 Professions Code § 17200;

26 xiii. The proper formula(s) for calculating damages, interest, and restitution owed
27 to Plaintiffs and the Class Members;

28 xiv. The nature and extent of class-wide damages.

1 c. Typicality: Plaintiffs' claims are typical of the claims of the Class. Both
2 Plaintiffs and Class Members sustained injuries and damages, and were deprived of property rightly
3 belonging to them, arising out of and caused by Defendants' common course of conduct in violation
4 of law as alleged herein, in similar ways and for the same types of unpaid wages.

5 d. Adequacy of Representation: Plaintiffs are members of the Class and will
6 fairly and adequately represent and protect the interests of the Class and Class Members. Plaintiffs'
7 interests do not conflict with those of Class and Class Members. Counsel who represent Plaintiffs
8 are competent and experienced in litigating large wage and hour class actions, including numerous
9 cases virtually identical to this one (i.e., wage and hour class action cases), and other employment
10 class actions, and will devote sufficient time and resources to the case and otherwise adequately
11 represent the Class and Class Members.

12 e. Superiority of Class Action: A class action is superior to other available
13 means for the fair and efficient adjudication of this controversy. Individual joinder of all Class
14 Members is not practicable, and questions of law and fact common to the Class predominate over
15 any questions affecting only individual members of the Class. Each Class Member has been
16 damaged or may be damaged in the future by reason of Defendant's unlawful policies and/or
17 practices. Certification of this case as a class action will allow those similarly situated persons to
18 litigate their claims in the manner that is most efficient and economical for the parties and the judicial
19 system. Certifying this case as a class action is superior because it allows for efficient and full
20 disgorgement of the ill-gotten gains Defendant has enjoyed by maintaining its unlawful break and
21 compensation policies and will thereby effectuate California's strong public policy of protecting
22 employees from deprivation or offsetting of compensation earned in their employment. If this action
23 is not certified as a Class Action, it will be impossible as a practical matter, for many or most Class
24 Members to bring individual actions to recover monies unlawfully withheld from their lawful
25 compensation due from Defendants, due to the relatively small amounts of such individual
26 recoveries relative to the costs and burdens of litigation.

FIRST CAUSE OF ACTION

**FAILURE TO PROVIDE TIMELY AND DUTY-FREE MEAL BREAKS AND PAY
MISSED MEAL BREAK PREMIUMS**

[Cal. Labor Code §§ 226.7, 512; IWC Wage Order 5-2001 Section 11]

On behalf of Plaintiff and the Meal Break Class Against Defendants

34. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

35. California Labor Code § 226.7(a) provides, “No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

36. Section 512(a) of the California Labor Code provides, in relevant part, that: An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30-minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal 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

37. Here, Defendants violated and continue to violate Labor Code § 512 and IWC Wage Order 4-2001 § 11 by, among other things, failing to provide and schedule duty-free meal breaks on or before the fifth hour of work for Meal Break Class Member and failed to advise all other Meal Break Class Members of their meal break rights with respect to the timing of meal breaks, failed to provide Meal Break Class Members with thirty-minute, uninterrupted meal periods within the first five (5) hours of their shifts, and failed to pay meal break premiums for late meal breaks. Instead, Defendants often required employees to take their breaks at the end of their shifts without paying any late meal break premiums. As a result of Defendants’ failure to authorize or permit lawful and timely meal periods, Plaintiffs and the other Class members and Meal Period Class Members

1 frequently did not receive compliant duty-free meal periods within the first five (5) hours of their
2 work.

3 38. Plaintiffs seek to recover all unpaid wages for time spent working through recorded
4 meal breaks, premium pay for missed, late or short meal breaks, reasonable attorneys' fees, costs of
5 suite and penalties to the extent possible pursuant to Labor Code sections 226.7, 512, 1021.5 and
6 IWC Wage Orders.

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PROVIDE TIMELY AND DUTY-FREE REST BREAKS**
9 **AND PAY MISSED REST BREAK PREMIUMS**

10 **[Cal. Labor Code §§ 226.7; Section 12 of IWC Wage Order 5-2001]**

11 **On behalf of Plaintiffs and the Rest Break Class Against Defendants**
12

13 39. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
14 in the preceding paragraphs.

15 40. Under Labor Code § 226.7, if an employer maintains a uniform policy that does not
16 authorize and permit the amount of rest time on the schedule called for under the law (as specified
17 in Section 12 of the applicable Wage Order), "it has violated the wage order and is liable." The
18 *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting
19 an unlawful policy:

20 An employer is required to authorize and permit the amount of rest break time called for
21 under the wage order for its industry. If it does not—if, for example, it adopts a uniform
22 policy authorizing and permitting only one rest break for employees working a seven-hour
23 shift when two are required—*it has violated the wage order and is liable.*

24
25 (*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

26 41. Here, Defendant did not authorize Plaintiffs and the Rest Break Class Members to
27 take their ten-minute rest breaks during each 4 hours of work or major fraction thereof during their
28 shifts. Plaintiffs and the Rest Break Class Members did not receive timely rest breaks during their

1 shifts. Accordingly, Defendant is liable to Plaintiffs and the Rest Break Class Members for rest
2 break premiums for all such shifts on which they were not able to take compliant rest breaks.

3 42. Plaintiffs and Class Members seek to recover all unpaid wages for time spent working
4 through recorded meal breaks, premium pay for missed, late or short meal breaks, reasonable
5 attorneys' fees, costs of suite and penalties to the extent possible pursuant to Labor Code sections
6 226.7, 1021.5 and IWC Wage Orders.

7 8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS**

10 **[Cal. Labor Code § 226(a)]**

11 **On behalf of Plaintiffs and the Wage Statement Class Members Against Defendants**

12
13 43. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
14 in the preceding paragraphs.

15 44. Section 226(a) of the California Labor Code provides, in relevant part:

16 Every employer shall...furnish each of his or her employees...an accurate
17 itemized statement in writing showing (1) gross wages earned, (2) total hours
18 worked by the employee, except for any employee whose compensation is
19 solely based on a salary and who is exempt from payment of overtime under
20 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
21 Commission, (3) the number of piece-rate units earned and any applicable piece
22 rate if the employee is paid on a piece-rate basis, (4) all deductions, provided
23 that all -deductions made on written orders of the employee may be aggregated
24 and shown as one item, (5) net wages earned, (6) the inclusive dates of the
25 period for which the employee is paid, (7) the name of the employee and only
26 the last four digits of his or her social security number or an employee
27 identification number other than a social security number, (8) the name and
28 address of the legal entity that is the employer and (9) all applicable hourly rates

1 in effect during the pay period and the corresponding number of hours worked
2 at each hourly rate by the employee...

3
4 45. As set forth above, Defendant's wage statements issued fail to include the start date
5 of each pay periods in violation of Labor Code § 226(a)(6). Additionally, Defendant's failure to pay
6 Plaintiffs and the other Wage Statement Class Members for all meal and rest break premiums, the
7 wage statements issued by Defendant to Plaintiffs and the other Wage Statement Class Members do
8 not indicate the correct amount of gross wages earned, net wages earned, or the applicable hourly
9 rates in effect during the pay period and the corresponding number of hours worked at each hourly
10 rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

11 46. Defendant's violation of Labor Code § 226 was knowing and intentional. *See Garnett*
12 *v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant
13 knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew that it was
14 not providing total hours worked to plaintiff or other employees paid on commission" even though
15 it believed that employees paid solely on commission or commission and salary "are exempt and
16 therefore we do not record hours on a wage statement").

17 47. Defendant's failure to furnish accurate and complete itemized wage statements has
18 caused Plaintiffs and the other Wage Statement Class Members to incur economic damages in that
19 they were not aware that they were owed and not paid appropriate premiums for their non-compliant
20 statutory rest breaks and meal periods. *See Cicairos v. Summit Logistics*, 133 Cal.App.4th 949, 954
21 ("If it is left to the employee to add up the daily hours shown on the time cards or other records so
22 that the employee must perform arithmetic computations to determine the total hours worked during
23 the pay period, the requirements of section 226 would not be met"); *McKenzie v. Federal Express*
24 *Corp.*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011) (wage statements violated California Labor Code by
25 not including, inter alia, total hours worked giving rise to claims under both Section 226 and for
26 PAGA penalties); Labor Code § 226(e)(2)(B) (clarifying that injury is established where the wage
27 statement violated Section 226(a)(1), (2), or (5), among other provisions, and where employees
28 cannot easily determine the gross or net wages earned by the employee during the pay period).

1 48. Labor Code § 226(e) provides that an employee is entitled to recover \$50 for initial
2 pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not
3 to exceed \$4,000, as well as an award of costs and reasonable attorney's fees, for all pay periods in
4 which the employer fails to provide accurate itemized statements to the employee causing the
5 employee to suffer injury.

6 **FOURTH CAUSE OF ACTION**

7 **WAITING TIME PENALTIES FOR**

8 **FAILURE TO PAY WAGES DUE ON TERMINATION**

9 **[Cal. Labor Code §§ 201-203]**

10 **On Behalf of Plaintiffs and the Waiting Time Class Against Defendants**

11
12 49. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
13 in the preceding paragraphs.

14 50. Labor Code § 203 provides "if an employer willfully fails to pay . . . any wages of an
15 employee who is discharged or who quits, the wages of the employee shall continue as a penalty. .
16 ." for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

17 51. Labor Code §201 requires an employer to pay an employee whose employment is
18 terminated by the employer all wages earned and unpaid immediately upon termination.

19 52. Labor Code §202 requires an employer to pay an employee who quits his or her
20 employment, all wages earned and unpaid no later than 72 hours thereafter.

21 53. Labor Code §203 provides that an employer who fails to pay all wages earned and
22 due an employee whose employment ended as set forth above, the wages of the employee shall
23 continue as a penalty from the due date at the same rate of pay until paid, but not more than 30 days.
24 In other words, the employer owes the employee his or her daily rate of pay at their regular rate of
25 pay for each day the full amount of unpaid wages is not paid, for a penalty of up to 30 days' wages.

26 54. Due to Defendant's faulty policies described above, including its failure to pay for
27 meal and rest break premiums, Defendants violated Labor Code § 203, for those employees whose
28 employment ended within the last three years and ongoing (i.e., the Waiting Time Class Members)

1 by willfully failing to pay them all wages due upon the termination of their employment.

2 55. Plaintiffs and Class Members are entitled to thirty (30) days of pay at their regular
3 rate of pay as waiting time penalties.

4
5 **FIFTH CAUSE OF ACTION**

6 **FAILURE TO PAY WAGES ON A TIMELY BASIS**

7 **[Cal. Labor Code §§ 204, 210]**

8 **On Behalf of Plaintiffs and the Wage Statement Class Against Defendants**

9
10 56. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
11 in the preceding paragraph.

12 57. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any
13 employment are due and payable twice during each calendar month, on days designated in advance
14 by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these requirements are
15 “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the
16 wages are paid not more than seven calendar days following the close of the payroll period.

17 58. Due to Defendant’s failure to pay Plaintiffs and the Wage Statement Sub-Class all
18 meal and rest break period premiums owed,² Defendant violated Labor Code § 204 by failing to pay
19 all wages due within seven (7) days of the close of the payroll period on a regular and consistent
20 basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at

21
22 ² Courts have routinely found that employees who do not receive meal/rest periods premiums are entitled to waiting
23 time penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal.
24 Aug. 10, 2016) (denying the defendant’s motion for summary judgment on the plaintiff’s claim for waiting time penalties
25 based upon the failure to provide rest period premiums and finding that the California Court of Appeals decision in *Ling*
26 *vs. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 “concerned only whether ‘a section 203 waiting time
27 claim based on section 226.7 premium pay is an action brought for the non-payment of wages under section 218.5”);
28 *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016)
(finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204);
Brewer v. Gen. Nutrition Corp. (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19 [denying defendant’s motion for
summary judgment because “the premium payments due under section 226.7 are to be considered “wages” for purposes
of sections 203 and 226.”]; *Abad v. Gen. Nutrition Centers, Inc.* (C.D. Cal. Mar. 7, 2013) 2013 WL 4038617, at *3–4
[distinguishing *Kirby*, and finding “Plaintiffs’ section 203 claim for failure to pay wages...can be based on amounts
owed under section 226.7.”). The issue is currently before the California Supreme Court in the *Naranjo* case. *See*
Naranjo v. Spectrum Security Services, Inc., Cal. Supreme Court Case No. S258966.

1 *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can
2 support claims under Labor Code §§ 203 and 204).

3 59. Labor Code § 210 provides that “in addition to, an entirely independent and apart
4 from, any other penalty provided in this article, every person who fails to pay the wages of each
5 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any
6 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
7 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
8 failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty
9 compensation policies and practices described in detail above, Plaintiffs and the Class are entitled
10 to recover statutory penalties under Labor Code § 210.

11 **SIXTH CAUSE OF ACTION**

12 **UNFAIR COMPETITION LAW VIOLATIONS**

13 **(BUS. & PROF. CODE § 17200, ET SEQ.)**

14 **On Behalf of Plaintiffs and the Class Against Defendants**

15 60. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
16 in the preceding paragraphs.

17 61. Section 17200 of the California Business & Professions Code prohibits any unlawful,
18 unfair, or fraudulent business practices. Business & Professions Code § 17204 allows “any person
19 who has suffered injury in fact and has lost money or property” to prosecute a civil action for
20 violation of the UCL. Such a person may bring such an action on behalf of himself and others
21 similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

22 62. Under section 17208 of the California Business and Professions Code, the statute of
23 limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for this
24 cause of action is four years prior to the filing of this Complaint through the present, and on-going
25 until the violations are corrected, or the Class is certified.

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

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

3 64. As a direct and proximate result of Defendants' unlawful business practices, Plaintiffs
4 and the Class Members have suffered economic injuries. Defendants have profited from its unlawful,
5 unfair, and/or fraudulent acts and practices.

6 65. Plaintiffs and similarly situated Class Members are entitled to monetary relief
7 pursuant to Business & Professions Code §§ 17203 and 17208 for unpaid meal and rest period
8 premiums and unpaid wages, from at least four years prior to the filing of this complaint through to
9 the date of such restitution, at rates specified by law. Defendant should be required to disgorge all
10 the profits and gains it has reaped and restore such profits and gains to Plaintiffs and Class Members,
11 from whom they were unlawfully taken.

12 66. Through its actions alleged herein, Defendant has engaged in unfair competition
13 within the meaning of section 17200 of the California Business & Professions Code, because
14 Defendant's conduct, as herein alleged has damaged Plaintiffs and the Class Members by wrongfully
15 denying them all meal and rest period premiums due, and therefore was substantially injurious to
16 Plaintiffs and the Class Members.

17 67. Defendant engaged in unfair competition in violation of sections 17200 et seq. of the
18 California Business & Professions Code by violating Sections 226.7 and 512 of the California Labor
19 Code, and Sections 11 and 12 of the IWC Wage Order 5-2001.

20 68. Defendant's course of conduct, act and practice in violation of the California laws
21 mentioned above constitute independent violations of sections 17200 et seq. of the California
22 Business and Professions Code.

23 69. Plaintiffs and similarly situated Class Members are entitled to enforce all applicable
24 penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

25 70. Plaintiffs have assumed the responsibility of enforcement of the laws and public
26 policies specified herein by suing on behalf of themselves and other similarly situated Class
27 Members previously or presently employed by Defendants in California. Plaintiffs' success in this
28 action will enforce important rights affecting the public interest. Plaintiffs will incur a financial

1 burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys'
2 fees to Plaintiffs is appropriate pursuant to Code of Civil Procedure §1021.5.

3 **SEVENTH CAUSE OF ACTION**

4 **LABOR CODE PRIVATE ATTORNEY GENERAL ACT**

5 **PAGA PENALTIES FOR VIOLATIONS OF**

6 **LABOR CODE §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, AND 512**

7 **(Labor Code §§ 2698-2699.5)**

8 **On Behalf of Plaintiffs and the Aggrieved Employees Against Defendants**

9
10 71. Plaintiffs, on behalf of themselves and all aggrieved employees, realleges and
11 incorporates by reference all previous paragraphs.

12 72. Based on the above allegations incorporated by reference, Defendant violated Labor
13 Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, and 512, as well as IWC Wage Order 5-2001.

14 73. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiffs and
15 all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial
16 subject to the following formula:

17 \$100 for the initial violation per employee per pay period; and

18 \$200 for each subsequent violation per employee per pay period.

19 These penalties will be allocated 75% to the Labor Workforce Development Agency and
20 25% to the affected employees.

21 74. As set forth above, Defendants failed to provide Plaintiffs and all aggrieved
22 employees with accurate itemized wage statements in compliance with Labor Code § 226(a). Labor
23 Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be
24 subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation
25 in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a
26 subsequent citation, for which the employer fails to provide the employee a wage deduction
27 statement or fails to keep the required in subdivision (a) of Section 226.” Also, with respect to all
28 pay periods in which a missed or late meal break premium was paid, Defendants failed to make any

1 associated PAGA penalties that were triggered by same. In these instances, when Defendants paid
2 late or missed meal break premiums to Plaintiffs and the Meal Break Aggrieved Employees,
3 pursuant to Labor Code section 226.7, these late or missed meal break premiums demonstrated
4 violations of Labor Code section 226.7, as well as Section 512 of the Labor Code, that give rise to
5 independent PAGA penalty claims. *See Kim v. Reins International California, Inc.*, 9 Cal.5th 73
6 (Mar. 12, 2020) (“For example, employers can pay an additional hour of wages as a remedy for
7 failing to provide meal and rest breaks. (Section 226.7(c)) But we have held that payment of this
8 statutory remedy “does not excuse a section 226.7 violation.” (*Kirby v. Immoos Fire Protection, Inc.*
9 (2012), 53 Cal.4th 1244, 1256”).

10 75. Further, Plaintiffs Martha Garcia and Martha Arevalo, as Aggrieved Employees, do
11 need not demonstrate or prove that Defendants’ conduct in refusing to provide accurate and itemized
12 wage statements was knowing, intentional, or willful. *Lopez v. Friant & Assocs., LLC*, cited above;
13 *see also Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment
14 on a PAGA claim, “all [plaintiff] needs to establish is a violation of section 226(a), which she has
15 done, as discussed above.”); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal.
16 2011) (holding that “for the purposes of recovering PAGA penalties, one need only prove a violation
17 of Section 226(a), and need not establish a Section 226(e) injury.”); *Aguirre v. Genesis Logistics*,
18 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) (“Plaintiff do not need to establish
19 a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.”).

20 76. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code
21 § 2699, et seq. because of Defendant’s violation of Labor Code §§ Labor Code §§ 201, 202, 203,
22 204, 210, 226, 226.3, 226.7, and 512, as well as IWC Wage Order 4-2001 as well as attorneys’ fees
23 and costs of suit pursuant to Labor Code section 2699(g)(1).

24 JURY DEMAND

25 77. Plaintiffs hereby demands trial by jury of his and the Class’s claims against
26 Defendants, and of all claims except for the PAGA and UCL, claims which are subject to a bench
27 trial.

28 ///

1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiffs, on behalf of themselves and the members of the Class, pray for
3 judgment against Defendants as follows:

4 1. An Order than this action may proceed and be maintained as a class action;

5 2. On the First Cause of Action:

6 a. A declaratory judgment that Defendants violated California Labor Code §§
7 226.7, 512 and Section 11 of IWC Wage Order 5-2001;

8 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiffs and the Meal
9 Break Class Members for an hour of pay for each day that a timely, duty-free meal period was not
10 provided during the Class Period.

11 c. Attorneys' fees and costs of suit pursuant to Labor Code section 1021.5.

12 3. On the Second Cause of Action:

13 a. A declaratory judgment that Defendants violated California Labor Code §
14 226.7, and Section 12 of IWC Wage Order 5-2001;

15 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiffs and the Rest Break
16 Class Members for an hour of pay for each day that a timely, duty-free rest period was not provided
17 during the Class Period.

18 c. Attorneys' fees and costs of suit pursuant to Labor Code section 1021.5.

19 4. On the Third Cause of Action:

20 a. A declaratory judgment that Defendants violated California Labor Code §226
21 by issuing inaccurate and/or incomplete wage statements that failed to include the start date for each
22 pay period, the correct amount of gross wages earned, net wages earned, or the applicable hourly
23 rates in effect during the pay period and the corresponding number of hours worked at each hourly
24 rate to Plaintiffs and the wage statement Class Members;

25 b. An award to Plaintiffs and Class Members of \$50 for each initial pay period,
26 one year prior to the filing of this Complaint through the date of trial, in which a violation of Section
27 226 occurred and \$100 for each subsequent pay period, one year prior to the filing of this Complaint
28 through the date of trial, in which a violation of Section 226 occurred, not to exceed \$4,000 for each

1 member of the Class, as well as an award of costs and reasonable attorney's fees, pursuant to Labor
2 Code § 226(e).

3 5. On the Fourth Cause of Action:

4 a. A declaratory judgment that Defendants violated California Labor Code §§
5 201 through 203;

6 b. Pursuant to Cal. Labor Code §§ 201 through 203, an award to Plaintiffs and
7 the Waiting Time Class members for waiting time penalties in the amount of 30 days' wages per
8 waiting time Class Member.

9 c. Attorneys' fees and costs of suit pursuant to Labor Code section 1021.5.

10 6. On the Fifth Cause of Action:

11 a. A declaratory judgment that Defendants violated California Labor Code §§
12 204 and 210;

13 b. Pursuant to Labor Code §§ 204 and 210, an award to Plaintiffs and the Class
14 for penalties pursuant to Labor Code § 210.

15 c. Attorneys' fees and costs of suit pursuant to Labor Code section 1021.5.

16 7. On the Sixth Cause of Action:

17 a. That the Court find and declare that Defendants have violated the UCL and
18 committed unfair and unlawful business practices by failing to pay meal and rest break premiums;

19 b. Restitution, including, but not limited to, the relief permitted by section 226.7
20 of the California Labor Code (i.e., pay as specified for meal and rest period premiums to Plaintiffs
21 and the members of the Class during the Class Period.

22 c. Attorneys' fees and costs of suit pursuant to Labor Code section 1021.5.

23 8. On the Seventh Cause of Action:

24 a. A civil penalty against Defendants in the amount of \$100 for the initial
25 violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the California
26 Labor Code for Plaintiffs and the Aggrieved Employees during all of the pay periods in the PAGA
27 Period in which an underlying Labor Code violation occurred, and on-going until the violations are
28 corrected; ;

b. An award of reasonable attorney's fees against Defendants as specified in Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection with the PAGA claims;

c. An award of all costs incurred by the undersigned counsel for Plaintiffs in connection with Plaintiffs' and Aggrieved Employees' PAGA claim against Defendants, as provided for in Labor Code § 2699(g)(1); and

9. All other relief as this Court deems proper.

Dated: December 2, 2021

Respectfully,

Mahoney Law Group, APC
Employment Rights Law Group, APC



By: Katherine J. Odenbreit, Esq.
Laura Theriault, Esq.
Amir Seyedfarshi, Esq.
Counsel for Plaintiffs, the Class, and the
Aggrieved Employees

DEMAND FOR JURY TRIAL

Plaintiffs on behalf of themselves and all Class Members, hereby demand a jury trial on all causes of action and claims with respect to which they have a right to have a jury trial.

Dated: December 2, 2021

Respectfully,

Mahoney Law Group, APC
Employment Rights Law Group, APC



By: Katherine J. Odenbreit, Esq.
Laura Theriault, Esq.
Amir Seyedfarshi, Esq.
Counsel for Plaintiffs, the Class, and the
Aggrieved Employees

EXHIBIT A



Kevin Mahoney, Esq
(562)590-5550 phone
(562)590-8400 facsimile
kmahoney@mahoney-law.net

June 9, 2021

VIA ELECTRONIC FILING

LABOR AND WORKFORCE DEVELOPMENT AGENCY

Attn: PAGA Administrator

<https://dir.tfaforms.net/128>

VIA CERTIFIED MAIL #7019 2280 0002 0214 3791

Return Receipt Requested

Harvest Fresh Market
C/O Mike M Mokhtare
9922 Katella Ave
Garden Grove CA 92804

VIA CERTIFIED MAIL #7019 2280 0002 0214 3807

Return Receipt Requested

Harvest Fresh Market, Inc.
9922 Katella Ave
Garden Grove CA 92804

Re: NOTICE OF INTENT TO FILE SUIT (Labor Code § 2699.3)

Maria Lopez, Luis Diaz and Jesus Martinez Dominguez v. Harvest Fresh Market

Dear Gentlepersons:

This letter is the written notice required by the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), California Labor Code Section 2698 *et seq.*, including without limitation California Labor Code Sections 2699.33 (a)(1), 2699.3(b)(1), and/or 2699.3(c)(1), and any other applicable provision of statute, rule, or law. This letter is being sent simultaneously via online filing to the California Labor and Workforce Development Agency. This letter is an important formal legal notice which may lead to action against you and your company in a court of law and in administrative proceedings, or both and the imposition of substantial penalties and other order and remedies against you and your company.

This office, along with our co-counsel, Amir Seyedfarshi from Employment Rights Law Group, represents Plaintiffs Maria Lopez, Luis Diaz and Jesus Martinez Dominguez ("Plaintiffs") and a

proposed group (and subgroups) of current and former Aggrieved Employees of Harvest Fresh Market, a California corporation, doing business as Harvest Fresh Market and its co-employers, successors in interest, and/or merged entities (“Defendants”) in connection with her individual, class action and PAGA representative claims for civil penalties, based on, without limitation, Defendant’s:

- (1) failure to provide timely and duty-free meal periods within the first five (5) hours and to provide lawful second meal periods for shifts worked in excess of ten (10) hours and/or pay meal period premiums for late meal breaks in violation of Labor Code §§ 226.7 and 512 and Section 11 of the applicable IWC Wage Order;
- (2) failure to provide timely, duty free rest periods for every four hours of work or major fraction thereof in violation of Labor Code § 226.7 and Section 12 of the applicable IWC Wage Order;
- (3) failure to provide accurate itemized wage statements in violation of Labor Code § 226 based upon Defendants’ failure to include the employer’s name and address, and meal and rest break premiums in stating the total gross and net wages earned;
- (4) unfair competition in violation of Bus. & Prof. Code § 17200 based upon the foregoing meal and rest break premium claims; and
- (5) Failure to reimburse employees for their expenses incurred in connection with work-related usage of their personal cell phones in violation of Labor Code section 2802;
- (6) statutory penalties under California’s Private Attorney General Act (“PAGA”) based upon the foregoing under Labor Code sections 2698 et seq.

In connection with her PAGA claims, Plaintiffs seek PAGA penalties from one year prior to the date of this Notice and ongoing (the “PAGA Period”). Plaintiffs seek to represent the following groups of aggrieved employees:

a. The “Aggrieved Employees”:

All non-exempt individuals who are or were employed by Harvest Fresh Food in the State of California and who worked one or more shifts of (5) hours or longer during the PAGA Period.

i. The “Wage Statement Aggrieved Employees”:

All Aggrieved Employees who were issued one or more wage statement from Defendants during the PAGA Period;

ii. The “Rest Break Aggrieved Employees”:

All Aggrieved Employees who did not receive their timely ten-minute, duty free rest breaks while working for Defendants during the PAGA Period;

iii. The “Meal Break Aggrieved Employees”:

All Aggrieved Employees who did not receive their timely thirty-minute meal break on or before the fifth hour of work while working for Defendants on the shifts greater than 5 hours during the PAGA Period;

iv. The “Waiting Time Penalty Aggrieved Employees”:

All Aggrieved Employees whose employment with Defendants terminated during the PAGA Period.

v. The “Reimbursement Aggrieved Employees”:

All Aggrieved Employees who did not receive reimbursement for work-related personal cell-phone expenses from Defendants during the PAGA Period.

DEFENDANTS’ WAGE STATEMENT VIOLATIONS

Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

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

Defendant’s wage statements issues to Plaintiffs and other Aggrieved Wage Statement employees did not include the name and the address of the employer. (See Exhibit A). There is no mention of the legal entity that is the employer on any of the paystubs issued to Plaintiffs and the Aggrieved employees.

Due to, *inter alia*, Defendants’ failure to pay Plaintiff and the other Aggrieved Employees for all meal and rest break premiums), the wage statements issued by Defendants to Plaintiff and the other Wage Statement Aggrieved Employees do not indicate the correct amount of gross wages earned, net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

Defendants’ violation of Labor Code § 226 was knowing and intentional. *See Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant knowingly and intentionally violated Labor Code § 226 because the “[d]efendant knew that it was not providing total hours worked to plaintiff or other employees paid on commission” even though it believed that employees paid solely on commission or commission and salary “are exempt and therefore

we do not record hours on a wage statement”).

Defendants’ failure to furnish accurate itemized wage statements has caused Plaintiff and the other Wage Statement Aggrieved Employees to incur economic damages in that they were not aware that they were owed and not paid appropriate premiums for their non-compliant statutory rest breaks and meal periods. *See Cicairos v. Summit Logistics*, 133 Cal.App.4th 949, 954 (“If it is left to the employee to add up the daily hours shown on the time cards or other records so that the employee must perform arithmetic computations to determine the total hours worked during the pay period, the requirements of section 226 would not be met”); *McKenzie v. Federal Express Corp.*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011) (wage statements violated California Labor Code by not including, inter alia, total hours worked giving rise to claims under both Section 226 and for PAGA penalties); Labor Code § 226(e)(2)(B) (clarifying that injury is established where the wage statement violated Section 226(a)(1), (2), or (5), among other provisions, and where employees cannot easily determine the gross or net wages earned by the employee during the pay period).

Labor Code § 226(e) provides that an employee is entitled to recover \$50 for initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000, as well as an award of costs and reasonable attorney’s fees, for all pay periods in which the employer fails to provide accurate itemized statements to the employee causing the employee to suffer injury.

DEFENDANTS’ MEAL PERIOD VIOLATIONS

Labor Code § 512 requires employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal period within the first five (5) hours of an employee’s shift. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period.

Under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the amount of duty-free mealtime on or before the fifth hour of work as called for under the law (as specified in the applicable Wage Order), “it has violated the wage order and is liable.” As described above, the *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy.

Here, Defendants violated and continue to violate Labor Code § 512 and IWC Wage Order 5-2002 § 11 by, among other things, failing to provide and schedule duty-free meal breaks on or before the fifth hour of work to Meal Break Aggrieved Employees and failed to advise all other Meal Break Aggrieved Employees of their meal break rights with respect to the timing of meal breaks, failed to provide Meal Break Aggrieved Employees with thirty-minute, uninterrupted meal periods within the first five (5) hours of their shifts, and failed to pay meal break premiums for late meal breaks. Instead, Defendants often required employees to take their breaks at the end of their shifts without paying any late meal break premiums. As a result of Defendants’ failure to authorize or permit lawful and timely meal periods, Plaintiff and the other Class members and Meal Period Aggrieved Employees frequently did not receive compliant duty-free meal periods within the first

five (5) hours of their work.

DEFENDANTS' REST PERIOD VIOLATIONS

Under Labor Code § 226.7, if an employer maintains a uniform policy that does not authorize and permit the amount of rest time on the schedule called for under the law (as specified in Section 12 of the applicable Wage Order), "it has violated the wage order and is liable." The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

(*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

Here, Defendant did not authorize Plaintiff and the Rest Break Aggrieved Employees to take their ten-minute rest breaks during each 4 hours of work or major fraction thereof during their shifts. Plaintiffs and the rest break Aggrieved employees were required to remain on premises and were under pressure to finish their assignments. They could not leave the store and often their rest breaks were interrupted. Thus, Defendant violated Labor Code § 226.7 by preventing the rest break aggrieved employees from receiving their breaks.

DEFENDANT'S FAILURE TO PAY WAGES ON A TIMELY BASIS

Labor Code § 204 expressly requires that "[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Pursuant to Labor Code § 204(d), these requirements are "deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

Due to Defendants' failure to pay Plaintiff and the other Aggrieved Employees all meal and rest break period premiums owed, Defendants violated Labor Code § 204 by failing to pay all wages due within seven (7) days of the close of the payroll period on a regular and consistent basis.

Labor Code § 210 provides that "in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld." As a result of the faulty compensation policies and practices described in detail above, Plaintiff and the other Aggrieved Employees are entitled to recover penalties under Labor Code § 210.

DEFENDANTS' FAILURE TO REIMBURSE BUSINESS EXPENSES

Pursuant to Labor Code § 2802(a) “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer....” Labor Code Section 2802(c) also clarifies that “the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

Specifically, under Labor Code § 2802, employers must reimburse employees for required work-related use of personal cell phones, regardless of whether they incur any additional out-of-pocket expense from that work-related use. *See Cochran v. Schwan’s Home Service*, 228 Cal. App. 4th 1137 (2014).

Under Labor Code § 2802, if an employer requires Reimbursement Aggrieved Employees to use their cell phone for work, then Defendants must reimburse employees for a reasonable portion of their monthly cell phone bills. Here, the Reimbursement Aggrieved Employees were expected to use their cell phones at all times while working for Defendant.

Accordingly, Defendants violated Labor Code § 2802 and continue to do so by failing to reimburse the Reimbursement Aggrieved Employees for all work-related cell phone charges they incurred in connection with their job duties.

This notice is hereby given to and is made against Defendants, and all related and/or alter ego companies, corporations, partnerships, and /or business entities, as well as against any and all officers, owners, directors managers, managing agents, or entities who are or may be liable under law for any of those alleges violations as to any locations or employees who worked at any time in the state of California.

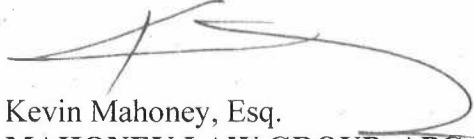
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CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency, with whom this PAGA Notice has been filed, of our intent to pursue a PAGA representative action (and a class action) against Defendants seeking, *inter alia*, PAGA penalties under Labor Code § 2699, to be brought by the Plaintiff individually and on behalf of the Aggrieved Employees, as defined above.

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters where possible and beneficial to the aggrieved employees. If Defendants are interested in attempting to resolve this matter, including the PAGA claims, please have counsel contact us by June 10, 2021 so that we may discuss an informal discovery plan and the possibility of early mediation.

Very truly yours,



Kevin Mahoney, Esq.
MAHONEY LAW GROUP, APC