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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN DIEGO**

14 STEPHANIE RODRIGUEZ, MAYRA
15 DOMINGUEZ, and MARICELA AMEZCUA,
16 on behalf of themselves and on behalf of all
17 others similarly situated,

18 PLAINTIFFS,

19 v.

20 COLMOL, INC. DBA KING GRAPHICS, a
21 California Corporation; and DOES 1 to 100,
22 inclusive,

23 DEFENDANT.

CASE NO: 37-2021-00034563-CU-OE-CTL

**CLASS ACTION AND REPRESENTATIVE
ACTION COMPLAINT FOR:**

**(1) FAILURE TO PAY OVERTIME
WAGES (LABOR CODE §§ 510, 1194, 1198);
(2) FAILURE TO PAY TIMELY WAGES
(LABOR CODE §§ 204, 210);
(3) FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS
(LABOR CODE § 226);
(4) UCL VIOLATIONS (BUS. & PROF.
CODE §§ 17200-17204); AND
(5) PAGA AND OTHER PENALTIES
(LABOR CODE §§ 2698 – 2699.5);**

DEMAND FOR JURY TRIAL

1 Plaintiffs Mayra Dominguez, Stephanie Rodriguez, and Marisela Amezcua (“Plaintiffs”) on
2 behalf of themselves, the State of California, other aggrieved employees, and all others similarly
3 situated (hereinafter “Class Members”) complain and allege as follows:

4 **OVERVIEW OF CLAIMS**

5 1. Plaintiffs bring this action on behalf of themselves and all others similarly situated,
6 as a class action, and as a representative action pursuant to Labor Code § 2699, *et seq.*, and on behalf
7 of the California general public, against Defendant Colmol, Inc. dba King Graphics, and DOES 1 to
8 100 (“Defendant”) for their (1) failure to pay overtime wages; (2) failure to pay timely wages twice
9 per month; (3) failure to provide accurate itemized wage statements within the one year prior to the
10 filing of this Complaint; (4) UCL violations based on the foregoing; and (5) PAGA and other
11 penalties based on the foregoing. As a result of the foregoing, Defendant has violated California
12 statutory laws as described below.

13 2. The “Class Period” is designated as the period from four years prior to the filing of
14 this action through the trial date. The “PAGA Period” is designated as the period from one year
15 prior to the sending of Plaintiffs’ PAGA letter to the LWDA (*i.e.*, on or around June 22, 2021)
16 through the present and on-going. Defendant’s violations of California’s wage and hour laws and
17 unfair competition laws, as described more fully below, have been ongoing throughout the Class
18 Period.

19 **VENUE**

20 3. Venue is proper in this county under section 395.5 of the California Code of Civil
21 Procedure. Many, if not all, of the putative Class Members were employed and/or performed work
22 during the Class Period by Defendant in San Diego. Defendant’s headquarters is located in San
23 Diego. Many of the acts alleged herein including Defendant’s failure to provide accurate itemized
24 wage statements, failure to pay all wages due to former employees, failure to pay timely wages, and
25 failure to pay overtime, occurred in San Diego. Venue is therefore proper in San Diego.

26 **JURISDICTION**

27 4. Defendant is within the jurisdiction of this Court. Defendant transacts hundreds of
28 thousands of dollars by managing and operating a Graphic design printing company throughout the

1 State of California, including San Diego. Thus, Defendant has obtained the benefits of the laws of
2 the State of California. In addition, Plaintiffs assert no claims arising under federal law. Rather,
3 Plaintiffs bring causes of action based solely on, and arising from, California law. The claims of the
4 Class and the claims of the aggrieved employees are also based solely on California law described
5 herein.

6 THE PARTIES

7 A. Plaintiffs

8 5. Plaintiff Stephanie Rodriguez is a California resident who has been working for
9 Defendant from approximately March 2015 to the present with the packaging crew department.
10 Oftentimes during her workweek, she was made to work a double shift which would entail work
11 from 6:00 a.m. to 2:30 p.m. and from 2:30 p.m. to 8:00 p.m. The overtime was paid to her at only
12 \$2.00 an hour over her regular rate, as opposed to 1.5 x her regular rate, as required by law.

13 6. Plaintiff Mayra Dominguez is a California resident who has been working for
14 Defendant from approximately October 2013 to the present as a machine operator. Plaintiff
15 Dominguez often works shifts in excess of 8 hours. Plaintiff Dominguez was also paid \$2.00 per
16 hour over the regular rate for all hours worked over 8 in a day, as opposed to 1.5 x her regular rate,
17 as required by law. For some of her overtime shifts, Plaintiff Dominguez was paid her regular
18 straight-time rate and did not receive any overtime wages whatsoever. Moreover, Plaintiff
19 Dominguez was paid in cash and was not issue a wage statement.

20 7. Plaintiff Marisela Amezcua is a California resident who has been working for
21 Defendant from approximately April 2016 to the present as a packaging crew member. Plaintiff
22 Dominguez was also not paid overtime wages at the proper overtime rate when she worked more
23 than eight hours in one workday or more than 40 hours in a workweek. Moreover, Plaintiff Amezcua
24 was paid in cash and was not issued a wage statement.

25 8. From at least four years from the filing of this complaint through the present, and
26 on-going, Defendant's hourly-paid non-exempt employees, including Plaintiffs during their
27 employment, were not paid proper overtime, were not provided accurate and/or complete wage
28 statements; and did not receive all wages timely.

1 9. Plaintiffs represent the state of California and groups of aggrieved employees defined
2 as:

- 3 a. All non-exempt hourly-paid individuals who are or were employed by
4 Defendant in the State of California during the PAGA Period (hereinafter
5 referred to as “Aggrieved Employees”);
6
7 b. All Aggrieved Employees who were issued one or more wage statements from
8 Defendant during the PAGA Period (hereinafter referred to as “Wage Statement
9 Aggrieved Employees”);
10
11 c. All Aggrieved Employees who worked more than 8 hours in a day or more than
12 40 hours in a week and who did not receive overtime pay at the rate of 1.5 times
13 their regular rate of pay for their overtime hours worked during the PAGA Period
14 (“Overtime Aggrieved Employees”).

15 10. By way of this action, Plaintiffs also seek to represent the following Classes:

- 16 a. All non-exempt hourly-paid individuals who are or were employed by Defendant
17 in the State of California during the Class Period and ending when notice to the
18 Class is sent (hereinafter referred to as “Class Members” or the “Class”).
19
20 b. All Class Members who were issued one or more wage statements from
21 Defendant during the period from one year prior to the filing of this Complaint
22 and continuing into the present (hereinafter referred to as “Wage Statement Class
23 Members”);
24
25 c. All Class Members who worked more than 8 hours in a day or more than 40
26 hours in a week and who did not receive overtime pay at the rate of 1.5 times their
27 regular rate of pay for their overtime hours worked during the Class Period
28 (“Overtime Class Members”).

B. Defendant

11. Defendant Colmol, Inc. dba King Graphics is a California corporation headquartered
in San Diego, California. To operate its Graphic design Printing projects, Defendant employs non-
exempt employees, such as Plaintiffs, the Class Members, and the Aggrieved Employees.

12. 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 sue Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiffs
are informed and believes, and based thereon alleges, 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

1 Defendants designated hereinafter as DOES when such identities become known.

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

7 14. Defendant was and is the employer of Plaintiffs, the Aggrieved Employees and Class
8 Members for all relevant time periods. At any one time during the Class Period, and the PAGA
9 Covered Period, Defendant employed approximately 90 Class Members.

10 **FACTUAL ALLEGATIONS**

11 15. Defendant operates and, at all times during the PAGA Period and the Class Period,
12 has done and does business in California managing and operating a Graphic Design Printing
13 company. Defendant, in the course of operating its business in California during the Class Period
14 and the PAGA Period, employed Plaintiff, the Aggrieved Employees and the Class Members.

15 16. Here, Defendant violated and continues to violate Labor Code § 510, which provides
16 that any work in excess of eight hours on any day, as well as all hours worked on the seventh
17 consecutive day of a workweek, shall be compensated at the rate of no less than 1.5 times the regular
18 rate of pay.

19 17. Here, Defendant hired Plaintiffs, Class Members, and the Overtime Aggrieved
20 Employees to work as packers, machine operators and other positions in California. Plaintiffs, the
21 Class, and the Overtime Aggrieved Employees often worked more than 8 hours and over 40 hours
22 per week. In fact, Plaintiffs, the Class, and the Aggrieved Employees submitted paper slips given to
23 them by their employer showing that they were paid overtime on a separate slip of paper with
24 incorrect overtime calculations showing dramatic underpayment of overtime pay. The same time
25 records also show that Plaintiffs, the Class, and the Overtime Aggrieved Employees routinely
26 worked over 8 hours per day and/or over 40 hours per week without receiving overtime pay at the
27 appropriate and correct overtime rate for their overtime hours.

28 18. Moreover, Defendant failed to issue wage statements to Plaintiffs Dominguez,

1 Plaintiff Amezcua and a segment the Class, and the Overtime Aggrieved Employees and instead
2 paid them with cash and provided them with receipts rather than checks with proper wage statements
3 in compliance with Labor Code § 226. Plaintiff Rodriguez and the remainder of the Class and
4 Overtime Aggrieved Employees received deficient wage statements that did not include an accurate
5 total of overtime hours worked and overtime wages payable in compliance with Labor Code § 226.

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

- 8 (1) gross wages earned;
- 9 (2) total hours worked by the employee;
- 10 (3) the number of piece-rate units earned and any applicable piece rate if the employee
is paid on a piece rate;
- 11 (4) all deductions, provided that all deductions made on written orders of the employee
may be aggregated and shown as one item;
- 12 (5) net wages earned;
- 13 (6) the inclusive dates of the period for which the employee is paid;
- 14 (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;
- 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
number of hours worked at each hourly rate by the employee...

17 20. Defendant's wage statements issued to a segment of the Class failed to include all
18 overtime hours worked on their paystubs is in violation of Labor Code § 226(a)(5). Moreover, due
19 to, *inter alia*, Defendant's failure to pay Plaintiff and the other Wage Statement Aggrieved
20 Employees and Wage Statement Class Members for all overtime due, the wage statements issued by
21 Defendant to Plaintiff, the Wage Statement Class Members, and the Wage Statement Aggrieved
22 Employees do not indicate the correct amount of gross wages earned, net wages earned, or the
23 applicable hourly rates in effect during the pay period and the corresponding number of hours
24 worked at each hourly rate in violation of Labor Code § 226(a)(1), (2),(3), (5) and (9).

25 21. 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
it believed that employees paid solely on commission or commission and salary "are exempt and

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

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

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

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

28 25. Further, and in addition to the § 226(a) penalties outlined above, Labor Code § 226.3

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

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

19 27. Due to Defendant’s failure to pay Plaintiffs, the Class, and the other Aggrieved
20 Employees all overtime wages due, Defendant violated Labor Code § 204 by failing to pay all wages
21 due within seven (7) days of the close of the payroll period on a regular and consistent basis. *See*
22 *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D.
23 Cal. May 2, 2016)

24 28. Labor Code § 210 provides that “in addition to, an entirely independent and apart
25 from, any other penalty provided in this article, every person who fails to pay the wages of each
26 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any
27 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
28 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each

1 failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty
2 compensation policies and payroll practices described in detail above, Plaintiff, the Class, and the
3 other Aggrieved Employees are entitled to recover penalties under Labor Code § 210.

4 29. Pursuant to Labor Code §2802(a) “[a]n employer shall indemnify his or her employee
5 for all necessary expenditures or losses incurred by the employee in direct consequence of the
6 discharge of his or her duties, or of his or her obedience to the directions of the employer....” The
7 purpose of this statute is “to prevent employers from passing their operating expenses on to their
8 employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562 (2007) (quoting legislative
9 history from the 2000 amendment to the statute). Labor Code Section 2802(c) also clarifies that “the
10 term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited
11 to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

12 30. Plaintiffs by this action seeks to recover, on behalf of themselves and all other current
13 and former Aggrieved Employees of Defendant, the civil penalties provided by PAGA, as specified
14 in Labor Code § 2699(f). Plaintiffs seek to recover the PAGA civil penalties through a representative
15 action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal.
16 4th 969 (2009). Class certification of the PAGA claims is not required. *Id.*

17 CLASS ACTION ALLEGATIONS

18 31. Plaintiffs bring this action, on behalf of themselves and all others similarly situated,
19 as a class action pursuant to Code of Civil Procedure § 382. Plaintiffs seek to represent Classes
20 composed of and defined as:

- 21 (i) All non-exempt hourly-paid individuals who are or were employed by Defendant
22 in the State of California during the Class Period and ending when notice to the
23 Class is sent (hereinafter referred to as “Class Members” or the “Class”), as well
24 as:
25 (ii) All Class Members who were issued one or more wage statements from
26 Defendant during the period from one year prior to the filing of this Complaint
27 and continuing into the present (hereinafter referred to as “Wage Statement Class
28 Members”); and
(iii) All Class Members who worked more than 8 hours in a day or more than 40 hours
in a week and who did not receive overtime pay at the rate of 1.5 times their
regular rate of pay for their overtime hours worked during the Class Period
 (“Overtime Class Members”).

1 32. This action has been brought and may properly be maintained as a class action under
2 Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation,
3 the proposed class is easily ascertainable, and Plaintiffs are proper representatives of the Class:
4

5 a. Numerosity: The potential members of the Class as defined are so numerous
6 that joinder of all the members of the Class is impracticable. While the precise number of Class
7 Members has not been determined at this time, Plaintiffs are informed and believe that Defendant
8 has, on average, at any one time during the Class Period employed over 90 Class Members as non-
9 exempt employees who were subject to Defendant's unlawful policies. The Class Members are
10 dispersed throughout California. Joinder of all members of the proposed classes is therefore not
11 practicable.

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

15 i. Whether Defendant failed to provide Plaintiffs and the members of the Wage
16 Statement Class complete wage statements in violation of Labor Code Section 226(a);

17 ii. Whether Defendant violated Sections 204 and 210 of the Labor Code by
18 failing to pay member of the Class all wages due on a timely basis;

19 iii. Whether Defendant violated Section 510 of the Labor Code by failing to pay
20 Plaintiffs and members of the Class all overtime wages due for daily and weekly overtime hours
21 worked;

22 iv. Whether Plaintiffs and the Class are entitled to restitution under Business and
23 Professions Code § 17200;

24 v. The proper formula(s) for calculating damages, interest, and restitution owed
25 to Plaintiff and the Class Members;

26 vi. The nature and extent of class-wide damages.

27 c. Typicality: Plaintiffs' claims are typical of the claims of the Class. Both
28 Plaintiffs and Class Members sustained injuries and damages, and were deprived of property rightly
belonging to them, arising out of and caused by Defendant's common course of conduct in violation

1 of law as alleged herein, in similar ways and for the same types of unpaid wages.

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

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

24 **FIRST CAUSE OF ACTION**
25 **FAILURE TO PAY OVERTIME WAGES**
26 **[Labor Code §§ 510,1194,1198; IWC Wage Order, § 3]**
On Behalf of Plaintiffs and the Class Against Defendant

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

34. Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.

35. Labor Code § 1194 provides that any employee receiving less than the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

36. Furthermore, pursuant to Labor Code § 1198, “[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Section 3 of the applicable IWC Wage order provides for daily and weekly overtime wages.

37. Defendant only paid Plaintiffs and the Class the regular hourly rate and failed to pay overtime wages for all overtime hours worked. To make matters worse, Defendant's wage statements issued to Plaintiffs and the Class intentionally did not include overtime hours to avoid paying the overtime wages owed.

38. Plaintiffs and the Class often worked eight hours per day and often worked over 40 hours per week. Defendant violated Labor Code § 510 and Section 3 of the applicable IWC Wage Order by failing to pay Plaintiffs and the Class their overtime wages at the applicable overtime rates, including daily overtime and weekly overtime, and instead merely paid Plaintiffs and the Class straight time wages for all hours worked.

SECOND CAUSE OF ACTION
FAILURE TO PAY WAGES ON A TIMELY BASIS
[Cal. Labor Code §§ 204, 210]

On Behalf of Plaintiffs and the Wage Statement Class Against Defendant

39. Plaintiffs re-allege and incorporate by reference each and every allegation set forth

1 in the preceding paragraphs.

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

7 41. Due to Defendant’s failure to pay Plaintiff and the Wage Statement Class all overtime
8 premiums owed, Defendant violated Labor Code § 204 by failing to pay all wages due within seven
9 (7) days of the close of the payroll period on a regular and consistent basis. *See Parson v. Golden*
10 *State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016)
11 (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code
12 §204).

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

21 **THIRD CAUSE OF ACTION**
22 **FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS**
23 **[Cal. Labor Code § 226(a), §226(e)]**

24 **On behalf of Plaintiffs and the Wage Statement Class Members Against Defendant**

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

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

28 Every employer shall...furnish each of his or her employees...an
accurate itemized statement in writing showing (1) gross wages earned,
(2) total hours worked by the employee, except for any employee whose

1 compensation is solely based on a salary and who is exempt from
2 payment of overtime under subdivision (a) of Section 515 or any
3 applicable order of the Industrial Welfare Commission, (3) the number
4 of piece-rate units earned and any applicable piece rate if the employee
5 is paid on a piece-rate basis, (4) all deductions, provided that all -
6 deductions made on written orders of the employee may be aggregated
7 and shown as one item, (5) net wages earned, (6) the inclusive dates of
8 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...

9 45. Due to Defendant's failure to pay Plaintiff and the other Wage Statement Class
10 Members all overtime wages for overtime hours, the wage statements issued by Defendant to
11 Plaintiffs and the other Wage Statement Class Members did not indicate the correct amount of gross
12 wages earned, net wages earned, or the applicable hourly rates in effect during the pay period and
13 the corresponding number of hours worked at each hourly rate in violation of Labor Code §
14 226(a)(1), (2), (3), (5), and (9). Another segment of the Class received no wage statements at all.

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

21 47. Defendant's failure to furnish accurate and complete itemized wage statements has
22 caused Plaintiffs and the other Wage Statement Class Members to incur economic damages in that
23 they were not aware that they were owed overtime *See Cicairos v. Summit Logistics*, 133
24 Cal.App.4th 949, 954 ("If it is left to the employee to add up the daily hours shown on the time cards
25 or other records so that the employee must perform arithmetic computations to determine the total
26 hours worked during the pay period, the requirements of section 226 would not be met"); *McKenzie*
27 *v. Federal Express Corp.*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011) (wage statements violated
28 California Labor Code by not including, inter alia, total hours worked giving rise to claims under

1 both Section 226 and for PAGA penalties); Labor Code § 226(e)(2)(B) (clarifying that injury is
2 established where the wage statement violated Section 226(a)(1), (2),(3), or (5), among other
3 provisions, and where employees cannot easily determine the gross or net wages earned by the
4 employee during the pay period).

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

10 **FOURTH CAUSE OF ACTION**
11 **UNFAIR COMPETITION LAW VIOLATIONS**
12 **(BUS. & PROF. CODE §§ 17200,17204, ET SEQ.)**
13 **On Behalf of Plaintiffs and the Class Against Defendant**

14 49. Plaintiff re-allege and incorporate by reference each and every allegation set forth in
15 the preceding paragraphs.

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

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

25 52. Section 90.5(a) of the Labor Code states that it is the public policy of California to
26 enforce vigorously minimum labor standards in order to ensure employees are not required to work
27 under substandard and unlawful conditions, and to protect employers who comply with the law from
28 those who attempt to gain competitive advantage at the expense of their workers by failing to comply
with minimum labor standards.

1 53. As a direct and proximate result of Defendant's unlawful business practices,
2 Plaintiffs and the Class Members have suffered economic injuries. Defendant has profited from its
3 unlawful, unfair, and/or fraudulent acts and practices.

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

9 55. Through its actions alleged herein, Defendant has engaged in unfair competition
10 within the meaning of section 17200 of the California Business & Professions Code, because
11 Defendant's conduct, as herein alleged has damaged Plaintiffs and the Class Members by wrongfully
12 denying them all overtime due, and therefore was substantially injurious to Plaintiff and the Class
13 Members.

14 56. Defendant engaged in unfair competition in violation of sections 17200 et seq. of the
15 California Business & Professions Code by violating Sections 510 of the California Labor Code,
16 and Section 3 of the applicable IWC Wage Order.

17 57. Defendant's course of conduct and practice are in violation of the California laws
18 mentioned above constitute independent violations of sections 17200 et seq. of the California
19 Business and Professions Code.

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

22 59. Plaintiff has assumed the responsibility of enforcement of the laws and public
23 policies specified herein by suing on behalf of themselves and other similarly situated Class
24 Members previously or presently employed by Defendant in California. Plaintiffs' success in this
25 action will enforce important rights affecting the public interest. Plaintiffs will incur a financial
26 burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys'
27 fees to Plaintiff is appropriate pursuant to Code of Civil Procedure §1021.5.

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FIFTH CAUSE OF ACTION
LABOR CODE PRIVATE ATTORNEY GENERAL ACT
PAGA PENALTIES FOR VIOLATIONS OF
LABOR CODE §§ 204, 210, 226, 226.3, 510
(Labor Code §§ 2698-2699.5)

On Behalf of Plaintiff and the Aggrieved Employees Against Defendant

60. Plaintiffs, on behalf of themselves and all aggrieved employees, reallege and incorporate by reference all previous paragraphs.

61. Based on the above allegations incorporated by reference, Defendant violated Labor Code §§204, 210, 226, 226.3, 510, 1194, 1198, as well as Section 3 of the applicable IWC Wage Order.

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

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

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

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

63. As set forth above, Defendant failed to provide Plaintiffs and all aggrieved employees with accurate itemized wage statements in compliance with Labor Code § 226(a). Labor Code § 226.3 provides for additional civil penalties for underlying violations of §226 and states that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.”

64. Further, Plaintiffs, as Aggrieved Employees, need not demonstrate or prove that Defendant’s conduct in refusing to provide accurate and itemized wage statements was knowing, intentional, or willful. *Lopez v. Friant & Assocs., LLC*, cited above; *see also Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, “all [plaintiff] needs to establish is a violation of section 226(a), which she has done, as discussed

1 above.”); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that
2 “for the purposes of recovering PAGA penalties, one need only prove a violation of Section 226(a),
3 and need not establish a Section 226(e) injury.”); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist.
4 LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) (“Plaintiff do not need to establish a Cal. Lab. Code
5 § 226(e) injury to recover penalties under § 2699(f) of PAGA.”).

6 65. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code
7 § 2699, et seq., as specified above, because of Defendant’s violation of Labor Code §§ Labor Code,
8 204, 210, 226, 226.3, 510 and 2802, as well as Section 3 of the applicable IWC Wage Order.

9 JURY DEMAND

10 66. Plaintiffs hereby demand trial by jury of their and the Class’s claims against
11 Defendant, and of all claims except for the PAGA and UCL, claims, which are subject to a bench
12 trial.

13 PRAYER FOR RELIEF

14 Wherefore, Plaintiffs, on behalf of themselves and the members of the Class, and the LWDA
15 and Aggrieved Employees, pray for judgment against Defendant as follows:

16 An Order that this action may proceed and be maintained as a class action; and

17 67. On the First Cause of Action:

18 a. A declaratory judgment that Defendant violated California Labor Code §§
19 1194, 1198, and 510;

20 b. Pursuant to Labor Code §§ 510 and 1194, an award to Plaintiffs and the Class
21 for penalties pursuant to Labor Code § 210;

22 c. An award to Plaintiffs and the other members of the Class in the amount of
23 their unpaid overtime compensation for worked performed, plus interest and/or liquidated damages
24 during the Class Period.

25 68. On the Second Cause of Action:

26 a. A declaratory judgment that Defendant violated California Labor Code §§
27 204 and 210;

28 b. Pursuant to Labor Code §§ 204 and 210, an award to Plaintiffs and the Wage

Statement Class for penalties pursuant to Labor Code § 210.

69. On the Third Cause of Action:

a. A declaratory judgment that Defendant violated California Labor Code §226 by issuing inaccurate and/or incomplete wage statements that failed to include 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 to Plaintiffs and the wage statement Class Members and or by failing to issue wage statements at all to a segment of the Class; and

b. An award to Plaintiffs and Class Members of \$50 for each initial pay period, one year prior to the filing of this Complaint through the date of trial, in which a violation of Section 226 occurred and \$100 for each subsequent pay period, one year prior to the filing of this Complaint through the date of trial, in which a violation of Section 226 occurred, not to exceed \$4,000 for each member of the Wage Statement Class, as well as an award of costs and reasonable attorney's fees, pursuant to Labor Code § 226(e).

70. On the Fourth Cause of Action:

a. That the Court find and declare that Defendant have violated the UCL §§17200 and committed unfair and unlawful business practices by failing to pay all wages due to Class members at the proper overtime rate of 1.5 x their regular rate of pay; and

b. An award of all unpaid overtime wages due to Class members.

71. On the Fifth Cause of Action:

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

b. An additional amount of the penalties specified in §226.3 for the underlying §226 violations;

c. An award of reasonable attorney's fees against Defendant as specified in

1 Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection with
2 the PAGA claims;

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

6 i. All other relief as this Court deems proper.

7
8 Dated: August 12, 2021

Respectfully,

9 ACKERMANN & TILAJEF, P.C.
10 LAW OFFICE OF TATIANA HERNANDEZ, P.C.

11 By:



12 Craig Ackermann, Esq.

13 Tatiana Hernandez, Esq.

14 *Attorneys for Plaintiffs, the Class, the Aggrieved*
Employees, and the State of California