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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SAN JOAQUIN**

14 ANGELICA DIAZ VALDEZ, an individual,
15 on behalf of herself, others similarly situated,
16 and as a private attorney general on behalf of
17 the State of California,

18 **PLAINTIFF,**

19 **v.**

20 NBC MANTECA MERCHANTS, INC., a
21 California Corporation, and DOES 1 thru 50,
22 inclusive,

23 **DEFENDANTS.**

CASE NO.:

STK-CV-40E-2021-9075

24 **CLASS ACTION AND**
25 **REPRESENTATIVE ACTION**
26 **COMPLAINT**

- 27 1. Failure to Pay Minimum Wages In
Violation of Labor Code §§ 1194 and
1194.2
- 28 2. Failure to Pay Overtime Wages In
Violation of Labor Code § 510
3. Failure to Provide Lawful Meal Periods
And Pay Meal Period Premiums Pursuant
to Labor Code §§ 226.7 and 512
4. Penalties and Injunctive Relief Pursuant to
Labor Code § 226(e) and (h)
5. Violations of Labor Code § 226(f) and (h)
6. Violations of Labor Code § 1198.5 (k) and
(l)
7. Violation of Business & Professions Code
§ 17200
8. Penalties Pursuant to Labor Code § 2699,
et seq. for violations of Labor Code §§
201, 202, 203, 204, 210, 226, 226.3, 226.7,
432, 510, 512, 558, 1174, 1174.5, 1194,
1197, 1197.1, 1198, 1198.5, and IWC
Wage Order Nos. 7-2001 and 9-2001.

BY FAX

1 Plaintiff ANGELICA DIAZ VALDEZ, an individual, on behalf of herself and others
2 similarly situated, complains of Defendant NBC MANTECA MERCHANTS, INC. and the Doe
3 Defendants ("Defendants") and each of them, as follows:

4 I.

5 **INTRODUCTION AND FACTUAL BACKGROUND**

6 1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of
7 Plaintiff and the following classes and subclasses:

8 (1) all individuals who were employed by NBC MANTECA MERCHANTS, INC.
9 as a non-exempt, hourly employee in California for one or more pay periods
10 from April 2, 2017 and continuing into the present; (NBC Manteca Class)¹

11 (2) all non-exempt, hourly employees who were employed by NBC MANTECA
12 MERCHANTS, INC. at 912 Spreckles Ave, Manteca, CA 95336 at any point
13 from April 2, 2017 and continuing into the present. ("Spreckles Ave Class");²

14 Collectively, Classes one (1) and two (2) may be referred to as the "Class."

15 (3) all individuals who were employed by NBC MANTECA MERCHANTS, INC.
16 in California as a non-exempt, hourly employee or other similar position who
17 made less than 130% of the state minimum wage and who worked a shift of
18 more than eight (8) hours in a day and/or forty (40) hours in a week during a pay
19 period from April 2, 2017 and continuing into the present. ("NBC Manteca
20 Non-Exempt Overtime Subclass");

21 (4) all individuals who were employed by NBC MANTECA MERCHANTS, INC.
22 at 912 Spreckles Ave, Manteca, CA 95336 in California as a non-exempt,
23 hourly employee or other similar position who made less than 130% of the state
24 minimum wage and who worked a shift of more than eight (8) hours in a day
25 and/or forty (40) hours in a week during a pay period from April 2, 2017 and
26 continuing into the present. ("Spreckles Ave Non-Exempt Overtime Subclass");

27 ¹ Judicial Council Emergency Rule No. 9 tolled the statute of limitations applicable to this action for 5 months and
28 25 days or from April 6, 2020 to October 1, 2020. "Notwithstanding any other law, the statutes of limitations and
repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020."

² Judicial Council Emergency Rule No. 9 tolled the statute of limitations applicable to this action for 5 months and 25
days or from April 6, 2020 to October 1, 2020. "Notwithstanding any other law, the statutes of limitations and repose
for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020." PAGA's statute
of limitations is governed by the Code of Civ. Proc. § 340 such that it is subject to modification by the Judicial
Council.

1 Collectively, subclasses two (2) and three (3) may be referred to as the "Overtime
2 Subclass."

3 (5) all individuals who were employed by NBC MANTECA MERCHANTS, INC. in
4 California who worked one or more shifts of more than six (6) hours as a non-
5 exempt, hourly employee or other similar position and who made less than 130% of
6 the state minimum wage at any point between April 2, 2017 and continuing into the
7 present. ("NBC Manteca First Meal Period Subclass");³

8 (6) all individuals who were employed by NBC MANTECA MERCHANTS, INC. in
9 California who worked one or more shifts of more than six (6) hours as a non-
10 exempt, hourly employee or other similar position at 912 Spreckles Ave, Manteca,
11 CA 95336 and who made less than 130% of the state minimum wage at any point
12 from April 2, 2017 and continuing into the present. ("Spreckles Ave First Meal
13 Period Subclass");⁴

14 (7) All individuals who were employed by NBC MANTECA MERCHANTS, INC. or its
15 predecessor, merged or related entities in California who were paid a meal and/or rest
16 period premium within the same week that they received either an incentive payment,
17 non-discretionary bonus, production bonus, efficiency bonus, or attendance bonus
18 from April 2, 2017 and continuing into the present. ("Meal/Rest Period Premium
19 Subclass");

20 Collectively, subclasses five (5), six (6), and seven (7) may be referred to as the "Meal
21 Period Subclass."

22 (8) all individuals who were employed by NBC MANTECA MERCHANTS, INC.
23 as a non-exempt, hourly employee in California for one or more pay periods
24 from April 2, 2020 and continuing into the present; (NBC Manteca Wage
25 Statement Subclass)

26 (9) all non-exempt, hourly employees who were employed by NBC MANTECA
27 MERCHANTS, INC. at 912 Spreckles Ave, Manteca, CA 95336 at any point
28 from April 2, 2020 and continuing into the present. ("Spreckles Ave Wage
Statement Subclass");

Collectively, subclasses eight (8) and nine (9) may be referred to as the "Wage Statement
Subclass."

³ This subclass does not include the time that any such class members made 130% or more of the state minimum wage.

⁴ This subclass does not include the time that any such class members made 130% or more of the state minimum wage.

1
2
3 2. This is also a representative action brought pursuant to Labor Code § 2698, *et seq.*,
4 on behalf of the State of California and several groups of aggrieved employees defined as
5 follows:

- 6 (1) all non-exempt, hourly employees who were employed by NBC Manteca
7 Merchants, Inc. in California at any point from February 20, 2020 and
8 continuing into the present. ("Non-Exempt Aggrieved Employees");⁵
9
10 (2) all non-exempt, hourly employees who were employed by NBC Manteca
11 Merchants, Inc. at 912 Spreckles Ave, Manteca, CA 95336 at any point from
12 February 20, 2020 and continuing into the present. ("912 Spreckles Ave
13 Aggrieved Employees");⁶
14
15 (3) all individuals who were employed by NBC Manteca Merchants, Inc. in
16 California as a non-exempt, hourly employee or other similar position and who
17 worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a
18 week during a pay period from February 20, 2020 and continuing into the
19 present. ("Overtime Aggrieved Employees");
20
21 (4) all individuals who were employed by NBC Manteca Merchants, Inc. in
22 California who worked one or more shifts of more than six (6) hours as a non-
23 exempt, hourly employee or other similar position from February 20, 2020 and
24 continuing into the present. ("Meal Period Aggrieved Employees");
25
26 (5) all individuals who were employed by NBC Manteca Merchants, Inc. in
27 California as a non-exempt hourly employee, or other similar position, who
28 worked one or more shifts of more than four (4) hours in length or major
fraction thereof from February 20, 2020 and continuing into the present. ("Rest
Period Aggrieved Employee");

⁵ Judicial Council Emergency Rule No. 9 tolled the statute of limitations applicable to this action for 5 months and 25 days or from April 6, 2020 to October 1, 2020. "Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020." PAGA's statute of limitations is governed by the Code of Civ. Proc. § 340 such that it is subject to modification by the Judicial Council.

⁶ Judicial Council Emergency Rule No. 9 tolled the statute of limitations applicable to this action for 5 months and 25 days or from April 6, 2020 to October 1, 2020. "Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020." PAGA's statute of limitations is governed by the Code of Civ. Proc. § 340 such that it is subject to modification by the Judicial Council.

1 (6) all individuals who were employed by NBC Manteca Merchants, Inc. for one or
2 more pay periods in California as a non-exempt, hourly employee and whose
3 employment concluded at any time between February 20, 2020 and continuing
into the present. ("Late Payment Aggrieved Employees");

4 Collectively, these groups may all collectively be referred to herein as aggrieved employees
5 and/or all aggrieved employees where appropriate

6 3. Plaintiff, the Classes, and the aggrieved employees were employed by Defendant
7 NBC MANTECA MERCHANTS, INC., and any subsidiaries or affiliated companies and Does 1
8 through 50 (who include individuals acting on behalf an employer within the meaning of Labor
9 Code § 558.1) within the State of California as a non-exempt, hourly employees within four (4)
10 years of the filing of the Complaint and continuing into the present. Plaintiff is a current
11 employee of Defendants in San Joaquin County.

12 4. At times throughout his employment with Defendants during the past four (4)
13 years and within the past year, Plaintiff, the Classes, and the aggrieved employees worked shifts
14 in excess of six (6) hours in a day, worked shifts in excess of eight (8) hours in a day, and/or
15 worked in excess of forty (40) hours in a week.

16 5. At times throughout his employment with Defendants during the past four (4)
17 years and within the past year, Plaintiff, the Classes, and the aggrieved employees worked more
18 than forty (40) hours per week.

19 6. Defendants hire employees to work within the state of California who are covered
20 by California Industrial Welfare Commission Occupational Wage Order Nos. 7-2001 and 9-2001.
21 Based upon information and belief, Defendants classified Plaintiff, the Classes, and the aggrieved
22 employees as non-exempt for the purposes of overtime, meal periods, and rest periods.

23 7. Plaintiff and the Wage Statement Subclass received at least one wage statement
24 between one (1) year prior to the filing of this Complaint and continuing into the present.

25 8. Labor Code § 1197 states the California requirement that employees must be paid
26 at least the minimum wage fixed by the Commission or by any applicable state or local law, and
27 any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles
28 "any employee receiving less than the legal minimum wage...to recover in a civil action the

1 unpaid balance of the full amount of this minimum wage.” IWC Wage Order Nos. 7-2001 and 9-
2 2001 obligates employers to pay each employee minimum wages for all hours worked.

3 9. In addition, Labor Code § 1198 provides that “the maximum hours of work and the
4 standard conditions of labor fixed by the commission shall be the maximum hours of work and
5 the standard conditions of labor for employees. The employment of any employee for longer
6 hours than those fixed by the order or under conditions of labor prohibited by the order is
7 unlawful.”

8 10. At times within the past four (4) years including within the past year, Defendants
9 engaged in a common policy and practice for at least part of the time since the onset of the
10 COVID-19 pandemic of requiring Plaintiff, the Class, and the aggrieved employees to undergo
11 temperature checks and/or other medical screenings prior to the start of their shift while off-the-
12 clock for which they did not receive compensation in violation of Labor Code §§ 1194 and 510.
13 Plaintiff, the Class, and the other aggrieved employees did not receive compensation for the time
14 spent undergoing temperature checks and medical screenings for at least part of the time since the
15 onset of the COVID-19 pandemic. In order to have their temperature’s checked, Plaintiff, the
16 Class, and the other aggrieved employees were regularly required to wait in lines of 5-10 people
17 and were not paid for either the time waiting to have their temperature check or the time
18 associated with temperature checks/medical screenings themselves for at least part of the period
19 applicable to their claims.

20 11. Defendants’ conduct in failing to pay Plaintiff and the aggrieved employees for
21 such time violated Labor Code §§ 1194, 1197, 1197.1, and 1198 and was willful.

22 12. Defendants were aware and/or should have been aware that the Department of
23 Industrial Relations issued guidance on July 28, 2020 advising that employers that they must
24 compensate employees for the time associated with medical checks before shifts (including
25 temperature checks):

26
27 a) **Medical Checks**

28 **9. Q: Must my employer pay me for time spent at my employer’s worksite completing certain medical checks (including temperature checks) before beginning a shift?**

1 A: Yes. Employers must pay workers for all “hours worked,” including time that a worker is
2 under the control of the employer. Employers that require their workers to complete a
3 medical check in order to begin a shift, even if it is recommended under public health
orders, must compensate workers for that time worked.

4 The term “hours worked” means the time during which a worker is subject to the control of
5 an employer, and includes all the time the worker is suffered or permitted to work,
6 whether or not required to do so. Under this definition, one way to determine whether
7 time a worker spends performing a task is compensable—that is, whether it is time
“worked”—is whether the employer exercised control over the worker by requiring the
worker to perform that task.

8 If an employer requires that all workers perform a medical check (such as a temperature
9 check) onsite before beginning a shift, the time completing the medical check, including
10 any time waiting in line, would constitute time worked. This requirement applies even if
such tasks were performed pursuant to a state or local public health guideline, because
the check is done at the request, and thus under the control, of the employer.

11 **10. Q: Is my employer required to pay workers for required medical checks (including**
12 **temperature checks) at the employer’s worksite, even if the medical checks take very**
13 **little time?**

14 A: Yes, an employer is required to compensate for all hours worked in California even if a
15 required task takes only a small amount of time. There is no “de minimis” rule under
16 California law. Therefore, if an employer requires medical checks (such as a temperature
17 check) at the employer’s worksite, the employer must compensate a worker for that time
18 worked, even if the temperature check takes only a small amount of time to complete and
19 record.

20 13. Labor Code § 1197.1 authorizes employees who are paid less than the minimum
21 fixed by an applicable state or local law, or by an order of the commission a civil penalty,
22 restitution of wages, and liquidate damages as follows: (1) for any initial violation that is
23 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
24 period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the
25 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
26 period for which the employee is underpaid regardless of whether the initial violation is
27 intentionally committed. As set forth above, Defendants failed to compensate Plaintiff and all
28 aggrieved employees for all overtime wages at the proper rates. Accordingly, through PAGA and
to the extent permitted by law Plaintiff and all aggrieved employees are entitled to recover civil
penalties for violations of Labor Code § 1197.1.

1 14. Labor Code § 510 requires an employer to compensate an employee who works
2 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight
3 (8) hours worked on the seventh consecutive day no less than one and one-half times the regular
4 rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate
5 employees at no less than twice the regular rate of pay when an employee works more than
6 twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.
7 In accordance with Labor Code § 1194, Plaintiff and the other aggrieved employees could not
8 agree to work for a lesser wage.

9 15. This Complaint does not seek any overtime related damages for employees making
10 30% or more than the state minimum wage. Based upon information and belief, at no point
11 during her employment did Plaintiff receive a regular hourly rate of pay that was more than 30%
12 percent more than the state minimum wage.

13 16. In addition, Labor Code § 1197 states the California requirement that employees
14 must be paid at least the minimum wage fixed by the Commission or by any applicable state or
15 local law, and any payment of less than the minimum wage is unlawful.

16 17. Similarly, Labor Code § 1198 provides that “the maximum hours of work and the
17 standard conditions of labor fixed by the commission shall be the maximum hours of work and
18 the standard conditions of labor for employees. The employment of any employee for longer
19 hours than those fixed by the order or under conditions of labor prohibited by the order is
20 unlawful.”

21 18. As discussed in detail above, at times during the four (4) years prior to the filing of
22 this Complaint and within the past year, Defendants engaged in a common policy and practice
23 since the onset of the COVID-19 pandemic of requiring Plaintiff, the Overtime Subclass, and the
24 aggrieved employees to undergo temperature checks and other medical screenings while off-the-
25 clock for which they did not receive compensation in violation of Labor Code §§ 1194 and 510
26 for at least part of the COVID-19 pandemic. This includes, but is not limited, to requiring
27 Plaintiff, the Overtime Subclass, and the other aggrieved employees to undergo temperature
28

1 checks before the start of their shifts for which they did not receive compensation and/or for the
2 time spent waiting in line to undergo such temperature checks.

3 19. Since Plaintiff, the Overtime Subclass Members, and many of the aggrieved
4 employees later worked eight (8) hours aside from the off-the-clock time associated with
5 temperature checks, many of the hours worked by Plaintiff and the aggrieved employees were
6 misclassified as regular hours instead of overtime hours resulting in the underpayment of
7 overtime wages in addition to the failure to pay for all hours worked. Such conduct violated
8 Labor Code § 510.

9 20. Based upon the foregoing, Defendants violated Labor Code § 510 with respect to
10 Plaintiff and all aggrieved employees. Employees, including Plaintiff and the other aggrieved
11 employees who experience a violation of Labor Code § 510 may pursue PAGA penalties under
12 Labor Code § 558. Labor Code § 558 imposes a penalty upon employers “who violates, or causes
13 to be violated...any provision regulating hours and days of work in any order of the Industrial
14 Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation,
15 fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was
16 underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each
17 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
18 period for which the employee was underpaid in addition to an amount sufficient to recover
19 underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected
20 employee.” For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only
21 the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and
22 not any underpaid wages.

23 21. Labor Code § 1197.1 authorizes employees who are paid less than the minimum
24 fixed by an applicable state or local law, or by an order of the commission a civil penalty,
25 restitution of wages, and liquidate damages as follows: (1) for any initial violation that is
26 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
27 period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the
28 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay

1 period for which the employee is underpaid regardless of whether the initial violation is
2 intentionally committed. As set forth above, Defendants failed to compensate Plaintiff and all
3 aggrieved employees for all overtime wages at the proper rates. Accordingly, through PAGA and
4 to the extent permitted by law Plaintiff and all aggrieved employees are entitled to recover civil
5 penalties for violations of Labor Code § 1197.1.

6 22. Labor Code § 512 requires employers to provide employees with thirty (30)
7 minute uninterrupted and duty-free meal period within the first five (5) hours of work. Moreover,
8 an employee who works more than ten (10) hours per day is entitled to receive a second thirty
9 (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512, an employer
10 may not employ an employee for a work period of more than ten (10) hours, without providing
11 the employee with a second meal period of not less than thirty (30) minutes. Moreover, the
12 second meal period may not be waived if the total hours worked is more than twelve (12) hours.

13 23. Similarly, IWC Wage Order Nos. 7-2001 and 9-2001 prohibit an employer from
14 “employ[ing] any person for a work period of more than five (5) hours without a meal period of
15 not less than 30 minutes. IWC Wage Order Nos. 7-2001 and 9-2001 further obligates employers
16 to provide an employee to “pay the employee one (1) hour of pay at the employee’s regular rate
17 of compensation for each workday that the meal period is not provided. Labor Code section 1198
18 prohibits an employer from requiring an employee to work beyond the “standard conditions of
19 labor fixed by the commission...or under conditions of labor prohibited by the order.”

20 24. At times during the past four (4) years and within the past year, Defendants failed
21 to authorize and permit Plaintiff, the Meal Period Subclass, and the aggrieved employees to
22 receive lawful meal periods, failed to advise them of their right to such meal periods, failed to
23 authorize and permit them to take timely first meal periods, and failed to authorize and permit
24 employees to take 30 minute meal periods on occasion.

25 25. At times during the past four (4) years and within the past year, Defendants’ meal
26 period policies and practices also disincentivized and discouraged Plaintiff, the Meal Period
27 Subclass, and the aggrieved employees from taking timely first meal periods within the first five
28 (5) hours of their shift. Defendants’ understaffing policies and practices also pressured, coerced,

1 and forced employees to take untimely first meal periods and/or forgo meal periods due to a lack
2 of sufficient coverage.

3 26. At times during the past four (4) years and within the past year, Defendants also
4 engaged in a common pattern and practice of rounding meal period punches in violation of Labor
5 Code sections 1194, 510, 512, and 226.7. As the California Supreme Court held in *Donohue v.*
6 *Ann Servs.*, 11 Cal.5th 58, 81 (2021) “employers cannot engage in the practice of rounding time
7 punches—that is, adjusting the hours that an employee has actually worked to the nearest present
8 time increment—in the meal period context.” Here, as in *Donohue*, Defendants engaged in a
9 common policy and practice during the past four (4) years and within the past year of rounding
10 Plaintiff, the Meal Period Subclass, and the aggrieved employees’ time punches such that they did
11 not receive minimum wages for all hours worked, overtime wages for the improperly rounded
12 time punches, did not receive meal period premiums for rounded time punches, and/or proper and
13 lengthy meal periods. As such, Plaintiff alleges that Defendants violated Labor Code §§ 201, 202,
14 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, and
15 IWC Wage Order Nos. 7-2001 and 9-2001 when it engaged in such policies and practices.

16 27. Labor Code § 226.7 provides “an employer shall not require an employee to work
17 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
18 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Similarly, IWC
19 Wage Order Nos. 7-2001 and 9-2001, prohibit an employer from “employ[ing] any person for a
20 work period of more than five (5) hours without a meal period of not less than 30 minutes. IWC
21 Wage Order Nos. 7-2001 and 9-2001 further obligate employers to provide an employee to “pay
22 the employee one (1) hour of pay at the employee’s regular rate of compensation for each
23 workday that the meal period is not provided. Accordingly, for each day that Plaintiff and all
24 aggrieved employees did not receive compliant meal periods, they are entitled to receive meal
25 period premiums pursuant to Labor Code § 226.7 and IWC Wage Order Nos. 7-2001 and 9-2001.
26 Unfortunately, Plaintiff and the other aggrieved employees were not compensated with one (1)
27 hours’ worth of pay at their regular rate of compensation when they were not provided with a
28 compliant meal period in violation of Labor Code § 226.7 and IWC Wage Order Nos. 7-2001 and

1 9-2001. Accordingly, for each day that Plaintiff, the Meal Period Subclass, and the aggrieved
2 employees did not receive compliant meal or rest periods, they were entitled to receive meal
3 period premiums pursuant to Labor Code § 226.7 and Wage Order Nos. 7-2001 and 9-2001.

4 28. At times during the past four (4) years and within the past year, Defendants also
5 failed to pay Plaintiff, the Meal Period Subclass, and the aggrieved employees' meal period
6 premiums for each workday that the employees did not receive a compliant meal period and/or at
7 the proper rate. Labor Code § 226.7 provides "an employer shall not require an employee to work
8 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
9 regulation, standard, or order of the Industrial Welfare Commission ("IWC").

10 29. Further, on the rare occasion if any that Defendants paid meal period premiums
11 during the past four (4) years and within the past year, Defendants paid meal period premiums to
12 Plaintiff, the Meal Period Subclass, and the aggrieved employees, Defendants improperly paid the
13 premium at the employee's hourly base rate instead of at their regular rate. Plaintiff contends that
14 Defendants' policies and practices as alleged above violated Labor Code § 226.7 and seeks
15 penalties pursuant to PAGA related thereto consistent with the California Supreme Court's
16 decision in *Ferra v. Loews Hollywood Hotel, LLC*, No. S259172) ___Cal.5th___ 2021 Cal.
17 LEXIS 4877 (July 15, 2021) ("we hold that the term 'regular rate of compensation' in section
18 226.7(c) has the same meaning of regular rate of pay' in section 510(a) and encompasses not only
19 hourly wages, but all nondiscretionary payments for work performed by the employee.").

20 30. Labor Code § 226.7 provides "an employer shall not require an employee to work
21 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
22 regulation, standard, or order of the Industrial Welfare Commission ("IWC"). Under IWC Wage
23 Order Nos. 7-2001 and 9-2001, an employer must authorize and permit all employees to take ten
24 (10) minute duty free rest periods for every major fraction of four hours worked. *See Augustus v.*
25 *ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that "during rest periods
26 employers must relieve employees of all duties and relinquish control over how employees spend
27 their time.").

1 31. Pursuant to Labor Code § 226.7 and IWC Wage Order Nos. 7-2001 and 9-2001,
2 Defendants failed to provide Rest Period Aggrieved Employees with rest periods of not less than
3 ten (10) minutes for every major fraction of four (4) hours worked. Instead, Defendants regularly
4 and consistently required Rest Period Aggrieved Employees to forgo rest periods and/or required
5 them to remain on the premises and failed to relieve them of all duties.

6 32. Moreover, the aggrieved employees were denied rest periods as a result of
7 Defendants' understaffing practices and policies. Notably, although Defendants' rest period
8 policies and practices are not compliant, they also pressured and coerced employees to forgo rest
9 periods and made it difficult for employees to take lawful duty-free rest periods both due to their
10 understaffing policies and practices and otherwise.

11 33. Further, on the rare occasion if any that Defendants paid rest period premiums,
12 Defendants paid rest period premiums to the aggrieved employees, Defendants improperly paid
13 the premium at the employee's hourly base rate instead of at their regular rate. Plaintiff contends
14 that Defendants' policies and practices as alleged above violated Labor Code § 226.7 and seeks
15 penalties pursuant to PAGA related thereto consistent with the California Supreme Court's
16 decision in *Ferra v. Loews Hollywood Hotel, LLC*, No. S259172) ___ Cal.5th ___ 2021 Cal.
17 LEXIS 4877 (July 15, 2021) ("we hold that the term 'regular rate of compensation' in section
18 226.7(c) has the same meaning of regular rate of pay' in section 510(a) and encompasses not only
19 hourly wages, but all nondiscretionary payments for work performed by the employee.").

20 34. Based upon the foregoing, Defendants violated Labor Code § 226.7 and 1198 as
21 well as IWC Wage Order Nos. 7-2001 and 9-2001 with respect to the aggrieved employees.
22 Employees, including Plaintiff and the other aggrieved employees who experienced a violation of
23 Labor Code § 226.7 may pursue PAGA penalties under Labor Code § 558. Labor Code § 558
24 imposes a penalty upon employers "who violates, or causes to be violated...any provision
25 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
26 subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
27 underpaid employee for each pay period for which the employee was underpaid in addition to an
28 amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred

1 dollars (\$100) for each underpaid employee for each pay period for which the employee was
2 underpaid in addition to an amount sufficient to recover underpaid wages; and (3) Wages
3 recovered pursuant to this section shall be paid to the affected employee.” For purposes of Labor
4 Code § 558, Plaintiff and the aggrieved employees seek only the penalties assessed as civil
5 penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages.

6 35. As to Plaintiff, the Wage Statement Subclass, and the aggrieved employees, within
7 the past year, Defendants also failed to provide accurate itemized wage statements in accordance
8 with Labor Code § 226(a)(1, 2, 5, 8, and 9). Labor Code § 226 obligates employers, semi-
9 monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

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

24 Similarly, Labor Code § 226(e) provides:

25 (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an
26 employer to comply with subdivision (a) is entitled to recover the greater of all actual
27 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
28 one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
award of costs and reasonable attorney’s fees.

(2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the
employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the
employer fails to provide accurate and complete information as required by any one or
more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly
and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the
pay period or any of the other information required to be provided on the itemized
wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision
(a).

(ii) Which deductions the employer made from gross wages to determine the net
wages paid to the employee during the pay period. Nothing in this subdivision

1 alters the ability of the employer to aggregate deductions consistent with the
2 requirements of item (4) of subdivision (a).

3 (iii) The name and address of the employer and, if the employer is a farm labor
4 contractor, as defined in subdivision (b) of Section 1682, the name and address of
5 the legal entity that secured the services of the employer during the pay period.

6 (iv) The name of the employee and only the last four digits of his or her social
7 security number or an employee identification number other than a social security
8 number.

9 36. Due to Defendants' failure to pay Plaintiff, the Classes, and the aggrieved
10 employees all minimum wages, all overtime wages, all meal period premiums (including at the
11 proper rates), all rest period premiums (including at the proper rates), the wage statements issued
12 by Defendants do not indicate the correct amount of gross wages earned, the total hours worked,
13 the net wages earned, all applicable hourly rates in effect during the pay period and the
14 corresponding number of hours worked at each hourly rate. Thus, Defendants have violated Labor
15 Code §226(a)(1), (2), (5), and (9) with respect to Plaintiff, the Wage Statement Subclass, and the
16 aggrieved employees.

17 37. In addition, the wage statements issued to Plaintiff, the Wage Statement Subclass,
18 and all aggrieved employees did not include the total hours worked by the employee or even what
19 their time records reflected that they worked in violation of Labor Code § 226(a)(2). As
20 previously explained, in express violation of Section 7(A)(3) of IWC Wage Order Nos. 7-2001
21 and 9-2001 which requires employers to record "when the employee begins and ends each work
22 period," based upon information and belief, at some later point during the period applicable to
23 this complaint and the COVID-19 pandemic, Defendants started providing some compensation
24 for medical screenings and temperature checks. However, instead of recording the actual time
25 worked by Plaintiff, the Class, the Wage Statement Subclass, the aggrieved employees when it
26 implemented this policy, Defendants instead arbitrarily compensated Plaintiff and the aggrieved
27 employees for a set amount of time without even informing them it was doing so, an opportunity
28 to report a different amount of time, and failed to actually record the actual hours worked. As
such, regardless of whether or not Defendants compensated the Class and aggrieved employees
for such time during part of the applicable period—which Plaintiff, the Class, and the aggrieved
employees dispute at least in part and/or that it was sufficient—their wage statements still did not

1 list either the total number of hours they worked or the number of hours reflected in their time
2 records in violation of Labor Code section 226(a)(2).

3 38. Further, Defendants also engaged in a common pattern and practice of rounding
4 meal period punches such that they did not receive minimum wages for all hours worked,
5 overtime wages for the improperly rounded time punches, did not receive meal period premiums
6 for rounded time punches, and/or proper and lengthy meal periods. As a result and separately due
7 to this practice Plaintiff, the Wage Statement Subclass, and the aggrieved employees routinely
8 received itemized wage statements that did not include the correct number of total hours worked
9 in violation of Labor Code § 226 or the total wages earned in violation of Labor Code §
10 226(a)(9).

11 39. Within the past year, Defendants also issued itemized wage statements to Plaintiff,
12 the Wage Statement Subclass, and the aggrieved employees that did not include the legal name of
13 the entity that is the employer. Recently, in *Noori v. Countrywide Payroll & HR Solutions, Inc.*,
14 43 Cal.App.5th 957, 966 (2019), the California Court of Appeal found that the employer violated
15 Labor Code § 226 if it altered the employer's name where confusion might ensue. The Court of
16 Appeal went on to provide several examples of what it considered to be improper alterations such
17 as listing "First Transit and a logo, instead of "First Transit Transportation, LLC" where a
18 different entity 'First Transit, Inc.' also exists' and use of "Wal-Mart Associates, Inc. instead of
19 Wal-Mart Stores, Inc." *Id.*

20 40. Within the past year, the wage statements issued to Plaintiff and the other
21 aggrieved employees included the name of the non-existent entity NBC Manteca CA, without
22 providing any information about the name of the employer itself. Even more confusingly,
23 Plaintiff and the other aggrieved employees wage statements included logos that said TJX and T-
24 J-Maxx, but neither were the legal entity that is the employer or a dba or abbreviation for
25 Defendant. Indeed, Defendant does not do business under the name of NBC Manteca CA, but
26 instead, as indicated on the sign on its building does business under another name Marmaxx or
27 Marmaxx Shipping Center:
28



41. Due to Defendants' failure to identify themselves as Plaintiff's employer and their use of the dba of Marmaxx, Plaintiff falsely believed her employer to be Marmaxx. Simply put, there are 3 different names on Plaintiff, the Wage Statement Subclass, and the aggrieved employees' Wage Statements none of which are the name of her employer nor even the dba that it uses of Marmaxx. It was not possible to determine from the wage statement alone who Plaintiff's, the Wage Statement Subclass members, or the aggrieved employees' employer was. Whether it was TJ Maxx, TJX, NBC Merchants, Inc., the non-existent entity NBC Manteca CA—which is not an abbreviation of NBC Manteca Merchants, Inc.—but a combination of different words altogether and not the dba/alternative name of Marmaxx used by Defendant. Further, there are several additional similarly named entities including but not limited to NBC Merchants, Inc., NBC Apparel, Inc., NBC Apparel, LLC, Newton Buying Company of CA, Inc. whose initials would also be NBC and operate out of the same address.

42. At all times relevant hereto, TJ Maxx and/or TJX were retail businesses and were not in the same business as Defendant NBC Manteca Merchants, Inc. which is a warehousing company according to its own filings with the California Secretary of State:

6. Type of Business:

Warehousing

By signing this document, I certify that the information is true and correct and that I am authorized by California law to sign.

Electronic Signature: Kelly Lettmann

43. Defendant also represents and warrants in its disclosures to the SEC that NBC Manteca Merchants, Inc. is a separate subsidiary of the TJX Companies, Inc. and there is another Marmaxx Operating Corp. with the same name as the dba of NBC Manteca Merchants, Inc.

44. According to SEC filings, there is no other name under which NBC Manteca Merchants, Inc. does business under—which is not actually true as does business under the name Marmaxx at the location that Plaintiff worked at:

Exh1

SUBSIDIARIES

All of the following subsidiaries are either directly or indirectly owned by The TJX Companies, Inc.

Operating Subsidiaries	State or Jurisdiction of Incorporation or Organization	Name Under Which Does Business (if Different)
NBC Astoria Inc.	Massachusetts	
Newton Buying Corp.	Delaware	
NBC Distributors Inc.	Massachusetts	
NBC Merchants, Inc.	Indiana	
NBC Charlotte Merchants, Inc.	North Carolina	
NBC Nevada Merchants, Inc.	Nevada	
NBC Philadelphia Merchants, Inc.	Pennsylvania	
NBC Pittston Merchants, Inc.	Pennsylvania	
NBC Houston Merchants, Inc.	Texas	
NBC Manteca Merchants, Inc.	California	
TJX Incentive Sales, Inc.	Virginia	
Marmaxx Operating Corp.	Delaware	TJX Marmaxx Merchants

Available on the SEC website at:

<https://www.sec.gov/Archives/edgar/data/109198/000095012311030274/b83553exv21.htm>

45. In addition to violating Labor Code § 226(a), Defendants also knowingly and intentionally failed to pay Plaintiff, the Class, the Wage Statement Subclass, and all aggrieved employees minimum wages, overtime wages, meal period premiums, and rest periods premiums including at the proper rates.

46. Moreover, Plaintiff and all aggrieved employees also suffered legal “injury” for purposes of Labor Code section 226(e) insofar as they were unable to readily and easily determine from the wage statements themselves the information required to be set forth by Section 226(a), the information provided by Defendants were confusing and inaccurate. In addition, Plaintiff and the aggrieved employees were unable to determine at all the total hours

1 worked by the employee, the gross wages earned, the net wages earned, and all applicable hourly
2 rates in effect during the pay period and the corresponding number of hours worked at each
3 hourly rate by the employee for the reasons discussed above.

4 47. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
5 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
6 per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee
7 for each violation in a subsequent citation, for which the employer fails to provide the employee a
8 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As
9 explained in detail above, Defendants failed to provide Plaintiff and the other aggrieved
10 employees with accurate itemized wage statements. Accordingly, Plaintiff and the other
11 aggrieved employees may also recover Labor Code § 226.3 penalties for Defendants’ violations
12 of Labor Code § 226(a).

13 48. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in
14 any employment are due and payable twice during each calendar month, on days designated in
15 advance by the employer as the regular paydays.” Defendants pay Plaintiff and all aggrieved
16 employees on a weekly basis.

17 49. Due to Defendants’ failure to pay Plaintiff and all aggrieved employees all
18 minimum wages, all overtime wages, split shift premiums, meal period premiums, and rest period
19 premiums for the reasons discussed above, Defendants failed to timely pay Plaintiff and all
20 aggrieved employees all wages owed within seven (7) days of the close of the payroll period in
21 accordance with Labor Code § 204(d) on a regular and consistent basis. This includes failing to
22 pay for temperature checks at the start of the pandemic once it learned its policies were not
23 compliant and for which they still have not been paid.

24 50. 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
27 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
28 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for

1 each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of
2 the faulty compensation policies and practices described in detail above, Plaintiff and the other
3 aggrieved employees are entitled to recover penalties under Labor Code § 210 through PAGA.
4 *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008) (affirming an award of
5 Labor Code section 210 penalties under PAGA due to the employer’s failure to timely pay wages
6 at the proper rate in accordance with a local wage ordinance).

7 51. Under Labor Code §§ 201-202, an employer must provide an employee wages at
8 the time or discharge or within up to seventy-two (72) hours of their resignation. Labor Code §
9 203 provides “if an employer willfully fails to pay . . . any wages of an employee who is
10 discharged or who quits, the wages of the employee shall continue as a penalty. . .” for up to 30
11 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

12 52. As described in detail above, Defendants failed to pay aggrieved employees whose
13 employment concluded all wages owed, including but not limited to minimum wages, split shift
14 premiums, overtime wages, meal period premiums, and rest period premiums within the time
15 constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation. Thus,
16 as result of Defendants’ faulty policies described above, the Late Payment Aggrieved Employees
17 left their employment with Defendants without being compensated for each and every hour
18 worked at the appropriate rate in violation of Labor Code §§ 201, 202, and 203. This included
19 failing to pay for temperature checks at the start of the pandemic once it learned its policies were
20 not compliant

21 53. Labor Code § 1174 provides that each employer shall keep “payroll records
22 showing the hours worked daily by and the wages paid to...employees employed
23 at...establishments.” An employer who fails to maintain the records proscribed by Labor Code §
24 1174 is subject to a civil penalty of five hundred (\$500) dollars under Labor Code § 1174.5.

25 54. As previously explained, during the past four (4) years and within the past year,
26 Defendants failed to maintain accurate records of the total hours worked by employees or of the
27 time associated with temperature checks and medical screenings and the actual meal punches (it
28 rounded meal punches) on a regular and consistent basis in express violation of Section 7(A)(3)

of IWC Wage Order Nos. 7-2001 and 9-2001 which requires employers to record “when the employee begins and ends each work period.”:

7. RECORDS

(A) Every employer shall keep accurate information with respect to each employee including the following:

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

55. Due to Defendants’ regular and consistent practice of not recording all hours worked and estimating the time associated with temperature checks, medical screenings, and the rounding of time punches instead of recording work periods as required by the applicable IWC Wage Orders, both the time records maintained by Defendants and its payroll records do not show the actual hours worked daily by Plaintiff and the aggrieved employees. This is in addition to and separate from the time that Defendants failed to pay any compensation and also includes instances when some compensation was paid, but the time was not recorded. For instance, based upon information and belief, at some point Defendants arbitrarily added some time associated with temperature checks, but still failed to record the actual hours worked by Plaintiff and all aggrieved employees for each work period as required by the applicable IWC Wage Order. This caused Plaintiff and the other aggrieved employees time records not to actually show the total hours worked daily by each of them throughout the PAGA period in violation of Labor Code §§ 1174 and 1174.5.

56. Labor Code § 1198.5(a) provides that “every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.” Labor Code § 1198.5(b) requires the employer to “make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request.” “If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, or times agreed to by mutual agreement as provided in this section,

1 the current or former employee or the Labor Commissioner may recover a penalty of seven
2 hundred fifty dollars (\$750) from the employer.

3 57. Similarly, an employee may request a copy of their pay records within the
4 meaning of Labor Code § 226(a) in accordance with Labor Code § 226(c). Under Labor Code §
5 226(c), “an employer who receives a written or oral request to inspect or receive a copy of
6 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
7 the request as soon as practicable, but no later than 21 calendar days from the date of the request.”
8 Pursuant to Labor Code § 226(f) if an employer fails to comply with a request pursuant to Labor
9 Code § 226(f), the employer must pay the employee a penalty of seven hundred fifty dollars.

10 58. When responding to a records request, Labor Code § 226 obligates an employer to
11 provide either a duplicate of an employee’s itemized wage statements or “a computer-generated
12 record that accurately shows all of the following information:

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

25 59. In addition, Labor Code § 432 provides that “[i]f an employee or applicant signs
26 any instrument relating to the obtaining or holding of employment, he shall be given a copy of the
27 instrument upon request.” Moreover, Labor Code section 6408(d) requires an employer to
28 “[a]llow access by employees or their representatives to accurate records of employee exposures
to potentially toxic materials or harmful physical agents.” Relatedly, IWC Wage Order Nos. 7-
and 9-2001, Section (7)(A)(3) and (C) require employers to maintain and make available upon
reasonable request an employee’s time records from the past three years. (“All required records
shall be in the English language and in ink or other indelible form...for at least three years” and
“shall be available for inspection by the employee upon reasonable request.”).

60. On August 16, 2021, Plaintiff submitted a request for records under Labor Code §§ 226, 432, and 1198.5 via USPS Certified Mail (No. 7020 1810 0000 4230 5988). The USPS tracking records indicate that NBC Manteca Merchants, Inc. received the record request on August 25, 2021. Pursuant to Labor Code §§ 226, 432, 1198.5 and 6408(d) as well as his time records within the meaning of Section 7(A)(3) and (C) of the IWC Wage Order, Plaintiff's pay records were due within 21 days of the receipt of her request (September 15, 2021) and her personnel records within 30 days of receipt (September 24, 2021). However, Defendants did not timely produce Plaintiff's personnel file, or her pay records and as of the date of this filing has still not produced her pay records within the meaning of Labor Code section 226.

II.

JURISDICTION AND VENUE

61. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

62. This Court has personal jurisdiction over Defendant NBC Manteca Merchants, Inc. because Defendant has caused injuries in the County of San Joaquin and State of California through their acts, and by their violation of the California Labor Code and California law in San Joaquin County.

63. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure §395. Defendants operates within California and do business within San Joaquin County. The unlawful acts alleged herein have a direct effect on Plaintiff and the Classes within the State of California and the County of San Joaquin.

64. This case should be classified as complex according to Rule 3.400 of the California Rules of Court, and assigned to a complex litigation judge and department, as it will involve substantial documentary evidence, and is likely to involve extensive motion practice

1 raising difficult or novel issues that will be time-consuming to resolve and would require
2 substantial post judgment judicial supervision.

3 III.

4 PARTIES

5 A. PLAINTIFF

6 65. Plaintiff ANGELICA DIAZ VALDEZ is a current employee of Defendants who
7 works for Defendants in San Joaquin County.

8 66. Plaintiff and the Class were regularly required to:

9 a. Work hours without receiving compensation and/or minimum wages for all
10 hours worked;

11 b. Work overtime hours without receiving any compensation and/or the
12 proper amount of compensation;

13 c. Work without being provided lawful meal periods;

14 d. Work without being provided an accurate itemized wage statement that
15 accurately indicates the name of the legal entity that is the employer, the gross wages earned, the
16 total hours worked by the employee, the net wages earned, as well as all applicable hourly rates in
17 effect during the pay period and the corresponding number of hours worked at each hourly rate by
18 the employee;

19 B. DEFENDANTS

20 67. Defendant NBC Manteca merchants, inc. is a California corporation, with a
21 current principal place of business of 770 Cochituate Road, Framingham, MA 01701. Upon
22 information and belief, Defendant employed Plaintiff and the Classes within California and in
23 San Joaquin County, including in Manteca, California. Defendant has done and does business
24 throughout the State of California and in San Joaquin County.

25 68. The true names and capacities, whether individual, corporate, associate, or
26 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
27 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
28 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants

1 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
2 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
3 capacities of the Defendants designated hereinafter as DOES when such identities become
4 known.

5 69. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
6 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
7 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
8 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
9 employer and/or joint employer of Plaintiff and the Class and/or as alter egos of each other.

10 IV.

11 CLASS ACTION ALLEGATIONS

12 70. Plaintiff brings this action on behalf of herself and all others similarly situated as a
13 Class Action pursuant to §382 of the Code of Civil Procedure. Plaintiff seeks to represent a Class
14 and Subclasses composed of and defined as follows:

- 15 (1) all individuals who were employed by NBC MANTECA MERCHANTS, INC.
16 as a non-exempt, hourly employee in California for one or more pay periods
17 from April 2, 2017 and continuing into the present; (NBC Manteca Class)⁷
- 18 (2) all non-exempt, hourly employees who were employed by NBC MANTECA
19 MERCHANTS, INC. at 912 Spreckles Ave, Manteca, CA 95336 at any point
20 from April 2, 2017 and continuing into the present. ("Spreckles Ave Class");⁸

21 Collectively, Classes one (1) and two (2) may be referred to as the "Class."

- 22 (3) all individuals who were employed by NBC MANTECA MERCHANTS, INC.
23 in California as a non-exempt, hourly employee or other similar position who
24 made less than 130% of the state minimum wage and who worked a shift of
25 more than eight (8) hours in a day and/or forty (40) hours in a week during a pay

26 ⁷ Judicial Council Emergency Rule No. 9 tolled the statute of limitations applicable to this action for 5 months and
27 25 days or from April 6, 2020 to October 1, 2020. "Notwithstanding any other law, the statutes of limitations and
28 repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020."

⁸ Judicial Council Emergency Rule No. 9 tolled the statute of limitations applicable to this action for 5 months and 25
days or from April 6, 2020 to October 1, 2020. "Notwithstanding any other law, the statutes of limitations and repose
for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020." PAGA's statute
of limitations is governed by the Code of Civ. Proc. § 340 such that it is subject to modification by the Judicial
Council.

1 period from April 2, 2017 and continuing into the present. ("NBC Manteca
2 Non-Exempt Overtime Subclass");

- 3 (4) all individuals who were employed by NBC MANTECA MERCHANTS, INC.
4 at 912 Spreckles Ave, Manteca, CA 95336 in California as a non-exempt,
5 hourly employee or other similar position who made less than 130% of the state
6 minimum wage and who worked a shift of more than eight (8) hours in a day
and/or forty (40) hours in a week during a pay period from April 2, 2017 and
continuing into the present. ("Spreckles Ave Non-Exempt Overtime Subclass");

7
8 Collectively, subclasses two (2) and three (3) may be referred to as the "Overtime
9 Subclass."

- 10 (5) all individuals who were employed by NBC MANTECA MERCHANTS, INC. in
11 California who worked one or more shifts of more than six (6) hours as a non-
12 exempt, hourly employee or other similar position and who made less than 130% of
the state minimum wage at any point between April 2, 2017 and continuing into the
present. ("NBC Manteca First Meal Period Subclass");⁹

- 13
14 (6) all individuals who were employed by NBC MANTECA MERCHANTS, INC. in
15 California who worked one or more shifts of more than six (6) hours as a non-
16 exempt, hourly employee or other similar position at 912 Spreckles Ave, Manteca,
17 CA 95336 and who made less than 130% of the state minimum wage at any point
from April 2, 2017 and continuing into the present. ("Spreckles Ave First Meal
Period Subclass");¹⁰

- 18 (7) All individuals who were employed by NBC MANTECA MERCHANTS, INC. or its
19 predecessor, merged or related entities in California who were paid a meal and/or rest
20 period premium within the same week that they received either an incentive payment,
21 non-discretionary bonus, production bonus, efficiency bonus, or attendance bonus
from February 7, 2017 and continuing into the present. ("Meal/Rest Period Premium
22 Subclass");

23 Collectively, subclasses five (5), six (6), and seven (7) may be referred to as the "Meal
24 Period Subclass."

25
26 ⁹ This subclass does not include the time that any such class members made 130% or more of the state minimum
27 wage.

28 ¹⁰ This subclass does not include the time that any such class members made 130% or more of the state minimum
wage.

1 (8) all individuals who were employed by NBC MANTECA MERCHANTS, INC.
2 as a non-exempt, hourly employee in California for one or more pay periods
3 from April 2, 2020 and continuing into the present; (NBC Manteca Class)

4 (9) all non-exempt, hourly employees who were employed by NBC MANTECA
5 MERCHANTS, INC. at 912 Spreckles Ave, Manteca, CA 95336 at any point
6 from April 2, 2020 and continuing into the present. ("Spreckles Ave Class");

7 Collectively, subclasses eight (8) and nine (9) may be referred to as the "Wage Statement
8 Subclass."

9 71. This is also a representative action brought pursuant to Labor Code § 2698, *et seq.*,
10 on behalf of the State of California and several groups of aggrieved employees defined as
11 follows:

12 (1) all non-exempt, hourly employees who were employed by NBC Manteca
13 Merchants, Inc. in California at any point from February 20, 2020 and
14 continuing into the present. ("Non-Exempt Aggrieved Employees");¹¹

15 (2) all non-exempt, hourly employees who were employed by NBC Manteca
16 Merchants, Inc. at 912 Spreckles Ave, Manteca, CA 95336 at any point from
17 February 20, 2020 and continuing into the present. ("912 Spreckles Ave
18 Aggrieved Employees");¹²

19 (3) all individuals who were employed by NBC Manteca Merchants, Inc. in
20 California as a non-exempt, hourly employee or other similar position and who
21 worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a
22 week during a pay period from February 20, 2020 and continuing into the
23 present. ("Overtime Aggrieved Employees");

24 (4) all individuals who were employed by NBC Manteca Merchants, Inc. in
25 California who worked one or more shifts of more than six (6) hours as a non-

26 ¹¹ Judicial Council Emergency Rule No. 9 tolled the statute of limitations applicable to this action for 5 months and
27 25 days or from April 6, 2020 to October 1, 2020. "Notwithstanding any other law, the statutes of limitations and
28 repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020." PAGA's
statute of limitations is governed by the Code of Civ. Proc. § 340 such that it is subject to modification by the Judicial
Council.

¹² Judicial Council Emergency Rule No. 9 tolled the statute of limitations applicable to this action for 5 months and
25 days or from April 6, 2020 to October 1, 2020. "Notwithstanding any other law, the statutes of limitations and
repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020." PAGA's
statute of limitations is governed by the Code of Civ. Proc. § 340 such that it is subject to modification by the Judicial
Council.

1 exempt, hourly employee or other similar position from February 20, 2020 and
2 continuing into the present. ("Meal Period Aggrieved Employees");

3 (5) all individuals who were employed by NBC Manteca Merchants, Inc. in
4 California as a non-exempt hourly employee, or other similar position, who
5 worked one or more shifts of more than four (4) hours in length or major
6 fraction thereof from February 20, 2020 and continuing into the present. ("Rest
Period Aggrieved Employee");

7 (6) all individuals who were employed by NBC Manteca Merchants, Inc. for one or
8 more pay periods in California as a non-exempt, hourly employee and whose
9 employment concluded at any time between February 20, 2020 and continuing
into the present. ("Late Payment Aggrieved Employees");

10 Collectively, these groups may all collectively be referred to herein as aggrieved employees
11 and/or all aggrieved employees where appropriate

12 72. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to
13 amend or modify the class description with greater specificity, by division into subclasses, or by
14 limitation to particular issues.

15 73. This action has been brought and may properly be maintained as a class action
16 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
17 community of interest in the litigation and the Proposed Classes are easily ascertainable.

18 **A. Numerosity**

19 74. The potential members of the Proposed Classes as defined are each so numerous
20 that joinder of all the members of the Proposed Classes is impracticable. While the precise
21 number of proposed Class Members in each Class has not been determined at this time, Plaintiff
22 is informed and believes that Defendants currently employ, and during the relevant time periods
23 employed to be more than 100 members or more of the Proposed Class and Subclasses at any
24 given time.

25 75. Plaintiff alleges that Defendants' employment records would provide information
26 as to the number and location of all Proposed Class members. Joinder of all members of the
27 Proposed Class and Subclasses is not practicable.

28 ///

1 **B. Commonality**

2 76. There are questions of law and fact common to the Proposed Classes¹³ that
3 predominate over any questions affecting only individual Proposed Class Members. These
4 common questions of law and fact include, without limitation:

5 a. Whether Defendants failed to pay minimum wages for all hours worked as
6 required by Labor Code §§ 1194, 1194.2, and 1197 as well as IWC Wage Order Nos. 7-2001 and
7 9-2001 to the Class;

8 b. Whether Defendants failed to pay wages and/or overtime compensation
9 and at the correct rate as required by Labor Code § 510 to the Overtime Subclass

10 c. Whether Defendants violated Labor Code §§ 226.7 and IWC Wage Order
11 Nos. 7-2001 and 9-2001, by failing to authorize and permit First Meal Period Class Members to
12 take a timely meal period within the first five (5) hours of their shift as well as their failure to pay
13 the Meal Period Subclass one additional hour of pay at the employees' at their regular rate of
14 compensation when they did not receive a compliant meal period;

15 d. Whether Defendants violated Labor Code § 226(a) and (e) by failing to
16 provide an accurate itemized wage statements that accurately indicate, the name of the legal entity
17 that is the employer, the gross wages earned, all deductions from wages, the net wages earned, as
18 well as all applicable hourly rates in effect during the pay period and the corresponding number
19 of hours worked at each hourly rate by the employee to the Wage Statement Subclass;

20 e. Whether Defendants violated § 17200 et seq. of the Business & Professions
21 Code by engaging in the acts previously alleged against the Class;

22 **C. Typicality**

23 77. The claims of Plaintiff are typical of the claims of the Proposed Class and
24 Subclasses. Plaintiff and all members of the Proposed Class and Subclasses sustained injuries
25 and damages arising out of and caused by Defendants' common course of conduct in violation of
26 laws, regulations that have the force and effect of law, and statutes as alleged herein.

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28 ¹³ Plaintiff reserves his right to designate subclasses within the Classes including designating an Unfair Competition subclass for each class.

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1 of a wage less than the minimum wage fixed by an order of the commission,
2 an employee shall be entitled to recover liquidated damages in an amount
3 equal to the wages unlawfully unpaid and interest thereon.

4 84. As set forth above, during statutory period applicable to the claims in this action,
5 including within the past year, and continuing into the present, Plaintiff and the Class were not
6 compensated for all hours worked as a result of Defendants' policies and practices described in
7 detail above.

8 85. In failing to pay Plaintiff, Plaintiff, the Non-Exempt Class, and the Piece Rate
9 Class for all hours worked, for the reasons described above, Defendants willfully and
10 intentionally violated Labor Code § 1194 and acted in bad faith. Accordingly, pursuant to
11 sections 1194 and 1194.2 of the California Labor Code, Plaintiff and the Class are entitled to
12 recover, either their unpaid hourly wages due, or minimum wage plus interest and/or liquidated
13 damages in an additional amount equal to the total amount of wages unlawfully withheld during
14 the Class Period.

15 **VI.**
16 **SECOND CAUSE OF ACTION**
17 **FAILURE TO PAY WAGES AND/OR OVERTIME UNDER**
18 **LABOR CODE §§ 510, 1194, and 1199**
19 **[Against All Defendants by Plaintiff and the Overtime Subclasses]**

20 86. Plaintiff, on behalf of herself, the Class, and the Overtime Subclass realleges and
21 incorporates by reference all previous paragraphs.

22 87. Labor Code § 510 requires an employer to compensate an employee who works
23 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight
24 (8) hours worked on the seventh consecutive day no less than one and one-half times the regular
25 rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate
26 employees at no less than twice the regular rate of pay when an employee works more than
27 twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.
28 In accordance with Labor Code § 1194, Plaintiff, the Class, and the Overtime Subclass could not
agree to work for a lesser wage.

1 88. In addition, Labor Code § 1197 states the California requirement that employees
2 must be paid at least the minimum wage fixed by the Commission or by any applicable state or
3 local law, and any payment of less than the minimum wage is unlawful.

4 89. Similarly, Labor Code § 1198 provides that “the maximum hours of work and the
5 standard conditions of labor fixed by the commission shall be the maximum hours of work and
6 the standard conditions of labor for employees. The employment of any employee for longer
7 hours than those fixed by the order or under conditions of labor prohibited by the order is
8 unlawful.”

9 90. This Complaint does not seek any overtime related damages for employees making
10 30% or more than the state minimum wage. Based upon information and belief, at no point
11 during her employment did Plaintiff receive a regular hourly rate of pay that was more than 30%
12 percent more than the state minimum wage.

13 91. In addition, Labor Code § 1197 states the California requirement that employees
14 must be paid at least the minimum wage fixed by the Commission or by any applicable state or
15 local law, and any payment of less than the minimum wage is unlawful.

16 92. Similarly, Labor Code § 1198 provides that “the maximum hours of work and the
17 standard conditions of labor fixed by the commission shall be the maximum hours of work and
18 the standard conditions of labor for employees. The employment of any employee for longer
19 hours than those fixed by the order or under conditions of labor prohibited by the order is
20 unlawful.”

21 93. As discussed in detail above, at times during the four (4) years prior to the filing of
22 this Complaint and within the past year, Defendants engaged in a common policy and practice
23 since the onset of the COVID-19 pandemic of requiring Plaintiff and the Overtime Subclass to
24 undergo temperature checks and other medical screenings while off-the-clock for which they did
25 not receive compensation in violation of Labor Code §§ 1194 and 510 for at least part of the
26 COVID-19 pandemic. This includes, but is not limited, to requiring Plaintiff and the Overtime
27 Subclass to undergo temperature checks before the start of their shifts for which they did not
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1 receive compensation and/or for the time spent waiting in line to undergo such temperature
2 checks.

3 94. Since Plaintiff and the Overtime Subclass later worked eight (8) hours aside from
4 the off-the-clock time associated with temperature checks, many of the hours worked by Plaintiff
5 and the Overtime Subclass were misclassified as regular hours instead of overtime hours resulting
6 in the underpayment of overtime wages in addition to the failure to pay for all hours worked.
7 Such conduct violated Labor Code § 510.

8 95. Based upon information and belief, at times during the four (4) years prior to the
9 filing of this Action and within the past year, Defendants also failed to include additional
10 compensation other than Plaintiff and the Overtime Subclass members' base rate, when
11 calculating and paying overtime.

12 96. Based upon information and belief, at times during the four (4) years prior to the
13 filing of this Action and within the past year, Defendants failed to pay Plaintiff and the Overtime
14 Subclass members at one and one-half times their regular rate and instead underpaid their
15 overtime wages.

16 97. Defendants conduct, as described above was willful.

17 98. As a result of the unlawful acts of Defendants, Plaintiff and the Overtime Subclass
18 have been deprived of wages and/or overtime in amounts to be determined at trial, and are
19 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and
20 costs.

21 VII.

22 THIRD CAUSE OF ACTION

23 **FAILURE TO PROVIDE LAWFUL MEAL PERIODS PURSUANT TO LABOR CODE**

24 **§§ 226.7 and 512; IWC WAGE ORDER NO. 6-2001, § 11**

25 **[Against All Defendants by Plaintiff, the Class, and the Meal Period Subclass]**

26 99. Plaintiff, on behalf of herself, the Class, and the Meal Period Subclass, realleges
27 and incorporates by reference all previous paragraphs.

28 100. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
compensation for each non-compliant meal period an employer fails to provide. Employees are
entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be

provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours.

101. At points within the past four (4) years including within the past year, Plaintiff, the Class, and the Meal Period Subclass consistently worked shifts over six (6) hours and did not receive timely first meal periods within the first five (5) hours of their shifts.

102. At points within the past four (4) years including within the past year, Plaintiff, the Class, and the Meal Period Subclass consistently worked shifts over six (6) hours and did not receive timely first meal periods within the first five (5) hours of their shifts.

103. During the statutory period applicable to their claims, Plaintiffs and the Proposed Meal Period were not compensated with one (1) hours' worth of pay at their regular rate of compensation when they were not provided with a compliant meal period or at the proper rate based upon Defendants' unlawful compensation policies detailed above.

104. At times during the past four (4) years and within the past year, on the rare occasion, if any, that Defendants paid a meal period premium, Defendants had a common policy and practice of failing to include compensation associated with incentive payments, non-discretionary bonuses, production bonuses, efficiency bonuses, or attendance bonuses. Instead of paying meal/rest period premiums at employees' regular rates, on the rare occasions that Plaintiff, the Class and the Meal Period Subclass received a meal period premium, Defendants improperly paid the premium at the employee's hourly base rate instead of at their regular rate.

105. Plaintiff contends that Defendants' policies and practices as alleged above violated Labor Code § 226.7 consistent with the California Supreme Court's decision in *Ferra v. Loews Hollywood Hotel, LLC*, No. S259172) ___ Cal.5th ___ 2021 Cal. LEXIS 4877 (July 15, 2021) ("we hold that the term 'regular rate of compensation' in section 226.7(c) has the same meaning of regular rate of pay' in section 510(a) and encompasses not only hourly wages, but all nondiscretionary payments for work performed by the employee.").

106. Pursuant to Labor Code §226.7, Plaintiffs and the Proposed Meal Period Subclass members are entitled to damages in an amount equal to one (1) hour of wages per non-compliant meal break, per day in a sum to be proven at trial.

VIII.
FOURTH CAUSE OF ACTION
PENALTIES AND INJUNCTIVE RELIEF PURSUANT TO LABOR CODE § 226(e) and
226(h)
[Against all Defendants on behalf of Plaintiff and the Wage Statement Subclass]

107. Plaintiff, on behalf of herself and the Wage Statement Subclass, realleges and incorporates by reference all previous paragraphs and all subsequent paragraphs.

108. From at least one (1) year prior to the filing of this action and continuing into the present, Defendants knowing and intentionally failed to provide accurate itemized wage statements to Plaintiff and the Wage Statement Subclass in accordance with Labor Code § 226(a)(1, 2, 5, 8, and 9). 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...;
- (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...

Similarly, Labor Code § 226(e) provides:

- (e) (1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.
- (2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.
- (B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

- (i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).
- (ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision

1 alters the ability of the employer to aggregate deductions consistent with the
2 requirements of item (4) of subdivision (a).

3 (iii) The name and address of the employer and, if the employer is a farm labor
4 contractor, as defined in subdivision (b) of Section 1682, the name and address of
5 the legal entity that secured the services of the employer during the pay period.

6 (iv) The name of the employee and only the last four digits of his or her social
7 security number or an employee identification number other than a social security
8 number.

9 109. Due to Defendants' failure to pay Plaintiff and the Class all minimum wages, all
10 overtime wages, all meal period premiums (including at the proper rates), all rest period
11 premiums (including at the proper rates), the wage statements issued by Defendants to Plaintiff
12 and the Wage Statement Subclass do not indicate the correct amount of gross wages earned, the
13 total hours worked, the net wages earned, all applicable hourly rates in effect during the pay
14 period and the corresponding number of hours worked at each hourly rate. Thus, Defendants have
15 violated Labor Code §226(a)(1), (2), (5), and (9) with respect to Plaintiff and the Wage Statement
16 Subclass.

17 110. In addition, the wage statements issued to Plaintiff and the Wage Statement
18 Subclass, did not include the total hours worked by the employee or even what their time records
19 reflected that they worked in violation of Labor Code § 226(a)(2). As previously explained, in
20 express violation of Section 7(A)(3) of IWC Wage Order Nos. 7-2001 and 9-2001 which requires
21 employers to record "when the employee begins and ends each work period," based upon
22 information and belief, at some later point during the period applicable to this complaint and the
23 COVID-19 pandemic, Defendants started providing some compensation for medical screenings
24 and temperature checks. However, instead of recording the actual time worked by Plaintiff, the
25 Class, or the Wage Statement Subclass when it implemented this policy, Defendants instead
26 arbitrarily compensated Plaintiff and the Class for a set amount of time without even informing
27 them it was doing so, an opportunity to report a different amount of time, and failed to actually
28 record the actual hours worked. As such, regardless of whether or not Defendants compensated
the Class for such time during part of the applicable period—which Plaintiff and the Class dispute
at least in part and/or that it was sufficient—their wage statements still did not list either the total

1 number of hours they worked or the number of hours reflected in their time records in violation of
2 Labor Code section 226(a)(2).

3 111. Further, Defendants also engaged in a common pattern and practice of rounding
4 meal period punches such that they did not receive minimum wages for all hours worked,
5 overtime wages for the improperly rounded time punches, did not receive meal period premiums
6 for rounded time punches, and/or proper and lengthy meal periods. As a result and separately due
7 to this practice Plaintiff and the Wage Statement Subclass routinely received itemized wage
8 statements that did not include the correct number of total hours worked in violation of Labor
9 Code § 226 or the total wages earned in violation of Labor Code § 226(a)(9).

10 112. Within the past year, Defendants also issued itemized wage statements to Plaintiff
11 and the Wage Statement Subclass that did not include the legal name of the entity that is the
12 employer. Recently, in *Noori v. Countrywide Payroll & HR Solutions, Inc.*, 43 Cal.App.5th 957,
13 966 (2019), the California Court of Appeal found that the employer violated Labor Code § 226 if
14 it altered the employer's name where confusion might ensue. The Court of Appeal went on to
15 provide several examples of what it considered to be improper alterations such as listing "First
16 Transit and a logo, instead of "First Transit Transportation, LLC" where a different entity 'First
17 Transit, Inc.' also exists' and use of "Wal-Mart Associates, Inc. instead of Wal-Mart Stores, Inc."
18 *Id.*

19 113. Within the past year, the wage statements issued to Plaintiff and the other
20 aggrieved employees included the name of the non-existent entity NBC Manteca CA, without
21 providing any information about the name of the employer itself. Even more confusingly,
22 Plaintiff and the other aggrieved employees wage statements included logos that said TJX and T-
23 J-Maxx, but neither were the legal entity that is the employer or a dba or abbreviation for
24 Defendant. Indeed, Defendant does not do business under the name of NBC Manteca CA, but
25 instead, as indicated on the sign on its building does business under another name Marmaxx or
26 Marmaxx Shipping Center.

27 114. to Defendants' failure to identify themselves as Plaintiff's employer and their use
28 of the dba of Marmaxx, Plaintiff falsely believed her employer to be Marmaxx. Simply put, there

are 3 different names on Plaintiff and the Wage Statement Subclass' Wage Statements none of which are the name of her employer nor even the dba that it uses of Marmaxx. It was not possible to determine from the wage statement alone who Plaintiff's or the Wage Statement Subclass members' employer was. Whether it was TJ Maxx, TJX, the non-existent entity NBC Manteca CA—which is not an abbreviation of NBC Manteca Merchants, Inc.—but a combination of different words altogether and not the dba/alternative name of Marmaxx used by Defendant. Further, there are several additional similarly named entities including but not limited to NBC Merchants, Inc., NBC Apparel, Inc., NBC Apparel, LLC, Newton Buying Company of CA, Inc. whose initials would also be NBC and operates out of the same address.

115. At all times relevant hereto, TJ Maxx and/or TJX were retail businesses and were not in the same business as Defendant NBC Manteca Merchants, Inc. which is a warehousing company according to its own filings with the California Secretary of State:

6. Type of Business: Warehousing

By signing this document, I certify that the information is true and correct and that I am authorized by California law to sign.

Electronic Signature: Kelly Lettmann

116. Defendant also represents and warrants in its disclosures to the SEC that NBC Manteca Merchants, Inc. is a separate subsidiary of the TJX Companies, Inc. and there is another Marmaxx Operating Corp. with the same name as the dba of NBC Manteca Merchants, Inc.

117. According to SEC filings, there is no other name under which NBC Manteca Merchants, Inc. does business under—which is not actually true as does business under the name Marmaxx at the location that Plaintiff worked at:

SUBSIDIARIES

All of the following subsidiaries are either directly or indirectly owned by The TJX Companies, Inc.

Operating Subsidiaries	State or Jurisdiction of Incorporation or Organization	Name Under Which Does Business (if Different)
NBC Attire Inc.	Massachusetts	
Newton Buying Corp.	Delaware	
NBC Distributors Inc.	Massachusetts	
NBC Merchants, Inc.	Indiana	
NBC Charlotte Merchants, Inc.	North Carolina	
NBC Nevada Merchants, Inc.	Nevada	
NBC Philadelphia Merchants, Inc.	Pennsylvania	
NBC Pittston Merchants, Inc.	Pennsylvania	
NBC Houston Merchants, Inc.	Texas	
NBC Manteca Merchants, Inc.	California	
TJX Incentive Sales, Inc.	Virginia	
Marmaxx Operating Corp.	Delaware	TJMaxx Marshalls

1 Available on the SEC website at:

2 <https://www.sec.gov/Archives/edgar/data/109198/000095012311030274/b83553exv21.htm>

3 118. In addition to violating Labor Code § 226(a), Defendants also knowingly and
4 intentionally failed to pay Plaintiff, the Class, and the Wage Statement Subclass all minimum
5 wages, overtime wages, meal period premiums, and rest periods premiums including at the proper
6 rates.

7 119. Moreover, Plaintiff and the Wage Statement Subclass also suffered legal “injury”
8 for purposes of Labor Code section 226(e) insofar as they were unable to readily and easily
9 determine from the wage statements themselves the information required to be set forth by
10 Section 226(a), the information provided by Defendants were confusing and inaccurate. In
11 addition, Plaintiff and the aggrieved employees were unable to determine at all the total hours
12 worked by the employee, the gross wages earned, the net wages earned, and all applicable hourly
13 rates in effect during the pay period and the corresponding number of hours worked at each
14 hourly rate by the employee for the reasons discussed above.

15 120. Due to Defendants’ failure to pay Plaintiff and the Wage Statement Class all
16 overtime wages, all rest period premiums, and meal period premiums, the wage statements issued
17 by Defendant do not indicate the correct amount of gross wages earned, the total hours worked,
18 the net wages earned, all applicable hourly rates in effect during the pay period and the
19 corresponding number of hours worked at each hourly rate. Thus, Defendant has violated Labor
20 Code §226(a)(1), (2), (5), and (9) with respect to Plaintiff and the Wage Statement Class.

21 121. Defendants also knowingly and intentionally failed to pay Plaintiff and the Classes
22 overtime wages owed, meal period premiums, and rest periods premiums. Moreover, Plaintiff and
23 the Wage Statement Class also suffered legal “injury” for purposes of Labor Code section 226(e)
24 insofar as they were unable to readily and easily determine from the wage statements themselves
25 the information required to be set forth by Section 226(a), the information provided by
26 Defendants was confusing and inaccurate, Plaintiff and the Wage Statement Class were unable to
27 determine at all the total hours worked by the employee, the gross wages earned, the net wages
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1 earned, and all applicable hourly rates in effect during the pay period and the corresponding
2 number of hours worked at each hourly rate by the employee for the reasons discussed above.

3 122. Moreover, Defendants undeniably knew when paying that the wage statements it
4 issued did not include the name of the legal entity that is the employer, the gross wages earned,
5 the net wages earned, and all applicable hourly rates in effect during the pay period and the
6 corresponding number of hours worked at each hourly rate by the employee for the reasons
7 discussed above. *See Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015)
8 (finding that the defendant knowingly and intentionally violated Labor Code § 226 because the
9 “[d]efendant knew that it was not providing total hours worked to plaintiff or other employees
10 paid on commission” even though it believed that employees paid solely on commission or
11 commission and salary “are exempt and therefore we do not record hours on a wage statement.”).

12 123. Defendants also failed to both comply with and create a policy that complied with
13 Labor Code § 226 prior to the filing of this lawsuit. Labor Code § 226(e)(3) provides that when
14 determining whether or not an employer’s violation of Labor Code § 226(a) was knowing and
15 intentional, “the relevant factor [is] whether the employer, prior to an alleged violation, has
16 adopted and is in compliance with a set of policies, procedures, and practices that fully comply
17 with this section.” Accordingly, Defendants’ conduct was knowing and intentional within the
18 meaning of Labor Code § 226(e).

19 124. An employee suffering injury as a result of a knowing and intentional failure by an
20 employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual
21 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
22 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
23 an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
24 reasonable attorneys’ fees. *See Lab. Code § 226(e)*. Plaintiff and the Wage Statement Class seek
25 penalties under Labor Code § 226(e) in amounts to be determined at trial, and are entitled to
26 recovery of such amounts, attorneys’ fees, and costs.

125. Labor Code § 226(h) provides that an employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees.

126. Plaintiff is a current employee of Defendant and is entitled to an injunction on behalf of herself and the other current Wage Statement Subclass Members' to compel Defendant to issue itemized wage statements to her and the other current employees that comply with Labor Code § 226 and corrects the deficiencies identified above.

IX.
FIFTH CAUSE OF ACTION
VIOLATIONS OF LABOR CODE § 226(f) and (h)
[Against all Defendants on behalf of Plaintiff]

127. Plaintiff, on behalf of herself, realleges and incorporates by reference all previous paragraphs.

128. Section 226 of the Labor Code provides, in relevant part:

An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request.

129. Labor Code § 226 provides that a failure by an employer to permit a current or former employee to inspect or receive a copy of records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.

130. Relatedly, Labor Code § 226(h) authorizes an employee to bring an action for violation of Labor Code § 226 and to obtain an award of costs and reasonable attorney's fees and injunctive relief.

131. On August 16, 2021, Plaintiff submitted a request for records under Labor Code §§ 226, 432, and 1198.5 via USPS Certified Mail (No. 7020 1810 0000 4230 5988). The USPS tracking records indicate that NBC Manteca Merchants, Inc. received the record request on August 25, 2021. Pursuant to Labor Code §§ 226, 432, 1198.5 and 6408(d) as well as his time records within the meaning of Section 7(A)(3) and (C) of the IWC Wage Order, Plaintiff's pay records were due within 21 days of the receipt of her request (September 15, 2021) and her personnel records within 30 days of receipt (September 24, 2021). However, Defendants did not

1 timely produce Plaintiff's personnel file, or her pay records and as of the date of this filing has
2 still not produced her pay records within the meaning of Labor Code section 226.

3 132. Based upon the foregoing, Defendants' violated Labor Code section 226 by not
4 providing a copy of the requested records within 21 days.

5 133. Pursuant to Labor Code § 226(f) and (h) Plaintiff is entitled to collect a Seven
6 Hundred and Fifty dollars (\$750) penalty, an injunction compelling the production of his pay
7 records within the meaning of Labor Code § 226(a) and an award of costs and reasonable
8 attorney's fees to enforce this provision, in a sum to be proven at trial.

9 **X.**
SIXTH CAUSE OF ACTION
PENALTIES PURSUANT TO LABOR CODE § 1198.5(k) AND
10 **INJUNCTIVE RELIEF PURSUANT TO LABOR CODE § 1198.5(l)**
11 **[Against all Defendants on behalf of Plaintiff]**

12 134. Plaintiff realleges and incorporates by reference all previous paragraphs.

13 135. Section 1198.5 of the Labor Code specifically authorizes, in relevant part:

14 Every current and former employee, or his or her representative, has the right to inspect
15 and receive a copy of the personnel records that the employer maintains relating to the
employee's performance or to any grievance concerning the employee.

16 136. Labor Code § 1198.5(k) further provides that if an employer fails to permit a
17 current or former employee, or his or her representative, to inspect or copy personnel records
18 within the times specified in this section, or times agreed to by mutual agreement as provided in
19 this section, the current or former employee or the Labor Commissioner may recover a penalty of
20 seven hundred fifty dollars (\$750) from the employer.

21 137. Labor Code § 1198.5(l) also entitles a current and/or former employee to bring an
22 action for injunctive relief and to recover costs and reasonable attorney's fees in such an action.

23 138. On August 16, 2021, Plaintiff submitted a request for records under Labor Code §§
24 226, 432, and 1198.5 via USPS Certified Mail (No. 7020 1810 0000 4230 5988). The USPS
25 tracking records indicate that NBC Manteca Merchants, Inc. received the record request on
26 August 25, 2021. Pursuant to Labor Code §§ 226, 432, 1198.5 and 6408(d) as well as his time
27 records within the meaning of Section 7(A)(3) and (C) of the IWC Wage Order, Plaintiff's pay
28 records were due within 21 days of the receipt of her request (September 15, 2021) and her

1 personnel records within 30 days of receipt (September 24, 2021). However, Defendants did not
2 timely produce Plaintiff's personnel file, or her pay records and as of the date of this filing has
3 still not produced her pay records within the meaning of Labor Code section 226.

4 139. Pursuant to Labor Code § 1198.5, Plaintiff is entitled to collect a Seven Hundred
5 and Fifty dollars (\$750) penalty, an injunction compelling the production of his personnel records
6 within the meaning of Labor Code § 1198.5 and an award of costs and reasonable attorney's fees
7 to enforce this provision, in a sum to be proven at trial.

8 **XI.**
9 **SEVENTH CAUSE OF ACTION**
10 **UNFAIR COMPETITION PURSUANT TO**
11 **BUSINESS & PROFESSIONS CODE § 17200**
12 **[Against all Defendants on behalf of Plaintiff and the Class]**

13 140. Plaintiff, on behalf of herself and the Class realleges and incorporates by reference
14 all previous paragraphs.

15 141. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of herself,
16 on behalf of the general public, and on behalf of the Proposed Classes, bring this claim pursuant
17 to Business & Professions Code § 17200, et seq. The conduct of Defendants as alleged in this
18 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general
19 public, and the Proposed Classes. Plaintiff seeks to enforce important rights affecting the public
20 interest within the meaning of Code of Civil Procedure § 1021.5. Plaintiff is a "person" within the
21 meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause
22 of action for injunctive relief, restitution, and other appropriate equitable relief.

23 142. Defendants have engaged in unlawful and unfair business practices that violate
24 fundamental public policies of the state of California and the United States of America As a result
25 of its unlawful and unfair business practices, Defendants have forced employees to work under
26 substandard and unlawful conditions in an effort to gain a competitive advantage over law-
27 abiding employers who comply with California's Labor Code.

28 143. Defendants have violated statutes and public policies as alleged herein. Through
the conduct alleged in this Complaint, Defendants have acted contrary to these public policies,
have violated specific provisions of the Labor Code, and have engaged in other unlawful and

1 unfair business practices in violation of Business & Profession Code § 17200, et seq., depriving
2 Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and
3 privileges guaranteed to all employees under law.

4 144. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
5 violation of § 17200 et seq. of the Business & Professions Code.

6 145. Defendants, by engaging in the conduct herein alleged, either knew or in the
7 exercise of reasonable care, should have known that the conduct was unlawful. As such it is a
8 violation of § 17200 et seq. of the Business & Professions Code.

9 146. As a proximate result of the above-mentioned acts of Defendants, Plaintiff, the
10 Class, others similarly situated, other businesses, and the general public have been damaged in a
11 sum as may be proven.

12 147. As part of their claims against Defendant, Plaintiffs seek not only the unpaid
13 wages, but also the market value of the loss of the statutory protections and the cost to other
14 employers of providing proper pay, breaks, and complying with the California Labor Code
15 provisions identified herein. *See e.g. Safeway, Inc. v. Sup. Ct.*, 238 Cal.App.4th 1138, 1162
16 (2015).

17 148. Unless restrained, Defendants will continue to engage in the unlawful conduct as
18 alleged above. Pursuant to the Business & Professions Code, this court should make such orders
19 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or
20 employment by Defendants, its agents, or employees, of any unlawful or deceptive practices
21 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution
22 and disgorgement of profits which may be necessary to restore Plaintiff and members of the
23 Proposed Classes the money Defendants have unlawfully failed to pay.

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1 XII.

2 EIGHTH CAUSE OF ACTION

3 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**
4 **FOR PENALTIES PURSUANT TO LABOR CODE § 2698, ET SEQ. FOR VIOLATIONS**
5 **OF LABOR CODE §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 432, 510, 512, 558, 1174,**
6 **1174.5, 1194, 1197, 1197.1, 1198, 1198.5, and IWC Wage Order Nos. 7-2001 and 9-2001**

7 149. Plaintiff, on behalf of the State of California, realleges and incorporates by
8 reference all previous paragraphs.

9 150. Plaintiff filed his PAGA Notice online with the Labor Workforce Development
10 Agency ("LWDA") and sent a letter by certified mail to Defendants setting forth the facts and
11 theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.*
12 As required by PAGA, Plaintiff submitted the \$75.00 filing fee to the LWDA. Pursuant to Labor
13 Code § 2699.3(a)(2)(A), no notice was received and/or will have been received by Plaintiff from
14 the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of the
15 postmark date of the PAGA notice. Plaintiff is therefore, entitled to commence and proceed with
16 a civil action pursuant to Labor Code § 2699.

17 151. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
18 § 2698, *et seq.* because of Defendants' violations of Labor Code §§ 201, 202, 203, 204, 210, 226,
19 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, and IWC Wage Order Nos.
20 7-2001 and 9-2001

21 152. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and
22 all other aggrieved employees are entitled to penalties in an amount to be shown at the time of
23 trial subject to the following formula unless a civil penalty is already proscribed under the Labor
24 Code:

25 \$100 for the initial violation per employee per pay period; and

26 \$200 for each subsequent violation per employee per pay period.

27 153. These penalties will be allocated 75% to the Labor Workforce Development
28 Agency and 25% to the affected employees. These penalties may be stacked separately for each
of Defendants violations of the California Labor Code. *See e.g. Kaanaana v. Barrett Business*
Services, Inc., 29 Cal.App.5th 778, 808 (2018) (acknowledging that the employees could get

1 separate PAGA penalties for interrupted meal periods because interrupted meal periods violated
2 Labor Code sections 1194 and 512 and remanding to the trial court to determine the amount of
3 PAGA penalties to award); *Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx)
4 2012 U.S. Dist. LEXIS 86975, at *59, fn. 77 (C.D. Cal. June 22, 2012) (holding that although the
5 plaintiff did not seek stacked PAGA penalties, that “PAGA penalties can be ‘stacked,’ i.e.,
6 multiple PAGA penalties can be assessed for the same pay period for different Labor Code
7 violations.”); *accord Schiller v. David's Bridal, Inc.*, No. 1:10-cv-00616 AWI SKO) 2010 U.S.
8 Dist. LEXIS 81128, at *17 (E.D. Cal. July 14, 2010); *Pulera v. F & B, Inc.*, No. 2:08-cv-00275-
9 MCE-DAD, 2008 U.S. Dist. LEXIS 72659, 2008 WL 3863489, at * 2-3 (E.D. Cal. Aug. 19,
10 2008); *Smith v. Brinker Intern, Inc.*, No. C 10-0213 VRW, 2010 U.S. Dist. LEXIS 54110, 2010
11 WL 1838726, at * 2-6 (N.D. Cal. May 5, 2010).

12 154. In addition, Plaintiff and the aggrieved employees seek the default penalty
13 provided by Labor Code § 226.3. Labor Code § 226.3 provides that “[a]ny employer who violates
14 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred
15 fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars
16 (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to
17 provide the employee a wage deduction statement or fails to keep the required in subdivision (a)
18 of Section 226.”

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

25 156. As a result of the faulty compensation policies and practices described in detail
26 above, the State of California is entitled to recover penalties under Labor Code § 210 through
27 PAGA.
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157. Further, Labor Code § 558 imposes a penalty upon employers “who violates, or causes to be violated...any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid...” Based upon the above factual allegations related to overtime, meal period, and rest period violations, Plaintiff and the aggrieved employees are entitled to recover civil penalties under Labor Code § 558 and not any underpaid wages under PAGA. *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019).

158. Labor Code § 1174 provides that each employer shall keep “payroll records showing the hours worked daily by and the wages paid to...employees employed at...establishments.” An employer who fails to maintain the records proscribed by Labor Code § 1174 is subject to a civil penalty of five hundred (\$500) dollars under Labor Code § 1174.5.

159. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution of wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. As set forth above, Defendants failed to compensate Plaintiff and all aggrieved employees for all overtime wages at the proper rates. Accordingly, through PAGA and to the extent permitted by law Plaintiff and all aggrieved employees are entitled to recover civil penalties for violations of Labor Code § 1197.1.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1 1. An Order that this action may proceed and be maintained as a Class Action on
2 behalf of the Classes;

3 2. For compensatory damages in the amount of unpaid minimum wages not paid to
4 Plaintiff and each Class Member from April 2, 2017 and continuing into the present as may be
5 proven;

6 3. For compensatory damages in the amount of unpaid overtime wages not paid to
7 Plaintiff, each Class Member from April 2, 2017 and continuing into the present as may be
8 proven;

9 4. For compensatory damages in the amount of Plaintiff and each Class Members
10 unpaid and/or underpaid meal period premiums from April 2, 2017 and continuing into the
11 present as may be proven;

12 5. For penalties pursuant to Labor Code § 226(e) for violations of Labor Code
13 § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs
14 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not
15 exceeding an aggregate penalty of four thousand dollars (\$4,000) for the inaccurate itemized
16 wage statements issued to Plaintiff and the Wage Statement Class from April 2, 2020 and
17 continuing into the present as may be proven;

18 6. An order enjoining Defendants and its agents, servants, and employees, and all
19 persons acting under, in concert with, or for it requiring Defendant to provide accurate itemized
20 wage statements employed within the meaning of Labor Code section 226 to Plaintiff and the
21 Wage Statement Subclass members still in accordance with Labor Code Section 226(h);

22 7. For penalties pursuant to Labor Code section 226 in the amount of Seven Hundred
23 and Fifty Dollars (\$750) and an award of attorneys' fees related to Defendants' failure to timely
24 produce Plaintiff's pay records;

25 8. An order enjoining Defendants and its agents, servants, and employees, and all
26 persons acting under, in concert with, or for it requiring Defendant to provide Plaintiff with
27 copies of her pay records within the meaning of Labor Code § 226(a), (b), (c), and (f);
28

1 9. For penalties pursuant to Labor Code section 1198.5 in the amount of Seven
2 Hundred and Fifty Dollars (\$750) and an award of attorneys' fees related to the enforcement of
3 this provision;

4 10. An order enjoining and directing Defendants and its agents, servants, and
5 employees to provide Plaintiff with and/or the right to inspect her personnel files within the
6 meaning of Labor Code § 1198.5;

7 11. For restitution for unfair competition pursuant to Business & Professions Code
8 § 17200 to Plaintiff and the Unfair Competition Class for actions, including disgorgement of
9 profits, in an amount as may be proven;

10 12. An order enjoining Defendant and its agents, servants, and employees, and all
11 persons acting under, in concert with, or for it from providing Plaintiff and the Proposed Class
12 Members proper compensation for overtime hours worked, meal period premiums, rest period
13 premiums, from failing to provide timely first meal periods within the first five (5) hours of an
14 employees shift and second meal periods when employees work more than ten (10) hours in a
15 day;

16 13. For penalties under Labor Code § 2698, *et seq.* for Plaintiff and all aggrieved
17 employees because of Defendants' violation of Labor Code §§ 201, 202, 203, 204, 210, 226,
18 226.3, 226.7, 432, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5 and IWC Wage
19 Order Nos. 7-2001 and 9-2001 and post judgment interest;

20 14. An award providing for payment of costs of suit;

21 15. An award of attorneys' fees; and

22 16. Such other and further relief as this Court may deem proper and just.

23 **DEMAND FOR JURY TRIAL**

24 Plaintiff hereby demands a trial of her claims by jury for causes of action 1-6, but not
25 claims (unfair competition) or (PAGA) for which a bench trial is required.

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1 DATED: September 27, 2021

WINSTON LAW GROUP, P.C.

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3 By: David Winston
4 DAVID S. WINSTON
5 Attorneys for Plaintiff, the Proposed
6 Class, and the aggrieved employees
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