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11 and the aggrieved employees

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF ALAMEDA**

14 LUZ SANTILLANES, an individual, on
15 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 1ST CLASS LAUNDRY, a California
21 Corporation, and DOES 1 thru 50, inclusive,

22 DEFENDANTS.

CASE NO.:

RG 21107711

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

- 26 1. Failure to Pay Overtime Wages In
Violation of Labor Code § 510
- 27 2. Failure to Provide Lawful Meal Periods
And Pay Meal Period Premiums Pursuant
to Labor Code §§ 226.7 and 512
- 28 3. Failure to Provide Lawful Rest Periods
And Pay Rest Period Premiums Pursuant to
Labor Code § 226.7
4. Violations of Labor Code § 226(e)
5. Violation of Business & Professions Code
§ 17200
6. Penalties Pursuant to Labor Code § 2699,
et seq. for violations of Labor Code §§
201, 202, 203, 204, 210, 226, 226.3, 510,
512, 558, 1174, 1174.5, 1194, 1197,
1197.1, 1198, and 2802 as well as IWC
Wage Order No. 6-2001

ENDORSED
FILED
ALAMEDA COUNTY

AUG 04 2021

CLERK OF THE SUPERIOR COURT
By Molly . Kautz
Deputy

1 Plaintiff LUZ SANTILLANES, an individual, on behalf of herself and others similarly
2 situated, complains of Defendant 1ST CLASS LAUNDRY and the Doe Defendants
3 (“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 1st Class Laundry as a non-exempt,
9 hourly employee in California for one or more pay periods from February 7,
10 2017 and continuing into the present; (Class)¹
- 11 (2) all individuals who were employed by 1st Class Laundry or its predecessor or merged
12 entities in California as a non-exempt, hourly employee or other similar position and
13 who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a
14 week during a pay period from February 7, 2017 and continuing into the present.
15 (“Non-Exempt Overtime Subclass”);
- 16 (3) all individuals who were employed by 1st Class Laundry or its predecessor, merged
17 or related entities for one or more pay periods in California as a non-exempt, hourly
18 employee and who worked a shift of more than eight (8) hours in a day and/or forty
19 (40) hours in a week during a period where they also received an incentive payments,
20 non-discretionary bonuses, production bonuses, efficiency bonuses, or attendance
21 bonuses from February 7, 2017 and continuing into the present; (“Incentive Pay
22 Overtime Subclass”);

23 Collectively, subclasses two (2) and three (3) may be referred to as the “Overtime
24 Subclass.”

- 25 (4) all individuals who were employed by 1st Class Laundry or its predecessor, merged
26 or related entities in California who worked one or more shifts of more than six (6)
27 hours as a non-exempt, hourly employee or other similar position from February 7,
28 2017 and continuing into the present. (“First Meal Period Subclass”);
- (5) all individuals who were employed by 1st Class Laundry or its predecessor, merged
or related entities in California who worked one or more shifts of more than ten (10)

¹ 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.”

hours as a non-exempt hourly employee or other similar position from February 7, 2017 and continuing into the present. (“Second Meal Period Subclass”);

- (6) All individuals who were employed by 1st Class Laundry or its predecessor, merged or related entities in California who were paid a meal and/or rest period premium within the same week that they received either an incentive payment, non-discretionary bonus, production bonus, efficiency bonus, or attendance bonus from February 7, 2017 and continuing into the present. (“Meal/Rest Period Premium Subclass”);

Collectively, subclasses four (4), five (5), and six (6) may be referred to as the “Meal Period Subclass.”

- (7) all individuals who were employed by 1st Class Laundry, or its predecessor, merged or related entities in California as a non-exempt hourly employee, or other similar position, who worked one or more shifts of more than four (4) hours in length or major fraction thereof from February 7, 2017 and continuing into the present. (“Rest Period Subclass”);

- (8) all individuals who were employed by 1st Class Laundry, or its predecessor, merged or related entities in California as a non-exempt hourly employee, or other similar position, who worked one or more shifts of more than ten (10) hours in length from February 7, 2017 and continuing into the present. (“Third Rest Period Subclass”);

Collectively, subclasses six (6), seven (7), and eight (8) may be referred to as the “Rest Period Subclass.”

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

- (1) all individuals who were employed by 1st Class Laundry or its predecessor or merged entities in California as a non-exempt, hourly employee for one or more pay periods from February 6, 2020² and continuing into the present (“Non-Exempt Aggrieved Employees”);

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 (2) all individuals who were employed by 1st Class Laundry or its predecessor or merged
2 entities in California as a non-exempt, hourly employee or other similar position and
3 who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a
4 week during a pay period from February 6, 2020 and continuing into the present.
("Non-Exempt Overtime Aggrieved Employees");

5 (3) all individuals who were employed by 1st Class Laundry or its predecessor, merged
6 or related entities for one or more pay periods in California as a non-exempt, hourly
7 employee and who worked a shift of more than eight (8) hours in a day and/or forty
8 (40) hours in a week during a period where they also received an incentive payments,
9 non-discretionary bonuses, production bonuses, efficiency bonuses, or attendance
bonuses from February 6, 2020 and continuing into the present; ("Incentive Pay
Overtime Aggrieved Employees");

10 Collectively, aggrieved employee groups two (2) and three (3) may be referred to as the
11 "Overtime Aggrieved Employees."

12 (4) all individuals who were employed by 1st Class Laundry or its predecessor, merged
13 or related entities in California who worked one or more shifts of more than six (6)
14 hours as a non-exempt, hourly employee or other similar position from February 6,
2020 and continuing into the present. ("First Meal Period Aggrieved Employees");

15 (5) all individuals who were employed by 1st Class Laundry or its predecessor, merged
16 or related entities in California who worked one or more shifts of more than ten (10)
17 hours as a non-exempt hourly employee or other similar position from February 6,
2020 and continuing into the present. ("Second Meal Period Aggrieved Employees");

18 (6) All individuals who were employed by 1st Class Laundry or its predecessor, merged
19 or related entities in California who were paid a meal and/or rest period premium
20 within the same week that they received either an incentive payment, non-
21 discretionary bonus, production bonus, efficiency bonus, or attendance bonus from
22 February 6, 2020 and continuing into the present. ("Meal/Rest Period Premium
Aggrieved Employees");

23 Collectively, aggrieved employee groups four (4), five (5), and six (6) may be referred to
24 as the "Meal Period Aggrieved Employees."

25 (7) all individuals who were employed by 1st Class Laundry, or its predecessor, merged
26 or related entities in California as a non-exempt hourly employee, or other similar
27 position, who worked one or more shifts of more than four (4) hours in length or
28 major fraction thereof from February 6, 2020 and continuing into the present. ("Rest
Period Aggrieved Employee");

1 (8) all individuals who were employed by 1st Class Laundry, or its predecessor, merged
2 or related entities in California as a non-exempt hourly employee, or other similar
3 position, who worked one or more shifts of more than ten (10) hours in length from
4 February 6, 2020 and continuing into the present. ("Third Rest Period Aggrieved
Employee");

5 Collectively, aggrieved employee groups six (6), seven (7), and eight (8) may be referred
6 to as the "Rest Period Aggrieved Employees."

7 (9) all individuals who were employed by Bui1st Class Laundry or its predecessor,
8 merged or related entities for one or more pay periods in California and whose
9 employment concluded at any time between on February 6, 2020 and continuing into
the present; ("Late Payment Aggrieved Employee");

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

12 3. Plaintiff, the Classes, and the aggrieved employees were employed by Defendant
13 1st Class Laundry, and any subsidiaries or affiliated companies and Does 1 through 50 (who
14 include individuals acting on behalf an employer within the meaning of Labor Code § 558.1)
15 within the State of California as a non-exempt, hourly employees within four (4) years of the
16 filing of the Complaint and continuing into the present.

17 4. Plaintiff is a current employee of Defendant 1st Class Laundry who worked for
18 Defendants in Alameda County. At times throughout his employment with Defendants during the
19 past four (4) years and within the past year, Plaintiff, the Classes, and the aggrieved employees
20 worked shifts in excess of six (6) hours in a day, worked shifts in excess of eight (8) hours in a
21 day, and worked shifts in excess of ten (10) hours in a day.

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

25 6. Defendants hire employees to work within the state of California who are covered
26 by California Industrial Welfare Commission Occupational Wage Order No. 6-2001. Based upon
27 information and belief, Defendants classified Plaintiff, the Classes, and the aggrieved employees
28 as non-exempt for the purposes of overtime, meal periods, and rest periods.

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

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

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

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

19 11. At times during the four (4) years prior to the filing of this Action and within the
20 past year, Defendant paid Plaintiff, the Class, the Overtime Subclass, and the other aggrieved
21 employees with non-discretionary bonuses and incentive pay—including but not limited to
22 incentive payments, non-discretionary bonus, production bonuses, efficiency bonuses, or
23 attendance bonuses—during the same workweek that they earned overtime wages, but failed to
24 include such amounts when calculating and paying overtime wages in violation of Labor Code
25 section 510.

26 12. At times during the four (4) years prior to the filing of this Action and within the
27 past year, Defendant also failed to include additional compensation other than Plaintiff, the Class
28 Members, the Overtime Subclass members, and the other aggrieved employees’ base rate, when

calculating and paying overtime. For instance, for the pay period of June 1, 2021 to June 15, 2021, Plaintiff earned a non-discretionary bonus of \$12.60, but was only paid overtime wages at the rate of one-and-one half of her hourly base rate:

Earnings	rate	hours	this period	year to date
Regular	16.5000	63.00	1,039.50	14,551.50
Overtime	24.7500	1.33	32.92	784.67
Bonus			12.60	23.80
Ca Sup Psl				520.00
Gross Pay			\$1,085.02	15,879.97

13. At times during the four (4) years prior to the filing of this Action and within the past year, Defendant failed to pay Plaintiff and all aggrieved employees overtime wages at one and one-half times their regular rate and instead underpaid their overtime wages.

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

15. Similarly, IWC Wage Order No. 6-2001 prohibits an employer from “employ[ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order No. 6-2001 further obligates employers to provide an employee to “pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided. Labor Code section 1198 prohibits an employer from requiring an employee to work beyond the “standard conditions of labor fixed by the commission...or under conditions of labor prohibited by the order.”

16. Labor Code § 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable

1 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Similarly, IWC
2 Wage Order 6-2001 prohibits an employer from “employ[ing] any person for a work period of
3 more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order 6-
4 2001 further obligates employers to provide an employee to “pay the employee one (1) hour of
5 pay at the employee’s regular rate of compensation for each workday that the meal period is not
6 provided. Accordingly, for each day that Plaintiff, the Class, and the Meal Period Subclass did not
7 receive compliant meal or rest periods, they were entitled to receive meal period premiums
8 pursuant to Labor Code § 226.7 and Wage Order No. 6-2001.

9 17. At times during the four (4) years prior to the filing of this Action and within the
10 past year, Defendants failed to authorize and permit Plaintiff, the Class Members, the Meal Period
11 Subclass Members, and the aggrieved employees to receive lawful meal periods, failed to
12 authorize and permit them to take timely first meal periods, failed to advise employees of their
13 right to take timely first meal periods, failed to authorize and permit them to take a second meal
14 period when they worked shifts in excess of ten (10) hours in a day, and/or twelve (12) hours in a
15 day. Defendant’s meal period policies and practices also disincentivized and discouraged
16 Plaintiff, the Class, the Meal Period Subclass, and the other aggrieved employees from taking
17 timely first meal periods within the first five (5) hours of their shift. Defendant’s understaffing
18 policies and practices also pressured, coerced, and forced employees to take untimely first meal
19 periods due to a lack of sufficient coverage.

20 18. At times during the past four (4) years and within the past year, Plaintiff, the Class,
21 the Meal Period Subclass, and the aggrieved employees were also not compensated with one (1)
22 hours’ worth of pay at their regular rate of compensation when they were not provided with a
23 compliant meal or rest period. This includes instances when Plaintiff, the Class, the Meal Period
24 Subclass, and the aggrieved employees were not provided with lawful timely first meal periods
25 and/or second meal periods.

26 19. At times during the past four (4) years and within the past year, on the rare
27 occasion, if any, that Defendant paid a meal period premium, Defendant had a common policy
28 and practice of failing to include compensation associated with incentive payments, non-

1 discretionary bonuses, production bonuses, efficiency bonuses, or attendance bonuses. Instead of
2 paying meal/rest period premiums at employees' regular rates, on the rare occasions that Plaintiff,
3 the Class, the Meal Period Subclass, and the aggrieved employees received a meal period
4 premium, Defendant improperly paid the premium at the employee's hourly base rate instead of
5 at their regular rate. Defendant often referred to such premiums by pay codes, including, but not
6 limited to, "Meal Prem Pay" on the itemized wage statements that it issued to Plaintiff, the Class,
7 the Meal Period Subclass, and the other aggrieved employees. Plaintiff contends that Defendant's
8 policies and practices as alleged above violated Labor Code § 226.7 consistent with the California
9 Supreme Court's decision in *Ferra v. Loews Hollywood Hotel, LLC*, No. S259172)
10 ___Cal.5th___ 2021 Cal. LEXIS 4877 (July 15, 2021) ("we hold that the term 'regular rate of
11 compensation' in section 226.7(c) has the same meaning of regular rate of pay' in section 510(a)
12 and encompasses not only hourly wages, but all nondiscretionary payments for work performed
13 by the employee.").

14 20. Labor Code § 226.7 provides "an employer shall not require an employee to work
15 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
16 regulation, standard, or order of the Industrial Welfare Commission ("IWC"). Under IWC Wage
17 Order No. 6-2001, an employer must authorize and permit all employees to take ten (10) minute
18 duty free rest periods for every major fraction of four hours worked. *See Augustus v. ABM*
19 *Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that "during rest periods employers
20 must relieve employees of all duties and relinquish control over how employees spend their
21 time.").

22 21. Pursuant to Labor Code § 226.7 and IWC Wage Order No. 6-2001, Defendant
23 failed to provide Plaintiff and all aggrieved employees with duty-free rest periods of not less than
24 ten (10) minutes for every major fraction of four (4) hours worked, including, but not limited to
25 failing to authorize and permit Plaintiff and the other aggrieved employees to receive a third rest
26 period when they worked shifts in excess of ten (10) hours per day.

22. Moreover, as a result of its understaffing practices and policies with respect to employees, it was not possible for Plaintiff, the Class, the Rest Period Subclass, and the aggrieved employees to take rest periods.

23. In addition to failing to authorize and permit compliant rest periods, Plaintiff, the Class, and the aggrieved employees were not compensated with one (1) hours' worth of pay at their regular rate of compensation when they were not provided with a compliant rest period and/or their rest period was interrupted in accordance with Labor Code § 226.7(b).

24. As to Plaintiff, the Wage Statement Class, and the aggrieved employees, Defendants also failed to provide accurate itemized wage statements in accordance with Labor Code § 226(a)(1, 2, 5, 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

1 wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision
2 (a).
3 (ii) Which deductions the employer made from gross wages to determine the net
4 wages paid to the employee during the pay period. Nothing in this subdivision
5 alters the ability of the employer to aggregate deductions consistent with the
6 requirements of item (4) of subdivision (a).
7 (iii) The name and address of the employer and, if the employer is a farm labor
8 contractor, as defined in subdivision (b) of Section 1682, the name and address of
9 the legal entity that secured the services of the employer during the pay period.
10 (iv) The name of the employee and only the last four digits of his or her social
11 security number or an employee identification number other than a social security
12 number.

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

21 26. Plaintiff, the Wage Statement Class, and the aggrieved employees also suffered
22 legal "injury" for purposes of Labor Code section 226(e) insofar as they were unable to readily
23 and easily determine from the wage statements themselves the information required to be set forth
24 by Section 226(a), the information provided by Defendants was confusing and inaccurate.

25 27. In addition, Plaintiff, the Wage Statement Class, and the aggrieved employees
26 were unable to determine at all the total hours worked by the employee, the gross wages earned,
27 the net wages earned, and all applicable hourly rates in effect during the pay period and the
28 corresponding number of hours worked at each hourly rate by the employee for the reasons
discussed above.

29 28. Defendants also knowingly and intentionally failed to pay Plaintiff and the Classes
30 minimum wages, overtime wages owed, meal period premiums, and rest periods premiums.
31 Moreover, Plaintiff and the Wage Statement Class also suffered legal "injury" for purposes of
32 Labor Code section 226(e) insofar as they were unable to readily and easily determine from the

1 wage statements themselves the information required to be set forth by Section 226(a), the
2 information provided by Defendants was confusing and inaccurate, Plaintiff, the Wage Statement
3 Class, and the aggrieved employees were unable to determine at all the total hours worked by the
4 employee, the gross wages earned, the net wages earned, and all applicable hourly rates in effect
5 during the pay period and the corresponding number of hours worked at each hourly rate by the
6 employee for the reasons discussed above.

7 29. Labor Code § 1197 states the California requirement that employees must be paid
8 at least the minimum wage fixed by the Commission or by any applicable state or local law, and
9 any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles
10 “any employee receiving less than the legal minimum wage...to recover in a civil action the
11 unpaid balance of the full amount of this minimum wage.” IWC Wage Order No. 6-2001
12 obligates employers to pay each employee minimum wages for all hours worked.

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

18 31. Within the past year, Defendant engaged in a common policy and practice of not
19 paying aggrieved employees of all hours worked, including but not limited to all off-the-clock
20 work (this could include temperature checks and responding to text messages). Defendant’s
21 failure to pay the aggrieved employees for all hours worked violated Labor Code §§ 1194, 1197,
22 1197.1, and 1198.

23 32. Labor Code §2802 provides that “[a]n employer shall indemnify his or her
24 employee for all necessary expenditures or losses incurred by the employee in direct consequence
25 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
26 even though unlawful, unless the employee, at the time of obeying the directions, believed them
27 to be unlawful.”
28

33. Within the past year, Defendant required and/or expected some aggrieved employees to use their cell phones in the normal course of their job duties. Some of the aggrieved employees were specifically directed by Defendant and/or its supervisory employees to utilize their cell phones in the discharge of their job duties for which they did not receive compensation. Defendant's conduct in requiring some of the aggrieved employees to engage in the above described activities caused them to incur losses as a direct consequence of their duties. Although some of the aggrieved employees were regularly required to and/or ordered/directed to use their own personal communication devices for work purposes, those aggrieved employees were not provided with any reimbursement for the use of their personal cell phones. Accordingly, Defendant has violated Labor Code §§ 1194, 1197, and 2802.

34. Labor Code § 204 expressly requires that "[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Pursuant to Labor Code § 204(a), "Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.

35. Within the past year, Defendant failed to maintain regular pay dates as required by Labor Code § 204. Instead of establishing set pay periods, Defendant arbitrarily paid Plaintiff and the other aggrieved employees either 2, 3, 4, or 5 days after the close of payroll:

Period Beginning:	06/01/2021	Period Beginning:	06/16/2021
Period Ending:	06/15/2021	Period Ending:	06/30/2021
Pay Date:	06/18/2021	Pay Date:	07/02/2021
Period Beginning:	05/16/2021	Period Beginning:	02/16/2021
Period Ending:	05/31/2021	Period Ending:	02/28/2021
Pay Date:	06/04/2021	Pay Date:	03/05/2021

36. Further, as discussed in detail above, within the past year Defendant failed to pay Plaintiff and all aggrieved employees minimum wages, overtime wages, meal period premiums,

1 and rest period premiums owed, Defendant failed to timely pay the aggrieved employees for labor
2 performed between the 1st and 15th days between the 16th calendar day of the month during
3 which the labor was performed on a regular and consistent basis. Moreover, as a result of the
4 conduct described in detail above, Defendant also failed to pay Plaintiff and the other aggrieved
5 employees all wages owed for labor performed between the 16th and last day between the 1st and
6 10th day of the following month on a regular and consistent basis.

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

15 38. Labor Code § 1174 provides that each employer shall keep “payroll records
16 showing the hours worked daily by and the wages paid to...employees employed
17 at...establishments.” An employer who fails to maintain the records proscribed by Labor Code §
18 1174 is subject to a civil penalty of five hundred (\$500) dollars under Labor Code § 1174.5.

19 39. As explained in detail above, Defendants failed to maintain accurate records of the
20 hours worked by the aggrieved employees within the past year, as required by Labor Code §
21 1174. Thus, Defendants violated Labor Code §§ 1174 and 1174.5.

22 40. Labor Code §§ 201-202, an employer must provide an employee wages at the time
23 or discharge or within up to seventy-two (72) hours of their resignation. Labor Code § 203
24 provides “if an employer willfully fails to pay . . . any wages of an employee who is discharged or
25 who quits, the wages of the employee shall continue as a penalty. . .” for up to 30 days.

26 41. As described in detail above, Defendant willfully failed to pay Late Payment
27 Aggrieved Employees whose employment concluded all wages owed, including but not limited to
28 minimum wages, overtime wages, meal period premiums, and rest period premiums within the

1 time constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation.
2 Thus, as result of Defendant's faulty policies described above, the Late Payment Aggrieved
3 Employees left their employment with Defendant without being compensated for each and every
4 hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, and 203.

5 42. Separate and independent of the foregoing, Defendant also failed to pay Late
6 Payment Aggrieved Employees whose employment concluded any wages within the time
7 constraints provided by Labor Code §§ 201-203. This may include but is not limited to, because
8 of Defendant's policy and practice of processing final pay checks at the same time as all
9 employees pay checks.

10 II.

11 JURISDICTION AND VENUE

12 43. This Court has subject matter jurisdiction over all causes of action asserted herein
13 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
14 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy,
15 exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the
16 laws of the State of California or is subject to adjudication in the courts of the State of California.

17 44. This Court has personal jurisdiction over Defendant 1st Class Laundry because
18 Defendant has caused injuries in the County of Alameda and State of California through their
19 acts, and by their violation of the California Labor Code and California law in Alameda County.

20 45. During the statutory period applicable to the claims at issue in this action,
21 Defendant 1st Class Laundry's principal place of business was located at 33483 Western Avenue,
22 Union City, CA 94587.

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

27 47. This case should be classified as complex according to Rule 3.400 of the
28 California Rules of Court, and assigned to a complex litigation judge and department, as it will

1 involve substantial documentary evidence, and is likely to involve extensive motion practice
2 raising difficult or novel issues that will be time-consuming to resolve and would require
3 substantial post judgment judicial supervision.

4 **III.**

5 **PARTIES**

6 **A. PLAINTIFF**

7 48. Plaintiff LUZ SANTILLANES is a current employee of Defendants who works for
8 Defendants in Alameda County.

9 49. Plaintiff and the Class were regularly required to:

- 10 a. Work overtime hours without receiving the proper amount of
11 compensation;
- 12 b. Work without being provided lawful meal periods;
- 13 c. Work without being provided lawful rest periods;
- 14 d. Work without being provided an accurate itemized wage statement that
15 accurately indicate the gross wages earned, total hours worked by the employee, the net wages
16 earned, as well as all applicable hourly rates in effect during the pay period and the corresponding
17 number of hours worked at each hourly rate by the employee;

18 **B. DEFENDANTS**

19 50. Defendant 1ST CLASS LAUNDRY is a California corporation, with a current
20 principal place of business of 33483 Western Avenue, Union City, CA 94587. Upon information
21 and belief, Defendant employed Plaintiff and the Classes within California and in Alameda
22 County, including in Union City, California. Defendant has done and does business throughout
23 the State of California and in Alameda County.

24 51. The true names and capacities, whether individual, corporate, associate, or
25 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
26 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
27 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
28 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred

1 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
2 capacities of the Defendants designated hereinafter as DOES when such identities become
3 known.

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

9 **IV.**

10 **CLASS ACTION ALLEGATIONS**

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

- 14
- 15 (1) all individuals who were employed by 1st Class Laundry as a non-exempt,
16 hourly employee in California for one or more pay periods from February 7,
2017 and continuing into the present; (the Class)³
- 17
- 18 (2) all individuals who were employed by 1st Class Laundry or its predecessor or merged
19 entities in California as a non-exempt, hourly employee or other similar position and
20 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 February 7, 2017 and continuing into the present.
21 (“Non-Exempt Overtime Subclass”);
- 22
- 23 (3) all individuals who were employed by 1st Class Laundry or its predecessor, merged
24 or related entities for one or more pay periods in California as a non-exempt, hourly
25 employee and who worked a shift of more than eight (8) hours in a day and/or forty
(40) hours in a week during a period where they also received an incentive payments,
26 non-discretionary bonuses, production bonuses, efficiency bonuses, or attendance
bonuses from February 7, 2017 and continuing into the present; (“Incentive Pay
Overtime Subclass”);

27 ³ 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.”

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

3 (4) all individuals who were employed by 1st Class Laundry or its predecessor, merged
4 or related entities in California who worked one or more shifts of more than six (6)
5 hours as a non-exempt, hourly employee or other similar position from February 7,
6 2017 and continuing into the present. ("First Meal Period Subclass");

7 (5) all individuals who were employed by 1st Class Laundry or its predecessor, merged
8 or related entities in California who worked one or more shifts of more than ten (10)
9 hours as a non-exempt hourly employee or other similar position from February 7,
10 2017 and continuing into the present. ("Second Meal Period Subclass");

11 (6) All individuals who were employed by 1st Class Laundry or its predecessor, merged
12 or related entities in California who were paid a meal and/or rest period premium
13 within the same week that they received either an incentive payment, non-
14 discretionary bonus, production bonus, efficiency bonus, or attendance bonus from
15 February 7, 2017 and continuing into the present. ("Meal/Rest Period Premium
16 Subclass");

17 Collectively, subclasses four (4), five (5), and six (6) may be referred to as the "Meal
18 Period Subclass."

19 (7) all individuals who were employed by 1st Class Laundry, or its predecessor, merged
20 or related entities in California as a non-exempt hourly employee, or other similar
21 position, who worked one or more shifts of more than four (4) hours in length or
22 major fraction thereof from February 7, 2017 and continuing into the present. ("Rest
23 Period Subclass");

24 (8) all individuals who were employed by 1st Class Laundry, or its predecessor, merged
25 or related entities in California as a non-exempt hourly employee, or other similar
26 position, who worked one or more shifts of more than ten (10) hours in length from
27 February 7, 2017 and continuing into the present. ("Third Rest Period Subclass");

28 Collectively, subclasses six (6), seven (7), and eight (8) may be referred to as the "Rest
Period Subclass."

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

(1) all individuals who were employed by 1st Class Laundry or its predecessor or merged

1 entities in California as a non-exempt, hourly employee for one or more pay periods
2 from February 6, 2020⁴ and continuing into the present (“Non-Exempt Aggrieved
3 Employees”);

4 (2) all individuals who were employed by 1st Class Laundry or its predecessor or merged
5 entities in California as a non-exempt, hourly employee or other similar position and
6 who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a
7 week during a pay period from February 6, 2020 and continuing into the present.
8 (“Non-Exempt Overtime Aggrieved Employees”);

9 (3) all individuals who were employed by 1st Class Laundry or its predecessor, merged
10 or related entities for one or more pay periods in California as a non-exempt, hourly
11 employee and who worked a shift of more than eight (8) hours in a day and/or forty
12 (40) hours in a week during a period where they also received an incentive payments,
13 non-discretionary bonuses, production bonuses, efficiency bonuses, or attendance
14 bonuses from February 6, 2020 and continuing into the present; (“Incentive Pay
15 Overtime Aggrieved Employees”);

16 Collectively, aggrieved employee groups two (2) and three (3) may be referred to as the
17 “Overtime Aggrieved Employees.”

18 (4) all individuals who were employed by 1st Class Laundry or its predecessor, merged
19 or related entities in California who worked one or more shifts of more than six (6)
20 hours as a non-exempt, hourly employee or other similar position from February 6,
21 2020 and continuing into the present. (“First Meal Period Aggrieved Employees”);

22 (5) all individuals who were employed by 1st Class Laundry or its predecessor, merged
23 or related entities in California who worked one or more shifts of more than ten (10)
24 hours as a non-exempt hourly employee or other similar position from February 6,
25 2020 and continuing into the present. (“Second Meal Period Aggrieved Employees”);

26 (6) All individuals who were employed by 1st Class Laundry or its predecessor, merged
27 or related entities in California who were paid a meal and/or rest period premium
28 within the same week that they received either an incentive payment, non-
discretionary bonus, production bonus, efficiency bonus, or attendance bonus from
February 6, 2020 and continuing into the present. (“Meal/Rest Period Premium
Aggrieved Employees”);

⁴ 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.

Collectively, aggrieved employee groups four (4), five (5), and six (6) may be referred to as the “Meal Period Aggrieved Employees.”

(7) all individuals who were employed by 1st Class Laundry, or its predecessor, merged or related entities in California as a non-exempt hourly employee, or other similar position, who worked one or more shifts of more than four (4) hours in length or major fraction thereof from February 6, 2020 and continuing into the present. (“Rest Period Aggrieved Employee”);

(8) all individuals who were employed by 1st Class Laundry, or its predecessor, merged or related entities in California as a non-exempt hourly employee, or other similar position, who worked one or more shifts of more than ten (10) hours in length from February 6, 2020 and continuing into the present. (“Third Rest Period Aggrieved Employee”);

Collectively, aggrieved employee groups six (6), seven (7), and eight (8) may be referred to as the “Rest Period Aggrieved Employees.”

(9) all individuals who were employed by Bui1st Class Laundry or its predecessor, merged or related entities for one or more pay periods in California and whose employment concluded at any time between on February 6, 2020 and continuing into the present; (“Late Payment Aggrieved Employee”);

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

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

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

A. Numerosity

57. The potential members of the Proposed Classes as defined are each so numerous that joinder of all the members of the Proposed Classes is impracticable. While the precise number of proposed Class Members in each Class has not been determined at this time, Plaintiff is informed and believes that Defendants currently employ, and during the relevant time periods

1 employed to be more than 100 members or more of the Proposed Class and Subclasses at any
2 given time.

3 58. Plaintiff alleges that Defendants' employment records would provide information
4 as to the number and location of all Proposed Class members. Joinder of all members of the
5 Proposed Class and Subclasses is not practicable.

6 **B. Commonality**

7 59. There are questions of law and fact common to the Proposed Classes⁵ that
8 predominate over any questions affecting only individual Proposed Class Members. These
9 common questions of law and fact include, without limitation:

10 a. Whether Defendants failed to pay wages and/or overtime compensation
11 and at the correct rate as required by Labor Code § 510 to the Class and the Overtime Subclass

12 b. Whether Defendants violated Labor Code §§ 226.7 and IWC Wage Order
13 No. 6-2001, by failing to authorize and permit First Meal Period Class Members to take a timely
14 meal period within the first five (5) hours of their shift, failure to provide second meal periods for
15 shifts worked in excess of ten (10) hours to the Second Meal Period Class as well as their failure
16 to pay the Meal Period Classes and the Unfair Competition Class one additional hour of pay at the
17 employees' at their regular rate of compensation when they did not receive a compliant meal
18 period;

19 c. Whether Defendants violated Labor Code § 226.7 and IWC No. 6-2001, by
20 failing to inform Plaintiff and the Proposed Rest Period Class of their right to receive a ten (10)
21 minute duty-free rest period for every four hours of work or major fraction thereof, failing to
22 authorize and permit employees' to leave the premises during rest periods and/or relieve
23 employees of all control during rest periods, and by failing to compensate said employees one (1)
24 additional hour of pay at the employee's regular rate of compensation in lieu of rest periods;

25 d. Whether Defendants violated Labor Code § 226(a) and (e) by failing to
26 provide an accurate itemized wage statements that accurately indicate, the gross wages earned, all

27 _____
28 ⁵ Plaintiff reserves his right to designate subclasses within the Classes including designating an Unfair Competition subclass for each class.

1 deductions from wages, the net wages earned, as well as all applicable hourly rates in effect
2 during the pay period and the corresponding number of hours worked at each hourly rate by the
3 employee to the Wage Statement Class;

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

6 **C. Typicality**

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

11 **D. Adequacy of Representation**

12 61. Plaintiff will fairly and adequately represent and protect the interests of the
13 members of the proposed Classes. Counsel who represents Plaintiff and the Proposed Classes is
14 competent and experienced in litigating large employment class actions, and have the financial
15 resources to litigate the claims at issue.

16 **E. Superiority of Class Action**

17 62. A class action is superior to other available means for the fair and efficient
18 adjudication of this controversy. Individual joinder of all Proposed Class Members is not
19 practicable, and questions of law and fact common to the Proposed Class predominate over any
20 questions affecting only individual members of the Proposed Class. Each member of the
21 Proposed Class has been damaged and is entitled to recovery by reason of Defendants' illegal
22 policy and/or practice of failing to pay all wages due, failing to provide meal periods, failing to
23 provide rest periods, and failing to provide accurate itemized wage statements.

24 63. Class action treatment will allow those similarly situated persons to litigate their
25 claims in the manner that is most efficient and economical for the parties and the judicial system.
26 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
27 action that would preclude its maintenance as a class action.

28 ///

V.

FIRST CAUSE OF ACTION
FAILURE TO PAY WAGES AND/OR OVERTIME UNDER
LABOR CODE §§ 510, 1194, and 1199
[Against All Defendants by Plaintiff, the Class, and the Overtime Subclasses]

64. Plaintiff, on behalf of herself, the Class, and the Overtime Subclasses realleges and incorporates by reference all previous paragraphs.

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

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

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

68. At times during the four (4) years prior to the filing of this Action and within the past year, Defendant paid Plaintiff, the Class, and the Overtime Subclass with non-discretionary bonuses and incentive pay—including but not limited to incentive payments, non-discretionary bonus, production bonuses, efficiency bonuses, or attendance bonuses—during the same workweek that they earned overtime wages, but failed to include such amounts when calculating and paying overtime wages in violation of Labor Code section 510.

69. At times during the four (4) years prior to the filing of this Action and within the past year, Defendant also failed to include additional compensation other than Plaintiff, the Class Members, and the Overtime Subclass members' base rate, when calculating and paying overtime.

70. At times during the four (4) years prior to the filing of this Action and within the past year, Defendant failed to pay Plaintiff and all aggrieved employees overtime wages at one and one-half times their regular rate and instead underpaid their overtime wages.

71. Defendants conduct, as described above was willful.

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

VI.

SECOND CAUSE OF ACTION

**FAILURE TO PROVIDE LAWFUL MEAL PERIODS PURSUANT TO LABOR CODE
§§ 226.7 and 512; IWC WAGE ORDER NO. 6-2001, § 11
[Against All Defendants by Plaintiff, the Class, and the Meal Period Subclasses]**

73. Plaintiff, on behalf of herself, the Class, and the Meal Period Subclasses, realleges and incorporates by reference all previous paragraphs.

74. 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.

75. At points within the past four (4) years including within the past year, Plaintiff, the Class, and the First 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.

76. At points within the past four (4) years including within the past year, Plaintiff and the Proposed Second Meal Period Subclass did not receive a second thirty (30) minute meal

1 period when working shifts in excess of ten (10) hours in a day during the statutory period
2 applicable to their claims;

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

7 78. At times during the past four (4) years and within the past year, on the rare
8 occasion, if any, that Defendant paid a meal period premium, Defendant had a common policy
9 and practice of failing to include compensation associated with incentive payments, non-
10 discretionary bonuses, production bonuses, efficiency bonuses, or attendance bonuses. Instead of
11 paying meal/rest period premiums at employees' regular rates, on the rare occasions that Plaintiff,
12 the Class, the Meal Period Subclass, and the aggrieved employees received a meal period
13 premium, Defendant improperly paid the premium at the employee's hourly base rate instead of
14 at their regular rate. Defendant often referred to such premiums by pay codes, including, but not
15 limited to, "Meal Prem Pay" on the itemized wage statements that it issued to Plaintiff, the Class,
16 the Meal Period Subclass, and the other aggrieved employees. Plaintiff contends that Defendant's
17 policies and practices as alleged above violated Labor Code § 226.7 consistent with the California
18 Supreme Court's decision in *Ferra v. Loews Hollywood Hotel, LLC*, No. S259172)
19 ___Cal.5th___ 2021 Cal. LEXIS 4877 (July 15, 2021) ("we hold that the term 'regular rate of
20 compensation' in section 226.7(c) has the same meaning of regular rate of pay' in section 510(a)
21 and encompasses not only hourly wages, but all nondiscretionary payments for work performed
22 by the employee.").

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

26 ///

27 ///

28 ///

VII.
THIRD CAUSE OF ACTION
FAILURE TO PROVIDE LAWFUL REST PERIODS AND PAY NON-COMPLIANT
REST PERIOD PREMIUMS PURSUANT TO LABOR CODE § 226.7 AND IWC WAGE
ORDER NO. 6-2001, § 12
[Against All Defendants by Plaintiff, the Class, and the Rest Period Subclass]

80. Plaintiff, on behalf of herself, the Class, and the Rest Period Subclass, realleges and incorporates by reference all previous paragraphs.

81. Plaintiff, the Non-Exempt Class, the Field Non-Exempt Class, and the Rest Period Class, consistently worked shifts more than four (4) hours or a major fraction thereof, including shifts of more than ten (10) hours in a day without receiving rest periods and/or the proper amount of rest periods during the statutory period applicable to their claims.

82. Labor Code § 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage Order No. 6-2001 an employer must authorize and permit all employees to take ten (10) minute duty free rest periods for every major fraction of four hours worked.

83. Defendants failed to provide Plaintiff, the Class, and the Rest Period Subclass, with rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked. Instead, Defendants failed to advise them of their right to receive rest period, failed to authorize and permit rest periods, and regularly and consistently required them to forgo rest periods and/or made it impossible for them to complete their assignments and also take a rest period.

84. Moreover, as a result of its understaffing practices and policies with respect to employees, it was not possible for Plaintiff, the Class, and the Rest Period Subclass to take rest periods.

85. In addition to failing to authorize and permit compliant rest periods, Plaintiff, the Class, and the aggrieved employees were not compensated with one (1) hours’ worth of pay at their regular rate of compensation when they were not provided with a compliant rest period and/or their rest period was interrupted in accordance with Labor Code § 226.7(b).

86. At times during the past four (4) years and within the past year, on the rare occasion, if any, that Defendant paid a rest period premium, Defendant 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/or the Rest Period Subclass received a rest period premium, Defendant improperly paid the premium at the employee's hourly base rate instead of at their regular rate. Plaintiff contends that Defendant's 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.").

87. Pursuant to Labor Code § 226.7, Plaintiff the Non-Exempt Class, and the Rest Period Subclass are entitled to damages in an amount equal to one (1) hour of wages per non-compliant rest period, in a sum to be proven at trial.

VIII.
FOURTH CAUSE OF ACTION
VIOLATIONS OF LABOR CODE § 226(e)
endants on behalf of Plaintiff and the Wage S

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

89. 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 Class in accordance with Labor Code § 226(a)(1, 2, 5, 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 alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).

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

(iv) 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.

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

91. Defendants also knowingly and intentionally failed to pay Plaintiff and the Classes overtime wages owed, meal period premiums, and rest periods premiums. Moreover, Plaintiff and the Wage Statement Class also suffered legal "injury" for purposes of Labor Code section 226(e)

1 insofar as they were unable to readily and easily determine from the wage statements themselves
2 the information required to be set forth by Section 226(a), the information provided by
3 Defendants was confusing and inaccurate, Plaintiff and the Wage Statement Class were unable to
4 determine at all the total hours worked by the employee, the gross wages earned, the net wages
5 earned, and all applicable hourly rates in effect during the pay period and the corresponding
6 number of hours worked at each hourly rate by the employee for the reasons discussed above.

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

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

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

1 penalties under Labor Code § 226(e) in amounts to be determined at trial, and are entitled to
2 recovery of such amounts, attorneys' fees, and costs.

3 **IX.**
4 **FIFTH CAUSE OF ACTION**
5 **UNFAIR COMPETITION PURSUANT TO**
6 **BUSINESS & PROFESSIONS CODE § 17200**
7 **[Against all Defendants on behalf of Plaintiff and the Class]**

8 95. Plaintiff, on behalf of herself and the Class realleges and incorporates by reference
9 all previous paragraphs.

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

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

23 98. Defendants have violated statutes and public policies as alleged herein. Through
24 the conduct alleged in this Complaint, Defendants have acted contrary to these public policies,
25 have violated specific provisions of the Labor Code, and have engaged in other unlawful and
26 unfair business practices in violation of Business & Profession Code § 17200, et seq., depriving
27 Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and
28 privileges guaranteed to all employees under law.

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

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

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

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

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

X.

SIXTH CAUSE OF ACTION

PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS FOR PENALTIES PURSUANT TO LABOR CODE § 2698, ET SEQ. FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 203, 204, 210, 226, 226.3, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, and 2802 as well as IWC Wage Order No. 6-2001

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

105. Plaintiff filed his PAGA Notice online with the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified mail to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* As required by PAGA, Plaintiff submitted the \$75.00 filing fee to the LWDA. Pursuant to Labor

1 Code § 2699.3(a)(2)(A), no notice was received and/or will have been received by Plaintiff from
2 the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of the
3 postmark date of the PAGA notice. Plaintiff is therefore, entitled to commence and proceed with
4 a civil action pursuant to Labor Code § 2699.

5 106. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
6 § 2698, *et seq.* because of Defendants’ violations of Labor Code §§ 201, 202, 203,⁶ 204, 210, 226,
7 226.3, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, and 2802 as well as IWC Wage
8 Order No. 6-2001.

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

13 \$100 for the initial violation per employee per pay period; and

14 \$200 for each subsequent violation per employee per pay period.

15 108. These penalties will be allocated 75% to the Labor Workforce Development
16 Agency and 25% to the affected employees. These penalties may be stacked separately for each
17 of Defendants violations of the California Labor Code. *See e.g. Kaanaana v. Barrett Business*
18 *Services, Inc.*, 29 Cal.App.5th 778, 808 (2018) (acknowledging that the employees could get
19 separate PAGA penalties for interrupted meal periods because interrupted meal periods violated
20 Labor Code sections 1194 and 512 and remanding to the trial court to determine the amount of
21 PAGA penalties to award); *Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017)
22 (“hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section
23 226(a) does not have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section
24 226(e)(1) and acknowledging that a Plaintiff could recover separately under PAGA for violations
25 of Labor Code §§ 226(a) and 226(e)); *Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM

26 ⁶ Ms. Santillanes is a current employee of Defendant, but can bring a claim on behalf of former employees under
27 PAGA. *Huff vs. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745 (2018) (explaining that there is no
28 typicality requirement in a PAGA action because “PAGA allows an ‘aggrieved employee’—a person affected by at
least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations
committed by that employer.”) (emphasis added).

1 (JCGx) 2012 U.S. Dist. LEXIS 86975, at *59, fn. 77 (C.D. Cal. June 22, 2012) (holding that
2 although the plaintiff did not seek stacked PAGA penalties, that “PAGA penalties can be
3 ‘stacked,’ i.e., multiple PAGA penalties can be assessed for the same pay period for different
4 Labor Code violations.”); accord *Schiller v. David’s Bridal, Inc.*, No. 1:10-cv-00616 AWI SKO)
5 2010 U.S. Dist. LEXIS 81128, at *17 (E.D. Cal. July 14, 2010); *Pulera v. F & B, Inc.*, No. 2:08-
6 cv-00275-MCE-DAD, 2008 U.S. Dist. LEXIS 72659, 2008 WL 3863489, at * 2-3 (E.D. Cal.
7 Aug. 19, 2008); *Smith v. Brinker Intern, Inc.*, No. C 10-0213 VRW, 2010 U.S. Dist. LEXIS
8 54110, 2010 WL 1838726, at * 2-6 (N.D. Cal. May 5, 2010).

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

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

22 111. As a result of the faulty compensation policies and practices described in detail
23 above, the State of California is entitled to recover penalties under Labor Code § 210 through
24 PAGA.

25 112. Further, Labor Code § 558 imposes a penalty upon employers “who violates, or
26 causes to be violated...any provision regulating hours and days of work in any order of the
27 Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial
28 violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the

1 employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For
2 each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
3 period for which the employee was underpaid...” Based upon the above factual allegations
4 related to overtime, meal period, and rest period violations, Plaintiff and the aggrieved employees
5 are entitled to recover civil penalties under Labor Code § 558 and not any underpaid wages under
6 PAGA. *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019).

7 113. Labor Code § 1174 provides that each employer shall keep “payroll records
8 showing the hours worked daily by and the wages paid to...employees employed
9 at...establishments.” An employer who fails to maintain the records proscribed by Labor Code §
10 1174 is subject to a civil penalty of five hundred (\$500) dollars under Labor Code § 1174.5.

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

22 **RELIEF REQUESTED**

23 **WHEREFORE**, Plaintiff prays for the following relief:

- 24 1. An Order that this action may proceed and be maintained as a Class Action on
25 behalf of the Classes;
- 26 2. For compensatory damages in the amount of unpaid overtime wages not paid to
27 Plaintiff, each Class Member from February 7, 2017 and continuing into the present as may be
28 proven;

1 3. For compensatory damages in the amount of Plaintiff and each Class Members
2 unpaid meal period premiums from February 7, 2017 and continuing into the present as may be
3 proven;

4 4. For compensatory damages in the amount of Plaintiff, each Class Members'
5 unpaid rest period premiums from February 7, 2017 and continuing into the present as may be
6 proven;

7 5. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code
8 § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs
9 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not
10 exceeding an aggregate penalty of four thousand dollars (\$4,000) for the inaccurate itemized
11 wage statements issued to Plaintiff and the Wage Statement Class from February 7, 2020 and
12 continuing into the present as may be proven;

13 6. For restitution for unfair competition pursuant to Business & Professions Code
14 § 17200 to Plaintiff and the Unfair Competition Class for actions, including disgorgement of
15 profits, in an amount as may be proven;

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

22 8. For penalties under Labor Code § 2698, *et seq.* for Plaintiff and all aggrieved
23 employees because of Defendants' violation of Labor Code §§ 201, 202, 203, 204, 210, 226,
24 226.3, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, and 2802 as well as IWC Wage
25 Order No. 6-2001;

26 9. An award of prejudgment and post judgment interest;

27 10. An award providing for payment of costs of suit;

28 11. An award of attorneys' fees; and

1 12. Such other and further relief as this Court may deem proper and just.

2 **DEMAND FOR JURY TRIAL**

3 Plaintiff hereby demands a trial of her claims by jury for causes of action 1-4, but not
4 claims 5 (unfair competition) and 6 (PAGA) for which a bench trial is required.

5
6 DATED: August 4, 2021

WINSTON LAW GROUP, P.C.

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8 By: David S. Winston
9 DAVID S. WINSTON
10 Attorneys for Plaintiff, the Proposed
11 Class, and the aggrieved employees
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