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10 Attorneys for Plaintiff MAYTE PEREZ

11 **SUPERIOR COURT OF CALIFORNIA**

12 **COUNTY OF ORANGE**

13
14 MAYTE PEREZ, an individual, on behalf of
herself and others similarly situated,

15 Plaintiff,

16 vs.

17 VELVET YOGURT, INC. d/b/a ACTIVE
18 CULTURE, a California corporation; FAYE
WICKLAND, an individual; and DOES 1
19 through 50, inclusive,

20 Defendants.

Case No. 30-2021-01221399-CU-OE-CXC

Assigned for All Purposes to:
Hon. Peter J. Wilson, Dept. CX-102

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay All Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods or Compensation;
4. Failure to Permit Rest Periods or Provide Compensation;
5. Failure to Provide Accurate Itemized Wage Statements;
6. Waiting Time Penalties;
7. Failure to Reimburse Business Expenses;
8. Violation of the Unfair Competition Law; and
9. Violation of the Private Attorneys General Act of 2004

DEMAND FOR JURY TRIAL

Action Filed: September 15, 2021
Trial Date: None set

1 Plaintiff MAYTE PEREZ (“Plaintiff”), individually, and on behalf of all others similarly
2 situated, brings this First Amended Class and Representative Action Complaint (“FAC”) against
3 Defendants VELVET YOGURT, INC. d/b/a ACTIVE CULTURE, a California corporation; FAYE
4 WICKLAND, an individual; and DOES 1 through 50, inclusive (collectively, “Defendants”), and
5 alleges as follows:

6 **INTRODUCTION**

7 1. Plaintiff brings this putative class action against Defendants, on behalf of herself
8 individually and a putative class of California citizens who are and were employed by Defendants as
9 non-exempt employees throughout California during the Class Period (collectively the “Class” or
10 “Class Members”). The term Class Period is defined as four (4) years prior to the filing of this action
11 to the date of class certification.

12 2. Plaintiff also brings this representative action pursuant to the Private Attorneys General
13 Act of 2004, Labor Code sections 2698 *et seq.* (“PAGA”), against Defendants, on behalf of herself
14 individually and other aggrieved employees who are and were employed by Defendants as non-exempt
15 employees throughout California during the PAGA Period. The term PAGA Period is defined as one
16 year prior to Plaintiff’s notice of Labor Code violations to the Labor and Workforce Development
17 Agency (“LWDA”) and Defendants until judgment.

18 3. Plaintiff is informed and believes, and thereon alleges, that Defendants are doing
19 business as Active Culture, operating cafes and selling food and beverages in multiple locations
20 throughout California.

21 4. Plaintiff alleges that Defendants have engaged in a systematic pattern of wage and hour
22 violations under the California Labor Code, the Industrial Welfare Commission (“IWC”) Wage
23 Orders, and California Business and Professions Code that have damaged Plaintiff and Class
24 Members, and contribute to Defendants’ deliberate unfair competition.

25 5. Plaintiff is informed and believes, and thereon alleges, that Defendants have violated
26 and continue to violate state wage and hour laws by, among other things:

- 27 (a) failing to pay all wages (including minimum, regular, and overtime wages);
- 28 (b) failing to provide lawful meal periods or compensation in lieu thereof;

- 1 (c) failing to authorize or permit rest breaks or provide compensation in lieu thereof;
2 (d) failing to provide accurate itemized wage statements;
3 (e) failing to pay all wages due upon separation of employment; and
4 (f) failing to reimburse business expenses.

5 6. Plaintiff seeks monetary relief against Defendants on behalf of herself and the putative
6 class to recover, among other things, unpaid wages, liquidated damages, restitution, interest, attorneys'
7 fees, costs, and penalties pursuant to Labor Code sections 201-204, 206, 210, 218.6, 226, 226.3, 226.7,
8 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, and
9 California Code of Civil Procedure section 1021.5.

10 **JURISDICTION AND VENUE**

11 7. This is a class action pursuant to California Code of Civil Procedure section 382 and
12 representative action under PAGA. The monetary damages, restitution, penalties, and other amounts
13 sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be
14 established according to proof at trial.

15 8. This Court has jurisdiction over this action pursuant to the California Constitution,
16 Article VI, section 10, which grants the Superior Court original jurisdiction in all causes, except those
17 given by statutes to other courts. The statutes under which this action is brought do not specify any
18 other basis for jurisdiction. All claims alleged herein arise under California law for which Plaintiff
19 seeks relief authorized by California law.

20 9. This Court has jurisdiction over all Defendants because, upon information and belief,
21 they have sufficient minimum contacts in California, or otherwise intentionally avail themselves of
22 the California market so as to render the exercise of jurisdiction over them by the California courts
23 consistent with traditional notions of fair play and substantial justice.

24 10. Venue is proper in this Court under Code of Civil Procedure sections 395(a) and 395.5
25 because, upon information and belief, Defendants reside, transact business, maintain offices, and/or
26 have an agent or agents in this county, and the acts and omissions alleged herein took place in this
27 county.

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PARTIES

11. Plaintiff is a California citizen and resides in Orange County, California. Defendants employed Plaintiff as a non-exempt employee during the Class Period.

12. Defendant VELVET YOGURT, INC. d/b/a ACTIVE CULTURE (“Active Culture”) was and is a corporation doing business throughout the State of California, with its principal place of business in Orange County, California.

13. Plaintiff is informed and believes, and thereon alleges Defendant FAYE WICKLAND (“Ms. Wickland”) is an individual and Chief Financial Officer, Partner/Owner, and Director of Active Culture. Plaintiff is further informed and believes, and thereon alleges that Ms. Wickland was and is involved in the day-to-day operations of Active Culture’s facilities and worksites, including hiring, firing, and disciplining employees; enforcing company rules, policies, and practices; working onsite at Active Culture’s cafes; meeting and communicating with management (e.g., supervisors) and employees; and/or causing cash bonuses to be paid to Plaintiff and Class Members without proper documentation, among other things. Consequently, Ms. Wickland violated or caused to be violated the Industrial Welfare Commission (“IWC”) Wage Order provisions regulating minimum wages or hours and days of work, as well as Labor Code sections 203, 204, 226, 226.7, 1194, 1197 and 2802 as explained herein and below. Thus, Ms. Wickland is personally liable for the Labor Code and IWC Wage Order violations pursuant to Labor Code section 558.1.

14. Plaintiff is informed and believes, and thereon alleges that at all times hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as employers, whose employees were and are engaged throughout this county and the State of California.

15. Defendant DOES 1 through 50, are sued under fictitious names pursuant to Code of Civil Procedure section 474 because Plaintiff does not know their true names or capacities. Plaintiff will seek leave of court to amend this FAC and serve such fictitiously named Defendants when their names and capacities are ascertained.

16. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 50 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants at all relevant times.

17. Plaintiff is informed and believes, and thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants.

18. Plaintiff is informed and believes, and thereon alleges, that each Defendant directly or indirectly, through agents or other persons or entities, employed or otherwise exercised control over the wages, hours, and working conditions of Plaintiff. Furthermore, each Defendant in all respects acted as the employer and/or joint employer of Plaintiff and the Class Members.

19. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES 1 through 50, acting as the agent, alter ego, agent, servant, joint venturer, co-conspirator, and/or partner for the other, within a common enterprise and legal authority to act on the other's behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

20. At all relevant times, Defendants, and each of them, acted within the scope of such agency or employment, or ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

21. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently, and/or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

CLASS ALLEGATIONS

22. Plaintiff brings this class action pursuant to Code of Civil Procedure section 382 on behalf of herself and all others similarly situated who were injured by Defendants' violations of the Labor Code, Business and Professions Code sections 17200, *et seq.*, and IWC Wage Orders during the Class Period.

23. Plaintiff's proposed Class consists of and is defined as follows:

Class

All California citizens currently or formerly employed by Defendants as non-exempt

employees in the State of California within four (4) years prior to the filing of this action to the date of class certification.

24. Plaintiff also seeks to certify the following Subclass:

Waiting Time Subclass

All Class Members who separated from their employment with Defendants at any time within three (3) years prior to the filing of this action to the date of class certification (“Subclass” or “Waiting Time Subclass”).

25. Members of the Class and Subclass described above will be collectively referred to as “Class Members.”

26. Plaintiff reserves the right to modify or re-define the Class or Subclass, establish additional subclasses, or modify or re-define any class or subclass definition as appropriate based on investigation, discovery, and specific theories of liability.

27. There is a well-defined community of interest in this litigation and the proposed Class and Subclass are readily ascertainable.

28. **Commonality:** This action has been brought and may properly be maintained as a class action under the California Code of Civil Procedure section 382 because there are common questions of law and fact as to the Class Members that predominate over any questions affecting only individual members including, but not limited to, the following:

- (a) Whether Defendants paid Plaintiff and Class Members all wages (including minimum, regular, and overtime wages) for all hours worked;
- (b) Whether Defendants rounded meal periods and time worked by Plaintiff and Class Members to Defendants’ benefit;
- (c) Whether Defendants required Plaintiff and Class Members to work off-the-clock without compensation;
- (d) Whether Defendants reassigned overtime hours worked by Plaintiff and Class Members to different workdays and/or pay periods in order to avoid paying overtime compensation;
- (e) Whether Defendants designated overtime hours worked by Plaintiff and Class

Members as paid time off in order to avoid paying overtime compensation;

(f) Whether Defendants automatically deducted meal periods that were not taken by Plaintiff and Class Members;

(g) Whether Defendants provided Plaintiff and Class Members with compliant meal periods or paid compensation in lieu thereof;

(h) Whether Defendants authorized and permitted compliant rest breaks to Plaintiff and Class Members or paid compensation in lieu thereof;

(i) Whether Defendants failed to provide Plaintiff and Class Members with accurate itemized wage statements;

(j) Whether Defendants failed to timely pay Class Members all wages due immediately upon termination or within 72 hours of resignation;

(k) Whether Defendants failed to reimburse Plaintiff and Class Members for necessary business expenditures;

(l) Whether Defendants' conduct was willful or reckless; and

(m) Whether Defendants engaged in unfair business practices in violation of Business and Professions Code sections 17200, *et seq.*

29. There is a well-defined community of interest. Further, Plaintiff and Class Members have suffered common injuries as a result of Defendants' systemic employment policies and practices. Looking to Defendants' employment policies and practices, the Court can adjudicate the lawfulness of those policies and practices on a class-wide basis, according to proof, and issue an award to Plaintiff and Class Members accordingly. In addition, answers to common questions raised in this FAC will advance resolution of each individual Class Member's claims.

30. **Numerosity:** The Class Members are so numerous that joinder of all members is impractical. Although the members of the entire Class and Subclass are unknown to Plaintiff at this time, on information and belief, the class is estimated to be greater than 100 individuals.

31. **Ascertainability:** The identities of the Class Members are readily ascertainable by inspection of Defendants' employment and payroll records.

32. **Typicality:** The claims (or defenses, if any) of Plaintiff are typical of the claims of the

1 Class Members because Defendants' failure to comply with the provisions of California's wage and
2 hour laws entitled each Class Member to similar pay, benefits, and other relief. The injuries sustained
3 by Plaintiff are also typical of the injuries sustained by Class Members because they arise out of and
4 are caused by Defendants' common course of conduct as alleged herein.

5 33. **Adequacy:** Plaintiff will fairly and adequately represent and protect the interests of all
6 Class Members because it is in Plaintiff's best interest to prosecute the claims alleged herein to obtain
7 full compensation and penalties due to Plaintiff and the Class Members. Plaintiff's attorneys, as
8 proposed class counsel, are competent and experienced in litigating large employment class actions
9 and versed in the rules governing class action discovery, certification, and settlement. Plaintiff has
10 incurred and, throughout the duration of this action, will continue to incur attorneys' fees and costs
11 that have been and will be necessarily expended for the prosecution of this action for the substantial
12 benefit of the Class Members.

13 34. **Superiority:** The nature of this action makes use of class action adjudication superior
14 to other methods. A class action will achieve economies of time, effort, and expense as compared with
15 separate lawsuits and will avoid inconsistent outcomes because the same issues can be adjudicated in
16 the same manner for the entire Class and Subclass at the same time. If appropriate, this Court can, and
17 is empowered to, fashion methods to efficiently manage this case as a class action.

18 35. **Public Policy Considerations:** Employers in the State of California violate
19 employment and labor laws every day. Current employees are often afraid to assert their rights out of
20 fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they
21 believe their former employers might damage their future endeavors through negative references
22 and/or other means. Class actions provide class members who are not named in the FAC with a type
23 of anonymity that allows for the vindication of their rights while affording them privacy protections.

24 **GENERAL ALLEGATIONS**

25 36. **Background:** At all relevant times mentioned herein, Defendants employed Plaintiff
26 and other persons as non-exempt employees at Defendants' locations within California. Defendants
27 employed Plaintiff in a non-exempt position during her employment and continue to employ Plaintiff
28 and other non-exempt employees within California.

1 37. Plaintiff is informed and believes, and thereon alleges, that at all times herein
2 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who were
3 knowledgeable about California's wage and hour laws, employment and personnel practices, and the
4 requirements of California law.

5 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
6 have known they had a duty to compensate Plaintiff and Class Members, and Defendants had the
7 financial ability to pay such compensation but willfully, knowingly and intentionally failed to do so
8 all in order to increase Defendants' profits.

9 39. **Unpaid Wages:** Plaintiff is informed and believes, and thereon alleges, that Defendants
10 knew or should have known that Plaintiff and Class Members were entitled to receive at least minimum
11 wages and wages at their regular rate of pay and that they were not receiving minimum and regular
12 wages for all work that was required to be performed. In violation of the Labor Code and IWC Wage
13 Orders, Plaintiff and Class Members were not paid at least minimum and regular wages when
14 Defendants (1) pressured them not to clock in for their shifts until their scheduled start times even
15 though Plaintiff and Class Members were subject to Defendants' control and were suffered or
16 permitted to work before their scheduled start time without compensation, (2) required Plaintiff and
17 Class Members to clock out at the end of their scheduled shifts and continue working without
18 compensation, (3) required Plaintiff and Class Members to clock out for meal periods and continue
19 working without compensation and/or automatically deducted 30 minutes for meal periods that were
20 not taken by Plaintiff and Class Members, and (4) rounded Plaintiff and Class Members' meal periods
21 and time worked to Defendants' benefit.

22 40. **Unpaid Overtime:** Plaintiff is informed and believes, and thereon alleges, that
23 Defendants knew or should have known that Plaintiff and Class Members were entitled to overtime
24 compensation for all hours worked in excess of eight (8) in a workday and/or 40 in a workweek. In
25 violation of the Labor Code and IWC Wage Orders, Plaintiff and Class Members were not paid at their
26 lawful overtime rate for all overtime hours worked, due to the same practices described in the
27 preceding paragraph, and Defendants' practices of (1) reassigning hours worked by Plaintiff and Class
28 Members beyond eight (8) in a workday and/or 40 in a workweek to different workdays and/or pay

1 periods in order to avoid paying overtime compensation, and (2) designating hours worked by Plaintiff
2 and Class Members beyond eight (8) in a workday and/or 40 in a workweek as paid time off in order
3 to avoid paying overtime compensation. Plaintiff and Class Members were paid at their regular rate of
4 pay for those overtime hours worked that Defendants reassigned to different days and/or pay periods,
5 or designated as paid time off.

6 **41. Meal Period Violations:** Plaintiff is informed and believes, and thereon alleges, that
7 Defendants knew or should have known that Plaintiff and Class Members were entitled to receive a
8 timely, off-duty, uninterrupted 30-minute meal period for every five (5) hours of work, or payment of
9 one (1) additional hour of pay at their regular rate of pay when they did not receive a compliant meal
10 period. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class Members did not
11 receive compliant meal periods due to Defendants' practices of understaffing their facilities, and
12 requiring Plaintiff and Class Members to clock out for meal periods and continue working.
13 Consequently, Plaintiff and Class Members' meal periods were missed, shortened, interrupted, or late.
14 Further, Defendants restricted Plaintiff and Class Members to Defendants' worksites during their meal
15 periods. Defendants also auto-deducted 30-minute meal periods even when Plaintiff and Class
16 Members were not provided with meal periods, and rounded meal periods. In addition, Defendants
17 failed to adopt and implement a policy authorizing a second 30 minute meal period when Plaintiff and
18 Class Members worked shifts in excess of 10 hours. Defendants also failed to pay Plaintiff and Class
19 Members one (1) additional hour of pay at their regular rate of pay when Plaintiff and Class Members
20 did not receive a compliant meal period.

21 **42. Rest Period Violations:** Plaintiff is informed and believes, and thereon alleges, that
22 Defendants knew or should have known that Plaintiff and Class Members were entitled to receive a
23 10-minute, off-duty, uninterrupted rest period for every four (4) hours worked, or major fraction
24 thereof, or payment of one (1) additional hour of pay at their regular rate of pay when they were not
25 permitted to take a compliant rest period. In violation of the Labor Code and IWC Wage Orders,
26 Plaintiff and Class Members were not permitted to take compliant rest breaks, due to Defendants'
27 failure to adopt and implement a compliant rest break policy, and practices of understaffing their
28 facilities and restricting breaks to Defendants' worksites. Defendants also failed to adopt and

1 implement a practice of providing second rest breaks when Plaintiff and Class Members worked over
2 six (6) hours per workday and third rest breaks when Plaintiff and Class Members worked over 10
3 hours per workday. Consequently, Plaintiff and Class Members were not authorized or permitted to
4 take rest breaks. Defendants failed to pay Plaintiff and Class Members one (1) additional hour of pay
5 at their regular rate of pay when they did not receive a compliant rest break.

6 43. **Waiting Time Penalties:** Plaintiff is informed and believes, and thereon alleges, that
7 Defendants knew or should have known that Waiting Time Subclass Members who separated from
8 their employment with Defendants during the statutory period were entitled to timely payment of all
9 wages due. In violation of the Labor Code, Waiting Time Class Members did not receive payment of
10 all wages owed upon separation within the permissible time period due to, *inter alia*, Defendants'
11 failure to pay all wages, meal and rest period premiums, and reimburse expenses to Class Members.

12 44. **Wage Statement Violations:** Plaintiff is informed and believes, and thereon alleges
13 that Defendants knew or should have known that Plaintiff and Class Members were entitled to receive
14 complete and accurate wage statements. In violation of the Labor Code and IWC Wage Orders,
15 Plaintiff and Class Members were not furnished with complete and accurate wage statements that show
16 all of the information required by Labor Code section 226, including, but not limited to, the gross and
17 net wages earned, the total hours worked, all applicable hourly rates in effect during the pay period,
18 and the corresponding number of hours worked at each hourly rate. Further, Defendants failed to
19 properly document cash bonuses on wage statements.

20 45. **Unreimbursed Business Expenses:** Plaintiff is informed and believes, and thereon
21 alleges, that Defendants knew or should have known that Plaintiff and Class Members were entitled
22 to reimbursement for their necessary work-related business expenses. In violation of the Labor Code
23 and IWC Wage Orders, Defendants required Plaintiff and Class Members to download, install, and
24 use Paylocity on their personal cell phones to record their hours worked, but failed to reimburse
25 Plaintiff and Class Members for a reasonable portion of their cellular phone bills.

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FIRST CAUSE OF ACTION
FAILURE TO PAY ALL WAGES
(AGAINST ALL DEFENDANTS)

46. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

47. At all times herein relevant, Defendants had a duty to comply with Labor Code sections 204, 206, 1182.12, 1194, 1194.2, 1197, 1198, the applicable IWC Wage Orders, and all applicable local minimum wage ordinances in effect throughout California.

48. Labor Code section 204 and the IWC Wage Orders require timely payment of all wages owed on regularly scheduled paydays at least twice during each calendar month, on days designated in advance by the employer as the regular paydays. All wages earned in excess of the normal work period must be paid no later than the payday for the next regular payroll period.

49. Labor Code section 206 provides that in case of a dispute over wages, the employer shall pay, without condition and promptly under the Labor Code all wages conceded due, leaving to the employee all remedies he/she is otherwise entitled to as to any balance claimed.

50. The IWC Wage Orders define “hours worked” as “the time during which an employee is subject to the control of an employer and includes all time the employee is suffered or permitted to work, whether or not required to do so.”

51. Labor Code section 1182.12 sets forth the minimum hourly wage that must be paid to all employees in California for all hours worked. Local minimum wage ordinances, may provide for higher minimum wage rates that must be paid to employees for all hours worked in those locales where each local ordinance is in effect. Labor Code section 1197 affirms that it is unlawful to pay less than the state or local minimum wage, whichever is higher, for any hour of work.

52. Labor Code section 1194 requires that employers pay employees at least the legal minimum wage rate for all hours worked, notwithstanding any agreement to work for a lesser wage. Labor Code section 1194 further authorizes any employee receiving less than the legal minimum wage applicable to the employee to recover in a civil action the unpaid balance of the full amount of wages, along with interest thereon, reasonable attorneys’ fees and costs of suit.

53. Labor Code section 1194.2 authorizes the recovery of liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon for unpaid wage violations.

54. Labor Code section 1198 prohibits employers from employing for longer hours or less favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise set by the Labor Commissioner.

55. During the relevant time period, Defendants failed to pay Plaintiff and Class Members all wages due, including minimum and regular wages due to Defendants' practices of (1) pressuring Plaintiff and Class Members not to clock in for their shifts until their scheduled start times even though Plaintiff and Class Members were subject to Defendants' control and were suffered or permitted to work before their scheduled start time without compensation, (2) requiring Plaintiff and Class Members to clock out at the end of their scheduled shifts and continue working without compensation, (3) requiring Plaintiff and Class Members to clock out for meal periods and continue working without compensation and/or automatically deducting 30 minutes for meal periods that were not taken by Plaintiff and Class Members, and (4) rounding Plaintiff and Class Members' meal periods and time worked to Defendants' benefit.

56. In violation of California law, Defendants have knowingly and willfully refused to perform their obligations and compensate Plaintiff and Class Members for all wages earned as alleged above.

57. Defendants' failure to pay Plaintiff and Class Members all earned minimum and regular wages in accordance with Labor Code sections 204, 206, 1182.12, 1194, 1194.2, 1197, 1198, the applicable IWC Wage Orders, and all applicable local minimum wage ordinances in effect throughout California, Plaintiff and Class Members are entitled to recover the full amount of unpaid wages, liquidated damages, prejudgment interest, and statutory penalties, along with attorneys' fees and costs in amounts that will be established at trial.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

58. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though

1 fully set forth herein.

2 59. At all relevant times, Defendants had a duty to comply with Labor Code sections 204,
3 206, 510, 1194, and 1198 and the applicable IWC Wage Orders.

4 60. Labor Code section 204 and the IWC Wage Orders require timely payment of all wages
5 owed, including overtime, on regularly scheduled paydays at least twice during each calendar month,
6 on days designated in advance by the employer as the regular paydays. All wages earned in excess
7 of the normal work period must be paid no later than the payday for the next regular payroll period.

8 61. Labor Code section 206 provides that in case of a dispute over wages, the employer
9 shall pay, without condition and promptly under the Labor Code all wages conceded due, leaving to
10 the employee all remedies he/she is otherwise entitled to as to any balance claimed.

11 62. Labor Code section 510 and the IWC Wage Orders require that employers pay
12 employees for all overtime hours at a rate of one and one-half times the employee's regular rate of pay
13 for hours worked in excess of eight (8) hours in one (1) workday, 40 hours in one (1) workweek, and
14 after the first eight hours on the seventh consecutive workday in one (1) workweek. Labor Code
15 section 510 and the IWC Wage Orders further require that employers pay employees double their
16 regular rate of pay for hours work in excess of 12 hours in a workday and after eight hours on the
17 seventh consecutive workday in one (1) workweek. Labor Code section 510 requires payment of
18 overtime wages at one and one half times the "regular rate of pay," which includes all forms of
19 remuneration earned by the employee.

20 63. Labor Code section 1194 requires that employers pay employees at least the legal
21 overtime rate for all overtime hours worked, notwithstanding any agreement to work for a lesser wage.
22 Labor Code section 1194 further authorizes any employee receiving less than the legal overtime
23 compensation applicable to the employee to recover in a civil action the unpaid balance of the full
24 amount of overtime compensation, along with interest thereon, reasonable attorneys' fees and costs of
25 suit.

26 64. Labor Code section 1198 prohibits employers from employing for longer hours or less
27 favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise set by
28 the Labor Commissioner.

1 65. During the relevant time period, Defendants failed to pay Plaintiff and Class Members
2 all earned overtime wages, due to Defendants' practices of (1) pressuring Plaintiff and Class Members
3 not to clock in for their shifts until their scheduled start times even though Plaintiff and Class Members
4 were subject to Defendants' control and were suffered or permitted to work before their scheduled
5 start time without compensation, (2) requiring Plaintiff and Class Members to clock out at the end of
6 their scheduled shifts and continue working without compensation, (3) requiring Plaintiff and Class
7 Members to clock out for meal periods and continue working without compensation and/or
8 automatically deducting 30 minutes for meal periods that were not taken by Plaintiff and Class
9 Members, and (4) rounding Plaintiff and Class Members' meal periods and time worked to
10 Defendants' benefit. Additionally, Defendants maintained a practice of (1) reassigning hours worked
11 by Plaintiff and Class Members beyond eight (8) in a workday and/or 40 in a workweek to different
12 workdays and/or pay periods in order to avoid paying overtime compensation, and (2) designating
13 hours worked by Plaintiff and Class Members beyond eight (8) in a workday and/or 40 in a workweek
14 as paid time off in order to avoid paying overtime compensation.

15 66. In violation of state law, Defendants have knowingly and willfully refused to perform
16 their obligations and compensate Plaintiff and Class Members for all overtime wages earned as alleged
17 above.

18 67. Defendants' failure to pay overtime compensation due to Plaintiff and Class Members
19 in accordance with Labor Code sections 204, 206, 510, 1194 and 1198 and the IWC Wage Orders,
20 Plaintiff and Class Members are entitled to recover the full amount of unpaid overtime compensation,
21 prejudgment interest, statutory penalties, attorneys' fees, and costs in amounts that will be established
22 at trial.

23 **THIRD CAUSE OF ACTION**

24 **MEAL PERIOD VIOLATIONS**

25 **(AGAINST ALL DEFENDANTS)**

26 68. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
27 fully set forth herein.

28 69. At all relevant times, Defendants had a duty to comply with Labor Code sections 226.7

1 and 512, and the applicable IWC Wage Orders.

2 70. Labor Code section 512 and the IWC Wage Orders prohibit an employer from
3 employing any person for a work period of more than five (5) hours per day without providing the
4 employee with a meal period of not less than 30 minutes (commencing before the employee's fifth
5 hour of work), except that if the total work period per day is no more than six (6) hours, the meal
6 period may be waived by mutual consent of the employer and employee. A second meal period of not
7 less than 30 minutes is required if an employee works more than 10 hours per day and must begin
8 before the employee's tenth hour of work, except if the total hours worked is no more than 12 hours,
9 the second meal period may be waived by mutual consent of the employer and employee, but only if
10 the first meal period was not waived. An employer must relieve an employee of all duties during meal
11 periods.

12 71. The applicable IWC Wage Orders state that "[u]nless the employee is relieved of all
13 duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period
14 and counted as time worked."

15 72. Labor Code section 226.7(b) and the IWC Wage Orders prohibit an employer from
16 requiring any employee to work during a meal period mandated by any California statute, regulation,
17 standard or order. If an employer fails to provide an employee with a meal period in accordance with
18 state law, Labor Code section 226.7(c) and the IWC Wage Orders require that the employer pay the
19 employee one (1) additional hour of pay at the employee's regular rate of compensation for each
20 workday that the meal period is noncompliant.

21 73. During the relevant time period, Plaintiff and Class Members did not receive compliant
22 meal periods for working more than five (5) and/or 10 hours per day due to Defendants' practice of
23 understaffing their facilities, and requiring Plaintiff and Class Members to clock out for meal periods
24 and continue working. Defendants further restricted meal periods to the worksite. As a result, meal
25 periods were not free of all duties, were short, missed, interrupted and/or late. Defendants also
26 automatically deducted 30-minute meal periods even when Plaintiff and Class Members were not
27 provided with meal periods, and rounded meal periods. Defendants further failed to provide Plaintiff
28 and Class Members with second meal periods.

1 74. During the relevant time period, Defendants failed to pay Plaintiff and Class Members
2 meal period premiums for noncompliant meal periods pursuant to Labor Code section 226.7(b) and
3 the applicable IWC Wage Order.

4 75. As a result of Defendants' failure to provide compliant meal periods and pay meal
5 period premiums to Plaintiff and Class Members in accordance with the IWC Wage Orders and Labor
6 Code sections 226.7 and 512, Plaintiff and Class Members suffered and continue to suffer a loss of
7 wages and compensation.

8 76. Because Plaintiff and Class Members were and/or are entitled to such meal periods or
9 "premium pay" in lieu thereof, they are entitled to such payment per shift in an amount according to
10 proof. To the extent such unpaid premiums are deemed unpaid wages, Plaintiff will also seek pre- and
11 post-judgment interest as provided by law at 10% per annum, in an amount according to proof.

12 77. Also, pursuant to Code of Civil Procedure section 1021.5, Plaintiff will seek attorneys'
13 fees and costs from Defendants in an amount subject to proof and approved by the Court.

14 **FOURTH CAUSE OF ACTION**

15 **REST PERIOD VIOLATIONS**

16 **(AGAINST ALL DEFENDANTS)**

17 78. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
18 fully set forth herein.

19 79. At all relevant times, Defendants had a duty to comply with Labor Code section 226.7
20 and the applicable IWC Wage Orders.

21 80. The IWC Wage Orders require employers to authorize and permit all employees to take
22 10-minute duty-free rest periods for each four (4) hours worked, or major fraction thereof.

23 81. If an employer fails to provide an employee with a rest period in accordance with
24 California law, Labor Code section 226.7(c) and the IWC Wage Orders require that the employer pay
25 the employee one (1) additional hour of pay at the employee's regular rate of compensation for each
26 workday that the rest period is noncompliant.

27 82. During the relevant time period, Defendants did not implement a compliant rest break
28 policy. Consequently, Plaintiff and Class Members did not receive a 10 minute rest period for every

1 four (4) hours worked or major fraction thereof because they were required to work through their daily
2 rest periods and/or were not authorized to take their rest periods.

3 83. During the relevant time period, Defendants failed to pay Plaintiff and Class Members
4 rest period premiums for noncompliant rest periods pursuant to Labor Code section 226.7(b) and the
5 applicable IWC Wage Order.

6 84. As a result of Defendants' failure to provide compliant rest periods and pay rest period
7 premiums to Plaintiff and Class Members in accordance with the IWC Wage Orders and Labor Code
8 sections 226.7 and 516, Plaintiff and Class Members suffered and continue to suffer a loss of wages
9 and compensation.

10 85. Because Plaintiff and Class Members were and/or are entitled to such rest periods or
11 "premium pay" in lieu thereof, they are entitled to such payment per shift in an amount according to
12 proof. To the extent such unpaid premiums are deemed unpaid wages, Plaintiff will also seek pre- and
13 post-judgment interest as provided by law at 10% per annum, in an amount according to proof.

14 86. Also, pursuant to Code of Civil Procedure section 1021.5, Plaintiff will seek attorneys'
15 fees and costs from Defendants in an amount subject to proof and approved by the Court.

16 **FIFTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

18 **(AGAINST ALL DEFENDANTS)**

19 87. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
20 fully set forth herein.

21 88. At all relevant times, Defendants had a duty to comply with Labor Code section 226.

22 89. Labor Code section 226(a) requires that, semimonthly or at the time of each payment
23 of wages, employers must furnish each employee with an accurate itemized wage statement in writing
24 that accurately shows (1) gross wages earned, (2) total number of hours worked, (3) the number of any
25 piece-rate units earned and all applicable piece rates, (4) all deductions made from wages, (5) net
26 wages earned, (6) the inclusive dates of the pay period, (7) the name and last four digits or employment
27 identification number of the employee, (8) the name and address of the legal entity that is the
28 employer, and (9) all applicable hourly rates in effect and the corresponding number of hours worked

1 at each hourly rate.

2 90. Labor Code section 226(e)(1) authorizes an employee suffering injury as a result of a
3 knowing and intentional failure by an employer to provide an accurate itemized wage statement to
4 recover the greater of all actual damages or \$50 for the initial pay violation and \$100 for each violation
5 in a subsequent pay period, not to exceed an aggregate penalty of \$4,000 per employee, in addition to
6 an award of costs and attorneys' fees.

7 91. During the relevant time period, Defendants have knowingly and intentionally failed
8 to comply with Labor Code section 226(a) on wage statements that were provided to Plaintiff and
9 Class Members. The deficiencies include, among other things, Defendants' failure to correctly state
10 the gross and net wages earned, the total hours worked, all applicable hourly rates in effect during the
11 pay period, and the corresponding number of hours worked at each hourly rate. Additionally,
12 Defendants failed to properly document cash bonuses on wage statements.

13 92. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff
14 and Class Members have suffered injury and damage to their statutorily protected rights. Specifically,
15 Plaintiff and Class Members have been injured by Defendants' intentional violation of California
16 Labor Code section 226(a) because they were denied both their legal right to receive, and their
17 protected interest in receiving, accurate itemized wage statements under California Labor Code section
18 226(a). Plaintiff has had to file this lawsuit in order to determine the extent of the underpayment of
19 wages, thereby causing Plaintiff to incur expenses and lost time. Plaintiff would not have had to engage
20 in these efforts and incur these costs had Defendants provided the accurate wages earned and number
21 of hours worked at each corresponding pay rate. This has also delayed Plaintiff's ability to demand
22 and recover the underpayment of wages from Defendants.

23 93. Defendants' violations of California Labor Code section 226(a) prevented Plaintiff and
24 Class Members from knowing, understanding and disputing the wages paid to them, and resulted in
25 an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and intentional
26 failure to comply with California Labor Code section 226(a), Plaintiff and Class Members have
27 suffered an injury, and the exact amount of damages and/or penalties is all in an amount to be shown
28 according to proof at trial.

1 94. Plaintiff and Class Members are also entitled to injunctive relief under California Labor
2 Code section 226(h), compelling Defendants to comply with California Labor Code section 226, and
3 seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

4 **SIXTH CAUSE OF ACTION**

5 **WAITING TIME PENALTIES**

6 **(AGAINST ALL DEFENDANTS)**

7 95. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
8 fully set forth herein.

9 96. At all relevant times, Defendants had a duty to comply with Labor Code sections 201,
10 202, and 203. Defendants failed to comply with these final paycheck requirements with respect to
11 Waiting Time Subclass Members.

12 97. Labor Code section 201 requires that if an employer discharges an employee, the wages
13 earned and unpaid at the time of discharge are due and payable immediately.

14 98. Labor Code section 202 requires that if "an employee not having a written contract for
15 a definite period" quits, the employee's wages shall become due and payable no later than 72 hours
16 thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in
17 which case the employee is entitled to his or her wages at the time of quitting.

18 99. Labor Code section 203 provides that if an employer willfully fails to pay, without
19 abatement or reduction, any wages of an employee who is discharged or quits, the wages of the
20 employee shall continue as a penalty from the due date thereof at the same rate until paid or until an
21 action therefor is commenced, but that the wages shall not continue for more than 30 days per
22 employee.

23 100. During the relevant time period, Defendants willfully failed to pay Waiting Time
24 Subclass Members all their earned wages upon termination including, but not limited to, minimum,
25 regular, and overtime compensation, premium compensation, and reimbursements either at the time
26 of discharge or within 72 hours of leaving Defendants' employ.

27 101. As a result of Defendants' failure to timely pay all wages owed to Waiting Time
28 Subclass Members in accordance with Labor Code sections 201, 202 and 203, Waiting Time Subclass

1 Members are entitled to recover waiting time penalties, prejudgment interest, attorneys' fees, and costs
2 in amounts that will be established at trial.

3 **SEVENTH CAUSE OF ACTION**

4 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

5 **(AGAINST ALL DEFENDANTS)**

6 102. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
7 fully set forth herein.

8 103. At all relevant times, Defendants had a duty to comply with Labor Code sections 2800
9 and 2802. Defendants failed to comply with these indemnification and reimbursement requirements
10 with respect to Plaintiff and Class Members.

11 104. Labor Code section 2800 requires employers to indemnify employees for losses caused
12 by the employer's want of ordinary care. To the extent Defendants claim that Plaintiff and Class
13 Members failed to request, demand, notify or otherwise seek reimbursement for their expenses and
14 losses, Defendants were obligated to nevertheless indemnify Plaintiff and Class Members due to their
15 own negligence.

16 105. Labor Code section 2802(a) requires that employers indemnify and reimburse
17 employees for all business expenses, which are defined as all necessary expenditures or losses incurred
18 by the employee in direct consequence of the discharge of the employee's duties or otherwise incurred
19 based on the employee's obedience to the employer's directions. Labor Code section 2802(b)
20 authorizes employees to recover in a court action interest which shall accrue from the date on which
21 the employee incurred the necessary expenditure or loss. Labor Code section 2802(c) authorizes
22 employees, who to enforce their right to reimbursements under Labor Code section 2802, to also
23 recover attorneys' fees and costs.

24 106. During the relevant time period, Defendants required Plaintiff and Class Members to
25 download, install, and use Paylocity on their personal cell phones to record their hours worked, but
26 failed to reimburse Plaintiff and Class Members for a reasonable portion of their cellular phone bills
27 in violation of Labor Code sections 2800 and 2802.

28 107. As a result of Defendants' failure to indemnify and reimburse Plaintiff and Class

Members for all business and work-related costs, expenditures, losses and expenses in accordance with Labor Code sections 2800 and 2802, Plaintiff and Class Members are entitled to recover the full unreimbursed balance of reimbursements, expenditures and losses, prejudgment interest, and statutory penalties, along with attorneys' fees and costs in amounts that will be established at trial.

EIGHTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES
(AGAINST ALL DEFENDANTS)

108. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

109. Defendants' conduct, as alleged herein, has been and continues to be unfair, unlawful and harmful to Plaintiff and Class Members. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

110. Defendants' activities, as alleged herein, violate California law and constitute unlawful business acts or practices in violation of California Business and Professions Code sections 17200, *et seq.*

111. A violation of Business and Professions Code sections 17200, *et seq.* may be predicated on the violation of any state or federal law.

112. Defendants' policies and practices have violated state law in at least the following respects:

- (a) Failing to pay all minimum and regular wages due to Plaintiff and Class Members in violation of Labor Code sections 204, 206, 1182.12, 1194, 1194.2, 1197 and 1198;
- (b) Failing to pay all overtime wages due to Plaintiff and Class Members in violation of Labor Code sections 510, 1194 and 1198;
- (c) Failing to provide meal periods without paying Plaintiff and Class Members premium wages for every day in which a meal period was not provided in violation of Labor Code sections 226.7 and 512;
- (d) Failing to authorize or permit rest breaks without paying Plaintiff and Class Members premium wages for every day in which a rest break was not authorized or permitted in

violation of Labor Code section 226.7;

(e) Failing to provide Plaintiff and Class Members with accurate itemized wage statements in violation of Labor Code section 226;

(f) Failing to timely pay all earned wages to Waiting Time Subclass Members upon separation of employment in violation of Labor Code sections 201, 202 and 203; and

(g) Failing to reimburse Plaintiff and Class Members all necessary business expenses in violation of Labor Code sections 2800 and 2802.

113. Defendants intentionally avoided paying Plaintiff and Class Members wages and monies, thereby creating for Defendants an artificially lower cost of doing business in order to undercut their competitors and establish and gain a greater foothold in the marketplace.

114. Pursuant to Business and Professions Code sections 17202, 17203, and 17208, Plaintiff and Class Members are entitled to restitution of the wages unlawfully withheld and retained by Defendants during a period that commences four (4) years prior to the filing of this action; an award of attorneys' fees pursuant to Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

115. Plaintiff and Class Members are entitled to an injunction, restitution, and other equitable relief against such unlawful practices to return all funds over which Plaintiff and Class Members have an ownership interest and to prevent future damage pursuant to Business and Professions Code sections 17200 *et seq.*

NINTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004

(AGAINST ALL DEFENDANTS)

116. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

117. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under PAGA only after giving the LWDA and the employer notice of the Labor Code sections alleged to have been violated, and after receiving notice from the LWDA of its intention not to investigate or after 65 days have passed without notice from the LWDA.

1 118. On September 11, 2021, Plaintiff gave written notice of the specified provisions alleged
2 to have been violated by Defendants, including the facts and theories to support the alleged violations,
3 as required by Labor Code section 2699.3. This written notice was provided via certified mail to
4 Defendants and to the LWDA by electronically filing the notice via the Department of Industrial
5 Relations' website. More than 65 days has passed since Plaintiff submitted her PAGA notice to the
6 LWDA without a response from the LWDA. Accordingly, Plaintiff may amend her Complaint to add
7 a PAGA cause of action against Defendants.

8 119. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that provides
9 for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions,
10 commissions, boards, agencies or employees for violation of the code may, as an alternative, be
11 recovered through a civil action brought by an aggrieved employee on behalf of herself and other
12 current or former employees pursuant to the procedures specified in Labor Code section 2699.3.

13 120. For all provisions of the Labor Code except those for which a civil penalty is
14 specifically provided, Labor Code section 2699(f) imposes upon Defendants a penalty of one hundred
15 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred
16 dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay period in which
17 Defendants violated these provisions of the Labor Code.

18 121. Pursuant to Labor Code Sections 2699.3 and 2699.5, Plaintiff may seek civil penalties
19 for any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201,
20 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5,
21 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, paragraphs
22 (1) to (5), inclusive, (7), and (9) of subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230,
23 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of
24 Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2,
25 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851,
26 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153,
27 subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision
28 (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296,

1 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695,
2 subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5,
3 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, Sections 1735, 1771,
4 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2,
5 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311,
6 and 6399.7.

7 122. Defendants' conduct violates numerous Labor Code sections, including, but not limited
8 to, the following:

9 (a) Violation of Labor Code sections 201-204, 206, 210, 510, 558, 1194, 1197,
10 1197.1, and 1198 for failure to timely pay all earned wages (including minimum, regular, and overtime
11 wages) owed to Plaintiff and other aggrieved employees during employment and upon separation of
12 employment as herein alleged;

13 (b) Violation of Labor Code sections 226.7 and 512 for failure to provide meal
14 periods to Plaintiff and other aggrieved employees and failure to pay premium wages for missed meal
15 periods as herein alleged;

16 (c) Violation of Labor Code section 226.7 for failure to permit rest breaks to
17 Plaintiff and other aggrieved employees and failure to pay premium wages for missed rest periods as
18 herein alleged;

19 (d) Violation of Labor Code sections 226 and 226.3 for failure to provide accurate
20 itemized wage statements to Plaintiff and other aggrieved employees as herein alleged;

21 (e) Violation of Labor Code sections 1174 and 1174.5 for failure to maintain
22 accurate records regarding the employment of Plaintiff and other aggrieved employees as herein
23 alleged; and

24 (f) Violation of Labor Code section 2800 and 2802 for failure to reimburse Plaintiff
25 and other aggrieved employees for business expenses.

26 123. Labor Code Section 226.3 provides: "[a]ny employer who violates subdivision (a) of
27 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
28 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each

1 violation in a subsequent citation, for which the employer fails to provide the employee a wage
2 deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil
3 penalties provided for in this section are in addition to any other penalty provided by law.”

4 124. Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf
5 of an employer who violates, or causes to be violated, a section of this chapter or any provision
6 regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject
7 to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid
8 employee for each pay period for which the employee was underpaid . . . (2) For each subsequent
9 violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the
10 employee was underpaid.”

11 125. Labor Code section 558.1 provides that any “employer or other person acting on behalf
12 of an employer, who violates, or causes to be violated, any provision regulating minimum wages or
13 hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to
14 be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802 [of the Labor Code], may be held liable
15 as the employer for such violation.”

16 126. Labor Code Section 1174.5 provides a \$500 penalty for an employer’s failure to
17 maintain accurate and complete payroll records showing the hours worked daily by and the wages paid
18 to employees.

19 127. Labor Code section 1197.1 also provides “[a]ny employer or other person acting either
20 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to
21 any employee a wage less than the minimum fixed by an applicable state or local law, or by an order
22 of the commission shall be subject to a civil penalty . . . as follows: (1) For any initial violation that is
23 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period
24 for which the employee is underpaid . . . (2) For each subsequent violation for the same specific
25 offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which
26 the employee is underpaid regardless of whether the initial violation is intentionally committed.

27 128. As set forth above, Defendants have violated numerous provisions of the Labor Code
28 regulating hours and days of work as well as the IWC Wage Orders. Accordingly, Plaintiff also seeks

1 the civil penalties set forth in Labor Code sections 558 and 1197.1 for herself, the underpaid
2 employees, and the State of California.

3 129. Plaintiff is an “aggrieved employee” because he was employed by the alleged violators
4 and had one or more of the alleged violations committed against her, and therefore is properly suited
5 to represent the interests of all other aggrieved employees.

6 130. Plaintiff has exhausted the procedural requirements under Labor Code section 2699.3
7 as to Defendants and is therefore able to pursue a claim for penalties on behalf of herself and all other
8 aggrieved employees under the PAGA.

9 131. Pursuant to Labor Code sections 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
10 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited
11 above.

12 132. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred herein.

13 **PRAYER FOR RELIEF**

14 Plaintiff, individually and on behalf of all others similarly situated, other aggrieved employees,
15 and the State of California, prays for relief and judgment against Defendants, jointly and severally, as
16 follows:

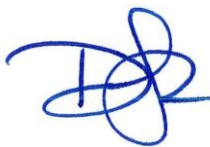
- 17 1. For certification of this action as a class action, including certifying the Class and
18 Subclass alleged by Plaintiff;
- 19 2. For appointment of Plaintiff Mayte Perez as the class representative;
- 20 3. For appointment of Jose Garay, APLC and the Law Office of Daniel J. Hyun as class
21 counsel for all purposes;
- 22 4. For compensatory damages in an amount according to proof with interest thereon;
- 23 5. For economic and/or special damages in an amount according to proof with interest
24 thereon;
- 25 6. For damages, monetary relief, wages, premiums, reimbursements, benefits and
26 penalties, including interest thereon;
- 27 7. For waiting time penalties pursuant to Labor Code section 203;
- 28 8. For the amounts provided for in Labor Code section 226.7;

- 1 9. For liquidated damages pursuant to Labor Code section 1194.2;
- 2 10. For statutory penalties to the extent permitted by law, including those pursuant to the
- 3 Labor Code and IWC Wage Orders;
- 4 11. For restitution to Plaintiff and Class Members of all money and property unlawfully
- 5 acquired by Defendants through unfair or unlawful business practices pursuant to
- 6 Business and Professions Code sections 17200 *et seq.*;
- 7 12. For an order requiring Defendants to restore and disgorge all funds to each employee
- 8 acquired by means of any act or practice declared by this Court to be unlawful, unfair
- 9 or fraudulent and, therefore, constituting unfair competition under Business and
- 10 Professions Code sections 17200, *et seq.*;
- 11 13. For permanent injunctive relief described in the UCL cause of action;
- 12 14. For prejudgment interest on all sums recovered pursuant to Labor Code section 218.6
- 13 and Civil Code sections 3287 and 3289, and applicable law;
- 14 15. For post judgment interest on all amounts awarded to Plaintiff and Class Members as
- 15 provided by law;
- 16 16. For recovery of attorneys' fees and costs provided by Labor Code sections 218.6, 226,
- 17 1194, 2802, 2698 *et seq.*, and Code of Civil Procedure section 1021.5;
- 18 17. For a declaratory judgment that the practices complained of herein are unlawful under
- 19 California law;
- 20 18. Such other equitable relief as the Court may deem proper;
- 21 19. For PAGA penalties; and
- 22 20. For such other relief as the Court deems just and proper.

23 Dated: November 16, 2021

JOSE GARAY, APLC/
LAW OFFICE OF DANIEL J. HYUN

24
25
26 By: _____



Jose R. Garay
Daniel J. Hyun
Shelly D. Song

Attorneys for Plaintiff MAYTE PEREZ

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Dated: November 16, 2021



Jose R. Garay
Daniel J. Hyun
Shelly D. Song
Attorneys for Plaintiff MAYTE PEREZ