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FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION

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and the aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE**

MARIA ROCHA, an individual, on behalf of
herself, others similarly situated, and as a
private attorney general on behalf of the State
of California,

PLAINTIFF,

v.

GRAPES FLC, a California Corporation, and
DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO.: # **289872**

**CLASS ACTION AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay Minimum Wages In Violation of Labor Code §§ 1194 and 1194.2
2. Failure to Pay Overtime Wages In Violation of Labor Code § 510
3. Failure to Provide Lawful Meal Periods And Pay Meal Period Premiums Pursuant to Labor Code §§ 226.7 and 512
4. Failure to Provide Lawful Rest Periods And Pay Rest Period Premiums Pursuant to Labor Code § 226.7
5. Penalties Pursuant to Labor Code § 226(e)
6. Waiting Time Penalties Pursuant to Labor Code § 203
7. Failure to Reimburse Business Expenses In Violation of Labor Code § 2802
8. Violation of Business & Professions Code § 17200
9. Penalties Pursuant to Labor Code § 2699, et seq. for violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2802, and IWC Wage Order Nos. 13-2001 and 14-2001.

CASE MANAGEMENT CONFERENCE

Hearing Date: 4.21.2022
Time: 8:30 Am
Department: 7

1 Plaintiff MARIA ROCHA, an individual, on behalf of herself and others similarly
2 situated, and as a private attorney general on behalf of the State of California complains of
3 Defendant GRAPES FLC and the Doe Defendants (“Defendants”) and each of them, as follows:

4 **I.**

5 **INTRODUCTION AND FACTUAL BACKGROUND**

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

- 8 (1) all individuals who were employed by GRAPES FLC as a non-exempt
9 employee in California for one or more pay periods from August 29, 2017 and
10 continuing into the present; (Non-Exempt Class)¹
- 11 (2) all individuals who were employed by GRAPES FLC as a non-exempt, hourly
12 employee in California for one or more pay periods from August 29, 2017 and
13 continuing into the present; (Non-Exempt Hourly Class)
- 14 (3) all individuals who were employed by Grapes FLC or its predecessor or merged
15 entities in California as a non-exempt employee or other similar position and
16 who worked a shift of more than ten (10) hours in any one workday or more
17 than forty (40) hours in a workweek during a pay period from August 29, 2017
18 to and continuing into the present. (“Overtime Subclass”);
- 19 (4) all individuals who were employed by Grapes FLC or its predecessor or merged
20 entities in California as a non-exempt employee or other similar position and
21 who worked a shift of more than nine and one-half (9 1/2) hours in any one
22 workday or more than fifty-five (55) hours in a workweek during a pay period
23 from January 1, 2019 to December 31, 2019. (“2019 Overtime Subclass”);
- 24 (5) all individuals who were employed by Grapes FLC or its predecessor or merged
25 entities in California as a non-exempt employee or other similar position and
26 who worked a shift of more than nine (9) hours in any one workday or more
27 than fifty (50) hours in a workweek during a pay period from January 1, 2020 to
28 December 31, 2020. (“2020 Overtime Subclass”);

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.” However, since Grapes FLC did not come into existence until August 29, 2017, the class period only goes back to August 29, 2017 and not June 27, 2017.

1 (6) all individuals who were employed by Grapes FLC or its predecessor or merged
2 entities in California as a non-exempt employee or other similar position and
3 who worked a shift of more than eight and one-half (8 1/2) hours in any one
4 workday or more than forty-five (45) hours in a workweek during a pay period
from January 1, 2021 through. ("2021 Overtime Subclass");

5 Collectively, subclasses three (3), four (4), five (5), and six (6) may be referred to as
6 the "Overtime Subclass."

7 (7) all individuals who were employed by Grapes FLC or its predecessor, merged or
8 related entities in California who worked one or more shifts of more than six (6)
9 hours as a non-exempt employee or other similar position from August 29, 2017
and continuing into the present. ("First Meal Period Class");

10 (8) all individuals who were employed by Grapes FLC or its predecessor, merged or
11 related entities in California who worked one or more shifts of more than ten
12 (10) hours as a non-exempt employee or other similar position from August 29,
2017 and continuing into the present. ("Second Meal Period Class");

13 (9) All individuals who were employed by Grapes FLC or its predecessor, merged
14 or related entities in California who were paid a meal and/or rest period
15 premium within the same week that they received either piece rate
16 compensation, an incentive payment, non-discretionary bonus, production
17 bonus, efficiency bonus, attendance bonus, and/or other non-discretionary
18 bonuses and/or incentive payments from August 29, 2017 and continuing into
the present. ("Meal/Rest Period Premium Subclass");

19 Collectively, subclasses seven (7), eight (8), and nine (9) may be referred to as the
20 "Meal Period Subclass."

21 (10) all individuals who were employed by GRAPES FLC as a non-exempt
22 employee in California and who worked a shift of more than 3.51 hours from
23 August 29, 2017 and continuing into the present. ("Non-Exempt Rest Period
Subclass").

24 Collectively, subclasses nine (9) and ten (10) may be referred to as the "Rest Period
25 Subclass."

26 (11) all individuals who were employed by GRAPES FLC as a non-exempt
27 employee in California for one or more pay periods from June 27, 2020 and
28 continuing into the present; (Non-Exempt Wage Statement Subclass)

1 (12) all individuals who were employed by GRAPES FLC as a non-exempt, hourly
2 employee in California for one or more pay periods from June 27, 2020 and
3 continuing into the present; (Non-Exempt Hourly Wage Statement Subclass)

4 Collectively, subclasses eleven (11) and twelve (12) may be referred to as the “Wage
5 Statement Subclass.”

6 (13) all individuals who were employed by Grapes FLC or its predecessor, merged or
7 related entities for one or more pay periods in California as a non-exempt,
8 hourly employee and whose employment concluded at any time between June
9 27, 2018 and continuing into the present. (“Former Employee Class”);

10 (14) all individuals who were employed by GRAPES FLC as a non-exempt
11 employee in California for one or more pay periods from August 29, 2017 and
12 continuing into the present; (Unfair Competition Subclass)

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

16 (1) all non-exempt employees who were employed by Grapes FLC or its
17 predecessor, merged or related entities in California at any point from May 27,
18 2020 and continuing into the present. (“Non-Exempt Aggrieved Employees”);²

19 (2) all non-exempt, hourly employees who were employed by Grapes FLC or its
20 predecessor, merged or related entities in California at any point from May 27,
21 2020 and continuing into the present. (“Non-Exempt Hourly Aggrieved
22 Employees”);

23 (3) all individuals who were employed by Grapes FLC or its predecessor or merged
24 entities in California as a non-exempt employee or other similar position and
25 who worked a shift of more than nine (9) hours in any one workday or more
26 than fifty (50) hours in a workweek during a pay period from May 27, 2020 to
27 December 31, 2020. (“2020 Overtime Aggrieved Employees”);

28 (4) all individuals who were employed by Grapes FLC or its predecessor or merged
entities in California as a non-exempt employee or other similar position and

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 who worked a shift of more than eight and one-half (8 1/2) hours in any one
2 workday or more than forty-five (45) hours in a workweek during a pay period
3 from January 1, 2021 to and continuing into the present. ("2021 Overtime
4 Aggrieved Employees");

5 Collectively, aggrieved employee groups three (3) and four (4) may be referred to as
6 the "Overtime Aggrieved Employees."

7 (5) all individuals who were employed by Grapes FLC or its predecessor, merged or
8 related entities in California who worked one or more shifts of more than six (6)
9 hours as a non-exempt, hourly employee or other similar position from May 27,
10 2020 and continuing into the present. ("First Meal Period Aggrieved
11 Employees");

12 (6) all individuals who were employed by Grapes FLC, or its predecessor, merged
13 or related entities in California as a non-exempt hourly employee, or other
14 similar position, who worked one or more shifts of more than four (4) hours in
15 length or major fraction thereof from May 27, 2020 and continuing into the
16 present. ("Rest Period Aggrieved Employee");

17 (7) all individuals who were employed by Grapes FLC or its predecessor, merged or
18 related entities for one or more pay periods in California as a non-exempt,
19 hourly employee and whose employment concluded at any time between May
20 27, 2020 and continuing into the present. ("Late Payment Aggrieved
21 Employees").

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

24 3. Plaintiff, the Classes, and the aggrieved employees were employed by Defendant
25 GRAPES FLC and any subsidiaries or affiliated companies and Does 1 through 50 (who include
26 individuals acting on behalf an employer within the meaning of Labor Code § 558.1) within the
27 State of California as a non-exempt, hourly employees within four (4) years of the filing of the
28 Complaint and continuing into the present. Plaintiff is a former employee of Defendants who
worked for Defendants in Tulare County.

4. At times throughout her employment with Defendants from August 29, 2017 and
continuing into the present and within the past year, Plaintiff, the Classes, and the aggrieved

1 employees worked shifts in excess of six (6) hours in a day, worked shifts in excess of eight (8)
2 hours in a day, ten (10) hours in a day, twelve (12) hours in a day and/or worked in excess of
3 forty (40) hours in a week or more.

4 5. At times throughout her employment with Defendants from August 29, 2017 and
5 continuing into the present and within the past year, Plaintiff, the Classes, and the aggrieved
6 employees worked enough hours to be eligible to receive overtime wages under IWC Wage Order
7 Nos. 13-2001 and 14-2001 and/or Labor Code section 510.

8 6. Defendants hire employees to work within the state of California who are covered
9 by California Industrial Welfare Commission Occupational Wage Order Nos. 13-2001 and 14-
10 2001. Based upon information and belief, Defendants classified Plaintiff, the Classes, and the
11 aggrieved employees as non-exempt for the purposes of overtime, meal periods, and rest periods.

12 7. Plaintiff and the Wage Statement Subclass received at least one wage statement
13 between June 27, 2020 and continuing into the present.

14 8. Labor Code §2802 provides that “[a]n employer shall indemnify his or her
15 employee for all necessary expenditures or losses incurred by the employee in direct consequence
16 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
17 even though unlawful, unless the employee, at the time of obeying the directions, believed them
18 to be unlawful.”

19 9. At times between August 29, 2017 and continuing into the present, Defendants
20 required and/or expected Plaintiff, the Class, and the aggrieved employees to use gloves and
21 scissors when picking and/or packing grapes and failed to provide such tools.

22 10. At times between August 29, 2017 and continuing into the present, Defendants
23 also failed to provide any masks and/or other safety equipment as required by California law
24 during the COVID-19 pandemic and made employees provide their own masks. By failing to
25 provide Plaintiff, the Class, and aggrieved employees with masks, gloves, and scissors,
26 Defendants caused Plaintiff, the Class, and the aggrieved employees to make expenditures and
27 incur losses in the direct consequence of the discharge of their job duties.

1 11. At times between August 29, 2017 and continuing into the present, Defendants
2 also expected Plaintiff, the Class, and the aggrieved employees to use their personal vehicles for
3 business purposes and for which they did not receive reimbursement. This includes, but is not
4 limited, to requiring Plaintiff, Class Members, and aggrieved employees with trucks to move the
5 porta potties used by the employees.

6 12. Labor Code § 1197 states the California requirement that employees must be paid
7 at least the minimum wage fixed by the Commission or by any applicable state or local law, and
8 any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles
9 “any employee receiving less than the legal minimum wage...to recover in a civil action the
10 unpaid balance of the full amount of this minimum wage.” IWC Wage Order Nos. 13-2001 and
11 14-2001 obligate employers to pay each employee minimum wages for all hours worked.

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

17 14. At times between August 29, 2017 and continuing into the present, Defendants
18 required Plaintiff, the Class, and the aggrieved employees to perform work off-the-clock for
19 which they received no compensation including showing up to work early and performing work
20 while off-the-clock for which no compensation was received, picking up and purchasing supplies
21 (including gloves, scissors, and masks for which no reimbursement was received), and washing
22 grape trays while at home. Based upon information and belief, Plaintiff and the other aggrieved
23 employees were suffered and permitted and/or required to wash the grape trays while off-the-
24 clock for time periods of several hours including, but not limited, between 3-4 hours. Although
25 not limited to this period, such activity was more frequent between July-September. Since
26 Plaintiff, the Class, and the aggrieved employees previously worked eight-and-a half (8.5) hours
27 or nine (9) hours in a day and/or forty-five (45) or fifty (50) hours in a week prior to performing
28

1 the required tray washing, Plaintiff, the Class, and the other aggrieved employees were entitled to
2 overtime wages under Labor Code § 510 and IWC Wage Order Nos. 13-2001 and 14-2001.

3 15. Separate and independent of the foregoing, at times between August 29, 2017 and
4 continuing into the present, Plaintiff, the Class, and the aggrieved employees were often required
5 to report at 6:30 am in the morning and/or put to work before their official shift start time for
6 which they did not receive compensation. Based upon information and belief, Defendants also
7 engaged in a non-neutral rounding practice whereby Plaintiff, the Class, and the aggrieved
8 employees' time entries were rounded down and failed to account for the off-the-clock-work
9 performed by the aggrieved employees such that the rounding policies and practices resulted in
10 the systemic underpayment of Plaintiff and the other aggrieved employees' wages. Defendants
11 also adopted and maintained a common policy and practice whereby it rounded Plaintiff, the
12 Class, and the aggrieved employees' time entries to indicate that they worked exactly eight (8)
13 and/or nine (9) hours a day in order to avoid paying them overtime wages to which they were
14 entitled. This policy and practice caused Plaintiff, the Class, and the aggrieved employees not to
15 receive any compensation whatsoever for the time worked in excess of eight-and-a half (8.5)
16 hours or nine (9) hours in a day and/or forty-five (45) or fifty (50) hours in a week.

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

25 17. IWC Wage Order Nos. 13-2001 and 14-2001 provide:

26 (a) Starting January 1, 2019, an employee shall not be employed more than nine and one-
27 half (9 1/2) hours per workday or fifty-five (55) hours per workweek unless the employee
28 receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours

1 worked over nine and one-half (9 1/2) hours in any one workday or more than fifty-five
2 (55) hours in any one workweek.

3 (b) Starting January 1, 2020, an employee shall not be employed more than nine (9) hours
4 per workday or fifty (50) hours per workweek unless the employee receives one and one-
5 half (1 1/2) times such employee's regular rate of pay for all hours worked over nine (9)
6 hours in any one workday or more than fifty (50) hours in any one workweek.

7 (c) Starting January 1, 2021, an employee shall not be employed more than eight and one-
8 half (8 1/2) hours per workday or forty-five (45) hours per workweek unless the employee
9 receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours
10 worked over eight and one-half (8 1/2) hours in any one workday or more than forty-five
11 (45) hours in any one workweek.

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

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

20 20. At times between August 29, 2017 and continuing into the present, Defendants
21 also failed to include the compensation associated with piece rate work, incentive pay, and other
22 non-discretionary pay (such as non-discretionary bonuses) when calculating and paying overtime.
23 This resulted in the underpayment of overtime wages in violation of Labor Code §§ 510, 1197,
24 and 1198.

25 21. Labor Code § 512 requires employers to provide employees with thirty (30)
26 minute uninterrupted and duty-free meal period within the first five (5) hours of work. Moreover,
27 an employee who works more than ten (10) hours per day is entitled to receive a second thirty
28 (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.

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

8 23. Labor Code § 226.7 provides “an employer shall not require an employee to work
9 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
10 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Similarly, IWC
11 Wage Order Nos. 13-2001 and 14-2001 prohibit an employer from “employ[ing] any person for a
12 work period of more than five (5) hours without a meal period of not less than 30 minutes. IWC
13 Wage Order Nos. 13-2001 and 14-2001 further obligate employers to provide an employee to
14 “pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each
15 workday that the meal period is not provided. Accordingly, for each day that Plaintiff and all
16 aggrieved employees did not receive compliant meal periods, they were entitled to receive meal
17 period premiums pursuant to Labor Code § 226.7 and Wage Order Nos. 13-2001 and 14-2001.

18 24. At times between August 29, 2017 and continuing into the present, Defendant
19 failed to authorize and permit Plaintiff, the Class, and the other aggrieved employees to receive
20 lawful meal periods, failed to advise them of their right to such meal periods, failed to authorize
21 and permit them to take timely first meal periods. Defendant’s meal period policies and practices
22 also disincentivized and discouraged Plaintiff, the Class, and the aggrieved employees from
23 taking timely first meal periods within the first five (5) hours of their shift. Defendants’
24 understaffing policies and practices also pressured, coerced, and forced employees to take
25 untimely first meal periods and/or forgo meal periods due to a lack of sufficient coverage and/or
26 allotment of time to complete the required or expected tasks. Defendants also failed to authorize
27 and permit Plaintiff, the Class, and the aggrieved employees who worked more than five (5)
28 hours, but less than six (6) hours to take a meal period.

1 25. At times between August 29, 2017 and continuing into the present, Defendants
2 also failed to pay Plaintiff, the Class, and the aggrieved employees meal period premiums for
3 each workday that the employees did not receive a compliant meal period and/or at the proper
4 rate. Further, on the rare occasion, if any, that Defendants paid a meal period premium,
5 Defendants had a common policy and practice of failed to pay meal period premiums at the
6 proper rates. This includes, but is not limited to, failing to include the compensation associated
7 with piece rate work, incentive pay, and other non-discretionary pay (such as non-discretionary
8 bonuses) when calculating and paying meal period premiums. This resulted in the underpayment
9 of meal period premiums in violation of Labor Code § 226.7.

10 26. Labor Code § 226.7 provides “an employer shall not require an employee to work
11 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
12 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage
13 Order Nos. 13-2001 and 14-2001, an employer must authorize and permit all employees to take
14 ten (10) minute duty free rest periods for every major fraction of four hours worked. *See Augustus*
15 *v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that “during rest periods
16 employers must relieve employees of all duties and relinquish control over how employees spend
17 their time.”).

18 27. Pursuant to Labor Code § 226.7 and IWC Wage Order Nos. 13-2001 and 14-2001,
19 Defendants failed to provide Plaintiff, the Class, and the aggrieved employees with rest periods of
20 not less than ten (10) minutes for every major fraction of four (4) hours worked. Instead,
21 Defendants regularly and consistently required Plaintiff, the Class, and the aggrieved employees
22 to forgo rest periods and/or required them to remain on the premises and failed to relieve them of
23 all duties.

24 28. Moreover, at times from August 29, 2017 and continuing into the present,
25 Plaintiff, the Class, and the aggrieved employees were denied rest periods as a result of
26 Defendants’ understaffing practices and policies. Notably, although Defendants’ rest period
27 policies and practices are not compliant, they also pressured and coerced employees to forgo rest
28

1 periods and made it difficult for employees to take lawful duty-free rest periods both due to their
2 understaffing policies and practices and otherwise.

3 29. At times from August 29, 2017 and continuing into the present, Defendant failed
4 to provide Plaintiff and all the aggrieved employees with rest periods of not less than ten (10)
5 minutes for every major fraction of four (4) hours worked. Instead, Defendant regularly and
6 consistently required aggrieved employees to forgo rest periods. In fact, it was more common for
7 the aggrieved employees not to receive a rest period than to receive one. Defendant also failed to
8 authorize and permit or provide a second rest period when they worked shifts in excess of six (6)
9 hours—including, but not limited to when the aggrieved employees worked shifts in excess of six
10 (6) hours, but less than eight (8) hours—and failed to authorize and permit employees who
11 worked more than ten (10) hours a third rest period.

12 30. Further, on the rare occasion if any that Defendants paid rest period premiums
13 from August 29, 2017 and continuing into the present, Defendants improperly paid the premium
14 at the employees' hourly base rate instead of at their regular rate. This includes, but is not limited
15 to, failing to include the compensation associated with piece rate work, incentive pay, and other
16 non-discretionary pay (such as non-discretionary bonuses) when calculating and paying meal
17 period premiums. This resulted in the underpayment of rest period premiums in violation of
18 Labor Code § 226.7.

19 31. As to Plaintiff, the Wage Statement Subclass, and the aggrieved employees, from
20 June 27, 2020 and continuing into the present, Defendants also failed to provide accurate itemized
21 wage statements in accordance with Labor Code § 226(a)(1, 2, 5, 8, and 9). Labor Code § 226
22 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage
23 statement in writing showing:

- 24 (1) gross wages earned;
25 (2) total hours worked by the employee;
26 (3) the number of piece-rate units earned and any applicable piece rate if the
27 employee is paid on a piece rate;
28 (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.

32. Due to Defendant's failure to pay Plaintiff and all aggrieved employees all minimum wages, overtime wages, meal period premiums, and rest period premiums, the wage statements issued by Defendants 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. Further, due to Defendant's failure to record all hours worked, Defendant also failed to advise Plaintiff and the other aggrieved employees of the actual total number of hours they worked during the pay period in violation of Labor Code § 226(a)(2). Thus, Defendants have violated Labor Code §226(a)(1), (2), (5), and (9) with respect to Plaintiff, the Wage Statement Subclass, and the aggrieved employees.

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

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

13 35. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
14 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
15 per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee
16 for each violation in a subsequent citation, for which the employer fails to provide the employee a
17 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As
18 explained in detail above, Defendants failed to provide Plaintiff and the other aggrieved
19 employees with accurate itemized wage statements. Accordingly, Plaintiff and the other
20 aggrieved employees may also recover Labor Code § 226.3 and/or 2699.3 penalties for
21 Defendants’ violations of Labor Code § 226(a).

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

26 37. Due to Defendants’ failure to pay Plaintiff and all aggrieved employees all
27 minimum wages, all overtime wages, meal period premiums, and rest period premiums for the
28 reasons discussed above, Defendant failed to timely pay Plaintiff and all aggrieved employees all

1 wages owed within seven (7) days of the close of the payroll period in accordance with Labor
2 Code § 204(d) on a regular and consistent basis.

3 38. Labor Code § 210 provides that “in addition to, an entirely independent and apart
4 from, any other penalty provided in this article, every person who fails to pay the wages of each
5 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For
6 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
7 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
8 each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of
9 the faulty compensation policies and practices described in detail above, Plaintiff and the other
10 aggrieved employees are entitled to recover penalties under Labor Code § 210 through PAGA.
11 *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008) (affirming an award of
12 Labor Code section 210 penalties under PAGA due to the employer’s failure to timely pay wages
13 at the proper rate in accordance with a local wage ordinance).

14 39. Under Labor Code §§ 201-202, an employer must provide an employee wages at
15 the time of discharge or within up to seventy-two (72) hours of their resignation. Labor Code §
16 203 provides “if an employer willfully fails to pay . . . any wages of an employee who is
17 discharged or who quits, the wages of the employee shall continue as a penalty. . .” for up to 30
18 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

19 40. As described in detail above, Defendant failed to pay Plaintiff , the Former
20 Employee Subclass and the aggrieved employees whose employment concluded all wages owed,
21 including but not limited to minimum wages, overtime wages, meal period premiums, and rest
22 period premiums within the time constraints proscribed in Labor Code §§ 201-202 at the time of
23 their termination/separation. Thus, as result of Defendants’ faulty policies described above,
24 Plaintiff, the Former Employee Subclass, and all the Late Payment Aggrieved Employees left
25 their employment with Defendants without being compensated for each and every hour worked at
26 the appropriate rate in violation of Labor Code §§ 201, 202, and 203.

41. As described in detail above, Defendants failed to pay Plaintiff, the Class, and the aggrieved employees whose employment concluded all wages owed, including but not limited to minimum wages, overtime wages, meal period premiums, and rest period premiums within the time constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation. Thus, as result of Defendants' faulty policies described above, the Former Employee Subclass and the aggrieved employees left their employment with Defendants without being compensated for each and every hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, and 203. This included failing to pay for temperature checks at the start of the pandemic once it learned its policies were not compliant

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

43. As previously explained, Defendants failed to maintain accurate records of the total hours worked by Plaintiff, the Class, and the other aggrieved employees while off-the-clock on a regular and consistent basis. Thus, Defendants violated Labor Code §§ 1174 and 1174.5.

44. Plaintiff filed her PAGA Notice online with the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified mail to Defendant setting forth the facts and theories of the violations alleged against Defendant, 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 Code § 2699.3(a)(2)(A), no notice was received and/or will have been received by Plaintiff from the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of the postmark date of the PAGA notice. Plaintiff is therefore, entitled to commence and proceed with a civil action pursuant to Labor Code § 2699.

II.

JURISDICTION AND VENUE

45. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure

§ 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

46. This Court has personal jurisdiction over Defendant Grapes FLC because Defendant has caused injuries in the County of Tulare and State of California through their acts, and by their violation of the California Labor Code and California law in Tulare County.

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

48. This case should be classified as complex according to Rule 3.400 of the California Rules of Court, and assigned to a complex litigation judge and department, as it will involve substantial documentary evidence, and is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve and would require substantial post judgment judicial supervision.

III.

PARTIES

A. PLAINTIFF

49. Plaintiff MARIA ROCHA is a former employee of Defendants who worked for Defendants in Tulare County.

50. Plaintiff and the Class were regularly required to:

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

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

c. Work without being provided lawful meal periods;

d. Work without being provided lawful rest periods;

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

6 f. Were deprived of wages that Defendants knew were due and owing, yet
7 failed to pay at the time of termination and/or within 72 hours of resignation for those former
8 employees who did not provide advance notice; and

9 g. Work without being reimbursed for expenses incurred in direct
10 consequence of the discharge of his or her duties.

11 **B. DEFENDANTS**

12 51. Defendant Grapes FLC is a California corporation. Defendant's principal place of
13 business is believed to be 214 E Robin Ave, Visalia, CA 93291. Upon information and belief,
14 Defendant employed Plaintiff and the Classes within California and in Tulare County, including
15 in Visalia, California. Defendant has done and does business throughout the State of California
16 and in Tulare County.

17 52. The true names and capacities, whether individual, corporate, associate, or
18 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
19 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
20 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
21 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
22 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
23 capacities of the Defendants designated hereinafter as DOES when such identities become
24 known.

25 53. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
26 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
27 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
28

legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the Class and/or as alter egos of each other.

IV.

CLASS ACTION ALLEGATIONS

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

- (1) all individuals who were employed by GRAPES FLC as a non-exempt employee in California for one or more pay periods from August 29, 2017 and continuing into the present; (Non-Exempt Class)³
- (2) all individuals who were employed by GRAPES FLC as a non-exempt, hourly employee in California for one or more pay periods from August 29, 2017 and continuing into the present; (Non-Exempt Hourly Class)
- (3) all individuals who were employed by Grapes FLC or its predecessor or merged entities in California as a non-exempt employee or other similar position and who worked a shift of more than ten (10) hours in any one workday or more than forty (40) hours in a workweek during a pay period from August 29, 2017 to and continuing into the present. (“Overtime Subclass”);
- (4) all individuals who were employed by Grapes FLC or its predecessor or merged entities in California as a non-exempt employee or other similar position and who worked a shift of more than nine and one-half (9 1/2) hours in any one workday or more than fifty-five (55) hours in a workweek during a pay period from January 1, 2019 to December 31, 2019. (“2019 Overtime Subclass”);
- (5) all individuals who were employed by Grapes FLC or its predecessor or merged entities in California as a non-exempt employee or other similar position and who worked a shift of more than nine (9) hours in any one workday or more than fifty (50) hours in a workweek during a pay period from January 1, 2020 to December 31, 2020. (“2020 Overtime Subclass”);

³ 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.” However, since Grapes FLC did not come into existence until August 29, 2017, the class period only goes back to August 29, 2017 and not June 27, 2017.

1 (6) all individuals who were employed by Grapes FLC or its predecessor or merged
2 entities in California as a non-exempt employee or other similar position and
3 who worked a shift of more than eight and one-half (8 1/2) hours in any one
4 workday or more than forty-five (45) hours in a workweek during a pay period
from January 1, 2021 through. ("2021 Overtime Subclass");

5 Collectively, subclasses three (3), four (4), five (5), and six (6) may be referred to as
6 the "Overtime Subclass."

7 (7) all individuals who were employed by Grapes FLC or its predecessor, merged or
8 related entities in California who worked one or more shifts of more than six (6)
9 hours as a non-exempt employee or other similar position from August 29, 2017
and continuing into the present. ("First Meal Period Class");

10 (8) all individuals who were employed by Grapes FLC or its predecessor, merged or
11 related entities in California who worked one or more shifts of more than ten
12 (10) hours as a non-exempt employee or other similar position from August 29,
2017 and continuing into the present. ("Second Meal Period Class");

13 (9) All individuals who were employed by Grapes FLC or its predecessor, merged
14 or related entities in California who were paid a meal and/or rest period
15 premium within the same week that they received either piece rate
16 compensation, an incentive payment, non-discretionary bonus, production
17 bonus, efficiency bonus, attendance bonus, and/or other non-discretionary
18 bonuses and/or incentive payments from August 29, 2017 and continuing into
the present. ("Meal/Rest Period Premium Subclass");

19 Collectively, subclasses seven (7), eight (8), and nine (9) may be referred to as the
20 "Meal Period Subclass."

21 (10) all individuals who were employed by GRAPES FLC as a non-exempt
22 employee in California and who worked a shift of more than 3.51 hours from
23 August 29, 2017 and continuing into the present. ("Non-Exempt Rest Period
Subclass").

24 Collectively, subclasses nine (9) and ten (10) may be referred to as the "Rest Period
25 Subclass."

26 (11) all individuals who were employed by GRAPES FLC as a non-exempt
27 employee in California for one or more pay periods from June 27, 2020 and
28 continuing into the present; (Non-Exempt Wage Statement Subclass)

1 (12) all individuals who were employed by GRAPES FLC as a non-exempt, hourly
2 employee in California for one or more pay periods from June 27, 2020 and
3 continuing into the present; (Non-Exempt Hourly Wage Statement Subclass)

4 Collectively, subclasses eleven (11) and twelve (12) may be referred to as the “Wage
5 Statement Subclass.”

6 (13) all individuals who were employed by Grapes FLC or its predecessor, merged or
7 related entities for one or more pay periods in California as a non-exempt,
8 hourly employee and whose employment concluded at any time between June
9 27, 2018 and continuing into the present. (“Former Employee Class”);

10 (14) all individuals who were employed by GRAPES FLC as a non-exempt
11 employee in California for one or more pay periods from August 29, 2017 and
12 continuing into the present; (Unfair Competition Subclass).

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

16 (1) all non-exempt employees who were employed by Grapes FLC or its
17 predecessor, merged or related entities in California at any point from May 27,
18 2020 and continuing into the present. (“Non-Exempt Aggrieved Employees”);⁴

19 (2) all non-exempt, hourly employees who were employed by Grapes FLC or its
20 predecessor, merged or related entities in California at any point from May 27,
21 2020 and continuing into the present. (“Non-Exempt Hourly Aggrieved
22 Employees”);

23 (3) all individuals who were employed by Grapes FLC or its predecessor or merged
24 entities in California as a non-exempt employee or other similar position and
25 who worked a shift of more than nine (9) hours in any one workday or more
26 than fifty (50) hours in a workweek during a pay period from May 27, 2020 to
27 December 31, 2020. (“2020 Overtime Aggrieved Employees”);

28 (4) all individuals who were employed by Grapes FLC or its predecessor or merged
entities in California as a non-exempt employee or other similar position and

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.

1 who worked a shift of more than eight and one-half (8 1/2) hours in any one
2 workday or more than forty-five (45) hours in a workweek during a pay period
3 from January 1, 2021 to and continuing into the present. (“2021 Overtime
4 Aggrieved Employees”);

5 Collectively, aggrieved employee groups three (3) and four (4) may be referred to as
6 the “Overtime Aggrieved Employees.”

7 (5) all individuals who were employed by Grapes FLC or its predecessor, merged or
8 related entities in California who worked one or more shifts of more than six (6)
9 hours as a non-exempt, hourly employee or other similar position from May 27,
10 2020 and continuing into the present. (“First Meal Period Aggrieved
11 Employees”);

12 (6) all individuals who were employed by Grapes FLC, or its predecessor, merged
13 or related entities in California as a non-exempt hourly employee, or other
14 similar position, who worked one or more shifts of more than four (4) hours in
15 length or major fraction thereof from May 27, 2020 and continuing into the
16 present. (“Rest Period Aggrieved Employee”);

17 (7) all individuals who were employed by Grapes FLC or its predecessor, merged or
18 related entities for one or more pay periods in California as a non-exempt,
19 hourly employee and whose employment concluded at any time between May
20 27, 2020 and continuing into the present. (“Late Payment Aggrieved
21 Employees”).

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

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

27 57. This action has been brought and may properly be maintained as a class action
28 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.

29 **A. Numerosity**

30 58. The potential members of the Proposed Classes as defined are each so numerous
31 that joinder of all the members of the Proposed Classes is impracticable. While the precise

1 number of proposed Class Members in each Class has not been determined at this time, Plaintiff
2 is informed and believes that Defendants currently employ, and during the relevant time periods
3 employed to be more than 100 members or more of the Proposed Class and Subclasses at any
4 given time.

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

8 **B. Commonality**

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

12 a. Whether Defendants failed to pay minimum wages for all hours worked as
13 required by Labor Code §§ 1194, 1194.2, and 1197 as well as IWC Wage Order Nos. 13-2001
14 and 14-2001 to the Class;

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

17 c. Whether Defendants violated Labor Code §§ 226.7 and IWC Wage Order
18 Nos. 13-2001 and 14-2001, by failing to authorize and permit First Meal Period Class Members
19 and Unfair Competition Class Members to take a timely meal period within the first five (5) hours
20 of their shift, failure to provide second meal periods for shifts worked in excess of ten (10) hours
21 to the Second Meal Period Class and the Unfair Competition Class as well as their failure to pay
22 the Meal Period Classes and the Unfair Competition Class one additional hour of pay at the
23 employees' at their regular rate of compensation when they did not receive a compliant meal
24 period;

25 d. Whether Defendants violated Labor Code § 226.7 and IWC Nos. 13-2001
26 and 14-2001, by failing to inform Plaintiff and the Proposed Rest Period Class and the Unfair

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

1 Competition Class of their right to receive a ten (10) minute duty-free rest period for every four
2 hours of work or major fraction thereof, failing to authorize and permit employees' to leave the
3 premises during rest periods and/or relieve employees of all control during rest periods, and by
4 failing to compensate said employees one (1) additional hour of pay at the employee's regular
5 rate of compensation in lieu of rest periods;

6 e. Whether Defendants violated Labor Code § 226(a) and (e) as well as IWC
7 Wage Order Nos. 13-2001 and 14-2001 by failing to provide an accurate itemized wage
8 statements that accurately indicate, the gross wages earned, all deductions from wages, the net
9 wages earned, as well as all applicable hourly rates in effect during the pay period and the
10 corresponding number of hours worked at each hourly rate by the employee to the Wage
11 Statement Class;

12 f. Whether Defendants violated §§ 201-203 of the Labor Code by failing to
13 pay compensation due and owing at the time that the Late Payment Classes employment with
14 Defendants concluded;

15 g. Whether Defendants violated Labor Code § 2802 by failing to provide
16 Plaintiff, the Non-Exempt Class, and the Unfair Competition Class with all tools and implements
17 needed to discharge his or her duties;

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

20 **C. Typicality**

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

25 **D. Adequacy of Representation**

26 62. Plaintiff will fairly and adequately represent and protect the interests of the
27 members of the proposed Classes. Counsel who represents Plaintiff and the Proposed Classes is
28

competent and experienced in litigating large employment class actions, and have the financial resources to litigate the claims at issue.

E. Superiority of Class Action

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

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

V.

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF LABOR CODE §§ 1194 and 1194.2 AND IWC WAGE ORDER NOS. 7-2001 and 9-2001

[Against All Defendants by Plaintiff, the Class, the Non-Exempt Class, and the Non-Exempt Hourly Class]

65. Plaintiff, on behalf of herself and the Class, the Non-Exempt Class, and the Non-Exempt Hourly Class re-alleges and incorporates by reference all previous paragraphs.

66. Section 1194 of the Labor Code provides, in relevant part:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than minimum wage...applicable to the employee is entitle to recover in a civil action the unpaid balance of the full amount of this minimum wage ..., including interest thereon, reasonable attorney's fees, and costs of suit.

67. Section 1194.2 of the Labor Code provides, in relevant part:

In any action under...Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

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

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

VI.
SECOND CAUSE OF ACTION
FAILURE TO PAY WAGES AND/OR OVERTIME UNDER
LABOR CODE §§ 510, 1194, and 1199
[Against All Defendants by Plaintiff, the Non-Exempt Class, the Non-Exempt Hourly Class,
the Overtime Subclass, the 2019 Overtime Subclass, the 2020 Overtime Subclass, and the
2021 Overtime Subclass]

70. Plaintiff, on behalf of herself, the Class, the Non-Exempt Class, the Non-Exempt Hourly Class, the Overtime Subclass, the 2019 Overtime Subclass, the 2020 Overtime Subclass, and the 2021 Overtime Subclass realleges and incorporates by reference all previous paragraphs.

71. 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 and the Class could not agree to work for a lesser wage.

72. IWC Wage Order Nos. 13-2001 and 14-2001 provide:

1 (a) Starting January 1, 2019, an employee shall not be employed more than nine and one-
2 half (9 1/2) hours per workday or fifty-five (55) hours per workweek unless the employee
3 receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours
4 worked over nine and one-half (9 1/2) hours in any one workday or more than fifty-five
(55) hours in any one workweek.

5 (b) Starting January 1, 2020, an employee shall not be employed more than nine (9) hours
6 per workday or fifty (50) hours per workweek unless the employee receives one and one-
half (1 1/2) times such employee's regular rate of pay for all hours worked over nine (9)
hours in any one workday or more than fifty (50) hours in any one workweek.

7 (c) Starting January 1, 2021, an employee shall not be employed more than eight and one-
8 half (8 1/2) hours per workday or forty-five (45) hours per workweek unless the employee
9 receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours
10 worked over eight and one-half (8 1/2) hours in any one workday or more than forty-five
(45) hours in any one workweek.

11 73. 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 74. 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 75. As discussed in detail above, at times from August 29, 2017 and continuing into
20 the present, Defendants failed to pay Plaintiff, the Class, the Non-Exempt Class, the Non-Exempt
21 Hourly Class, the Overtime Subclass, the 2019 Overtime Subclass, the 2020 Overtime Subclass,
22 and the 2021 Overtime Subclass, with wages for all hours worked (including overtime hours) and
23 failed to pay overtime wages at the proper rate.

24 76. Based upon information and belief, at times from August 29, 2017 and continuing
25 into the present, Defendants failed to pay Plaintiff, the Class, the Non-Exempt Class, the Non-
26 Exempt Hourly Class, the Overtime Subclass, the 2019 Overtime Subclass, the 2020 Overtime
27 Subclass, and the 2021 Overtime Subclass members at one and one-half times their regular rate
28 and instead underpaid their overtime wages.

1 with a compliant meal period or at the proper rate based upon Defendants' unlawful
2 compensation policies detailed above.

3 84. At times between August 29, 2017 and continuing into the present, on the rare
4 occasion, if any, that Defendants paid a meal period premium, Defendants had a common policy
5 and practice of failing to include compensation associated with piece rate compensation, incentive
6 payments, non-discretionary bonuses, production bonuses, efficiency bonuses, or attendance
7 bonuses. Instead of paying meal/rest period premiums at employees' regular rates, on the rare
8 occasions that Plaintiff, the Class and the Meal Period Subclass received a meal period premium,
9 Defendants improperly paid the premium at the employee's hourly base rate instead of at their
10 regular rate.

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

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

20 **VIII.**

21 **FOURTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE LAWFUL REST PERIODS AND PAY NON-COMPLIANT 23 REST PERIOD PREMIUMS PURSUANT TO LABOR CODE § 226.7 AND IWC WAGE 24 ORDER NOS. 13-2001 AND 14-2001, § 12**

25 **[Against All Defendants by Plaintiff, the Non-Exempt Class, the Non-Exempt Hourly Class,
26 and the Rest Period Subclass]**

27 87. Plaintiff, on behalf of herself, the Non-Exempt Class, the Non-Exempt Hourly
28 Class, and the Rest Period Subclass, realleges and incorporates by reference all previous
paragraphs.

1 88. Plaintiff, the Non-Exempt Class, the Non-Exempt Hourly Class, and the Rest
2 Period Subclass consistently worked shifts more than four (4) hours or a major fraction thereof,
3 including shifts in excess of six (6) hours in a day, but less than eight (8) hours.

4 89. Labor Code § 226.7 provides “an employer shall not require an employee to work
5 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
6 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage
7 Order Nos. 13-2001 and 14-2001 an employer must authorize and permit all employees to take
8 ten (10) minute duty free rest periods for every major fraction of four hours worked.

9 90. Labor Code § 226.7 provides “an employer shall not require an employee to work
10 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
11 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage
12 Order Nos. 13-2001 and 14-2001 an employer must authorize and permit all employees to take
13 ten (10) minute duty free rest periods for every major fraction of four hours worked.

14 91. Pursuant to Labor Code § 226.7 and IWC Wage Order Nos. 13-2001 and 14-2001,
15 Defendants failed to provide Plaintiff and the Non-Exempt Class, the Non-Exempt Hourly Class,
16 and the Rest Period Subclass with duty-free rest periods of not less than ten (10) minutes for
17 every major fraction of four (4) hours worked. Specifically, Defendants failed to have a lawful
18 rest period policy in place that informed Plaintiff, the Non-Exempt Class, the Non-Exempt
19 Hourly Class, and the Rest Period Subclass of their right to take rest periods for shifts that were a
20 major fraction of a four (4) hour work period and to make rest breaks available to these
21 employees. Instead, Defendants often required Plaintiff, the Non-Exempt Class, the Non-Exempt
22 Hourly Class, and the Rest Period Subclass to work without lawful rest periods and/or the correct
23 number of rest periods. This includes, but is not limited to, failing to advise Plaintiff and the other
24 Rest Period Classes of their right to receive a second ten (10) minute rest period when they
25 worked a shift in excess of six (6) hours, but less than eight (8) hours. Defendants regularly and
26 consistently failed to authorize and permit employees to take a second net ten (10) minute duty-
27 free rest period when working shifts in excess of six (6) hours, but less than eight (8) hours.

1 92. Defendants also failed to advise Plaintiff, the Non-Exempt Class, the Non-Exempt
2 Hourly Class, and the Rest Period Subclass of their right to receive a second ten (10) minute rest
3 period when they worked a shift in excess of six (6) hours, but less than eight (8) hours as well as
4 their right to receive a third ten (10) minute rest period for every shift worked in excess of ten
5 (10) hours. Defendants also regularly and consistently failed to authorize and permit employees to
6 take a second net ten (10) minute duty-free rest period when working shifts in excess of six (6)
7 hours, but less than eight (8) hours. Defendants also failed to authorize and permit Plaintiff, the
8 Non-Exempt Class, the Non-Exempt Hourly Class, and the Rest Period Subclass of their right to
9 receive a third ten (10) minute rest period for every shift worked in excess of ten (10) hours.

10 93. Moreover, as a result of its understaffing practices and policies with respect to
11 employees, it was not possible for Plaintiff, the Non-Exempt Class, the Non-Exempt Hourly
12 Class, and the Rest Period Subclass to take rest periods. Notably, although Defendants' rest
13 period policies and practices are not compliant, they also pressured and coerced employees to
14 forgo rest periods and made it difficult for employees to take lawful duty-free rest periods.

15 94. In addition to failing to authorize and permit compliant rest periods, Plaintiff, the
16 Non-Exempt Class, the Non-Exempt Hourly Class, and the Rest Period Subclass were not
17 compensated with one (1) hours' worth of pay at their regular rate of compensation when they
18 were not provided with a compliant rest period and/or their rest period was interrupted in
19 accordance with Labor Code § 226.7(b).

20 95. At times between August 29, 2017 and continuing into the present, on the rare
21 occasion, if any, that Defendants paid a rest period premium, Defendants had a common policy
22 and practice of failing to include compensation associated with piece rate compensation, incentive
23 payments, non-discretionary bonuses, production bonuses, efficiency bonuses, or attendance
24 bonuses. Instead of paying meal/rest period premiums at employees' regular rates, on the rare
25 occasions that Plaintiff, Plaintiff, the Non-Exempt Class, the Non-Exempt Hourly Class, and the
26 Rest Period Subclass received a rest period premium, Defendants improperly paid the premium at
27 the employee's hourly base rate instead of at their regular rate.

96. Based upon the foregoing, at all times pertinent hereto, Defendants failed to authorize and permit Plaintiff and the other members of the Rest Period Class to take duty-free rest periods of not less than ten (10) minutes net for every major fraction of four (4) hours worked.

97. Pursuant to Labor Code § 226.7, Plaintiff and the Rest Period Classes are entitled to damages in an amount equal to one (1) hour of wages per missed rest period, in a sum to be proven at trial.

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

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

99. From at least June 27, 2020 and continuing into the present, Defendants knowing and intentionally failed to provide accurate itemized wage statements to Plaintiff and the Wage Statement Subclass in accordance with Labor Code § 226(a)(1, 2, 3, 5, 8, and 9). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

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

Similarly, Labor Code § 226(e) provides:

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

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

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

9 (ii) Which deductions the employer made from gross wages to determine the net
10 wages paid to the employee during the pay period. Nothing in this subdivision
11 alters the ability of the employer to aggregate deductions consistent with the
12 requirements of item (4) of subdivision (a).

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

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

11 100. Due to Defendants' failure to pay Plaintiff and the Class all minimum wages, all
12 overtime wages, all meal period premiums (including at the proper rates), and all rest period
13 premiums (including at the proper rates), the wage statements issued by Defendants to Plaintiff
14 and the Wage Statement Subclass do not indicate the correct amount of gross wages earned, the
15 total hours worked, the net wages earned, all applicable hourly rates in effect during the pay
16 period and the corresponding number of hours worked at each hourly rate. Thus, Defendants have
17 violated Labor Code §226(a)(1), (2), (3), (5), and (9) with respect to Plaintiff and the Wage
18 Statement Subclass.

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

22 102. Moreover, Plaintiff and the Wage Statement Subclass also suffered legal "injury"
23 for purposes of Labor Code section 226(e) insofar as they were unable to readily and easily
24 determine from the wage statements themselves the information required to be set forth by
25 Section 226(a), the information provided by Defendants were confusing and inaccurate. In
26 addition, Plaintiff and the Wage Statement Subclass were unable to determine at all the total
27 hours worked by the employee, the gross wages earned, the net wages earned, and all applicable
28

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

3 103. Defendants also knowingly and intentionally failed to pay Plaintiff and the Classes
4 all minimum wages, overtime wages owed, meal period premiums, and rest periods premiums.
5 Moreover, Plaintiff and the Wage Statement Subclass also suffered legal “injury” for purposes of
6 Labor Code section 226(e) insofar as they were unable to readily and easily determine from the
7 wage statements themselves the information required to be set forth by Section 226(a), the
8 information provided by Defendants was confusing and inaccurate, Plaintiff and the Wage
9 Statement Subclass were unable to determine at all the total hours worked by the employee, the
10 gross wages earned, the net wages earned, and all applicable hourly rates in effect during the pay
11 period and the corresponding number of hours worked at each hourly rate by the employee for the
12 reasons discussed above.

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

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

106. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code § 226(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 exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees. *See* Lab. Code § 226(e). Plaintiff and the Wage Statement Class seek penalties under Labor Code § 226(e) in amounts to be determined at trial, and are entitled to recovery of such amounts, attorneys' fees, and costs.

X.

SIXTH CAUSE OF ACTION

**WAITING TIME PENALTIES PURSUANT TO LABOR CODE §§201-203
[Against all Defendants on behalf of Plaintiff and the Former Employee Class]**

107. Plaintiffs on behalf of herself and the Former Employee Class re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

108. Sections 201 and 202 of the California Labor Code requires Defendants to pay all compensation due and owing to former employees in the Class during the actionable period for this cause of action, at or around the time that their employment is terminated.

109. Section 203 of the California Labor Code provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty (30) workdays.

110. As described in detail above, Defendants failed to pay Plaintiff and the other Class Members whose employment concluded all wages owed, including but not limited to all minimum wages, overtime wages, meal period premiums, and rest period premiums within the time constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation. Thus, as result of Defendants' faulty policies described above, Plaintiff and all Class Members' left their employment with Defendants without being compensated for each and every hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, and 203.

111. At the time of Plaintiff, the other members of the Former Employee Class' separation from Defendants, the sums were certain and known to Defendants.

112. As a result, Defendants are liable to Plaintiff and the Former Employee Class who are no longer employed by Defendants for waiting time penalties amounting to thirty (30) days wages for Plaintiff and each Class Member pursuant to California Labor Code § 203. See, e.g., DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties).

XI.
SEVENTH CAUSE OF ACTION
FAILURE TO REIMBURSE FOR BUSINESS EXPENSES
(LABOR CODE § 2802)
[Against all Defendants on behalf of Plaintiff, the Non-Exempt Class and the Non-Exempt Hourly Class]

113. Plaintiffs on behalf of herself, the Non-Exempt Class and the Non-Exempt Hourly Class re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

114. Labor Code § 2802 provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.”

115. At times between August 29, 2017 and continuing into the present, Defendants required and/or expected Plaintiff, the Non-Exempt Class and the Non-Exempt Hourly Class to use gloves and scissors when picking and/or packing grapes and failed to provide such tools.

116. At times between August 29, 2017 and continuing into the present, Defendants also failed to provide any masks and/or other safety equipment as required by California law during the COVID-19 pandemic and made employees provide their own masks. By failing to provide Plaintiff, the Class, and aggrieved employees with masks, gloves, and scissors, Defendants caused Plaintiff, Non-Exempt Class and the Non-Exempt Hourly Class to make expenditures and incur losses in the direct consequence of the discharge of their job duties.

117. At times between August 29, 2017 and continuing into the present, Defendants also expected Plaintiff, Non-Exempt Class and the Non-Exempt Hourly Class to use their personal vehicles for business purposes and for which they did not receive reimbursement. This

1 includes, but is not limited, to requiring Plaintiff, Non-Exempt Class and the Non-Exempt Hourly
2 Class with trucks to move the porta potties used by the employees.

3 118. Defendants' conduct in requiring Plaintiff to engage in the above described
4 activities caused them to incur losses as a direct consequence of their duties in violation of Labor
5 Code § 2802.

6 119. Defendants' failure to pay for or reimburse the work-related business expenses of
7 Plaintiff, the Non-Exempt Class and the Non-Exempt Hourly Class violated non-waivable rights
8 secured to Plaintiff and Field Non-Exempt Class by Labor Code §2802. See Labor Code §2804.
9 Plaintiff, the Non-Exempt Class and the Non-Exempt Hourly Class are entitled to reimbursement
10 for these necessary expenditures, plus interest and attorneys' fees and costs, under Labor Code §
11 2802.

12 **XII.**
13 **EIGHTH CAUSE OF ACTION**
14 **UNFAIR COMPETITION PURSUANT TO**
15 **BUSINESS & PROFESSIONS CODE § 17200**
16 **[Against all Defendants on behalf of Plaintiff, the Class, and the Unfair Competition Class]**

17 120. Plaintiff, on behalf of herself, the Class, and the Unfair Competition Class
18 realleges and incorporates by reference all previous paragraphs.

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

27 122. Defendants have engaged in unlawful and unfair business practices that violate
28 fundamental public policies of the state of California and the United States of America As a result
of its unlawful and unfair business practices, Defendants have forced employees to work under

1 substandard and unlawful conditions in an effort to gain a competitive advantage over law-
2 abiding employers who comply with California's Labor Code.

3 123. Defendants have violated statutes and public policies as alleged herein. Through
4 the conduct alleged in this Complaint, Defendants have acted contrary to these public policies,
5 have violated specific provisions of the Labor Code, and have engaged in other unlawful and
6 unfair business practices in violation of Business & Profession Code § 17200, et seq., depriving
7 Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and
8 privileges guaranteed to all employees under law.

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

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

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

17 127. As part of their claims against Defendant, Plaintiffs seek not only the unpaid
18 wages, but also the market value of the loss of the statutory protections and the cost to other
19 employers of providing proper pay, breaks, and complying with the California Labor Code
20 provisions identified herein. *See e.g. Safeway, Inc. v. Sup. Ct.*, 238 Cal.App.4th 1138, 1162
21 (2015).

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

1 XII.

2 NINTH CAUSE OF ACTION

3 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**
4 **FOR PENALTIES PURSUANT TO LABOR CODE § 2698, ET SEQ. FOR VIOLATIONS**
5 **OF LABOR CODE §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5,**
6 **1194, 1197, 1197.1, 1198, 2802, and IWC Wage Order Nos. 13-2001 and 14-2001**

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

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

17 131. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
18 § 2698, *et seq.* because of Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 210, 226,
19 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2802, and IWC Wage
20 Order Nos. 13-2001 and 14-2001.

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

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

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

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

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

12 134. In addition, Plaintiff and the aggrieved employees seek the default penalty
13 provided by Labor Code §§ 226.3 and/or 2699.3 for violations of Labor Code section 226(a).⁶
14 Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226
15 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee
16 per violation in an initial violation and one thousand dollars (\$1,000) per employee for each
17 violation in a subsequent citation, for which the employer fails to provide the employee a wage
18 deduction statement or fails to keep the required in subdivision (a) of Section 226.”

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

25
26
27
28 ⁶ There is a split of authority between the appellate courts regarding which penalty applies for a violation of Labor Code section 226(a) at present.

1 136. As a result of the faulty compensation policies and practices described in detail
2 above, the State of California is entitled to recover penalties under Labor Code § 210 through
3 PAGA.

4 137. Further, Labor Code § 558 imposes a penalty upon employers “who violates, or
5 causes to be violated...any provision regulating hours and days of work in any order of the
6 Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial
7 violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the
8 employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For
9 each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
10 period for which the employee was underpaid...” Based upon the above factual allegations
11 related to overtime, meal period, and rest period violations, Plaintiff and the aggrieved employees
12 are entitled to recover civil penalties under Labor Code § 558 and not any underpaid wages under
13 PAGA. *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019).

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

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

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. An Order that this action may proceed and be maintained as a Class Action on behalf of the Classes;
2. For compensatory damages in the amount of unpaid minimum wages not paid to Plaintiff and each Class Member from August 29, 2017 and continuing into the present as may be proven;
3. For compensatory damages in the amount of unpaid overtime wages not paid to Plaintiff, each Class Member from August 29, 2017 and continuing into the present as may be proven;
4. For compensatory damages in the amount of Plaintiff and each Class Members unpaid and/or underpaid meal period premiums from August 29, 2017 and continuing into the present as may be proven;
5. For compensatory damages in the amount of Plaintiff and each Class Members unpaid and/or underpaid rest period premiums from August 29, 2017 and continuing into the present as may be proven;
6. For penalties pursuant to Labor Code § 226(e) for violations of Labor Code § 226(a) in the amount of 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 exceeding an aggregate penalty of four thousand dollars (\$4,000) for the inaccurate itemized wage statements issued to Plaintiff and the Wage Statement Class from June 27, 2020 and continuing into the present as may be proven;
7. An award to Plaintiff and the Former Employee Class of waiting time penalties in the amount of up to 30 days' wages;
8. That the Court award to Plaintiff and Class Members all unreimbursed business expenses, and interest thereon, that they are owed, pursuant to Labor Code § 2802, in an amount to be proved at trial;

1 9. For restitution for unfair competition pursuant to Business & Professions Code
2 § 17200 to Plaintiff and the Unfair Competition Class for actions, including disgorgement of
3 profits, in an amount as may be proven;

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

10 11. For penalties under Labor Code § 2698, *et seq.* for Plaintiff and all aggrieved
11 employees because of Defendants' violation of Labor Code §§ 201, 202, 203, 204, 210, 226,
12 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2802, and IWC Wage
13 Order Nos. 13-2001 and 14-2001.

14 12. An award of post judgment interest;

15 13. An award providing for payment of costs of suit;

16 14. An award of attorneys' fees; and

17 15. Such other and further relief as this Court may deem proper and just.

18 **DEMAND FOR JURY TRIAL**

19 Plaintiff hereby demands a trial of her claims by jury for causes of action 1-7, but not
20 claims 8 (unfair competition) or 9 (PAGA) for which a bench trial is required.

21 ///

22 ///

23 ///

24 DATED: December 22, 2021

WINSTON LAW GROUP, P.C.

25 By: David S. Winston
26 DAVID S. WINSTON
27 Attorneys for Plaintiff, the Proposed
28 Class, and the aggrieved employees