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Attorneys for Plaintiff CIDA BENG, on behalf of herself
and others similarly situated

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

CIDA BENG, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

SAS MANAGEMENT STORES, INC., a
California corporation; SAS C-STORES INC.,
a California corporation; S&S PETROLEUM,
INC., a Washington corporation; and DOES 1
to 10, inclusive

Defendants.

**CASE NO. 21STCV45479
FIRST AMENDED CLASS ACTION
COMPLAINT:**

- 1. Failure to Pay Overtime Wages in Violation of Cal. Labor Code §§ 510 and 1198;**
- 2. Failure to pay all Wages and Minimum Wages in Violation of Cal. Labor Code §§ 1182, 1194, 1197, 1198;**
- 3. Failure to Provide Meal Periods in Violation of Cal. Labor Code §§ 226.7, 512, 516 and 1198;**
- 4. Failure to Provide Rest Periods in Violation of Cal. Labor Code §§ 226.7, 516, 1198;**
- 5. Failure to Timely Furnish Accurate Itemized Wage Statements in Violation of Cal. Labor Code §226(a);**

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- 6. **Failure to Timely Pay Wages During Employment in Violation of Cal. *Labor Code* § 204;**
- 7. **Waiting Time Penalties Pursuant to Cal. *Labor Code* §§ 201, 203;**
- 8. **Unlawful Direct Deposit and Discount of Wages in Violation of Cal. *Labor Code* §§ 212 and 213;**
- 9. **Unlawful Deductions in Violation of Cal. *Labor Code* §§ 221 and 224;**
- 10. **Secret Payment of Lower Wages in Violation of Cal. *Labor Code* § 223;**
- 11. **Failure to Provide Suitable Seating in Violation of Cal. *Labor Code* § 1198;**
- 12. **Failure to Reimburse Business Expenses in violation of in Violation of Cal. *Labor Code* § 2802;**
- 13. **Failure to Provide Notice of Material Terms of Employment in Violation of Cal. *Labor Code* § 2810.5(a)(1)(A)-(C);**
- 14. **Failure to Provide Sick Day Balances in Violation of Cal. *Labor Code* § 246;**
- 15. **Failure to Preserve Payroll Records in Violation of Cal. *Labor Code* § 1174;**
- 16. **Violations of California *Business & Professions Code* §§ 17200, *et seq.*; and**
- 17. **Civil Penalties Pursuant to PAGA California *Labor Code* §§ 2698, *et seq.***

DEMAND FOR JURY TRIAL

1 Plaintiff, CIDA BENG (hereinafter “Plaintiff”) hereby submits her Complaint against
2 Defendants SAS MANAGEMENT STORES, INC., a California corporation; SAS C-STORES
3 INC., a California corporation; S&S PETROLEUM, INC., a Washington corporation; and DOES
4 1 to 10 (hereinafter referred to as “Defendants”) on behalf of herself and the class of all other
5 similarly situated current and former employees of Defendants as follows:

6 **NATURE OF THE CASE**

7 1. This is a class action arising out of Defendants’ failure to provide their non-exempt
8 employees with all wages, meal and rest periods in compliance with the applicable Wage Order
9 and/or the California *Labor Code*, by failing to provide suitable seating, by failing to reimburse
10 business expenses, by failing to provide sick day balances, and by failing to comply with the
11 applicable Wage Order and/or the California *Labor Code* in regards to the payment of wages.

12 2. SAS MANAGEMENT STORES, INC. and SAS C-STORES INC. are California
13 corporations, and S&S PETROLEUM, INC. is a Washington corporation. Together, Defendants
14 owns and operates approximately 80 gas station convenience stores throughout Washington,
15 Idaho, Oregon, and California, including at least 25 stores in California. Upon information and
16 belief, Defendants maintains a single, centralized Human Resources (HR) department at its
17 corporate headquarters in Mukilteo, Washington, for all non-exempt, hourly paid employees
18 working for Defendants in California, including Plaintiff and others similarly situated. At all
19 relevant times, Defendants issued and maintained uniform, standardized scheduling and
20 timekeeping practices and procedures for all non-exempt, hourly paid employees in California,
21 including Plaintiff and others similarly situated, regardless of their location or position.

22 3. Defendants have maintained practices across its locations which have failed and
23 continues to fail to pay Plaintiff and other non-exempt employees all wages. Specifically,
24 Defendants have a company-wide policy of discouraging Plaintiff and other non-exempt
25 employees from recording hours worked and assigning very heavy workloads. This has resulted
26 in Defendants’ failure to pay overtime wages to Plaintiff and other non-exempt employees.

27 4. Further, as a result of Defendants limiting the amount of overtime employees could
28 accrue, coupled with understaffing and heavy workloads, Plaintiff and other non-exempt

1 employees were forced to work off-the-clock.

2 5. Defendants' failure to properly staff its facilities and practice of assigning heavy
3 workloads has also resulted in a lack of meal period and rest period coverage and prevented
4 Plaintiff and other non-exempt employees from taking compliant meal and rest periods.

5 6. In light of the foregoing, Defendants failed to provide Plaintiff and other non-
6 exempt employees with compliant wage statements, failed to timely pay wages during
7 employment and failed to timely pay final wages upon termination or separation from
8 employment.

9 7. Defendants also had a practice of automatically issuing debit cards to Plaintiff and
10 other non-exempt employees without giving them the option to elect their form of payment for
11 their wages, and unlawfully deducted fees for the use the debit cards.

12 8. Further, Defendants failed to provide Plaintiff and other non-exempt employees
13 suitable seating, although the nature of the work could reasonably be accomplished from a seated
14 position.

15 9. Defendants also failed to reimburse Plaintiff and other non-exempt employees for
16 business related expenses, including but not limited to the use of personal cellphones to perform
17 work related duties.

18 10. At all relevant times, on information and belief, Defendants also failed, on a
19 company-wide basis, to provide written notice to Plaintiff and other non-exempt employees that
20 lists the requisite information set forth in *Labor Code* §§ 2810.5(a)(1)(A)-(C).

21 11. Plaintiff brings Causes of Action One through Fifteen (the "class claims") as a
22 class action on behalf of herself and other similarly situated individuals who have worked for
23 Defendants in California, at any time from four-years prior to the filing of this complaint, through
24 the resolution of this action. Plaintiff, on her own behalf and on behalf of all Class Members,
25 brings the class claims pursuant to California *Labor Code* §§ 200-203, 204, 212, 213, 221, 223,
26 224, 226, 226.7, 246, 500, 510, 512, 516, 1182.11-1182.12, 1174, 1194, 1194.2, 1197, 1198, 2802,
27 2810, the applicable wage order and under Business & Professions Code §§ 17200-17208, for
28 unfair competition due to Defendants' unlawful, unfair and fraudulent business acts and practices.

12. Plaintiff brings Cause of Action Sixteen as a proxy of the State of California on behalf of other aggrieved employees for penalties under the Private Attorneys General Act (PAGA). PAGA provides that any civil penalty assessed and collected by the Labor and Workforce Development Agency (LWDA) for violations of applicable provisions of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself and other current or former employees pursuant to procedures outlined in California *Labor Code* § 2699.3. PAGA also provides that an aggrieved employee can bring a civil action on behalf of other aggrieved employees for violation of any other Labor Code provision that does not itself contain a civil penalty, in which case the civil penalties are assessed at \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation. On October 8, 2021, Plaintiff provided written notice to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. More than 65 calendar days have passed since the date notice was provided to the LWDA and Defendants.

13. Accordingly, Plaintiff has satisfied the administrative prerequisites under California *Labor Code* Section 2699.3(a) to recover civil penalties against Defendants for violations of California Labor Code identified in this Complaint.

14. Plaintiff is informed and believes, and based thereon alleges, Defendants have engaged in, among other things a system of willful violations of the California Labor Code and the applicable IWC wage orders by creating and maintaining policies, practices and customs that knowingly deny employees the above stated rights and benefits.

PARTIES

15. Plaintiff, Cida Beng is an individual over the age of eighteen (18) and is now, and/or at all relevant times mentioned in this Complaint was, a resident and domiciliary of the State of California. During the relevant time period, Plaintiff worked for Defendants in Long Beach, California from approximately June 2020 through approximately October 2020. Plaintiff worked as a cashier and earned approximately \$13.00 per hour for regular shifts and

1 approximately \$13.50 per hour for graveyard shifts. Her job duties included, without limitation,
2 processing transactions, counting money, restocking products, disposing of trash, and cleaning
3 and maintaining her work premises.

4 16. The Defendant Parties to this case are SAS Management Stores, Inc., SAS C-
5 Stores, Inc., and S&S Petroleum, Inc., and each of their past, present and/or future, direct and/or
6 indirect, officers, directors, members, managers, exempt employees, agents, representatives,
7 attorneys, insurers, partners, investors, shareholders, administrators, parent companies,
8 subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers. Plaintiff
9 is informed and believes, and based thereon alleges, that Defendants SAS Management Stores
10 Inc. and SAS C-Stores Inc. are California corporations, and S&S Petroleum Inc. is a Washington
11 corporation. Plaintiff is further informed and believes that at all times relevant hereto, Defendants
12 have transacted, and continues to transact, business throughout the State of California.

13 17. Plaintiff is informed and believes, and based upon such information and belief
14 alleges, that Defendants are, now and/or at all times mentioned in this Complaint was in some
15 manner legally responsible for the events, happenings and circumstances alleged in this
16 Complaint.

17 18. Plaintiff is further informed and believes, and based upon such information and
18 belief alleges, that at all times herein mentioned, Defendants proximately caused Plaintiff, all
19 others similarly situated, and the general public to be subjected to the unlawful practices, wrongs,
20 complaints, injuries and/or damages alleged in this Complaint.

21 19. Plaintiff is informed and believes and based thereon alleges that at all times herein
22 mentioned Defendants and DOES 1 through 10, are and were corporations, business entities,
23 individuals, and partnerships, licensed to do business and actually doing business in the State of
24 California.

25 20. Plaintiff does not know the true names or capacities, whether individual, partner
26 or corporate, of the Defendants sued herein as DOES 1 through 10, inclusive, and for that reason,
27 said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
28 complaint when the true names and capacities are known. Plaintiff is informed and believes and

1 based thereon alleges that each of said fictitious Defendants were responsible in some way for the
2 matters alleged herein and proximately caused Plaintiff and members of the general public and class
3 to be subject to the illegal employment practices, wrongs and injuries complained of herein.

4 21. At all times herein mentioned, each of said Defendants participated in the doing of
5 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
6 Defendants, and each of them, were the agents, servants and employees of each of the other
7 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
8 within the course and scope of said agency and employment.

9 22. Plaintiff is informed and believes and based thereon alleges that at all times material
10 hereto, each of the Defendants named herein were the agent, employee, alter ego and/or joint
11 venturer of, or working in concert with each of the other co-Defendants and were acting within the
12 course and scope of such agency, employment, joint venture, or concerted activity. To the extent
13 said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining
14 Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

15 23. At all times herein mentioned, Defendants, and each of them, were members of, and
16 engaged in, a joint venture, partnership and common enterprise, and acting within the course and
17 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

18 24. At all times herein mentioned, the acts and omissions of various Defendants, and
19 each of them, concurred and contributed to the various acts and omissions of each and all of the
20 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
21 herein mentioned, Defendants, and each of them, ratified each and every act or omission complained
22 of herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the
23 acts and omissions of each and all of the other Defendants in proximately causing the damages as
24 herein alleged.

25 25. The members of the classes (as defined below), including the representative Plaintiff
26 named herein, have been employed during the Class Period in California. The practices and policies
27 which are complained of by way of this Complaint are enforced throughout the State of California.

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1 **JURISDICTION AND VENUE**

2 26. The Court has jurisdiction over this class action pursuant to Article 6, § 10 of the
3 California Constitution and California Code of Civil Procedure § 410.10.

4 27. Additionally, this Court has jurisdiction over Plaintiff's and the Class' claims for
5 injunctive relief, including restitution of earned wages, arising from Defendants' unfair
6 competition under Business & Professions Code §§ 17203 and 17204. The Court also has
7 jurisdiction over Plaintiff's and the Class' claims for penalties in violation of the Labor Code
8 pursuant to the Private Attorneys General Act of 2004 California *Labor Code* §§ 2698-99, as well
9 as pursuant to the applicable Labor Code provisions.

10 28. The Court has jurisdiction over Defendants because they are authorized to do
11 business in the State of California and is registered with the California Secretary of State.
12 Defendants do sufficient business with sufficient minimum contacts in California, and/or
13 otherwise intentionally avails itself of the California market through the advertising, marketing
14 and sale of goods and services, to render the exercise of jurisdiction over Defendants by the
15 California court consistent with traditional notions of fair play and substantial justice.

16 29. Venue is proper in Los Angeles County because the acts which give rise to this
17 litigation occurred in this county and because Defendants have employed class members in this
18 county and transacts business in this county.

19 **FACTUAL ALLEGATIONS**

20 30. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

21 31. Defendants have engaged in, and continue to engage in, unfair business practices
22 in California by practicing, employing and utilizing the employment practices and policies
23 outlined above.

24 32. Defendants' utilization of such unfair business practices deprives Plaintiff and
25 other aggrieved employees of the general minimum working standards and entitlements due to
26 them under California law and the Industrial Welfare Commission wage orders as described
27 herein.

28 33. Plaintiff and all other aggrieved employees were and are classified by Defendants

1 as non-exempt employees, pursuant to the provisions of the California *Labor Code*, and the orders
2 and standards promulgated by the California Department of Industrial Relations, Industrial
3 Welfare Commission, and Division of Labor Standards. As non-exempt employees, Plaintiff and
4 all other aggrieved employees are entitled to certain benefits, including mandated meal and rest
5 breaks.

6 34. In addition, said statutory provisions, wage orders, regulations and standards
7 obligate the employer to maintain accurate records of the hours worked by employees.

8 35. As a direct result of the wage and hour violations herein alleged, Plaintiff and
9 members of the Classes have suffered, and continue to suffer substantial losses related to the use
10 and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in seeking
11 to compel Defendants to fully perform its obligations under state law, all to Plaintiff's respective
12 damage in amounts according to proof at the time of trial.

13 ***Defendants' Failure to Pay Overtime Wages***

14 36. During the Class Period, upon information and belief, Defendants had, and
15 continue to have, a company-wide policy of discouraging and impeding Plaintiff and other non-
16 exempt employees from recording hours worked that were outside of their scheduled shifts in
17 order to limit the amount of overtime employees could accrue. On information and belief, this
18 policy of limiting overtime, coupled with Defendants' policy and/or practice of understaffing and
19 assignment of heavy workloads, led Plaintiff and other aggrieved employees to work off-the-
20 clock before and after their scheduled shift times. For example, prior to almost every shift,
21 Plaintiff was required to arrive early and spend 2-3 minutes off-the-clock counting cash in the
22 register. As a further example, after every shift until August 2020, Plaintiff would spend an
23 additional 20-30 minutes off-the-clock disposing of trash and cleaning restrooms. When this
24 occurred, Plaintiff was unable to record this off-the-clock work because Defendants' management
25 prohibited her from recording hours worked outside of her scheduled shifts.

26 37. At all times, Plaintiff and other non-exempt employees remained under the control
27 of Defendants. Defendants could have recorded this off-the-clock work, but refused to do so to
28 avoid paying Plaintiff and other non-exempt employees overtime wages.

1 38. Second, Defendants had, and continue to have, a policy and/or practice of
2 requiring employees to use their personal mobile phones to communicate with management at all
3 times, including on days off. Defendants expected Plaintiff and other non-exempt to promptly
4 respond to text messages on their mobile phones at all times to discuss work-related matters with
5 Defendants' management. For example, four (4) times per week, Plaintiff was required to spend
6 3-5 minutes of off-the-clock outside of her shift to respond to text message from her supervisor
7 regarding her work schedule, upcoming tasks, customer complaints, and whether she had clocked
8 out at the end of her scheduled shift. Thus, Defendants required Plaintiff and other non-exempt
9 employees to respond to management on their personal phones while off-the-clock in order to
10 meet Defendants' expectations but failed to compensate them for this time.

11 39. Third, during the relevant time period, Defendants maintained and implemented a
12 company-wide on premises meal period policy, which mandated that Plaintiff and other non-
13 exempt employees remain on the work premises during their meal periods. Because Plaintiff and
14 other non-exempt employees were restricted from leaving the premises during meal periods, they
15 were denied the ability to use their meal periods freely for their own purposes. For example, until
16 August 2020, Plaintiff and other aggrieved employees were unable to purchase food or run
17 personal errands because they were unable to leave the work premises. Thus, Defendants
18 effectively maintained control over Plaintiff and other non-exempt employees during meal
19 periods.

20 40. Fourth, Defendants' company-wide policy and/or practice of understaffing its
21 locations while assigning heavy workloads, resulted in a failure to provide other non-exempt
22 employees with adequate meal period coverage. Defendants also failed to adhere to a schedule of
23 meal periods, which further caused other non-exempt employees to not be relieved of their duties
24 for compliant meal periods. As a result, other non-exempt employees missed or had meal periods
25 interrupted in order to complete their assigned tasks. Consequently, other non-exempt employees
26 performed work during meal periods for which they were not paid. Further, on information and
27 belief, because Defendants frowned upon employees accruing meal period penalties, Defendants
28 adjusted Plaintiff's and/or other non-exempt employees' time records to reflect compliant meal

1 periods, even when they did not receive a compliant meal period, in order to strictly limit meal
2 penalties that Defendants would otherwise owe. Thus, Plaintiff and/or other non-exempt
3 employees performed work during meal periods for which they were not paid Defendants knew
4 or should have known that as a result of these company-wide practices and/or policies, Plaintiff
5 and other non-exempt employees were performing assigned duties off-the-clock before and after
6 their shifts and/or during meal periods, and were suffered or permitted to perform work for which
7 they were not paid. Because Plaintiff and other non-exempt employees worked shifts of eight (8)
8 hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified
9 for overtime premium pay.

10 41. Fifth, Defendants' policies required advance approval of overtime in direct
11 violation of *Gentry v. Superior Ct.*, 42 Cal. 4th 443, 455 (2007) ("the rights to the legal minimum
12 wage and legal overtime compensation conferred by the statute are unwaivable.").

13 42. Sixth, Defendants' policies specifically threaten discipline for any employees who
14 work overtime without pre-authorization and goes on to say confusingly that exempt employees
15 will not be paid for working beyond their regular scheduled hours, but non-exempt employees will.
16 The difference between such employees is not explained in the handbook and could be easily
17 misinterpreted by a lay person reviewing the company policies. *Id.* For purposes of certification of
18 the class, Plaintiff will establish via other class employees' declarations that it was the general
19 understanding that overtime would not be paid by Defendants.

20 43. Therefore, Plaintiff and other non-exempt employees were not paid overtime
21 wages for all of the overtime hours they actually worked. Furthermore, Defendants did not pay
22 Plaintiff and other non-exempt employees the correct overtime rate for the recorded overtime
23 hours that they generated. In addition to an hourly wage, Defendants paid Plaintiff and other non-
24 exempt employees hazard pay, incentive pay, nondiscretionary bonuses, and/or other forms of
25 remuneration. However, in violation of the California *Labor Code*, Defendants failed to
26 incorporate all compensation, including hazard pay, incentive pay, nondiscretionary bonuses,
27 and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of
28 calculating the overtime wage rate. Therefore, during times when Plaintiff and other non-exempt

1 employees worked overtime and received these other forms of pay, Defendants failed to pay all
2 overtime wages by paying a lower overtime rate than required. Specifically, Defendants paid
3 Plaintiff and other non-exempt employees hazard pay, incentive pay and/or nondiscretionary
4 bonuses, which were listed on Plaintiff's and other non-exempt employees' wage statements as
5 "Hazard Pay."

6 44. Defendants failed to calculate the correct rate of pay due to Graveyard shift pay
7 and hazard pay to Plaintiff and other non-exempt employees.

8 45. During pay periods that Plaintiff and other non-exempt employees were paid
9 overtime wages, Defendants did not incorporate the hazard pay, nondiscretionary bonuses and/or
10 incentive pay into Plaintiff's and non-exempt employees' regular rate of pay and, as a result, paid
11 them at incorrect and lower rates of pay for overtime hours worked. Specifically, Defendants paid
12 Plaintiff and other non-exempt employees 1.5 times their hourly rate of pay instead of 1.5 times
13 their regular rate of pay. Defendants' failure to properly calculate the overtime rates of pay based
14 on all remuneration paid has resulted in an underpayment of overtime wages to Plaintiff and other
15 non-exempt employees on a company-wide basis.

16 ***Defendants' Failure to Pay all Wages and Minimum Wages***

17 46. As stated above, during the relevant time period, as a result of Defendants'
18 policy of limiting the amount of overtime employees could accrue, coupled with understaffing
19 and heavy workloads, Plaintiff and other non-exempt employees were forced to work off-the-
20 clock before and after their scheduled shift start and end times to complete their work-related
21 tasks, such as counting cash (all employees were instructed to do a cash count before clocking
22 in and could not clock in until the shift actually started), disposing of trash, and cleaning
23 restrooms. More specifically, Defendants explicitly instructed Plaintiff and the class to clock out
24 at the end of their scheduled shifts and keep completing their duties. Plaintiff and other class
25 employees would spend 20-30 minutes at the end of almost every shift taking trash out and
26 cleaning restrooms until approximately August/September 2020 when management stopped the
27 practice.

28 47. Additionally, employees were forced to work off the clock because there was only

1 one person in the kiosk. Thus, class employees would do off the clock pre-shift work and post-
2 shift work (Plaintiff estimates that the pre-shift work was approximately three minutes). In
3 addition, as set forth above, due to Defendants' company-wide practice of requiring employees
4 to communicate with supervisors at all times, Plaintiff and other non-exempt employees were
5 forced to work off-the-clock responding to text messages from Defendants' management.
6 Moreover, due to Defendants' policies and/or practices of understaffing while assigning of heavy
7 workloads, failing to adhere to a schedule of meal periods, and requiring employees to stay on
8 the work premises during meal periods, Plaintiff and other non-exempt employees were forced to
9 forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of
10 all duties during meal periods.

11 48. Additionally, due to the policy of only one employee working at a time, the Class
12 cannot take meal and rest breaks because they are the only ones in the store, often on graveyard
13 shifts. The illegality of these policies is hinted at in Defendants on duty meal waiver which requires
14 employees to agree to eat meals on premises. Although this policy allegedly stopped around
15 September of 2020, Defendants still pressured employees to stay on premises and the provided
16 breakroom was the office area and employees would still be interrupted if customers tapped on the
17 windows. Plaintiff reports customer interruptions were something that happened regularly.

18 49. Specifically, Plaintiff reports that employees did not have an opportunity to take
19 timely, off-duty meals and rest periods and were discouraged from accumulating overtime. As a
20 result, she reports most employees would work off the clock in order to appease management. This
21 includes side work that they could not perform until another employee was present including
22 stocking and cleaning bathrooms and periphery areas. Despite being required to perform these
23 duties, class members were never paid for this as it was "off the clock". Plaintiff estimates that rest
24 breaks were frequently missed four times a week due to interruptions by customers. Indeed,
25 Defendants own policies prohibit employees from leaving the premises during rest breaks and
26 meal breaks.

27 50. Furthermore, Defendants have taken unlawful deductions from Plaintiff and the
28 class's pay checks by providing debit cards with fees, rounding hours, and not calculating the correct

1 rate of pay based upon *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal. 5th 858 ("*Ferra*"),
2 which unanimously holds that employers are required to pay meal and rest break violation premiums
3 at the same "regular rate of pay" they use for paying overtime and confirming that the decision
4 applies retroactively to meal and rest break violation premium payments previously made or owed.
5 *Id.* At "regular rate of compensation," as used in statute and wage order requiring an employer to pay
6 one additional hour of pay at an employee's regular rate of compensation as remedy for failure to
7 provide mandatory meal, rest, or recovery period, was equivalent with "regular rate of pay," as used
8 in overtime statute, and, thus, nondiscretionary payments for work performed by employee were to
9 be included when determining compensation for failure to provide a meal, rest, or recovery period,
10 retroactively. *Id.*

11 51. The primary factors driving the violations in this case are understaffing and poor
12 management. In this case, Defendants assign employees to work at gas stations, often alone.
13 Defendants failed to provide adequate coverage and clear scheduling to permit its employees to
14 take timely breaks. Additionally, Defendants has failed to implement compliant policies to ensure
15 that staff is working on the clock and receives off duty breaks.

16 52. Defendants pressured its work force to perform job duties even though there were issues
17 of understaffing. Plaintiff Clemens [sic] reports that there was a rampant culture of working off the clock
18 and through meal breaks in order to comply with Defendants' policies of not working "over" the
19 scheduled shifts. Other class employees consistently worked off the clock doing pre-shift and closing-
20 shift duties that incurred approximately 20 minutes per shift. Furthermore, an analysis of Defendants
21 records demonstrates that time was rounded leading to a non-neutral shaving of time benefiting
22 Defendants. Plaintiff claims that neither she nor class members were paid for off-the-clock work before
23 and after their scheduled shift times.

24 53. Further, as stated, in order to prevent employees from accruing meal period
25 penalties, upon information and belief, Defendants adjusted Plaintiff's and/or other non-exempt
26 employees' time records to reflect compliant meal periods, regardless of whether they had
27 received a compliant meal period. Thus, Defendants did not pay at least minimum wages for all
28 hours worked by Plaintiff and other non-exempt employees. To the extent that these off-the-clock

1 hours did not qualify for overtime premium payment, Defendants did not pay at least minimum
2 wages for those hours worked off-the-clock.

3 ***Failure to Provide Compliant Meal Periods***

4 54. As stated above, Defendants had, and continue to have, a company-wide policy
5 and/or practice of understaffing, which, combined with the assignment of heavy workloads and
6 failing to adhere to a schedule of meal periods, has resulted in a lack of meal period coverage and
7 prevented Plaintiff and other non-exempt employees from taking all timely, uninterrupted meal
8 periods to which they were entitled. As a result, Plaintiff and other non-exempt employees were
9 forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal
10 periods interrupted, and/or had to forgo their meal periods altogether. Class employees typically
11 would work through and sometimes skip meal and rest breaks entirely. Also, when employees
12 begin a meal or rest period, they are subject to interruption by having to respond to customer
13 needs.

14 55. For example, on several occasions, Plaintiff was unable to take her meal period
15 until her sixth hour after the start of her scheduled shift. Moreover, upon information and belief,
16 because Defendants frowned upon employees accruing meal period penalties, Defendants'
17 management would adjust Plaintiff and other non-exempt employees time records to reflect
18 compliant meal periods, regardless of whether they had received a compliant meal period, in order
19 to strictly limit meal penalties that would need to be paid by Defendants. Any premiums paid for
20 missed meal and rest periods, were improperly paid at the worker's base hourly rate, rather than
21 the regular rate.

22 56. Moreover, as set forth above, Defendants maintained a company-wide on-
23 premises meal period policy, which mandated that Plaintiff and other non-exempt employees
24 remain on Defendants' premises during their meal periods. Because Plaintiff and other non-
25 exempt employees were restricted from leaving the premises during meal periods, they were
26 denied the ability to use their meal periods freely for their own purposes. For example, as stated,
27 until August 2020, Plaintiff and other non-exempt employees were unable to purchase food or
28 run personal errands because they were unable to leave the work premises. Thus, Plaintiff and

1 other non-exempt employees remained under Defendants' control during their meal periods.

2 57. In addition, to the extent Defendants required its employees to sign written "on-
3 duty" meal period agreements, such agreements were invalid under California law. Defendants'
4 "on-duty" meal period policy results from the company's own staffing and business decisions,
5 not because the nature of the work required on-duty meal periods. There were multiple employees
6 employed by Defendants at Plaintiff's and other non-exempt employees' locations and
7 Defendants' locations are not in remote areas. Defendants could have provided rover break
8 coverage for Plaintiff and other non-exempt employees or staffed more employees at its locations,
9 but chose not to do so. Further, the work of Defendants' employees is not of the kind that could
10 be said to meet the "nature of the work" exception.

11 58. Plaintiff and other non-exempt employees were responsible for processing sales,
12 restocking shelves, disposing of trash, and cleaning restrooms. None of these tasks is akin to the
13 kind that the California Division of Labor Standards Enforcement ("DLSE") has found warrant
14 an "on-duty" meal period, such as transporting hazardous materials via vehicles that must be
15 monitored at all times pursuant to federal regulation. Therefore, Defendants' use of an "on-duty"
16 meal period is improper and unlawful. Because of Defendants' company-wide written "on-duty"
17 meal period policy, Plaintiff and other non-exempt employees did not receive all required off-
18 duty meal periods and did not receive premium pay for missed, late, or interrupted meal periods
19 Additionally, Defendants did not provide Plaintiff and other non-exempt employees with all
20 second 30- minute meal periods on days that they worked in excess of ten (10) hours in one day.
21 Plaintiff and other non-exempt employees did not sign valid meal period waivers on days that
22 they were entitled to meal periods and were not relieved of all duties. Moreover, Defendants had
23 a company-wide policy of requiring all employees to sign blanket meal period waivers at or near
24 their time of hire. Defendants took the position that non-exempt, hourly paid employees had
25 waived their rights to first and/or second meal periods for the entirety of their employment and,
26 on that basis, did not provide them with all meal periods to which they were entitled. Defendants'
27 company-wide use of blanket meal period waivers, signed at or near the time of hire, and
28 imposition on employees to revoke the waivers in writing, discouraged and impeded Plaintiff and

1 other non-exempt employees from taking all meal periods to which they were entitled. And,
2 Defendants' presumption that meal periods would not be provided for shifts in excess of five (5)
3 hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve (12)
4 hours, due to blanket meal period waivers, discouraged Plaintiff and other non-exempt employees
5 from taking all meal periods. Even assuming Defendants' blanket use of meal period waivers is
6 valid, Wage Order No. 5 and section 512 only allow for the waiver of meal periods "by mutual
7 consent of the employer and employee" meaning employees should be able to revoke their waiver
8 at any time, without any requirement that the revocation be made in writing. Defendants' meal
9 period waiver forms prohibit non-written revocation.

10 59. In addition to failing to provide or permit breaks in the first place, Defendants also
11 maintain uniform policies that discourage and prevent employees from reporting missed breaks.
12 Defendants cannot claim ignorance of the breadth and scope of the denial of meal and rest periods.
13 The data demonstrates evidence 46.4% of all shifts had a meal break violation and Defendants
14 paid 24,443 meal premiums in the date during the class period (approximately 107,495 total
15 shifts).

16 60. Therefore, Class members must endure missed meal and rest periods as part of
17 their everyday reality. While Class members receive premium pay for some missed meals, and to
18 a lesser extent rest periods, it is only for a fraction of the meal and rest periods they regularly are
19 not provided or permitted to take.

20 ***Defendants' Failure to Provide Compliant Rest Breaks***

21 61. During the relevant time period, Defendants regularly failed to authorize and
22 permit Plaintiff and other non-exempt employees to take a ten (10) minute rest period per each
23 four (4) hour period worked or major fraction thereof. Thus, Defendants fail to permit their non-
24 exempt employees to take rest breaks of at least ten minutes by the end of every fourth hour of
25 work or major fraction thereof. Furthermore, on and information and belief, Defendants
26 maintained a company-wide on-premises rest period policy, which mandated that Plaintiff and
27 other non-exempt employees remain on Defendants' premises during their rest periods. Because
28 Plaintiff and other non-exempt employees were restricted from leaving the premises during rest

1 periods, they were denied the ability to use their rest periods freely for their own purposes, such
2 as to run personal errands. The rest policy does not say “or major portion thereof” on premises
3 requirement for rests. For example, because Plaintiff was required to remain on Defendants’
4 premises during her rest periods, she was interrupted four (4) times per week and spent several
5 minutes attending to customers that would request her assistance. Thus, Defendants’ effectively
6 maintained control over Plaintiff and other non-exempt employees during rest periods.
7 Defendants assign employees to work at gas stations, often alone. Defendants failed to provide
8 adequate coverage and clear scheduling to permit its employees to take timely breaks.
9 Additionally, Defendants have failed to implement compliant policies to ensure that staff is
10 working on the clock and receives off duty breaks.

11 ***Defendants’ Failure to Provide Compliant Wage Statements***

12 62. During the relevant time period, Defendants have knowingly and intentionally
13 provided Plaintiff and other non-exempt employees with uniform, incomplete, and inaccurate
14 wage statements. For example, Defendants issued uniform wage statements to Plaintiff and other
15 non-exempt employees that fail to correctly list: gross wages earned; total hours worked; net
16 wages earned; and all applicable hourly rates in effect during the pay period, including rates of
17 pay for overtime wages and/or meal and rest period premiums, and the corresponding number of
18 hours worked at each hourly rate.

19 63. Because Defendants did not record the time Plaintiff and other non-exempt
20 employees spent working off-the-clock and deducted time from their meal periods that were
21 missed and/or interrupted (and therefore time for which they should have been paid), Defendants
22 did not list the correct amount of gross wages and net wages earned by Plaintiff and other non-
23 exempt employees in compliance with section 226(a)(1) and section 226(a)(5), respectively.

24 64. For the same reason, Defendants failed to accurately list the total number of hours
25 worked by Plaintiff and other non-exempt employees, and failed to list the applicable hourly rates
26 of pay in effect during the pay period and the corresponding accurate number of hours worked at
27 each hourly rate. Class members are paid bi-weekly, which yields 26 pay periods per year. To
28 calculate penalties for failure to furnish accurate wage statements, The average employee worked

1 4.6 shifts per week and had recorded time of 7.4 hours.

2 65. In addition, because Defendants did not calculate Plaintiff and other non-exempt
3 employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and
4 rest periods premiums, Defendants did not list the correct amount of gross wages. For the same
5 reason, Defendants also failed to list the correct amount of net wages. Defendants also failed to
6 correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of
7 pay for overtime wages and/or meal and rest period premiums.

8 66. Because Defendants failed to provide the correct net and gross wages earned,
9 applicable rates of pay, and number of total hours worked on wage statements, Plaintiff and other
10 non-exempt employees have been prevented from verifying, solely from information on the wage
11 statements themselves, that they were paid correctly and in full. Instead, Plaintiff and other non-
12 exempt employees have had to look to sources outside of the wage statements themselves and
13 reconstruct time records to determine whether in fact they were paid correctly and the extent of
14 underpayment, thereby causing them injury.

15 ***Defendants' Failure to Timely Pay Wages During Employment***

16 67. During the relevant time period, Defendants willfully failed to pay Plaintiff and
17 other non-exempt employees all wages due including, but not limited to, overtime wages,
18 minimum wages, and/or meal and rest period premiums, within the time periods specified by
19 California *Labor Code* § 204.

20 ***Defendants' Failure to Timely Pay Final Wage Upon Termination***

21 68. As a pattern and practice, Defendants regularly failed to pay Class members their
22 final wages pursuant to Labor Code §§201-203. On information and belief, Defendants have a
23 company-wide practice or policy of paying departing employees their final wages on the next
24 regular pay cycle, instead of adhering to the time requirements set forth in *Labor Code* §§ 201
25 and 202.

26 69. More specifically, on information and belief, Defendants have a company-wide
27 practice or policy of failing to pay all accrued wages to departing employees and don't adhere to
28 the time requirements set forth in Labor Code sections §§ 201 and 202. Specifically, Plaintiff

1 alleges that she received her final check late. Moreover, Defendants willfully failed to pay Class
2 members the earned and unpaid wages set forth above, including but not limited to, overtime
3 wages, minimum wages, and/or meal rest period premiums, either at the time of discharge, or
4 within seventy-two (72) hours of their leaving Defendants employment. Plaintiff had to wait two
5 weeks for her final paycheck, which was issued via a prepaid debit card. Furthermore, Plaintiff
6 was not paid at least four hours for her final day of work, despite Plaintiff being directed by her
7 manager Kelly Pittman to go to another store two hours prior to her scheduled shift so they could
8 discuss the incident. For example, Plaintiff was terminated on or about October 16, 2020.
9 However, Defendants did not provide Plaintiff her final wages until her next subsequent pay date,
10 October 20, 2020. Thus, Defendants failed to pay Plaintiff her final wages immediately, in
11 violation of *Labor Code* § 201.

12 70. In addition, Defendants willfully failed to pay Plaintiff and other non-exempt
13 employees who are no longer employed by Defendants the earned and unpaid wages set forth
14 above, including but not limited to, overtime wages, minimum wages, and/or meal rest period
15 premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving
16 Defendants' employ.

17 ***Unlawful Direct Deposit and Discount of Wages***

18 71. During the relevant time period, Defendants had an agreement with a payroll
19 service provider for the issuance of payroll debit cards to employees, including Plaintiff and other
20 non-exempt employees, to discharge its wage payment obligations to its employees. Upon
21 information and belief, Defendants' payroll debit card program was not voluntary or optional to
22 Plaintiff and other non-exempt employees. Defendants had a practice and/or policy of
23 automatically issuing payroll debit cards to Plaintiff and other non-exempt employees without
24 giving them the option to elect their form of payment for their wages. Plaintiff and other non-
25 exempt employees also received their final wages on a payroll debit card without a choice of an
26 alternative method, including a written check.

27 72. Defendants had a practice and/or policy of automatically issuing payroll debit
28 cards to departing employees without giving them the option to elect their form of payment for

1 their final wages. Defendants never gave Plaintiff or other class employees the option to have
2 wages direct deposited. Instead, Plaintiff and other class employees were given the debit card
3 form to fill out. Defendants' payroll debit card program was not voluntary or optional to
4 employees. Plaintiff received all wages, including Plaintiff's final wages on a payroll debit card
5 without a choice of an alternative method, including a written check. Under California law,
6 employers are permitted to fulfill their wage payment obligations to employees by using payroll
7 debit cards, but only so long as the employee is given the choice as to whether to accept a payroll
8 debit card as a form of payment. Johnson v. Sunrise Senior Living Management, Inc., No. 16
9 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). California courts
10 recognize a policy favoring the full and prompt payment of wages to employees. Defendants'
11 payroll card program is inconsistent with this policy. Because Defendants' company-wide payroll
12 debit card program is involuntary and denies aggrieved employees of easy access to the entirety
13 of their wages, the program violates California Labor Code sections 212 and 213.

14 73. Moreover, under Defendants' payroll debit program did not permit Plaintiff and
15 other non-exempt employees to withdraw their entire final wages in at least one transaction
16 without incurring a fee. For example, Plaintiff utilized ATMs to try to withdraw her wages, but
17 could not obtain the entire amount because ATMs only disburse cash in limited denominations.
18 Additionally, Plaintiff also encountered approximately \$1.75-\$2.50 in ATM fees each time she
19 utilized an ATM to withdraw funds from her payroll debit card, which resulted in a discount in
20 her pay. California courts recognize a policy favoring the full and prompt payment of wages to
21 employees. Defendants' payroll card program is inconsistent with this policy.

22 74. Defendants improperly deducted wages due to the issuance of prepaid debit cards
23 with withdrawal fees and deductions related to uniform maintenance.

24 75. Thus, Defendants paid Plaintiff and the class lower wages than those they were
25 entitled to while purporting that class employees were properly paid. The withdrawal information
26 was not clearly set forth for Plaintiff or the class before signing them up for such programs.

27 ***Unlawful Deductions***

28 76. Defendants systematically, and on a company-wide basis, provided Plaintiff and

1 other non-exempt employees with payroll debit cards as payment of their wages and/or final
2 wages. Under Defendants' payroll debit card program, Plaintiff and other non-exempt employees
3 were assessed various fees in connection with their use of the payroll debit cards. Plaintiff and
4 other non-exempt employees were required to pay per-transaction fees, ATM fees, in-person teller
5 fees, and/or other fees to obtain and/or spend their earned and due wages. The fees charged to
6 Plaintiff and other non-exempt employees resulted in a discount of their wages.

7 ***Secret Payment of Lower Wages***

8 77. During the relevant time period, Defendants willfully and systematically issued
9 payroll debit cards to Plaintiff and other non-exempt employees. The payroll debit cards
10 discounted the wages of Plaintiff and other non-exempt employees by charging various fees in
11 connection with the use of the payroll debit cards. Defendants' payroll debit card program resulted
12 in the payment of less than statutorily required wages to Plaintiff and other non-exempt
13 employees. In doing so, Defendants acted with the intent to deprive Plaintiff and other non-
14 exempt employees of statutory wages, including, but not limited to, overtime wages and minimum
15 wages to which they were entitled to under California law. Thus, Defendants' paid Plaintiff and
16 other non-exempt employees' lower wages than those they were entitled to while purporting that
17 Plaintiff and other non-exempt employees were properly paid.

18 ***Defendants' Failure to Provide Suitable Seating***

19 78. Defendants' California stores' areas are generally similar in their layout and design
20 and there was, and continues to be, space behind the checkout counters to allow for the presence
21 and use of a seat or stool by Plaintiff and other non-exempt employees (with reasonable or no
22 modification to these work areas) during the performance of their work duties. Defendants could
23 provide Plaintiff and other non-exempt employees with a seat or stool at the checkout counters,
24 but instead denies them seating and forces aggrieved employees to stand throughout the day.
25 Plaintiff and other non-exempt employees spent a substantial portion of their day behind the
26 checkout counters, regardless of their actual job title or description. The nature of the work of an
27 employee performing cashier duties can reasonably be accomplished from a seated position.
28 However, Defendants systematically, and on a company-wide basis, did not provide seats or

1 stools at or near checkout counters, or inadequate seating, forcing Plaintiff and other non-exempt
2 employees to stand throughout their work shifts.

3 79. Defendants willfully and knowingly failed to provide Class members with suitable
4 seats, although the nature of work required standing for substantial periods of time. Plaintiff reports
5 that her and class members were not allowed sit or even lean on the cash register area. For example,
6 when Plaintiff was first hired, she would bring a stool from the office area and she was counseled
7 about doing so. Additionally, there were many lulls and employees could take breaks to sit when
8 performing cash register duties.

9 80. Defendants violated Labor Code section 1198 and Code of Regulations, title 8,
10 section 11070(14)(A) because Class members were not allowed to sit, even when it would not
11 have interfered with the performance of their duties, nor were they provided with suitable seats.
12 Plaintiff reports that Defendants' management did not inform Class members that they were
13 allowed to sit down, provide any means for them to sit down, or mention any policy regarding
14 sitting. Defendants did not provide Plaintiff and other non-exempt employees with seats or stools
15 in reasonable proximity to their work areas to allow them to use seats when it would not interfere
16 with the performance of their duties for times when they were not engaged in active duties that
17 require standing. In other words, to the extent Plaintiff and other non-exempt employees engaged
18 in duties in which the nature of the work required standing, Defendants denied them the use of
19 seats nearby during lulls in their work duties. Plaintiff and other class were explicitly counseled
20 about bringing any seats to the cashier area where they performed duties. Plaintiff reports that
21 any chairs in the store were reserved for managers and assistant managers only when performing
22 paperwork. Moreover, Defendants did not inform Plaintiff and other non-exempt employees of
23 their rights to a seat or stool under California law.

24 81. Defendants' seating is not suitable; the seats are nasty. Any documents by
25 Defendants, showing examples of seating that consisted of stools and chairs in poor condition (some
26 in bathroom areas or covered in plastic,) that are away from the customer area, are clearly not
27 conducive to class employees performing their job duties. Furthermore, it is unclear when and
28 where such seating was provided by Defendants. Finally, Plaintiff and other class members can

offer contradictory evidence, direct testimony that class members were explicitly counseled about bringing any seats to the cashier area where they performed duties. Plaintiff reports that any chairs in the store were reserved for managers and assistant managers only when performing paperwork.

Defendants' Failure to Reimburse Business Expenses

82. During the relevant time period, Defendants had a company-wide policy of requiring Plaintiff and other non-exempt employees to utilize their own personal mobile phones to carry out their job duties, but Defendants failed to reimburse them for the costs of their work-related mobile phone expenses.

83. During the Class Period, Defendants had a company-wide policy requiring Class members to use their phone to carry out their work-related duties, SA Defendants failed to reimburse them for this cost. Plaintiff and other non-exempt employees were required to use their personal mobile phones for work-related tasks, including responding to calls and text messages from Defendants' management on and off-the-clock. For example, Plaintiff was required to use her personal mobile phone during her shifts and outside of her shifts to discuss work-related matters with her supervisor. Although Defendants required Plaintiff and other non-exempt employees to utilize their personal mobile phones to carry out their work-related duties, Defendants failed to reimburse them for this cost. Specifically, Defendants argue that their policies prohibited cell phone use but that was not true based on Defendants management, which typically required cell phone communication while employees worked. Plaintiff reported she was directed to always have her cell phone on and always communicated with class employees in this manner. While Defendants compensated management, and assistant management with cell phone expenses at \$20 a month, they failed to compensate its non-exempt employees. However, Defendants regularly communicated with its employees using cell phones but passed these operating costs off onto Class members.

84. Defendants required employees to utilize their own personal mobile phones, and to wear uniform shirts bearing the company logo, and have the uniforms specially washed. Defendants, on a company-wide basis, expected Plaintiff and other non-exempt employees to report to work wearing clean uniform shirts bearing the company logo. However, Defendants did

not provide its employees with sufficient uniform items to wear for their shifts throughout the week. For example, Defendants only provided Plaintiff with one (1) uniform shirt during her employment. Because Defendants failed to provide Plaintiff and other non-exempt employees with an adequate number of uniform items in relation to their scheduled shifts, Plaintiff and other non-exempt employees were forced to wash their uniforms more frequently than they otherwise do laundry and incur expenses in doing so. Due to the nature of their work, Plaintiff's and other non-exempt employees' uniforms would become stained and/or acquire an unpleasant odor, and Plaintiff and other non-exempt employees would be required to wash their uniform shirts separately from their other clothes, further increasing their overall laundry costs. Thus, Defendants failed to maintain uniforms they required Plaintiff and other non-exempt employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms. Defendants could have provided Plaintiff and other non-exempt employees with the actual tools for use on the job, such as company phones and access to laundering services. Or, Defendants could have reimbursed employees for the costs of their mobile phone usage and laundering expenses or provided a uniform maintenance allowance. Instead, Defendants passed these operating costs off onto Plaintiff and other non-exempt employees.

Defendants' Failure to Provide Notice of Material Terms of Employment

85. At all relevant times, on information and belief, Defendants failed, on a company-wide basis, to provide written notice to Plaintiff and other non-exempt employees that lists the requisite information set forth in *Labor Code* §§ 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiff and other non-exempt employees with written notice of basic information regarding their employment with Defendants is in violation of *Labor Code* § 2810.5.

Defendants Failure to Provide Sick Day Balances

86. At all relevant times, on information and belief, Defendants failed, on a company-wide basis, to provide Plaintiff and other non-exempt employees with paid sick days. Specifically, Defendants only include the sick pay balance on select wage statements as opposed to all. This is evidenced in the pay checks provided which fail to consistently show the balances accrued. Furthermore, under *Ferra*, Defendants failed to calculate the regular rate of pay for sick leave.

1 **Failure to Preserve Payroll Records**

2 87. Defendants have lost records pertaining to the class relating to time data and pay
3 data for parts of the class period.

4 88. Proof of violations of the California Labor Code "is almost impossible to establish
5 . . . if the employer has not kept accurate or adequate records. Recognizing this problem, the
6 Supreme Court held that when an employer's records are inaccurate or incomplete, the employee
7 carries this burden by proving the amount and extent of work performed "as a matter of just and
8 reasonable inference. "The burden then shifts to the employer to come forward with evidence of
9 the precise amount of work performed or with evidence to negative the reasonableness of the
10 inference to be drawn from the employee's evidence. If the employer fails to produce such
11 evidence, the court may then award damages to the employee, even though the result be only
12 approximate. Under this burden-shifting framework, an employer is not allowed to benefit from
13 its own poor recordkeeping. *Duran v. U.S. Bank Nat'l Assn.*, (2014) 59 Cal. 4th 1, 40-41.

14 89. As a result of Defendants' failure to maintain records, record keeping violations,
15 based on Defendant's failure to keep accurate time records in violation of section 1174 subdivision
16 (d), and Industrial Welfare Commission's (IWC) wage order 14-2001, section 7. (Cal. Code Reg.,
17 tit. 8, § 11140, subd. (7).) and can make inferences in the evidence that similar violations occurred
18 for other employees based upon the reasoning in *Duran*.

19 **Facts Regarding Willfulness**

20 90. Plaintiff is informed and believes, and based thereon alleges, that Defendants are
21 and were advised by skilled lawyers, other professionals, employees with human resources
22 background and advisors with knowledge of the requirements of California wage and hour laws
23 and that at all relevant times, Defendants knew or should have known, that the Plaintiff Class
24 members, including Plaintiff, were entitled to receive one hour of pay at the employee's regular
25 rate of compensation for each day that a meal and/or rest period was not provided and were and
26 are entitled to received pay for all hours worked, accurate itemized wage statements, and final
27 pay in a timely manner. Defendants failed to furnish its Class members with accurate, itemized
28 wage statements upon payment of wages.

1 ***Unfair Business Practices***

2 91. Defendants have further engaged in, and continue to engage in, unfair business
3 practices in California by practicing, employing and utilizing the unlawful employment practices
4 and policies outlined above.

5 92. As a direct result of the wage and hour violations herein alleged, Plaintiff and
6 members of the Plaintiff Class have suffered, and continue to suffer substantial losses related to
7 the use and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in
8 seeking to compel Defendants to perform their obligations under state law, all to Plaintiff's and
9 the Plaintiff Class members' respective damage in amounts according to proof at the time of trial.

10 ***Plaintiff's Exhaustion of Administrative Remedies***

11 93. Plaintiff is currently complying with the procedures for bringing suit specified in
12 California *Labor Code* § 2699.3.

13 94. By letter dated October 8, 2021, required notice was provided to Labor and
14 Workforce Development Agency ("LWDA") and Defendants, of the specific provisions of the
15 California *Labor Code* alleged to have been violated, including the facts and theories to support
16 the alleged violations. More than 65 calendar days have passed since the date notice was provided
17 to the LWDA and Defendants.

18 95. Accordingly, Plaintiff has satisfied the administrative prerequisites under
19 California *Labor Code* Section 2699.3(a) to recover civil penalties against Defendants for
20 violations of California Labor Code identified in this Complaint.

21 **CLASS ACTION ALLEGATIONS**

22 96. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

23 97. Pursuant to California *Code of Civil Procedure* § 382, this action is brought and
24 may be properly maintained as a class action. This action satisfies the ascertainability,
25 numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of
26 those provisions.

27 98. Plaintiff brings this suit as a class action on behalf of two classes of individuals
28 defined as follows (collectively the "Classes"):

1 99. Plaintiff Class: All persons who have been, or currently are, employed by
2 Defendants and who held, or hold, job positions which Defendants have classified as “non-exempt”
3 employees in the State of California, at any time since four years prior to filing this action, through
4 the date judgment is rendered in this action. More specifically, all persons who have been, or
5 currently are, employed by Defendants and who held, or hold, job positions which Defendants have
6 classified as "non-exempt" employees in the State of California, at any time since June 19, 2017
7 through the earlier of: (i) the date of preliminary approval of the settlement, or (ii) December 9,
8 2023. The "Settlement Class Members" or “Class Members” shall not include any person who
9 submits a timely and valid request for exclusion. Defendants have represented that the Settlement
10 Class Members have worked 28,980 workweeks (measured by counting all weeks between the
11 Settlement Class Members' hire and termination dates) between January 1, 2018 and April 10, 2023
12 (the "Reference Period"). If there is a more than 10% increase in the number of weeks worked by
13 the Settlement Class Members during the Reference Period (more than 31,878 workweeks), it will
14 trigger an escalator provision where the Maximum Settlement Amount shall increase by 1% for
15 every 1% increase in workweeks over the 10% threshold.

16 100. Terminated Sub Class: All members of the Plaintiff Class whose employment
17 ended during the Class Period.

18 101. Covered Period: Covered period starts on June 19, 2017 through the earlier of (i)
19 the date of preliminary approval of the settlement, or (ii) December 9, 2023. The PAGA covered
20 period starts on October 10, 2020 through the earlier of: (i) the date of preliminary approval of
21 the settlement, or (ii) December 9, 2023.

22 102. Numerosity: Plaintiff is informed and believes, and on that basis alleges, that
23 during the class period hundreds of class members have been employed by Defendants as non-
24 exempt employees in the State of California. Because so many persons have been employed by
25 Defendants in this capacity, the members of the Plaintiff Class are so numerous that joinder of all
26 members is impossible and/or impracticable.

27 103. Common Questions of Law and/or Fact: Common questions of law, in fact, exist
28 as to all members of the Plaintiff Class and predominate over any questions affecting solely

1 individual members of the Plaintiff Class. Among the questions of law and fact, that are relevant
2 to the adjudication of class members' claims are as follows:

- 3 a. Whether Plaintiff and Class Members are subject to and entitled to the benefits of
4 California wage and hour statutes;
- 5 b. Whether Defendants failed to pay Plaintiff and Class Members for all hours
6 worked;
- 7 c. Whether Defendants failed to pay Plaintiff and Class Members all overtime;
- 8 d. Whether Defendants had a standard policy of not providing compliant meal breaks
9 and premiums to Plaintiff and members of the Plaintiff Class;
- 10 e. Whether Defendants had a standard policy of not providing compliant rest breaks
11 and premiums to Plaintiff and members of the Plaintiff Class;
- 12 f. Whether Defendants unlawfully and/or willfully failed to provide Plaintiff and
13 members of the Plaintiff Class with true and proper wage statements upon payment
14 of wages, in violation of California *Labor Code* § 226;
- 15 g. Whether Defendants failed to timely pay wages during employment;
- 16 h. Whether Defendants unlawfully/or willingly failed to timely pay Plaintiff and the
17 Terminated Sub Class upon termination;
- 18 i. Whether Defendants had a standard or policy of unlawful direct deposit and
19 discount of wages;
- 20 j. Whether Defendants had a standard or policy of unlawfully deducting wages from
21 Plaintiff and members of the Plaintiff Class;
- 22 k. Whether Defendants had a standard or policy of secretly paying Plaintiff and
23 members of the Plaintiff Class lower wages;
- 24 l. Whether Defendants failed to provide Plaintiff and members of the Plaintiff Class
25 with suitable seating;
- 26 m. Whether Defendants failed to reimburse Plaintiff and members of the Plaintiff
27 Class for business-related expenses;
- 28 n. Whether Defendants failed to provide Plaintiff and members of the Plaintiff Class

1 with proper notice of material terms of employment;

2 o. Whether Defendants failed to provide Plaintiff and members of the Plaintiff Class
3 with proper sick pay balance;

4 p. Whether Plaintiff and members of the Plaintiff Class sustained damages, and if so,
5 the proper measure of such damages, as well as interest, penalties, costs, attorneys'
6 fees, and equitable relief;

7 q. Whether Defendants conduct as alleged herein violates the Unfair Business
8 Practices Act of California, *Bus. & Prof. Code* § 17200, *et seq.*

9 104. Typicality: The claims of the named Plaintiff are typical of the claims of the
10 members of the Plaintiff Class. Defendants' common course of conduct in failing to provide their
11 non-exempt employees with meal and rest periods and all wages in compliance with the
12 applicable Wage Order or premium compensation at the regular rate in lieu thereof and failing to
13 provide them with compliant wage statements has caused Plaintiff and the proposed Class to
14 sustain the same or similar injuries and damages. Plaintiff's claims are thereby representative of
15 and co-extensive with the claims of the proposed Class. Plaintiff and the proposed Class sustained
16 the same or similar injuries and damages arising from Defendants' common policies, practices,
17 procedures, protocols, routines, and rules which were applied to other class members as well as
18 Plaintiff. Plaintiff seeks recovery for the same type of losses, injuries, and damages as were
19 suffered by other members of the proposed class.

20 105. Adequacy of Representation: Plaintiff is an adequate representative of the
21 proposed classes because she is a member of the class, and her interests do not conflict with the
22 interests of the members she seeks to represent. Plaintiff has retained competent counsel,
23 experienced in the prosecution of complex class actions, and together Plaintiff and her counsel
24 intend to prosecute this action vigorously for the benefit of the classes. The interests of the Class
25 Members will fairly and adequately be protected by Plaintiff and her attorneys.

26 106. Superiority of Class Action: A class action is superior to other available methods
27 for the fair and efficient adjudication of this litigation since individual litigation of the claims of
28 all Class Members is impracticable. It would be unduly burdensome to the courts if these matters

were to proceed on an individual basis, because this would potentially result in hundreds of individuals, repetitive lawsuits. Further, individual litigation presents the potential for inconsistent or contradictory judgments, and the prospect of a “race to the courthouse,” and an inequitable allocation of recovery among those with equally meritorious claims. By contrast, the class action device presents far fewer management difficulties, and provides the benefit of a single adjudication, economics of scale, and comprehensive supervision by a single court.

107. The various claims asserted in this action are additionally or alternatively certifiable under the provisions of the California *Code of Civil Procedure* § 382 because:

a. The prosecution of separate actions by hundreds of individual class members would create a risk of varying adjudications with respect to individual class members, thus establishing incompatible standards of conduct for Defendants, and

b. The prosecution of separate actions by individual class members would also create the risk of adjudications with respect to them that, as a practical matter, would be dispositive of the interest of the other class members who are not a party to such adjudications and would substantially impair or impede the ability of such non-party class members to protect their interests.

FIRST CAUSE OF ACTION

Unpaid Overtime

(By Plaintiff and Members of the Putative Class Against All Defendants)

108. Plaintiff incorporates herein by reference the allegations set forth above.

109. At all times relevant herein, which comprise the time period not less than four (4) years preceding the filing of this action, Defendants were required to compensate their hourly employees for all overtime hours worked.

110. California *Labor Code* §§ 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more

1 than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that
2 employers are required to pay employees working more than twelve (12) hours in a day overtime
3 compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of
4 pay includes all remuneration for employment paid to, or on behalf of, the employee, including
5 nondiscretionary bonuses and incentive pay.

6 111. Defendants willfully failed to pay all overtime wages owed to Plaintiff and
7 members of the Classes. During the relevant time period, Plaintiff and members of the Classes
8 were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in
9 a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week,
10 because all hours that they worked were not recorded.

11 112. Defendants knew or should have known that as a result of company-wide practices
12 and/or policies, that prevents Plaintiff and members of the Classes from earning overtime,
13 Plaintiff and members of the Classes were performing assigned duties off-the-clock before and
14 after their shifts and/or during meal periods, and were suffered or permitted to perform work for
15 which they were not paid. Because Plaintiff and members of the Classes worked shifts of eight
16 (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work
17 qualified for overtime premium pay. Therefore, Plaintiff and members of the Classes were not
18 paid overtime wages for all of the overtime hours they actually worked.

19 113. Defendants' failure to pay Plaintiff and members of the Classes the balance of
20 overtime compensation, as required by California law, violates the provisions of California *Labor*
21 *Code* §§ 510 and 1198. Plaintiff and members of the Classes are entitled to recover civil penalties,
22 attorney's fees, costs, and interest thereon.

23 **SECOND CAUSE OF ACTION**

24 **Failure to Pay All Wages**

25 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

26 114. Plaintiff incorporates herein by reference the allegations set forth above.

27 115. At all times relevant herein, which comprise the time period not less than four (4)
28 years preceding the filing of this action, Defendants were required to compensate their hourly

employees for all hours worked.

116. For at least the four (4) years preceding the filing of this action, Defendants failed to compensate employees for all hours worked. Defendants implemented policies that actively prevented employees from being compensated for all time worked by subjecting Plaintiff and members of the Classes to work off-the-clock.

117. Under the above-mentioned wage order and state regulations, Plaintiff and the Plaintiff Class are entitled to recover compensation for all hours worked, but not paid, for the four (4) years preceding the filing of this action, in addition to reasonable attorney's fees and costs of suit in accordance with California *Labor Code* § 218.5, and penalties pursuant to California *Labor Code* §§ 203 and 206.

118. The applicable IWC Wage Order defines “hours worked” to mean “the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

119. Defendants suffered or permitted Plaintiff and members of the Plaintiff Class to work portions of the day for which Defendants failed to compensate them. This includes time spent under Defendants’ control prior to clocking in and after clocking out.

120. California *Labor Code* §1182.12 and the applicable IWC Wage Order section 4 provide that on and after July 1, 2014, the minimum wage for all industries shall not be less than nine dollars (\$9) per hour, on and after January 1, 2016, the minimum wage for all industries shall not be less than ten dollars (\$10) per hour, on and after January 1, 2017, the minimum wage for all industries shall not be less than ten dollars and fifty cents (\$10.50) per hour, on and after January 1, 2018, the minimum wage for all industries shall not be less than eleven dollars (\$11) per hour.

121. California *Labor Code* § 1194(a) provides in relevant part: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage ... is entitled 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.”

122. California *Labor Code* § 1194.2(a) provides in relevant part: “In any action under

1 section 1193.6 or section 1194 to recover wages because of the payment of a wage less than the
2 minimum wage fixed by an order of the commission, an employee shall be entitled to recover
3 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

4 123. California *Labor Code* § 1197 provides: “The minimum wage for employees fixed
5 by the commission is the minimum wage to be paid to employees, and the payment of a less wage
6 than the minimum so fixed is unlawful.”

7 124. Plaintiff is informed and believes, and therefore alleges, that Defendants’
8 compensation schemes do not fairly compensate Plaintiff and other Class Members for all hours
9 spent performing their job duties.

10 125. The failure to pay at least minimum wages to Plaintiff and members of the Plaintiff
11 Class for each and every hour worked violates California *Labor Code* §§ 1182.11-1182.12, 1194,
12 1194.2, and 1197; the applicable IWC Wage Order, section 4; and California *Business &*
13 *Professions Code*.

14 126. The failure to pay designated wages to Plaintiff and members of the Plaintiff Class
15 for each and every hour worked violates California *Labor Code* §§ 221 and 223; IWC Wage
16 Order; and California *Business & Professions Code*.

17 127. During the applicable time period, Defendants have and continue to have a pattern
18 and practice of not providing its employees all wages, by failing to include all compensable time,
19 including time worked off-the-clock.

20 128. As a proximate result of the above-mentioned violations. Plaintiff and the Plaintiff
21 Class have been damaged in an amount according to proof at time of trial.

22 **THIRD CAUSE OF ACTION**

23 **Non-Compliant Meal Breaks**

24 **(By Plaintiff and Members of the Putative Class Against Defendant)**

25 129. Plaintiff hereby incorporates by reference each and every one of the allegations
26 contained in the preceding paragraphs as if the same were fully set forth herein.

27 130. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and the Class
28 Members regularly worked more than five (5) hours per shift and were entitled to a meal period

1 of not less than thirty (30) minutes without duty.

2 131. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that
3 Defendants routinely failed to provide Plaintiff and the members of the Classes with such meal
4 periods without duty, notwithstanding the fact that Plaintiff and the members of the Classes had
5 not waived their right to the same. Thus, Defendants failed to provide Plaintiff and the members
6 of the Classes with meal periods required by California *Labor Code* §§ 226.7, 512, 516 and IWC
7 Wage Order, section 11 and categorically failed to pay any and all meal period wages due.

8 132. Plaintiff and Class Members seek damages pursuant to California *Labor Code* §§
9 226.7(b) and IWC Wage Order section 11(D), in the amount of one additional hour of pay at the
10 regular rate for each work day that the meal period is/was not provided to Plaintiff and any
11 member of the Classes, the cumulative sum of which is to be determined at trial.

12 133. Under the foregoing, California employers must provide meal periods and
13 authorize and permit rest periods to all employees during their shifts. In *Augustus v. ABM Security*
14 *Services, Inc.*, 2 Cal.5th 257 (2016), the California Supreme Court reaffirmed that the required
15 meal and rest periods must be “off-duty,” which means that employees must be relieved of “all
16 work-related duties,” including the duty to remain “on call,” and they must be “free from
17 employer control” over how they “spend their time.” *Id.* at 264, 269. Employees must have the
18 freedom to use meal and rest periods for their own purposes. *Id.* at 270; *Brinker Rest. Corp. v.*
19 *Superior Court*, 53 Cal.4th 1004, 1038-39 (2012).

20 134. When employees must either “remain at the ready and capable of being summoned
21 to action,” “respond when the employer seeks contact with [them],” “perform other work if the
22 employer so requests,” and/or remain “on call” during their meal and rest periods, the employees
23 have not been “relieve[d] ... of all work-related duties and employer control.” *Augustus*, 2 Cal.5th
24 at 270. Such a meal or rest period is not “off duty” and therefore is “impermissible.” *Id.*

25 135. The Supreme Court’s decision in *Augustus* is just the latest in a series of meal and
26 rest break cases that have affirmed California’s broad, protective standard for employees.¹

27 _____
28 ¹ See, e.g., *Brinker Rest. Corp. v. Superior Court*, 53 Cal.4th 1004 (2012); *Lubin v. Wackenhut Corp.*, 5 Cal.App.5th 926 (2016), *reh'g denied* (Dec. 14, 2016); *Faulkinbury v. Boyd & Assocs.*,

1 136. Moreover, as the mere existence of a facially lawful meal and rest break policy is
2 unavailing if there are practical constraints and pressures on employees to perform their duties in
3 ways that omit breaks. See *Brinker*, 53 Cal.4th at p. 1040.

4 137. Yet Defendants did and do not provide Plaintiff and members of the Classes with
5 meal periods during which they are completely relieved of duty for at least thirty (30) minutes by
6 the fifth hour of work and again by the tenth hour of work.

7 138. Rather, Plaintiff and members of the Classes' meal periods were typically late, and
8 were required to remain on the premises. Further, Defendants failed to provide second 30-minute
9 meal periods on days worked in excess of ten (10) hours in one day.

10 139. Thus, Defendants have failed to perform its obligations to provide Plaintiff and the
11 members of the Plaintiff Class with off-duty meal periods by the end of the fifth hour of work and
12 a second meal period by the end of the tenth hour of work. Defendants also have failed to pay
13 Plaintiff and the members of the Plaintiff Class one (1) hour of pay at the regular rate for each
14 off-duty meal period that they have been denied, as a result of failing to incorporate
15 nondiscretionary bonuses into the rate of pay.

16 140. On July 15, 2021, the California Supreme Court issued a decision in *Ferra v.*
17 *Loews Hollywood Hotel, LLC*, 11 Cal.5th 858 where the court unanimously held that employers
18 must pay premium payments to employees for missed meal, rest, and recovery breaks at the
19 employee's "regular rate of pay" instead of their base hourly rate. The regular rate of pay may be
20 higher than the base hourly rate because the regular rate of pay must include all nondiscretionary
21 incentive payments, including nondiscretionary bonuses.

22 141. Defendants knew or should have known that as a result of its policies and/or
23 practices, that Plaintiff and members of the Classes were not actually relieved of all duties to take
24 timely, uninterrupted meal periods. Defendants further knew or should have known that it did not
25 pay Plaintiff and members of the Classes all meal period premiums when meal periods were

26 _____
27 *Inc.*, 216 Cal.App.4th 220 (2013); *Berlanga v. Equilon Enterprises LLC*, 2017 WL 3782245, at
28 *3 (N.D. Cal. Aug. 31, 2017) (a policy requiring employees to "remain in contact with supervisors
and other employees working in their units throughout their shifts... would appear to be unlawful
under [*Augustus*].").

missed, late, short, and/or interrupted. Furthermore, Defendants have engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Plaintiff and members of the Classes have not received all premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that Defendants did pay Plaintiff and members of the Classes premium pay for missed, late, and interrupted meal periods, Defendants did not pay Plaintiff and members of the Classes at the correct rate of pay for premiums because Defendants systematically failed to include all forms of compensation, such as hazard pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. Accordingly, Defendants failed to provide all meal periods in violation of California *Labor Code* §§ 226.7, 512(a), 516, and 1198.

142. Plaintiff and members of the Classes are entitled to civil penalties, attorney's fees, costs, and interest thereon.

FOURTH CAUSE OF ACTION

Non-Compliant Rest Breaks

(By Plaintiff and Members of the Putative Class Against All Defendants)

143. Plaintiff hereby incorporates by reference each and every one of the allegations contained in the preceding paragraphs as if the same were fully set forth herein.

144. Plaintiff is informed and believes, and thereon allege, that Plaintiff and Class Members were entitled to a paid rest period of not less than ten (10) minutes without duty for each and every four (4) hours worked during the workday.

145. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that Defendants routinely failed to provide Plaintiff and the members of the Classes with such paid rest periods without duty, notwithstanding the fact that Plaintiff and the members of the Classes had not waived their right to the same. Thus, Defendants failed to provide Plaintiff and Class Members with rest periods required by California *Labor Code* §§ 226.7, 512, and 516, IWC Wage Order, section 12 and categorically failed to pay any and all rest period wages due.

146. Plaintiff and Class Members seek damages pursuant to California *Labor Code* §226.7(b) and the applicable IWC Wage Order section 12(B), in the amount of one additional

1 hour of pay at the regular rate for each work day that the rest period is/was not provided or
2 provided late to Plaintiff and any member of the Classes, the cumulative sum of which is to be
3 determined at trial.

4 147. Therefore, Plaintiff and members of the Plaintiff Class are entitled to
5 compensation for Defendants' failure to provide rest periods, plus interest, attorneys' fees,
6 expenses, and costs of suit pursuant to California *Labor Code* §§226.7(b) and the applicable wage
7 order.

8 **FIFTH CAUSE OF ACTION**

9 **Failure to Furnish Accurate Itemized Wage Statements**

10 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

11 148. Plaintiff hereby incorporates by reference each and every one of the allegations
12 contained in the preceding paragraphs as if the same were fully set forth herein.

13 149. California *Labor Code* § 226(a) and IWC Wage Order, section 7(B) requires
14 employers to furnish each employee with a statement itemizing, among other things, the total
15 hours worked by the employee, on a semi-monthly basis or at the time of each payment of wages.

16 150. *Labor Code* § 226(e) provides that if an employer fails to comply with providing
17 an employee with properly itemized wage statements as set forth in 226(a), then the employee is
18 entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a
19 violation occurs and \$100 per employee for each violation in a subsequent pay period, not to
20 exceed \$4,000. Further, *Labor Code* § 226.3 provides that any employer who violates section
21 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an
22 initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the
23 employer fails to provide the employee a wage statement or fails to keep the required records
24 pursuant to section 226(a).

25 151. Defendants knowingly and intentionally failed to furnish Plaintiff and the
26 members of the Classes with timely, itemized statements in compliance with California *Labor*
27 *Code* § 226(a) and IWC Wage Order section 7(B).

28 152. Plaintiff is informed and believes, and thereon alleges, that Defendants knowingly

1 and intentionally failed to furnish Plaintiff and members of the Classes with timely, itemized
2 statements showing (a) total hours, (b) gross wages earned, (c) all deductions, and/or (d) all
3 applicable hourly rates in effect during each respective pay period and the corresponding number
4 of hours worked at each hourly rate by each respective individual.

5 153. Plaintiff is informed and believes, and thereon alleges, that Defendants did not
6 maintain accurate business records pertaining to the total hours worked for Defendants by
7 Plaintiff and the members of the Classes as required under California *Labor Code* § 1174.5. This
8 is a result of missing hours worked, incorrect rates of pay, and missed meal and rest-break
9 premiums.

10 154. As a result of not having kept accurate records, Plaintiff and the Class Members
11 suffered injuries in the form of confusion over whether they received all wages owed to them,
12 and difficulty and expense in reconstructing pay records in addition to other injuries which may
13 come to light during the discovery process.

14 155. California *Labor Code* § 1198 provides that the maximum hours of work and the
15 standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in
16 the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any
17 employees for longer hours than those fixed by the order or under conditions of labor prohibited
18 by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to
19 keep accurate time records showing when the employee begins and ends each work period and
20 meal period.

21 156. During the relevant time period, Defendants failed, on a company-wide basis, to
22 keep accurate records of work and meal period start and stop times for Plaintiff and members of
23 the Classes, in violation of section 1198. Also, as stated, Defendants engaged in a company-wide
24 practice and/or policy of falsifying Plaintiff’s and members of the Classes’ time records by
25 recording that compliant meal periods were taken regardless of if or when meal periods were
26 actually taken, and thereby failed to keep accurate records of meal start and end times for Plaintiff
27 and members of the Classes. Furthermore, in light of Defendants’ failure to provide Plaintiff and
28 members of the Classes with second 30-minute meal periods to which they were entitled,

Defendants kept no records of meal start and end times for second meal periods.

157. Plaintiff and the members of the Classes herein seek damages and penalties pursuant to California *Labor Code* § 226(e) for Defendants' violations of California *Labor Code* § 226(a).

158. Plaintiff and Class Members also seek preliminary and permanent injunctive relief and an award of reasonable attorneys' fees and costs pursuant to California *Labor Code* § 226(h). Plaintiff and the members of the Classes also request relief as described below.

SIXTH CAUSE OF ACTION

Failure to Timely Pay Wages During Employment

(By Plaintiff and Members of the Putative Class Against All Defendants)

159. Plaintiff hereby incorporates by reference each and every one of the allegations contained in the preceding paragraphs as if the same were fully set forth herein.

160. California *Labor Code* § 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

161. California *Labor Code* § 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California *Labor Code* § 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

162. During the Class Period, Defendants willfully failed to pay Plaintiff and members of the Classes all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within the time periods specified by California *Labor Code* § 204.

1 163. Plaintiff and members of the Classes are entitled to recover civil penalties,
2 attorney's fees, costs, and interest thereon, pursuant to *Labor Code* § 210.

3 **SEVENTH CAUSE OF ACTION**

4 **Waiting Time Penalties**

5 **(By Plaintiff and Members of the Terminated Sub Class Against All Defendants)**

6 164. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
7 forth herein.

8 165. At all times, relevant herein, Defendants were required to pay their employees all
9 wages owed in a timely fashion during and at the end of their employment, pursuant to California
10 *Labor Code* §§ 201-203.

11 166. As a pattern and practice, Defendants regularly failed to pay Plaintiff and the class
12 members/ members of the Terminated Sub Class their final wages pursuant to California *Labor*
13 *Code* §§ 201-203, and accordingly owe waiting time penalties pursuant to California *Labor Code*
14 § 203.

15 167. California *Labor Code* §§ 201 and 202 provide that if an employer discharges an
16 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,
17 and that if an employee voluntarily leaves his or her employment, his or her wages shall become
18 due and payable not later than seventy-two (72) hours thereafter, unless the employee has given
19 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee
20 is entitled to his or her wages at the time of quitting.

21 168. On information and belief, Defendants have a company-wide practice or policy of
22 paying departing employees their final wages on the next regular pay cycle, instead of adhering
23 to the time requirements set forth in *Labor Code* §§ 201 and 202.

24 169. For example, Plaintiff was terminated on or about October 16, 2020. However,
25 Defendants did not provide Plaintiff her final wages until her next subsequent pay date, October
26 20, 2020. Thus, Defendants failed to pay Plaintiff her final wages immediately, in violation of
27 *Labor Code* § 201. In addition, Defendants willfully failed to pay Plaintiff and members of the
28 Terminated Sub Class the earned and unpaid wages set forth above, including but not limited to,

overtime wages, minimum wages, and/or meal rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants employ.

170. Plaintiff and members of the Terminated Sub Class are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to *Labor Code* § 256.

EIGHTH CAUSE OF ACTION

Unlawful Direct Deposit and Discount of Wages

(By Plaintiff and Members of the Terminated Sub Class Against All Defendants)

171. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

172. California *Labor Code* § 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount. California *Labor Code* § 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit. Under California law, employers are also permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but only under certain circumstances. Employer use of payroll debit cards is permitted only so long as the employee is given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards Enforcement ("DLSE") decision deeming payroll debit card program permissible relied heavily on:

. . . [T]he fact that the pay programs were optional, thereby allowing an employee to either participate in the program or receive his or her pay in some other way, such as direct deposit. Specifically, the DLSE opined that "[t]he success of the described procedure, in practice, will of course require that . . . it is presented as an alternative method for wage payment for which [the employees'] participation is optional." The DLSE also stated, "[i]t is significant that the program does not mandate employee participation in the Money Network Service and that it is designed to provide an alternative for employees receiving their wage payment.

1 Employees are also given the option of having their pay direct deposited into an
2 account of their choosing. . .” (internal citations omitted).

3 173. In addition, employers can only utilize payroll debit card programs if they provide
4 employees with effective access to their wages without discount. The DLSE has interpreted *Labor*
5 *Code* § 212 and 213 as permitting employer use of payroll debit cards where the following
6 requirements are satisfied:

7 (1) [T]he “wages [are] payable at some established place of business in the state
8 and there be at least 30 days of sufficient funds for payment,”

9 (2) the employees are “fully informed of the service and procedures and that it is
10 represented as an alternative method for wage payment for which their
11 participation is optional,”

12 (3) the employees receive “an itemized wage statement,” and

13 (4) “at least one transaction per pay period [is] without fee.”

14 *Ortiz v. Randstad North America, L.P.*, No. C-13-5050 MMC, 2015 WL 6202298
15 at 3.

16 174. Further, the DLSE notes that the *Labor Code* manifests:

17 . . . [A] strong public policy that prohibits an employer (or its agent) from imposing
18 conditions or obstacles which interfere with or prevent an employee’s (sic) from
19 promptly receiving their due wages in full. The imposition of a fee in order to
20 readily access one’s earned and paid wages under a payroll card program which is
21 designed to discharge the employer’s wage payment obligations could
22 impermissibly interfere with an employee’s receipt of paid wages by creating a
23 financial condition which would have the effect of reducing or discounting wages
24 because such fee would be charged against the same account in which wages are
25 deposited. (emphases in original)

26 *DLSE opinion letter* 2008.07.07.

27 175. The DLSE has also acknowledged that payroll service providers “effectively act
28 as agents of the client employers in discharging the employer’s wage payment obligations.” *Id.*

1 In a second opinion letter, the DLSE stated that “[w]hile the Labor Code does not purport to
2 regulate the specific arrangements between employers and payroll service providers, both an
3 employer and, under the express language in Labor Code § 212- their agent, must comply with
4 its requirements.” *DLSE opinion letter* 2008.07.07.2.

5 176. During the Class Period, Defendants had an agreement with a payroll service
6 provider for the issuance of payroll debit cards to employees, including Plaintiff and members of
7 the Classes, to discharge its wage payment obligations to its employees. Upon information and
8 belief, Defendants’ payroll debit card program was not voluntary or optional to Plaintiff and
9 members of the Classes. Defendants had a practice and/or policy of automatically issuing payroll
10 debit cards to Plaintiff and members of the Classes without giving them the option to elect their
11 form of payment for their wages. Plaintiff and members of the Terminated Sub-Class also
12 received their final wages on a payroll debit card without a choice of an alternative method,
13 including a written check. Further, each time the debit cards are used, ATM fees are charged.

14 177. California courts recognize a policy favoring the full and prompt payment of
15 wages to employees. Defendants’ payroll card program is inconsistent with this policy. Because
16 Defendants’ company-wide payroll debit card program is involuntary and denies aggrieved
17 employees of easy access to the entirety of their wages, the program violates California *Labor*
18 *Code* §§ 212 and 213. Plaintiff and members of the Classes are therefore entitled to recover civil
19 penalties, attorney’s fees, costs, and interest thereon, pursuant to *Labor Code* § 225.5.

20 **NINTH CAUSE OF ACTION**

21 **Unlawful Deductions**

22 **(By Plaintiff and Members of the Terminated Sub Class Against All Defendants)**

23 178. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
24 forth herein.

25 179. California *Labor Code* § 221 provides that it shall be unlawful for any employer
26 to collect or receive from an employee any part of wages theretofore paid by said employer to
27 said employee.

28 180. California *Labor Code* § 224 also provides in pertinent part that it is lawful to

1 withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by
2 the employee."

3 181. During the Class Period, Defendants unlawfully deducted a portion of wages
4 previously paid to Plaintiff and members of the Classes in violation of California *Labor Code* §
5 221. This was a result of ATM and teller fees that were incurred each time Plaintiff and members
6 of the Classes obtained and/or spent their earned and due wages.

7 182. Defendants' payroll debit card program, which resulted in a discount of wages to
8 employees, is tantamount to taking deductions from Plaintiff's and members of the Classes'
9 paychecks without their written authorization and therefore constitutes an unlawful deduction of
10 wages, in violation of *Labor Code* §§ 221 and 224.

11 183. Plaintiff and members of the Classes are therefore entitled to recover civil penalties,
12 attorney's fees, costs, and interest thereon, pursuant to *Labor Code* §§ 225.5

13 **TENTH CAUSE OF ACTION**

14 **Secret Payment of Lower Wages**

15 **(By Plaintiff and Members of the Terminated Sub Class Against All Defendants)**

16 184. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
17 forth herein.

18 185. California *Labor Code* § 223 makes it unlawful for an employer to secretly pay
19 wages lower than required by statute while purporting to pay legal wages.

20 186. During the relevant time period, Defendants willfully and systematically issued
21 payroll debit cards to Plaintiff and members of the Classes. The payroll debit cards discounted the
22 wages of Plaintiff and members of the Classes by charging various fees in connection with the use
23 of the payroll debit cards. Defendants' payroll debit card program resulted in the payment of less
24 than statutorily required wages to Plaintiff and members of the Classes.

25 187. In doing so, Defendants acted with the intent to deprive Plaintiff and members of
26 the Classes of statutory wages, including, but not limited to, overtime wages and minimum wages
27 to which they were entitled to under California law. Thus, Defendants paid Plaintiff and members
28 of the Classes lower wages than those they were entitled to while purporting that Plaintiff and

1 members of the Classes were properly paid. Plaintiff and members of the Classes are therefore
2 entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to *Labor*
3 *Code* § 225.5.

4 **ELEVENTH CAUSE OF ACTION**

5 **Failure to Provide Suitable Seating**

6 **(By Plaintiff and Members of the Putative Class Against Defendant)**

7 188. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
8 forth herein.

9 189. California *Labor Code* § 1198 makes it illegal to employ an employee under
10 conditions of labor that are prohibited by the applicable wage order. California *Labor Code* §
11 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ...
12 standard conditions of labor for employees. The employment of any employee ... under
13 conditions of labor prohibited by the order is unlawful." California Code of Regulations, Title 8,
14 section 11070(14)(A) provides that "[a]ll working employees shall be provided with suitable seats
15 when the nature of the work reasonably permits the use of seats."

16 190. "The 'nature of the work' refers to an employee's tasks performed at a given
17 location for which a right to a suitable seat is claimed, rather than a 'holistic' consideration of the
18 entire range of an employee's duties anywhere on the jobsite during a complete shift. If the tasks
19 being performed at a given location reasonably permit sitting, and provision of a seat would not
20 interfere with performance of any other tasks that may require standing, a seat is called for." *Kilby*
21 *v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). "Whether the nature of the work reasonably
22 permits sitting is a question to be determined objectively based on the totality of the
23 circumstances. An employer's business judgment and the physical layout of the workplace are
24 relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an
25 individual employee's characteristics." *Id.* The burden of proof to show suitable seating is not
26 available is on the employer. *Id.* at 568. In other words, the employer must show that compliance
27 is "infeasible because no suitable seating exists." See *id.*

28 191. Defendants violated California *Labor Code* § 1198 and California Code of

1 Regulations, Title 8, section 11070(14)(A) because Plaintiff and members of the Classes were not
2 allowed to sit, even when it would not have interfered with the performance of their duties, nor
3 were they provided with suitable seats. Defendants' management did not inform Plaintiff and
4 members of the Classes that they were allowed to sit down, provide any means for them to sit
5 down, or mention any policy regarding sitting.

6 192. As a result of Defendants' company-wide policy and/or practice of prohibiting
7 employees from sitting during their shifts and company-wide failure to provide suitable seating,
8 Plaintiff and members of the Classes were forced to stand during shifts and denied seats.
9 Defendants' failure to provide suitable seating to Plaintiff and members of the Classes violates
10 California *Labor Code* § 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

11 193. California *Labor Code* § 1198 makes it illegal to employ an employee under
12 conditions of labor that are prohibited by the applicable wage order. California *Labor Code* §
13 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ...
14 standard conditions of labor for employees. The employment of any employee . . . under
15 conditions of labor prohibited by the order is unlawful." California Code of Regulations, Title 8,
16 section 11070(14)(B) provides that "[w]hen employees are not engaged in the active duties of
17 their employment and the nature of the work requires standing, an adequate number of suitable
18 seats shall be placed in reasonable proximity to the work area and employees shall be permitted
19 to use such seats when it does not interfere with the performance of their duties."

20 194. The IWC states that section 14(B) applies during "lulls in operation" when an
21 employee, while still on the job, is not then actively engaged in any duties. *Kilby* citing IWC,
22 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is
23 entitled to a seat under section 14(A) if his or her actual tasks at a discrete location make seated
24 work feasible, while working there. *Id.* However, if other job duties take the employee to a
25 different location where he or she must perform tasks requiring standing, the employee would be
26 entitled to a seat under section 14(B) during "lulls in operation." *Id.*

27 195. Defendants did not provide Plaintiff and members of the Classes with seats or
28 stools in reasonable proximity to their work areas to allow them to use seats when it would not

1 interfere with the performance of their duties for times when they were not engaged in active duties
2 that require standing.

3 As a result of Defendants' company-wide policy and/or practice of prohibiting employees
4 from sitting at any time, even when they were not engaged in active duties requiring
5 standing, and company-wide failure to provide seats in reasonable proximity to their work
6 areas, Plaintiff and members of the Classes were forced to stand during shifts and denied
7 seats. Defendants' failure to provide suitable seating to Plaintiff and members of the
8 Classes violates California *Labor Code* § 1198 and IWC Wage Order No. 7-2001,
9 subdivision 14(B).

10 196. Plaintiff and members of the Classes are therefore entitled to recover civil penalties,
11 attorney's fees, costs, and interest thereon, and seek injunctive relief to bring Defendants into
12 compliance with California's seating requirements, pursuant to *Labor Code* § 1194.5.

13 **TWELFTH CAUSE OF ACTION**

14 **Failure to Reimburse Business Expenses**

15 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

16 197. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
17 forth herein.

18 198. California *Labor Code* § 2802 requires employers to pay for all necessary
19 expenditures and losses incurred by the employee in the performance of his or her job. The purpose
20 of *Labor Code* § 2802 is to prevent employers from passing off their cost of doing business and
21 operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App.
22 4th 1137, 1144 (2014).

23 199. The applicable wage order, IWC Wage Order No. 7-2001, provides that: "[w]hen
24 tools or equipment are required by the employer or are necessary to the performance of a job, such
25 tools and equipment shall be provided and maintained by the employer, except that an employee
26 whose wages are at least two (2) times the minimum wage provided herein may be required to
27 provide and maintain hand tools and equipment customarily required by the trade or craft."

28 200. During the Class Period Defendants had a company-wide policy requiring Plaintiff

1 and members of the Classes to utilize their own mobile phones for work-related duties and
2 subjected Plaintiff and members of the Classes to increased laundry costs for uniforms.

3 201. Thus, Defendants had, and continue to have, a company-wide policy and/or
4 practice of not reimbursing employees for expenses necessarily incurred in violation of California
5 *Labor Code* § 2802.

6 202. Plaintiff and members of the Classes are entitled to recover civil penalties,
7 attorney's fees, costs, and interest thereon.

8 **THIRTEENTH CAUSE OF ACTION**

9 **Failure to Provide Notice of Material Terms of Employment**

10 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

11 203. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
12 forth herein.

13 204. California's Wage Theft Prevention Act was enacted to ensure that employers
14 provide employees with basic information material to their employment relationship at the time
15 of hiring, and to ensure that employees are given written and timely notice of any changes to basic
16 information material to their employment.

17 205. Codified at California *Labor Code* § 2810.5, the Wage Theft Prevention Act
18 provides that at the time of hiring, an employer must provide written notice to employees of the
19 rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece,
20 commission, or otherwise, including any rates for overtime, the regular payday designated by the
21 employer, and any allowances claims as part of the minimum wage, including meal or lodging
22 allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5
23 must also include a statement that the employee may accrue and use sick leave; has a right to
24 request and use accrued paid sick leave; may not be terminated or retaliated against for using or
25 requesting the use of accrued paid sick leave; and has the right to file a complaint against an
26 employer who retaliates.

27 206. At all relevant times, on information and belief, Defendants failed, on a company-
28 wide basis, to provide written notice to Plaintiff and members of the Classes that lists the requisite

1 information set forth in *Labor Code* § 2810.5(a)(1)(A)-(C). Defendants' failure to provide
2 Plaintiff and members of the Classes with written notice of basic information regarding their
3 employment with Defendants is in violation of *Labor Code* § 2810.5.

4 207. Plaintiff and members of the Classes are therefore entitled to recover civil
5 penalties, attorney's fees, costs, and interest thereon.

6 **FOURTEENTH CAUSE OF ACTION**

7 **Failure to Provide Sick Day Balances**

8 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

9 208. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
10 forth herein.

11 209. California *Labor Code* § 246(i) provides: "An employer shall provide an employee
12 with written notice that sets forth the amount of paid sick leave available, or paid time off leave
13 an employer provides in lieu of sick leave, for use on either the employee's itemized wage
14 statement described in Section 226 or in a separate writing provided on the designated pay date
15 with the employee's payment of wages."

16 210. Defendants have failed to comply with *Labor Code* § 246(i) as it only provided
17 Plaintiff and members of the Classes with a sick day balance on some of their respective wage
18 statements as opposed to all.

19 211. As a proximate result of the acts of Defendants, and each of them, as described
20 above, Plaintiff and members of the Classes have suffered and will continue to suffer economic
21 damages, including lost wages, lost benefits, loss of promotional opportunity, and other
22 compensatory damages in an amount to be ascertained at the time of trial.

23 212. That the acts of Defendants, and each of them, which were carried out by managing
24 agents, were intentional, willful and malicious and done in conscious disregard of Plaintiffs'
25 rights, safety and well-being and with the intent to vex, injure and annoy Plaintiff.

26 213. Wherefore, Plaintiffs and Class Members are entitled to the penalties provided by
27 law for violation of the above-mentioned, and all other related remedies, in the amount to be
28 determined at the time of trial.

1 **FIFTEENTH CAUSE OF ACTION**

2 **Failure to Preserve Payroll Records in Violation of Cal. *Labor Code* § 1174 et seq.**

3 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

4 214. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
5 forth herein.

6 215. California *Labor Code* § 1174 requires employers to: “Keep a record showing the
7 names and addresses of all employees employed and the ages of all minors.

8 216. Defendants have failed to comply with *Labor Code* § 1174. Defendants have lost
9 records pertaining to the class relating to time data and pay data for parts of the class period.

10 217. As a proximate result of the acts of Defendants, and each of them, as described
11 above, Plaintiff and members of the Classes have suffered and will continue to suffer economic
12 damages, including lost wages, lost benefits, loss of promotional opportunity, and other
13 compensatory damages in an amount to be ascertained at the time of trial.

14 218. That the acts of Defendants, and each of them, which were carried out by managing
15 agents, were intentional, willful and malicious and done in conscious disregard of Plaintiffs’
16 rights, safety and well-being and with the intent to vex, injure and annoy Plaintiff.

17 219. Wherefore, Plaintiffs and Class Members are entitled to the penalties provided by
18 law for violation of the above-mentioned, and all other related remedies, in the amount to be
19 determined at the time of trial.

20 **SIXTEENTH CAUSE OF ACTION**

21 **VIOLATIONS OF CALIFORNIA**

22 ***BUSINESS AND PROFESSIONS CODE SECTION 17200, et seq.***

23 **(By Plaintiff and the Members of the Plaintiff Class Against All Defendants)**

24 220. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
25 forth herein.

26 221. California *Business and Professions Code* §17200 defines unfair competition to
27 include, “unlawful, unfair or fraudulent business practices.”

28 222. Plaintiff and all proposed Class Members are “persons within the meaning of

1 Business and Professions Code §17204, who have suffered injury in fact and have lost money or
2 property as a result of Defendants' unfair competition.

3 223. Defendants have been committing, and continues to commit, acts of unfair
4 competition by engaging in the unlawful, unfair and fraudulent business practices and acts
5 described in this Complaint, including, but not limited to:

- 6 a) violations of California *Labor Code* §§ 510, 1198;
- 7 b) violations of California *Labor Code* §§ 1182.11-1182.12, 1194, 1194.2, 1197, 1198;
- 8 c) violations of California *Labor Code* §§ 226.7, 512, 516, and 1198;
- 9 d) violations of California *Labor Code* § 226, 1174;
- 10 e) violations of California *Labor Code* § 204;
- 11 f) violations of California *Labor Code* §§ 201 and 202;
- 12 g) violations of California *Labor Code* §§ 212 and 213;
- 13 h) violations of California *Labor Code* §§ 221 and 224;
- 14 i) violations of California *Labor Code* § 223;
- 15 j) violations of California *Labor Code* § 1198;
- 16 k) violations of California *Labor Code* § 2802;
- 17 l) violations of California *Labor Code* § 2810.5;
- 18 m) violations of California *Labor Code* § 246; and
- 19 n) violations of the applicable Wage Order.

20 224. As a result of its unlawful, unfair, and/or fraudulent business acts and practices,
21 Defendants have reaped and continue to reap unfair benefits and illegal profits at the expense of
22 Plaintiff and proposed Class Members. Defendants' unlawful, unfair, and/or fraudulent conduct
23 has also enabled Defendants to gain an unfair competitive advantage over law-abiding employers
24 and competitors.

25 225. The *Business and Professions Code* §17203 provides that the Court may restore to
26 an aggrieved party any money or property acquired by means of the unlawful, unfair, and/or
27 fraudulent business acts or practices.

28 226. Plaintiff seeks a court order enjoining Defendants from the unlawful, unfair, and/or

1 fraudulent activity alleged herein.

2 227. Pursuant to Civil Code §3287(a), Plaintiff and other members of the Plaintiff Class
3 are entitled to recover pre-judgment interest on wages earned, but not paid.

4 228. Plaintiff further seeks an order requiring an audit and accounting of the payroll
5 records to determine the amount of restitution of all unpaid wages owed to himself and members
6 of the proposed Plaintiff Class, according to proof, as well as a determination of the amount of
7 funds to be paid to current and former employees that can be identified and located pursuant to a
8 court order and supervision.

9 229. Plaintiff seeks restitution for herself and all others similarly situated of these
10 amounts, including all earned and unpaid wages and attorneys' fees and costs pursuant to Cal.
11 Code Civ. Proc. §1021.5.

12 **SEVENTEENTH CAUSE OF ACTION**

13 **Statutory Penalties Pursuant to PAGA (*Labor Code* §§2698, *et seq.*)**

14 **(On behalf of All Aggrieved Employees)**

15 230. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
16 forth herein.

17 231. At all times set forth herein, the Private Attorneys General Act of 2004 (PAGA,
18 California *Labor Code* §§ 2698-99) applied to Defendants' employment of Plaintiff and the
19 proposed Class Members.

20 232. At all times set forth herein, California *Labor Code* § 2699(a) has provided that
21 any provision of law under the California *Labor Code* that provides for a civil penalty to be
22 assessed and collected by the Labor and Workforce Development Agency (LWDA) for violations
23 of the California *Labor Code* may, as an alternative, be recovered through a civil action brought
24 by an aggrieved employee on behalf of herself and other current or former employees pursuant to
25 procedures outlined in California *Labor Code* § 2699.3.

26 233. At all times set forth herein, the PAGA has also provided that for the violation of
27 any Labor Code provision that does not itself contain a civil penalty, there are established civil
28 penalties of \$100 for each aggrieved employee per pay period for the initial violation and \$200

1 for each aggrieved employee per pay period for each subsequent violation. Cal. Lab. C. § 2699(f).

2 234. A civil action under PAGA may be brought by an "aggrieved employee," any
3 person that was employed by the alleged violator and against whom one or more of the alleged
4 violations was committed.

5 235. Defendants committed, and continue to commit, violations of the California Labor
6 Code, including, but not limited to:

- 7 a. violations of California *Labor Code* §§ 510, 1198;
- 8 b. violations of California *Labor Code* §§ 1182.11-1182.12, 1194, 1194.2, 1197,
9 1198;
- 10 c. violations of California *Labor Code* §§ 226.7, 512, 516, and 1198;
- 11 d. violations of California *Labor Code* § 226, 1174;
- 12 e. violations of California *Labor Code* § 204;
- 13 f. violations of California *Labor Code* §§ 201 and 202;
- 14 g. violations of California *Labor Code* §§ 212 and 213;
- 15 h. violations of California *Labor Code* §§ 221 and 224;
- 16 i. violations of California *Labor Code* § 223;
- 17 j. violations of California *Labor Code* § 1198;
- 18 k. violations of California *Labor Code* § 2802;
- 19 l. violations of California *Labor Code* § 2810.5;
- 20 m. violations of California *Labor Code* § 246; and
- 21 n. violations of the applicable Wage Order

22 236. Plaintiff was employed by Defendants and the alleged violations have been
23 committed against her during her time of employment and she is, therefore, an aggrieved
24 employee. Plaintiff and other employees are "aggrieved employees" as defined by California
25 *Labor Code* §2699(c) in that they are all current or former employees of Defendants, and one or
26 more of the alleged violations were committed against them.

27 237. Pursuant to California *Labor Code* § 2699.3, aggrieved employees, including
28 Plaintiff, may pursue a civil action arising under the PAGA after the following requirements have

1 been met:

2 238. The aggrieved employee shall give written notice (hereinafter "Employee's
3 Notice") to the LWDA and the employer of the specific provisions of the California Labor Code
4 alleged to have been violated, including the facts and theories to support the alleged violations;

5 239. The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer
6 and the aggrieved employee by certified mail that it does not intend to investigate the alleged
7 violations sixty (60) calendar days of the postmark date of the Employee's Notice. Upon receipt
8 of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days
9 of the postmark date of the Employee's Notice, the aggrieved employee may commence a civil
10 action pursuant to California *Labor Code* §2699 to recover civil penalties in addition to any other
11 penalties to which the employee may be entitled.

12 240. On October 8, 2021, Plaintiff provided written notice to the LWDA and by
13 certified mail to Defendants of the specific provisions of the California Labor Code alleged to
14 have been violated, including the facts and theories to support the alleged violations. More than
15 65 calendar days have passed since the date notice was provided to the LWDA and Defendants.
16 Accordingly, Plaintiff has satisfied the administrative prerequisites under California *Labor Code*
17 Section 2699.3(a) to recover civil penalties against Defendants for violations of California Labor
18 Code identified in this Complaint.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff, and the Class Members pray for judgment as follows:

- 21 1. For an order certifying the proposed Plaintiff and Terminated Sub-Class;
- 22 2. For an order that counsel for Plaintiff be appointed class counsel
- 23 3. Certification of this class action on behalf of the proposed Plaintiff and Terminated
24 Sub-Class;
- 25 4. Designation of Plaintiff as the class representative of the Plaintiff and Terminated
26 Sub Class;
- 27 5. For restitution of all monies due to Plaintiff and the members of the Plaintiff Class
28 and disgorgement of all profits from the unlawful business practices of Defendant

6. An order appointing Plaintiff's counsel as class counsel;
7. Prejudgment and post judgment interest on all sums awarded;
8. For compensatory damages;
9. For penalties pursuant to California *Labor Code* §§ 200, 226, 226.7, 226.3, 226.7;
10. For interest accrued to date;
11. For costs of suit and expenses incurred herein pursuant to California *Labor Code* §§ 226 and 1194;
12. For reasonable attorneys' fees pursuant to California *Labor Code* §§ 226 and 2699(g)(1), Code of Civil Procedure § 1021.5, and/or other applicable law; and
13. A declaratory judgment that Defendants have knowingly and intentionally violated the following provisions of law;
 - California *Labor Code* §§ 510, 1198 for failing to pay overtime;
 - California *Labor Code* §§ 1182.11-1182.12, 1194, 1194.2, 1197, 1198 for failing to pay all wages;
 - California *Labor Code* §§ 226.7, 512, 516, and 1198 for failing to provide compliant meal and rest breaks;
 - California *Labor Code* § 226, 1174 for failing to provide compliant wage statements;
 - California *Labor Code* § 204 for failing to timely pay wages;
 - violations of California *Labor Code* §§ 201 and 202 for failing to pay wages at termination;
 - California *Labor Code* §§ 212 and 213 for unlawful direct deposit and discount of wages;
 - California *Labor Code* §§ 221 and 224 for unlawful deductions;
 - California *Labor Code* § 223 for secret payment of lower wages;
 - California *Labor Code* § 1198 for failing to provide suitable seating;
 - California *Labor Code* § 2802 for failing to reimburse business expenses;
 - California *Labor Code* § 2810.5 for failing to provide notice of material

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terms of employment;
California *Labor Code* § 246 for failing to provide sick day balances; and
California Business & Professions Code §§ 17200-08 by violating the
provisions set forth herein above.

14. For all such other and further relief that the Court may deem just and proper.

DATED: October 15, 2024
BRADLEY/GROMBACHER, LLP
CAPSTONE LAW APC

By: /s/ Marcus J. Bradley
Marcus Bradley, Esq.
Kiley Grombacher, Esq.
Robert Drexler, Esq.
Molly DeSario, Esq.
Jonathan Lee, Esq.
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of Plaintiff’s and the members of the Classes’ claims by
jury to the extent authorized by law.

DATED: October 15, 2024
BRADLEY/GROMBACHER, LLP
CAPSTONE LAW APC

By: /s/ Marcus J. Bradley
Marcus Bradley, Esq.
Kiley Grombacher, Esq.
Robert Drexler, Esq.
Molly DeSario, Esq.
Jonathan Lee, Esq.
Attorneys for Plaintiff

1
2 **PROOF OF SERVICE**
3 **VIA CASE ANYWHERE**

4 STATE OF CALIFORNIA)
5) ss.
6 COUNTY OF LOS ANGELES)

7 I am employed in the County of Los Angeles, State of California. I am over the age
8 of 18 and not a party to the within action. My business address is 31365 Oak Crest Drive,
9 Suite 240, Westlake Village, CA 91361.

10 On October 15, 2024, I served the foregoing document described as:
11 **FIRST AMENDED CLASS ACTION COMPLAINT**

12 on all interested parties in said action.

13 **SEE ATTACHED SERVICE LIST**

14 Pursuant to the Court's Order Authorizing Electronic Service, the above-named
15 document has been electronically served on counsel of record by transmission through the
16 Case Anywhere system on the date below. The transmission of this document to Case
17 Anywhere system was reported as complete and a copy of the Case Anywhere Transaction
18 Receipt will be maintained along with the original document and proof of service in our
19 office.

20 Executed on October 15, 2024 at Westlake Village, California.

21 /s/ Suzette Boucher
22 _____
23 Suzette Boucher
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26
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Service List

Beng v. SAS Management Stores, Inc. et al.
Los Angeles County Superior Court Case No. 21STCV45479

Mailing List

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