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 and on behalf of all others similarly situated

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

DEBRA ANN GONZALEZ, individually
 and on behalf of all others similarly
 situated,

Plaintiff,

vs.

HAYWARD F2, INC.; EAST BAY F2,
 INC.; DUBLIN F2, INC.; TRACY F2,
 INC.; and DOES 1 through 20, inclusive,

Defendants.

Case No. 21CV001198

*Assigned for All Purposes to:
 Judge Evelio Grillo
 Dept. 21*

**SECOND AMENDED CLASS ACTION
 COMPLAINT FOR:**

1. Failure to Provide Meal Periods;
2. Failure to Permit Rest Breaks;
3. Failure to Provide Accurate Itemized Wage Statements;
4. Failure to Pay All Wages Due Upon Separation of Employment;
5. Failure to Reimburse Necessary Business Expenses;
6. Violation of Business and Professions Code §§ 17200, *et seq.*;
7. Enforcement of Labor Code § 2698 *et seq.* ("PAGA"); and
8. Failure to Pay Wages.

FILED
 Superior Court of California
 County of Alameda

09/23/2022

Clerk of the Court, Executive Officer / Clerk of the Court

By: *Cheryl Clark* Deputy
 C. Clark

1 Plaintiff Debra Ann Gonzalez, individually, and on behalf of others similarly situated,
2 alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Debra Ann Gonzalez (“Plaintiff”) brings this putative class and
5 representative action pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code. §
6 2698 *et seq.*, against defendants Hayward F2, Inc., East Bay F2, Inc., Dublin F2, Inc., and
7 Tracy F2, Inc., and DOES 1 through 20, inclusive (collectively, “Defendants”), on behalf of
8 herself individually and on behalf of California citizens who are and were employed by
9 Defendants as non-exempt employees throughout California.

10 2. Defendants are in the business of operating car dealerships throughout
11 California.

12 3. Through this action, Plaintiff alleges that Defendants have engaged in a
13 systematic pattern of wage and hour violations under the California Labor Code and Industrial
14 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
15 unfair competition.

16 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
17 increased their profits by violating state wage and hour laws by, among other things:

- 18 (a) Failure to pay overtime at the correct regular rate of pay.
- 19 (b) Failing to provide lawful meal periods or compensation in lieu thereof;
- 20 (c) Failing to authorize or permit lawful rest breaks or provide compensation
21 in lieu thereof;
- 22 (d) Failing to provide accurate itemized wage statements;
- 23 (e) Failing to pay all wages due upon separation of employment; and
- 24 (f) Failing to reimburse all business expenses incurred by the employee in
25 direct consequence of the discharge of his or her duties.

26 5. Plaintiff seeks monetary relief against Defendants on behalf of herself and all
27 others similarly situated in California to recover, among other things, unpaid wages and
28 benefits, interest, attorneys’ fees, costs and expenses, and penalties pursuant to Labor Code §§

201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1198, 2698, *et seq.*, 2800, 2802, and Code of California Civil Procedure § 1021.5.

JURISDICTION AND VENUE

6. This is a class action pursuant to California Code of Civil Procedure § 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

7. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

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

9. Venue is proper in this Court because, upon information and belief, Defendants reside, transact business, or have offices in this county, or the acts and omissions alleged herein took place in this county.

THE PARTIES

10. Plaintiff is a citizen of California. Plaintiff was employed by Defendants during the Class Period in California.

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

12. Plaintiff is unaware of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this Complaint and serve such fictitiously named defendants once their names and capacities

1 become known.

2 13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20
3 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants
4 at all relevant times.

5 14. Plaintiff is informed and believes, and thereon alleges, that each defendant acted
6 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
7 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant
8 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as
9 the employer and/or joint employer of Plaintiff and the class members.

10 15. Plaintiff is informed and believes, and thereon alleges, that each and all of the
11 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
12 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
13 the other's behalf. The acts of any and all Defendants were in accordance with, and represent,
14 the official policy of Defendants.

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

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

22 **CLASS ACTION ALLEGATIONS**

23 18. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of
24 herself and all others similarly situated who were affected by Defendants' Labor Code,
25 Business and Professions Code §§ 17200, *et. Seq.*, and IWC Wage Order violations.

26 19. All claims alleged herein arise under California law for which Plaintiff seeks
27 relief authorized by California law.

28 20. Plaintiff's proposed class consists of and is defined as follows:

1 Class

2 All California citizens currently or formerly employed by Defendants as non-
3 exempt employees in the State of California at any time between May 1, 2017¹
4 and the date of class certification (“Class”).

5 21. Plaintiff also seeks to certify the following subclass of employees:

6 Waiting Time Subclass

7 All Class Members who separated their employment with Defendants at any time
8 between May 1, 2018 and the date of class certification (“Subclass” or “Waiting
9 Time Subclass”).

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

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

15 24. There are common questions of law and fact as to the Class Members that
16 predominate over any questions affecting only individual members including, but not limited to,
17 the following:

18 (a) Whether Defendants failed to pay Plaintiff and Class Members overtime
19 wages at the correct rate of pay;

20 (b) Whether Defendants deprived Plaintiff and Class Members of timely
21 meal periods or required Plaintiff and Class Members to work through
22 meal periods without compensation;

23 (c) Whether Defendants deprived Plaintiff and Class Members of rest breaks
24 or required Plaintiff and Class Members to work through rest breaks
25 without compensation;

26 (d) Whether Defendants failed to provide Plaintiff and Class Members

27 ¹ The statute of limitations for this matter was tolled pursuant to Cal. Rules of Court, Appendix I,
28 Emergency Rule No. 9.

1 accurate itemized wage statements;

2 (e) Whether Defendants failed to timely pay Plaintiff and the Subclass all
3 wages due upon termination or within seventy-two (72) hours of
4 resignation;

5 (f) Whether Defendants required Plaintiff and class members to incur
6 expenses for work and then failed to adequately reimburse Plaintiff and
7 Class Members for such expenses;

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

9 (h) Whether Defendants engaged in unfair business practices in violation of
10 Business and Professions Code §§ 17200, *et seq.*

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

13 (a) Numerosity: The Class Members are so numerous that joinder of all
14 members is impractical. Although the members of the entire Class and Subclass are unknown
15 to Plaintiff at this time, on information and belief, the class is estimated to be greater than one
16 100 individuals. The identities of the Class Members are readily ascertainable by inspection of
17 Defendants' employment and payroll records.

18 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the
19 claims (or defenses, if any) of the Class Members because Defendants' failure to comply with
20 the provisions of California's wage and hour laws entitled each Class Member to similar pay,
21 benefits, and other relief. The injuries sustained by Plaintiff are also typical of the injuries
22 sustained by the Class Members, because they arise out of and are caused by Defendants'
23 common course of conduct as alleged herein.

24 (c) Adequacy: Plaintiff will fairly and adequately represent and protect the
25 interests of all Class Members because it is in her best interest to prosecute the claims alleged
26 herein to obtain full compensation and penalties due to her and the Class Members. Plaintiff's
27 attorneys, as proposed class counsel, are competent and experienced in litigating large
28 employment class actions and versed in the rules governing class action discovery,

1 certification, and settlement. Plaintiff has incurred and, throughout the duration of this action,
2 will continue to incur attorneys' fees and costs that have been and will be necessarily expended
3 for the prosecution of this action for the substantial benefit of the Class Members.

4 (d) Superiority: The nature of this action makes use of class action
5 adjudication superior to other methods. A class action will achieve economies of time, effort,
6 and expense as compared with separate lawsuits and will avoid inconsistent outcomes because
7 the same issues can be adjudicated in the same manner for the entire Class and Subclass at the
8 same time. If appropriate, this Court can, and is empowered to, fashion methods to efficiently
9 manage this case as a class action.

10 (e) Public Policy Considerations: Employers in the State of California
11 violate employment and labor laws every day. Current employees are often afraid to assert their
12 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing
13 actions because they believe their former employers might damage their future endeavors
14 through negative references and/or other means. Class actions provide class members who are
15 not named in the complaint with a type of anonymity that allows for the vindication of their
16 rights while affording them privacy protections.

17 **GENERAL ALLEGATIONS**

18 26. At all relevant times mentioned herein, Defendants employed Plaintiff and other
19 California residents as non-exempt employees at Defendants' California business location(s).

20 27. Defendants continue to employ non-exempt employees within California.

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

25 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and Class Members were entitled to receive wages for all time
27 worked and that they were not receiving all wages earned for work that was required to be
28 performed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class Members

1 were not paid all wages for all hours worked at the correct rate due to failure to include bonuses
2 and commissions in the overtime rate.

3 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and Class Members were entitled to receive all required meal
5 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
6 rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the
7 Labor Code and IWC Wage Orders, Plaintiff and Class Members did not receive all meal
8 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
9 rate of pay when they did not receive a timely, uninterrupted meal period.

10 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and Class Members were entitled to receive all rest breaks or
12 payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of pay
13 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff
14 and Class Members did not receive all rest breaks or payment of one (1) additional hour of pay
15 at Plaintiff's and Class Members' regular rate of pay when a rest break was missed.

16 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and class members were entitled to reimbursement for
18 necessary expenditures incurred in connection with the performance and execution of their job
19 duties. In violation of the California Labor Code, Plaintiff and class members did not receive
20 adequate reimbursement for necessary business expenses, including, but not limited to,
21 reimbursement for personal cell phone and personal vehicle use for work.

22 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that the Class Members were entitled to receive itemized wage statements
24 that accurately showed the employer name and address, gross and net wages earned, total hours
25 worked, all applicable hourly rates in effect, and the number of hours worked at each hourly
26 rate in accordance with California law. In violation of the Labor Code, the Class Members were
27 not provided with accurate itemized wage statements.

28 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that the Waiting Time Subclass members were entitled to timely payment
2 of wages due upon separation of employment. In violation of the Labor Code, the Waiting
3 Time Subclass did not receive payment of all wages within permissible time periods.

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

8 36. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief
9 against Defendants on behalf of herself and all Class Members to recover, among other things,
10 unpaid wages, unpaid meal period premium payments, unpaid rest period premium payments,
11 interest, attorneys' fees, penalties, costs, and expenses.

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PROVIDE MEAL PERIODS**

14 (Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

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

17 38. Labor Code § 226.7 provides that no employer shall require an employee to work
18 during any meal period mandated by the IWC Wage Orders.

19 39. Section 11 of the applicable IWC Wage Order states, "[n]o employer shall
20 employ any person for a work period of more than five (5) hours without a meal period of not
21 less than 30 minutes, except that when a work period of not more than six (6) hours will
22 complete the day's work the meal period may be waived by mutual consent of the employer and
23 the employee."

24 40. Labor Code § 512(a) provides that an employer may not require, cause, or permit
25 an employee to work for a period of more than five (5) hours per day without providing the
26 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if
27 the total work period per day of the employee is not more than six (6) hours, the meal period
28 may be waived by mutual consent of both the employer and the employee.

41. Labor Code § 512(a) also provides that an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

42. During the relevant time period, Plaintiff and Class Members did not receive compliant meal periods for working more than five (5) and/or ten (10) hours per day because their meal periods were missed, late, short, and/or they were not permitted to take meal periods.

43. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a compliant meal period is not provided.

44. At all relevant times, Defendants failed to pay Plaintiff and Class Members meal period premiums for missed, late, and/or short meal periods pursuant to Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order.

45. As a result of Defendants' failure to pay Plaintiff and Class Members an additional hour of pay for each day a compliant meal period was not provided, Plaintiff and Class Members suffered and continue to suffer a loss of wages and compensation.

SECOND CAUSE OF ACTION

FAILURE TO PERMIT REST BREAKS

(Violation of Labor Code § 226.7; Violation of IWC Wage Order § 12)

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

47. Labor Code § 226.7(a) provides that no employer shall require an employee to work during any rest period mandated by the IWC Wage Orders.

48. Section 12 of the applicable IWC Wage Order states “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period[,]” and the “[a]uthorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major

1 fraction thereof[,]” unless the total daily work time is less than three and one-half (3½) hours.

2 49. During the relevant time period, Plaintiff and Class Members did not receive a
3 ten (10) minute rest period for every four (4) hours or major fraction thereof worked because
4 they were required to work through their daily rest periods and/or were not authorized to take
5 their rest periods.

6 50. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order
7 requires an employer to pay an employee one (1) additional hour of pay at the employee’s
8 regular rate of compensation for each work day that a compliant rest period is not provided.

9 51. At all relevant times, Defendants failed to pay Plaintiff and Class Members rest
10 period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code §
11 226.7(b) and section 12 of the applicable IWC Wage Order.

12 52. As a result of Defendants’ failure to pay Plaintiff and Class Members an
13 additional hour of pay for each day a compliant rest period was not provided, Plaintiff and Class
14 Members suffered and continue to suffer a loss of wages and compensation.

15 **THIRD CAUSE OF ACTION**

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

17 (Violation of Labor Code § 226)

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

20 54. Labor Code § 226(a) requires Defendants to provide each employee with an
21 accurate wage statement in writing showing nine pieces of information, including, the
22 following: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of
23 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate
24 basis, (4) all deductions, provided that all deductions made on written orders of the employee
25 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the
26 period for which the employee is paid, (7) the name of the employee and the last four digits of
27 his or her social security number or an employee identification number other than a social
28 security number, (8) the name and address of the legal entity that is the employer, and (9) all

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

3 55. During the relevant time period, Defendants have knowingly and intentionally
4 failed to comply with Labor Code § 226(a) on wage statements that were provided to the Class
5 Members. The deficiencies include, among other things, the failure to correctly state the gross
6 and net wages earned, total hours worked, all applicable hourly rates in effect, and the number
7 of hours worked at each hourly rate by the Class Members.

8 56. As a result of Defendants' knowing and intentional failure to comply with Labor
9 Code § 226(a), the Class Members suffered injury and damage to their statutorily-protected
10 rights. Specifically, the Class Members are deemed to suffer an injury pursuant to Labor Code
11 § 226(e) where, as here, Defendants intentionally violated Labor Code § 226(a). The Class
12 Members were denied both their legal right to receive, and their protected interest in receiving,
13 accurate itemized wage statements under Labor Code § 226(a). Plaintiff has had to file this
14 lawsuit in order to analyze the extent of the underpayment, thereby causing Plaintiff to incur
15 expenses and lost time. Plaintiff would not have had to engage in these efforts and incur these
16 costs had Defendants provided the accurate hours worked, wages earned, and rates of pay. This
17 has also delayed Plaintiff's ability to demand and recover the underpayment of wages from
18 Defendants.

19 57. The Class Members are entitled to recover from Defendants the greater of all
20 actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or fifty
21 dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred dollars
22 (\$100.00) per employee for each violation in subsequent pay periods in an amount not
23 exceeding four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

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

1 proof at trial.

2 59. The Class Members are also entitled to injunctive relief under California Labor
3 Code § 226(h), compelling Defendants to comply with California Labor Code § 226.
4 Accordingly, the Class Members seek the recovery of attorneys' fees and costs incurred in
5 obtaining this injunctive relief.

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

8 (Violation of Labor Code §§ 201, 202, and 203)

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

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

17 62. During the relevant time period, Defendants willfully failed to pay the Waiting
18 Time Subclass all their earned wages upon termination, including, but not limited to, meal
19 period premiums, and rest period premiums either at the time of discharge or within seventy-
20 two (72) hours of their leaving Defendants' employ.

21 63. Defendants' failure to pay the Waiting Time Subclass all their earned wages at
22 the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is
23 in violation of Labor Code §§ 201 and 202.

24 64. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
25 immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202,
26 then the wages of the employee shall continue as a penalty from the due date at the same rate
27 until paid or until an action is commenced; but the wages shall not continue for more than thirty
28 (30) days.

65. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover from Defendants the statutory penalty, which is defined as the Waiting Time Subclass members' regular daily wages at their regular hourly rate of pay for each day they were not paid, up to a maximum of thirty (30) days.

FIFTH CAUSE OF ACTION

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

(Violation of Labor Code §§ 2800, 2802)

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

67. Labor Code § 2800 states that an employer shall in all cases indemnify his employee for losses.

68. Labor Code § 2802 requires employers to indemnify their employees for all necessary expenditures or losses incurred by employees in direct consequence of the discharge of their duties.

69. Section 9 of the applicable IWC Wage Order states that when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.

70. During the relevant time period, Defendants required Plaintiff and class members to incur expenses without properly compensating them for such expenses.

71. In violation of Labor Code §§ 2800 and 2802, Defendants failed to indemnify Plaintiff and class members for these expenses.

72. In committing the violations as herein alleged, Defendants have intentionally and willfully failed to fully reimburse Plaintiff and class members for necessary business-related costs and expenses. As a direct result, Plaintiff and class members have suffered and continue to suffer substantial losses relating to the use and enjoyment of such compensation, wages, expenses, and attorney's fees.

SIXTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.

(Violation of Business and Professions Code §§ 17200, *et seq.*)

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

74. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice . . .”

75. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be predicated on a violation of any state or federal law. In the instant case, Defendants’ policies and practices violated state law, causing Plaintiff and Class Members to suffer and continue to suffer injuries-in-fact.

76. Defendants’ policies and practices violated state law in at least the following respects:

- (a) Failing to pay wages to Plaintiff and Class Members at the proper rate and in violation of Labor Code §§ 510, 1194, 1198;
- (b) Failing to provide compliant meal periods without paying Plaintiff and Class Members premium wages for every day said meal periods were not provided in violation of Labor Code §§ 226.7 and 512;
- (c) Failing to authorize or permit compliant rest breaks without paying Plaintiff and Class Members premium wages for every day said rest breaks were not authorized or permitted in violation of Labor Code § 226.7;
- (d) Failing to provide the Class Members with accurate itemized wage statements in violation of Labor Code § 226;
- (e) Failing to timely pay all earned wages to the members of the Waiting Time Subclass upon separation of employment in violation of Labor Code §§ 201, 202, and 203; and
- (f) Failing to reimburse business expenses in violation of Labor Code §§ 2800 and 2802.

1 77. As alleged herein, Defendants systematically engaged in unlawful conduct in
2 violation of the California Labor Code and IWC Wage Orders, such as failing to provide meal
3 periods and rest periods or compensation in lieu thereof, failing to furnish accurate wage
4 statements, failing to pay all wages due and owing upon separation of employment in a timely
5 manner, and failing to reimburse business expenses, all in order to decrease their costs of doing
6 business and increase their profits.

7 78. At all relevant times herein, Defendants held themselves out to Plaintiff and
8 Class Members as being knowledgeable concerning the labor and employment laws of
9 California.

10 79. At the time Plaintiff and Class Members were hired, Defendants knowingly,
11 intentionally, and wrongfully misrepresented to each of them their conformance with the
12 California Labor Code and IWC Wage Orders, including proper payments required by law.

13 80. At all times relevant herein, Plaintiff and Class Members relied on and believed
14 Defendants' representations concerning their conformance with California's wage and hour
15 laws all to their detriment.

16 81. At all times relevant herein, Defendants intentionally avoided paying Plaintiff
17 and Class Members wages and monies, thereby creating for Defendants an artificially lower
18 cost of doing business in order to undercut their competitors and establish and/or gain a greater
19 foothold in the marketplace.

20 82. As a result of Defendants' intentional, willful, purposeful, and wrongful
21 misrepresentation of their conformance with the California Labor Code and IWC Wage Orders,
22 Plaintiff and Class Members suffered a loss of wages and monies, all in an amount to be shown
23 according to proof at trial.

24 83. By violating the foregoing statutes and regulations as herein alleged,
25 Defendants' acts constitute unfair and unlawful business practices under California Business
26 and Professions Code §§ 17200, *et seq.*

27 84. As a result of the unfair and unlawful business practices of Defendants, as
28 alleged herein, Plaintiff and Class Members are entitled to injunctive relief, disgorgement, and

1 restitution in an amount to be shown according to proof at trial.

2 85. Plaintiff seeks to enforce important rights affecting the public interest within the
3 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged
4 herein, has been and continues to be unfair, unlawful, and harmful to Plaintiff, Class Members,
5 and the general public. Based on Defendants' conduct as alleged herein, Plaintiff and Class
6 Members are entitled to an award of attorneys' fees pursuant to California Code of Civil
7 Procedure § 1021.5.

8 SEVENTH CAUSE OF ACTION

9 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

10 86. Plaintiff hereby re-alleges and incorporate by reference the previous paragraphs as
11 though fully set forth herein.

12 87. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
13 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
14 ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees for
15 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by
16 an aggrieved employee on behalf of himself or herself and other current or former employees
17 pursuant to the procedures specified in Labor Code § 2699.3.

18 88. For all provisions of the Labor Code except those for which a civil penalty is
19 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
20 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
21 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
22 period in which Defendants violated these provisions of the Labor Code.

23 89. Defendants' conduct violates numerous Wage Order and Labor Code sections,
24 including, but not limited to, the following:

- 25 a. violation of Labor Code §§ 201, 202, 203, 204, 510, 1194, 1198, for
26 failure to timely pay all earned wages owed to Plaintiff and other
27 aggrieved employees during employment and upon separation of
28 employment as herein alleged;

- b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to Plaintiff and other aggrieved employees and failure to pay premium wages for missed meal periods as herein alleged;
- c. violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and other aggrieved employees and failure to pay premium wages for missed rest periods as herein alleged;
- d. violation of Labor Code § 226 for failure to provide accurate itemized wage statements to Plaintiff and other aggrieved employees as herein alleged;
- e. violation of Labor Code §§ 2800 and 2802 for failure to reimburse Plaintiff and other aggrieved employees for necessary business expenses as herein alleged; and
- f. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and complete records showing, among other things, the hours worked daily by and the wages paid to aggrieved employees.

90. Plaintiff is an “aggrieved employee” because she was employed by the alleged violator and had one or more of the violations committed against her, and therefore is properly suited to represent the interests of all other aggrieved employees.

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

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

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

EIGHTH CAUSE OF ACTION

FAILURE TO PAY WAGES

(Violation of Labor Code §§ 510, 1194, and 1198; Violation of IWC Wage Order § 3)

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

95. Labor Code § 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either one and one-half (1½) or two (2) times the person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

96. California Labor Code § 510 codifies the right to overtime compensation at one and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh consecutive day of work, and overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work in a workweek.

97. Plaintiff and Class Members were employees entitled to the protections of California Labor Code §§ 510 and 1194.

98. During the relevant time period, Defendants required Plaintiff and Class Members to work in excess of eight (8) hours in a day, forty (40) hours in a week, and/or on a seventh consecutive day of work, entitling them to overtime wages.

99. During the relevant time period, Defendants failed to pay Plaintiff and Class Members overtime wages for all overtime hours worked at the correct rate of pay.

100. In violation of California law, Defendants knowingly and willfully refused to perform their obligations and compensate Plaintiff and Class Members for all wages earned and all hours worked.

101. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of overtime compensation, as required by California law, violates the provisions of Labor Code §§ 510 and 1198, and is therefore unlawful.

102. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to recover their unpaid overtime and double time compensation as well as interest, costs, and attorneys' fees.

PRAYER FOR RELIEF

Plaintiff, on her own behalf and on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

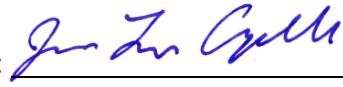
1. For certification under California Code of Civil Procedure § 382 of the proposed Class, Waiting Time Subclass, and any other appropriate subclasses;
2. For appointment of Debra Ann Gonzalez as the class representative;
3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;
4. For compensatory damages in an amount according to proof at trial;
5. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties;
6. For economic and/or special damages in an amount according to proof at trial;
7. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;
8. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;
9. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
10. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under Business and Professions Code §§ 17200, *et seq.*;
11. For pre-judgment interest;
12. For civil penalties;
13. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§ 226(e), 2802(c), and 2698 *et seq.*; and

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14. For such other relief as the Court deems just and proper.

Dated: August 30, 2022

AEGIS LAW FIRM, PC

By: 

Jessica L. Campbell

Attorneys for Plaintiff Debra Ann Gonzalez

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over
3 the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and
4 my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

On September 23, 2022, I served the foregoing document entitled:

5 • **SECOND AMENDED CLASS ACTION COMPLAINT**

on all the appearing and/or interested parties in this action by delivering ☐ the original ☒ a true
6 copy thereof on the party(ies) addressed below as follows:

7 Joshua J. Cliffe
8 Courtney Chambers
9 **LITTLER MENDELSON, PC**
333 Bush Street, 34th Floor
10 San Francisco, CA 94104
Telephone: 415.433.1940
11 Facsimile: 415.399.8490
jcliffe@littler.com
cchambers@littler.com

12 *Attorneys for Defendants:*

13 HAYWARD F2, INC.; EAST BAY F2, INC.; DUBLIN F2, INC.; TRACY F2, INC.

14 ☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
15 correspondence for mailing. Under that practice it would be deposited with the U.S.
16 Postal Service on that same day with postage thereon fully prepaid at Irvine, California
17 in the ordinary course of business. I am aware that on motion of the party served, service
is presumed invalid if postage cancellation date or postage meter date is more than one
day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed.*
R. Civ. Proc. 5(a); *Fed. R. Civ. Proc.* 5(c).)

18 ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business
19 practice of Aegis Law Firm PC for collection and processing correspondence for
20 overnight delivery, and I caused such document(s) described herein to be deposited for
delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal*
Code Civ. Proc. § 1013(c); *Fed. R. Civ. Proc.* 5(c).)

21 ☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via
22 electronic transmission via the above listed email addresses on the date below. (*Cal.*
Code Civ. Proc. § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

23 ☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to
24 the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.*
5(b)(2)(A).)

25 ///

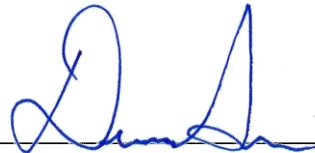
26 ///

27 ///

28 ///

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 Executed on September 23, 2022, at Irvine, California.

4 
5 _____
6 Delaney Graves