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9 individually and on behalf of all other similarly situated employees

10 **SUPERIOR COURT OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN JOAQUIN**

12 ELIZABET SANCHEZ, individually and on
13 behalf of all other similarly situated
14 employees,

15 Plaintiff,

16 vs.

17 PACIFIC COAST PRODUCERS, a California
18 Corporation; and DOES 1 to 100, inclusive,

19 Defendants.

Case No. STK-CV-UOE-2021-11106

CLASS ACTION

**SECOND AMENDED COMPLAINT FOR
DAMAGES:**

1. Failure to Pay Overtime Wages
2. Meal Period Violations
3. Rest Period Violations
4. Wage Statement Violations
5. Waiting Time Penalties
6. Failure to Reimburse Expenses
7. Unfair Competition
8. Private Attorneys General Act
9. Failure to Pay Minimum Wages

DEMAND FOR JURY TRIAL

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SECOND AMENDED CLASS ACTION COMPLAINT

FILE BY FAX

FILED
SUPERIOR COURT

2023 MAR 29 PM 3:03

ANDREW E. RILEY, CLERK

JANET MALDONADO

BY
DEPUTY

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3 Plaintiff ELIZABET SANCHEZ ("Plaintiff"), on behalf of herself and all other similarly
4 situated employees, hereby files this Second Amended Complaint against Defendants PACIFIC
5 COAST PRODUCERS, a California Corporation; and DOES 1 to 100, inclusive (hereinafter all
6 collectively referred to as "Defendants"). On information and belief, Plaintiff alleges the following:

7 **INTRODUCTION**

8 1. This is a class action and Private Attorneys General Act ("PAGA") lawsuit brought by
9 Plaintiff for failure to provide minim and overtime wages, meal and rest period violations, wage
10 statement violations, failure to provide reimbursements, waiting time penalties, and unfair competition.

11 **JURISDICTION AND VENUE**

12 2. The San Joaquin County Superior Court has jurisdiction in this matter pursuant to
13 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
14 Labor Code, California Business and Professions Code, and Wage Order No. 3.

15 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), and 395.5, in that
16 Defendants reside in San Joaquin County. In addition, some of the wrongful acts and violations of law
17 asserted herein occurred within San Joaquin County, and Defendants' obligation to pay wages arose in
18 San Joaquin County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414
19 (1984).

20 4. Plaintiff has sought permission pursuant to California Labor Code section 2699 *et seq.* to
21 pursue the claims set forth in this Second Amended Complaint against Defendants as a Private Attorney
22 General on behalf of herself and other similarly situated employees. Pursuant to California Labor Code
23 section 2699.3, Plaintiff gave written notice via online submission to the Labor and Workforce
24 Development Agency ("LWDA") on approximately November 24, 2021. Plaintiff provided facts and
25 legal bases for her claims within the notice to the LWDA on all violations asserted under the PAGA
26 cause of action. Plaintiff also submitted the \$75.00 filing fee. The November 24, 2021, notice was also
27 sent via certified mail to Defendants on the same day. To date, the LWDA has not provided any
28 response to Plaintiff's notice correspondence. Accordingly, Plaintiff has exhausted all administrative

1 remedies pursuant to the PAGA and may bring this action on behalf of herself and all similarly situated
2 employees, *i.e.* aggrieved employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks,*
3 *Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005). Aggrieved employees include, but
4 are not limited to the following: all non-exempt employees working for Defendant in California from
5 November 24, 2020 to present.

6 **PARTIES**

7 5. ELIZABET SANCHEZ is an individual over the age of eighteen (18) and is a resident
8 of the State of California.

9 6. On information and belief, Plaintiff alleges PACIFIC COAST PRODUCERS, is now
10 and/or at all times mentioned in this Complaint was a California Corporation and the owner and
11 operator of an industry, business and/or facility doing business in the State of California.

12 7. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
13 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
14 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
15 names and capacities of these DOE Defendants when they are ascertained.

16 8. At all times mentioned herein, each Defendant was the agent or employee of each of the
17 other Defendants and was acting within the course and scope of such agency or employment. The
18 Defendants are jointly and severally liable to Plaintiff.

19 9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
20 were members of and/or engaged in a joint employment, joint venture, partnership and common
21 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
22 joint venture, partnership and common enterprise.

23 10. Defendants, and each of them, now and/or at all times mentioned in this Complaint
24 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

25 11. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
26 wrongs, complaints, injuries and/or damages alleged in this Complaint.

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1 **CLASS ALLEGATIONS**

2 12. Plaintiff brings the First through Seventh Causes of Action on behalf of herself and all
3 others similarly situated as a class action pursuant to California Code of Civil Procedure section 382.
4 The class which Plaintiff seeks to represent is composed of, and defined, as follows:

5 All non-exempt employees who have or continue to work for Defendants
6 in California from December 7, 2017 to the present.

7 13. This action has been brought and may be properly maintained as a class action,
8 pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-
9 defined community of interests in the litigation and the proposed class is easily ascertainable.

10 (a) Numerosity: The putative class is so numerous that the individual joinder of all members
11 is impracticable under the circumstances of this case. While the exact number of class
12 members is unknown to Plaintiff at this time, Plaintiff is informed and believes that
13 Defendants have employed more than five hundred (500) individuals falling within the
14 above stated class definition throughout the State of California during the applicable
15 statute of limitations, who were subjected to the policies and practices outlined in this
16 Complaint. As such, joinder of all members of the putative class is not practicable.

17 (b) Common Questions Predominate: Common questions of law and fact exist as to all
18 members of the putative class and predominate over questions that affect only individual
19 members of the class. These common questions of law and fact include, without
20 limitation, the following:

- 21 (1) Whether Defendants had a policy and practice to incorporate the value of non-
22 discretionary remuneration into putative class members' regular rates of pay for
23 the purpose of paying overtime wages, meal and rest period premiums, and paid
24 sick time;
25 (2) Whether Defendants authorized and permitted all meal periods;
26 (3) Whether Defendants authorized and permitted all rest periods;
27 (4) Whether Defendants engaged in rounding employees hours worked, including
28 meal periods;

- (5) Whether Defendants kept payroll records as required by law;
- (6) Whether Defendants failed to pay for all hours worked;
- (7) Whether Defendants failed to reimburse Plaintiff and putative class members for work-related cell phone use;
- (8) Whether as a result of Defendants' policies and practices Plaintiff's and putative class members received all wages, due and owing, at the time of their termination or separation; and
- (9) Whether as a result of Defendants' policies and practices Plaintiff's and putative class members received all wages, due and owing, at the time of their termination or separation; and
- (10) Whether Defendants provided Plaintiff's and putative class members with wage statements that complied with Labor Code section 226.

(c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative class. The putative class also sustained damages arising out of Defendants' common course of conduct in violation of the law as complained of herein. Plaintiff and all members of the putative class were non-exempt employees who received nondiscretionary remuneration and were not paid all overtime wages, meal and rest period premiums, and paid sick time due to incorrect calculations of their regular rates of pay. Defendant's engaged in unlawful rounding of Plaintiff's and similarly situated employees hours worked, including, but not limited to, clock in/out for meal periods, and the start and end of employee's shifts. Similarly, Plaintiff and all similarly situated employees were not authorized and permitted to take all meal and paid rest periods and were required to use their personal cell phones to communicate with Defendants' managerial and supervisory employees. Additionally, Defendants issued Plaintiff and all members of the putative class wage statements that did not comply with Labor Code section 226. As a result, Plaintiff and each member of the putative class will have suffered the same type of harm and seek the same type of recovery based on the same legal theories.

1 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
2 putative class. For all relevant times, Plaintiff resided in California and worked for
3 Defendants in California. Moreover, Plaintiff is an adequate representative of the
4 putative class as Plaintiff has no interests that are adverse to those of putative class
5 members. Additionally, Plaintiff has retained counsel who has substantial experience in
6 complex civil litigation and wage and hour matters.

7 (e) Superiority: A class action is superior to other available means for the fair and efficient
8 adjudication of the controversy since individual joinder of all members of the putative
9 class is impracticable. Class action treatment will permit a larger number of similarly
10 situated persons to prosecute their common claims in a single forum simultaneously,
11 efficiently, and without the unnecessary duplication of effort and expense that numerous
12 individual actions would engender. Further, as damages suffered by each individual
13 member of the class may be relatively small, the expenses and burden of the individual
14 litigation would make it difficult or impossible for individual members of the class to
15 redress the wrongs done to them, and an important public interest will be served by
16 addressing the matter as a class action. The cost to the court system of adjudication of
17 such individualized litigation would be substantial. Individualized litigation would also
18 present the potential for inconsistent or contradictory judgments.

19 14. Plaintiff is unaware of any difficulties that are likely to be encountered in the
20 management of this action that would preclude its maintenance as a class action.

21 GENERAL ALLEGATIONS

22 15. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 14 as though fully
23 set forth herein.

24 16. Defendants operate a business that packages, cans, labels, and distributes shelf-stable
25 fruits and tomatoes. Defendants' base of operations is in Lodi, California, but they operate facilities in
26 Oroville and Woodland, California, as well. Plaintiff worked for Defendants from approximately
27 November 2020 to August 2021 as a non-exempt, hourly employee.
28

1 17. Plaintiff and similarly situated employees regularly worked over eight (8) hours in a day
2 or more and/or over forty (40) hours in a week. Plaintiff and similarly situated employees were also
3 paid non-discretionary remuneration, such as a yearly production bonus, pack bonuses, referral bonuses,
4 shift differentials, and other similar payments. Defendant failed to incorporate the value of this non-
5 discretionary remuneration into Plaintiff's and similarly situated employees' regular rates of pay for the
6 purpose of paying overtime wages, meal and rest period premiums, and sick leave wages. Defendants
7 wholly failed to pay any weighted average premium payments, for overtime or otherwise, as far back as
8 2017, and continues to unlawfully exclude various types of non-discretionary earnings from regular rate
9 calculations and premium wage payments.

10 18. Defendants unlawfully rounded Plaintiff's and similarly situated employees hours
11 worked, including rounding meal period clock in/outs. Defendants had the ability to track employees
12 hours worked down to the minute and pay wages reflective of actual hours worked. However,
13 Defendants chose to engage in rounding. The rounding policy and practices utilized by Defendants were
14 unlawfully skewed in favor of the employer. For example, Defendants' time keeping system would
15 round employees hours worked up to 8:00 a.m. and down to 5:00 p.m., if employees clocked in between
16 7:52 a.m. and 8:00 a.m. or 5:00 p.m. to 5:07 p.m., respectively. Although the time round be rounded in
17 this way for the benefits of Defendants, time would not be rounded to the nearest fifteen (15) minute
18 increment for the benefit of employees when clocking in before 7:52 a.m. or out after 5:07 p.m. Thus,
19 the rounding was not neutral and was applied in a way to exclusively benefit Defendants, so they could
20 avoid paying minimum, regular, and overtime wages.

21 19. Plaintiff is informed and believes, and on that basis alleges, that Defendant has failed to
22 maintain records of Plaintiff and similarly situated employees hours worked as a result of a deletion of
23 data in connection with switching third-party payroll providers. The lack of any such time records spans
24 from approximately 2020 to 2022.

25 20. Defendants regularly rounded employees time spent on meal periods, creating an illusion
26 of compliant meal periods when, in fact, they were regularly shortened or not able to be taken at all.
27 Defendants' timekeeping system automatically flagged meal period violations by creating alerts
28 showing where employees had less than a full 30 minutes (even when that time was rounded), where

1 employees were not able to take a meal period before the completion of the fifth hour worked, where
2 employees were not able to take a second meal period, and where employees were not able to take a
3 second meal period before the completion of the fifth hour worked. Instead of paying employees meal
4 period premiums or investigating the matter further with the employee, Defendants and a policy and
5 practice of having supervisors unilaterally decide whether or not any premiums should be provided
6 without any notice to employees. As a result of Defendants' rounding policies and practices, Plaintiff
7 and similarly situated employees were regularly deprived of being compensated for their hours actually
8 worked before their scheduled shift, after their scheduled shift, and during meal periods.

9 21. Defendants further did not authorize and permit Plaintiff and similarly situated
10 employees to take all meal and rest periods owed to them. For example, Defendants rest period policy
11 did not authorize employees to take a rest break for every four hours worked or major fraction thereof.
12 Plaintiff and similarly situated employees did not receive all uninterrupted thirty (30) minute meal
13 periods every five (5) hours and ten (10) minute rest periods every four (4) hours or major fraction
14 thereof. Defendants did not pay Plaintiff and similarly situated employees missed meal or rest period
15 premiums.

16 22. Finally, Defendants failed to pay Plaintiff and similarly situated employees for work-
17 related cell phone use even though cell phones were used as a means of communication between
18 employees and management throughout the workday.

19 23. As a result of Defendants' failure to pay Plaintiff and similarly situated employees all
20 overtime wages, paid sick wages, and meal and rest period premiums owed, the wage statements
21 Defendants issued were inaccurate. The paystubs Defendants issued did not itemize accurate regular
22 and overtime rates of pay, accurate missed meal and rest period premiums owed, and accurate gross and
23 net wages earned. As a result, Plaintiff and similarly situated employees were not able to determine the
24 total wages owed to them from their paystubs alone.

25 24. As of this date of this letter, Defendants have not paid Plaintiff and similarly situated
26 employees all minimum wages, regular wages, overtime wages, paid sick time, and meal and rest period
27 premiums owed to them.

1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**
3 **FAILURE TO PAY OVERTIME WAGES**
4 **(As to all Defendants)**

5 25. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 24 as though fully
6 set forth herein.

7 26. During the period Plaintiff was employed by Defendants, Defendants were required to
8 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
9 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
10 hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 3, section (3)(A);*
11 *Cal. Lab. Code §§ 510, 1194.*

12 27. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
13 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
14 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
15 worked at their regular rate of pay.

16 28. Plaintiff and similarly situated employees were not exempt from overtime protections
17 employees under the California Wage Orders and Labor Code.

18 29. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
19 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
20 the extent pertinent as if set forth here in full.

21 **SECOND CAUSE OF ACTION**
22 **MEAL PERIOD VIOLATIONS**
23 **(As to all Defendants)**

24 30. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 29 as though fully
25 set forth herein.

26 31. An employer must provide an employee a meal period in accordance with the
27 applicable Wage Order, and California Labor Code sections 226.7 and 512.

28 32. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 3, section
11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30)
minutes for each work period of more than five (5) hours.

1 33. California Labor Code section 512 and Wage Order No. 3 section 11(B) further
2 provide that employers may not employ employees for a work period for more than ten (10) hours
3 per day without providing the employee with a second meal period of at least thirty (30) minutes.
4 However, if the total hours worked is no more than twelve (12) hours, the second meal period may
5 be waived so long as there was no waiver as to the first meal period. Employees are entitled to one
6 (1) hour of pay at their regular rate of compensation for each meal period not provided.

7 34. Defendants employed Plaintiff and similarly situated employees for periods of more
8 than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal
9 period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more
10 than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated
11 employees to take their first meal period before the completion of their fifth hour of work and failed
12 to allow Plaintiff and similarly situated employees to take their second meal period before the
13 completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their
14 rights to all meal periods throughout their employment.

15 35. Defendants further failed to pay Plaintiff and similarly situated employees the
16 applicable meal period premiums for any such missed meal breaks.

17 36. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
18 employees have been damaged as stated in the section below entitled "DAMAGES," which is
19 incorporated here to the extent pertinent as if set forth here in full.

20 **THIRD CAUSE OF ACTION**
21 **REST PERIOD VIOLATIONS**
22 **(As to all Defendants)**

23 37. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 36 as though fully
24 set forth herein.

25 38. An employer must provide an employee a rest period in accordance with the
26 applicable Wage Order and California Labor Code section 226.7.

27 39. California Labor Code section 226.7 and Wage Order No. 3, section 12(A) require an
28 employer to provide a rest period of not less than ten (10) minutes for each work period of more than
four (4) hours or a major fraction thereof.

1 40. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly
2 situated employees to take paid rest periods of at least ten (10) minutes for each work period that
3 they worked more than four (4) hours or a major fraction thereof.

4 41. Defendants further failed to pay Plaintiff and similarly situated employees the
5 applicable rest period premiums for any such missed rest periods.

6 42. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
7 employees have been damaged as stated in the section below entitled "DAMAGES," which is
8 incorporated here to the extent pertinent as if set forth here in full.

9
10 **FOURTH CAUSE OF ACTION**
 WAGE STATEMENT VIOLATIONS
 (As to all Defendants)

11 43. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 42 as though fully
12 set forth herein.

13 44. Pursuant to California Labor Code section 226(a), an employer must provide an itemized
14 statement to an employee, semimonthly or at the time of each payment of wages, showing:

15 *(1) gross wages earned, (2) total hours worked by the employee, except for*
16 *any employee whose compensation is solely based on a salary and who is*
17 *exempt from payment of overtime under subdivision (a) of Section 515 or*
18 *any applicable order of the Industrial Welfare Commission, (3) the*
19 *number of piece-rate units earned and any applicable piece rate if the*
20 *employee is paid on a piece-rate basis, (4) all deductions, provided that*
21 *all deductions made on written orders of the employee may be aggregated*
22 *and shown as one item, (5) net wages earned, (6) the inclusive dates of the*
23 *period for which the employee is paid, (7) the name of the employee and*
24 *the last four digits of his or her social security number or an employee*
25 *identification number other than a social security number, (8) the name*
26 *and address of the legal entity that is the employer and, if the employer is*
27 *a farm labor contractor, as defined in subdivision (b) of Section 1682, the*
28 *name and address of the legal entity that secured the services of the*
 employer, and (9) all applicable hourly rates in effect during the pay
 period and the corresponding number of hours worked at each hourly rate
 by the employee. The deductions made from payment of wages shall be
 recorded in ink or other indelible form, properly dated, showing the
 month, day, and year, and a copy of the statement and the record of the
 deductions shall be kept on file by the employer for at least three years at
 the place of employment or at a central location within the State of
 California.

45. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an
itemized statement or failed to provide an accurate and complete itemized statement showing the

1 requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not
2 accurately itemize all applicable hourly rates in effect during the pay period, all regular, overtime
3 and double time hours worked and corresponding rates of pay, and gross and net wages earned.
4 Plaintiff and similarly situated employees were not able to promptly and easily determine their total
5 hours worked from their paystubs alone. Additionally, Plaintiff and similarly situated employees
6 suffered confusion over whether they received all wages owed and were prevented from effectively
7 challenging information on their wage statements.

8 46. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
9 employees have been damaged as stated in the section below entitled "DAMAGES," which is
10 incorporated here to the extent pertinent as if set forth here in full.

11 **FIFTH CAUSE OF ACTION**
12 **WAITING TIME PENALTIES**
(As to all Defendants)

13 47. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 46 as though fully
14 set forth herein.

15 48. An employer must pay an employee who is terminated all unpaid wages immediately
16 upon termination. *See* Cal. Lab. Code § 201.

17 49. An employer must pay an employee who resigns all unpaid wages within seventy-two
18 (72) hours of their resignation. *See* Cal. Lab. Code § 202.

19 50. Plaintiff and similarly situated employees did not receive all wages, including overtime
20 wages, meal and rest period premiums, or all sick leave pay owed at their termination or within the
21 required time after their separation from employment.

22 51. An employer who willfully fails to pay an employee wages in accordance with California
23 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
24 days. *See* Cal. Lab. Code § 203.

25 52. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees'
26 their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff
27 and similarly situated employees were receiving nondiscretionary remuneration that was not
28 incorporated into their regular rate of pay for the purpose of calculating overtime, meal and rest period

1 premiums, and sick leave pay. Such conduct shows Defendants had knowledge of earned, but unpaid
2 wages at the time of separation, yet Defendants still refused to pay the remaining wages owed.

3 53. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
4 have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by
5 thirty (30) days for Defendants' failure to pay all wages due.

6 **SIXTH CAUSE OF ACTION**
7 **FAILURE TO REIMBURSE EXPENSES**
8 **(As to all Defendants)**

9 54. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 53 as though fully
10 set forth herein.

11 55. California Labor Code section 2802(a) states that "An employer shall indemnify his or
12 her employee for all necessary expenditures or losses incurred by the employee in direct consequence of
13 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
14 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
15 unlawful."

16 56. Defendants required Plaintiff and similarly situated employees to use their personal cell
17 phones for work purposes but failed to reimburse them for such use.

18 57. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
19 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
20 the extent pertinent as if set forth here in full.

21 **SEVENTH CAUSE OF ACTION**
22 **UNFAIR COMPETITION**
23 **(As to All Defendants)**

24 58. Plaintiff s by reference and re-alleges paragraphs 1 through 57 as though fully set forth
25 herein.

26 59. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act
27 or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1
28 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. See
California Business and Professions ("B&P") Code § 17200.

60. Plaintiff and similarly situated employees were not paid all wages owed, including minimum, regular, and overtime wages, and meal and rest period premiums, paid sick leave, or reimbursed for business expenses, during their employment or any time thereafter.

61. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law (“UCL”) (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

62. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

EIGHTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

63. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 59 as though fully set forth herein.

64. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 3, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 226.7, 512 and Wage Order No. 3, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7 and Wage Order No. 3, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

- Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

65. Plaintiff seeks civil penalties against Defendants as provided in the California Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section 2699(f)(2).

66. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

67. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

NINTH CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(As to all Defendants)

68. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 67 as though fully set forth herein.

69. For the period preceding the filing of this Complaint, Defendants were required to compensate Plaintiff and similarly situated employees with at least California's applicable minimum for every hour worked. See MW-Order 2019; IWC Wage Order, No. 3, section 4(A); Cal. Lab. Code § 1194.

70. Plaintiff and similarly situated employees were not exempt to the State's Minimum Wage Order. Defendants aware of their obligation to pay the minimum wage for each hour worked but failed to do so.

71. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:

- a. Wages in an amount to be proven at trial;
- b. Interest for the wages due pursuant to California Labor Code section 1194;
- c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;

3. As to the Second Cause of Action:

- a. Wages in an amount to be proven at trial;
- b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;

4. As to the Third Cause of Action:

- a. Wages in an amount to be proven at trial;
- b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;

5. As to the Fourth Cause of Action:

- a. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which the violation occurred and one hundred dollars (\$100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);
- b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);

6. As to the Sixth Cause of Action:

- a. An amount to be proven at trial;
- b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

7. As to the Eighth Cause of Action:

- a. For civil penalties as provided in the Labor Code for each enumerated violation;
- b. For those Labor Code sections where there is no civil penalty provided for their violation, the default penalty provided in Labor Code section 2699(f): for any

1 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
2 period; For any subsequent violation, two hundred dollars (\$200) for each
3 aggrieved employee per pay period;

- 4 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
5 d. For any other remedies as allowed by law and/or deemed appropriate by the
6 Court;

7 8. As to the Ninth Cause of Action:

- 8 a. Wages in an amount to be proven at trial;
9 b. Interest for the wages due pursuant to California Labor Code section 1194;
10 c. For reasonable attorney's fees and costs incurred pursuant to California Labor
11 Code section 1194;
12 d. Liquidated damages pursuant to Labor Cod section 1194.2

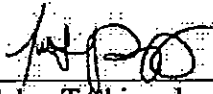
13 9. For such other and further relief as this Court may deem just and proper,
14 including, but not limited to:

- 15 a. Wages as proved at trial;
16 b. Injunctive and Declaratory relief;
17 c. Attorney's fees and costs as provided for by law; and
18 d. Interest.

19
20 Dated: March 21, 2023

Shimoda & Rodriguez Law, PC

21
22 By: _____


23 Galen T Shimoda
24 Justin P. Rodriguez
25 Attorneys for Plaintiff
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3 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Elias Tapia, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to
7 the within above-entitled action.

8 On April 4, 2023, I served the following documents on the party below:

- 9 • SECOND AMENDED COMPLAINT FOR DAMAGES

10 Benjamin L. Webster, Bar No. 132230 11 John H. Adams, Jr., Bar No. 253341 12 Littler Mendelson, P.C 13 500 Capitol Mall 14 Suite 2000 15 Sacramento, California 95814 16 Phone: (916) 830-7200 17 Fax: (916) 561-0828 18 Email: bwebster@littler.com 19 jhadams@littler.com 20 lkahl@littler.com 21 jjhughey@littler.com	
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22 ☐ [By Mail] I am familiar with my employer's practice for the collection and
23 processing of correspondence for mailing with the United States Postal
24 Service and that each day's mail is deposited with the United States Postal
25 Service that same day in the ordinary course of business. On the date set
26 forth above, I served the aforementioned document(s) on the parties in
27 said action by placing a true copy thereof enclosed in a sealed envelope
28 with postage thereon fully prepaid, for collection and mailing on this date,
following ordinary business practices, at Elk Grove, California, addressed
as set forth above.

☐ [By Personal Service] By personally delivering a true copy thereof to the
office of the addressee above.

☐ [XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
above. No error was reported by the e-mail service that I used.

☐ [By Overnight Courier] By causing a true copy and/or original thereof to
be personally delivered via the following overnight courier service: _____.

29 I declare under penalty of perjury under the laws of the State of California that the foregoing
30 is true and correct, and that this declaration was executed on April 4, 2023, at Elk Grove,
31 California.

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Elias Tapia