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JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

JOSEFINA HERNANDEZ and JOVA HERNANDEZ, individually, and on behalf of other members of the general public similarly situated, and as aggrieved employees pursuant to the Private Attorneys General Act ("PAGA"), Plaintiffs, vs. G. L. MEZZETTA, INC., a California corporation; JRM IMPORTS & SALES, INC., a California corporation; JRM MEZZETTA COURT, LLC, a California limited liability company; and DOES 1 through 10, inclusive, Defendants.	Case No.: CIV2103635 **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, *ET SEQ.*** (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages); (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods); (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods); (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records); (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination); (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment); (8) Violation of Labor Code § 1198 and

California Code of Regulations Title 8, § 11080 Subdivision 5(A) (Failure to Provide Reporting Time Pay);

(9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;

(10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and

(11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

Plaintiffs Josefina Hernandez and Jova Hernandez, individually and on behalf of all other members of the public similarly situated, and as aggrieved employees and on behalf of all other aggrieved employees, allege as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to California Code of Civil Procedure section 382 and California Labor Code sections 2698, *et seq.* ("PAGA") to recover civil penalties and any other available relief on behalf of Plaintiffs, the State of California, and other current and former employees who worked for Defendants in California as non-exempt, hourly paid employees and received at least one wage statement and against whom one or more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating hours and days of work in the applicable Industrial Welfare Commission ("IWC") Wage Order were committed, as set forth in this complaint. The monetary damages, penalties, and restitution sought by Plaintiffs exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10. The statutes under which this action is brought do not specify any other basis for jurisdiction. Plaintiffs' share of damages, penalties, and other relief sought in this action does not exceed $75,000.

2. This Court has jurisdiction over Defendants because Defendants are either 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. There is no basis for federal diversity jurisdiction in this action because there is no complete diversity, and this case falls within the statutory exceptions to "minimal diversity" jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4). Upon information and belief, two-thirds or more of the class members and Defendants are citizens of California and/or (a) two-thirds of the class members and Defendants are citizens of California; (b) the alleged wage and hour violations occurred in California; (c) significant relief is being sought against Defendants whose violations of California wage and hour laws form a significant basis

for Plaintiff's claims; and (d) no other class action has been filed within the past three (3) years on behalf of the same proposed class against Defendants asserting the same or similar factual allegations.

3. Venue is proper in this Court, because Defendants employ persons within the County of Marin, and have violated the requirements of the California Labor Code and applicable Wage Order in this county which give rise to the penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the California Labor Code and applicable IWC Wage Order in at least one location within the County of Marin, including Defendants' facility in Larkspur (2200 Larkspur Landing Circle, Suite #201, Larkspur Oaks, California 94939). Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty or forfeiture imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in Marin County and Plaintiffs could bring this action to recover penalties in Marin County, venue is proper.

THE PARTIES

4. Plaintiff Josefina Hernandez ("Josefina") is a resident of Vallejo, in Solano County, California. Defendants employed Plaintiff Josefina as an hourly paid, non-exempt Olive Filler from approximately February 2014 to September 2020. Plaintiff Josefina worked for Defendants at their location in American Canyon, in Napa County, California. During her employment, Plaintiff Josefina typically worked eight (8) to eleven (11) hours or more per day and five (5) days per week. Plaintiff Josefina's primary job duties included, without limitation, inserting chili or garlic into pitted olives.

5. Plaintiff Jova Hernandez ("Jova") is a resident of Vallejo, in Solano County, California. Defendants employed Plaintiff Jova as an hourly paid, non-exempt Olive Filler from approximately February 2014 to September 2020. Plaintiff Jova worked for Defendants at their location in American Canyon, in Napa County, California. During her employment, Plaintiff Jova typically worked eight (8) to eleven (11) hours or more per day and five (5) days per week. Plaintiff Jova's primary job duties included, without limitation, inserting chili or garlic into pitted olives.

6. G. L. MEZZETTA, INC. was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

7. JRM IMPORTS AND SALES, INC. was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

8. JRM MEZZETTA COURT, LLC was and is, upon information and belief, a California limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

9. Plaintiffs are unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the complaint and serve such fictitiously named Defendants once their names and capacities become known.

10. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10 were the partners, agents, owners, or managers of G. L. MEZZETTA, INC.; JRM IMPORTS AND SALES, INC.; and JRM MEZZETTA COURT, LLC, at all relevant times.

11. Plaintiffs are informed and believe, and thereon allege, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, G. L. MEZZETTA, INC.; JRM IMPORTS AND SALES, INC.; JRM MEZZETTA COURT, LLC; and/or DOES 1 through 10 (collectively, "Defendants" or "MEZZETTA"), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others' behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

12. At all relevant times, Defendants, and each of them, ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

13. Plaintiffs are informed and believe, and thereon allege, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

14. Under California law, Defendants are jointly and severally liable as employers for the violations alleged herein because they have each exercised sufficient control over the wages, hours, working conditions, and employment status of Plaintiffs and class members. Each Defendant had the power to hire and fire Plaintiffs and class members, supervised and controlled their work schedule and/or conditions of employment, determined their rate of pay, and maintained their employment records. Defendants suffered or permitted Plaintiffs and class members to work and/or "engaged" Plaintiffs and class members so as to create a common-law employment relationship. As joint employers of Plaintiffs and class members, Defendants are jointly and severally liable for the civil penalties and all other relief available to Plaintiffs and class members under the law.

15. Plaintiffs are informed and believe, and thereon allege, that at all relevant times, Defendants, and each of them, have acted as joint employers with respect to Plaintiffs and class members because Defendants have:

(a) jointly exercised meaningful control over the work performed by Plaintiffs and class members;

(b) jointly exercised meaningful control over Plaintiffs' and class members' wages, hours, and working conditions, including the quantity, quality standards, speed, scheduling, and operative details of the tasks performed by Plaintiffs and class members;

(c) jointly required that Plaintiffs and class members perform work which is an integral part of Defendants' businesses; and

(d) jointly exercised control over Plaintiffs and class members as a matter of economic reality in that Plaintiffs and class members were dependent on Defendants, who shared the power to set the wages of Plaintiffs and class members and determined their working conditions, and who jointly reaped the benefits from the underpayment of their wages and noncompliance with other statutory provisions governing their employment.

16. Plaintiffs are informed and believe, and thereon allege, that at all relevant times there has existed a unity of interest and ownership between Defendants such that any individuality and separateness between the entities has ceased.

17. G. L. MEZZETTA, INC.; JRM IMPORTS AND SALES, INC.; JRM MEZZETTA COURT, LLC; and DOES 1 through 10 are therefore alter egos of each other.

18. Adherence to the fiction of the separate existence of Defendants would permit an abuse of the corporate privilege, and would promote injustice by protecting Defendants from liability for the wrongful acts committed by them under the name MEZZETTA.

19. Plaintiffs further allege, upon information and belief, that Defendants G. L. MEZZETTA, INC; JRM IMPORTS AND SALES, INC.; and JRM MEZZETTA COURT, LLC are alter egos of each other for the following reasons:

(a) On the California Secretary of State's website, G. L. MEZZETTA, INC.; JRM IMPORTS AND SALES, INC.; and JRM MEZZETTA COURT, LLC share the same entity and entity mailing address, "105 MEZZETTA COURT, AMERICAN CANYON, CA 94503;"

(b) On the California Secretary of State's website, G. L. MEZZETTA, INC.; JRM IMPORTS AND SALES, INC.; and JRM MEZZETTA COURT, LLC share the same Chief Executive Officer, Secretary and/or Managing Member and Agent for Service of Process, "JEFFREY MEZZETTA;" and

(c) On information and belief, G. L. MEZZETTA, INC.; JRM IMPORTS AND SALES, INC.; and JRM MEZZETTA COURT, LLC utilize the same standardized employment forms and issue the same employment policies.

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GENERAL ALLEGATIONS

20. Defendants own and operate a food processing and production company with various locations in California. Upon information and belief, Defendants maintain a single, centralized Human Resources ("HR") department at their company headquarters in American Canyon, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants' company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

21. In particular, Plaintiffs and class members, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees' assigned locations or positions. Upon information and belief, Defendants set forth uniform policies and procedures in several documents provided at an employee's time of hire.

22. Upon information and belief, Defendants maintain a centralized Payroll department at their company headquarters in American Canyon, California, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations and jobsites in California, including Plaintiffs and class members. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their work locations. Upon information and belief, Defendants process payroll for departing employees in the same manner throughout the State of California, regardless of the manner in which each employee's employment ends.

23. Defendants continue to employ non-exempt or hourly paid employees in California.

24. Plaintiffs are informed and believe, and thereon allege, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel practices, and about the requirements of California law.

25. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and class members were not paid for all hours worked because all hours worked were not recorded.

26. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive certain wages for overtime compensation and that they were not receiving certain wages for overtime compensation.

27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to be paid at a regular rate of pay, and corresponding overtime rates of pay, that included as eligible income all renumeration required by law, including but not limited to, all income derived from incentive pay, nondiscretionary bonuses, shift differential pay, and/or other forms of compensation, but failed to incorporate all forms of remuneration in calculating the regular rate of pay for Plaintiffs and class members.

28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive at least minimum wages for compensation and that they were not receiving at least minimum wages for work that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiffs and class members were not paid at least minimum wages for work done off-the-clock.

29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to meal periods in accordance with the California Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their regular rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiffs and class members were not provided with all meal periods or payment of one (1) additional hour of pay at their regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to rest periods in accordance with the California Labor Code and applicable IWC Wage Order or payment of one (1)

additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiffs and class members were not authorized and permitted to take compliant rest periods, nor did Defendants provide Plaintiffs and class members with payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period.

31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive complete and accurate wage statements in accordance with California law. In violation of the California Labor Code, Plaintiffs and class members were not provided complete and accurate wage statements.

32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that they had a duty to maintain accurate and complete payroll records in accordance with the California Labor Code and applicable IWC Wage Order, but willfully, knowingly, and intentionally failed to do so.

33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to timely payment of all wages earned upon termination of employment. In violation of the California Labor Code, Plaintiffs and class members did not receive payment of all wages due, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within permissible time periods.

34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to timely payment of wages during their employment. In violation of the California Labor Code, Plaintiffs and class members did not receive payment of all wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within permissible time periods.

35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive all reporting time

pay when Defendants required Plaintiffs and class members were required to report to work but were put to work for less than half of their regular scheduled shift. In violation of the California Labor Code, Plaintiffs and class members were not paid all reporting time pay.

36. Plaintiffs are informed and believe, and thereon allege, that at all times herein mentioned, Defendants knew or should have known that they had a duty to provide Plaintiffs and class members with written notice of the material terms of their employment with Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

37. Plaintiffs are informed and believe, and thereon allege, that at all times herein mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiffs and class members for all hours worked, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiffs and class members that they were properly denied wages, all in order to increase Defendants' profits.

PAGA REPRESENTATIVE ALLEGATIONS

38. At all times herein set forth, PAGA provides that any provision of law under the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California Labor Code and applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on behalf of themselves and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

39. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed."

40. Plaintiffs and other current and former employees of Defendants are "aggrieved employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current or former employees and one or more of the alleged violations were committed against them.

41. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiffs, may pursue a civil action arising under PAGA after the

following requirements have been met:

(a) The aggrieved employee or representative shall give written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation.

(b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(a) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars ($75).

(c) The LWDA shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation ("LWDA's Notice") within sixty (60) calendar days of the postmark date of the aggrieved employee's notice. Upon receipt of the LWDA Notice, or if no LWDA Notice is provided within sixty-five (65) calendar days of the postmark date of the aggrieved employee's notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties.

42. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees, through Plaintiffs, may pursue a civil action arising under PAGA for violations of any provision other than those listed in Section 2699.5 after the following requirements have been met:

(a) The aggrieved employee or representative shall give written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated (other than those listed in Section 2699.5), including the facts and theories to support the alleged violation.

(b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(c) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars ($75).

(c) The employer may cure the alleged violation within thirty-three (33)

> calendar days of the postmark date of the notice sent by the aggrieved employee or representative. The employer shall give written notice within that period of time by certified mail to the aggrieved employee or representative and by online filing with the LWDA if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the aggrieved employee may commence a civil action pursuant to Section 2699.

43. On November 12, 2021, Plaintiff Josefina provided written notice by online filing to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff Josefina's written notice was accompanied with the applicable filing fee of seventy-five dollars ($75). The LWDA PAGA Administrator confirmed receipt of Plaintiff Josefina's written notice and assigned Plaintiff Josefina PAGA Case Number LWDA-CM-852158-21. A true and correct copy of Plaintiff Josefina's written notice to the LWDA and Defendants is attached hereto as "Exhibit 1".

44. On November 12, 2021, Plaintiff Jova provided written notice by online filing to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff Jova's written notice was accompanied with the applicable filing fee of seventy-five dollars ($75). The LWDA PAGA Administrator confirmed receipt of Plaintiff Jova's written notice and assigned Plaintiff Jova PAGA Case Number LWDA-CM-852157-21. A true and correct copy of Plaintiff Jova's written notice to the LWDA and Defendants is attached hereto as "Exhibit 1".

45. As of the filing date of this complaint, over 65 days have passed since Plaintiffs sent their written notices described above, and the LWDA has not responded that it intends to investigate Plaintiffs' claims and Defendants have not cured the violations.

46. Thus, Plaintiffs have satisfied the administrative prerequisites under California Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5.

47. Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law."

48. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiffs' and other aggrieved employees' rights by violating various sections of the California Labor Code as set forth above.

49. As set forth below, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

50. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiffs, acting in the public interest as private attorneys general, seek assessment and collection of civil penalties for themselves, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5.

CLASS ACTION ALLEGATIONS

51. Plaintiffs bring this action on their own behalf, as well as on behalf of each and all other persons similarly situated, and thus seek class certification under California Code of

Civil Procedure section 382.

52. All claims alleged herein arise under California law for which Plaintiffs seek relief authorized by California law.

53. Plaintiffs' proposed class consists of and is defined as follows:

> All persons who worked for Defendants as non-exempt, hourly paid employees in California, within four years prior to the filing of the initial complaint until the date of trial ("Class").

54. Plaintiffs' proposed subclass consists of and is defined as follows:

> All persons who worked for Defendants as non-exempt, hourly paid employees in California, and who received at least one wage statement within one (1) year prior to the filing of the initial complaint[1] until the date of trial ("Subclass").

55. Members of the Class and Subclass are referred to herein as "class members."

56. Plaintiffs reserve the right to redefine the Class and Subclass and to add additional subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

57. There are common questions of law and fact as to class members that predominate over questions affecting only individual members, including, but not limited to:

(a) Whether Defendants required Plaintiffs and class members to work over eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and failed to pay all legally required overtime compensation to Plaintiffs and class members;

(b) Whether Defendants failed to properly calculate the "regular rate" of pay on which Plaintiffs' and class members' overtime rate of pay was based;

(c) Whether Defendants failed to pay Plaintiffs and class members at least minimum wages for all hours worked;

(d) Whether Defendants failed to provide Plaintiffs and class members with meal periods;

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[1] Subject to applicable tolling rules and period(s) of tolling, which include, but are not limited to, tolling under Emergency Rule 9 of the California Rules of Court.

(e) Whether Defendants failed to authorize and permit Plaintiffs and class members to take rest periods;

(f) Whether Defendants provided Plaintiffs and class members with complete and accurate wage statements as required by California Labor Code section 226(a);

(g) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);

(h) Whether Defendants failed to pay earned overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay due to Plaintiffs and class members upon their discharge;

(i) Whether Defendants failed to timely pay overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay to Plaintiffs and class members during their employment;

(j) Whether Defendants required Plaintiffs and class members to report to work, but failed to provide them with work or provided them with less than half their scheduled day's work, without properly compensating them as required by California Code of Regulations, Title 8, section 11080, subsection 5;

(k) Whether Defendants failed to provide written notice of information material to Plaintiffs' and class members' employment with Defendants;

(l) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and

(m) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

58. There is a well-defined community of interest in the litigation and the class members are readily ascertainable:

(a) <u>Numerosity</u>: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiffs at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

(b) Typicality: Plaintiffs are qualified to, and will, fairly and adequately protect the interests of each class member with whom they have a well-defined community of interest, and Plaintiffs' claims (or defenses, if any) are typical of all class members as demonstrated herein.

(c) Adequacy: Plaintiffs are qualified to, and will, fairly and adequately protect the interests of each class member with whom they have a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiffs acknowledge that they have an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiffs' attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiffs have incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

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

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime

(Against all Defendants)

59. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

60. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable Wage Order. California Labor Code section 1198 requires that ". . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful."

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

62. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiffs and class members 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 (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

63. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiffs and class members working more than twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay. An employee's

regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

64. California Labor Code section 510 codifies the right to overtime compensation at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay 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 (7th) day of work.

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

66. First, during the relevant period, Defendants had a company-wide policy and/or practice of improperly rounding employees' clock-in and/or clock-out times in their timekeeping system to the start and/or end of their scheduled hours worked, rather than their actual hours worked. For example, if Plaintiffs clocked in prior to the start of their scheduled shift time, the timekeeping system would automatically round their time to show them as clocking in at 5:00 a.m. which was the start of their scheduled shift time. Moreover, on information and belief, Defendants' timekeeping system rounded employees' clock-in and clock-out duration times to the nearest half (0.5) of an hour. Defendants' rounding policy resulted in the failure to compensate Plaintiffs and class members fully for all hours worked, causing Plaintiffs and class members to not be paid overtime wages for all of the overtime hours they actually worked. Defendants' policy of rounding is unfair and has, over time, resulted in the underpayment of wages to Plaintiffs and class members. To the extent Defendants' rounding policy has taken away time worked that was eligible for overtime, Plaintiffs and class members were denied overtime pay for all hours worked.

67. Second, during the relevant time period, Defendants had a company-wide policy

and/or practice of discouraging and impeding Plaintiffs and class members from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. For example, Defendants prohibited employees from clocking prior to their scheduled shift time and failed to provide employees with a sufficient number of timeclock machines to use, which effectively forced Plaintiffs and class members to report to work several minutes early and prior to the start of their scheduled shifts and wait in a long line for fear of being reprimanded by their supervisors for not clocking in on time. In other words, although Defendants required employees to clock in on time for their scheduled shifts, Defendants did not provide employees with sufficient mechanisms to do so, and effectively forced employees to report to work several minutes prior to their scheduled shifts and wait in line off-the-clock and under Defendants' control, time for which they were not paid. For example, because there were not enough timekeeping clocks to use and Plaintiffs were not allowed to clock in until 4:55 a.m. or later, Plaintiffs were forced to arrive to work 15 minutes prior to the start of their scheduled shift and wait in a long line of employees to be able to clock in on time for their 5:00 a.m. scheduled shift start time and received no compensation for this off-the-clock time. Accordingly, Defendants discouraged and impeded Plaintiffs and class members from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue and Plaintiffs and class members received no compensation for this time.

68. Third, during the relevant time period, Defendants implemented, on a company-wide basis, an employer-imposed requirement that Plaintiffs and class members undergo mandatory COVID-19 temperature checks and/or health-screenings before their scheduled shifts. For example, prior to clocking in for the start of each shift and while Plaintiffs waited in a long line of employees to be able to clock in, Defendants' personnel would take Plaintiffs' temperatures and/or conduct COVID-19 health screenings. Even though Defendants required these health screenings, Defendants did not provide Plaintiffs and class members a mechanism to record this time worked so they could be compensated for the time spent undergoing mandatory health-screenings and/or temperature checks.

69. Fourth, on information and belief, during the relevant time period, Defendants had a company-wide policy and/or practice of not paying employees for all hours worked. For example, at least once and up to two times per week, Defendants' timekeeping system would malfunction and prevent Plaintiffs from clocking in at the start of their scheduled shifts. Plaintiffs were required to report their hours worked on paper timesheets provided to them by their supervisors during the days that the timekeeping system malfunctioned; however, Defendants altered and/or adjusted employee time records reported on paper timesheets and/or all the hours reported on paper timesheets were not accounted for, and Plaintiffs were not paid for all hours worked.

70. Fifth, Defendants maintained a company-wide on-premises meal period policy, which mandated that Plaintiffs and class members remain on Defendants' premises during their unpaid meal periods. Because Plaintiffs and class members were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes, such as running personal errands. Thus, Defendants effectively maintained control over Plaintiffs and class members during their unpaid meal periods.

71. Defendants knew or should have known that as a result of these company-wide practices and/or policies, Plaintiffs and class members were performing their assigned duties off-the-clock before and/or after their shifts, and were suffered or permitted to perform work for which they were not paid. Because Plaintiffs and class members worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiffs and class members were not paid overtime wages for all of the overtime hours they actually worked.

72. Furthermore, Defendants did not pay Plaintiffs and class members the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Plaintiff and class members incentive pay, nondiscretionary bonuses, shift differential pay, and/or other forms of remuneration. However, in violation of the California Labor Code, Defendants failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, shift differential pay, and/or other forms of remuneration, into

the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Plaintiff and class members worked overtime and received these other forms of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

73. Defendants' failure to pay Plaintiffs and class members the balance of overtime compensation as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiffs and class members are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid Minimum Wages

(Against all Defendants)

74. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

75. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 8-2001 as "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." Cal. Code. Regs. tit. 8, § 11080(2)(G) (defining "Hours Worked").

76. As set forth above, Defendants had a company-wide policy and/or practice of rounding Plaintiffs' and class members' hourly clock-in and/or clock-out times in their timekeeping system to the start and/or end of their scheduled shift times and to the nearest half hour, resulting in the failure to compensate them for all hours worked. Additionally, as stated, due to Defendants' company-wide restrictions on overtime accrual and timekeeping practices, Defendants systematically failed to pay Plaintiffs and class members for actual hours worked

before and/or after their scheduled shifts, because these hours were not accurately recorded. As stated, Defendants required Plaintiffs and class members to remain under their control and/or perform work off-the-clock, including waiting in lines to clock in and to undergo mandatory COVID-19 temperature checks and/or health screenings. Moreover, Defendants maintained a policy and/or practice of altering and/or falsifying employee handwritten timesheets to reflect scheduled hours rather than hours actually worked, thereby shorting Plaintiffs and class members for work performed outside their scheduled shifts.

77. Further, as stated above, due to Defendants' company-wide policy requiring employees to stay on the work premises during meal periods, Plaintiffs and class members were not relieved of all duties during unpaid meal periods.

78. Defendants did not pay minimum wages for all hours worked by Plaintiffs and class members. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

79. Defendants' failure to pay Plaintiffs and class members minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code section 1194.2, Plaintiffs and class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

THIRD CAUSE OF ACTION

Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period Violations

(Against all Defendants)

80. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

81. At all relevant times herein set forth, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not

more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

82. At all relevant times herein set forth, California Labor Code sections 226.7, 512(a), 516, and 1198 provide that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC.

83. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, 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.

84. Defendants had, and continue to have, a uniform practice and/or policy of imposing strict quotas and/or deadlines on employees which, combined with heavy workloads, resulted in Plaintiffs and class members being forced to work in excess of five (5) hours before taking a meal period. Moreover, Defendants had, on a company-wide basis, failed to adhere to a schedule of meal periods. As a result of Defendants' company-wide practices and/or policies, Plaintiffs and class members were not always afforded timely 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, at least 1 (one) and up to two (2) times per week, Plaintiffs were not provided their meal periods until after the 6th hour or 7th hour of their scheduled shift start times.

85. Additionally, as stated, Defendants maintained and implemented a company-wide on-premises meal period policy, which mandated that Plaintiffs and class members remain on the work premises during their meal periods. Because Plaintiffs and class members were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. Thus, Defendants effectively maintained control over Plaintiffs and class members during meal periods.

86. Furthermore, Defendants did not provide Plaintiffs and class members with

second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, during their employment, Plaintiffs worked shifts in excess of ten (10) hours or more per day, but were not provided with a second 30-minute meal period. Plaintiffs and class members did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

87. At all times herein mentioned, Defendants knew or should have known that as a result of their company-wide policies and/or practices, were not actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further knew or should have known that Defendants did not pay Plaintiffs and class members meal period premiums when meal periods were missed, late, short, and/or interrupted. On information and belief, Defendants' timekeeping system would only allow employees to clock out for meal periods per their scheduled meal period times, and on the days that Plaintiffs were provided with late meal periods, the timekeeping system locked out employees and prevented them from recording a late meal period. Instead, Plaintiffs had to report their late meal period times on paper timesheets and were not paid all meal period premiums owed when compliant meal periods are not provided.

88. Moreover, as set forth above, Defendants have a company-wide policy and/or practice of rounding employee clock-in and clock-out times in their timekeeping system, which prevented Plaintiffs and class members from receiving all meal period premiums when they took late and/or shortened meal periods. As stated, Defendants' rounding policy rounded employees' clock-in and clock-out duration times in their timekeeping system to the nearest half (0.5) of an hour. To the extent that Defendants' timekeeping system reported that Plaintiffs and class members were provided with timely, full 30-minute meal periods when, in fact, the meal periods were taken after the fifth hour of work or were less than 30 minutes, Plaintiffs and class members were entitled to a meal period penalty. Thus, Plaintiffs and class members did not receive meal period penalties for these improperly rounded meal periods.

89. Moreover, Defendants engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because

of Defendants' practices and/or policies, Plaintiffs and class members have not received premium pay for all missed, late, and/or interrupted meal periods. Alternatively, to the extent that Defendants did pay Plaintiffs and class members premium pay for missed, late, and/or interrupted meal periods, Defendants did not pay Plaintiffs and class members at the correct rate of pay for premiums because Defendants systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, shift differential pay, and/or other forms of remuneration, in the regular rate of pay. As a result, Defendants failed to provide Plaintiffs and class members compliant meal periods in violation of California Labor Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

90. Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiffs and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that complaint meal period was not provided.

FOURTH CAUSE OF ACTION

Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations

(Against all Defendants)

91. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

92. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiffs' and class members' employment by Defendants.

93. At all relevant times, the applicable IWC Wage Order provides that "[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 that the "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 fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

94. At all relevant times, California Labor Code section 226.7 provides that no

employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiffs and class members are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

95. During the relevant time period, on information and belief, Defendants regularly failed to authorize and permit Plaintiffs and class members to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants' company-wide practices, including imposing quotas and/or strict deadlines and assigning heavy workloads, prevented Plaintiffs and class members from being relieved of all duty to take their rest periods. Additionally, Defendants failed to schedule rest periods, which, coupled with Defendants' failure to provide adequate rest period coverage, further led to Plaintiffs and class members not being authorized and permitted to take compliant rest periods. As a result of Defendants' practices and policies, Plaintiffs and class members worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Plaintiffs regularly missed their second rest periods due to their heavy workload and never received third rest periods when working shifts of more than ten (10) hours.

96. Furthermore, during the relevant time period, Defendants maintained and implemented a company-wide on-premises rest period policy, which mandated that Plaintiffs and class members remain on the work premises during their rest periods. Because Plaintiffs and class members were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal

errands. Thus, Defendants effectively maintained control over Plaintiffs and class members during rest periods.

97. Defendants have also engaged in a company-wide policy and/or practice of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Plaintiffs and class members have not received premium pay for all missed rest periods. Alternatively, to the extent that Defendants did pay Plaintiffs and class members one (1) additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiffs and class members at the correct rate of pay for premiums because Defendants failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, shift differential pay, and/or other forms of remuneration, in the regular rate of pay. As a result, Defendants denied Plaintiffs and class members rest periods and failed to pay them rest period premiums due, in violation of California Labor Code section 226.7 and 516, and the applicable IWC Wage Order.

98. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiffs and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a compliant rest period was not authorized and permitted.

FIFTH CAUSE OF ACTION

Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

(Against all Defendants)

99. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

100. At all relevant times herein set forth, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

101. At all relevant times, Defendants have knowingly and intentionally provided Plaintiffs and Subclass members with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiffs and Subclass members that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

102. Because Defendants did not record the time Plaintiffs and Subclass members spent working off the clock and improperly rounded Plaintiffs' and Subclass members' total hours worked, Defendants did not list the correct amount of gross wages and net wages earned by Plaintiffs and Subclass members in compliance with section 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total number of hours worked by Plaintiffs and Subclass members in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and corresponding accurate number of work hours worked at each hourly rate in violation of section 226(a)(9).

103. Second, because Defendants did not calculate Plaintiffs' and Subclass members' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, Defendants did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, Defendants failed to list the correct amount of net wages in violation of section 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest premiums, in violation of section 226(a)(9).

104. The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social

security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

105. California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, Defendants failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Plaintiffs and Subclass members, in violation of section 1198. Also, as stated, Defendants engaged in a company-wide practice and/or policy of falsifying Plaintiffs' and Subclass members' time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Plaintiffs and Subclass members. Furthermore, in light of Defendants' failure to provide Plaintiffs and Subclass members 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.

106. California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . ." At all relevant times, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiffs and Subclass members showing the daily hours they worked and the wages paid thereto as a result of failing

to record the off-the-clock hours that they worked and improperly rounding Plaintiffs' and Subclass members' total hours worked.

107. Plaintiffs and Subclass members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars ($4,000) per employee.

SIXTH CAUSE OF ACTION

Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon Termination

(Against all Defendants)

108. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

109. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay that were not timely paid to Plaintiffs and those class members no longer employed by Defendants upon their termination.

110. At all times relevant herein set forth, Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

111. Defendants willfully failed to pay Plaintiffs and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

112. Defendants' failure to pay Plaintiffs and class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiffs and class members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SEVENTH CAUSE OF ACTION

Violation of California Labor Code § 204—Failure to Timely Pay Wages During Employment

(Against all Defendants)

113. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

114. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay that were not timely paid to Plaintiffs and class members during their employment.

115. At all times relevant herein set forth, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed.

116. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the sixteenth (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 first (1st) and the tenth (10th) day of the following month.

117. At all times relevant herein, Labor Code section 204 provides 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, at all times relevant herein, Labor Code section 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.

118. During the relevant time period, Defendants willfully failed to pay Plaintiffs and class members all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within the time periods specified by California Labor Code section 204.

119. Defendants' failure to pay Plaintiffs and class members all wages due violates Labor Code section 204. Plaintiffs and class members are therefore entitled to recover from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

EIGHTH CAUSE OF ACTION

Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section 11080 Subdivision 5(A)—Failure to Provide Reporting Time Pay

(Against all Defendants)

120. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

121. California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 further requires that ". . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful."

122. The applicable IWC Wage Order, California Code of Regulations, Title 8, section 11080 (5)(A), provides that "[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage."

123. During the relevant time period, Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11080(5)(A), because

Defendants failed to pay Plaintiffs and class members reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regularly scheduled day's work.

124. Defendants had a company-wide practice of sending Plaintiffs and class members home early from their shifts, including before they had worked at least half of their regular shift, but would not pay Plaintiffs and class members for half of their scheduled shift. For example, on several occasions, Plaintiff Jova would report to work for her scheduled shift, but was sent home by Defendants' management within two (2) hours after clocking in due to a lack of products. Although Plaintiffs and class members would report to work based on the schedule that Defendants provided to them, Defendants would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

125. Accordingly, Plaintiffs and class members were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11080(5)(A).

NINTH CAUSE OF ACTION

For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.*

(Against all Defendants)

126. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

127. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiffs to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, and 1198. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiffs, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516, 1182.12, and 2810.5.

128. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

(a) Violation of Labor Code sections 510 and 1198, and the applicable IWC

Wage Order for Defendants' failure to compensate Plaintiffs and other aggrieved employees with all required overtime pay, and failure to properly calculate the overtime rates paid to Plaintiffs and other aggrieved employees as alleged herein;

(b) Violation of Labor Code sections 1182.12. 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiffs and other aggrieved employees with at least minimum wages for all hours worked, as alleged herein;

(c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to provide Plaintiffs and other aggrieved employees with meal periods, as alleged herein;

(d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to authorize and permit Plaintiffs and other aggrieved employees to take rest periods, as alleged herein;

(e) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiffs and other aggrieved employees, as alleged herein;

(f) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as alleged herein;

(g) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as alleged herein;

(h) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein;

(i) Violation of Labor Code section 1198 and the applicable IWC wage order for failure to pay reporting time pay when Plaintiff Jova and other aggrieved employees were put to work for less than half of their regular scheduled shifts, as alleged herein; and

(j) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to Plaintiffs' and other aggrieved employees' employment with Defendants, as set forth below.

129. California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees containing basic and material payroll information, including, among other things, the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-(C).

130. During the relevant time period, Defendants failed to provide Plaintiffs and other aggrieved employees with written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).

131. Defendants' failure to provide Plaintiffs and other aggrieved employees with written notice of basic information regarding their employment with Defendants is in violation of Labor Code section 2810.5. Plaintiffs and other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

TENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unlawful Business Practices

(Against all Defendants)

132. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

133. Defendants are "persons" as defined by California Business & Professions Code

sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

134. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiffs, class members, and to the general public. Plaintiffs have suffered injury in fact and have lost money as a result of Defendants' unlawful business practices. Plaintiffs seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

135. Defendants' activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code sections 17200, *et seq*.

136. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on the violation of any state or federal law. In the instant case, Defendants' policies and practices have violated state law in at least the following respects:

(a) Requiring non-exempt, hourly paid employees, including Plaintiffs and class members, to work overtime without paying them proper compensation in violation of California Labor Code sections 510 and 1198 and the applicable IWC Wage Order, and paying Plaintiffs and class members overtime at a lower rate than required by law by failing to properly calculate the regular rate of pay for purposes of overtime, as alleged herein;

(b) Failing to pay at least minimum wage to Plaintiffs and class members in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable IWC Wage Order, as alleged herein;

(c) Failing to provide uninterrupted meal periods to Plaintiffs and class members in violation of California Labor Code sections 226.7, 512(a), 516, 1198, and the applicable IWC Wage Order, as alleged herein;

(d) Failing to authorize and permit Plaintiffs and class members to take uninterrupted rest periods in violation of California Labor Code sections

226.7, 516, 1198, and the applicable IWC Wage Order, as alleged herein;

(e) Failing to provide Plaintiffs and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), 1198, and the applicable IWC Wage Order, as alleged herein;

(f) Failing timely to pay all earned wages to Plaintiffs and class members in violation of California Labor Code section 204, as alleged herein;

(g) Failing to pay reporting time pay in violation of California Labor Code section 1198 and the applicable IWC Wage Order, as alleged herein; and

(h) Failing to provide written notice of information material to Plaintiffs' and class members' employment with Defendants in violation of California Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

137. At all relevant times herein, California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees containing basic and material payroll information, including, among other things, the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-(C).

138. At all relevant times, on information and belief, Defendants failed, on a company-wide basis, to provide written notice to Plaintiffs and class members that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiffs and class members with written notice of basic information regarding their employment with Defendants is in violation of Labor Code sections 2810.5(a)(1)(A)-(C).

139. As a result of the violations of California law herein described, Defendants unlawfully gained an unfair advantage over other businesses. Plaintiffs and class members have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

140. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiffs and class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiffs and class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

ELEVENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq*. –

Unfair Business Practices

(Against all Defendants)

141. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

142. Defendants are "persons" as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

143. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, and harmful to Plaintiffs, class members, and to the general public. Plaintiffs have suffered injury in fact and have lost money as a result of Defendants' unfair business practices. Plaintiffs seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

144. Defendants' activities, namely Defendants' company-wide practice and/or policy of not paying Plaintiffs and class members all meal and rest period premiums due to them under Labor Code section 226.7, deprived Plaintiffs and class members of the compensation guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy provided by section 226.7 is a "'dual-purpose' remedy intended primarily to compensate employees, and

secondarily to shape employer conduct." *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiffs and class members as part of their employment with Defendants, and thus Defendants' practice and/or policy of denying these statutory benefits constitutes an unfair business practice in violation of California Business & Professions Code sections 17200, *et seq.* (*Id.*)

145. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on any unfair business practice. In the instant case, Defendants' policies and practices have violated the spirit of California's meal and rest period laws and constitute acts against the public policy behind these laws.

146. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiffs and class members are entitled to restitution for the class-wide loss of the statutory benefits implemented by section 226.7 withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiffs and class members; an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

REQUEST FOR JURY TRIAL

Plaintiffs request a trial by jury.

PRAYER FOR RELIEF

Plaintiffs, on behalf of all others similarly situated, pray for relief and judgment against Defendants, jointly and severally, as follows:

1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in excess of twenty-five thousand dollars ($25,000), exclusive of interest and costs. Plaintiffs reserve the right to amend their prayer for relief to seek a different amount.

Class Certification

2. That this case be certified as a class action;
3. That Plaintiffs be appointed as the representatives of the Class and Subclass;
4. That counsel for Plaintiffs be appointed as class counsel.

As to the First Cause of Action

5. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 510 and 1198 and the applicable IWC Wage Order by willfully failing to pay all overtime wages due to Plaintiffs and class members;

6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due, or as otherwise provided by law;

8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a); and

9. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable IWC Wage Order by willfully failing to pay minimum wages to Plaintiffs and class members;

11. For general unpaid wages and such general and special damages as may be appropriate;

12. For pre-judgment interest on any unpaid compensation from the date such amounts were due, or as otherwise provided by law;

13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a);

14. For liquidated damages pursuant to California Labor Code section 1194.2; and

15. For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

16. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order by

willfully failing to provide all meal periods to Plaintiffs and class members;

17. That the Court make an award to the Plaintiffs and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

18. For all actual, consequential, and incidental losses and damages, according to proof;

19. For premiums pursuant to California Labor Code section 226.7(c);

20. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

21. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

22. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order by willfully failing to authorize and permit Plaintiffs and class members to take all rest periods;

24. That the Court make an award to the Plaintiffs and class members of one (l) hour of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For premiums pursuant to California Labor Code section 226.7(c);

27. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

28. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

29. For such other and further relief as the Court may deem equitable and

appropriate.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage Order as to Plaintiffs and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For injunctive relief pursuant to California Labor Code section 226(h);

33. For statutory penalties pursuant to California Labor Code section 226(e);

34. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

35. For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay owed at the time of termination of the employment of Plaintiffs and other terminated class members;

37. For all actual, consequential and incidental losses and damages, according to proof;

38. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

39. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

40. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

41. For such other and further relief as the Court may deem equitable and

appropriate.

As to the Seventh Cause of Action

42. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to timely pay Plaintiffs and class members overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay during their employment;

43. For all actual, consequential and incidental losses and damages, according to proof;

44. For statutory penalties according to proof pursuant to California Labor Code section 210;

45. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

46. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

47. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eighth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11080(5)(A) by failing to provide Plaintiffs and class members with reporting time pay;

49. For all actual, consequential and incidental losses and damages, according to proof;

50. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law; and

51. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

52. That the Court declare, adjudge and decree that Defendants violated the

following California Labor Code provisions as to Plaintiffs and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); 1198 and the applicable IWC Wage Order (by failing to provide reporting time pay); and 2810.5 (by failing to provide written notice of material terms of employment);

53. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5;

54. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5;

55. For pre-judgment and post-judgment interest as provided by law; and

56. For such other and further relief as the Court may deem equitable and appropriate.

As to the Tenth Cause of Action

57. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiffs and class members all overtime wages due to them, failing to provide Plaintiffs and class members all minimum wages due to them, failing to provide Plaintiffs and class members all meal periods, failing to authorize and permit Plaintiffs and class members to take all rest periods, failing to provide Plaintiffs and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiffs and class members, failing to timely pay Plaintiffs and class members all earned wages during employment, failing to pay

Plaintiffs and class members reporting time pay, and failing to provide Plaintiff and class members with written notice of the material terms of their employment, constitutes an unlawful business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

58. For restitution of unpaid wages to Plaintiffs and all class members and prejudgment interest from the day such amounts were due and payable;

59. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200, *et seq.*;

60. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5; and

61. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eleventh Cause of Action

62. That the Court declare, adjudge and decree that Defendants' conduct of denying Plaintiffs and class members the statutory benefits guaranteed under section 226.7 constitutes an unfair business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

63. For restitution of the statutory benefits under section 226.7 unfairly withheld from Plaintiffs and class members and prejudgment interest from the day such amounts were due and payable;

64. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200, *et seq.*;

65. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

66. For pre-judgment and post-judgment interest as provided by law; and

67. For such other and further relief as the Court may deem equitable and appropriate.

Dated: January 18, 2022

Respectfully submitted,

Capstone Law APC

By: ______________________________

Orlando Villalba
Helga Hakimi
Roxanna Tabatabaeepour

Attorneys for Plaintiffs Josefina Hernandez and Jova Hernandez

EXHIBIT "1"

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LAW APC

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November 12. 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(https://dir.tfaforms.net/308)

Subject: *Jova Hernandez v. G.L. Mezzetta, Inc., et al.*

Dear PAGA Administrator:

This office represents Jova Hernandez in connection with her claims under the California Labor Code. Ms. Hernandez was an employee of G.L. MEZZETTA, INC., JRM IMPORTS & SALES, INC., and/or JRM MEZZETTA COURT, LLC ("MEZZETTA").

The employer may be contacted directly at the address below:

G.L. MEZZETTA, INC.
105 MEZZETTA COURT
AMERICAN CANYON CA 94503

JRM IMPORTS & SALES, INC.
105 MEZZETTA COURT
AMERICAN CANYON CA 94503

JRM MEZZETTA COURT, LLC
105 MEZZETTA COURT
AMERICAN CANYON CA 94503

Ms. Hernandez intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Hernandez seeks relief on behalf of herself, the State of California, and other persons who are or were employed by MEZZETTA as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

MEZZETTA employed Ms. Hernandez as an hourly paid, non-exempt employee from approximately February 2014 to approximately September 2020.[1] Ms. Hernandez worked for MEZZETTA as a Olive Filler at its location in American Canyon, California. During her employment, Ms. Hernandez typically worked eight (8) to eleven (11) hours or more per day and five (5) days per week. Ms. Hernandez typically worked 5:00 a.m. to 1:30 p.m., 3:30 p.m., or 4:30 p.m. Ms. Hernandez was compensated approximately $16.50 per hour at the time her employment ended with MEZZETTA. Her job duties included, without limitation, inserting chili or garlic into pitted olives.

MEZZETTA committed one or more of the following Labor Code violations against Ms. Hernandez the facts and theories of which follow, making her an "aggrieved employee" pursuant to California Labor Code section 2699(c): [2]

<u>MEZZETTA'S Company-Wide and Uniform Payroll and HR Practices</u>

G.L. MEZZETTA, INC. and JRM IMPORTS & SALES, INC. are California corporations, and JRM MEZZETTA COURT, LLC is a limited liability company. Together, MEZZETTA own and operate a food processing and production company with various locations in California.

Upon information and belief, MEZZETTA maintains a single, centralized Human Resources (HR) department at its corporate headquarters in American Canyon, California, for all non-exempt, hourly paid employees working for MEZZETTA in California, including Ms. Hernandez and other aggrieved employees. At all relevant times, MEZZETTA issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Hernandez and other aggrieved employees, regardless of its location or position. Upon information and belief, MEZZETTA maintains a centralized Payroll department at its corporate headquarters in American Canyon, California, which processes payroll for all non-exempt, hourly paid employees working for MEZZETTA in California, including Ms. Hernandez and other aggrieved employees. Further, MEZZETTA issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Hernandez and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, MEZZETTA utilized the same methods and formulas when calculating wages due to Ms. Hernandez and other aggrieved employees in California.

<u>Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime</u>

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[1] Subject to applicable tolling rules and period(s) of tolling, which include, but are not limited to, tolling under Emergency Rule 9 of the California Rules of Court.

[2] These facts, theories, and claims are based on Ms. Hernandez's experience and counsel's review of those records currently available relating to Ms. Hernandez's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Ms. Hernandez reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

California Labor Code sections 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 (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

MEZZETTA willfully failed to pay all overtime wages owed to Ms. Hernandez and other aggrieved employees. During the relevant time period, Ms. Hernandez and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, MEZZETTA had, and continues to have, a company-wide policy and/or practice of improperly rounding employees' clock-in and/or clock-out times in their timekeeping system to the start and/or end of their scheduled hours worked, rather than their actual hours worked. For example, if Ms. Hernandez clocked in prior to the start of her scheduled shift time, the timekeeping system would automatically round her time to show her as clocking in at 5:00 a.m. which was the start of her scheduled shift time. Moreover, on information and belief, MEZZETTA's timekeeping system rounded employees' clock-in and clock-out duration times to the nearest half (0.5) of an hour. MEZZETTA's rounding policy resulted in the failure to compensate Ms. Hernandez and other aggrieved employees fully for all hours worked, causing Ms. Hernandez and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. MEZZETTA's policy of rounding is unfair and has, over time, resulted in the underpayment of wages to Ms. Hernandez and other aggrieved employees. To the extent MEZZETTA's rounding policy has taken away time worked that was eligible for overtime, Ms. Hernandez and other aggrieved employees were denied overtime pay for all hours worked.

Second, MEZZETTA had a company-wide policy and/or practice of discouraging and impeding Ms. Hernandez and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. For example, MEZZETTA prohibited employees from clocking in prior to their scheduled shift time and failed to provide employees with a sufficient number of timeclock machines to use, which effectively forced Ms. Hernandez and other aggrieved employees to report to work several minutes early and prior to the start of their scheduled shifts and wait in a long line for fear of being reprimanded by their supervisors for not clocking in on time. In other words, although MEZZETTA required employees to clock in on time for their scheduled shifts, MEZZETTA did not provide employees with sufficient mechanisms to do so, and effectively forced employees to report to work several minutes prior to their scheduled shifts and wait in line off-the-clock and under MEZZETTA's control, time for which they were not paid. For example, because there were not enough timekeeping clocks to use and Ms. Hernandez was not allowed to clock in until

4:55 a.m. or later, Ms. Hernandez was forced to arrive to work 15 minutes prior to the start of her scheduled shift and wait in a long line of employees to be able to clock in on time for her 5:00 a.m. scheduled shift start time and received no compensation for this off-the-clock time. Accordingly, MEZZETTA discouraged and impeded Ms. Hernandez and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue and Ms. Hernandez and other aggrieved employees received no compensation for this time.

Third, MEZZETTA implemented, on a company-wide basis, an employer-imposed requirement that Ms. Hernandez and other aggrieved employees undergo mandatory COVID-19 temperature checks and/or health-screenings before their scheduled shifts. For example, prior to clocking in for the start of each shift and while Ms. Hernandez waited in a long line of employees to be able to clock in, MEZZETTA's personnel would take Ms. Hernandez's temperatures and/or conduct COVID-19 health screenings. Even though MEZZETTA required these health screenings, MEZZETTA did not provide Ms. Hernandez and other aggrieved employees a mechanism to record this time worked so they could be compensated for the time spent undergoing mandatory health-screenings and/or temperature checks.

Fourth, on information and belief, during the relevant time period, MEZZETTA had a company-wide policy and/or practice of not paying employees for all hours worked. For example, at least once and up to two times per week, MEZZETTA's timekeeping system would malfunction and prevent Ms. Hernandez from clocking in at the start of her scheduled shifts. Ms. Hernandez was required to report her hours worked on paper timesheets provided to her by her supervisors during the days that the timekeeping system malfunctioned, however, MEZZETTA altered and/or adjusted employee time records reported on paper timesheets and/or all the hours reported on paper timesheets were not accounted for and Ms. Hernandez and other aggrieved employees were not paid for all hours worked.

Fifth, MEZZETTA maintained a company-wide on-premises meal period policy, which mandated that Ms. Hernandez and other aggrieved employees remain on MEZZETTA's premises during their unpaid meal periods. Because Ms. Hernandez and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes, such as running personal errands. Thus, MEZZETTA effectively maintained control over Ms. Hernandez and other aggrieved employees during their unpaid meal periods.

MEZZETTA knew or should have known that as a result of these company-wide practices and/or policies, Ms. Hernandez and other aggrieved employees were performing assigned duties off-the-clock and/or after their shifts, and were suffered or permitted to perform work for which they were not paid. Because Ms. Hernandez and other aggrieved employees sometimes worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Hernandez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, MEZZETTA did not pay Ms. Hernandez and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, MEZZETTA paid Ms. Hernandez and other aggrieved employees incentive pay, nondiscretionary bonuses, shift differential pay, and/or other forms of remuneration. However, in violation of the California Labor Code, MEZZETTA failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, shift differential pay, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Ms. Hernandez and other aggrieved employees worked overtime and received these other forms of pay, MEZZETTA failed to pay all overtime wages by paying a lower overtime rate than required.

MEZZETTA's failure to pay Ms. Hernandez and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 8-2001 as "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." Cal. Code. Regs. tit. 8, § 11080(2)(G) (defining "Hours Worked").

As set forth above, MEZZETTA had a company-wide policy and/or practice of rounding Ms. Hernandez's and other aggrieved employees' hourly clock-in and/or clock-out times in their timekeeping system to the start and/or end of their scheduled shift times and to the nearest half hour, resulting in the failure to compensate them for all hours worked. Additionally, as stated, due to MEZZETTA's company-wide restrictions on overtime accrual and timekeeping practices, MEZZETTA systematically failed to pay Ms. Hernandez and other aggrieved employees for actual hours worked before and/or after their scheduled shifts, because these hours were not accurately recorded. As stated, MEZZETTA required Ms. Hernandez and other aggrieved employees to remain under their control and/or perform work off-the-clock, including waiting in lines to clock in and to undergo mandatory COVID-19 temperature checks and/or health screenings. Moreover, MEZZETTA maintained a policy and/or practice of altering and/or falsifying employee handwritten timesheets to reflect scheduled hours rather than hours actually worked, thereby shorting Ms. Hernandez and other aggrieved employees for work performed outside their scheduled shifts.

Further, as stated above, due to MEZZETTA's company-wide policy requiring employees to stay on the work premises during meal periods, Ms. Hernandez and other aggrieved employees were not relieved of all duties during unpaid meal periods.

Thus, MEZZETTA did not pay at least minimum wages for all hours worked by Ms. Hernandez and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, MEZZETTA did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, MEZZETTA regularly failed to pay at least minimum wages to Ms. Hernandez and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198. Ms. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, 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.

MEZZETTA had, and continue to have, a uniform practice and/or policy of imposing strict quotas and/or deadlines on employees which, combined with heavy workloads, resulted in Ms. Hernandez and other aggrieved employees being forced to work in excess of five (5) hours before taking a meal period. Moreover, MEZZETTA had, on a company-wide basis, failed to adhere to a schedule of meal periods. As a result of MEZZETTA's company-wide practices and/or policies, Ms. Hernandez and other aggrieved employees were not always afforded timely 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, 2 times per week, Ms. Hernandez was not provided her meal periods until after the 6th hour or 7th hour of her scheduled shift start times.

Additionally, as stated, MEZZETTA maintained and implemented a company-wide on-premises meal period policy, which mandated that Ms. Hernandez and other aggrieved employees remain on the work premises during their meal periods. Because Ms. Hernandez and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. Thus, MEZZETTA effectively maintained control over Ms. Hernandez and other aggrieved employees during meal periods.

Furthermore, MEZZETTA did not provide Ms. Hernandez and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, during her employment, Ms. Hernandez worked shifts in excess of ten (10) hours or more per day, but was not provided with a second 30-minute meal period. Ms. Hernandez and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

MEZZETTA knew or should have known that as a result of its company-wide policies and/or practices, Ms. Hernandez and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. MEZZETTA further knew or should have known that it did not pay Ms. Hernandez and other aggrieved employees meal period premiums when meal periods were missed, late, shortened, and/or interrupted.

On information and belief, MEZZETTA's timekeeping system would only allow employees to clock out for meal periods per their scheduled meal period times, and on the days that Ms. Hernandez was provided with late meal periods, the timekeeping system locked out employees and prevented them from recording a late meal period. Instead, Ms. Hernandez had to report her late meal period times on paper timesheets and was not paid all meal period premiums owed when compliant meal periods are not provided.

Moreover, as set forth above, MEZZETTA has a company-wide policy and/or practice of rounding employee clock-in and clock-out times in their timekeeping system, which prevented Ms. Hernandez and other aggrieved employees from receiving all meal period premiums when they took late and/or shortened meal periods. As stated, MEZZETTA's rounding policy rounded employees' clock-in and clock-out duration times in their timekeeping system to the nearest half (0.5) of an hour. To the extent that MEZZETTA's timekeeping system reported that Ms. Hernandez and other aggrieved employees were provided with timely, full 30-minute meal periods when, in fact, the meal periods were taken after the fifth hour of work or were less than 30 minutes, Ms. Hernandez and other aggrieved employees were entitled to a meal period penalty. Thus, Ms. Hernandez and other aggrieved employees did not receive meal period penalties for these improperly rounded meal periods.

Moreover, MEZZETTA engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Hernandez and other aggrieved employees have not received premium pay for missed, interrupted, shortened, or late meal periods. Alternatively, to the extent that MEZZETTA did pay other aggrieved employees premium pay for missed, late, interrupted and shortened meal periods, MEZZETTA did not pay other aggrieved employees at the correct rate of pay for premiums because MEZZETTA systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, shift differential pay, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, MEZZETTA failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Hernandez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

<u>Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods</u>

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[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 that the "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 fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, MEZZETTA regularly failed to authorize and permit Ms. Hernandez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, MEZZETTA's company-wide practices, including imposing quotas and/or strict deadlines and assigning heavy workloads, prevented Ms. Hernandez and other aggrieved employees from being relieved of all duty to take their rest periods. Additionally, MEZZETTA failed to schedule rest periods, which, coupled with MEZZETTA's failure to provide adequate rest period coverage, further led to Ms. Hernandez and other aggrieved employees not being authorized and permitted to take compliant rest periods. As a result of MEZZETTA's practices and policies, Ms. Hernandez and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Ms. Hernandez missed her first rest period almost every day and regularly missed her second rest periods due to MEZZETA's uniform practice and/or policy of imposing strict quotas and/or deadlines on employees coupled with the heavy workload and never received third rest periods when working shifts of more than ten (10) hours.

Furthermore, MEZZETTA maintained a company-wide on-premises rest period policy, which mandated that Ms. Hernandez and other aggrieved employees remain on MEZZETTA 's premises during their rest periods. Because Ms. Hernandez and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, MEZZETTA effectively maintained control over Ms. Hernandez and other aggrieved employees during rest periods.

As a result of MEZZETTA 's practices and policies, Ms. Hernandez and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Ms. Hernandez regularly had to forego her rest periods entirely during each shift in order to complete MEZZETTA's quota requirement and strict deadlines that MEZZETTA imposed on employees.

MEZZETTA also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Hernandez and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that MEZZETTA did pay Ms. Hernandez and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, MEZZETTA did not pay Ms. Hernandez and other aggrieved employees at the correct rate of pay for premiums because MEZZETTA failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, shift differential pay, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, MEZZETTA failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Hernandez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. MEZZETTA has not provided Ms. Hernandez and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or $50 for the initial pay period in which a violation occurs and $100 per employee for each violation in a subsequent pay period, not to exceed $4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of $250 per employee per violation in an initial citation and $1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, MEZZETTA has knowingly and intentionally provided Ms. Hernandez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, MEZZETTA issued uniform wage statements to Ms. Hernandez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, MEZZETT violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because MEZZETTA did not record the time Ms. Hernandez and other aggrieved employees spent working off-the-clock and improperly rounded Ms. Hernandez's and other aggrieved employees' total hours worked, MEZZETTA did not list the correct amount of gross wages and net wages earned by Ms. Hernandez and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, MEZZETTA failed to accurately list the total number of hours worked by Ms. Hernandez and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because MEZZETTA did not calculate Ms. Hernandez's other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, MEZZETTA did not list the correct amount of gross wages earned by Ms. Hernandez and other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by Ms. Hernandez and other aggrieved employees in violation of section 226(a)(5). MEZZETTA also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . ." Labor Code section 1174.5 provides that employers are subject to a $500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), MEZZETTA willfully failed to maintain accurate payroll records for Ms. Hernandez and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, MEZZETTA failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Ms. Hernandez and other aggrieved employees, in violation of section 1198. As stated, MEZZETTA engaged in a company-wide practice and/or policy of falsifying Ms. Hernandez's and other aggrieved employees' time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Ms. Hernandez and other aggrieved employees. Furthermore, in light of MEZZETTA 's failure to provide Ms. Hernandez and other aggrieved employees with second 30-minute meal periods to which they were entitled, MEZZETTA kept no records of meal start and end times for second meal periods.

Because MEZZETTA failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Hernandez and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Hernandez and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 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. California Labor Code section 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 section 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.

During the relevant time period, MEZZETTA failed to pay Ms. Hernandez and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Ms. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

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

MEZZETTA willfully failed to pay Ms. Hernandez and other aggrieved employees who are no longer employed by MEZZETTA all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving MEZZETTA 's employ.

MEZZETTA's failure to pay Ms. Hernandez and other aggrieved employees who are no longer employed by MEZZETTA their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving MEZZETTA's employ, violates Labor Code sections 201 and 202. Ms. Hernandez and other aggrieved employees are therefore entitled to recover from MEZZETTA the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

Ms. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11080 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that ". . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful."

California Code of Regulations, Title 8, section 11080(5)(A) provides that "[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." The "primary purpose of the reporting time regulation" is "to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer." *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, MEZZETTA violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11080(5)(A), because MEZZETTA failed to pay Ms. Hernandez and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regularly scheduled day's work.

MEZZETTA had a company-wide practice of sending Ms. Hernandez and other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay Ms. Hernandez and other aggrieved employees for half of their scheduled shift. For example, on several occasions, Ms. Hernandez would report to work for her scheduled shift, but was sent home by MEZZETTA's management within two (2) hours after clocking in due to a lack of products. Although Ms. Hernandez and other aggrieved employees would report to work based on the schedule that MEZZETTA provided to them, MEZZETTA would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. When this occurred, MEZZETTA did not pay Ms. Hernandez and other aggrieved employees for at least half of their scheduled day's work or the minimum reporting time pay.

Accordingly, Ms. Hernandez and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 California Code of Regulations, Title 8, section 11080(5)(A). Ms. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

At all relevant times, on information and belief, MEZZETTA failed, on a company-wide basis, to provide written notice to Ms. Hernandez and other aggrieved employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, MEZZETTA failed to provide Ms. Hernandez and other aggrieved employees with the rate or rates of pay, including any rates for overtime, as applicable, in violation of section 2810.5(a)(1)(A).

MEZZETTA’s failure to provide Ms. Hernandez and other aggrieved employees with written notice of basic information material to their employment with MEZZETTA is in violation of Labor Code section 2810.5.

Ms. Hernandez and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid. . . .” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” MEZZETTA, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Hernandez’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Ms. Hernandez seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Hernandez acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against MEZZETTA for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5.

Therefore, on behalf of all aggrieved employees, Ms. Hernandez seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Helga Hakimi
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

Helga Hakimi

Copy: G.L. MEZZETTA, INC. (via U.S. Certified Mail)
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City, State, ZIP+4® American Canyon, CA 94503

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

G.L. MEZZETTA, INC.
105 MEZZETTA COURT
AMERICAN CANYON CA 94503

9590 9402 4882 9032 7426 52

2. Article Number *(Transfer from service label)*

7020 0090 0001 3768 0300

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee

B. Received by *(Printed Name)* C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over $500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

Capstone LAW APC
1875 Century Park East, Ste 1000
Los Angeles, CA 90067

CERTIFIED MAIL®

7020 0090 0001 3768 0324

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee
$
Extra Services & Fees (check box, add fee as appropriate)
☑ Return Receipt (hardcopy) $
☐ Return Receipt (electronic) $
☐ Certified Mail Restricted Delivery $
☐ Adult Signature Required $
☐ Adult Signature Restricted Delivery $
Postage
$
Total Postage and Fees
$

Postmark Here

Jova Hernandez v. Mezzetta

Sent To JRM Mezzetta Court, LLC
Street and Apt. No., or PO Box No. 105 Mezzetta Court
City, State, ZIP+4® American Canyon, CA 94503

7020 0090 0001 3768 0324

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

JRM MEZZETTA COURT, LLC
105 MEZZETTA COURT
AMERICAN CANYON, CA 94503

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1. Article Addressed to:

JRM MEZZETTA COURT, LLC
105 MEZZETTA COURT
AMERICAN CANYON CA 94503

9590 9402 4882 9032 7426 76

2. Article Number *(Transfer from service label)*

7020 0090 0001 3768 0324

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee

B. Received by *(Printed Name)*

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over $500)
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

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1. Article Addressed to:

G.L. MEZZETTA, INC.
105 MEZZETTA COURT
AMERICAN CANYON CA 94503

9590 9402 4882 9032 7426 52

2. Article Number *(Transfer from service label)*

7020 0090 0001 3768 0300

COMPLETE THIS SECTION ON DELIVERY

A. Signature GL Mezzetta cv19 per McGeagn ☐ Agent ☐ Addressee

B. Received by (Printed Name) GL Mezzetta cv19 per McGeagn

C. Date of Delivery 11-15-21

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type
- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over $500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

JRM IMPORTS & SALES, INC.
105 MEZZETTA COURT
AMERICAN CANYON CA 94503

9590 9402 4882 9032 7426 69

2. Article Number *(Transfer from service label)*

7020 0090 0001 3768 0317

COMPLETE THIS SECTION ON DELIVERY

A. Signature *JRM Imports cv19 per McGeagn ☒ Agent ☐ Addressee

B. Received by (Printed Name) JRM Imports cv19 per McGeagn

C. Date of Delivery 11-15-21

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type
- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over $500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

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1. Article Addressed to:

JRM MEZZETTA COURT, LLC
105 MEZZETTA COURT
AMERICAN CANYON CA 94503

9590 9402 4882 9032 7426 76

2. Article Number *(Transfer from service label)*

7020 0090 0001 3768 0324

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X JRM Imports c/o PRI Mistry

☒ Agent
☐ Addressee

B. Received by (Printed Name)

JRM Imports c/o PRI Mistry

C. Date of Delivery

11-15-21

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type

☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over $500)
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000, Los Angeles, California 90067.

On **January 18, 2022,** I served the document(s) described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending [ ] the original [✓] a true copy thereof [✓] to interested parties as follows [or] [ ] as stated on the attached service list:

Michelle C. Doolin mdoolin@cooley.com Summer J. Wynn swynn@cooly.com Leo P. Norton lnorton@cooly.com COLLEY LLP 4401 Eastgate Mall San Diego, CA 92121-1909	*Attorneys for Defendants* G.L. MEZZETTA, INC., JRM IMPORTS & SALES, INC., and JRM MEZZETTA COURT, LLC

[**X**] **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

[ ] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

[ ] **BY FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.

[ ] **BY PERSONAL SERVICE:** I caused delivery of the document(s), enclosed in a sealed envelope, by hand via ProLegal Network to the offices of the addressee(s) named herein.

[ ] **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **January 18, 2022,** at Los Angeles, California.

Riley McIntire
Type or Print Name

Signature