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10 Attorneys for Plaintiffs Natasha Temple,
11 Christopher Casey, and Brenden Molitor

12 SUPERIOR COURT OF CALIFORNIA

13 IN AND FOR THE COUNTY OF SISKIYOU

14 NATASHA TEMPLE, an individual;
15 CHRISTOPHER CASEY, an individual;
16 and BRENDEN MOLITOR, an individual;
17 on behalf of all persons similarly situated
18 and the Labor and Workforce Development
19 Agency;

20 Plaintiffs,

21 v.

22 STEVE DECLERCK ENTERPRISES,
23 INC., a corporation; and DOES 1-100,
24 inclusive,

25 Defendants.

Case No.: CVCV22-351

FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT

1. FAILURE TO PROVIDE PAID SICK LEAVE
2. FAILURE TO PROVIDE MEAL PERIODS OR PAY PREMIUMS
3. FAILURE TO PROVIDE REST PERIODS OR PAY PREMIUMS
4. FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS
5. FAILURE TO PAY ALL WAGES DUE AT END OF EMPLOYMENT
6. UNFAIR COMPETITION
7. PRIVATE ATTORNEYS GENERAL ACT

JURY TRIAL DEMANDED

26 Plaintiffs Natasha Temple, Brenden Molitor, and Christopher Casey bring this class and
27 representative action against Steve DeClerck Enterprises, Inc., a corporation; and Does 1 through 100,
28 for violations of the Labor Code.

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SISKIYOU
YREKA BRANCH

NOV 06 2023

M. CHANDON

BY: DEPUTY CLERK

PARTIES

1. Plaintiff Natasha Temple ("Temple") was at all times relevant herein employed in Siskiyou County, California, and was an "employee" as defined by the Labor Code and applicable California Industrial Wage Commission ("IWC") Wage Order(s).

2. Plaintiff Brenden Molitor ("Molitor") was at all times relevant herein employed in Siskiyou County, California, and was an "employee" as defined by the Labor Code and applicable California Industrial Wage Commission ("IWC") Wage Order(s).

3. Plaintiff Christopher Casey ("Casey") was at all times relevant herein employed in Siskiyou County, California, and was an "employee" as defined by the Labor Code and applicable California Industrial Wage Commission ("IWC") Wage Order(s).

4. Temple, Molitor, and Casey are referred to collectively as Plaintiffs.

5. Defendant Steve DeClerck Enterprises, Inc. ("SDEI" or "Defendant") is a California corporation, formed under the laws of Oregon, and at all times relevant was an "employer" as defined by the Labor Code and applicable IWC Wage Order(s).

6. SDEI and Does 1-100 are referred to collectively as Defendants.

7. Plaintiffs are not aware of the true names and capacities of the Defendants sued herein as Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sue such Defendants by these fictitious names. Plaintiffs will amend this Complaint to allege their true names and capacities when ascertained. Plaintiffs are informed and believes, and on that basis allege, that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged and that Plaintiffs' injuries and damages herein alleged were legally caused by such

Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

8. Plaintiffs are informed and believes and thereupon allege that at all times mentioned herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant, employee, partner and/or joint venturer of and was acting in concert with each of the remaining Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting

1 within the course and scope of such agency, service, employment partnership, joint venture and/or
2 concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and
3 within the course and scope of such agency and/or employment, with the knowledge and/or consent of
4 the remaining Defendants.

5 **VENUE AND JURY TRIAL DEMAND**

6 9. Venue is proper in this court because the unlawful acts alleged herein took place in part
7 in Siskiyou County, California, Plaintiffs' place of employment with Defendants was within Siskiyou
8 County, and SDEI is a resident of Siskiyou County. With respect to the First through Sixth Causes of
9 Action, Plaintiffs demand a jury trial.

10 **GENERAL ALLEGATIONS**

11 10. SDEI is a corporation and an owner and operator of multiple restaurants in Yreka
12 County, including Round Table Pizza, Taco Belle, and KFC. SDEI also owns and operates a Taco
13 Bell in Weed, California, and another Taco Bell in Susanville, California.

14 11. Temple was hired by SDEI on or around October 16, 2021 as a shift manager at
15 SDEI's KFC restaurant in Yreka, California. Her employment ended on January 11, 2022.

16 12. Molitor was employed by SDEI from April to August 2022 at SDEI's Round Table
17 Pizza in Yreka, California.

18 13. Casey was employed by SDEI from approximately August 2022 to March 2023,
19 chiefly at SDEI's Round Table Pizza in Yreka, California. Casey also worked, for a brief time, at
20 the Yreka Taco Bell.

21 14. At all times during their respective employment, Plaintiffs were hourly employees,
22 eligible for rest and meal periods as well as overtime under California law.

23 15. SDEI routinely failed to relieve Plaintiffs of all duty and authorize and permit them
24 to take an uninterrupted, thirty-minute meal period for every workshift of more than five hours.

25 16. Due to the demands of the job, Temple found herself frequently compelled to work
26 through her meal periods. Similarly, Temple was frequently denied the opportunity to take an
27 uninterrupted, ten-minute rest period for every work period of four hours or more.

1 17. When Temple complained to SDEI about the lack of breaks, she was informed by
2 her General Manager, Felicia Wiles (“Wiles”), that there was not time for the shift manager (e.g.,
3 Temple) to take a meal period. Wiles also told Temple that nobody was allowed to take any breaks
4 from 11:00 a.m. to 1:30 p.m.; this effectively meant, since Temple started work at 9:00 a.m., that
5 she was forbidden from taking rest periods in the middle of every work period of four hours.

6 18. Furthermore, SDEI falsified Temple’s time records so that they falsely reflected that
7 Temple was receiving her meal periods; accordingly, Temple was not paid an hour pay at her
8 regular rate of compensation for each meal period that was not provided to her. Temple was also
9 not paid premium pay for denied rest periods.

10 19. Casey, too, was denied rest and meal periods to which he was entitled. Typically,
11 Casey worked a shift of eight hours or more, but would receive only one ten-minute rest break and
12 one thirty-minute meal break. During the shifts on which Casey worked as a delivery driver, he
13 was frequently denied the chance to take any breaks at all. Casey was informed by management,
14 erroneously, that an employee working an eight-hour shift was entitled to only one ten-minute rest
15 break and one thirty-minute meal break. Casey was not provided with premium pay for missed rest
16 and meal periods.

17 20. Similarly, Molitor was denied rest and meal periods. He typically worked shifts of
18 about eight hours, but was not always relieved of duty and permitted to take a ten-minute rest
19 period. He usually (but not always) received a thirty-minute meal period, but it was often provided
20 after he had worked substantially in excess of five hours. Molitor was not paid premiums for
21 missed rest periods and missed/late meal periods.

22 21. By failing to provide all rest and meal periods as required, and by failing to pay
23 premiums for missed rest periods and missed or late meal periods, SDEI violated Labor Code
24 sections 226.7 and 512.

25 22. Because Plaintiffs were not provided with rest and meal periods as required and
26 were not paid all premium pay owed, *supra*, and because Temple’s time records were altered so as
27 to falsely suggest that she received all meal periods, the itemized wage statements furnished to
28

1 Plaintiffs did not accurately show gross wages earned, total hours worked, net wages earned, and
2 all applicable hourly rates in effect during the pay period and the corresponding number of hours
3 worked at each hourly rate, in violation of Labor Code section 226, subdivisions (a)(1), (2), (5),
4 and (9), respectively. The wage statements furnished to Plaintiffs also failed to accurately show the
5 name of the employee (instead, showing only the last name and first initial), in violation of Labor
6 Code section 226, subdivision (a)(7).

7 23. Additionally, the wage statements issued to Plaintiffs did not accurately show the
8 “name and address of the legal entity that is the employer”, in violation of Labor Code section 226,
9 subdivision (a)(8), as the wage statements (1) inaccurately showed the name of the employer as
10 “DECLERCK ENTERPRISES, INC.” and (2) did not show the employer address. (**Exhibit 1.**)
11 Last, the wage statements failed to show “the inclusive dates of the period for which the employee
12 is paid”. (*Id.*)

13 24. SDEI also failed to provide its employees with paid sick leave. As shown by
14 Temple’s wage statements (an example of which is attached hereto as Exhibit 1), those documents
15 did not show the balance of any accrued paid sick leave or paid time off provided in lieu of sick
16 leave. Plaintiffs never received any separate written notice that showed the amount of paid sick
17 leave available. Plaintiffs are informed and believe, and thereon allege, that they in fact never
18 accrued any paid sick leave, pursuant to a uniform policy or practice. By failing to provide paid
19 sick leave and written notice of the same, SDEI violated Labor Code section 246.

20 25. At no point since the cessation of Plaintiffs’ respective employment has SDEI paid
21 Plaintiffs the full balance of rest and meal break premiums, *supra*. Accordingly, SDEI violated
22 Labor Code sections 201 and 202.

23 26. The foregoing violations, and each of them, were committed as against other
24 employees of SDEI in California, and within the applicable period(s) of limitations.

25 27. The foregoing list of misconduct is a partial list only and set forth by way of example.

26 28. On January 17, 2022, Temple provided written notice to the Labor and Workforce
27 Development Agency (“LWDA”) and SDEI regarding the specific provisions of the Labor Code

1 alleged to have been violated, including the facts and theories to support those alleged violations.
2 (Exhibit 2.)

3 29. As of the filing of this Complaint, more than 65 calendar days after Temple's initial
4 written notice, the LWDA has not provided written notice that it intends to investigate any of
5 Temple's allegations as set forth above. Accordingly, Temple has satisfied the administrative
6 prerequisites under Labor Code section 2699.3 to bring a civil action to recover civil penalties
7 against Defendants, in addition to other remedies, for violations of the California Labor Code.

8 CLASS ACTION ALLEGATIONS

9 30. Plaintiffs bring the First through Fifth Causes of Action as a class action, on behalf of
10 themselves and all others similarly situated, pursuant to Code of Civil Procedure 382. The classes
11 which Plaintiffs seek to represent consist of the following:

- 12
- 13 a. All current and former California employees of Defendants who were
14 employed by Defendants for thirty or more days, at any time from March 28,
15 2018 through the entry of final judgment in this action (the "Paid Sick Leave
16 Class");
 - 17 b. All current and former nonexempt California employees of Defendants who
18 worked at least one workday of four hours or more during one or more pay
19 periods at any time from March 28, 2018 through the entry of final judgment
20 in this action (the "Rest Break Class");
 - 21 c. All current and former nonexempt California employees of Defendants who
22 worked one least one work days of more than five hours during one or more
23 pay periods at any time from March 28, 2018 through the entry of final
24 judgment in this action (the "Meal Break Class");
 - 25 d. All former California employees of Defendants who received one or more
26 wage statements at any time from March 28, 2021 through the entry of final
27 judgment in this action (the "Wage Statement Class"); and
 - 28 e. All members of the Rest Break and Meal Break Classes whose employment
with Defendants ended at any time from March 28, 2019 through the entry of
final judgment in this action (the "Waiting Time Penalty Class").

The Paid Sick Leave Class, the Rest Break Class, the Meal Break Class, the Wage Statement Class, and
the Waiting Time Penalty Class are collectively referred to as "the Class."

1 31. The Class is so numerous that joinder of all members is impracticable, and the
2 disposition of their claims in a class action is a benefit to the parties and to the Court. Plaintiffs are
3 informed and believe, and thereon allege, that Defendants employed more than 700 persons who satisfy
4 the class definition. Although the exact number and identity of class members is not presently known,
5 they can be identified in Defendants' records through coordinated discovery pursuant to this class
6 action.

7 32. This action may be maintained as a class because the questions of law and fact which are
8 common to class members clearly predominate over any questions affecting only individual members
9 and because a class action is superior to other available methods for adjudicating the controversy.

10 33. There are numerous common questions of law and fact arising out of Defendants'
11 conduct. This class action focuses on Defendants' (a) systematic failure to provide paid sick leave and
12 written notice thereof; (b) systematic failure to provide rest and meal periods or pay premiums; (c)
13 systematic failure to comply with Labor Code section 226(a); and (d) systematic failure to pay all
14 wages upon cessation of employment.

15 34. Furthermore, common questions of fact and law predominate over any questions
16 affecting only individual members of the class. The predominating common or class-wide questions of
17 law and fact include the following:

- 18 a. Whether Defendants failed to provide their California employees with paid sick
19 leave and written notice thereof;
- 20 b. Whether Defendants failed to provide their nonexempt California employees
21 with rest and meal periods in accordance with the Labor Code and Wage Orders
22 of the Industrial Welfare Commission;
- 23 c. Whether Defendants failed to pay their nonexempt California employees with
24 rest and meal period premiums;
- 25 d. Whether the wage statements Defendants furnished to their California employees
26 complied with Labor Code section 226;

- 1 e. Whether Defendants failed to pay their California employees all wages due upon
2 cessation of employment;
- 3 f. Whether the alleged violations of the Labor Code constitute unfair business
4 practices;
- 5 g. Whether the Class is entitled to injunctive relief; and
- 6 h. Whether the Class is entitled to unpaid wages, statutory penalties, and/or
7 restitutionary relief, and the amount of the same.

8 35. Plaintiffs' claims are typical of the claims of the members of the Class as a whole, all of
9 whom have sustained and/or will sustain damage and injury as a proximate and/or legal result of the
10 alleged violations of Defendants. Plaintiffs' claims are typical of those of the Class because
11 Defendants subjected Plaintiffs and each member of the Class to the same violations alleged herein.

12 36. The defenses of Defendants, to the extent that such defenses apply, are applicable
13 generally to the whole Class and are not distinguishable as to the proposed class members.

14 37. Plaintiffs will fairly and adequately protect the interests of all members of the Class, and
15 have retained attorneys with extensive experience in litigation, including class and representative
16 actions. Plaintiffs have no interests that conflict with those of the Class. Plaintiffs are able to fairly and
17 adequately protect the interests of all members of the Class because it is in their best interest to
18 prosecute the claims alleged herein in order to obtain the full compensation due themselves and the
19 other class members.

20 38. A class action is superior to any other method available for fairly and efficiently
21 adjudicating the controversy because 1) joinder of individual class members is not practicable, 2)
22 litigating the claims of individual class members would be unnecessarily costly and burdensome and
23 would deter individual claims, 3) litigating the claims of individual class members would create a risk
24 of inconsistent or varying adjudications that would establish incompatible standards of conduct for
25 Defendants, 4) class members still working for Defendants may be fearful of retaliation if they were to
26 bring individual claims, 5) class members would be discouraged from pursuing individual claims
27 because the damages available to them are relatively small, and 6) public policy encourages the use of

1 the class actions to enforce employment laws and protect individuals who, by virtue of their
2 subordinate position, are particularly vulnerable.

3 39. Judicial economy will be served by maintenance of this lawsuit as a class action. To
4 process numerous virtually identical individual cases will significantly increase the expense on the
5 Court, the class members, and Defendants, all while unnecessarily delaying the resolution of this
6 matter. There are no obstacles to effective and efficient management of this lawsuit as a class action by
7 this Court and doing so will provide multiple benefits to the litigating parties including, but not limited
8 to, efficiency, economy, and uniform adjudication with consistent results.

9 40. Notice of a certified class action and any result or resolution of the litigation can be
10 provided to class members by mail, email, publication, or such other methods of notice as deemed
11 appropriate by the Court.

12 **FIRST CAUSE OF ACTION**
13 **FAILURE TO PAY SICK LEAVE**
14 **(Lab. Code, §§ 218, 233, 246 *et seq.*)**

15 **By Plaintiffs and the Paid Sick Leave Class Against Defendants**

16 41. Plaintiffs hereby reallege and incorporate by reference each and every allegation set
17 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
18 allegations of this cause of action.

19 42. Labor Code section 246(l) requires that employers pay sick time pay to non-exempt
20 employees at that employee's "regular rate of pay."

21 43. According to the California Supreme Court, sick pay is a form of wages. (*Murphy v.*
Kenneth Cole Productions (2007) 40 Cal.4th 1094, 1103.)

22 44. Labor Code section 233 provides that "any employer who provides sick leave for
23 employees shall permit an employee to use in any calendar year the employee's accrued and
24 available sick leave entitlement, in an amount not less than the sick leave that would be accrued
25 during six months at the employee's then current rate of entitlement, for the reasons specified in
26 subdivision (a) of Section 246.5."

1 45. During the relevant time period, Defendants intentionally and willfully failed to
2 provide paid sick leave as required by law. Accordingly, Plaintiffs did not receive the full amount
3 of paid sick time that they were entitled to receive by law, and were therefore denied the right to
4 use sick leave within the meaning of Labor Code sections 233(a) and (c).

5 46. Any employer who violates Labor Code section 233 is liable to employees for the
6 greater of one days' pay or actual damages, reasonable equitable relief, and reasonable attorneys'
7 fees and costs. (Lab. Code, § 233, subds. (d), (e).)

8 47. Further, Labor Code section 218 authorizes a private right of action to recover unpaid
9 wages.

10 48. Wherefore, Plaintiffs and the Paid Sick Leave Class have been injured as set forth above
11 and request relief as hereafter provided.

12 **SECOND CAUSE OF ACTION**
13 **FAILURE TO PROVIDE MEAL PERIODS OR PAY PREMIUMS**
14 **(Lab. Code, §§ 226.7, 512)**
15 **By Plaintiffs and the Meal Break Class Against Defendants**

16 49. Plaintiffs hereby reallege and incorporate by reference each and every allegation set
17 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
18 allegations of this cause of action.

19 50. Labor Code section 226.7 requires employers to provide employees meal periods as
20 mandated by Order of the Industrial Welfare Commission. It states:

21 a. No employer shall require any employee to work during any meal or rest
22 period mandated by an applicable order of the Industrial Welfare
23 Commission.

24 b. If an employer fails to provide an employee a meal period or rest period in
25 accordance with an applicable order of the Industrial Welfare Commission,
26 the employer shall pay the employee one additional hour of pay at the
27 employee's regular rate of compensation for each work day that the meal or
28 rest period is not provided.

1 51. Labor Code section 512(a) and the applicable wage order provide that an employer
2 may not employ a person for a work period of more than five hours per day without providing that
3 employee a meal period of not less than thirty minutes, except that if the total work period per day
4 is no more than six hours, the meal period may be waived by mutual consent of both the employer
5 and employee. An employer may not employ a person for a work period of more than ten hours
6 per day without providing an employee with a second meal period of not less than thirty minutes,
7 except that if the total work period per day of the employee is no more than twelve hours, the meal
8 period may be waived by mutual consent of both the employer and the employee, and if the first
9 meal period was not waived.

10 52. During the relevant time period, Plaintiffs were not provided with meal breaks as
11 required by law and did not receive an additional hour of premium pay for each missed meal
12 period.

13 53. Wherefore, Plaintiffs and the Meal Break Class have been injured and request relief
14 as hereinafter provided.

15 **THIRD CAUSE OF ACTION**
16 **FAILURE TO PROVIDE REST PERIODS OR PAY PREMIUMS**
17 **(Lab. Code, § 226.7)**
18 **By Plaintiffs and the Rest Break Class Against Defendants**

19 54. Plaintiffs hereby reallege and incorporate by reference each and every allegation set
20 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
21 allegations of this cause of action.

22 55. Labor Code section 226.7 requires employers to provide employees rest periods as
23 mandated by Order of the Industrial Welfare Commission. It states:

- 24 a. No employer shall require any employee to work during any meal or rest
25 period mandated by an applicable order of the Industrial Welfare
26 Commission.
27 b. If an employer fails to provide an employee a meal period or rest period in
28 accordance with an applicable order of the Industrial Welfare Commission,

1 the employer shall pay the employee one additional hour of pay at the
2 employee's regular rate of compensation for each work day that the meal or
3 rest period is not provided.

4 56. Section 11 of the applicable IWC Wage Order provides:

5 "(A) Every employer shall authorize and permit all employees to take rest periods,
6 which insofar as practicable shall be in the middle of each work period. Nothing in
7 this provision shall prevent an employer from staggering rest periods to avoid
8 interruption in the flow of work and to maintain continuous operations, or from
9 scheduling rest periods to coincide with breaks in the flow of work that occur in the
10 course of the workday. The authorized rest period time shall be based on the total
11 hours worked daily at the rate of ten (10) minutes net rest time for every four (4)
12 hours worked, or major fraction thereof. Rest periods shall take place at employer
13 designated areas, which may include or be limited to the employees' immediate work
14 area.

15 (B) Rest periods need not be authorized in limited circumstances when the disruption
16 of continuous operations would jeopardize the product or process of the work.
17 However, the employer shall make up the missed rest period within the same workday
18 or compensate the employee for the missed ten (10) minutes of rest time at his/her
19 regular rate of pay within the same pay period.

20 (C) A rest period need not be authorized for employees whose total daily work time
21 is less than three and one-half (3 ½) hours. Authorized rest period time shall be
22 counted as hours worked for which there shall be no deduction from wages.

23 (D) If an employer fails to provide an employee a rest period in accordance with the
24 applicable provisions of this order, the employer shall pay the employee one (1) hour
25 of pay at the employee's regular rate of compensation for each workday that the rest
26 period is not provided."

27 57. During the relevant time period, Plaintiffs were not provided with rest breaks as
28 required by law and did not receive an additional hour of premium pay for each missed rest break.

58. Wherefore, Plaintiffs and the Rest Break Class have been injured and request relief
as hereinafter provided.

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FOURTH CAUSE OF ACTION
FAILURE TO FURNISH COMPLETE AND ACCURATE ITEMIZED WAGE STATEMENTS
(Lab. Code, § 226(a))
By Plaintiffs and the Wage Statement Class Against Defendants

59. Plaintiffs hereby reallege and incorporate by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

60. Pursuant to Labor Code section 226(a) “every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when the wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee [. . .], (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number, (8) the name and address of the legal entity that is the employer [. . .], (9) all applicable hourly rates in effect during the pay period and corresponding number of hours worked at each hourly rate by the employee and, if the employer is a temporary services employer [. . .], the rate of pay and the total hours worked for each temporary services assignment.”

61. An employee suffering injury as a result of the knowing and intentional failure by an employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees. (Lab. Code, § 226, subd. (e)(1).)

62. An employee is deemed to suffer injury if the employer fails to provide a wage statement or if the employer fails to provide accurate and complete information as required by any one or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and

1 easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee
2 during the pay period or any of the other information required to be provided pursuant to Labor Code
3 section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the name
4 and address of the employer and iv) the name of the employee and the last four digits of his or her
5 social security number or employee identification number. (Lab. Code, § 226, subds. (e)(2)(A), (B)(i)-
6 (iv).) "Promptly and easily determine" means a reasonable person would be able to readily ascertain
7 the information without reference to other documents or information. (Lab. Code, § 226, subd.
8 (e)(2)(C).)

9 63. As set forth above, Defendants intentionally and willfully failed to furnish accurate
10 itemized wage statements which complied with Labor Code section 226.

11 64. Wherefore, Plaintiffs and the Wage Statement Class have been injured as set forth above
12 and request relief as hereafter provided.

13 **FIFTH CAUSE OF ACTION**
14 **FAILURE TO PAY ALL WAGES DUE AT END OF EMPLOYMENT**
15 **(Lab. Code, § 201, *et seq.*)**
16 **By Plaintiffs and the Waiting Time Penalty Class Against Defendants**

17 65. Plaintiffs hereby reallege and incorporate by reference each and every allegation set
18 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
19 allegations of this cause of action.

20 66. Labor Code section 201 provides that if an employer discharges an employee, the wages
21 earned and unpaid at the time of discharge are due and payable immediately.

22 67. Labor Code section 202 requires an employer to pay an employee all earned wages
23 within 72 hours of the employee quitting his or her employment, or immediately at the time of quitting
24 if the employee has given 72 hours previous notice of his or her intention to quit.

25 68. As set forth above, Plaintiffs were not timely paid all earned but unpaid wages when
26 their respective employment with Defendants ended.

27 69. Wherefore, Plaintiffs and the Waiting Time Penalty Class have been injured as set forth
28 above and requests relief as hereafter provided.

1 **SIXTH CAUSE OF ACTION**
2 **UNFAIR BUSINESS PRACTICES**
3 **(Bus. & Prof. Code, § 17200, *et seq.*)**
4 **By Plaintiffs, the Meal Break Class, the Rest Break Class, and the Paid Sick Leave Class**
5 **Against Defendants**

6 70. Plaintiffs hereby reallege and incorporate by reference each and every allegation set
7 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
8 allegations of this cause of action.

9 71. The paid sick leave violations and rest and meal break violations committed by
10 Defendants, as alleged above, are unfair business practices within the meaning of the Unfair
11 Competition Law (Business and Professions Code section 17200 *et seq.*).

12 72. Wherefore, Plaintiffs and the Paid Sick Leave Class, the Rest Break Class, and the
13 Meal Break Class have been damaged as set forth above and request relief as hereafter provided.

14 **SEVENTH CAUSE OF ACTION**
15 **PRIVATE ATTORNEYS GENERAL ACT**
16 **(Lab. Code, § 2698 *et seq.*)**
17 **By Temple Against Defendants**

18 73. Temple hereby realleges and incorporates by reference each and every allegation set
19 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
20 allegations of this cause of action.

21 74. Pursuant to Labor Code section 2699, subdivision (a), any provision of the Labor
22 Code which provides for a civil penalty to be assessed and collected by the LWDA for violations
23 of the Labor Code may, as an alternative, be recovered through a civil action brought by an
24 aggrieved employee on behalf of himself or herself and other current or former employees pursuant
25 to the procedures outlined in Labor Code section 2699.3.

26 75. Temple was employed by Defendants and the alleged violations were committed
27 against her during her time of employment. Temple is therefore an aggrieved employee as defined
28 by Labor Code section 2699, subdivision (c). Other current and former employees are also
 aggrieved employees in that one or more of the alleged violations were also committed against
 them during their time of employment with Defendants.

76. Pursuant to Labor Code section 2699, subdivision (f), the civil penalty recoverable in a PAGA action is that which is provided for by the Labor Code or, where no civil penalty is specifically provided, one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

77. Pursuant to California Labor Code section 2699, subdivision (g), an aggrieved employee may recover the civil penalty on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Furthermore, any employee who prevails in any such action shall be entitled to an award of reasonable attorney's fees and costs.

78. Pursuant to the PAGA, Temple seeks to recover civil penalties against Defendants for violations of the Labor Code.

79. Wherefore, Temple and other employees (current and former) have been aggrieved and Temple, on behalf of the Labor and Workforce Development Agency, requests relief as hereafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray judgment against Defendants as follows:

As to the First through Sixth Causes of Action:

1. That this Court certify the Class;
2. That this Court appoint Plaintiffs as Class Representatives;
3. That this Court appoint Mayall Hurley P.C. as counsel for the Class;
4. That this Court award injunctive relief, including that available under Labor Code sections 226(h) and 248.5(e), as well as Business and Professions Code section 17203;
5. That this Court award actual and compensatory damages, as well as restitutionary relief, to Plaintiffs and other members of the Class, including but not limited to the remedies provided for under Labor Code section 233(d) as well as unpaid meal and rest break premiums;

- 1 6. That this Court award statutory penalties including, but not limited to, those available
2 under Labor Code sections 203 and 226;
3 7. That this Court award statutory attorneys' fees and costs under Labor Code sections
4 218.5, 226(e)(1) and (h), 233(e), and 248.5(e), as well as those available under Code of
5 Civil Procedure section 1021.5;
6 8. That this Court award prejudgment and post-judgment interest according to any
7 applicable provision of law or as otherwise permitted by law; and
8 9. That this Court award such other and further relief as the court deems just and proper.

9 **As to the Seventh Cause of Action:**

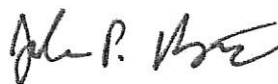
- 10 1. For civil penalties, including but not limited to those available under Labor Code
11 sections 226.3, 558, and 2699(f);
12 2. For injunctive relief;
13 3. For statutory attorneys' fees and costs, including but not limited to those available
14 under Labor Code section 2699(g);
15 4. For prejudgment and post-judgment interest according to any applicable provision
16 of law or as otherwise permitted by law, including those available under Civil Code
17 sections 3287(a) and 3289(b); and
18 5. For such other and further relief as the court deems just and proper.

19 ///

20 **DATED:** November 2, 2023

MAYALL HURLEY P.C.

21
22 By _____



ROBERT J. WASSERMANN
JOHN P. BRISCOE
Attorneys for Plaintiffs
NATASHA TEMPLE, BRENDEN MOLITOR,
AND CHRISTOPHER CASEY

EXHIBIT 1

21542

DECLERCK ENTERPRISES, INC A Franchisee of Taco Bell and KFC

021542

11/16/2021

15.50 HB

411.99

411.99

26.58

02-0000390 TEMPLE N

Social Security Tax
Medicare Tax
CA Disability Tax

411.99

411.99

26.58

Regular

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4.94

25.54
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411.99

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26.58

02-0000390 TEMPLE N

25.54
5.97
4.94

25.54
5.97
4.94

375.54

EXHIBIT 2

LAW OFFICES
MAYALL HURLEY

A PROFESSIONAL CORPORATION

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JENNY D. BAYSINGER
JOHN P. BRISCOE
VLADIMIR J. KOZINA
RACHAEL ALLGAIER
OF COUNSEL
J. ANTHONY ABBOTT

January 17, 2022

SUBMITTED ELECTRONICALLY

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612

SENT VIA CERTIFIED MAIL

Steve DeClerck Enterprises, Inc.
303 N. Oregon St.
Yreka, CA 96097

Re: Natasha Temple

To whom it may concern:

This firm represents Natasha Temple ("Temple") in relation to her former employment with Steve DeClerck Enterprises, Inc. ("SDEI"). In accordance with Labor Code section 2699.3, this letter shall serve as Temple's written notice to the Labor and Workforce Development Agency ("LWDA") and SDEI regarding the following violations, and facts and theories supporting those violations, on Temple's behalf and, as a proxy for the LWDA, on behalf of former and other current California employees of SDEI.

Temple was hired by SDEI on or around October 16, 2021 as a shift manager at SDEI's KFC restaurant in Yreka, California. At all times during said employment, Temple was an hourly employee, eligible for rest and meal periods as well as overtime under California law. Temple's employment with SDEI ended on January 11, 2022. Temple is informed and believes that SDEI operates at least two other franchisee restaurants in California.

SDEI routinely failed to relieve Temple of all duty and authorize and permit her to take an uninterrupted, thirty-minute meal period for every workshift of more than five hours. Due to the demands of the job, Temple found herself frequently compelled to work through her meal periods. Similarly, Temple was frequently denied the opportunity to take an uninterrupted, ten-minute rest period for every work period of four hours or more. When Temple complained to SDEI about the lack of breaks, she was informed by her General Manager, Felicia Wiles ("Wiles"), that there was not time for the shift manager (e.g., Temple) to take a meal period.

Labor and Workforce Development Agency
Steve DeClerck Enterprises, Inc.
Re: Natasha Temple
January 17, 2022
Page 2 of 3

Wiles also told Temple that nobody was allowed to take any breaks from 11:00 a.m. to 1:30 p.m.; this effectively meant, since Temple started work at 9:00 a.m., that she was forbidden from taking rest periods in the middle of every work period of four hours. Furthermore, SDEI falsified Temple's time records so that they falsely reflected that Temple was receiving her meal periods; accordingly, Temple was not paid an hour pay at her regular rate of compensation for each meal period that was not provided to her. Temple was also not paid premium pay for denied rest periods. Accordingly, SDEI violated Labor Code sections 226.7 and 512.

Because Temple was not provided with rest and meal periods and not paid all premium pay owed, *supra*, and because her time records were altered so as to falsely suggest that she received all meal periods, the itemized wage statements did not accurately show gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code section 226, subdivisions (a)(1), (2), (5), and (9), respectively. The wage statements furnished to Temple also failed to accurately show the name of the employee (instead, showing only the last name and first initial), in violation of Labor Code section 226, subdivision (a)(7). Additionally, the wage statements issued to Temple did not accurately show the "name and address of the legal entity that is the employer", in violation of Labor Code section 226, subdivision (a)(8), as the wage statements (1) inaccurately showed the name of the employer as "DECLERCK ENTERPRISES, INC." and (2) did not show the employer address. (**Exhibit A.**) Last, the wage statements failed to show "the inclusive dates of the period for which the employee is paid". (*Id.*)

SDEI also failed to provide its employees with paid sick leave. As shown by Temple's wage statements (an example of which is attached hereto as Exhibit A), those documents did not show the balance of any accrued paid sick leave or paid time off provided in lieu of sick leave. Temple never received any separate written notice that showed the amount of paid sick leave available. Temple is informed and believes, and thereon alleges, that she in fact never accrued any paid sick leave, pursuant to a uniform policy or practice. By failing to provide paid sick leave and written notice of the same, SDEI violated Labor Code section 246.

As mentioned above, Temple's employment with SDEI ended on January 11, 2022. However, at no point has SDEI paid Temple the full balance of rest and meal break premiums, *supra*. Accordingly, SDEI violated Labor Code sections 201 and 202.

The foregoing violations, and each of them, were committed as against current and other former employees of SDEI, and within the last year.

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or my client.

Labor and Workforce Development Agency
Steve DeClerck Enterprises, Inc.
Re: Natasha Temple
January 17, 2022
Page 3 of 3

If the LWDA does not intend to investigate these violations, Temple intends to file a civil complaint against SDEI pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code, § 2698 *et seq.*), on her behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former employees. Thank you for your attention in this matter.

Sincerely,

MAYALL HURLEY P.C.

By


JOHN P. BRISCOE

Exhibit A

DECLERCK ENTERPRISES, INC. A Franchisee of Taco Bell and NFC

21542

02-0000390 TEMPLE, N

15.50 HB

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36.45

375.54

py:

vac

PROOF OF SERVICE

I, the undersigned, certify and declare as follows:

I am over the age of eighteen years and not a party to this action. My business address is 112 S. Church Street, Lodi, CA 95240, that is located in the county where the mailing and/or delivery below took place.

On November 2, 2023, I served the following document:

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

addressed to:

Carla Vasques dos Santos-Moore
David Nusz
O'Hagan Meyer
221 Caledonia Street
Sausalito, CA 94965
CMoore@ohaganmeyer.com
dnusz@ohaganmeyer.com
Tanya Leal
tleal@ohaganmeyer.com
Samantha Lopez
slopez@ohaganmeyer.com

Darrin W. Mercier
Law Offices of Darrin W. Mercier
205 Lane Street
Yreka, CA 96097
darrin@sisqlaw.com

☐ **BUSINESS PRACTICE TO ENTRUST DEPOSIT TO OTHERS:** I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On the date specified below, at my place of business at Stockton, California a copy of the document described above was placed for deposit in the United States Postal Service in a sealed envelope, with postage fully prepaid addressed to the individuals and/or entities mentioned above; and that envelope was placed for collection and mailing on that date following ordinary business practice.

☒ **BY EMAIL:** In accordance with Code of Civil Procedure, Section 1010.6, on the date specified below, I caused a copy of the document(s) described above to be sent to the person(s) at the e-mail address(es) listed above. My business e-mail address is lriley@mayallaw.com. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on November 2, 2023, at Lodi, California.


LINDSAY RILEY