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CRUZ on behalf of herself and others similarly
situated

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

GABRIELA RIVERA DE CRUZ, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

CARDENAS MARKETS, LLC, a Delaware
limited liability company, MI PUEBLO
NEWCO, LLC, a Delaware limited liability
company; and DOES 1 to 10, inclusive

Defendants.

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

01/24/2022 at 03:03:19 PM

By: Cheryl Clark, Deputy Clerk

CASE NO. 22CV005906

CLASS ACTION COMPLAINT:

- 1. Failure to Pay Overtime Wages in Violation of Labor Code sections 510 and 1198;**
- 2. Failure to pay all Wages and Minimum Wages in Violation of Labor Code sections 1182, 1194, 1197, 1198;**
- 3. Failure to Provide Meal Periods in Violation of Labor Code sections 226.7, 512, 516 and 1198;**
- 4. Failure to Provide Rest Periods in Violation of Labor Code sections 226.7,**

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- 516, 1198;
5. **Failure to Timely Furnish Accurate Itemized Wage Statements in Violation of Labor Code section 226(a);**
 6. **Waiting Time Penalties Pursuant to Labor Code sections 201, 203;**
 7. **Failure to Provide Suitable Seating in Violation of Labor Code section 1198;**
 8. **Failure to Reimburse Business Expenses in violation of in Violation of Labor Code section 2802;**
 9. **Failure to Provide COVID-19 Supplemental Paid Sick Leave in Violation of Labor Code section 248.2;**
 10. **Failure to Pay Accrued Vacation Wages in Violation of Labor Code section 227.3;**
 11. **Violations of Business & Professions Code section 17200 *et seq.***

DEMAND FOR JURY TRIAL

1 Plaintiff, GABRIELA RIVERA DE CRUZ (hereinafter “Plaintiff”) hereby submits her
2 Complaint against Defendants CARDENAS MARKETS, LLC, a Delaware limited liability
3 company, MI PUEBLO NEWCO, LLC, a Delaware limited liability company; and DOES 1 to 10
4 (hereinafter referred to as “Defendants”) on behalf of herself and the class of all other similarly
5 situated current and former employees of Defendants as follows:

6 **NATURE OF THE CASE**

7 1. This is a class action arising out of Defendants’ failure to provide their non-exempt
8 employees with all wages, meal and rest periods in compliance with the applicable Wage order
9 and/or the California Labor Code, by failing to provide suitable seating, by failing to reimburse
10 business expenses, by failing to pay accrued vacation wages, failing to provide COVID-19
11 supplemental sick leave, and by failing to comply with the applicable wage order and/or the Labor
12 Code in regards to the payment of wages.

13 2. MI PUEBLO NEWCO, LLC was a California grocery chain based in San Jose,
14 California, that operated approximately 22 locations in Northern California. In 2017, CARDENAS
15 MARKETS LLC merged with MI PUEBLO NEWCO, LLC. CARDENAS MARKETS LLC is
16 based in Ontario California and operates approximately 56 stores across California. On January 1,
17 2021, CARDENAS MARKETS LLC acquired MI PUEBLO NEWCO LLC. At all relevant times,
18 Defendants issued and maintained uniform, standardized scheduling and timekeeping practices and
19 procedures for all non-exempt, hourly paid employees in California, including Plaintiff and others
20 similarly situated, regardless of their location or position.

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

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

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

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

7 7. Defendants also had a practice of failing to pay all accrued vacation and provide
8 supplemental COVID-19 paid sick leave pay.

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

12 9. Defendants also failed to reimburse Plaintiff and other non-exempt employees for
13 business related expenses, including but not limited to face masks which were required for the job.

14 10. Plaintiff brings Causes of Action One through Eleven (the "class claims") as a class
15 action on behalf of herself and other similarly situated individuals who have worked for Defendants
16 in California, at any time from four-years prior to the filing of this complaint, through the resolution
17 of this action. Plaintiff, on her own behalf and on behalf of all Class Members, brings the class
18 claims pursuant to Labor Code sections 200-203, 221, 223, 224, 226, 226.7, 227.3, 248, 500, 510,
19 512, 1174, 1194, 1194.2, 1197, 1198, 2802, the applicable wage order and under Business &
20 Professions Code sections 17200-17208, for unfair competition due to Defendants' unlawful, unfair
21 and fraudulent business acts and practices.

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

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PARTIES

12. Plaintiff, Gabriela Rivera de Cruz is an individual over the age of eighteen (18) and is now, and/or at all relevant times mentioned in this Complaint was, a resident and domiciliary of the State of California. During the relevant time period, Plaintiff worked for Defendants in Hayward, California from approximately October 3, 2014 through approximately October 13, 2021. Most recently, Plaintiff worked as a baker and earned approximately \$18.25 per hour.

13. Plaintiff is informed and believes, and based thereon alleges, that Defendants Mi Pueblo Newco LLC and Cardenas Markets LLC are Delaware limited liability companies. Plaintiff is further informed and believes that at all times relevant hereto, Defendants have transacted, and continue to transact, business throughout the State of California.

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

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

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

17. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of the Defendants sued herein as DOES 1 through 10, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint when the true names and capacities are known. Plaintiff is informed and believes and based thereon alleges that each of said fictitious Defendants were responsible in some way for the matters alleged herein and proximately caused Plaintiff and members of the general public and class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

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

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

12 20. At all times herein mentioned, Defendants, and each of them, were members of, and
13 engaged in, a joint venture, partnership and common enterprise, and acting within the course and
14 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

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

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

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23. The Court has jurisdiction over this class action pursuant to article 6, section 10 of the California Constitution and Code of Civil Procedure section 410.10.

24. Additionally, this Court has jurisdiction over Plaintiff's and the Class' claims for
ve relief, including restitution of earned wages, arising from Defendants' unfair
ition under Business & Professions Code section 17203 and 17204. The Court also has
tion over Plaintiff's and the Class' claims for penalties pursuant to the Private Attorneys
d Act of 2004, Labor Code sections 2698-99, as well as pursuant to the applicable
ons.

25. The Court has jurisdiction over Defendants because they are authorized to do business in the State of California and are registered with the California Secretary of State. Defendants do sufficient business with sufficient minimum contacts in California, and/or otherwise purposefully avails itself of the California market through the advertising, marketing and sale of products and services, to render the exercise of jurisdiction over Defendants by the California court consistent with traditional notions of fair play and substantial justice.

26. Venue is proper in Alameda County because the acts which give rise to this action occurred in this county and because Defendants have employed class members in this county and transacts business in this county.

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

28. Defendants have engaged in, and continue to engage in, unfair business practices in
nia by practicing, employing and utilizing the employment practices and policies outlined

29. As a direct result of the wage and hour violations herein alleged, Plaintiff and
 rs of the Classes have suffered, and continue to suffer substantial losses related to the use
 oyment of wages, lost interest on such wages, and expenses and attorneys' fees in seeking
 pel Defendants to fully perform its obligations under state law, all to Plaintiff's respective
 in amounts according to proof at the time of trial.

Defendants' Failure to Pay Overtime Wages

30. During the Class Period, upon information and belief, Defendants had, and continue to have, a company-wide policy of discouraging and impeding Plaintiff and other non-exempt employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with Defendants' policy and/or practice of understaffing and assignment of heavy workloads, led Plaintiff and other non-exempt employees to work off-the-clock before and after their scheduled shift times. For example, prior to almost every shift, Plaintiff was required to arrive early and spend 2-3 minutes walking to break room to clock in.

31. Moreover, Defendants' company-wide policy and/or practice of understaffing its locations while assigning heavy workloads, resulted in a failure to provide Plaintiff and other non-exempt employees with adequate meal period coverage. Defendants also failed to adhere to a schedule of meal periods, which further caused Plaintiff and other non-exempt employees to not be relieved of their duties for compliant meal periods. As a result, Plaintiff and other non-exempt employees missed or had meal periods interrupted in order to complete their assigned tasks. Consequently, Plaintiff and other non-exempt employees performed work during meal periods for which they were not paid. Further, on information and belief, because Defendants frowned upon employees accruing meal period penalties, employees were required to continue working after clocking out for their meal periods. Thus, Plaintiff and other non-exempt employees performed work during meal periods for which they were not paid. Defendants knew or should have known that as a result of these company-wide practices and/or policies, Plaintiff and other non-exempt employees were performing assigned duties off-the-clock during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Plaintiff and other non-exempt employees 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.

32. Therefore, Plaintiff and other non-exempt employees were not paid overtime wages for all of the overtime hours they actually worked.

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

2 33. As stated above, during the relevant time period, as a result of Defendants' policy of
3 limiting the amount of overtime employees could accrue, coupled with understaffing and heavy
4 workloads, Plaintiff and other non-exempt employees were forced to work off-the-clock to
5 complete their work-related tasks. Moreover, due to Defendants' policies and/or practices of
6 understaffing while assigning of heavy workloads, and failing to adhere to a schedule of meal
7 periods, Plaintiff and other non-exempt employees were forced to forego meal periods, have their
8 meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods.

9 34. Further, as stated, in order to prevent employees from accruing meal period
10 penalties, upon information and belief, Plaintiff and/or other non-exempt employees would clock
11 out before the fifth hour worked and continue working to reflect compliant meal periods, regardless
12 of whether they had received a compliant meal period. Thus, Defendants did not pay at least
13 minimum wages for all hours worked by Plaintiff and other non-exempt employees. To the extent
14 that these off-the-clock hours did not qualify for overtime premium payment, Defendants did not
15 pay at least minimum wages for those hours worked off-the-clock.

16 ***Failure to Provide Compliant Meal Periods***

17 35. As stated above, Defendants had, and continue to have, a company-wide policy
18 and/or practice of understaffing, which, combined with the assignment of heavy workloads and
19 failing to adhere to a schedule of meal periods, has resulted in a lack of meal period coverage and
20 prevented Plaintiff and other non-exempt employees from taking all timely, uninterrupted meal
21 periods to which they were entitled. As a result, Plaintiff and other non-exempt employees were
22 forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal
23 periods interrupted, and/or had to forgo their meal periods altogether.

24 36. For example, on several occasions, Plaintiff was unable to take her meal period until
25 after her sixth hour after the start of her scheduled shift. Moreover, upon information and belief,
26 because Defendants frowned upon employees accruing meal period penalties, Defendants would
27 require Plaintiff and other non-exempt employees to clock out but continue to work to reflect
28 compliant meal periods, regardless of whether they had received a compliant meal period, in order

1 to strictly limit meal penalties that would need to be paid by Defendants.

2 37. Additionally, Defendants did not provide Plaintiff and other non-exempt employees
3 with all second 30- minute meal periods on days that they worked in excess of ten (10) hours in
4 one day. Plaintiff and other non-exempt employees did not sign valid meal period waivers on days
5 that they were entitled to meal periods and were not relieved of all duties.

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

7 38. During the relevant time period, Defendants regularly failed to authorize and permit
8 Plaintiff and other non-exempt employees to take a ten (10) minute rest period per each four (4)
9 hour period worked or major fraction thereof.

10 39. Specifically, Plaintiff alleges that Defendants never provided rest periods.

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

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

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

24 42. For the same reason, Defendants failed to accurately list the total number of hours
25 worked by Plaintiff and other non-exempt employees, and failed to list the applicable hourly rates
26 of pay in effect during the pay period and the corresponding accurate number of hours worked at
27 each hourly rate.

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1 43. Because Defendants failed to provide the correct net and gross wages earned,
2 applicable rates of pay, and number of total hours worked on wage statements, Plaintiff and other
3 non-exempt employees have been prevented from verifying, solely from information on the wage
4 statements themselves, that they were paid correctly and in full. Instead, Plaintiff and other non-
5 exempt employees have had to look to sources outside of the wage statements themselves and
6 reconstruct time records to determine whether in fact they were paid correctly and the extent of
7 underpayment, thereby causing them injury.

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

9 44. On information and belief, Defendants have a company-wide practice or policy of
10 paying departing employees their final wages on the next regular pay cycle, instead of adhering to
11 the time requirements set forth in Labor Code sections 201 and 202.

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

17 46. Specifically, Plaintiff alleges that she did not receive a final pay check, although a
18 statement dated 10/15/21 was created indicating that she was owed at least \$826.64, plus missed
19 wages, and accrued vacation wages. Moreover, Defendants failed to pay Plaintiff for the seven
20 hours she worked on the day she quit on 10/12/21.

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

22 47. Defendants' California stores' areas are generally similar in their layout and design
23 and there was, and continues to be, space behind the counters to allow for the presence and use of a
24 seat or stool by Plaintiff and other non-exempt employees (with reasonable or no modification to
25 these work areas) during the performance of their work duties. Defendants could provide Plaintiff
26 and other non-exempt employees with a seat or stool at the counters, but instead denies them
27 seating and forces aggrieved employees to stand throughout the day. Plaintiff and other non-
28 exempt employees spent a substantial portion of their day behind the counters, regardless of their

1 actual job title or description. The nature of the work of an employee performing their job duties
2 can reasonably be accomplished from a seated position. However, Defendants systematically, and
3 on a company-wide basis, did not provide seats or stools at or near counters, forcing Plaintiff and
4 other non-exempt employees to stand throughout their work shifts.

5 48. Defendants did not provide Plaintiff and other non-exempt employees with seats or
6 stools in reasonable proximity to their work areas to allow them to use seats when it would not
7 interfere with the performance of their duties for times when they were not engaged in active duties
8 that require standing. In other words, to the extent Plaintiff and other non-exempt employees
9 engaged in duties in which the nature of the work required standing, Defendants denied them the
10 use of seats nearby during lulls in their work duties. Moreover, Defendants did not inform Plaintiff
11 and other non-exempt employees of their rights to a seat or stool under California law.

12 ***Defendants' Failure to Reimburse Business Expenses***

13 49. During the relevant time period, Defendants had a company-wide policy of
14 requiring Plaintiff and other non-exempt employees to purchase their own masks and gloves which
15 were necessary for their jobs, but Defendants failed to reimburse them for these costs.

16 50. Although Defendants required Plaintiff and other non-exempt employees to utilize
17 masks and gloves to carry out their work-related duties, Defendants failed to reimburse them for
18 this cost. Defendants could have provided Plaintiff and other non-exempt employees with the
19 actual tools for use on the job, such as supplied masks and gloves. Or, Defendants could have
20 reimbursed employees for the costs of their masks and gloves or provided a PPE allowance.
21 Instead, Defendants passed these operating costs off onto Plaintiff and other non-exempt
22 employees.

23 ***Defendants' Failure to Pay Accrued Vacation Wages***

24 51. Plaintiff alleges that Defendants failed to pay all accrued vacation compensation for
25 the last pay period.

26 52. By way of example, at the time Plaintiff separated from Defendants' employ she
27 had accrued 45.59 hours of vacation pay, which was never paid out to her.

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53. Labor Code section 227.3, prohibits employers from forfeiting payment of the vested vacation wages of their employees.

54. As a matter of uniform corporate policy, procedure and practice Defendants violated Labor Code section 227.3 by failing to pay Plaintiff and other non-exempt employees all vested vacation wages at the end of their employment. The uniform policy of not paying Plaintiff and other non-exempt employees vested vacation wages at the end of their employment resulted in a forfeiture of vested vacation wages in violation of Labor Code section 227.3.

Defendants' Failure to Provide Supplemental COVID-19 Pay

55. Defendants also breached the state mandate for COVID-19, as it did not provide pay for COVID-19 related time off, but rather required Plaintiff and other class members to use sick pay or vacation pay to take a day off for the COVID-19 vaccine or illness.

Facts Regarding Willfulness

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

Unfair Business Practices

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

58. As a direct result of the wage and hour violations herein alleged, Plaintiff and members of the Plaintiff Class have suffered, and continue to suffer substantial losses related to the use and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel Defendants to perform their obligations under state law, all to Plaintiff's and the

1 Plaintiff Class members' respective damage in amounts according to proof at the time of trial.

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

3 59. Plaintiff is currently complying with the procedures for bringing suit specified in
4 Labor Code section 2699.3.

5 60. By letter dated January 24, 2022, required notice was provided to Labor and
6 Workforce Development Agency ("LWDA") and Defendant, of the specific provisions of the
7 Labor Code alleged to have been violated, including the facts and theories to support the alleged
8 violations.

9 61. This Complaint will be amended when more than sixty-five (65) days have passed
10 since the date the notice was mailed to Defendant and the LWDA, if the LWDA chooses not to
11 investigate the allegations herein.

12 **CLASS ACTION ALLEGATIONS**

13 62. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

14 63. Pursuant to Code of Civil Procedure section 382, this action is brought and may be
15 properly maintained as a class action. This action satisfies the ascertainability, numerosity,
16 commonality, typicality, adequacy, predominance, and superiority requirements of those
17 provisions.

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

20 65. Plaintiff Class: All persons who have been, or currently are, employed by Defendants
21 and who held, or hold, job positions which Defendants have classified as "non-exempt" employees in
22 the State of California, at any time since four years prior to filing this action, through the date
23 judgment is rendered in this action.

24 66. Terminated Sub Class: All members of the Plaintiff Class whose employment ended
25 during the Class Period.

26 67. Numerosity: Plaintiff is informed and believes, and on that basis alleges, that during
27 the class period hundreds of class members have been employed by Defendants as non-exempt
28 employees in the State of California. Because so many persons have been employed by Defendants

1 in this capacity, the members of the Plaintiff Class are so numerous that joinder of all members is
2 impossible and/or impracticable.

3 68. Common Questions of Law and/or Fact: Common questions of law, in fact, exist as
4 to all members of the Plaintiff Class and predominate over any questions affecting solely individual
5 members of the Plaintiff Class. Among the questions of law and fact, that are relevant to the
6 adjudication of class members' claims are as follows:

- 7 a. Whether Plaintiff and Class Members are subject to and entitled to the benefits of
8 California wage and hour statutes;
- 9 b. Whether Defendants failed to pay Plaintiff and Class Members for all hours worked;
- 10 c. Whether Defendants failed to pay Plaintiff and Class Members all overtime;
- 11 d. Whether Defendants had a standard policy of not providing compliant meal breaks
12 and premiums to Plaintiff and members of the Plaintiff Class;
- 13 e. Whether Defendants had a standard policy of not providing compliant rest breaks
14 and premiums to Plaintiff and members of the Plaintiff Class;
- 15 f. Whether Defendants unlawfully and/or willfully failed to provide Plaintiff and
16 members of the Plaintiff Class with true and proper wage statements upon payment
17 of wages, in violation of Labor Code section 226;
- 18 g. Whether Defendants unlawfully/or willingly failed to timely pay Plaintiff and the
19 Terminated Sub Class upon termination;
- 20 h. Whether Defendants failed to provide Plaintiff and members of the Plaintiff Class
21 with suitable seating;
- 22 i. Whether Defendants failed to reimburse Plaintiff and members of the Plaintiff Class
23 for business-related expenses;
- 24 j. Whether Defendants failed to provide Plaintiff and members of the Plaintiff Class
25 with accrued vacation wages;
- 26 k. Whether Defendants failed to provide Plaintiff and members of the Plaintiff Class
27 with supplemental COVID-19 pay;
- 28 l. Whether Plaintiff and members of the Plaintiff Class sustained damages, and if so,

the proper measure of such damages, as well as interest, penalties, costs, attorneys' fees, and equitable relief;

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

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

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

71. Superiority of Class Action: A class action is superior to other available methods for the fair and efficient adjudication of this litigation since individual litigation of the claims of all Class Members is impracticable. It would be unduly burdensome to the courts if these matters were to proceed on an individual basis, because this would potentially result in hundreds of individuals, repetitive lawsuits. Further, individual litigation presents the potential for inconsistent or contradictory judgments, and the prospect of a "race to the courthouse," and an inequitable allocation of recovery among those with equally meritorious claims. By contrast, the class action

1 device presents far fewer management difficulties, and provides the benefit of a single
2 adjudication, economics of scale, and comprehensive supervision by a single court.

3 72. The various claims asserted in this action are additionally or alternatively certifiable
4 under the provisions of the Code of Civil Procedure section 382 because:

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

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

12 **FIRST CAUSE OF ACTION**

13 **Unpaid Overtime**

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

15 73. Plaintiff incorporates herein by reference the allegations set forth above.

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

19 75. California Labor Code section 510 and 1198 and the applicable Industrial Welfare
20 Commission ("IWC") wage order require employers to pay employees working more than eight (8)
21 hours in a day or more than forty (40) hours in a workweek at the rate of one-and-one-half (1 ½)
22 times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than
23 forty (40) hours in a workweek. The applicable IWC wage order further provides that employers
24 are required to pay employees working more than twelve (12) hours in a day overtime
25 compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay
26 includes all remuneration for employment paid to, or on behalf of, the employee, including
27 nondiscretionary bonuses and incentive pay.

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

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

14 78. For example, prior to almost every shift, Plaintiff was required to arrive early and
15 spend 2-3 minutes walking to break room to clock in.

16 79. Moreover, Defendants' company-wide policy and/or practice of understaffing its
17 locations while assigning heavy workloads, resulted in a failure to provide Plaintiff and other non-
18 exempt employees with adequate meal period coverage. Defendants also failed to adhere to a
19 schedule of meal periods, which further caused Plaintiff and other non-exempt employees to not be
20 relieved of their duties for compliant meal periods. As a result, Plaintiff and other non-exempt
21 employees missed or had meal periods interrupted in order to complete their assigned tasks.
22 Consequently, Plaintiff and other non-exempt employees performed work during meal periods for
23 which they were not paid. Further, on information and belief, because Defendants frowned upon
24 employees accruing meal period penalties, employees were required to continue working after
25 clocking out for their meal periods. Thus, Plaintiff and other non-exempt employees performed
26 work during meal periods for which they were not paid. Defendants knew or should have known
27 that as a result of these company-wide practices and/or policies, Plaintiff and other non-exempt
28 employees were performing assigned duties off-the-clock during meal periods, and were suffered

1 or permitted to perform work for which they were not paid. Because Plaintiff and other non-exempt
2 employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some
3 of this off-the-clock work qualified for overtime premium pay.

4 80. Defendants' failure to pay Plaintiff and members of the Classes the balance of
5 overtime compensation, as required by California law, violates the provisions of Labor Code
6 sections 510 and 1198. Plaintiff and members of the Classes are entitled to recover civil penalties,
7 attorney's fees, costs, and interest thereon.

8 **SECOND CAUSE OF ACTION**

9 **Failure to Pay All Wages**

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

11 81. Plaintiff incorporates herein by reference the allegations set forth above.

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

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

19 84. Under the applicable wage order and state regulations, Plaintiff and the Plaintiff
20 Class are entitled to recover compensation for all hours worked, but not paid, for the four (4) years
21 preceding the filing of this action, in addition to reasonable attorney's fees and costs of suit in
22 accordance with Labor Code section 218.5, and penalties pursuant to Labor Code sections 203 and
23 206.

24 85. The IWC wage order No. 7-2001 section 2(G) defines "hours worked" to mean "the
25 time during which an employee is subject to the control of an employer and includes all the time
26 the employee is suffered or permitted to work, whether or not required to do so."

27 86. Defendants suffered or permitted Plaintiff and members of the Plaintiff Class to
28 work portions of the day for which Defendants failed to compensate them. This includes time spent

1 under Defendants' control prior to clocking in and during meal periods.

2 87. Labor Code section 1194(a) provides in relevant part: "Notwithstanding any
3 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage ...
4 is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage
5 ... including interest thereon, reasonable attorney's fees, and costs of suit."

6 88. Labor Code section 1194.2(a) provides in relevant part: "In any action under section
7 1193.6 or section 1194 to recover wages because of the payment of a wage less than the minimum
8 wage fixed by an order of the commission, an employee shall be entitled to recover liquidated
9 damages in an amount equal to the wages unlawfully unpaid and interest thereon."

10 89. Labor Code section 1197 provides: "The minimum wage for employees fixed by the
11 commission is the minimum wage to be paid to employees, and the payment of a less wage than
12 the minimum so fixed is unlawful."

13 90. Plaintiff is informed and believes, and therefore alleges, that Defendants'
14 compensation schemes do not fairly compensate Plaintiff and other Class Members for all hours
15 spent performing their job duties.

16 91. For example, prior to almost every shift, Plaintiff was required to arrive early and
17 spend 2-3 minutes walking to break room to clock in.

18 92. Moreover, Defendants' company-wide policy and/or practice of understaffing its
19 locations while assigning heavy workloads, resulted in a failure to provide Plaintiff and other non-
20 exempt employees with adequate meal period coverage. Defendants also failed to adhere to a
21 schedule of meal periods, which further caused Plaintiff and other non-exempt employees to not be
22 relieved of their duties for compliant meal periods. As a result, Plaintiff and other non-exempt
23 employees missed or had meal periods interrupted in order to complete their assigned tasks.
24 Consequently, Plaintiff and other non-exempt employees performed work during meal periods for
25 which they were not paid. Further, on information and belief, because Defendants frowned upon
26 employees accruing meal period penalties, employees were required to continue working after
27 clocking out for their meal periods. Thus, Plaintiff and other non-exempt employees performed
28 work during meal periods for which they were not paid. Defendants knew or should have known

1 that as a result of these company-wide practices and/or policies, Plaintiff and other non-exempt
2 employees were performing assigned duties off-the-clock during meal periods, and were suffered
3 or permitted to perform work for which they were not paid.

4 93. The failure to pay at least minimum wages to Plaintiff and members of the Plaintiff
5 Class for each and every hour worked violates Labor Code sections 1182.11-1182.12, 1194,
6 1194.2, and 1197; IWC wage order No. 7-2001 section 4; and Business & Professions Code.

7 94. The failure to pay designated wages to Plaintiff and members of the Plaintiff Class
8 for each and every hour worked violates Labor Code section 221 and 223; IWC wage order No. 7-
9 2001 section 3; and Business & Professions Code.

10 95. During the applicable time period, Defendants have and continue to have a pattern
11 and practice of not providing its employees all wages, by failing to include all compensable time,
12 including time worked off-the-clock.

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

15 **THIRD CAUSE OF ACTION**

16 **Non-Compliant Meal Breaks**

17 **(By Plaintiff and Members of the Putative Class Against all Defendants)**

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

20 98. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and the Class
21 Members regularly worked more than five (5) hours per shift and were entitled to a meal period of
22 not less than thirty (30) minutes without duty.

23 99. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that
24 Defendants routinely failed to provide Plaintiff and the members of the Classes with such meal
25 periods without duty, notwithstanding the fact that Plaintiff and the members of the Classes had not
26 waived their right to the same. Thus, Defendants failed to provide Plaintiff and the members of the
27 Classes with meal periods required by Labor Code sections 226.7, 512, 516 and IWC wage order
28 No. 7-2001 section 11, and categorically failed to pay any and all meal period wages due.

1 100. Plaintiff and Class Members seek damages pursuant to Labor Code section 226.7(b)
2 and IWC wage order No. 7-2001 section 11(D), in the amount of one additional hour of pay at the
3 regular rate for each work day that the meal period is/was not provided to Plaintiff and any member
4 of the Classes, the cumulative sum of which is to be determined at trial.

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

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

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

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

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24
25 ¹ See, e.g., *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004; *Lubin v.*
26 *Wackenhut Corp.* (2016) 5 Cal.App.5th 926 , *rehg. denied* (Dec. 14, 2016); *Faulkinbury v. Boyd &*
27 *Assocs., Inc.* (2013) 216 Cal.App.4th 220; *Berlanga v. Equilon Enterprises LLC* (N.D.Cal., Aug.
28 31, 2017, No. 17-CV-00282-MMC) 2017 WL 3782245 at *3 (a policy requiring employees to
“remain in contact with supervisors and other employees working in their units throughout their
shifts... would appear to be unlawful under [*Augustus*.]”)

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

4 106. Rather, Plaintiff and members of the Classes' meal periods were typically late, and
5 short, as employees would clock out for their meal breaks but continue working as a result of the
6 heavy workloads. Further, Defendants failed to provide second 30-minute meal periods on days
7 worked in excess of ten (10) hours in one day.

8 107. For example, on several occasions, Plaintiff was unable to take her meal period until
9 after her sixth hour after the start of her scheduled shift. Moreover, upon information and belief,
10 because Defendants frowned upon employees accruing meal period penalties, Defendants would
11 require Plaintiff and other non-exempt employees to clock out but continue to work to reflect
12 compliant meal periods, regardless of whether they had received a compliant meal period, in order
13 to strictly limit meal penalties that would need to be paid by Defendants.

14 108. Thus, Defendants have failed to perform its obligations to provide Plaintiff and the
15 members of the Plaintiff Class with off-duty meal periods by the end of the fifth hour of work and
16 a second meal period by the end of the tenth hour of work. Defendants also have failed to pay
17 Plaintiff and the members of the Plaintiff Class one (1) hour of pay at the regular rate for each off-
18 duty meal period that they have been denied.

19 109. On July 15, 2021, the California Supreme Court issued a decision in *Ferra v. Loews*
20 *Hollywood Hotel, LLC* (2021) 11 Cal.5th 858 where the court unanimously held that employers
21 must pay premium payments to employees for missed meal, rest, and recovery breaks at the
22 employee's "regular rate of pay" instead of their base hourly rate.

23 110. Defendants knew or should have known that as a result of its policies and/or
24 practices, that Plaintiff and members of the Classes were not actually relieved of all duties to take
25 timely, uninterrupted meal periods. Defendants further knew or should have known that it did not
26 pay Plaintiff and members of the Classes all meal period premiums when meal periods were
27 missed, late, short, and/or interrupted. Furthermore, Defendants have engaged in a company-wide
28 practice and/or policy of not paying meal period premiums owed when compliant meal periods are

1 not provided. Because of this practice and/or policy, Plaintiff and members of the Classes have not
2 received all premium pay for missed, interrupted, or late meal periods. Accordingly, Defendants
3 failed to provide all meal periods in violation of Labor Code sections 226.7, 512(a), 516, and 1198.

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

6 **FOURTH CAUSE OF ACTION**

7 **Non-Compliant Rest Breaks**

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

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

11 113. Labor Code sections 226.7, 516, and 1198, and the applicable IWC wage order
12 require employers to provide rest periods and to pay an employee one (1) additional hour of pay at
13 the employee's regular rate for each work day that a meal or rest period is not provided. Labor
14 Code section 226.7 provides that no employer shall require an employee to work during any rest
15 period mandated by an applicable order of the IWC. The applicable IWC wage order provides that
16 "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as
17 practicable shall be in the middle of each work period" and that the "rest period time shall be based
18 on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or
19 major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

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

23 115. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that
24 Defendants routinely failed to provide Plaintiff and the members of the Classes with such paid rest
25 periods without duty, notwithstanding the fact that Plaintiff and the members of the Classes had not
26 waived their right to the same. Thus, Defendants failed to provide Plaintiff and Class Members
27 with rest periods required by Labor Code sections 226.7, 512, and 516, IWC wage order No. 7-
28 2001 section 12 and categorically failed to pay any and all rest period wages due.

116. Plaintiff alleges that she and members of the Classes were never provided with rest periods.

117. Plaintiff and Class Members seek damages pursuant to Labor section 226.7(b) and the IWC wage order No. 7-2001 section 12(B), in the amount of one additional hour of pay at the regular rate for each work day that the rest period is/was not provided or provided late to Plaintiff and any member of the Classes, the cumulative sum of which is to be determined at trial.

118. Therefore, Plaintiff and members of the Plaintiff Class are entitled to compensation for Defendants' failure to provide rest periods, plus interest, attorneys' fees, expenses, and costs of suit pursuant to Labor Code section 226.7(b) and the applicable wage order.

FIFTH CAUSE OF ACTION

Failure to Furnish Accurate Itemized Wage Statements

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

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

120. Labor Code section 226(a) and IWC wage order No. 7-2001 section 7(B) requires employers to furnish each employee with a statement itemizing, among other things, the total hours worked by the employee, on a semi-monthly basis or at the time of each payment of wages.

121. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in section 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).

122. Defendants knowingly and intentionally failed to furnish Plaintiff and the members of the Classes with timely, itemized statements in compliance with Labor Code section 226(a) and

1 IWC Wage order No. 7-2001 section 7(B).

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

7 124. Plaintiff is informed and believes, and thereon alleges, that Defendants did not
8 maintain accurate business records pertaining to the total hours worked for Defendants by Plaintiff
9 and the members of the Classes as required under Labor Code section 1174.5. This is a result of
10 missing hours worked, and missed meal and rest-break premiums, as illustrated above.

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

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

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

1 Plaintiff and members of the Classes with second 30-minute meal periods to which they were
2 entitled, Defendants kept no records of meal start and end times for second meal periods.

3 128. Plaintiff and the members of the Classes herein seek damages and penalties pursuant
4 to Labor Code section 226(e) for Defendants' violations of Labor Code section 226(a).

5 129. Plaintiff and Class Members also seek preliminary and permanent injunctive relief
6 and an award of reasonable attorneys' fees and costs pursuant to Labor Code section 226(h).

7 **SIXTH CAUSE OF ACTION**

8 **Waiting Time Penalties**

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

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

12 131. At all times, relevant herein, Defendants were required to pay their employees all
13 wages owed in a timely fashion during and at the end of their employment, pursuant to Labor Code
14 section 201-203.

15 132. As a pattern and practice, Defendants regularly failed to pay Plaintiff and the
16 members of the Terminated Sub Class their final wages pursuant to Labor Code sections 201-203,
17 and accordingly owe waiting time penalties pursuant to Labor Code section 203.

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

24 134. On information and belief, Defendants have a company-wide practice or policy of
25 paying departing employees their final wages late, instead of adhering to the time requirements set
26 forth in Labor Code sections 201 and 202.

27 135. Specifically, Plaintiff alleges that she did not receive a final pay check, although a
28 statement dated 10/15/21 was created indicating that she was owed at least \$826.64, plus missed

1 wages, and accrued vacation wages. Moreover, Defendants failed to pay Plaintiff for the seven
2 hours she worked on the day she quit on 10/12/21.

3 136. In addition, Defendants willfully failed to pay Plaintiff and members of the
4 Terminated Sub Class the earned and unpaid wages set forth above, including but not limited to,
5 overtime wages, minimum wages, and/or meal rest period premiums, either at the time of
6 discharge, or within seventy-two (72) hours of their leaving Defendants employ.

7 137. Plaintiff and members of the Terminated Sub Class are entitled to recover civil
8 penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 256.

9 **SEVENTH CAUSE OF ACTION**

10 **Failure to Provide Suitable Seating**

11 **(By Plaintiff and Members of the Putative Class Against all Defendants)**

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

14 139. Labor Code section 1198 makes it illegal to employ an employee under conditions
15 of labor that are prohibited by the applicable wage order. Labor Code section 1198 requires that
16 "the standard conditions of labor fixed by the commission shall be the ... standard conditions of
17 labor for employees. The employment of any employee ... under conditions of labor prohibited by
18 the order is unlawful." Code of Regulations, title 8, section 11070(14)(A) provides that "[a]ll
19 working employees shall be provided with suitable seats when the nature of the work reasonably
20 permits the use of seats."

21 140. "The 'nature of the work' refers to an employee's tasks performed at a given
22 location for which a right to a suitable seat is claimed, rather than a 'holistic' consideration of the
23 entire range of an employee's duties anywhere on the jobsite during a complete shift. If the tasks
24 being performed at a given location reasonably permit sitting, and provision of a seat would not
25 interfere with performance of any other tasks that may require standing, a seat is called for." *Kilby*
26 *v. CVS Pharmacy, Inc.* (2016) 63 Cal.4th 1, 8. "Whether the nature of the work reasonably permits
27 sitting is a question to be determined objectively based on the totality of the circumstances. An
28 employer's business judgment and the physical layout of the workplace are relevant but not

dispositive factors. The inquiry focuses on the nature of the work, not an individual employee's characteristics." *Ibid.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 24. In other words, the employer must show that compliance is "infeasible because no suitable seating exists." See *ibid.*

141. Defendants violated Labor Code section 1198 and Code of Regulations, title 8, section 11070(14)(A) because Plaintiff and members of the Classes were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. Defendants' management did not inform Plaintiff and members of the Classes that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

142. As a result of Defendants' company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Plaintiff and members of the Classes were forced to stand during shifts and denied seats. Defendants' failure to provide suitable seating to Plaintiff and members of the Classes violates Labor Code section 1198 and IWC wage order No. 7-2001 section 14(A).

143. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. 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." Code of Regulations, title 8, section 11070(14)(B) provides that "[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties."

144. The IWC states that section 14(B) applies during "lulls in operation" when an employee, while still on the job, is not then actively engaged in any duties. *Kilby* citing IWC, 1976 Wage orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under section 14(A) if his or her actual tasks at a discrete location make seated work feasible,

1 while working there. *Ibid.* However, if other job duties take the employee to a different location
2 where he or she must perform tasks requiring standing, the employee would be entitled to a seat
3 under section 14(B) during “lulls in operation.” *Ibid.*

4 145. Defendants did not provide Plaintiff and members of the Classes with seats or stools
5 in reasonable proximity to their work areas to allow them to use seats when it would not interfere
6 with the performance of their duties for times when they were not engaged in active duties that
7 require standing.

8 146. As a result of Defendants’ company-wide policy and/or practice of prohibiting
9 employees from sitting at any time, even when they were not engaged in active duties requiring
10 standing, and company-wide failure to provide seats in reasonable proximity to their work areas,
11 Plaintiff and members of the Classes were forced to stand during shifts and denied seats.
12 Defendants’ failure to provide suitable seating to Plaintiff and members of the Classes violates
13 Labor Code section 1198 and IWC Wage order No. 7-2001 section 14(B).

14 147. Plaintiff and members of the Classes are therefore entitled to recover civil penalties,
15 attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring Defendants into
16 compliance with California’s seating requirements, pursuant to Labor Code section 1194.5.

17 **EIGHTH CAUSE OF ACTION**

18 **Failure to Reimburse Business Expenses**

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

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

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

27 150. The applicable wage order, IWC Wage order No. 7-2001, provides that: “[w]hen
28 tools or equipment are required by the employer or are necessary to the performance of a job, such

1 tools and equipment shall be provided and maintained by the employer, except that an employee
2 whose wages are at least two (2) times the minimum wage provided herein may be required to
3 provide and maintain hand tools and equipment customarily required by the trade or craft.”

4 151. During the Class Period Defendants had a company-wide policy requiring Plaintiff
5 and members of the Classes to purchase their own face masks and gloves for work-related duties.

6 152. Although Defendants required Plaintiff and members of the Classes to utilize masks
7 and gloves to carry out their work-related duties, Defendants failed to reimburse them for this cost.
8 Defendants could have provided Plaintiff and members of the Classes with the actual tools for use
9 on the job, such supplied masks and gloves. Alternatively, Defendants could have reimbursed
10 employees for the costs of their masks and gloves or provided a PPE allowance. Instead,
11 Defendants passed these operating costs off onto Plaintiff and members of the Classes.

12 153. Thus, Defendants had, and continue to have, a company-wide policy and/or practice
13 of not reimbursing employees for expenses necessarily incurred in violation of Labor Code section
14 2802.

15 154. Plaintiff and members of the Classes are entitled to recover civil penalties,
16 attorney’s fees, costs, and interest thereon.

17 **NINTH CAUSE OF ACTION**

18 **Failure to Provide COVID-19 Supplemental Paid Sick Leave**

19 **(By Plaintiff and Members of the Putative Class Against all Defendants)**

20 155. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth
21 above as if fully set forth herein.

22 156. Labor Code section 248.2(b)(1) provides that:

23 “[a]n employer shall provide COVID-19 supplemental paid sick leave to each
24 covered employee if that covered employee is unable to work or telework due to
25 any of the following reasons:

26 (A) The covered employee is subject to a quarantine or isolation period related to
27 COVID-19 as defined by an order or guidelines of the State Department of Public
28 Health, the federal Centers for Disease Control and Prevention, or a local health

1 officer who has jurisdiction over the workplace ...

2 (B) The covered employee has been advised by a health care provider to self-
3 quarantine due to concerns related to COVID-19.

4 (C) The covered employee is attending an appointment to receive a vaccine for
5 protection against contracting COVID-19.

6 (D) The covered employee is experiencing symptoms related to a COVID-19
7 vaccine that prevent the employee from being able to work or telework.

8 (E) The covered employee is experiencing symptoms of COVID-19 and seeking a
9 medical diagnosis.

10 (F) The covered employee is caring for a family member, as defined in subdivision
11 (c) of Section 245.5, who is subject to an order or guidelines described in
12 subparagraph (A) or who has been advised to self-quarantine, as described in
13 subparagraph (B).

14 (G) The covered employee is caring for a child, as defined in subdivision (c) of
15 Section 245.5, whose school or place of care is closed or otherwise unavailable for
16 reasons related to COVID-19 on the premises.”

17 157. Labor Code section 248.2 (b)(2) states:

18 (D) The total number of hours of COVID-19 supplemental paid sick leave to which
19 a covered employee is entitled pursuant to subparagraph (A), (B), or (C) shall be in
20 addition to any paid sick leave that may be available to the covered employee under
21 Section 246.

22 (E) A covered employee may determine how many hours of COVID-19
23 supplemental paid sick leave to use, up to the total number of hours to which the
24 covered employee is entitled pursuant to subparagraph (A), (B), or (C) of this
25 paragraph. The employer shall make COVID-19 supplemental paid sick leave
26 available for immediate use by the covered employee, upon the oral or written
27 request of the covered employee to the employer.

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(F) An employer is not required to provide a covered employee more than the total number of hours of COVID-19 supplemental paid sick leave to which the covered employee is entitled pursuant to subparagraph (A), (B), or (C) of this paragraph.

158. Further, section 248.2 (b)(3) states:

(A) Each hour of COVID-19 supplemental paid sick leave shall be compensated at a rate equal to the following:

i. For nonexempt covered employees, by the highest of the following:

1. Calculated in the same manner as the regular rate of pay for the workweek in which the covered employee uses COVID-19 supplemental paid sick leave, whether or not the employee actually works overtime in that workweek.

2. Calculated by dividing the covered employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

3. The state minimum wage.

4. The local minimum wage to which the covered employee is entitled.

ii. COVID-19 supplemental paid sick leave for exempt covered employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

159. Defendants failed to comply Labor Code section 248 because it required Plaintiff and Class Members to take their personal sick days and/or vacation days for COVID-19 related time off and failed to provide state mandated COVID-19 supplemental sick pay.

160. Specifically, Plaintiff contracted COVID-19 in March of 2021 and rather than complying with the provisions set forth above, Defendants used 70.55 hours of Plaintiff's vacation hours and 48 hours of sick pay to cover her mandatory time away from work.

161. Defendants are liable to Plaintiff and the members of the Plaintiff Class alleged herein for the unpaid supplemental COVID-19 sick pay.

162. Wherefore, Plaintiff and the members of the Plaintiff Class request relief as hereinafter provided.

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1 170. Business and Professions Code section 17200 defines unfair competition to include,
2 “unlawful, unfair or fraudulent business practices.”

3 171. Plaintiff and all proposed Class Members are “persons within the meaning of
4 Business and Professions Code section 17204, who have suffered injury in fact and have lost
5 money or property as a result of Defendants’ unfair competition.

6 172. Defendants have been committing, and continues to commit, acts of unfair
7 competition by engaging in the unlawful, unfair and fraudulent business practices and acts
8 described in this Complaint, including, but not limited to:

- 9 a) violations of Labor Code sections 510, 1198;
- 10 b) violations of Labor Code sections 1182.11-1182.12, 1194, 1194.2, 1197, 1198;
- 11 c) violations of Labor Code sections 226.7, 512, 516, and 1198;
- 12 d) violations of Labor Code sections 226, 1174;
- 13 e) violations of Labor Code sections 201 and 202;
- 14 f) violations of Labor Code section 223;
- 15 g) violations of Labor Code section 227.3;
- 16 h) violations of Labor Code section 248.2;
- 17 i) violations of Labor Code section 1198;
- 18 j) violations of Labor Code section 2802;
- 19 k) violations of Labor Code section 2810.5;
- 20 l) violations of Labor Code section 246; and
- 21 m) violations of the applicable wage order.

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

27 174. Business and Professions Code section 17203 provides that the Court may restore to
28 an aggrieved party any money or property acquired by means of the unlawful, unfair, and/or

fraudulent business acts or practices.

175. Plaintiff seeks a court order enjoining Defendants from the unlawful, unfair, and/or fraudulent activity alleged herein.

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

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

178. Plaintiff seeks restitution for herself and all others similarly situated of these amounts, including all earned and unpaid wages and attorneys' fees and costs pursuant to Code of Civil Procedure section 1021.5.

PRAYER FOR RELIEF

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

1. For an order certifying the proposed Plaintiff and Terminated Sub-Class;
2. For an order that counsel for Plaintiff be appointed class counsel
3. Certification of this class action on behalf of the proposed Plaintiff and Terminated Sub-Class;
4. Designation of Plaintiff as the class representative of the Plaintiff and Terminated Sub Class;
5. For restitution of all monies due to Plaintiff and the members of the Plaintiff Class and disgorgement of all profits from the unlawful business practices of Defendant
6. An order appointing Plaintiff's counsel as class counsel;
7. Prejudgment and post judgment interest on all sums awarded;
8. For compensatory damages;
9. For penalties pursuant to Labor Code sections 200, 226, 226.7, 226.3, 226.7;
10. For interest accrued to date;

- 1 11. For costs of suit and expenses incurred herein pursuant to Labor Code sections 226
2 and 1194;
- 3 12. For reasonable attorneys' fees pursuant to Labor Code section 226 and Code of
4 Civil Procedure section 1021.5, and/or other applicable law; and
- 5 13. A declaratory judgment that Defendants have knowingly and intentionally violated
6 the following provisions of law;
- 7 a. Labor Code sections 510, 1198 for failing to pay overtime;
 - 8 b. Labor Code sections 1182.11-1182.12, 1194, 1194.2, 1197, 1198 for
9 failing to pay all wages;
 - 10 c. Labor Code sections 226.7, 512, 516, and 1198 for failing to provide
11 compliant meal and rest breaks;
 - 12 d. Labor Code sections 226, 1174 for failing to provide compliant wage
13 statements;
 - 14 e. Labor Code sections 201 and 202 for failing to pay wages at
15 termination;
 - 16 f. Labor Code section 1198 for failing to provide suitable seating;
 - 17 g. Labor Code section 2802 for failing to reimburse business expenses;
 - 18 h. Labor Code section 248 for failing to provide supplemental covid-19
19 sick leave pay;
 - 20 i. Labor Code section 227.3 for failing to provide accrued vacation
21 wages;
 - 22 j. Business & Professions Code sections 17200-08 for violating the
23 provisions set forth herein above.
- 24 14. For all such other and further relief that the Court may deem just and proper.

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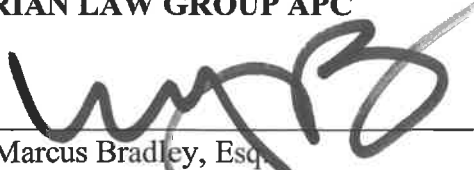
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2 DATED: January 24, 2022

BRADLEY/GROMBACHER, LLP
MAJARIAN LAW GROUP APC

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4 By: 

Marcus Bradley, Esq.
Kiley Grombacher, Esq.
Lirit King, Esq.
Sahag Majarian, Esq.
Garen Majarian, Esq.

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9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands trial of Plaintiff's and the members of the Classes' claims by jury
11 to the extent authorized by law.
12

13 DATED: January 24, 2022

BRADLEY/GROMBACHER, LLP
MAJARIAN LAW GROUP APC

14
15 By: 

Marcus Bradley, Esq.
Kiley Grombacher, Esq.
Lirit King, Esq.
Sahag Majarian, Esq.
Garen Majarian, Esq.

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19 Attorneys for Plaintiff
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