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and on behalf of all others similarly situated.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE

OLGA GUERRA, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

BEYOND STAFFING SOLUTIONS,
INC., a California corporation;
MOONSTONE PEO, INC., a Texas
corporation as DOE 1; BEYOND
FINANCIAL SOLUTIONS, INC., a
California corporation as DOE 2;
DAMARIS SERRANO, an individual as
DOE 3; PULMUONE FOODS USA, INC.,
an Iowa corporation as DOE 4; and DOES
5 through 50, inclusive,

Defendant(s).

CASE NO.: 30-2022-01245975-CU-OE-CXC

Assigned for All Purposes to:

Hon. Peter Wilson

Dept. CX-101

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods or
Compensation in Lieu Thereof;
4. Failure to Permit Rest Periods or Provide
Compensation in Lieu Thereof;
5. Knowing and Intentional Failure to Provide
Accurate Itemized Wage Statements;
6. Waiting Time Penalties;
7. Failure to Reimburse Business Expenses;
8. Violations of the Unfair Competition Law;
and
9. Enforcement of PAGA (Lab. Code § 2698, *et
seq.*).

JURY TRIAL DEMANDED

1 Plaintiff OLGA GUERRA (“Plaintiff”), individually, and on behalf of all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint against;
3 BEYOND STAFFING SOLUTIONS, INC., a California corporation (“BEYOND STAFFING”);
4 MOONSTONE PEO, INC., a Texas corporation sued under the fictitious name as DOE 1
5 (“MOONSTONE”); BEYOND FINANCIAL SOLUTIONS, INC., a California corporation sued
6 under the fictitious name as DOE 2 (“BEYOND FINANCIAL”); DAMARIS SERRANO, an
7 individual sued under the fictitious name as DOE 3 (“SERRANO”); PULMUONE FOODS USA,
8 INC., an Iowa corporation sued under the fictitious business name as DOE 4 (“PULMUONE”);
9 and DOES 5 through 50, inclusive (BEYOND STAFFING, BEYOND FINANCIAL, SERRANO,
10 PULMUONE, and DOES 5 through 50 collectively referred to as, “Defendants”) and alleges as
11 follows:

12 **INTRODUCTION**

13 1. This proposed class action, pursuant to California Code of Civil Procedure section
14 382, is brought on behalf of all persons currently or formerly employed by Defendants as non-
15 exempt employees who were placed, assigned, and/or staffed via a staffing agency to work at
16 PULMUONE’s facilities in the State of California during the Class Period (collectively, the “Class”
17 or “Class Members”). The term Class Period is defined as any time from four years prior to the
18 commencement of this action through the date of class certification, or as applicable, through the
19 final disposition of this action, and inclusive of any period of time in which the applicable statutes
20 of limitation were tolled between April 6, 2020, and October 1, 2020, pursuant to the California
21 Rules of Court, Appendix I, Emergency Rule 9 (*i.e.*, from August 16, 2017) (“Relevant Liability
22 Period”).

23 2. Plaintiff also brings this representative action pursuant to Labor Code section 2698,
24 *et seq.* (“PAGA”), against Defendants, on Plaintiff’s own behalf and on behalf all current and
25 former non-exempt employees of Defendants who were placed, assigned, and/or staffed via a
26 staffing agency to work at PULMUONE’s facilities in the State of California during the PAGA
27 Period. The term “PAGA Period” is defined as one year prior to the initial filing of this action
28 through the date of final judgment.

3. This proposed class and representative action seeks on behalf of Plaintiff and proposed Class Members, *inter alia*, compensation for all unpaid wages (including minimum, regular and overtime wages), and interest thereon; failure to provide all lawful 30-minute meal periods and net 10-minute rest breaks; inaccurate itemized wage statements; waiting time penalties; unpaid business expense reimbursements; civil penalties; and reasonable attorneys' fees and costs. Plaintiff's action is brought under, *inter alia*, the Industrial Welfare Commission ("IWC") Wage Orders and applicable provisions of the California Code of Regulations, Business & Professions Code sections 17200, *et seq.*, Civil Code section 3289, and Labor Code sections 200, 201, 201.3, 202, 203, 204, 210, 218, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2698, *et seq.*, 2800, 2802, and 2810.3.

4. Under the California Unfair Competition Law, Business and Professions Code ("Cal. Bus. & Prof. Code") sections 17200 *et seq.* ("UCL"), and pursuant to the class action procedures provided for in this statute, Plaintiff, on behalf of herself and the proposed Class, seeks declaratory relief, injunctive relief, and restitution of all benefits Defendants have received from their employees due to their unlawful business practices, including but not limited to, failure to provide minimum wage, regular and overtime compensation due for all hours worked, failure to maintain proper records of hours worked, failure to provide compliant meal periods and rest breaks to their employees or compensation in lieu thereof, failure to provide accurate itemized wage statements, failure to timely pay all earned wages upon separation of employment, and failure to reimburse all necessary business expenditures.

JURISDICTION AND VENUE

5. This Court has jurisdiction over all causes of action asserted herein pursuant to the California Constitution, Article VI, section 10, which grants the Superior Court original jurisdiction in all cases except those given to other trial courts. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law. Further, this is a class action pursuant to California Code of Civil Procedure section 382. As such, the monetary damages, restitution, penalties, and other amounts sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. The Court also has

1 jurisdiction over certain causes of action pursuant to Cal. Bus. & Prof. Code sections 17203 and
2 17204, which provide for exclusive jurisdiction for enforcement of this statute in any court of
3 competent jurisdiction.

4 6. This Court has jurisdiction over Defendants because each Defendant is a citizen of
5 California, a corporation or association organized under the laws of the State of California, an
6 association authorized to do business in California and registered with the California Secretary of
7 State, or does sufficient business in California, has sufficient minimum contacts with California or
8 otherwise intentionally avails itself of the laws and markets of California, through the promotion,
9 sale, marketing and distribution of its products or services in California, to render the exercise of
10 jurisdiction by the California courts permissible.

11 7. Venue in Orange County is proper under California Business and Professions Code
12 section 17203 and California Code of Civil Procedure section 395.5 because a substantial part of
13 Defendants' unlawful conduct, acts, and omissions alleged herein occurred in this County,
14 Defendants had and have ongoing business in this County, Defendants conduct substantial business
15 in this County, and Defendants' liability arose in this County, and/or Defendants reside, transact
16 business, maintain offices, and/or have an agent or agents in this County. The relief requested is
17 within the jurisdiction of this Court.

18 **PARTIES**

19 8. Plaintiff is an individual who resides in Orange County, California and was
20 employed by Defendants in California as a non-exempt employee during the Class Period, from
21 approximately July 2019 through the end of February 2021. Plaintiff was initially assigned by a
22 staffing agency to work at PULMUONE's business location in Orange County during the Class
23 Period before becoming a direct employee of PULMUONE. Plaintiff, at all relevant times, was
24 employed by Defendants as a non-exempt employee and paid on an hourly basis.

25 9. Plaintiff is informed, believes, and thereon alleges that, at all relevant times,
26 Defendant Beyond Staffing Solutions, Inc., was and is a California corporation with its principal
27 executive office located at 760 N. Euclid Street, Suite 207, Anaheim, California 92801. BEYOND
28 STAFFING was and is a staffing agency. As part of its business operations, BEYOND STAFFING

1 placed individuals to work at its client's business locations throughout California, including at
2 PULMUONE's facilities in California. BEYOND STAFFING is, and at all relevant times, an
3 employer subject to California state wage and hour laws. Plaintiff is informed, believes, and thereon
4 alleges that the practices and policies that are complained of by way of this action were
5 implemented and/or applicable during the Relevant Liability Period.

6 10. Plaintiff is informed, believes, and thereon alleges that, at all relevant times,
7 MOONSTONE PEO, INC., sued under the fictitious name as DOE 1, was and is a Texas
8 corporation with its principal executive office located at 760 N. Euclid Street, Suite 207, Anaheim,
9 California 92801; at 760 N. Euclid Street, Suite 208, Anaheim, California 92801; and 760 N. Euclid
10 Street, Suite 212, Anaheim, California 92801. As part of its business operations, MOONSTONE
11 placed individuals to work at its client's business locations throughout California, including at
12 PULMUONE's facilities in California. MOONSTONE is, and at all relevant times, an employer
13 subject to California state wage and hour laws. Plaintiff is informed, believes, and thereon alleges
14 that the practices and policies that are complained of by way of this action were implemented and/or
15 applicable during the Relevant Liability Period.

16 11. Plaintiff is informed, believes, and thereon alleges that, at all relevant times,
17 Defendant Beyond Financial Solutions, Inc., sued under the fictitious name as DOE 2, was and is
18 a California corporation with its principal executive office located at 760 N. Euclid Street, Suite
19 207, Anaheim, California 92801. BEYOND FINANCIAL was and is a staffing agency. As part of
20 its business operations, BEYOND FINANCIAL placed individuals to work at its client's business
21 locations throughout California, including at PULMUONE's facilities in California. BEYOND
22 FINANCIAL is, and at all relevant times, an employer subject to California state wage and hour
23 laws. Plaintiff is informed, believes, and thereon alleges that the practices and policies that are
24 complained of by way of this action were implemented and/or applicable during the Relevant
25 Liability Period.

26 12. Plaintiff is informed, believes, and thereon alleges that, at all relevant times,
27 Defendant Damaris Serrano, sued under the fictitious name as DOE 3, is an individual who was the
28 owner and Chief Executive Officer of Defendants BEYOND SOLUTIONS, MOONSTONE, and

1 BEYOND FINANCIAL. SERRANO is, and at all relevant times, an employer subject to California
2 state wage and hour laws. Plaintiff is informed, believes, and thereon alleges that the practices and
3 policies that are complained of by way of this action were implemented and/or applicable during
4 the Relevant Liability Period, were violated, or caused to be violated by SERRANO.

5 13. Plaintiff is informed, believes and thereon alleges that, at all relevant times,
6 Pulmuone Foods U.S.A., Inc., sued under the fictitious business name as DOE 4, was and is an
7 Iowa corporation with its principal executive office located at 2315 Moore Avenue, Fullerton,
8 California 92833. As part of its business, PULMUONE operates food manufacturing and packing
9 facilities in California and employs hourly non-exempt employees to carry out its business
10 operations. PULMUONE is, and at all relevant times was, an employer subject to California state
11 wage and hour laws. Plaintiff is informed, believes, and thereon alleges that the practices and
12 policies of PULMUONE that are complained of by way of this action were implemented and/or
13 applicable during the Relevant Liability Period.

14 14. Defendants continue to employ non-exempt employees within California.

15 15. Plaintiff is unaware of the true names and capacities of those Defendants identified
16 as DOES 1 through 50. Therefore, Plaintiff identifies those Defendants fictitiously. Plaintiff is
17 informed, believes and thereon alleges that, at all relevant times, each DOE Defendant was a parent,
18 sister, or related corporate entity of Defendants, or an owner, employee or agent of Defendants, and
19 each related entity, and was acting with the knowledge and authorization of each of the other
20 Defendants. Plaintiff will seek to amend this complaint to allege the true names and capacities of
21 each DOE Defendant when their names have been ascertained and identified. Plaintiff is informed,
22 believes and thereon alleges that each of the Defendants sued as DOES 5 through 50 participated
23 in, received the benefit of, or was in some way responsible for one or more of the wrongful acts
24 and omissions and some portion of the damages alleged herein.

25 16. Plaintiff is informed, believes and thereon alleges that at all times material hereto,
26 each Defendant acted in all respects pertinent to this action as the agent of the other Defendant,
27 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of
28 each Defendant are legally attributable to the other Defendant. Furthermore, Defendants in all

1 respects acted as the employer and/or joint employer of Plaintiff and the class members.

2 17. Plaintiff is informed, believes and thereon alleges that Defendants, each and all of
3 them, at all times material hereto, were the joint employers, parent companies, successor
4 companies, predecessors in interest, affiliates, agents, employees, servants, joint venturers,
5 directors, fiduciaries, representatives, and/or co-conspirators of each of the remaining Defendants.
6 Defendants, unless otherwise alleged, at all times material hereto, performed all acts and omissions
7 alleged herein within the course and scope of said relationship(s), and are a proximate cause of
8 Plaintiff's damages as herein alleged.

9 18. Plaintiff is informed, believes and thereon alleges, that there exists a unity of interest
10 in ownership between Defendants and DOES 5 through 50, inclusive, such that any individuality
11 and separateness between the individual and the corporation does not exist, as Defendants, and
12 DOES 5 through 50, inclusive, are alter egos, in that: (1) Defendants are and at all times mentioned
13 herein were mere shells, instrumentalities and conduits through which DOES 5 through 50,
14 inclusive, carried out their business in the business name, exercising complete control and
15 dominance over such business; (2) that Defendants were conceived, intended and used by DOES 5
16 through 50, inclusive, as devices to avoid individual liability and in place of Defendants, and DOES
17 5 through 50, inclusive, and were without the financial solvency and responsibility required by law;
18 and (3) that all of the assets of the Defendants have been transferred to DOES 5 through 50,
19 inclusive, or some other individual or entity which he or she owns or controls, with the intent to
20 hinder, delay or defraud creditors of Defendants, leaving Defendants with no assets. Further,
21 Plaintiff is informed, believes and thereon alleges, that there exists a principal-agency relationship
22 between and among Defendants.

23 19. Plaintiff is informed, believes and thereon alleges, that Defendants and DOES 5
24 through 50, inclusive, are jointly and severally liable as joint employers, a single enterprise, alter
25 ego of the other, or any other grounds for joint and several liability provided under law, for engaging
26 in the following acts: commingled funds and other assets; engaged in the diversion of corporate
27 funds and assets; treated the assets of the corporate entities as their own; held identical positions
28 with control over separate corporate entities; used the same office or business location; employed

1 the same employees and attorneys; undercapitalized the corporate entities; disregarded the legal
2 formalities; failed to maintain arm's length relationships; used the corporate formality to procure
3 labor, services, and merchandise for related persons or entities; and manipulated the assets and
4 liabilities between each other so as to concentrate the assets in one and the liabilities in another;
5 among others.

6 20. At all relevant times herein, Defendants were agents of each other and acting within
7 the course and scope of their agency.

8 **CLASS ACTION ALLEGATIONS AND FACTUAL BACKGROUND**

9 21. Pursuant to Civil Procedure Code section 382, Plaintiff brings this action
10 individually and as a class action on behalf of a proposed Class defined as follows:

11 Class:

12 All current and former non-exempt employees employed by
13 Defendants who were placed, assigned, and/or staffed via a staffing
14 agency to work at PULMUONE's California facilities at any time
15 from your years prior to the commencement of this action through the
16 date of class certification, or as applicable, through the date of final
17 disposition of this action, and inclusive of any period of time in which
18 the applicable statute of limitations were tolled between April 6, 2020,
19 and October 1, 2020, pursuant to the California Rules of Court,
20 Appendix I, Emergency Rule 9 (i.e., the Relevant Liability Period).
21 The Class includes those who worked at PULMUONE's California
22 facilities both as a direct employee and agency employee, but excludes
23 all times in which a Class Member was a direct employee of
24 PULMUONE during the Relevant Liability.

25 22. The Class is also comprised of the following Subclasses:

26 Waiting Time Sub-Class: Those members of the Class no longer
27 employed by Defendants, who separated their employment with
28 Defendants at any time from three years prior to the commencement

1 of this action through the date of class certification, or as applicable,
2 through the final disposition of this action, and inclusive of any period
3 of time in which the applicable statute of limitations were tolled
4 between April 6, 2020, and October 1, 2020, pursuant to the California
5 Rules of Court, Appendix I, Emergency Rule 9.

6 23. Plaintiff reserves the right pursuant to California Rules of Court, Rule 3.764 and
7 3.765, to amend or modify the respective definitions of the Class and/or Subclasses to provide
8 greater specificity and/or further division of subclasses or limitations thereof to particular issues.

9 24. This action is brought, and may properly be maintained, as a class action pursuant
10 to California Code of Civil Procedure section 382 because there is a well-defined community of
11 interest in the litigation, and the proposed class is easily ascertainable. This action presents
12 questions of common interest and satisfies the numerosity, commonality, typicality, adequacy,
13 predominance, and superiority requirements of this provision.

14 25. Through this action, Plaintiff alleges Defendants have consistently maintained and
15 enforced against Plaintiff and Class Members unlawful employment practices and policies which
16 violate the Labor Code and IWC Wage Orders.

17 26. Plaintiff is informed, believes, and thereon alleges that during the relevant time
18 period, Defendants failed to pay Plaintiff and Class Members all minimum, regular and overtime
19 wages for all hours worked by requiring Plaintiff and Class Members to perform work off-the-clock
20 work, failing to account for the time spent donning and doffing protective equipment, , failing to
21 account for time spent working during unpaid meal periods, failing to account for time associated
22 with travelling and/or completing a COVID-19 test in violation of the Labor Code and IWC Wage
23 Orders. Further, Defendants failed to pay all overtime wages for hours worked at the proper rates
24 to Plaintiff and Class Members by failing to compensate them at one-and-a-half times their regular
25 rate of pay, inclusive of all non-discretionary bonuses or incentive-based pay, for all overtime hours
26 worked.

27 27. Plaintiff is informed, believes, and thereon alleges that during the relevant time
28 period, Defendants deprived Plaintiff and Class Members of the opportunity to take all of their

1 statutorily entitled meal periods within the appropriate time intervals or provide compensation in
2 lieu thereof, which is in violation of the California Labor Code and IWC Wage Orders. Specifically,
3 Plaintiff and Class Members were often not relieved of all duties to be able to take an uninterrupted,
4 30-minute meal period within the first five (5) hours of work. Plaintiff and Class Members were
5 required to work during their meal periods and/or frequently took them late, had them shortened,
6 or interrupted. Defendants failed to adopt and implement a policy authorizing a second 30-minute
7 meal period when Plaintiff and Class Members worked shifts in excess of 10 hours and maintained
8 a practice of prioritizing work demands over allowing employees to take compliant meal periods.
9 Accordingly, Defendants failed to provide timely, uninterrupted off-duty 30-minute meal periods
10 or timely, uninterrupted off-duty second 30-minute meal periods. Defendants failed to compensate
11 Plaintiff and Class Members with an additional hour of pay at their regular rate for each day in
12 which they were denied a compliant meal period.

13 28. Plaintiff is informed, believes, and thereon alleges that during the relevant time
14 period, Defendants failed to permit Plaintiff and Class Members to take all of their statutorily
15 entitled rest periods within the appropriate time intervals, failed to adopt and implement a compliant
16 rest break policy, and failed to provide one additional hour of pay at their regular rate of pay for
17 each day that Plaintiff and Class Members missed a rest period, all in violation of the Labor Code
18 and IWC Wage Orders. Specifically, Plaintiff and Class Members often had rest periods that were
19 missed altogether, late, or interrupted. Defendants also failed to authorize a rest period policy that
20 provided for a third rest break when Plaintiff and Class Members worked more than 10 hours per
21 workday, in violation of the Labor Code and IWC Wage Orders.

22 29. Plaintiff is informed, believes, and thereon alleges that during the relevant time
23 period, Defendants willfully failed to pay all wages due to the Waiting Time Subclass upon
24 separation of employment. Waiting Time Subclass Members were not paid all wages (including
25 minimum, regular and overtime wages) within the required time period, in violation of the Labor
26 Code and IWC Wage Orders.

27 30. Plaintiff is informed, believes, and thereon alleges that during the relevant time
28 period, Defendants failed to furnish Plaintiff and Class Members with accurate and complete wage

1 statements. Plaintiff and Class Members received wage statements which did not accurately reflect
2 the gross and net wages earned, total hours worked, and all applicable rates of pay and the
3 corresponding number of hours worked at each pay rate, in violation of the Labor Code and IWC
4 Wage Orders.

5 31. Plaintiff is informed, believes, and thereon alleges that during the relevant time
6 period, Defendants failed to reimburse Plaintiff and Class Members for necessary business
7 expenses incurred in the performance of their duties in violation of the Labor Code and IWC Wage
8 Orders. Defendants required Plaintiff and Class Members to use their personal cellular phones to
9 communicate with supervisors, but were not reimbursed for a reasonable percentage of their cellular
10 phone bills. Defendants required Plaintiff and Class Members to take periodic COVID-19 tests
11 before being permitted to report for work, and thus, were required to travel to COVID-19 test
12 locations and incur costs of taking the test without being reimbursed for the use of their personal
13 automobiles or the costs of the test. Further, Plaintiff and Class Members were not reimbursed for
14 the cost of tools and supplies that they purchased to perform their job duties.

15 32. Plaintiff is informed, believes, and thereon alleges that Defendants' actions as
16 described throughout this complaint were willful.

17 33. Plaintiff, individually, and on behalf of all other Class Members, brings this action
18 pursuant to, *inter alia*, Labor Code sections 200, 201, 201.3, 202, 203, 204, 210, 218, 218.5, 218.6,
19 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1182.12, 1194, 1194.2, 1197, 1198, 2698, *et seq.*,
20 2800, 2802, and 2810.3, and the applicable provisions of the IWC Wage Orders, seeking unpaid
21 minimum, regular and overtime wages, compensation for missed meal periods and rest breaks or
22 premium payments in lieu thereof, itemized wage statement penalties, waiting time penalties,
23 reimbursement of necessary business expenditures, civil penalties, injunctive and other equitable
24 relief, and reasonable attorneys' fees and costs.

25 34. Plaintiff, individually, and on behalf of all Class Members, pursuant to Cal. Bus. &
26 Prof. Code sections 17200 *et seq.*, also seeks injunctive relief and restitution for the unfair,
27 unlawful, or fraudulent practices alleged in this complaint.

28 ///

NUMEROSITY

35. The Class is so numerous that joinder of all of its members is impracticable. While the exact number and identities of Class Members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed, believes and thereon alleges that the Class consists of more than 100 persons.

36. A class action is the only available method for the fair and efficient adjudication of this controversy. The members of the Class are so numerous that joinder of all members is impractical, if not impossible. The identity of Class Members can be ascertained by analysis of Defendants' employee and payroll records.

COMMONALITY

37. Common questions of fact and law exist as to all members of the Class that predominate over any questions affecting only individual Class Members. These common legal and factual questions include, but are not limited to, the following:

(a) Whether Defendants failed to accurately report all hours worked by Plaintiff and Class Members;

(b) Whether Defendants failed to pay Plaintiff and Class Members all minimum, regular and overtime wages at the lawful rates for all hours worked by Plaintiff and Class Members;

(c) Whether Defendants required Plaintiff and Class Members to perform work off-the-clock and all compensable time without compensation;

(d) Whether Defendants failed to provide timely, uninterrupted, off-duty meal periods to Plaintiff and Class Members, or required Plaintiff and Class Members to work through their meal periods without compensation in lieu thereof;

(e) Whether Defendants failed to permit timely, uninterrupted, off-duty rest breaks for every four hours or major fraction thereof worked by Plaintiff and Class Members, or required Plaintiff and Class Members to work through their rest breaks without compensation in lieu thereof;

(f) Whether Defendants failed to timely pay Waiting Time Subclass all wages due either immediately upon termination or within 72 hours after resignation;

- 1 (g) Whether Defendants' conduct was willful;
- 2 (h) Whether Defendants failed to issue accurate itemized wage statements to
- 3 Plaintiff and Class Members;
- 4 (i) Whether Defendants required Plaintiff and Class Members to purchase tools
- 5 and supplies, use their personal cellular phones, and take COVID-19 tests for work-related purposes
- 6 and failed to reimburse them for these costs, including, office supplies, a reasonable portion of their
- 7 cellular phone bills, mileage reimbursement, costs of COVID-19 testing, and other related
- 8 expenses;
- 9 (j) Whether Defendants engaged in unfair business practices in violation of Cal.
- 10 Bus. & Prof. Code sections 17200 *et seq.*; and
- 11 (k) Additional common questions of law and fact that may develop as the
- 12 litigation progresses.

13 **TYPICALITY**

14 38. Plaintiff is informed, believes, and thereon alleges that Plaintiff's claims are typical

15 of the claims of the Class because: Plaintiff and the Class sustained injuries and damages arising

16 out of and caused by Defendants' unlawful policies and practices; the claims arise out of the same

17 course of conduct by Defendants; Plaintiff's claims are based upon the same legal theories as the

18 claims of the Class; and the legal issues raised under California state law as a result of Defendants'

19 conduct apply equally to Plaintiff and the Class Members.

20 **ADEQUACY OF REPRESENTATION**

21 39. Plaintiff is an adequate representative of the Class, in that her claims (and defenses,

22 if any) are typical of those of the Class. Plaintiff has no conflicts of interest with her fellow Class

23 Members and will be able to fairly and adequately protect the interests of the Class. Plaintiff has

24 the same interests in the litigation of this case as the Class Members, is committed to vigorous

25 prosecution of this case and has retained competent counsel experienced in class action and wage

26 and hour litigation of this nature.

27 ///

28 ///

PREDOMINANCE

40. Defendants have engaged in a common course of wage and hour abuse toward Plaintiff and Class Members. The common issues arising from this conduct that affect Plaintiff and Class Members predominate over any individual issues. Adjudication of these common issues in a single action has important and desirable advantages of judicial economy.

SUPERIORITY OF CLASS ACTION

41. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual litigation of the claims of all Class Members is impracticable. Even if every Class Member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous cases would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. Moreover, individual actions by Class Members may establish inconsistent standards of conduct for Defendants. By contrast, the conduct of this action as a class action, with respect to some or all of the issues presented herein, presents fewer management difficulties, conserves the resources of the parties and the court system, and protects the rights of each Class Member.

42. Defendants have acted or refused to act in respects generally applicable to the Class, thereby making relief with regard to the members of the Class as a whole appropriate, as requested herein.

FIRST CAUSE OF ACTION

(FAILURE TO PAY ALL WAGES)

(Against All Defendants)

43. Plaintiff incorporates all paragraphs above as though fully set forth herein.

44. At all times herein relevant, Defendants had a duty to comply with Labor Code sections 200, 204, 218, 218.5, 218.6, 1182.12, 1194, 1194.2, 1197, 1198, the applicable IWC Wage Orders, and all applicable local minimum wage ordinances in effect throughout California.

1 45. Labor Code section 200 defines “wages” as including “all amounts for labor
2 performed by employees of every description, whether the amount is fixed or ascertained by the
3 standard of time, task, piece, commission basis, or other method of calculation.”

4 46. Labor Code section 204 and the IWC Wage Orders require timely payment of all
5 wages owed on regularly scheduled paydays at least twice during each calendar month, on days
6 designated in advance by the employer as the regular paydays. All wages in earned in excess of the
7 normal work period must be paid no later than the payday for the next regular payroll period.

8 47. The IWC Wage Orders define “hours worked” as “the time during which an
9 employee is subject to the control of an employer and includes all time the employee is suffered or
10 permitted to work, whether or not required to do so.”

11 48. Labor Code section 1182.12 sets forth the minimum hourly wage that must be paid
12 to all employees in California for all hours worked. Local minimum wage ordinances may provide
13 for higher minimum wage rates that must be paid to employees for all hours worked in those locales
14 where each local ordinance is in effect. Labor Code section 1197 affirms that it is unlawful to pay
15 less than the state or local minimum wage, whichever is higher, for any hour of work.

16 49. Labor Code section 1194 requires that employers pay employees at least the legal
17 minimum wage rate for all hours worked, notwithstanding any agreement to work for a lesser wage.
18 Labor Code section 1194 further authorizes any employee receiving less than the legal minimum
19 wage applicable to the employee to recover in a civil action the unpaid balance of the full amount
20 of wages, along with interest thereon, reasonable attorneys’ fees and costs of suit.

21 50. Labor Code section 1194.2 authorizes the recovery of liquidated damages in an
22 amount equal to the wages unlawfully unpaid and interest thereon for unpaid wage violations.

23 51. Labor Code section 1198 prohibits employers from employing for longer hours or
24 less favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise
25 set by the Labor Commissioner.

26 52. Labor Code section 1197.1 provides that any “employer or other person acting either
27 individually or as an officer, agent, or employee of another person, who pays or causes to be paid
28 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an

1 order of the commission, shall be subject to . . . restitution of wages [and] liquidated damages
2 payable to the employee” in an amount sufficient for the employee to recover underpaid wages and
3 liquidated damages pursuant to Section 1194.2 of the Labor Code.

4 53. Labor Code section 558.1 provides that “[a]ny employer or other person acting on
5 behalf of an employer, who violates or causes to be violated, any provision regulating minimum
6 wages or hours and days of work in any order of the Industrial Welfare Commission, or violates,
7 or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the
8 employer for such violation.”

9 54. During the relevant time period, Defendants failed to pay Plaintiff and Class
10 Members all wages due, including minimum and regular wages, due to Defendants’ policies and
11 practices of requiring Plaintiff and Class Members to perform off-the-clock work (i.e., pre-shift,
12 during unpaid break time, and post-shift), don and doff protective equipment while clocked out,
13 and complete COVID-19 testing without compensation.

14 55. In violation of California law, Defendants have knowingly and willfully refused to
15 perform their obligations and compensate Plaintiff and Class Members for all wages earned as
16 alleged above.

17 56. As a result of Defendants’ failure to pay Plaintiff and Class Members all earned
18 minimum and regular wages in accordance with Labor Code sections 200, 204, 1182.12, 1194,
19 1194.2, 1197, 1198, the applicable IWC Wage Orders, and all applicable local minimum wage
20 ordinances in effect throughout California, Plaintiff and Class Members are entitled to recover the
21 full amount of unpaid wages, liquidated damages, prejudgment interest, and statutory penalties,
22 along with attorneys’ fees and costs in amounts that will be established at trial.

23 57. WHEREFORE, Plaintiff and the Class Members that Plaintiff seeks to represent
24 request relief as described herein and below.

25 **SECOND CAUSE OF ACTION**

26 **FAILURE TO PAY OVERTIME WAGES**

27 **(AGAINST ALL DEFENDANTS)**

28 58. Plaintiff incorporates all paragraphs above as though fully set forth herein.

1 59. At all relevant times, Defendants had a duty to comply with Labor Code sections
2 200, 204, 218, 218.5, 218.6, 510, 1194, and 1198 and the applicable IWC Wage Orders.

3 60. Labor Code section 204 and the IWC Wage Orders require timely payment of all
4 wages owed, including overtime, on regularly scheduled paydays at least twice during each
5 calendar month, on days designated in advance by the employer as the regular paydays. All wages
6 earned in excess of the normal work period must be paid no later than the payday for the next
7 regular payroll period.

8 61. Labor Code section 510 and the IWC Wage Orders require that employers pay
9 employees for all overtime hours at a rate of one and one-half times the employee's regular rate of
10 pay for hours worked in excess of eight hours in one workday, 40 hours in one workweek, and after
11 the first eight hours on the seventh consecutive workday in one work week. Labor Code section 510
12 and the IWC Wage Orders further require that employers pay employees double their regular rate
13 of pay for hours work in excess of 12 hours in a workday and after eight hours on the seventh
14 consecutive workday in one workweek. Labor Code section 510 requires payment of overtime
15 wages at one- and one-half times the "regular rate of pay," which includes all forms of remuneration
16 earned by the employee.

17 62. Labor Code section 1194 requires that employers pay employees at least the legal
18 overtime rate for all overtime hours worked, notwithstanding any agreement to work for a lesser
19 wage. Labor Code section 1194 further authorizes any employee receiving less than the legal
20 overtime compensation applicable to the employee to recover in a civil action the unpaid balance
21 of the full amount of overtime compensation, along with interest thereon, reasonable attorneys'
22 fees and costs of suit.

23 63. Labor Code section 1198 prohibits employers from employing for longer hours or
24 less favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise
25 set by the Labor Commissioner.

26 64. Labor Code section 1197.1 provides that any "employer or other person acting either
27 individually or as an officer, agent, or employee of another person, who pays or causes to be paid
28 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an

1 order of the commission, shall be subject to . . . restitution of wages [and] liquidated damages
2 payable to the employee” in an amount sufficient for the employee to recover underpaid wages.

3 65. Labor Code section 558.1 provides that “[a]ny employer or other person acting on
4 behalf of an employer, who violates or causes to be violated, any provision regulating minimum
5 wages or hours and days of work in any order of the Industrial Welfare Commission, or violates,
6 or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the
7 employer for such violation.”

8 66. During the relevant time period, Defendants maintained policies and practices of
9 requiring Plaintiff and Class Members to perform off-the-clock work (i.e., pre-shift, during unpaid
10 break time, and post-shift), don and doff protective equipment while clocked out, and complete
11 COVID-19 testing without compensation. To the extent such unpaid time entitled Plaintiff and
12 Class Members to the payment of overtime wages, Defendants failed to pay Plaintiff and Class
13 Members all earned overtime wages due and at the lawful rates.

14 67. In violation of California law, Defendants have knowingly and willfully refused to
15 perform their obligations and compensate Plaintiff and Class Members for all overtime wages
16 earned as alleged above.

17 68. Defendants’ failure to pay overtime compensation due to Plaintiff and Class
18 Members in accordance with Labor Code sections 200, 204, 510, 1194 and 1198 and the IWC Wage
19 Orders, Plaintiff and Class Members are entitled to recover the full amount of unpaid overtime
20 compensation, prejudgment interest, statutory penalties, attorneys’ fees, and costs in amounts that
21 will be established at trial.

22 69. WHEREFORE, Plaintiff and the Class Members that Plaintiff seeks to represent
23 request relief as described herein and below.

24 **THIRD CAUSE OF ACTION**

25 **(FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF)**

26 **(Against All Defendants)**

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

28 71. At all relevant times, Defendants had a duty to comply with California Labor Code

sections 226.7 and 512, and the applicable IWC Wage Orders and California Code of Regulations.

72. Labor Code section 226.7 states, “No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission,” and requires payment of one (1) hour of pay at the “regular rate” in lieu of meal periods not provided by the employer. (Lab. Code § 226.7(a)-(c).)

73. Section 11 of the applicable IWC Wage Order provides as follows:

A. No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes . . .

B. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes . . .

C. If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the meal period is not provided.

74. Labor Code section 558.1 provides that “[a]ny employer or other person acting on behalf of an employer, who violates or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.”

75. Throughout the relevant time period, Plaintiff and Class Members regularly worked over five (5) and ten (10) hours in a workday and were entitled to timely, off-duty meal periods. Instead, Defendants failed to adopt and implement compliant meal period policies and practices, and Plaintiff and Class Members were frequently denied lawful meal periods.

76. At all times relevant herein, Labor Code section 226.7, and applicable provisions of the California Code of Regulations and IWC Wage Orders have applied and continue to apply to Plaintiff and Class Members’ employment with Defendants.

77. Labor Code section 226.7(b) and the IWC Wage Orders prohibit an employer from requiring any employee to work during a meal period mandated by any California statute,

1 regulation, standard or order. If an employer fails to provide an employee with a meal period in
2 accordance with state law, California Labor Code section 226.7(c) and the IWC Wage Orders
3 require that the employer pay the employee one additional hour of pay at the employee's regular
4 rate of compensation for each workday that the meal period is noncompliant.

5 78. Throughout the relevant time period, Plaintiff and Class Members did not receive
6 compliant meal periods for working more than five and/or 10 hours per day because their meal
7 periods were short, late, interrupted, and/or missed altogether, including second meal periods for
8 shifts over ten hours.

9 79. Throughout the relevant time period, Defendants failed to permit Plaintiff and Class
10 Members to take timely, uninterrupted, off-duty meal periods as required by law.

11 80. Throughout the relevant time period, Defendants failed to pay Plaintiff and Class
12 Members meal period premiums for noncompliant meal periods pursuant to California Labor Code
13 section 226.7(b) and the applicable IWC Wage Orders and California Code of Regulations.

14 81. Plaintiff is informed, believes, and thereon alleges that Class Members did not
15 voluntarily waive their meal periods.

16 82. As a direct and proximate result of Defendants' unlawful conduct, as set forth
17 herein, Plaintiff and Class Members have sustained and continue to sustain damages, including
18 loss of premium pay for meal period violations and earnings, in an amount to be established at
19 trial, plus prejudgment interest pursuant to statute.

20 83. WHEREFORE, Plaintiff and the Class Members that Plaintiff seeks to represent
21 request relief as described herein and below.

22 **FOURTH CAUSE OF ACTION**

23 **(FAILURE TO PERMIT REST PERIODS OR COMPENSATION IN LIEU THEREOF)**

24 **(Against All Defendants)**

25 84. Plaintiff incorporates all paragraphs above as though fully set forth herein.

26 85. Labor Code section 226.7 states "No employer shall require any employee to work
27 during any meal or rest period mandated by an applicable order of the Industrial Welfare
28 Commission." (Lab. Code § 226.7(a).)

1 86. Section 12 of the applicable Wage Order provides in relevant part that:

2 (A) Every employer shall authorize and permit all employees to take
3 rest periods, which insofar as practicable shall be in the middle of each
4 work period. The authorized rest period time shall be based on the total
5 hours worked daily at the rate of ten (10) minutes net rest time per four
6 (4) hours or major fraction thereof. However, a rest period need not be
7 authorized for employees whose total daily work time is less than three
8 and one-half (3 1/2) hours. Authorized rest period time shall be counted
9 as hours worked for which there shall be no deduction from wages.

10 (B) If an employer fails to provide an employee a rest period in
11 accordance with the applicable provisions of this order, the employer
12 shall pay the employee one (1) hour of pay at the employee's regular rate
13 of compensation for each work day that the rest period is not provided.

14 87. Labor Code section 558.1 provides that "[a]ny employer or other person acting on
15 behalf of an employer, who violates or causes to be violated, any provision regulating minimum
16 wages or hours and days of work in any order of the Industrial Welfare Commission, or violates,
17 or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the
18 employer for such violation.

19 88. Plaintiff is informed, believes, and thereon alleges that Defendants required Plaintiff
20 and Class Members to regularly work shifts in excess of three and one-half hours without being
21 permitted the opportunity to take a paid, uninterrupted, off-duty rest period of at least ten (10)
22 minutes for every four hours worked or major fraction thereof, and failed to pay Plaintiff and Class
23 Members rest period premiums for each workday that a rest period was not permitted.

24 89. Plaintiff is informed, believes, and thereon alleges that Plaintiff and Class Members
25 worked in excess of 3.5 hours, six (6) hours, and/or ten (10) hours.

26 90. During the relevant time period, Plaintiff and Class Members did not receive
27 compliant 10-minute rest periods for every four hours worked or major fraction thereof.

28 91. During the relevant time period, defendants failed to pay Plaintiff and Class
Members rest period premiums for non-compliant rest periods pursuant to California Labor Code
section 226.7(b).

 92. Plaintiff is informed, believes and thereon alleges Class Members did not
voluntarily waive rest periods.

FIFTH CAUSE OF ACTION

9 (Against All Defendants)

11 96. Labor Code section 226(a) provides that, at the time of each payment of wages, an
12 employer shall provide each employee with a wage statement itemizing, among other things, the
13 gross wages earned, total hours worked, net wages earned, all applicable hourly rates in effect and
14 the corresponding number of hours worked at each rate by the employee during the pay period.

98. Section 7 of the IWC Wage Orders requires Defendants to maintain time records showing, among other things, when the employee begins and ends each work period, meal periods taken, total daily hours worked, all deductions or other compensation actually furnished to employees, and accurately report total hours worked by Plaintiff and Class Members in an itemized statement. Plaintiff is informed, believes, and thereon alleges that Defendants have knowingly and intentionally failed to comply with the IWC Wage Orders.

99. Labor Code section 558.1 provides that “[a]ny employer or other person acting on behalf of an employer, who violates or causes to be violated, any provision regulating minimum

1 wages or hours and days of work in any order of the Industrial Welfare Commission, or violates,
2 or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the
3 employer for such violation.”

4 100. Throughout the relevant time period, Defendants provided wage statements that did
5 not accurately reflect the total number of hours worked by Plaintiff and Class Members at each
6 corresponding pay rate and the gross and net wages earned, making it difficult for Plaintiff and
7 Class Members to determine whether they were paid correctly for all hours worked and the extent
8 of any underpayment. Plaintiff has had to file this lawsuit in order to determine the extent of the
9 underpayment of wages, thereby causing Plaintiff to incur expenses and lost time. Plaintiff would
10 not have had to engage in these efforts and incur these costs had Defendants provided statements
11 that accurately all wages earned. This has also delayed Plaintiff’s ability to demand and recover the
12 underpayment of wages from Defendants. Defendants’ violations of California Labor Code section
13 226(a) prevented Plaintiff and Class Members from knowing, understanding and disputing the
14 wages paid to them, and resulted in an unjustified economic enrichment to Defendants.

15 101. Defendants knowingly and intentionally failed to provide accurate, itemized wage
16 statements to Plaintiff and Class Members, and as such Plaintiff and Class Members are deemed to
17 have suffered injury in accordance with Labor Code section 226. Plaintiff and the Class are
18 therefore entitled to the damages and penalties provided for under Labor Code section 226(e).

19 102. Plaintiff and Class Members are also entitled to injunctive relief under California
20 Labor Code section 226(h), compelling Defendants to comply with California Labor Code section
21 226 and seek the recovery of attorneys’ fees and costs incurred in obtaining this injunctive relief.

22 103. WHEREFORE, Plaintiff and the Class Members that Plaintiff seeks to represent
23 request relief as described herein and below.

24 **SIXTH CAUSE OF ACTION**

25 **(WAITING TIME PENALTIES)**

26 **(Against All Defendants)**

27 104. Plaintiff incorporates all paragraphs above as though fully set forth herein.
28

1 105. At all relevant times, Defendants had a duty to comply with California Labor Code
2 sections 201, 201.3, 202, and 203, and the applicable IWC Wage Orders and California Code of
3 Regulations. Defendants failed to comply with these final paycheck requirements with respect to
4 the Waiting Time Subclass.

5 106. California Labor Code section 201 requires that if an employer discharges an
6 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

7 107. California Labor Code section 201.3 requires that a “temporary services employer”
8 to pay an employee’s wages no less frequently than weekly, regardless of when the assignment
9 ends, and wages for work performed during any calendar week shall be due and payable not later
10 than the regular payday of the following calendar week. A temporary services employer who
11 violates the provisions of Labor Code section 201.3 is subject to the civil penalties provided for in
12 Section 203 and to any other penalties available at law.

13 108. California Labor Code section 202 requires Defendants to pay their employees all
14 wages due at the time the employee is discharged, or within 72 hours of quitting.

15 109. California Labor Code section 203 provides that if an employer willfully fails to
16 timely pay such wages, the employer must, as a penalty, continue to pay the subject employees’
17 wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed
18 30 days of wages.

19 110. Labor Code section 1197.1 provides that any “employer or other person acting either
20 individually or as an officer, agent, or employee of another person, who pays or causes to be paid
21 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an
22 order of the commission, shall be subject to . . . any applicable penalties imposed pursuant to
23 Section 203” in an amount sufficient for the employee to recover underpaid wages, liquidated
24 damages pursuant to Section 1194.2 of the Labor Code, and any applicable penalties imposed
25 pursuant to Section 203.

26 111. Labor Code section 558.1 provides that “[a]ny employer or other person acting on
27 behalf of an employer, who violates or causes to be violated, any provision regulating minimum
28 wages or hours and days of work in any order of the Industrial Welfare Commission, or violates,

1 or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the
2 employer for such violation.”

3 112. The Waiting Time Subclass is entitled to compensation for earned but unpaid wages,
4 including, but not limited to, minimum, regular and overtime wages, but to date have not received
5 such compensation, therefore entitling them to penalties pursuant to Labor Code section 203.

6 113. As a consequence of Defendants’ willful conduct in failing to pay all earned wages,
7 the Waiting Time Subclass Members are entitled to up to 30 days’ wages as a penalty for
8 Defendants’ failure to timely pay wages upon separation of employment.

9 114. WHEREFORE, Plaintiff and the Class Members that Plaintiff seeks to represent
10 request relief as described herein and below.

11 **SEVENTH CAUSE OF ACTION**

12 **(FAILURE TO REIMBURSE BUSINESS EXPENSES)**

13 **(Against All Defendants)**

14 115. Plaintiff incorporates all paragraphs above as though fully set forth herein.

15 116. At all relevant times, Defendants had a duty to comply with California Labor Code
16 sections 2800 and 2802 and the applicable IWC Wage Orders and California Code of Regulations.

17 117. California Labor Code section 2800 requires employers to indemnify employees for
18 losses caused by the employer’s want of ordinary care. To the extent Defendants claim that Plaintiff
19 and Class Members failed to request, demand, notify or otherwise seek reimbursement for their
20 expenses and losses, Defendants were obligated to nevertheless indemnify Plaintiff and Class
21 Members due to their own negligence.

22 118. Labor Code section 2802(a) provides that an employer shall indemnify his or her
23 employee for all necessary expenditures or losses incurred by the employee in direct consequence
24 of the discharge of his or her duties, or of his or her obedience to the directions of the employer.
25 Labor Code section 2802(b) authorizes employees to recover in a court action interest which shall
26 accrue from the date on which the employee incurred the necessary expenditure or loss. Labor Code
27 section 2802(c) authorizes employees to also recover attorneys’ fees and costs.
28

119. Labor Code section 558.1 provides that “[a]ny employer or other person acting on behalf of an employer, who violates or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.”

120. During the relevant time period, Plaintiff and Class Members were required to use their personal cellular phones to communicate with supervisors, but were not reimbursed for a reasonable percentage of their cellular phone bills. Defendants required Plaintiff and Class Members to take periodic COVID-19 tests before being permitted to report for work, and thus, were required to travel to COVID-19 test locations and incur costs of taking the test without being reimbursed for the use of their personal automobiles or the costs of the test. Further, Plaintiff and Class Members were not reimbursed for the cost of tools and supplies that they purchased to perform their job duties.

121. Defendants have unfairly and unlawfully violated Labor Code sections 2800 and 2802, and the applicable Wage Order by failing to reimburse Plaintiff and Class Members for all of their out-of-pocket business expenses incurred in the discharge of their job duties.

122. As a consequence of Defendants’ willful conduct, Plaintiff and Class Members have sustained damages for unreimbursed out-of-pocket business expenses, due in an amount to be established at trial, plus prejudgment interest, attorney’s fees, and costs pursuant to statute.

123. WHEREFORE, Plaintiff and the Class Members that Plaintiff seeks to represent request relief as described herein and below.

EIGHTH CAUSE OF ACTION
(UNFAIR BUSINESS PRACTICES)
(Against All Defendants)

124. Plaintiff incorporates all paragraphs above as though fully set forth herein.

125. California Business & Professions Code section 17200, *et seq.* (“UCL”) prohibits unfair competition by prohibiting unlawful, unfair, or fraudulent business practices or acts.

126. A violation of Business and Professions Code sections 17200, *et seq.*, may be predicated on the violation of any state or federal law. In the instant case, Defendants' policies and practices violated state law, causing Plaintiff and Class Members to suffer and continue to suffer injuries-in-fact. Defendants' conduct, as alleged herein, has been and continues to be unfair, unlawful and harmful to Plaintiff and Class Members, and contrary to California's strong public policy protecting employee rights. As such, Plaintiff seeks to enforce important rights affecting the public interest within the meaning of California Code of Civil Procedure section 1021.5.

127. Defendants' conduct alleged below constitutes false, fraudulent, unlawful, unfair, and/or deceptive business practices in at least the following respects:

(a) Failing to pay all minimum and regular wages due to Plaintiff and Class Members in violation of Labor Code sections 200, 204, 1182.12, 1194, 1194.2, 1197 and 1198;

(b) Failing to pay all overtime and double time wages due to Plaintiff and Class Members in violation of Labor Code sections 200, 204, 510, 1194 and 1198;

(c) Failing to provide compliant meal periods or compensation in lieu thereof in violation of California Labor Code sections 226.7 and 512;

(d) Failing to authorize or permit rest breaks or provide compensation in lieu thereof in violation of California Labor Code section 226.7;

(e) Failing to provide Plaintiff and Class Members with accurate itemized wage statements and maintain accurate records in violation of California Labor Code sections 226 and 1174;

(f) Failing to timely pay all earned wages to Waiting Time Subclass Members upon separation of employment in violation of California Labor Code sections 201, 201.3, 202 and 203;

(g) Failing to reimburse Plaintiff and Class Members all necessary business expenses in violation of California Labor Code sections 2800 and 2802; and

(h) Violations of the IWC Wage Orders for the same conduct above.

128. Defendants' course of conduct, acts, and practices in violation of California law mentioned above each constitute a separate and independent violation of the UCL. Defendants'

1 conduct described herein violates the policy or spirit of such laws or otherwise significantly
2 threatens or harms competition. The harm to Plaintiff and Class Members in being wrongfully
3 denied earned wages and reimbursements outweighs the utility, if any, of Defendants' policies or
4 practices and, therefore, Defendants' actions described herein constitute unfair business practices
5 or acts within the meaning of the UCL.

6 129. Plaintiff further brings this cause of action on behalf of the proposed Class, seeking
7 statutory relief to stop the misconduct of Defendants, as complained herein, and to compel
8 restitution and disgorgement of all profits (i.e., unpaid wages, reimbursements, and premiums, etc.)
9 obtained by Defendants through the unfair and unlawful business practices described herein, *inter*
10 *alia*, Business and Professions Code sections 17202, 17203, and 17208. Under the circumstances
11 alleged, it would be inequitable and result in a miscarriage of justice for Defendants to continue to
12 retain the property of Plaintiff and Class Members.

13 130. Defendants' failure to adopt policies in accordance with and/or adhere to these laws
14 engenders an unfair competitive advantage for Defendants, thereby constituting unfair business
15 practices, as set forth in the UCL.

16 131. Pursuant to California Business & Professions Code section 17203, as a direct and
17 proximate result of the unfair business practices of Defendants, Plaintiff, individually, and on behalf
18 of all employees similarly situated, is entitled to equitable and injunctive relief, against such
19 unlawful practices in order to prevent future damage, for which there is no adequate remedy at law,
20 and to avoid a multiplicity of lawsuits. Plaintiff and the Class Members' remedy includes full
21 restitution of all wages and reimbursements which have been unlawfully withheld from Plaintiff
22 and the Class Members as a result of the business acts and practices described herein, and an order
23 enjoining Defendants to cease and desist from engaging in the practices described herein.

24 132. Plaintiff and Class Members also request any other such legal and equitable relief
25 as the Court deems just and proper, including an injunction prohibiting Defendants from engaging
26 in the unfair, unlawful, and/or fraudulent practices alleged in this Complaint.

27 133. As a result of Defendants' unlawful and unfair business practices, Plaintiff and Class
28 Members are entitled to and seek restitution and disgorgement, and other appropriate relief

1 available under California Business & Professions Code sections 17200, *et seq.* Plaintiff,
2 individually and on behalf of the Class, also seeks recovery of attorneys' fees and costs of this
3 action to be paid by Defendants as provided by Code of Civil Procedure section 1021.5.

4 134. WHEREFORE, Plaintiff and the Class Members she seeks to represent request relief
5 as described herein and below.

6 **NINTH CAUSE OF ACTION**

7 **(ENFORCEMENT OF PAGA (LAB CODE § 2698, *et seq.*))**

8 **(Against All Defendants)**

9 135. Plaintiff incorporates by reference all paragraphs above as though fully set forth
10 herein.

11 136. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under
12 PAGA after giving the LWDA and the employer notice of the Labor Code sections alleged to
13 have been violated, and after receiving notice from the LWDA of its intention not to investigate
14 or after 65 days have passed without notice from the LWDA.

15 137. On February 10, 2022, Plaintiff gave written notice of the specified provisions
16 alleged to have been violated by BEYOND STAFFING and Pulmuone U.S.A., Inc., including the
17 facts and theories to support the alleged violations, as required by Labor Code section 2699.3. This
18 written notice was provided via certified mail to BEYOND STAFFING and Pulmuone U.S.A., Inc.,
19 and to the LWDA by electronically filing the notice via the Department of Industrial Relations'
20 website.

21 138. On May 10, 2022, Plaintiff supplemented the original notice to identify BEYOND
22 FINANCIAL; MOONSTONE; SERRANO; and PULMUONE as additional defendants.
23 PULMUONE was identified as an additional defendant after PULMUONE represented to Plaintiff
24 that it was erroneously sued as Pulmuone U.S.A., Inc. The supplemental notice was provided via
25 certified mail to Defendants and to the LWDA by electronically filing the notice via the Department
26 of Industrial Relations' website.

27 139. More than 65 days have passed since written notice was given, and the LWDA has
28 not responded to indicate that it would investigate the alleged violations. Accordingly, Plaintiff has

1 exhausted administrative remedies and may amend this complaint to add a PAGA cause of action.

2 140. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that
3 provides for a civil penalty to be assessed and collected by the LWDA or any of its departments,
4 divisions, commissions, boards, agencies or employees for violation of the code may, as an
5 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
6 himself and other current or former employees pursuant to the procedures specified in Labor Code
7 section 2699.3.

8 141. For all provisions of the Labor Code except those for which a civil penalty is
9 specifically provided, Labor Code section 2699(f) imposes upon Defendants a penalty of one
10 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and
11 two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent
12 pay period in which Defendants violated these provisions of the Labor Code.

13 142. The Labor Code sections violated by Defendants and those upon which Plaintiff
14 seeks remedies available under PAGA include, but are not limited to, the following:

15 (a) Labor Code sections 201-204, 206, 210, 510, 558, 558.1, 1182.12, 1194,
16 1194.2, 1197, 1197.1, 1198, and 1199 for failure to timely pay all earned wages (including
17 minimum, regular, and overtime wages) owed to Plaintiff and other aggrieved employees during
18 employment and upon separation of employment as herein alleged;

19 (b) Labor Code sections 226.7 and 512 for failure to provide meal periods to
20 Plaintiff and other aggrieved employees and failure to pay premium wages for missed meal
21 periods as herein alleged;

22 (c) Labor Code sections 226.7 for failure to permit rest breaks to Plaintiff and
23 other aggrieved employees and failure to pay premium wages for missed rest periods as herein
24 alleged;

25 (d) Labor Code sections 226, 226.3, and 558.1 for failure to provide accurate
26 itemized wage statements to Plaintiff and other aggrieved employees as herein alleged;

27 (e) Labor Code sections 1174 and 1174.5 for failure to maintain accurate
28 records regarding the employment of Plaintiff and other aggrieved employees as herein alleged;

1 and

2 (f) Labor Code sections 558.1, 2800, and 2802 for failure to reimburse
3 necessary business expenses.

4 143. Labor Code section 558(a) provides “[a]ny employer or other person acting on
5 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
6 provision regulating hours and days of work in any order of the Industrial Welfare Commission
7 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
8 underpaid employee for each pay period for which the employee was underpaid . . . (2) For each
9 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period
10 for which the employee was underpaid.”

11 144. Labor Code section 1174.5 provides a \$500 penalty for an employer’s failure to
12 maintain accurate and complete payroll records showing the hours worked daily and the wages paid
13 to employees.

14 145. Labor Code section 1197.1 also provides “[a]ny employer or other person acting
15 either individually or as an officer, agent, or employee of another person, who pays or causes to be
16 paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by
17 an order of the commission shall be subject to a civil penalty . . . as follows: (1) For any initial
18 violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee
19 for each pay period for which the employee is underpaid . . . (2) For each subsequent violation for
20 the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each
21 pay period for which the employee is underpaid regardless of whether the initial violation is
22 intentionally committed.

23 146. As set forth above, Defendants have violated numerous provisions of the Labor
24 Code regulating hours and days of work as well as the IWC Wage Orders. Accordingly, Plaintiff
25 also seeks the civil penalties set forth in Labor Code sections 558 and 1197.1 on Plaintiff’s own
26 behalf, the underpaid employees, and the State of California.

27 147. Plaintiff is an “aggrieved employees” because Plaintiff was employed by the alleged
28 violators and had one or more of the alleged violations committed against Plaintiff, and therefore

1 is properly suited to represent the interests of all other aggrieved employees.

2 148. The procedural requirements under Labor Code section 2699.3 as to Defendants
3 have been exhausted, permitting Plaintiff to pursue a claim for remedies available under PAGA.

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

7 150. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred
8 herein.

9 **PRAYER FOR RELIEF**

10 **WHEREFORE**, Plaintiff, individually, and on behalf of the proposed Class, prays for
11 judgment and the following specific relief against Defendants, jointly and severally, as follows:

12 1. That the Court certify the proposed Class and Subclasses, and any other class or
13 subclasses as appropriate under California Code of Civil Procedure section 382;

14 2. That Plaintiff be appointed as the Class Representative;

15 3. That Daily Aljian LLP be appointed as Class Counsel;

16 4. For compensatory damages, including, but not limited to, unpaid minimum and
17 overtime wages, in an amount according to proof with interest thereon;

18 5. For such general, economic, and/or special damages in an amount according to proof
19 with interest thereon;

20 6. For damages, monetary relief, wages, premiums, expense reimbursements, benefits
21 and penalties, including interest thereon;

22 7. For waiting time penalties pursuant to California Labor Code section 203;

23 8. For liquidated damages pursuant to California Labor Code section 1194.2;

24 9. For statutory penalties to the extent permitted by law, including those pursuant to
25 the California Labor Code and IWC Wage Orders;

26 10. For the amounts provided for in Labor Code section 226.7;

27 11. For civil penalties pursuant to PAGA;

28 12. For attorney's fees, costs of suit, including expert fees, and interest pursuant to

1 Labor Code sections 218.5, 218.6, 226(e), 1194, 1194.3, 2802(c) and Code of Civil Procedure
2 section 1021.5;

3 13. For disgorgement and restitution to Plaintiff and Class Members of all money and
4 property unlawfully acquired by Defendants through unfair or unlawful business practices pursuant
5 to Business and Professions Code sections 17200, *et seq.*;

6 14. For permanent injunctive relief described in the UCL cause of action;

7 15. For prejudgment interest on all sums recovered pursuant to Labor Code section
8 218.6, Civil Code sections 3287 and 3289, and applicable law

9 16. For post judgment interest on all amounts awarded to Plaintiff and Class Members
10 as provided by law;

11 17. A declaratory judgment that the practices complained of herein are unlawful under
12 California law;

13 18. Such other injunctive and equitable relief as the Court may deem proper; and

14 19. An award of such other and further relief as this Court may deem appropriate.

15 Dated: May 24, 2023

DAILY ALJIAN LLP

16 By: /s/ Simon Kwak

17 Justin E. D. Daily

18 Simon Kwak

19 Shelly D. Song

Attorneys for Plaintiff Olga Guerra, individually,
and on behalf of all others similarly situated.

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff, on behalf of herself and all others similarly situated, hereby requests a jury trial
22 on all claims so triable.

23 Dated: May 24, 2023

DAILY ALJIAN LLP

24 By: /s/ Simon Kwak

25 Justin E. D. Daily

26 Simon Kwak

27 Shelly D. Song

Attorneys for Plaintiff Olga Guerra, individually,
and on behalf of all others similarly situated.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

Case Name: GUERRA v. PULMUONE U.S.A., INC., et al.

I am employed in the City of Newport Beach, County of Orange, State of California. I am over the age of 18 years and not a party to the above-titled action. My business address is 100 Bayview Circle, Suite 5500, Newport Beach, California 92660. On **May 24, 2023**, I caused the foregoing document(s) to be served:

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

on the following parties:

Jason A. Geller
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Kevin Quan
kquan@fisherphillips.com
FISHER & PHILLIPS LLP
1 Montgomery Street, Suite 3400
San Francisco, California 94104

Attorneys for Defendant Pulmuone Foods USA, Inc.

[X] (BY ELECTRONIC TRANSMISSION) I caused the above-referenced document(s) to be transmitted via e-mail.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **May 24, 2023**, at Newport Beach, California.

/s/ Daisy Lopez

Daisy Lopez