

FILED
Superior Court Of California,
Sacramento
06/14/2022
mvalledor
By _____, Deputy
Case Number:
34-2022-00315068

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

LATOYIA KIMII BROWN, as an
individual and on behalf of all others
similarly situated,

Plaintiff,

vs.

HP HOOD LLC, a Delaware limited
liability company; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 34-2022-00315068

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

- (1) VIOLATION OF LABOR CODE §§ 201-204, 510, 558, 1194, 1197, AND 1197.1;
- (2) VIOLATION OF LABOR CODE § 2802;
- (3) VIOLATION OF LABOR CODE §§ 226.7 AND 512;
- (4) VIOLATION OF LABOR CODE § 226(a);
- (5) VIOLATION OF BUSINESS AND PROFESSIONS CODE §17200, *ET SEQ.*; AND
- (6) VIOLATION OF LABOR CODE § 2698, *ET SEQ.*

DEMAND OVER \$25,000.00

BY FAX

1 Plaintiff Latoyia Kimii Brown (“Plaintiff”) hereby submits this First Amended Class and
2 Representative Action (“Complaint”) against Defendant HP Hood LLC (“Defendant”) and Does
3 1 through 50 (collectively, “Defendants”), on behalf of herself, all other similarly situated current
4 and former employees, and all aggrieved employees of Defendants for penalties and/or damages
5 under the California Labor Code resulting from Defendant’s failure to pay minimum, regular,
6 and overtime wages for all hours worked, failure to reimburse business expenses, failure to pay
7 meal and rest period premium pay at the regular rate of pay, failure to provide accurate itemized
8 wage statements, penalties under California Labor Code statutes, and restitution for unfair
9 business practices in violation of Business and Professions Code § 17200, *et seq.*, as follows:

10 **INTRODUCTION**

11 1. This Complaint is within the Court’s jurisdiction under California Labor Code §§
12 201-204, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 2802, 2698, *et seq.*, the applicable
13 Wage Orders of the California Industrial Welfare Commission (“IWC”), and the Unfair
14 Competition Law, codified at Business and Professions Code § 17200, *et seq.* (the “UCL”).

15 2. This Complaint challenges systemic illegal employment practices resulting in
16 violations of the California Labor Code and Business and Professions Code against individuals
17 who worked for Defendants.

18 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
19 jointly and severally, have acted intentionally and with deliberate indifference and conscious
20 disregard to the rights of all employees by failing to pay minimum, regular, and overtime wages
21 for all hours worked, failing to reimburse business expenses, failing to pay meal and rest period
22 premium pay at the regular rate of pay, and failing to provide accurate itemized wage statements
23 to its employees in the State of California.

24 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 have engaged in, among other things a system of willful violations of the California Labor Code,
26 Business and Professions Code, and the applicable IWC Wage Orders, by creating and
27 maintaining policies, practices, and customs that knowingly deny employees the above stated

1 rights and benefits.

2 5. The policies, practices and customs of defendants described above and below
3 have resulted in unjust enrichment of Defendants and an unfair business advantage over
4 businesses that routinely adhere to the strictures of the California Labor Code and the California
5 Business and Professions Code.

6 **JURISDICTION AND VENUE**

7 6. The Court has jurisdiction over the violations of the California Labor Code §§
8 201-204, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 2802, 2698, *et seq.*, the applicable IWC
9 Wage Orders, and the UCL.

10 7. Venue is proper in Sacramento County, because Defendants are located in
11 Sacramento County and Plaintiff worked for Defendants in Sacramento County.

12 **PARTIES**

13 8. Plaintiff was employed by Defendants as a Relief Worker from about March 25,
14 2019, to about October 25, 2021. During her employment with Defendants, Plaintiff worked as a
15 non-exempt employee.

16 9. Plaintiff was and is the victim of the policies, practices, and customs of
17 Defendants complained of in this action in ways that have deprived her of the rights guaranteed
18 by California Labor Code §§ 201-204, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 2802,
19 2698, *et seq.*, the applicable IWC Wage Orders, and the UCL.

20 10. Plaintiff is informed and believes, and based thereon alleges, that Defendant HP
21 Hood LLC was and is a Delaware limited liability company that maintains operations and does
22 business in the State of California, including in Sacramento County, California. Plaintiff is
23 informed and believes, and based thereon alleges, that Defendant operates as a dairy processor.

24 11. Plaintiff is informed and believes, and based thereon alleges, that at all times
25 herein mentioned Does 1 through 50, are and were corporations, business entities, individuals,
26 and partnerships, licensed to do business and actually doing business in the State of California.
27 As such and based upon all the facts and circumstances incident to Defendants' business,

1 Defendants are subject to the California Labor Code, the IWC Wage Orders, and the UCL.

2 12. Plaintiff does not know the true names or capacities, whether individual, partner
3 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
4 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
5 Complaint when the true names and capacities are known. Plaintiff is informed and believes and
6 based thereon alleges that each of said fictitious defendants was responsible in some way for the
7 matters alleged herein and proximately caused Plaintiff and members of the general public and
8 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

9 13. At all times herein mentioned, each of said Defendant participated in the doing of
10 the acts hereinafter alleged to have been done by the named Defendant; and furthermore,
11 Defendants, and each of them, were the agents, servants, and employees of each of the other
12 defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
13 acting within the course and scope of said agency and employment.

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

21 15. At all times herein mentioned, Defendants, and each of them, were members of,
22 and engaged in, a joint venture, partnership, and common enterprise, and acting within the course
23 and scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

24 16. At all times herein mentioned, the acts and omissions of various Defendants, and
25 each of them, concurred and contributed to the various acts and omissions of each and all of the
26 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
27 herein mentioned, Defendants, and each of them, ratified each and every act or omission

1 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
2 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
3 damages as herein alleged.

4 **CLASS ACTION ALLEGATIONS**

5 17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
6 California Code of Civil Procedure § 382, of the following classes (together, the “Class” or
7 “Class Members”):

8 a. All current and former non-exempt employees of Defendants in the State
9 of California who were subject to the mandatory COVID-19 screenings at any time from
10 March 1, 2020, through the present (the “COVID Class” or “COVID Class Members”).

11 b. All current and former non-exempt employees of Defendant in the State of
12 California who earned non-discretionary remuneration, including, but not limited to shift
13 differentials, and meal/rest period premium pay during the same workweek at any time
14 between February 4, 2018, through the present (the “Meal/Rest Period Class” or
15 “Meal/Rest Period Class Members”).

16 18. **Numerosity and Ascertainability:** The members of the Class are so numerous
17 that joinder of all members would be impractical, if not impossible. The identity of the members
18 of the Class is readily ascertainable by review of Defendants’ records, including payroll records.

19 19. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
20 necessary steps to represent fairly and adequately the interests of the Class defined above.
21 Plaintiff’s attorneys are ready, willing, and able to fully and adequately represent the Class and
22 the individual Plaintiff. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class
23 actions in the past and currently have a number of wage-and-hour class actions pending in
24 California state and federal courts.

25 20. Defendants uniformly administered a corporate policy and practice of: (a) failing
26 to pay minimum, regular, and overtime wages for all hours worked in violation of Labor Code §§
27 201-204, 510, 558, 1194, 1197, and 1197.1; (b) failing to reimburse business expenses in

1 violation of Labor Code § 2802; (c) failing to pay meal and rest period premium pay at the
2 regular rate of pay in violation of Labor Code § 226.7 and 512; (d) failing to provide accurate
3 itemized wage statements in violation of Labor Code § 226; and (e) engaging in Unfair Business
4 Practices in violation of the UCL, the California Labor Code, including without limitation,
5 California Labor Code §§ 201-204, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 2802, and the
6 applicable IWC Wage Orders.

7 21. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
8 a consistent and uniform policy, practice, and procedure of willfully failing to comply with
9 Labor Code §§ 201-204, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 2802, the applicable
10 IWC Wage Orders, and the UCL.

11 22. **Common Question of Law and Fact:** There are predominant common questions
12 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
13 concerning Defendants' policy and practice of (a) failing to pay minimum, regular, and overtime
14 wages for all hours worked in violation of Labor Code §§ 201-204, 510, 558, 1194, 1197, and
15 1197.1; (b) failing to reimburse business expenses in violation of Labor Code § 2802; (c) failing
16 to pay meal and rest period premium pay at the regular rate of pay in violation of Labor Code §
17 226.7 and 512; (d) failing to provide accurate itemized wage statements in violation of Labor
18 Code § 226; and (e) engaging in Unfair Business Practices in violation of the UCL, the
19 California Labor Code, including without limitation, California Labor Code §§ 201-204, 226.7,
20 510, 512, 558, 1194, 1197, 1197.1, 2802, and the applicable IWC Wage Orders.

21 23. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
22 Class in that Plaintiff has suffered the harms alleged in this Complaint in a similar and typical
23 manner as the Class Members. As with other non-exempt employees of Defendants, Plaintiff was
24 required to undergo COVID screenings and temperature checks prior to the start of each shift
25 without the payment of any wages for such time. As a result, Plaintiff was not paid any
26 applicable minimum, regular, or overtime wages for undergoing said COVID screenings and
27 temperature checks off-the-clock. To date, Plaintiff has yet to receive the unpaid minimum,

1 regular, and overtime wages owed to her. Thus, Defendants owe waiting time penalties under
2 Labor Code § 203. Furthermore, as a result of the off-the-clock violation alleged above, Plaintiff
3 also received inaccurate wage statements that identified incorrect wage rates, total hours worked,
4 and net/gross wages earned, in violation of Labor Code § 226(a). Moreover, as a result of
5 Defendants requiring Plaintiff and Class Members to use their own phones to download an app
6 to perform COVID screenings, Defendants did not reimburse Plaintiff and the Class members for
7 those phone costs in violation of Labor Code § 2802. Additionally, Plaintiff earned non-
8 discretionary remuneration, including without limitation, shift differentials. Like other members
9 of the Class, Plaintiff was paid meal and rest period premium for missed meal and rest periods at
10 the base rate of pay as Defendants failed to include any non-discretionary remuneration earned
11 into the calculation of the regular rate. Specifically, whenever Plaintiff received meal and rest
12 period premium pay during workweeks in which Plaintiff earned non-discretionary
13 remuneration, the meal and rest period premium was paid at the base rate of pay. Thus, Plaintiff
14 is owed additional meal and rest break premium pay based on the correct, higher regular rate of
15 pay. Further, Defendants failed to pay Plaintiff all the wages owed upon separation of
16 employment due to the unpaid missed meal and rest period premiums. Finally, Plaintiff received
17 wage statements that failed to identify the accurate rate of pay, and the gross and net wages
18 earned. Therefore, Plaintiff is a member of the Class and has suffered the alleged violations of
19 Labor Code §§ 201-204, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 2802, the applicable
20 IWC Wage Orders, and the UCL.

21 24. The California Labor Code upon which Plaintiff bases these claims are broadly
22 remedial in nature. These laws and labor standards serve an important public interest in
23 establishing minimum working conditions and standards in California. These laws and labor
24 standards protect the average working employee from exploitation by employers who may seek
25 to take advantage of superior economic and bargaining power in setting onerous terms and
26 conditions of employment.

27 25. The nature of this action and the format of laws available to Plaintiff and

members of the Class identified herein make the class action format a particularly efficient and appropriate procedure to redress the wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate defendants would necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Requiring each class member to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damage to their careers at subsequent employment.

26. The prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual class members against the Defendants and which would establish potentially incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to the adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

27. Such a pattern, practice, and uniform administration of corporate policy regarding illegal employee compensation described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class identified herein, in a civil action, for unpaid wages, including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit according to the mandate of California Labor Code §§ 218.5, 226, 558, 1194, and Code of Civil Procedure § 1021.5.

28. Proof of a common business practice or factual pattern, which the named Plaintiff experienced and is representative of, will establish the right of each of the members of the Class to recovery on the causes of action alleged herein.

1 29. The Class is commonly entitled to a specific fund with respect to the
2 compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to
3 restitution of those funds being improperly withheld by Defendants. This action is brought for
4 the benefit of the entire Class and will result in the creation of a common fund.

5 **FIRST CAUSE OF ACTION**

6 **VIOLATION OF LABOR CODE §§ 201-204, 510, 558, 1194, 1197, and 1197.1**

7 **(BY PLAINTIFF AND THE COVID CLASS AGAINST ALL DEFENDANTS)**

8 30. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
9 though fully set forth herein.

10 31. This cause of action is brought pursuant to California Labor Code §§ 201-204,
11 510, 558, 1194, 1197, and 1197.1. The California Labor Code requires an employer to pay
12 employees minimum and regular wages for all hours worked fewer than eight hours in a day
13 and/or fewer than 40 hours in a workweek. The California Labor Code also requires an
14 employer to pay employees overtime wages for all hours worked greater than eight hours in a
15 day and/or greater than 40 hours in a workweek.

16 32. As a pattern and practice, Defendants suffered and permitted Plaintiff and Class
17 Members to work without payment of minimum and regular wages for all hours worked in a
18 workday and workweek, and without payment of overtime wages for all hours worked greater
19 than eight hours in a day and/or greater than 40 hours in a workweek.

20 33. Specifically, Defendants required Plaintiff and Class Members to undergo
21 COVID-19 screenings and temperature checks prior to the start of the work shift. Said COVID-
22 19 screenings and temperature checks were conducted off-the-clock – before Plaintiff and Class
23 Members clocked in for their shifts. Defendants failed to pay Plaintiff and Class Members for
24 any time spent undergoing said COVID-19 screenings and temperature checks, and thus,
25 Plaintiff and Class Members were not paid minimum, regular, and overtime wages for all hours
26 worked.

27 34. Defendants had a uniform corporate pattern, practice, and procedure regarding the

1 above practices in violation of the California Labor Code.

2 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
3 willful failure to pay all wages due and owing to Plaintiff and Class Members upon separation of
4 employment results in a continued payment of wages up to thirty (30) days from the time the
5 wages were due. Therefore, Plaintiff and Class Members who have separated from employment
6 are entitled to compensation pursuant to Labor Code § 203.

7 36. Such a pattern, practice and uniform administration of corporate policy regarding
8 illegal employee compensation as described herein is unlawful and creates an entitlement to
9 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
10 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according
11 to the mandate of California Labor Code §§ 201-204, 226, 510, 558, 1194, 1197, and 1197.1.

12 **SECOND CAUSE OF ACTION**

13 **VIOLATION OF LABOR CODE § 2802**

14 **(BY PLAINTIFF AND THE COVID CLASS AGAINST ALL DEFENDANTS)**

15 37. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
16 though fully set for herein.

17 38. This cause of action is brought pursuant to Labor Code § 2802, which provides
18 that employees are entitled to be indemnified for expenses and losses in discharging the duties of
19 their employers.

20 39. At all relevant times, Defendants regularly failed to reimburse and indemnify
21 Plaintiff and the Class members for business expenses incurred in the discharge of their duties.
22 Specifically, Defendants failed to pay Plaintiff and Class Members for work-related expenses,
23 including without limitation, the costs incurred with the use of personal cell phones. In
24 connection with Defendants' policy of requiring Plaintiff and Class Members to download an
25 app to perform COVID-19 screenings, Defendants did not allow Plaintiff and Class Members to
26 use Defendants' phones to perform said procedures. Thus, Plaintiff and Class Members were
27 required to use their personal cell phones to undergo Defendants' COVID-19 screenings. Costs
that Plaintiff and Class Members incurred in connection with these procedures were not

1 reimbursed.

2 40. Defendant had a uniform corporate pattern and practice and procedure regarding
3 the above practices in violation of Labor Code § 2802.

4 41. Such a pattern, practice and uniform administration of corporate policy regarding
5 Defendant's failure to reimburse employees for their business expenses as described herein is
6 unlawful and creates an entitlement to recovery by Plaintiff in a civil action, for the unpaid
7 balance of the full amount of damages owed, including interest thereon, penalties, attorneys'
8 fees, and costs of suit according to the mandate of California Labor Code § 2802.

9 **THIRD CAUSE OF ACTION**

10 **VIOLATION OF LABOR CODE § 226.7 AND 512**

11 **(BY PLAINTIFF AND MEAL/REST PERIOD CLASS AGAINST ALL DEFENDANTS)**

12 42. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
13 though fully set forth herein.

14 43. At all relevant times, Defendant failed in its affirmative obligation to ensure that
15 Plaintiff and Meal/Rest Period Class Members had the opportunity to take and were provided
16 with off-duty meal and rest periods in accordance with the mandates of the California Labor
17 Code and the applicable IWC Wage Order. For each workday that a meal or rest period is not
18 provided, employees are entitled to one additional hour of pay at the employee's regular rate of
19 pay. Defendant, however, paid meal and rest period premium wages at an employee's base
20 hourly rate of pay, which did not include non-discretionary remuneration, including, but not
21 limited to, shift differentials. As such, Plaintiff and the Meal/Rest Period Class are owed
22 additional meal/rest period premiums based on the correct, higher regular rate of pay.

23 44. Such a pattern, practice and uniform administration of corporate policy as
24 described herein is unlawful and creates an entitlement to recovery by Plaintiff and Meal/Rest
25 Period Class Members, in a civil action, for the unpaid balance of the premium compensation
26 pursuant to Labor Code section 226.7, and the applicable IWC Wage Order, including interest
27 thereon, penalties, including penalties pursuant to Labor Code §§ 201-203, 226, 226.7, and 512
reasonable attorneys' fees, and costs of suit.

1 45. Plaintiff is informed and believes, and based thereon allege, that Defendants'
2 willful failure to provide all meal and rest period premium wages due and owing to Plaintiff and
3 Meal and Rest Period Class Members upon separation from employment results in a continued
4 payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff
5 and other members of the Meal and Rest Period Class who have separated from employment are
6 entitled to compensation pursuant to Labor Code § 203.

7 **FOURTH CAUSE OF ACTION**

8 **VIOLATION OF LABOR CODE § 226**

9 **(BY PLAINTIFF, THE COVID CLASS, AND THE MEAL/REST PERIOD CLASS**
10 **AGAINST ALL DEFENDANTS)**

11 46. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
12 though fully set forth herein.

13 47. Defendants failed in its affirmative obligation to provide accurate itemized wage
14 statements. Defendants, as a matter of policy and practice, did not provide accurate records in
15 violation of Labor Code § 226(a) by failing to provide accurate payroll records for Plaintiff and
16 the Class.

17 48. As a result of Defendants' failure to pay proper wages and meal/rest break
18 premiums, in violation as identified above, the wage statements issued to Plaintiff and Class
19 Members failed to identify the correct gross wages earned, net wages earned, and correct hourly
20 rates of pay, in violation of Labor Code § 226(a)(1), (5), and (9).

21 49. Such a pattern, practice and uniform administration of corporate policy as
22 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class
23 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226,
24 including interest thereon, attorneys' fees, and costs of suit according to the mandate of
25 California Labor Code § 226.

26 ///

27 **FIFTH CAUSE OF ACTION**

VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.*

1 **(BY PLAINTIFF, THE COVID CLASS, AND THE MEAL/REST PERIOD CLASS**
2 **AGAINST ALL DEFENDANTS)**

3 50. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
4 though fully set forth herein.

5 51. Defendants, and each of them, have engaged and continue to engage in unfair and
6 unlawful business practices in California by practicing, employing, and utilizing the employment
7 practices outlined above, by: (a) failing to pay minimum, regular, and overtime wages for all
8 hours worked in violation of Labor Code §§ 201-204, 510, 558, 1194, 1197, and 1197.1; and (b)
9 failing to pay meal and rest period premium at the regular rate of pay in violation of Labor Code
10 §§ 226.7 and 512.

11 52. Defendants' utilization of such unfair and unlawful business practices constitutes
12 unfair and unlawful competition and provides an unfair advantage over Defendants' competitors.

13 53. Plaintiff seeks, individually and on behalf of other members of the Class similarly
14 situated, full restitution of monies, as necessary and according to proof, to restore any and all
15 monies withheld, acquired and/or converted by the Defendants by means of the unfair practices
16 complained of herein.

17 54. Plaintiff is informed and believes, and based thereon alleges, that at all times
18 herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices,
19 as proscribed by California Business & Professions Code § 17200, *et seq.*, including those set
20 forth herein above thereby depriving Plaintiff and other Class Members the minimum working
standards and conditions due to them under the California laws as specifically described therein.

21 **SIXTH CAUSE OF ACTION**

22 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

23 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

24 55. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
25 though fully set forth herein.

26 56. Plaintiff brings this cause of action as a proxy for the State of California and in
27 this capacity, seeks penalties on behalf of all Aggrieved Employees from February 1, 2021,

1 through the present, for Defendants' violations of Labor Code §§ 201-204, 226, 226.7, 510, 512,
2 558, 1194, 1197, 1197.1, 2802, 2698, et seq., as identified above, for failing to pay minimum,
3 regular, and overtime wages for all hours worked, failing to reimburse business expenses, failing
4 to pay meal and rest period premium pay at the regular rate of pay, and failing to provide
5 accurate itemized wage statements.

6 57. Specifically, Plaintiff and Aggrieved Employees were required to undergo
7 COVID screenings and temperature checks prior to the start of each shift without the payment of
8 any wages for such time. As a result, Plaintiff and Aggrieved Employees were not paid any
9 applicable minimum, regular, or overtime wages for undergoing said COVID screenings and
10 temperature checks off-the-clock. To date, Plaintiff and Aggrieved Employees have yet to
11 receive the unpaid minimum, regular, and overtime wages owed to them. Thus, Defendants owe
12 waiting time penalties under Labor Code § 203.

13 58. Furthermore, as a result of the off-the-clock violation alleged above, Plaintiff and
14 Aggrieved Employees also received inaccurate wage statements that identified incorrect wage
15 rates, total hours worked, and net/gross wages earned, in violation of Labor Code § 226(a).
16 Moreover, as a result of Defendants requiring Plaintiff and Aggrieved Employees to use their
17 own phones to download an app to perform COVID screenings, Defendants did not reimburse
18 Plaintiff and Aggrieved Employees for those phone costs in violation of Labor Code § 2802.

19 59. Additionally, Plaintiff and Aggrieved Employees earned non-discretionary
20 remuneration, including without limitation, shift differentials. Plaintiff and Aggrieved
21 Employees were paid meal and rest period premium for missed meal and rest periods at the base
22 rate of pay as Defendants failed to include any non-discretionary remuneration earned into the
23 calculation of the regular rate. Specifically, whenever Plaintiff and Aggrieved Employees
24 received meal and rest period premium pay during workweeks in which they earned non-
25 discretionary remuneration, the meal and rest period premium was paid at the base rate of pay.
26 Thus, Plaintiff and Aggrieved Employees are owed additional meal and rest break premium pay
27 based on the correct, higher regular rate of pay. Further, Defendants failed to pay Plaintiff and

1 Aggrieved Employees all the wages owed upon separation of employment due to the unpaid
2 missed meal and rest period premiums. Finally, Plaintiff and Aggrieved Employees received
3 wage statements that failed to identify the accurate rate of pay, and the gross and net wages
4 earned.

5 60. On or about February 1, 2022, Plaintiff sent written notice to the California Labor
6 & Workforce Development Agency (“LWDA”) of Defendants’ violation of Labor Code § 201-
7 204, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 2802, pursuant to Labor Code § 2698, *et*
8 *seq.*, the Private Attorneys General Act (“PAGA”). Plaintiff also sent written notice of said
9 Labor Code violations to Defendant via certified mail pursuant to Labor Code § 2699.3. As of
10 the date of the filing of this Complaint, the LWDA has not provided written notice regarding
11 whether it intends to investigate the Labor Code violations set forth in Plaintiff’s written notice.

12 As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all
13 applicable civil penalties for Defendants’ violation of Labor Code §§ 201-204, 226, 226.7, 510,
14 512, 558, 1194, 1197, 1197.1, 2802, and 2698 for the time period described above, on behalf of
15 himself and other Aggrieved Employees

16 **PRAYER FOR RELIEF**

17 1. WHEREFORE, Plaintiff prays for judgment for himself and all others on whose
18 behalf this suit is brought against Defendants, jointly and severally, as follows:

19 2. For an order certifying the proposed classes;

20 3. For an order appointing Plaintiff as the class representative as described herein;

21 4. For an order appointing Counsel for Plaintiff as Class Counsel;

22 5. Upon the First Cause of Action, for damages and/or penalties pursuant to
23 California Labor Code §§ 201-204, 226, 510, 558, 1194, 1197, and 1197.1, and for costs and
24 attorneys’ fees;

25 6. Upon the Second Cause of Action, for damages and/or penalties, costs and
26 attorneys’ fees pursuant to Labor Code § 2802;

27 7. Upon the Third Cause of Action, for damages and/or penalties pursuant to

1 California Labor Code §§ 201-203, 226, 226.7 and 512, and for costs and attorneys' fees;

2 8. Upon the Fourth Cause of Action, for damages and/or penalties pursuant to
3 California Labor Code § 226, and for costs and attorneys' fees;

4 9. Upon the Fifth Cause of Action, for restitution to Plaintiff and other similarly
5 affected members of the general public of all funds unlawfully acquired by Defendants by means
6 of any acts or practices declared by this Court to be in violation of Business & Professions Code
7 § 17200, *et seq.*, and for costs and attorneys' fees;

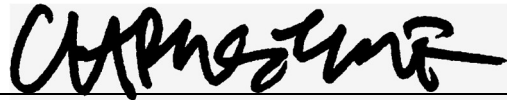
8 10. Upon the Sixth Cause of Action, for civil penalties according to proof pursuant to
9 the PAGA, Labor Code §226.3, and for costs and attorneys' fees; and

10 11. On all causes of action, for attorneys' fees and costs as provided by California
11 Labor Code §§ 218.5, 226, 1194, 2699, and Code of Civil Procedure § 1021.5; and

12 12. For such other and further relief the Court may deem just and proper.
13

14 DATED: June 14, 2022

DIVERSITY LAW GROUP, P.C.

15
16 By: 
17 Larry W. Lee
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20 Employees
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(Code of Civil Procedure Sections 1013a, 2015.5)


Erika Mejia