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and on behalf of all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE

MARIA JANET SANTOS
MARTINEZ, as an aggrieved employee,
and on behalf of all other aggrieved
employees under the Labor Code
Private Attorneys' General Act of
2004,

Plaintiff,

v.

LE ZINC BAR, LLC., a California limited
liability company; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: **22ST CV 16761**

REPRESENTATIVE ACTION

**COMPLAINT UNDER THE LABOR
CODE PRIVATE ATTORNEYS'
GENERAL ACT OF 2004 FOR CIVIL
PENALTIES UNDER LABOR CODE
SECTIONS 210, 226.3, 558, 1174.5, 1197.1
and 2699**

DEMAND FOR JURY TRIAL

[Amount in Controversy Greater Than
\$25,000.00]

COME NOW plaintiff MARIA JANET SANTOS MARTINEZ ("MS. SANTOS
MARTINEZ" or "Plaintiff"), as aggrieved employee, and on behalf of all other aggrieved employees
under the Labor Code Private Attorneys' General Act of 2004, and alleges as follows:

1 **JURISDICTION AND VENUE**

2 1. This is a representative action, pursuant to the Labor Code Private Attorneys General
3 Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against LE ZINC BAR, LLC,
4 a California limited liability company, and any of its respective subsidiaries or affiliated companies
5 within the State of California (“LE ZINC” and DOES 1 through 100, as further defined below,
6 “Defendants”), as a proxy of the Labor and Workforce Development Agency of the State of
7 California (“LWDA”), on behalf of Plaintiff and all other current and former non-exempt employees
8 of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains
9 to the alleged claims for failure to comply with Labor Code section 6409.6, Labor Code section
10 2810.5, Labor Code section 203, Labor Code section 226 and 226.2, Labor Code section 227.3,
11 Labor Code section 246, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing
12 and freedom of speech on behalf of all employees of Defendants working within the Civil Penalty
13 Period (collectively, “Aggrieved Employees”).

14 2. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
15 of Civil Procedure section 410.10.

16 3. Venue is proper in Los Angeles County, California pursuant to Code of Civil
17 Procedure sections 392, *et seq.* because, among other things, Los Angeles County is where the
18 causes of action complained of herein arose; the county in which the employment relationship
19 began; the county in which performance of the employment contract, or part of it, between Plaintiff,
20 or some of them, and Defendants was due to be performed; the county in which the employment
21 contract, or part of it, between Plaintiff and Defendants was actually performed; and the county in
22 which Defendants, or some of them, reside. Moreover, the unlawful acts alleged herein have a direct
23 effect on Plaintiff and Aggrieved Employees in Los Angeles County, and because Defendants
24 employ numerous Aggrieved Employees in Los Angeles.

25 4. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
26 Defendants during the applicable statutory period and suffered one or more of the Labor Code
27 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term “civil
28 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code

1 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus
2 reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former
3 employees of Defendants during the Civil Penalty Period.

4 5. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative
5 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
6 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
7 PAGA allegations described herein is not required.

8 6. During the period beginning one (1) year preceding the provision of notice to the
9 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
10 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 221,
11 223, 226, 226.2, 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174,
12 1174.5, 1194, 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, 2810.3, and 2810.5, among others.

13 7. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
14 such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within
15 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
16 specified in Labor Code section 2699.3.

17 8. On or around March 16, 2022, Plaintiff provided written notice pursuant to Labor
18 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’
19 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
20 as well as by certified mail, with return receipt requested to Defendants, and each of them.

21 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
22 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)
23 calendar days of the March 16, 2022 postmarked date of the herein-described notice sent by Plaintiff
24 to the LWDA and Defendants.

25 10. On April 6, 2020, the Judicial Council of California approved Appendix I –
26 Emergency Rules Related to COVID-19. Pursuant to the Amended Emergency Rule 9 of the
27 California Rules of Court, subdivision (a), the statutes of limitations and repose for civil causes of
28 action are tolled from April 6, 2020 until October 1, 2020.

PAGA REPRESENTATIVE ALLEGATIONS

11. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to pay overtime wages to Plaintiff and other Aggrieved Employees in the State of California in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime wages, as a result of, without limitation, failing to accurately track and/or pay for all hours actually worked at the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees to attend company meetings without compensation and to leave work late without allowing employees to clock in for all of that time; failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, incentive pay in calculating overtime wages, and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime rate of pay, detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours than actually worked, auto-deducting time for meal periods, and for paying straight pay instead of overtime pay, to the detriment of Plaintiff and other Aggrieved Employees.

12. At all relevant times mentioned herein, Defendants had and have a practice or policy of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for all hours worked or otherwise under Defendants' control as a result of, without limitation, failing to accurately track and/or pay for all hours actually worked at their regular rate of pay that is above the minimum wage; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees to attend company meetings without compensation and to leave work late without allowing employees to clock in for all of that time; detrimental rounding of employee time entries and failing to track and pay for all non-productive time, to the detriment of Plaintiff and other Aggrieved Employees.

13. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to provide Plaintiff and other Aggrieved Employees a thirty (30) minute uninterrupted,

1 timely, and complete meal periods for days on which the employee worked in excess of five (5) and
2 ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal
3 periods or compensation in lieu thereof including, without limitation, by interrupting meal periods;
4 not providing timely meal periods; failing to provide first and second meal periods; providing short
5 meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal
6 periods; not permitting employees to leave the premises; and otherwise requiring on-duty/on-call
7 meal periods; and/or auto-deducting meal periods that could not be auto-deducted by law or during
8 which employees worked, as required by California wage and hour laws

9 14. At all relevant times mentioned herein, Defendants had and have a policy or practice
10 of failing to provide Plaintiff and other Aggrieved Employees paid, uninterrupted, timely, and
11 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions
12 thereof, or compensation in lieu thereof, including, without limitation, by failing to provide rest
13 periods all together; requiring that they be bundled together and/or with meal periods; interrupting
14 them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not
15 providing them in a timely fashion; and not permitting employees to leave the premises; and/or
16 otherwise requiring on-duty/on-call rest periods, as required by California wage and hour laws.

17 15. At all relevant times mentioned herein, Defendants had and have a policy or practice
18 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
19 Plaintiff and other Aggrieved Employees with itemized wage statements that accurately reflect gross
20 wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable
21 hourly rates in effect during the pay period and the corresponding number of hours worked at each
22 hourly rate by the employee; and failing to include an accurate accounting of the total hours of
23 compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those
24 periods during the pay period, as well as the total hours of nonproductive time, the rate of
25 compensation, and the gross wages paid for that time; and other such information as required by
26 Labor Code section 226, subdivision (a).

27 16. At all relevant times mentioned herein, Defendants had and have a policy or practice
28 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish

1 Plaintiff and other Aggrieved Employees with documents signed to obtain or hold employment
2 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
3 under Labor Code section 1174, making it difficult for Plaintiff and other Aggrieved Employees to
4 calculate their unpaid wages and/or premium payments, to the detriment of Plaintiff and other
5 Aggrieved Employees.

6 17. At all relevant times mentioned herein, Defendants had and have a policy or practice
7 of failing to timely pay Plaintiff and other Aggrieved Employees, among other wages, all wages
8 owed as a result of Defendants' practice or policy of failing to pay, among other wages, overtime
9 wages, minimum wages, premium wages, paid time off and vacation time owed as required by Labor
10 Code sections 201, 202, and 203.

11 18. At all relevant times herein, Defendants had and have a policy or practice of failing
12 to pay Plaintiff and Aggrieved Employees their paid time off and vacation time owed upon
13 separation of employment as wages at their final rate of pay in violation of Labor Code section 227.3
14 and applicable Wage Orders.

15 19. At all relevant times mentioned herein, Defendants have had a policy or practice of
16 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
17 limitation, Plaintiff and other Aggrieved Employees, with their costs incurred for the purchase of
18 and maintenance of cellular phones and cellular phone plans, in direct consequence of the discharge
19 of their duties, or of their obedience to the directions of Defendants, as required by Labor Code
20 2802.

21 20. At all relevant times mentioned herein, Defendants have had a policy or practice of
22 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
23 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other Aggrieved
24 Employees with the rates of pay and overtime rates of pay applicable to their employment;
25 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
26 name, address, and telephone number of the workers' compensation insurance carrier; information
27 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
28 under Labor Code section 2810.5. Plaintiff is informed and believes that the notice requirement of

1 Labor Code section 2810.5 involves a mandatory payroll or workplace injury reporting, as described
2 under Labor Code section 2699(g)(2).

3 21. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and
4 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
5 California law (including, without limitation Labor Code section 246, *et seq.*), and also did not
6 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and
7 all other Aggrieved Employees. Plaintiff is informed and believes that the notice requirement of
8 Labor Code section 246, *et seq.* involves a mandatory payroll or workplace injury reporting, as
9 described under Labor Code section 2699(g)(2).

10 22. At all relevant times mentioned herein, Defendants have had a policy or practice of
11 failing to pay Plaintiff and Aggrieved Employees their wages in accordance with Labor Code
12 Section 204, which requires that: “[l]abor performed between the 1st and 15th days, inclusive, of
13 any calendar month shall be paid for between the 16th and 26th day of the month during which the
14 labor was performed, and labor performed between the 16th and the last day, inclusive of any
15 calendar month, shall be paid for between the 1st and 10th day of the following month.”

16 23. At all relevant times mentioned herein, Defendants had and have a policy or practice
17 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge
18 and experience they obtained at Defendants for purposes of competing with Defendants, including,
19 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
20 a prospective employer, and from disclosing who else works at Defendants and under what
21 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
22 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
23 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
24 Code sections 232, 232.5, and 1197.5, subdivision (k).

25 24. Defendants had and have a policy or practice of preventing Plaintiff and/or other
26 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
27 to their managers or outside to private attorneys or government officials, among others, in violation
28 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section

1 1102.5. In addition, Plaintiff is informed and believes that Defendants' herein-described policies
2 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
3 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
4 of Labor Code section 232 and 232.5.

5 25. Defendants had and have a policy or practice of preventing Plaintiff and/or other
6 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state
7 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,
8 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,
9 subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the exercise of
10 Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and
11 economic liberty.

12 26. Plaintiff, in her representative capacity, seeks civil penalties under Labor Code
13 sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate the
14 California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved
15 Employees pursuant to PAGA.

16 **PARTIES**

17 **A. Plaintiff**

18 27. Plaintiff, MS. SANTOS MARTINEZ, is a resident of the State of California. At all
19 relevant times herein, MS. SANTOS MARTINEZ is informed and believes, and based thereon
20 alleges, that Defendants employed her as a non-exempt employee, with duties that included, but
21 were not limited to, grilling, preparing food, cooking and cleaning. MS. SANTOS MARTINEZ is
22 informed and believes, and based thereon alleges, that she worked for Defendants from
23 approximately September of 2019 through approximately March of 2021. MS. SANTOS
24 MARTINEZ is informed and believes that Defendants paid (or purported to pay) her on an hourly
25 basis.

26 **B. Defendants**

27 28. Plaintiff is informed and believes, and based thereon alleges, that defendant LE ZINC
28 is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of

1 the laws of the State of California and doing business in the County of Los Angeles, State of
2 California. Plaintiff is informed and believes LE ZINC is primarily involved in the bar and
3 restaurant business.

4 29. The true names and capacities, whether individual, corporate, associate, or otherwise,
5 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
6 who therefore sue defendants by such fictitious names under Code of Civil Procedure section 474.
7 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
8 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
9 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
10 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
11 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
12 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
13 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
14 other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall
15 include LE ZINC, and any of its parent, subsidiary, or affiliated companies within the State of
16 California, as well as DOES 1 through 100 identified herein.

17 **JOINT LIABILITY ALLEGATIONS**

18 30. Plaintiff is informed and believes, and based thereon alleges, that at all times
19 mentioned herein, each of the defendants was the agent, principal, employee, employer,
20 representative, joint venture or co-conspirator of each of the other defendants, either actually or
21 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
22 employment, joint venture, and conspiracy.

23 31. All of the acts and conduct described herein of each and every corporate defendant
24 was duly authorized, ordered, and directed by the respective and collective defendant corporate
25 employers, and the officers and management-level employees of said corporate employers. In
26 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
27 their said employees, agents, and representatives, and each of them; and upon completion of the
28 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant

1 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
2 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
3 aforementioned corporate employees, agents and representatives.

4 32. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
5 thereon alleges that Defendants, and each of them, are joint employers.

6 **FIRST CAUSE OF ACTION**

7 **(Civil Penalties Under Labor Code § 210 – Against All Defendants)**

8 33. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
9 and incorporates each by reference as though fully set forth herein.

10 34. At all relevant times herein, Labor Code section 204, requires and required that:
11 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
12 between the 16th and 26th day of the month during which the labor was performed, and labor
13 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
14 between the 1st and 10th day of the following month.”

15 35. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
16 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
17 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
18 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
19 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
20 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
21 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

22 36. At all relevant times herein, Defendants have had a consistent policy or practice of
23 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as
24 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other
25 Aggrieved Employees are entitled to recover civil penalties for Defendants’ violations of Labor
26 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for
27 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
28 for each subsequent violation in connection with each payment that was made in violation of Labor

1 Code section 204.

2 **SECOND CAUSE OF ACTION**

3 **(Civil Penalties Under Labor Code § 226.3 – Against All Defendants)**

4 37. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
5 and incorporates each by reference as though fully set forth herein.

6 38. Defendants had and have a policy or practice of failing to comply with Labor Code
7 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees
8 with itemized wage statements that accurately reflect gross wages earned; total hours worked; net
9 wages earned; the name and address of each employer with whom they have been placed to work;
10 all applicable hourly rates in effect during the pay period and the corresponding number of hours
11 worked at each hourly rate; the legal name of the employer and/or the name and address of the legal
12 entity securing the employer's services if the employer is a farm labor contractor; and other such
13 information as required by Labor Code section 226, subdivision (a).

14 39. Labor Code section 226.3 states that "[a]ny employer who violates subdivision (a)
15 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
16 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
17 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
18 deduction statement or fails to keep the records required in subdivision (a) of Section 226."

19 40. Labor Code section 226.3 further provides that "[t]he civil penalties provided for in
20 this section are in addition to any other penalty provided by law."

21 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
22 and have a policy or practice of failing to furnish non-exempt employees, including, without
23 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total
24 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
25 corresponding number of hours worked at each hourly rate in effect during the pay period; and other
26 such information as required by Labor Code section 226, subdivision (a).

27 42. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
28 entitled to recover civil penalties for Defendants' violation of Labor Code section 226, subdivision

1 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
2 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
3 period for each subsequent violation.

4 **THIRD CAUSE OF ACTION**

5 **(Violation of Labor Code § 558 – Against All Defendants)**

6 43. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
7 and incorporates each by reference as though fully set forth herein.

8 44. Pursuant to Labor Code section 558, subdivision (a): “Any employer or other person
9 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating
10 hours and days of work in any of the Industrial Welfare Commission” shall be subject to a civil
11 penalty as follows:

12 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
13 pay period for which the employee was underpaid in addition to an amount sufficient
14 to recover underpaid wages;

15 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
16 employee for each pay period for which the employee was underpaid in addition to
17 an amount sufficient to recover underpaid wages;

18 (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

19 45. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
20 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
21 causing Plaintiff and other Aggrieved Employees not to: be paid overtime wages and minimum
22 wages; receive meal and rest periods or compensation in lieu thereof; be paid timely wages during
23 their employment and after their employment separation; receive accurate, itemized wage
24 statements; be provided with the opportunity to inspect employment records; be provided with
25 notice as required under Labor Code section 2810.5; be provided with the proper accrual and use of
26 paid sick leave; and/or be paid out all paid time off and/or vacation wages owed at the proper rate
27 of pay.

28 / / /

46. As a direct and proximate result of the herein-described Labor Code violations, pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties for Defendants' herein-described Labor Code violations in the amount fifty dollars (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

FOURTH CAUSE OF ACTION

(Violation of Labor Code § 1197.1 – Against All Defendants)

47. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs and incorporates each by reference as though fully set forth hereat.

48. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required every person employing labor in California to “[a]llow any member of the commission or the employees of the Division of Labor Standards Enforcement free access to the place of business or employment of the person to secure any information or make any investigation that they are authorized by this chapter to ascertain or make. The commission may inspect or make excerpts, relating to the employment of employees, from the books, reports, contracts, payrolls, documents, or papers of the person.”

49. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required every person employing labor in California to “[k]eep a record showing the names and addresses of all employees employed and the ages of all minors.”

50. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required every person employing labor in California to “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

51. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

52. Plaintiff is informed and believes, and based thereon alleges, that Defendants have willfully failed to maintain the records required by Labor Code subdivision (c), failed to maintain accurate and complete records required by Labor Code subdivision (d), and/or failed to allow inspection of records as required by Labor Code subdivision (b).

53. As a direct and proximate result of the herein-described Labor Code violations, pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties for Defendants' herein-described Labor Code violations in the amount of five hundred dollars (\$500) per violation per Aggrieved Employee.

FIFTH CAUSE OF ACTION

(Violation of Labor Code § 1197.1 – Against All Defendants)

54. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs and incorporates each by reference as though fully set forth herein.

55. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

1 (2) For each subsequent violation for the same specific offense, two hundred fifty
2 dollars (\$250) for each underpaid employee for each pay period for which the
3 employee is underpaid regardless of whether the initial violation is
4 intentionally committed. This amount shall be in addition to an amount
5 sufficient to recover underpaid wages, liquidated damages pursuant to Section
6 1194.2, and any applicable penalties imposed pursuant to Section 203.

7 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
8 Section 203, recovered pursuant to this section shall be paid to the affected
9 employee.”

10 56. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
11 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
12 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ wages for all hours
13 worked or otherwise under Defendants’ control due to, without limitation, routinely failing to
14 accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of
15 time entries; paying straight pay instead of overtime or otherwise failing to pay overtime hours at
16 the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock.

17 57. As a direct and proximate result of the herein-described Labor Code violations,
18 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
19 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one
20 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
21 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
22 subsequent violation.

23 **SIXTH CAUSE OF ACTION**

24 **(Civil Penalties Under Labor Code § 2699 – Against All Defendants)**

25 58. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
26 and incorporates each by reference as though fully set forth hereat.

27 59. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
28 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed

1 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
2 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
3 action brought by an aggrieved employee on behalf of himself or herself and other current or former
4 employees pursuant to the procedures specified in Labor Code section 2699.3.

5 60. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor
6 Code except those for which a civil penalty is specifically provided, the established civil penalty for
7 a violation of those provisions is as follows: if, at the time of the alleged violation, the person
8 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
9 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
10 employee per pay period for each subsequent violation.

11 61. Plaintiff is informed and believe and based thereon allege that Defendants, and each
12 of them, violated the Labor Code sections described herein, including, without limitation, for the
13 failure to: pay overtime wages and minimum wages; provide meal and rest periods or compensation
14 in lieu thereof; provide accurate, itemized wage statements; pay timely wages during employment
15 and after employment separation; provide employees the opportunity to inspect employment
16 records; reimburse Aggrieved Employees for costs incurred in furtherance of their work duties;
17 provide notice as required under Labor Code section 2810.5; provide the proper accrual and use of
18 paid sick leave; paying employees all owed paid time off and vacation time owed by separation at
19 the proper rate of pay; and placing restraints on competition, whistleblowing and freedom of speech,
20 entitling Plaintiff and other Aggrieved Employees to civil penalties for each of these Labor Code
21 violations in the amounts set forth in Labor Code section 2699, subdivision (f).

22 62. Moreover, Plaintiff and other Aggrieved Employees within the State of California
23 whom she seeks to represent are entitled to an award of reasonable attorneys' fees and costs in
24 connection with their herein-described claims for civil penalties.

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28 **REQUEST FOR JURY TRIAL**

