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FILED
Superior Court of California
County of Los Angeles

AUG 27 2021

Sherri R. Carter, Executive Officer/Clerk of Court
By S. DREW Deputy

7 Attorneys for PLAINTIFF ASHLEY LOPEZ, as an individual and on behalf of all others
8 similarly situated

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA,**
10 **IN AND FOR THE COUNTY OF LOS ANGELES**

FILED BY FAX

10 ASHLEY LOPEZ, as an individual, and on
11 behalf of all others similarly situated,

12 PLAINTIFF,

14 v.

16 M. PERNECKY MANAGEMENT CORP.,
17 a California corporation; and DOES 1
through 100, inclusive,

18 DEFENDANTS.
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CLASS ACTION COMPLAINT

Case No.: **21 ST CV 31848**

1. **FAILURE TO PAY MEAL AND REST PERIOD COMPENSATION (CAL. LAB. CODE §§ 226.7, 512);**
2. **FAILURE TO PAY OVERTIME COMPENSATION (CAL. LABOR CODE §§510, 1194);**
3. **VIOLATION OF LABOR CODE § 1391 AND EDUCATION CODE § 49116 (VIOLATION OF CALIFORNIA CHILD LABOR LAWS)**
4. **WAITING TIME PENALTIES (CAL. LAB. CODE § 203);**
5. **FAILURE TO PAY ALL WAGES BY THE APPROPRIATE PAY PERIOD (CAL. LAB. CODE § 204);**
6. **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS (CAL. LAB. CODE § 226, IWC Wage Order);**

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7. UNFAIR BUSINESS PRACTICES
(CALIFORNIA BUSINESS AND
PROFESSIONS CODE § 17200, ET
SEQ.);
8. FAILURE TO PAY MINIMUM WAGES
(CAL. LABOR CODE §§1182.12, 1194,
1194.2, 1197)

DEMAND FOR JURY TRIAL

PLAINTIFF ASHLEY LOPEZ (“PLAINTIFF” or “LOPEZ”) individually, and on behalf of herself, all others similarly situated, complains and alleges on information and belief the following against M. PERNECKY MANAGEMENT CORP. (hereinafter “M. PERNECKY”), a California corporation, and DOES 1 through 100, inclusive, (collectively, “DEFENDANTS”):

INTRODUCTION

1. This is a class action lawsuit being brought on behalf of all non-exempt employees who work(ed) for DEFENDANTS in California. PLAINTIFF and members of the PLAINTIFF CLASS (defined below) work(ed) as employees at DEFENDANTS’ various locations in California. PLAINTIFF and members of the PLAINTIFF CLASS have been subjected to numerous wage and hour violations which are the result of systemic policies and procedures implemented by DEFENDANTS. By this action, PLAINTIFF repudiates, disaffirms, and communicates her disaffirmance of any and all contracts or written agreements entered into between her and any of the DEFENDANTS that purports to impose any arbitration requirements, or purports to prevent her from bringing any and all of her claims in state court, notwithstanding any purported execution of arbitration agreements. PLAINTIFF turned eighteen on or about July 28, 2021. As a minor, any purported arbitration agreement between her and DEFENDANTS is hereby disaffirmed, unenforceable, and repudiated by and through the filing of this action. Thus, DEFENDANTS cannot compel into arbitration any claims brought by PLAINTIFF in Court as any purported agreement is unenforceable due to this disaffirmance and PLAINTIFF coming of age after her separation from employment, and to the full extent as permitted by law for her, as well as the PLAINTIFF CLASS.

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1 controlling the work of PLAINTIFF and the PLAINTIFF CLASS (described below);
2 DEFENDANTS operate as an interrelated operation; DEFENDANTS are operated by a small
3 group of shared officers and directors; and each of the DEFENDANTS share and control the
4 management of the premises where PLAINTIFF and members of the PLAINTIFF CLASS work.
5 Thus, adherence to the fiction of the separate existence of each defendant here would permit abuse,
6 sanction, fraud and promote injustice.

7 9. The true names and capacities of defendants named herein as DOES 1-100,
8 inclusive, whether individual, corporate, associate, or otherwise, are unknown to PLAINTIFF, who
9 therefore sue these defendants by such fictitious names. PLAINTIFF will amend this Complaint
10 to show true names and capacities of these defendants when they are ascertained.

11 10. At all times mentioned herein, DEFENDANTS, and each of them, were the agents,
12 representatives, employees, successors, assigns, parents, subsidiaries, and/or affiliates, each of the
13 other, and at all times pertinent hereto were acting within the course and scope of their authority as
14 such agents, representatives, employees, successors, assigns, parents, subsidiaries and/or affiliates.
15 PLAINTIFF also alleges that DEFENDANTS were, at all times relevant hereto, the alter egos of
16 each other. Wherever reference is made to DEFENDANTS herein, it is intended to include all of
17 the named DEFENDANTS as well as the DOE defendants. Each of the fictitiously named DOE
18 defendants is responsible for the occurrences herein alleged and proximately caused PLAINTIFF
19 damages as well as damages of members of the PLAINTIFF CLASS (described below).

20 **CLASS ACTION ALLEGATIONS**

21 11. PLAINTIFF brings this action on behalf of herself and all others similarly situated
22 as a class action pursuant to California Code of Civil Procedure section 382. The class that
23 PLAINTIFF seeks to represent ("PLAINTIFF CLASS") is composed and defined as follows:

24 **All California persons who are or have been non-exempt employees of DEFENDANTS since**
25 **four (4) years prior to the filing of the initial Complaint until the entry of final judgment in**
26 **this action (the "CLASS PERIOD").**

27 12. In addition, Plaintiff also proposes the following subclass ("MINOR SUBCLASS"):
28 **Minor Subclass: All California persons individuals who have been employed or are currently**

1 employed by DEFENDANTS as restaurant workers while not reaching 18 years old from
2 four (4) years prior to the filing of the initial Complaint until the entry of final judgment in
3 this action.

4 13. There exists a well-defined community of interests among the PLAINTIFF CLASS
5 and MINOR SUBCLASS with respect to the claims asserted herein, and the PLAINTIFF CLASS
6 and MINOR SUBCLASS are readily ascertainable for the following reasons:

7 a. Numerosity and Ascertainability: The members of the class and subclass are so
8 numerous that joinder of all members would be unfeasible and not practicable. While PLAINTIFF
9 does not know the exact number and identity of all Class members, PLAINTIFF alleges, on
10 information and belief, that the members of the PLAINTIFF CLASS and MINOR SUBCLASS
11 exceed one hundred (100) persons. PLAINTIFF alleges, on information and belief, that the identity
12 of such membership is readily ascertainable via inspection of the personnel records and other
13 documents maintained by DEFENDANTS;

14 b. Typicality: The claims of PLAINTIFF pled as class action claims are typical of the
15 claims of all members of the class as they arise out of the same course of conduct and are predicated
16 on the same violation(s) of the law. PLAINTIFF and all members of the PLAINTIFF CLASS and
17 MINOR SUBCLASS sustained injuries and damages arising out of DEFENDANTS' common
18 course of conduct in violation of laws as complained of herein.

19 c. Commonality: Common issues of fact and law predominate in this action over any
20 allegedly individual issues. The claims of PLAINTIFF and the PLAINTIFF CLASS and MINOR
21 SUBCLASS members arise from the same events or patterns or practices and are based on the
22 same legal theories. Specially, the following issues of fact and law, without limitation, predominate
23 and make this action superior to individual actions:

24 i. Whether DEFENDANTS failed to pay the required rest or meal break
25 premium to PLAINTIFF and members of the PLAINTIFF CLASS for all missed breaks.

26 ii. Whether DEFENDANTS denied PLAINTIFF and members of the
27 PLAINTIFF CLASS all of the wages to which they are entitled pursuant to the California Labor
28 Code, California IWC Wage Orders, and all other applicable employment laws and regulations;

1 iii. Whether DEFENDANTS violated California Labor Code section 204 by
2 failing to pay all wages earned in a timely manner;

3 iv. Whether DEFENDANTS have failed to properly provide accurate itemized
4 wage statements as well as keep accurate records as required by California Labor Code section 226
5 and the applicable Industrial Welfare Commission's ("IWC") Wage Order;

6 v. Whether DEFENDANTS owe PLAINTIFF and members of the
7 PLAINTIFF CLASS waiting time penalties pursuant to California Labor Code section 203;

8 vi. Whether DEFENDANTS engaged in unfair business practices under section
9 17200, *et. seq* of the California Business and Professions Code;

10 vii. Whether DEFENDANTS engaged in, among other things, a system of
11 willful violations of the California Labor Code section 1391 by creating and maintaining policies,
12 practices and customs such as: (a) scheduling a minor to work past 10:00 p.m. or 12:30 a.m. on
13 any day preceding a school day; and (b) scheduling a minor to work exceeding 4 hours on a school
14 day.

15 viii. The effect upon and the extent of damages suffered by PLAINTIFF and
16 members of the PLAINTIFF CLASS and subclass and the appropriate amount of compensation.

17 d. Adequacy: PLAINTIFF and the PLAINTIFF CLASS, as well as minor subclass,
18 all worked for DEFENDANTS, share the same interests, and were subjected to DEFENDANTS'
19 unlawful policy and practice of failing to provide breaks and failing to adequately compensate
20 employees for all time worked. PLAINTIFF and members of the PLAINTIFF CLASS, which
21 includes the subclass, do not have any conflicts of interest with other members that would or should
22 prevent the prosecution of this case. Given the significance of the deprivation of their rights,
23 PLAINTIFF will prosecute this action vicariously on behalf of the PLAINTIFF CLASS, which
24 includes the minor subclass. She has retained competent and experienced legal counsel who
25 specialize in employment, wage and hour, and class action litigation to represent themselves and
26 the proposed classes;

27 e. Superiority of Class Action: The disposition of PLAINTIFF and the proposed
28 PLAINTIFF CLASS and subclass members' claims in a class action will provide substantial

benefits to both the parties and the Court. The nature of this action and the nature of the laws available to the PLAINTIFF CLASS and subclass make use of the class action format a particularly efficient and appropriate procedure to afford relief to the classes. Further, this case involves a corporate employer and a large number of individual employees possessing claims with common issues of law and fact. If each employee were required to file an individual lawsuit, the corporate defendant would necessarily gain an unconscionable advantage since each defendant would be able to exploit and overwhelm the limited resources of each individual plaintiff with its 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 pursue an action against their present and/or former employer for an appreciable and justifiable fear of retaliation and permanent damage to their careers at present and/or subsequent employment. Proof of a common business practice or factual pattern, of which the named PLAINTIFF experienced, is representative of the class mentioned herein and will establish the right of each of the members of the class to recovery on the claims alleged herein.

The prosecution of separate actions by the individual class members, even if possible, would create: (a) a substantial risk of inconvenient or varying verdicts or adjudications with respect to the individual class members against the defendants herein; and/or (b) legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the other class members' claims who are not parties to the adjudications and/or would substantially impair or impede the ability of 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 attending thereto.

14. PLAINTIFF is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

FACTS COMMON TO ALL CAUSES OF ACTION

15. PLAINTIFF and members of the PLAINTIFF CLASS are current or former non-exempt employees of DEFENDANTS. PLAINTIFF and members of the PLAINTIFF CLASS have

1 been subjected to a variety of wage and hour violations during their employment with
2 DEFENDANTS.

3 16. Throughout the liability period, DEFENDANTS have wrongfully failed to
4 authorize and permit PLAINTIFF and members of PLAINTIFF CLASS and MINOR SUBCLASS
5 to take timely rest or meal periods where PLAINTIFF and Class Members were relieved of all
6 duties. DEFENDANTS regularly required PLAINTIFF and Class Members to work in excess of
7 four consecutive hours a day without authorizing and permitting PLAINTIFF and Class Members
8 to take all of their uninterrupted rest break of at least 10 minutes for every four hours of work or
9 major fraction thereof. DEFENDANTS also failed to provide and authorize all off-duty meal breaks
10 for every five hours of work. DEFENDANTS also failed to pay premium wages to Plaintiff and
11 Class Members for missed or interrupted breaks.

12 17. DEFENDANTS willfully failed and refused to timely pay PLAINTIFF and Class
13 Members at the end of every pay period for all wages owed, for missed meal periods, rest breaks,
14 work performed off the clock as provided above in violation of the California Labor Code.

15 18. At all times during the CLASS PERIOD, Defendants, as a matter of practice and
16 policy, failed to furnish PLAINTIFF and Class Members with accurate itemized wage statements
17 that accurately reflect the total time worked by PLAINTIFF and Class Members, gross wages earned
18 and net wages earned and other information, as required by the Labor Code Section 226(a). As a
19 result of this violation, PLAINTIFF and Class Members suffered injury by the very fact of receiving
20 defective wage statements per Labor Code Section 226(e). Furthermore, PLAINTIFF and Class
21 Members were injured, as their wage statements failed to provide them with the accurate
22 information about their time worked, net wages earned, gross wages earned, premium wages, even
23 thought they were entitled to it and thus, preventing them from raising their concerns about unpaid
24 wages. Therefore, PLAINTIFF and Class Members, among other things, are owed the amounts
25 provided by Labor Code Section 226(e).

26 19. At all times during the liability period, DEFENDANTS failed to pay overtime
27 wages for all hours worked to PLAINTIFF and Class Members for time PLAINTIFF and Class
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Members worked in excess of 40 hours per week and additional overtime wages for work in excess of eight hours.

20. DEFENDANTS further failed to pay final wages on time.

21. DEFENDANTS further failed to maintain accurate time records of time worked.

22. DEFENDANTS' conduct, action and inaction, as alleged herein, have caused each PLAINTIFF damages including, but not limited to, loss of wages and compensation. DEFENDANTS are liable to PLAINTIFF and Class Members for failing to pay all wages owed each pay period, failing to provide timely and accurate wage statements, failing to provide meal and rest breaks, failing to pay overtime and minimum wages, and engaging in unfair competition.

23. All of the aforementioned acts are violations of the California Labor Code, statutory and common laws of California.

24. PLAINTIFF and members of the MINOR SUBCLASS have been or currently are required to regularly work in excess of four (4) hours on school days and in excess of eight (8) hours on non-school days.

25. Additionally, PLAINTIFF and members of the MINOR SUBCLASS have been or currently are required to regularly work after 10 p.m. on days preceding a school day. PLAINTIFF and members of the MINOR SUBCLASS have been or currently are instructed to clock out and continue working past 10 p.m. on days preceding a school day. PLAINTIFF and member of the MINOR SUBCLASS have been or currently are instructed to leave earlier on their next shift to account for time worked off the clock. On other occasions PLAINTIFF and members of the MINOR SUBCLASS' timesheets have been or currently are modified by upper management by creating manual time punches to appear that no violations have been committed by DEFENDANTS.

26. Defendants knew of these violations but failed to remedy them.

27. DEDENDANTS' conduct, action and inaction, as alleged herein, have caused each PLAINTIFF damages including, but not limited to, loss of wages and compensation. DEFENDANTS are liable to PLAINTIFF, PLAINTIFF CLASS, MINOR SUBCLASS for failing to pay all wages owed each pay period, failure to provide timely and accurate wage statements, failing to provide meal and rest breaks, failing to pay overtime, violations of California's child labor

1 laws as to the minor subclass, and engaging in unfair competition. All of the aforementioned acts
2 are violations of the California Labor Code, California Education Code, statutory and common laws
3 of California.

4 28. Furthermore, the aforementioned acts constitute unfair and unlawful practices as
5 defined by law pursuant to California Business and Professions Code section 17200, et seq. By
6 virtue of this action, PLAINTIFFS seek to restore all wages to PLAINTIFF and members of the
7 PLAINTIFF CLASS that DEFENDANTS wrongfully took or withheld.

8 29. DEFENDANTS' violations of the law were willful and done according to
9 DEFENDANTS' established policies and procedures applicable to PLAINTIFF and all members of
10 the proposed classes.

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO PAY MEAL AND REST PERIOD COMPENSATION**

13 **(CALIFORNIA LABOR CODE §§ 226.7 and 512)**

14 (By PLAINTIFF in her individual capacity and in her capacity as representative of all
15 similarly situated members of the PLAINTIFF CLASS against DEFENDANTS)

16 30. PLAINTIFF realleges and incorporates by reference each and every allegation
17 contained in the foregoing paragraphs as though fully set forth here.

18 31. DEFENDANTS failed to give PLAINTIFF and members of the PLAINTIFF
19 CLASS rest breaks for shifts lasting four (4) hours or a major fraction thereof as required by law
20 and failed to compensate them for missed rest breaks. In addition, DEFENDANTS failed to give
21 PLAINTIFF and members of the PLAINTIFF CLASS an off-duty meal period for every five hours
22 of work, as required by Labor Code Section 512. DEFENDANTS further failed to compensate them
23 for missed meal breaks.

24 32. PLAINTIFF is informed and believes and alleges that the failure of DEFENDANTS
25 to provide these breaks and to compensate PLAINTIFF and members of the PLAINTIFF CLASS
26 for these missed breaks was willful, purposeful, and unlawful and done in accordance with the
27 policies and practices of DEFENDANTS' operations.

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33. As a proximate cause of the aforementioned violations, PLAINTIFF and members of the PLAINTIFF CLASS have been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court. PLAINTIFF and members of the PLAINTIFF CLASS are entitled to recover the unpaid balance of wages owed; penalties, including penalties available pursuant to California Labor Code Sections 226.7, 558, plus interest; and reasonable attorney's fees and costs of suit according to CCP Section 1021.5.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME COMPENSATION

(CALIFORNIA LABOR CODE §§510, 1194, 1194.2)

(By PLAINTIFF in her individual capacity and in her capacity as representative of all similarly situated members of the PLAINTIFF CLASS against DEFENDANTS)

34. PLAINTIFF realleges and incorporates by reference each and every allegation contained in the foregoing paragraphs as though fully set forth here.

35. Labor Code §510 requires employers to pay their non-exempt employees one and one-half times their regular hourly rate (overtime) for time worked in excess of eight hours in a single day, or 40 hours per week, and double their regular hourly rate (double-time) for all hours worked in excess of 12 hours in a single day. It also requires employers to pay their non-exempt employees overtime compensation for the first eight hours of work done on the seventh consecutive day of work done in any work week and double-time compensation for any work done beyond the first eight hours on the seventh consecutive day of work.

36. Labor Code §558(a) requires that any person acting on behalf of an employer who violates, or causes to be violated, overtime rules pay a civil penalty in the amount of \$50 for each underpaid employee for each pay period in which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. Also, Labor Code §558(a) for each subsequent violation, the person acting on behalf of an employer is liable in the amount of \$100 for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover the underpaid wages.

1 37. At all relevant times, DEFENDANTS required PLAINTIFF and members of the
2 PLAINTIFF CLASS to work more than eight hours per day and/or more than 40 hours per
3 workweek.

4 38. At all relevant times, DEFENDANTS failed and refused to pay PLAINTIFF and
5 members of the PLAINTIFF CLASS all the overtime compensation required by Labor Code §510,
6 8 Code of Regulations §11050, and Industrial Welfare Commission Order No. 5-2001.

7 39. As alleged herein, PLAINTIFF and members of the PLAINTIFF CLASS are not
8 exempt from the overtime pay requirements of Labor Code §510, 8 Code Regulations §11050, and
9 Industrial Welfare Commission Order No. 5-2001.

10 40. PLAINTIFF and members of the PLAINTIFF CLASS are owed unpaid overtime
11 wages.

12 41. In addition to the above withheld overtime wages, PLAINTIFF and members of the
13 PLAINTIFF CLASS are entitled to civil penalties in this amount stated above based upon
14 DEFENDANTS' underpayment of overtime wages. DEFENDANTS violated Labor Code §558 on
15 each of the past 7 pay periods within the one-year preceding the filing of this complaint, the first of
16 which DEFENDANTS are penalized \$50.00, and the remainder of which DEFENDANTS are
17 penalized \$100.00 each, for a total due in Labor Code §558 penalties of \$650.00.

18 42. PLAINTIFF and members of the PLAINTIFF CLASS have been deprived of their
19 rightfully earned overtime compensation as a direct and proximate result of DEFENDANTS' failure
20 and refusal to pay said compensation. PLAINTIFF and members of the PLAINTIFF CLASS are
21 entitled to recover such amounts, penalties, plus interest thereon, attorneys' fees, and costs.

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1 **THIRD CAUSE OF ACTION**

2 **VIOLATION OF CHILD LABOR LAWS**

3 **(CALIFORNIA LABOR CODE §§ 1391, 1288)**

4 (By PLAINTIFF in her individual capacity and in her capacity as representative of all
5 similarly situated members of the MINOR SUBCLASS OF THE PLAINTIFF CLASS against
6 DEFENDANTS)

7 43. PLAINTIFF incorporates in this cause of action each and every allegation of the
8 preceding paragraphs, with the same force and effect as though fully set forth herein.

9 44. Labor Code section 1391 makes it unlawful for an employer to employ a minor
10 between the ages of 16 and 17 for more than four hours on a day when school is in session.

11 45. Labor Code section 1391 makes it unlawful for an employer to employ a minor
12 between the ages of 16 or 17 years of age for more than eight hours in one day of 24 hours or more
13 than 48 hours in one week, or before 5 a.m., or after 10 p.m. on any day preceding a school day. On
14 evenings preceding a non-school day, minors may be employed until 12:30 a.m. of the non-school
15 day.

16 46. Labor Code section 1288 prescribes penalties for the violation of Labor Code
17 section 1391.

18 47. As alleged in this complaint, DEFENDANTS consistently employed minors in
19 violation of Labor Code sections 1391 and 1288.

20 48. DEFENDANTS knowingly and intentionally violated Labor Code § 1391 when
21 DEFENDANTS made PLAINTIFF and PLAINTIFF CLASS members, of the MINOR
22 SUBCLASS, work in excess of four (4) consecutive hours on school day even though Defendants
23 were put on notice that they violate child labor laws.

24 49. DEFENDANTS knowingly and intentionally violated Labor Code § 1391 when
25 made PLAINTIFF and PLAINTIFF CLASS members, specifically those of the MINOR
26 SUBCLASS, work in excess of eight (8) consecutive hours on school day even though Defendants
27 were put on notice that they violate child labor laws.
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50. DEFENDANTS employed PLAINTIFF and these class members for more than eight hours in one day and/or 40 hours in one week.

51. DEFENDANTS employed PLAINTIFF and these class members before 5:00 a.m. or after 10:00 p.m. on days preceding school days.

52. As a direct and proximate result of DEFENDANTS' unlawful conduct, as set forth herein, PLAINTIFF and members have sustained damages in an amount to be established at trial. Statutory penalties, costs, and attorney's fees are further requested pursuant to CCP Section 1021.5.

FOURTH CAUSE OF ACTION

WAITING TIME PENALTIES

(CALIFORNIA LABOR CODE §§ 201, 202 and 203)

(By PLAINTIFF in her individual capacity and in her capacity as a representative of all similarly situated members of the PLAINTIFF CLASS against DEFENDANTS)

53. PLAINTIFF realleges and incorporates by reference each and every allegation contained in the foregoing paragraphs as though fully set forth here.

54. Pursuant to California Labor Code section 201, if an employer discharges an employee, the wages earned and unpaid at the time of the discharge are due and payable immediately. Pursuant to California Labor Code section 202, if an employee quits his or her employment, the wages earned and unpaid at the time of the discharge are due and payable within seventy-two (72) hours of the resignation. Pursuant to California Labor Code section 203, if an employer willfully fails to pay compensation upon discharge, then the employer is liable for waiting time penalties in the form of compensation of up to thirty (30) workdays.

55. To this day, neither PLAINTIFF nor members of the PLAINTIFF CLASS have received all the wages and other compensation they rightfully earned.

56. DEFENDANTS, and each of them, willfully refused and continue to refuse to timely pay PLAINTIFF and members of the PLAINTIFF CLASS all wages earned in a timely manner, as required by California Labor Code section 203. PLAINTIFF therefore requests restitution and penalties as provided by California Labor Code section 203.

06-30-2021

1 57. At all times, PLAINTIFF and members of the PLAINTIFF CLASS have been
2 ready, willing and available to accept payment of these monies.

3 58. PLAINTIFF and members of the PLAINTIFF CLASS are entitled to compensation
4 for all forms of wages earned, but to date, have not received such compensation therefore entitling
5 PLAINTIFF and the class to penalties under California Labor Code section 203.

6 **FIFTH CAUSE OF ACTION**

7 **FAILURE TO PAY ALL WAGES BY THE APPROPRIATE PAY PERIOD**

8 **(CALIFORNIA LABOR CODE § 204)**

9 (By PLAINTIFF in her individual capacity and in her capacity as a representative of all
10 similarly situated members of the PLAINTIFF CLASS against DEFENDANTS)

11 59. PLAINTIFF realleges and incorporates by reference each and every allegation
12 contained in the foregoing paragraphs as though fully set forth here.

13 60. During the CLASS PERIOD, Labor Code section 204 applied to DEFENDANTS'
14 employment of PLAINTIFF and the PLAINTIFF CLASS. At all relevant times, Labor Code section
15 204 provided that all wages earned by any employee, such as PLAINTIFF and members of the
16 PLAINTIFF CLASS, in any employment between the 1st and 15th days, inclusive, of any calendar
17 month, other than those wages due upon termination of an employee, are due and payable between
18 the 16th and 26th day of the month during which the work was performed. Furthermore, at all times
19 relevant hereto, Labor Code section 204 provided that all wages earned by any employee, such as
20 PLAINTIFF and members of the PLAINTIFF CLASS, in any employment between the 16th and
21 the last day, inclusive, of any calendar month, other than those wages due upon termination of an
22 employee, are due and payable between the 1st and 10th day of the following month.

23 61. During the CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFF and
24 members of the PLAINTIFF CLASS wages for all hours worked.

25 62. During the CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFF and
26 members of the PLAINTIFF CLASS for all wages earned, and, therefore violated Labor Code
27 section 204. Accordingly, PLAINTIFF and members of the PLAINTIFF CLASS are entitled to
28 recover all damages, penalties and other remedies available for violation of Labor Code section 204.

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

3 **(CALIFORNIA LABOR CODE § 226, IWC Wage Order)**

4 (By PLAINTIFF in her individual capacity and in her capacity as a representative of all
5 similarly situated members of the PLAINTIFF CLASS against DEFENDANTS)

6 63. PLAINTIFF realleges and incorporates by reference each and every allegation
7 contained in the foregoing paragraphs as though fully set forth here.

8 64. California Labor Code section 226(a) and the applicable IWC Wage Order requires
9 that DEFENDANTS keep accurate records and semimonthly or at the time of payment of wages,
10 furnish each of his or her employees, itemize in wage statements, among other things, time records
11 showing when an employee ends and begins, meal periods, split shift intervals and total daily hours
12 worked shall also be recorded, when a piece rate or incentive plan is in operation, piece rates or an
13 explanation of the incentive plan formula shall be provided to the employees, an accurate production
14 record shall be maintained by the employer. Every employer shall also semimonthly or at the time
15 of each payment of wages furnish each employee, an itemized statement showing, among other
16 things all deductions.

17 65. DEFENDANTS knowingly and intentionally failed to comply with California
18 Labor Code section 226(a) and the applicable IWC Wage Order by failing to keep required accurate
19 payroll records and by failing, on each and every wage statement that was provided to PLAINTIFF
20 and members of the PLAINTIFF CLASS, to accurately reflect wage information and properly
21 itemize deductions.

22 66. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS
23 knowingly and intentionally provided inaccurate wage statements to PLAINTIFF and members of
24 the PLAINTIFF CLASS. PLAINTIFF and members of the PLAINTIFF CLASS have suffered
25 actual damages as a result of DEFENDANTS' violation of Cal. Labor Code § 226(a) and the
26 applicable IWC Wage Order. In addition, PLAINTIFF and the PLAINTIFF CLASS have also
27 suffered, and will continue to suffer, actual damages in the form of additional litigation expenses
28 incurred to calculate lost wages. These additional litigation expenses include, but are not limited

1 to, attorney's fees, expert witnesses and other costs attendant to the calculation of lost wages when
2 such costs would not need to be incurred if DEFENDANTS had provided proper itemized wage
3 statements to PLAINTIFF and members of the PLAINTIFF CLASS that complied with California
4 Labor Code section 226(a) and the applicable IWC Wage Order.

5 67. California Labor Code section 226(e) and (g) provide that an employee suffering
6 injury as a result of a knowing and intentional failure by an employer to comply with subdivision
7 (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay
8 period in which a violation occurs and one hundred dollars (\$100) per employee for each violation
9 in subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) and
10 is entitled to an award of costs and reasonable attorney's fees.

11 68. PLAINTIFF and members of the PLAINTIFF CLASS are therefore entitled to
12 recover all amounts for all such wages and expenses and benefits on such wage statements,
13 penalties, interest, attorney's fees, and other court costs and expenses of suit, according to proof at
14 trial. PLAINTIFF and members of the PLAINTIFF CLASS are also entitled to recover, in addition
15 to or in lieu of some or all wages and expenses and benefits, nominal, actual and compensatory
16 damages in amounts according to proof at trial.

17 69. By PLAINTIFF in her individual capacity and in her capacity as a representative of
18 all similarly situated members of the PLAINTIFF CLASS against DEFENDANTS.

19 **SEVENTH CAUSE OF ACTION**

20 **UNFAIR BUSINESS PRACTICES**

21 **(CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200, ET SEQ.)**

22 (By PLAINTIFF in her individual capacity and in her capacity as a representative of all
23 similarly situated members of the PLAINTIFF CLASS against DEFENDANTS)

24 70. PLAINTIFF realleges and incorporates by reference each and every allegation
25 contained in the foregoing paragraphs as though fully set forth here.

26 71. DEFENDANTS' violations of the Employment Laws and Regulations, as alleged,
27 include, among other things: (1) DEFENDANTS' failure and refusal to pay all wages earned by
28 PLAINTIFF and the PLAINTIFF CLASS pursuant to DEFENDANTS' illegal pay practices

described above; (2) DEFENDANTS' failure to provide PLAINTIFF and the PLAINTIFF CLASS with meal and rest break premiums. The aforementioned violations constitute unfair business practices in violation of the Unfair Competition Law, California Business and Professions Code Section 17200, et seq.

72. As a result of DEFENDANTS' unfair business practices, DEFENDANTS have reaped unfair benefits and illegal profits at the expense of PLAINTIFF, the PLAINTIFF CLASS and members of the public. DEFENDANTS should be compelled to restore such monies to PLAINTIFF and the PLAINTIFF CLASS.

73. DEFENDANTS' unfair business practices entitle PLAINTIFF and the PLAINTIFF CLASS to seek preliminary and permanent injunctive relief, including but not limited to, orders that DEFENDANTS account for and restore to PLAINTIFF and the PLAINTIFF CLASS the compensation unlawfully withheld from them.

EIGHTH CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(CALIFORNIA LABOR CODE §§1182.12, 1194, 1194.2, 1197)

(By PLAINTIFF in her individual capacity and in her capacity as representative of all similarly situated members of the PLAINTIFF CLASS against DEFENDANTS)

74. PLAINTIFF realleges and incorporates by reference each and every allegation contained in the foregoing paragraphs as though fully set forth here.

75. Pursuant to Labor Code §1197, payment of less than the minimum wage fixed by law is unlawful. An employer violates the minimum wage statute even if the average rate for paid and unpaid hours exceeded the minimum wage.

76. At all relevant times, DEFENDANTS failed and refused to pay PLAINTIFF and members of the PLAINTIFF CLASS the legal minimum wage in the State of California, as set forth in Labor Code §1182.12. Under California law, PLAINTIFF and members of the PLAINTIFF CLASS are entitled to at least the minimum wage for every hour worked.

77. DEFENDANTS' failure to pay the legal minimum wage to PLAINTIFF and members of the PLAINTIFF CLASS as alleged herein is unlawful and creates entitlement, pursuant

1 to Labor Code §§1197, 1194, 1194.2, to recovery by PLAINTIFF and members of the PLAINTIFF
2 CLASS in a civil action for the unpaid balance of the full amount of the unpaid wages owed,
3 calculated as the difference between the straight time compensation paid and applicable minimum
4 wage, including interest thereon.

5 78. Pursuant to Labor Code §1194, PLAINTIFF and members of the PLAINTIFF
6 CLASS request that the court award reasonable attorneys' fees and costs incurred by PLAINTIFF
7 and members of the PLAINTIFF CLASS in this action.

8 79. In addition, pursuant to Labor Code §1194.2, PLAINTIFF and members of the
9 PLAINTIFF CLASS are entitled to recover liquidated damages in an amount equal to the minimum
10 wages unlawfully unpaid in the amounts set forth above, and interest thereon.

11 PRAYER FOR RELIEF

12 WHEREFORE, PLAINTIFF and the PLAINTIFF CLASS, including the MINOR
13 SUBCLASS, pray for judgment as follows:

14 1. That the Court determine that Causes of Action 1 through 8 may be maintained as a
15 class action.

16 2. For injunctive relief to stop DEFENDANTS' illegal practices described above;

17 3. For general and compensatory damages, according to proof;

18 4. For restitution of all monies due to PLAINTIFF and the PLAINTIFF CLASS,
19 including the subclass;

20 5. For statutory penalties as provided by law;

21 6. For penalties pursuant to California Labor Code and all other applicable Labor Code
22 and/or Employment Laws and Regulations;

23 7. For reasonable attorneys' fees as provided by law and under the statutes mentioned
24 throughout this complaint;

25 8. For interest accrued to date;

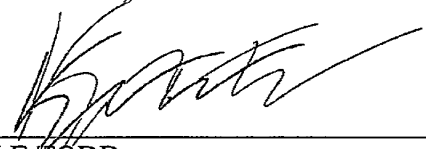
26 9. For costs of the suit incurred herein;

27 10. For such other and further relief that the Court may deem just and proper.

28 ///

1 Dated: August 27, 2021

KYLE TODD, P.C.

2
3 By: 

4 KYLE TODD

ALFREDO NAVA

Attorneys for Plaintiff ASHLEY LOPEZ

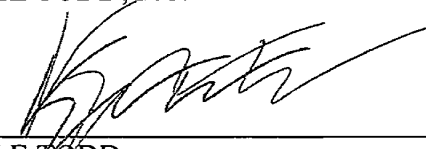
individually, and on behalf of all others similarly
situated

7
8 **DEMAND FOR JURY TRIAL**

9 PLAINTIFF and members of the PLAINTIFF CLASS demand a trial by jury on all issues
10 so triable.

11 Dated: August 27, 2021

KYLE TODD, P.C.

12
13 By: 

14 KYLE TODD

ALFREDO NAVA

Attorneys for Plaintiff ASHLEY LOPEZ

individually, and on behalf of all others similarly
situated