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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

NOV 23 2022

BY: Sophia A. Smith, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

TESSA M. JENNINGS, on behalf of herself and others similarly situated, Plaintiff, v. SKYGROUP INVESTMENTS, LLC; iFLY HOLDINGS, LLC; and DOES 1 through 100, inclusive, Defendants.	Case No.: CIV SB 2222518 **CLASS AND REPRESENTATIVE ACTION COMPLAINT FOR:** 1. Failure to Pay Minimum Wages 2. Failure to Pay Overtime Wages 3. Meal Period Liability under Labor Code § 226.7 4. Rest Break Liability under Labor Code § 226.7 5. Failure to Provide Accurate Itemized Employee Wage Statements 6. Failure to Pay All Wages Owed Timely and Upon Separation of Employment 7. Failure to Reimburse for Business Expenses 8. Violation of Labor Code § 1174(d) 9. Violation of Business & Professions Code §§ 17200, et seq. 10. Penalties Pursuant to Labor Code § 2699 **DEMAND FOR JURY TRIAL**

FAXED

Plaintiff Tessa M. Jennings ("Plaintiff"), on behalf of herself, the State of California, and all others similarly situated, alleges and complains of defendants Skygroup Investments, LLC, iFly Holdings, LLC, and DOES 1 through 100, inclusive (collectively, "Defendants"), and each of them, as follows:

I. INTRODUCTION

1. This is a class action pursuant to California Code of Civil Procedure section 382 on behalf of Plaintiff and the following class: *All current and former hourly paid or non-exempt employees who worked for Defendants in the State of California within the longest applicable limitations period* (the "Class" or "Class Members").

2. Throughout the time period involved in this case, Defendants willfully maintained a policy and/or practice of failing to pay all wages, including minimum and overtime wages, for all hours worked; failing to provide compliant duty-free meal periods; failing to authorize and permit compliant duty-free rest breaks; failing to maintain and provide accurate itemized wage statements; failing to reimburse business expenses; and failing to pay all wages owed timely and upon separation of employment. Defendants' illegal conduct has also given rise to derivative claims for unfair business practices and violation of the Private Attorneys General Act of 2004 ("PAGA").

3. Plaintiff, on behalf of herself and all other similarly situated employees, pursuant to California Business & Professions Code sections 17200 through 17208, also seeks all monies owed but withheld and retained by Defendants to which Plaintiff and Class Members are entitled. Plaintiff seeks an order by the Court awarding restitution, injunctive relief, and all other legal and equitable relief allowed, plus interest, attorneys' fees and costs.

4. Plaintiff, on behalf of herself and all other similarly situated aggrieved employees (the "Aggrieved Employees"), also brings this representative action against Defendants to recover wages and penalties owed pursuant to Labor Code section 2699. Plaintiff was compelled to retain the services of counsel to file this action to protect her interests and those of Aggrieved Employees and has thereby incurred attorneys' fees and costs, which he is entitled to recover under Labor Code section 2699.

5. The Judicial Council of California (JCC)'s amended Emergency Rule 9 (effective May 29, 2020) provides: "Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020." The Advisory Committee Comment notes that: "Emergency rule 9 is intended to apply broadly to toll any statute of limitations on the filing of a pleading in court asserting a civil cause of action. The term "civil causes of action" includes special proceedings. *See* Code Civ. Proc., §§ 312, 363 ["action," as used in title 2 of the code (Of the Time of Commencing Civil Actions), is construed "as including a special proceeding of a civil nature") . . . .] The rule also applies to statutes of limitations on filing of causes of action in court found in codes other than the Code of Civil Procedure." Accordingly, the relevant time period for claims under the PAGA discussed herein is one year prior to the date Plaintiff filed her PAGA Notice online with the California Labor & Workforce Development Agency ("LWDA") and sent a letter by certified mail to Defendants plus the additional time during which the statute of limitations was tolled (pursuant to Emergency Rule 9 of the California Rules of Court) and ongoing.

6. For purposes of the allegations set forth herein, Class Members, along with Aggrieved Employees comprising the PAGA representative action, are collectively referred to as "Employees" except as otherwise specified.

II. JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court "original jurisdiction in all other causes" except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

8. This Court has jurisdiction over Defendants because, upon information and belief, Defendants have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by California courts consistent with traditional notions of fair play and substantial justice.

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9. Venue as to Defendants is proper in this judicial district pursuant to Code of Civil Procedure section 395.5 because, upon information and belief, the obligations giving rise to liability occurred in part in the County of San Bernardino, State of California.

10. This case should be classified as complex according to California Rules of Court, Rule 3.400, and assigned to a complex litigation judge and department because it is a class action, will involve substantial documentary evidence and a large number of witnesses, is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve, and will require substantial post judgment judicial supervision.

III. PARTIES

11. Defendants employed Plaintiff as a non-exempt employee in California and subjected her to the same employment policies and/or practices that affected Employees.

12. Plaintiff is informed and believes, and based thereon alleges, that Defendants are registered to do business in the State of California.

13. Plaintiff is informed and believes, and based thereon alleges, that Defendants do business in the State of California and, at all times hereinafter mentioned, were and are employers as defined in and subject to the California Labor Code and California Industrial Welfare Commission ("IWC") Occupational Wage Orders. During the relevant period, Defendants employed Plaintiff and Employees within the State of California.

14. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes and based thereon alleges that each of the defendants designated herein as DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the defendants designated hereinafter as DOES when such identities become known.

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15. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall include DOES 1 through 100 identified herein.

16. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to other Defendants. Plaintiff is further informed and believes, and based thereon alleges, that Defendants are joint employers in that they employed Plaintiff and Employees at the same time and were operating as a joint enterprise and single entity during the relevant time periods.

17. California courts have recognized that the definition of "employer" for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California's labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person may be liable for violations of the California Labor Code as to that person.

18. California law also permits and recognizes the piercing of a corporate veil between sister companies under the single enterprise rule. *Hasso v. Hapke* (2014) 227 Cal.App.4th 107, 155; *Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 512. The single enterprise rule applies where "there are two or more personalities, there is but one enterprise; and that this enterprise has been so handled that it should respond, as a whole, for the debts of certain component elements of it." *Hasso, supra,* 227 Cal.App.4th at p. 155; *Greenspan, supra,* 191 Cal.App.4th at p. 512.

19. At all times throughout their employment, Plaintiff and Employees were regularly and consistently subject to the common policies and/or practices utilized by Defendants.

20. Accordingly, all Defendants engaged, suffered, and permitted Plaintiff and Employees to perform services from which they benefitted. Moreover, the aforementioned entities

had the right to exercise control over the wages, hours, and/or working conditions over Plaintiff and Employees at all relevant times herein, so as to be considered joint employers.

IV. FACTUAL BACKGROUND

Defendants Systematically Violated State Wage and Hour Laws

21. While the precise number of Class Members has not been determined at this time, Plaintiff is informed and believes that there are more than one hundred Class Members employed by Defendants within the State of California at any given time. Accounting for employee turnover during the relevant periods necessarily increases this number substantially. Defendants design, manufacture, distribute and operate wind tunnel systems for indoor skydiving experiences at recreational facilities around the globe, including within the State of California.

22. Upon information and belief, Plaintiff and Employees are covered by IWC Wage Order No. 4-2001.[1]

23. Throughout the applicable period of time, Defendants did not pay Plaintiff and Employees at least the California minimum wage for all hours worked. Defendants did not fully compensate Plaintiff and Employees because they were required to perform pre- and post-shift activities that were off the clock, as well as during meal and rest breaks.

24. Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code section 1194 entitles "any employee receiving less than the legal minimum wage…to recover in a civil action the unpaid balance of the full amount of this minimum wage." IWC Wage Order No. 4-2001 also obligates employers to pay each employee minimum wages for all hours worked.

25. These minimum wage standards apply to each hour employees work for which they are not paid. Therefore, an employer's failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee's total pay over all hours worked, paid or

[1] Upon information and belief, Plaintiff alleges that IWC Wage Order No. 4-2001 is applicable. However, Plaintiff reserves the right to amend and/or allege any other applicable Wage Order(s).

not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

26. Labor Code section 1194.2 authorizes employees to recover liquidated damages for violations of Labor Code section 1194. Where an employee, like Plaintiff and Employees, is not paid for all hours worked under Labor Code section 1194, the employee may recover minimum wages and liquidated damages. *Sillah v. Command Int'l Sec. Servs*. (N.D. Cal. 2015) 154 F.Supp.3d 891 [holding that employees suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed they were paid less than minimum wage]; *accord Andrade v. Arby's Rest. Grp., Inc*. (N.D. Cal. Dec. 12, 2016) No. 15-cv-03175 NC, 2016 U.S. Dist. LEXIS 172319, at *20-21.

27. Labor Code section 1197.1 authorizes employees who are paid less than the minimum wage fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution of wages, and liquidated damages as follows: "(1) [f]or 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….[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars ($250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed."

28. Labor Code section 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the employee's regular rate of pay. Further, Labor Code section 510 obligates an employer to compensate an employee at no less than twice the regular rate of pay when the employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.

29. Throughout the applicable period of time, Defendants have had a policy and/or practice of failing to pay overtime wages to Plaintiff and Employees for all overtime hours they worked. The work times of Plaintiff and Employees have been, and continue to be, greater than

eight (8) hours per day and/or forty (40) hours per week. Yet, because Defendants did not pay Plaintiff and Employees wages for, *inter alia*, hours that were worked off the clock, Plaintiff and Employees were deprived wages at overtime premium amounts attributable to overtime hours. Moreover, the overtime that was paid was short because Defendants incorrectly calculated the regular rate for purposes of calculating overtime; Defendants failed to include non-discretionary forms of pay in the regular rate calculations for Plaintiff and Employees and failed to factor wage premiums or shift differential pay into the regular rate of pay to calculate overtime pay rates.

30. By their common policy and/or practice of requiring Plaintiff and Employees to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the applicable overtime rate of pay, Defendants willfully violated the provisions of Labor Code sections 510 and 1198, as well as the relevant IWC Wage Order(s).

31. Defendants failed to provide Plaintiff and Employees with timely duty-free meal periods. Labor Code sections 226.7, 512, and IWC Wage Order No. 4-2001 require employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal period within the first five (5) hours of work. *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1042 ["Accordingly, first meal periods must start after no more than five hours."]. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. *See* Labor Code § 512.

32. Defendants denied Plaintiff and Employees meal periods that comply with Labor Code sections 226.7 and 512, and IWC Wage Order No. 4-2001. Plaintiff and Employees suffered late, rounded, short, interrupted, and/or missed first and second meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58 [the California Supreme Court reversed the Fourth Appellate District and set forth two clear rules: (1) employers are not permitted to round time records when determining if employees are entitled to meal premium pay, and (2) it is the employer's burden to show that compliant meal periods were provided to employees if the time records show otherwise]. Plaintiff and Employees did not receive compliant meal periods within the first five (5) hours of their work, and did not receive compliant second meal periods when working shifts of ten (10) hours or more.

33. Defendants were also obligated but failed to provide Plaintiff and Employees with net ten (10) minute rest breaks for work shifts exceeding four (4) hours or a major fraction thereof worked as required by Labor Code section 226.7 and IWC Wage Order No. 4-2001. The California Supreme Court held in *Augustus v. ABM Security Services Inc*., (2016) 2 Cal.5th 257, that employees must be relieved of all duties during rest breaks pursuant to Labor Code section 226.7 and Subdivision 12(A) of Wage Order No. 5-2001. The Court found that the Wage Orders and the Labor Code require employers to “relinquish control over how employees spend their time” and “relieve employees of all duties” during employees’ 10-minute rest periods. Plaintiff and Employees did not receive compliant rest breaks.

34. In addition to failing to authorize and permit compliant meal and rest breaks, Plaintiff and Employees were not compensated with one (1) hour’s worth of pay at their regular rates of pay when they were not provided with compliant meal and rest breaks in accordance with Labor Code section 226.7(b). *See Ferra v. Loews Hollywood Hotel* (2021) 11 Cal.5th 858.

35. Defendants violated Labor Code sections 2800 and 2802 by failing to pay and indemnify Plaintiff and Employees for their necessary business expenditures and losses incurred in direct consequence of the discharge of their duties.

36. Labor Code section 203 provides “if an employer willfully fails to pay…any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty...” for up to 30 days. Labor Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.

37. Due to Defendants’ non-compliant policies and/or practices described herein, Plaintiff and Employees whose employment with Defendants concluded were not compensated for, *inter alia*, minimum and overtime wages for all hours worked, and were not paid all meal and rest break premiums owed at their regular rates of pay. Thus, Defendants have failed to pay Plaintiff and Employees all wages, whose sums were certain, at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code section 203.

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38. Labor Code section 204 expressly requires that "[a]ll wages…earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Pursuant to Labor Code section 204(d), these requirements are "deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period." Due to Defendants' failure to pay Plaintiff and Employees for, *inter alia*, all hours worked at the legal minimum and overtime rates, Defendants failed to timely pay Plaintiff and Employees within seven (7) days of the close of the payroll period in accordance with Labor Code section 204 on a regular and consistent basis.

39. Through Labor Code section 210 and the PAGA, and to the extent permitted by law, Plaintiff and Employees are entitled to recover civil penalties for violations of Labor Code section 204.

40. Plaintiff and Employees were not furnished with accurate itemized wage statements that accurately showed their gross wages earned, net wages earned, premium payments at their regular rates of pay for non-compliant meal and rest breaks, all applicable hourly rates and corresponding number of hours worked at each hourly rate in effect during each pay period, and other information required by Labor Code section 226(a).

41. During the relevant period, Defendants have knowingly and intentionally failed to provide Plaintiff and Employees with the above-described writing through actions alleged herein in violation of Labor Code section 226. Plaintiff and Employees have been injured by Defendants' intentional violation of Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate itemized wage statements.

42. In addition, because Defendants failed to provide the accurate and mandated information on the itemized wage statements, Plaintiff and Employees have been prevented by Defendants from determining, *inter alia*, if all hours worked were paid and the extent of the underpayment. Plaintiff had to file this lawsuit and perform computations in order to analyze whether, and to what extent, Plaintiff and Employees suffered underpayment, thereby causing Plaintiff to incur expenses and time lost. Thus, Plaintiff and Employees are owed the greater of all

actual damages or fifty dollars ($50.00) for the initial pay period in which a violation occurs and one hundred dollars ($100.00) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars ($4,000.00), as provided for in Labor Code section 226(e).

43. Moreover, for the violations described above, Plaintiff and Employees may also recover civil penalties pursuant to Labor Code section 226.3 and the PAGA for Defendants' violations of Labor Code section 226(a).

44. Further, Plaintiff and Employees have been denied their legal right and protected interest in having available at a central location at the plant or establishment where they are employed, accurate and complete payroll records showing the hours worked daily by, and the wages paid to, Plaintiff and Employees at those respective locations pursuant to Labor Code section 1174. Pursuant to Labor Code section 1174.5 and the PAGA, Plaintiff and Employees may also recover civil penalties for violation of Labor Code section 1174(d).

45. Based on the foregoing, Defendants have also engaged in unlawful and unfair business practices in violation of California's Business and Professions Code sections 17200, *et seq.*, thereby entitling Plaintiff and Class Members to restitution, disgorgement of profits, or other equitable remedies.

V. CLASS ACTION ALLEGATIONS

46. Plaintiff brings this action on behalf of herself and all others similarly situated as a class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a proposed class comprised of and defined as follows:

> *All current and former hourly paid or non-exempt employees who worked for Defendants in the State of California within the longest applicable limitations period* (again, the "Class" or "Class Members").

47. Plaintiff reserves the right under California Rule of Court, Rule 3.765(b) to amend or modify the class description identified herein with greater specificity or further division into subclasses or limitation to particular issues.

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48. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation and the Class is easily ascertainable.

A. <u>Numerosity</u>

50. The potential members of the Class as defined are so numerous that joinder of all the members of the Class is not practicable. Plaintiff is informed and believes that there are more than one hundred Class Members employed by Defendants within the State of California at any given time. Accounting for employee turnover during the relevant periods necessarily increases this number substantially.

51. Plaintiff alleges Defendants' employment records would provide information as to the number and location of all Class Members.

B. <u>Commonality</u>

52. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

a. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;

b. Whether Defendants had a corporate policy and/or practice of failing to pay Class Members for all hours worked in violation of California law;

c. Whether Defendants failed to pay at least the minimum wage to Class Members for all hours worked;

d. Whether Defendants required Class Members to work over eight (8) hours per day and/or over forty (40) hours per week and failed to pay the legally required overtime compensation to Class Members;

e. Whether Defendants deprived Class Members of legally compliant meal periods and rest breaks;

f. Whether Defendants had a corporate policy and/or practice of failing to pay Class Members required premium payments for non-compliant (e.g., short, late, interrupted, and/or missed altogether) meal periods and rest breaks in violation of California law;

g. Whether Defendants failed to reimburse Class Members for necessary business-related expenses and costs;

h. Whether Defendants failed to timely pay all wages due to Class Members during their employment;

i. Whether Defendants failed to pay all wages due to Class Members within the required time upon their discharge or resignation;

j. Whether Defendants complied with wage reporting as required by the California Labor Code, including, *inter alia*, section 226;

k. Whether Defendants kept complete and accurate payroll records as required by the California Labor Code, including, *inter alia*, section 1174(d);

l. Whether Defendants' conduct was willful or reckless;

m. Whether Defendants engaged in unfair business practices in violation of the Unfair Competition Law, Business and Professions Code sections 17200, *et seq*.;

n. Whether Class Members are entitled to compensatory damages pursuant to the California Labor Code;

o. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law;

p. Whether Class Members are entitled to attorneys' fees and costs; and

q. Whether Class Members are entitled to interest.

C. <u>Typicality</u>

53. The claims of Plaintiff are typical of the claims of the Class. Plaintiff and Class Members sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws and regulations that have the force and effect of law and statutes, as alleged herein.

D. <u>Adequacy of Representation</u>

54. Plaintiff will fairly and adequately represent and protect the interests of the Class. Counsel who represent Plaintiff and Class Members are competent and experienced in litigating

wage and hour class and representative actions, and have the financial resources to litigate the claims at issue.

E. Superiority of Class Action

55. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each member of the Class has been damaged and is entitled to recovery by reason of Defendants' illegal policy and/or practice of failing to pay minimum and overtime wages, failing to provide compliant duty-free meal periods and/or pay premiums owed thereon, failing to authorize and permit compliant duty-free rest breaks and/or pay premiums owed thereon, failing to maintain and provide accurate itemized wage statements, failing to reimburse for necessary business expenses incurred, failing to pay all wages owed in a timely manner, failing to pay all wages due upon termination and/or resignation, and engaging in unfair business practices.

56. Class action treatment will allow those similarly situated persons to litigate their claims in a manner that is most efficient and economical for the parties and the judicial system. 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.

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

Cal. Labor Code §§ 1182.12 1194, 1194.2, 1197, 1197.1, and the Relevant IWC Wage Orders

[On Behalf of Plaintiff and the Class against All Defendants]

57. Plaintiff, on behalf of herself and the Class, re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged herein.

58. Throughout the period of time applicable to this cause of action, Defendants did not pay Plaintiff and Class Members at least the California minimum wage for all hours worked, thereby violating Labor Code section 1194 and the relevant IWC Wage Order(s). Defendants did

not fully compensate Plaintiff and Class Members because they were required to perform pre- and post-shift activities that were off the clock, as well as during meal and rest breaks.

59. Defendants' failure to pay Plaintiff and Class Members the minimum wage as required is unlawful and violates Labor Code sections 1182.12, 1194, 1194.2, 1197, and 1197.1. As a result, Plaintiff and Class Members are entitled to recover the unpaid balance of their minimum wage compensation, as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

Cal. Labor Code §§ 510 and 1198 and the Relevant IWC Wage Orders

[On Behalf of Plaintiff and the Class against All Defendants]

60. Plaintiff, on behalf of herself and the Class, re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged herein.

61. At all times relevant to this Complaint, Labor Code section 510(a) was in effect and provided: "Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of forty hours in any one workweek…shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee."

62. Pursuant to the relevant IWC Wage Order(s), an employee shall not be employed more than eight (8) hours in any workday and/or more than forty (40) hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over eight (8) hours in any workday and/or more than forty (40) hours in any workweek. Further, an employer must compensate an employee at no less than twice the employee's regular rate of pay when the employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.

63. At all times mentioned, Plaintiff and the Class regularly worked shifts that consisted of more than eight (8) hours in a workday and/or more than forty (40) hours in a workweek and were not paid proper overtime wages for all overtime hours worked as a result of,

but not limited to, Defendants' failure to pay for work performed off the clock, including pre- and post-shift, and during meal and rest breaks. Further, the overtime that was paid to Plaintiff and Class Members was short, as Defendants incorrectly calculated the regular rate of pay for purposes of calculating overtime because Defendants failed to (1) include non-discretionary forms of pay in regular-rate calculations, and (2) factor wage premiums or shift differential pay into the regular rate of pay to calculate overtime pay rates.

64. Accordingly, by requiring Plaintiff and the Class to work in excess of eight (8) hours per day and/or forty (40) hours per week without properly compensating them overtime wages, as described above, Defendants willfully violated the provisions of Labor Code section 1194.

65. As a result of the unlawful acts of Defendants, Plaintiff and the Class have been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, costs, and attorneys' fees.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

Cal. Labor Code §§ 226.7, 512, and the Relevant IWC Wage Orders

[On Behalf of Plaintiff and the Class against All Defendants]

66. Plaintiff, on behalf of herself and the Class, re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged herein.

67. Labor Code section 226.7 provides "an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC")." Similarly, Labor Code section 512 and the IWC Wage Orders require employers to provide employees with thirty (30) minute uninterrupted and duty-free meal periods within the first five (5) hours of work. *See Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1042 ("Accordingly, first meal periods must start after no more than five hours.") Moreover, an

employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. *See* Labor Code § 512.

68. Despite these legal requirements, Defendants failed to always provide meal periods that comply with Labor Code sections 226.7, 512, and IWC Wage Order No. 4-2001. Plaintiff and Class Members experienced rounded, short, untimely and interrupted meal periods, and on occasion, the demands of employee job duties were such that they were prevented from taking a meal period altogether. Having been thus subjected to late, rounded, short, interrupted, and missed meal periods, Plaintiff and Class Members did not receive their statutorily mandated meal periods.

69. Under Labor Code section 226.7 and the relevant IWC Wage Order(s), Plaintiff and Class Members are entitled to be paid one (1) hour of additional wages at their regular rates of pay for each day they were not provided with all required meal periods. *See Ferra, supra*, 11 Cal.5th 858. Defendants failed to pay Plaintiff and Class Members the additional wages to which they were entitled for non-compliant meal periods.

70. As a result, Defendants are liable to Plaintiff and each Class Member for one (1) hour of additional wages at their regular rates of pay for each workday a compliant meal period was not provided, in a sum to be proven at trial.

<u>FOURTH CAUSE OF ACTION</u>

FAILURE TO AUTHORIZE AND PERMIT REST BREAKS

Cal. Labor Code § 226.7 and the Relevant IWC Wage Orders

[On Behalf of Plaintiff and the Class against All Defendants]

71. Plaintiff, on behalf of herself and the Class, re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged herein.

72. Under the applicable IWC Wage Order(s), an employer must authorize and permit all employees to take ten (10) minute duty free rest breaks for every major fraction of four hours worked. Labor Code section 226.7 provides "an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission."

73. Defendants are required by California law to authorize and permit breaks of ten (10) uninterrupted minutes for each four hours of work or major fraction thereof (i.e., more than two hours). That is, the required number of rest breaks is equal to the number of work hours divided by four, and if the work time is not evenly divisible by four, any remainder of two hours or less is rounded down and that which exceeds two hours is rounded up. For example, if a Class Member's work time is six hours and ten minutes, he or she is entitled to two rest breaks. If the work time is nine hours, the employee is still entitled to only two rest breaks. (There is an exception: if the shift is under three and one-half hours, no rest break is required.) Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

74. Despite these legal requirements, Defendants failed to authorize and permit Plaintiff and Class Members to take timely, duty-free rest breaks. Plaintiff and Class Members were subject to policies and/or practices that prevented them from taking legally compliant rest breaks. Defendants did not relieve Plaintiff and Class Members of all duties during their rest breaks and required them to be available to continue working–or, in fact, interrupted them–during their rest breaks. Notwithstanding any formal written policy to the contrary, Defendants' actual custom and business practice was to undermine any formal policy of permitting rest breaks by pressuring Class Members to perform their duties in a way that omitted breaks, including, but not limited to, scheduling a heavy workload that made taking breaks extremely difficult, maintaining an informal anti-rest break policy enforced through ridicule or reprimand, and exerting coercion against the taking of, creating incentives to forego, or otherwise encouraging the skipping of legally protected breaks. Here, as a companywide practice and in fact, Defendants did not offer Plaintiff and Class Members the opportunity to receive compliant off-duty rest breaks and, thus, "the court may not conclude employees voluntarily chose to skip…breaks." *Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal.App.4th 388, 410 ("[i]f an employer fails to provide legally compliant meal or rest breaks, the court may not conclude employees voluntarily chose to skip those breaks."); *accord, Brinker, supra,* 53 Cal.4th at p. 1033 ("No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it.")

75. In *Augustus v. ABM Security Services, Inc*. (2016) 2 Cal.5th 257, the court expressly rejected the employer's assertion that it could provide an on-duty rest break to employees who worked as security guards and further explained "that employers [must] relinquish any control over how employees spend their break time, and relieve their employees of all duties." *Id.* at 273. However, Defendants did not relieve Plaintiff and Class Members of all duties and relinquish control over how Plaintiff and Class Members spend their time.

76. Plaintiff and Class Members were not compensated with one (1) hour's worth of pay at their regular rates of pay when they were not provided with compliant rest breaks in accordance with Labor Code section 226.7(b). *See Ferra, supra*, 11 Cal.5th 858.

77. As a result, Defendants are liable to Plaintiff and Class Members for one (1) hour of additional of pay at their regular rates of pay for each workday when a compliant rest break was not provided, in a sum to be proven at trial.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

Cal. Labor Code §§ 226 and 226.3

[On Behalf of Plaintiff and the Class against All Defendants]

78. Plaintiff, on behalf of herself and the Class, re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged herein.

79. Labor Code section 226(a) requires employers, semi-monthly or at the time of each payment of wages, to furnish employees an accurate itemized statement in writing showing:

(1) gross wages earned;

(2) total hours worked by the employee;

(3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;

(4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;

(5) net wages earned;

(6) the inclusive dates of the period for which the employee is paid;

(7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;

(8) the name and address of the legal entity that is the employer…; and

(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee….

80. During the relevant time period, due to Defendants', *inter alia*, failure to pay Plaintiff and Class Members meal and rest break premiums at the regular rates of pay thereon, along with the failure to pay minimum and overtime wages, the wage statements issued by Defendants, at a minimum, do not indicate the correct amount of gross wages earned, the correct total hours worked, the correct net wages earned, and the applicable and/or correct hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code section 226(a)(1), (2), (5), and (9). Moreover, the wage statements issued do not indicate the correct name and address of the legal entity that is the employer in violation of Labor Code section 226(a)(8).

81. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual damages or fifty dollars ($50.00) for the initial pay period in which a violation occurs and one hundred dollars ($100.00) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars ($4,000.00), and is entitled to an award of costs and reasonable attorneys' fees.

82. The absence of accurate information on their wage statements has delayed challenge to Defendants' unlawful pay practices, requires discovery and mathematical computations to determine the amount of wages owed, causes difficulty and expense in attempting to reconstruct time and pay records, and led to submission of inaccurate information about wages and amounts deducted from wages to state and federal governmental agencies. Plaintiff would not have had to engage in these efforts and incur these costs had Defendants provided accurate wage

statements. This also delayed Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

83. Thus, Plaintiff and Class Members have been injured by Defendants' violation of Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate itemized wage statements.

84. Plaintiff and Class Members are thus entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars ($4,000.00) per employee pursuant to Labor Code section 226(e), and any other allowable penalties including those pursuant to Labor Code section 226.3.

SIXTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES WITHIN A TIMELY MANNER AND UPON SEPARATION OF EMPLOYMENT

Cal. Labor Code §§ 201, 202, 203, 204, and 210

[On Behalf of Plaintiff and the Class against All Defendants]

85. Plaintiff, on behalf of herself and the Class, re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged herein.

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

87. Labor Code section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty (30) days.

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88. As alleged herein and above, Defendants' failure to pay wages was willful in that Defendants knew wages were owed to Plaintiff and Class Members, but failed to pay said wages, at the time of termination, or within 72 hours of resignation, thus entitling Plaintiff and Class Members to penalties under Labor Code section 203, which provides that an employee's wages shall continue as a penalty until paid for a period of up to thirty (30) days from the time they were due.

89. Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and 15th day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and 10th day of the following month. Section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

90. The requirements of Labor Code section 204 shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period when the wages were earned.

91. During the relevant time period, Defendants failed to pay Plaintiff and Class Members all wages due to them within the time period specified by Labor Code section 204 including, but not limited to minimum and overtime wages, along with meal and rest break premiums.

92. Labor Code section 210 imposes upon Defendants a penalty of $100.00 for each violation of failing to pay the wages of each employee. Furthermore, Labor Code section 210 imposes upon Defendants for each subsequent violation, or any willful or intentional violation, of failure to pay the wages of each employee a penalty of $200.00, plus 25 percent of the amount unlawfully withheld.

93. Pursuant to Labor Code sections 218.5 and 218.6, along with California Civil Code sections 3287(b) and 3289, Plaintiff requests that the Court award reasonable attorneys' fees and

the costs incurred by them in this action, along with pre-judgment interest on all amounts recovered herein, as well as any statutory penalties Defendants may owe under the California Labor Code and/or any other statute.

SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

Cal. Labor Code §§ 2800 and 2802

[On Behalf of Plaintiff and the Class against All Defendants]

94. Plaintiff, on behalf of herself and the Class, re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged herein.

95. Labor Code sections 2800 and 2802 provide that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

96. Defendants required Plaintiff and Class Members to use their personal cell phones for business-related purposes. Expenses were incurred as a direct consequence of Plaintiff's and Class Members' duties and at the direction of Defendants.

97. Although Plaintiff and Class Members were regularly required to use their own personal cell phones for work purposes, Plaintiff and Class Members were not provided reimbursement for the cost and use of their personal cell phones. California law prohibits an employer from failing to indemnify business expenses or losses incurred by employees.

EIGHTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 1174(d)

[On Behalf of Plaintiff and the Class against All Defendants]

98. Plaintiff, on behalf of herself and the Class, re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged herein.

99. Pursuant to Labor Code section 1174(d), an employer shall keep, 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 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.

100. Defendants have intentionally and willfully failed to keep accurate and complete payroll records showing the hours worked daily by and the wages paid to Plaintiff and Class Members.

101. As a result of Defendants' violation of Labor Code section 1174(d), Plaintiff and Class Members have suffered injury and damage to their statutorily protected rights.

102. More specifically, Plaintiff and Class Members have been injured by Defendants' intentional and willful violation of Labor Code section 1174(d) because they were denied both their legal right and protected interest in having available, accurate, and complete payroll records pursuant to Labor Code section 1174(d).

NINTH CAUSE OF ACTION

UNFAIR COMPETITION LAW VIOLATIONS

Cal. Business & Professions Code §§ 17200, *et seq*.

[On Behalf of Plaintiff and the Class against All Defendants]

103. Plaintiff, on behalf of herself and the Class, re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged herein.

104. The Unfair Competition Law ("UCL"), California Business & Professions Code sections 17200, *et seq*., prohibits any unlawful, unfair, or fraudulent business practices. Business & Professions Code section 17204 allows "any person who has suffered injury in fact and has lost money or property" to prosecute a civil action for violation of the UCL. Such a person may bring such an action on behalf of himself or herself and others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

105. Labor Code section 90.5(a) states that it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

106. A violation of Business and Professions Code sections 17200, *et seq*. may be predicated upon the violation of any state or federal law. Defendants' policies and/or practices have violated state law in at least the following respects:

(a) Requiring Plaintiff and Class Members to work without paying them the minimum wage for all hours worked in violation of Labor Code sections 1182.12, 1194, 1194.2, 1197, and 1197.1, and applicable IWC Wage Order(s);

(b) Requiring Plaintiff and Class Members to work overtime without paying them the proper compensation in violation of Labor Code sections 510 and 1198, and applicable IWC Wage Order(s);

(c) Failing to provide compliant duty-free meal periods to Plaintiff and Class Members and failing to authorize and permit compliant duty-free rest breaks to Plaintiff and Class Members in violation of Labor Code sections 226.7 and 512, and applicable IWC Wage Order(s);

(d) Failing to reimburse Plaintiff and Class Members for necessary business expenses and losses incurred in performing their job duties, in violation of Labor Code sections 2800 and 2802;

(e) Failing to timely pay all wages to Plaintiff and Class Members during their employment and upon separation of employment, in violation of Labor Code sections 201, 202, 203, 204, and 210; and

(f) Failing to maintain and provide Plaintiff and Class Members with accurate itemized wage statements, in violation of Labor Code sections 226(a).

Thus, Defendants engaged in unlawful competition in violation of sections 17200, *et seq*. of the California Business & Professions Code by violating, *inter alia*, sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802 of the Labor Code and applicable IWC Wage Order(s).

107. As a direct and proximate result of Defendants' unlawful business practices, Plaintiff and Class Members have suffered economic injuries because Defendants' conduct has damaged Plaintiff and Class Members by, *inter alia*, wrongfully denying them all wages, including minimum and overtime wages, failing to pay all meal and rest breaks premiums at the regular rate of pay, and neglecting to reimburse for necessary business expenses, along with the corresponding interest, in a timely manner and upon separation, and while supplying them inaccurate and misleading wage statements. Such conduct is substantially injurious to Plaintiff and Class Members.

108. Additionally, Defendants intentionally avoided paying Plaintiff and Class Members wages and monies, thereby creating for Defendants an artificially lower cost of doing business in order to undercut their competitors and establish a greater foothold in the marketplace. Through their actions alleged herein, Defendants have engaged in unfair competition within the meaning of section 17200 of the California Business & Professions Code.

109. Defendants have profited from their unlawful, unfair, and/or fraudulent acts and practices. Plaintiff and Class Members are entitled to monetary relief pursuant to the California Business & Professions Code sections 17203 and 17208. Defendants should be required to disgorge all the profits and gains they have reaped and restore such profits and gains to Plaintiff and Class Members, from whom they were unlawfully taken.

110. Defendants' course of conduct, acts, and practices in violation of California laws mentioned above constitute independent violations of sections 17200, *et seq.* of the California Business & Professions Code.

111. Plaintiff and Class Members are entitled to enforce all applicable penalty provisions of the California Labor Code pursuant to California Business & Professions Code section 17202.

112. Plaintiff has assumed the responsibility of enforcement of the laws and public policies specified herein by suing on behalf of herself and Class Members previously or presently

employed by Defendants in California. Plaintiff's success in this action will enforce important rights affecting the public interest. Plaintiff will incur a financial burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is appropriate pursuant to Code of Civil Procedure section 1021.5.

TENTH CAUSE OF ACTION

PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004

Cal. Labor Code §§ 2698, *et seq.*

[On Behalf of Plaintiff and Aggrieved Employees against All Defendants]

113. Plaintiff, on behalf of herself and Aggrieved Employees, re-alleges and incorporates by reference all of the allegations contained in the previous paragraphs of this Complaint as though fully set forth herein.

114. Plaintiff, on behalf of herself and Aggrieved Employees, brings this representative action against Defendants to recover wages and penalties pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Labor Code sections 2698, *et seq.*

115. Based on the above allegations incorporated by reference, Defendants have violated Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174(d), 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802 as well as applicable IWC Wage Order(s).

116. Under Labor Code sections 2699(f)(2) and 2699.5, Plaintiff and Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

$100 for the initial violation per employee per pay period; and

$200 for each subsequent violation per employee per pay period.

These penalties shall be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the affected employees.

117. Defendants failed to provide Plaintiff and Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code section 226(a). Plaintiff seeks separate PAGA penalties for Defendants' violations of Labor Code section 226(a) and (e). *Lopez v. Friant*

& Assocs., LLC (2017) 15 Cal.App.5th 773, 788; *Bell v. Home Depot U.S.A.* (E.D. Cal. Dec. 11, 2017) No. 2:12-cv-02499 JAM-CKD, 2017 U.S. Dist. LEXIS 204493, at *5 [finding after *Friant* that "[t]o the extent the Court's Order [granting summary judgment to *Home Depot*] was ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs' derivative claim for [PAGA] penalties under section 226(e)…the Court's Order should not be read to grant summary judgment on Plaintiffs' claim for PAGA penalties based on violation of section 226(a)."]). For violations of Labor Code section 226(a), Plaintiff seeks the default penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial violation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required records in subdivision (a) of Section 226." Accordingly, through the PAGA and to the extent permitted by law Plaintiff and Aggrieved Employees are entitled to recover penalties for violations of Labor Code section 226.3 and seek the default PAGA penalties for each of Defendants' numerous violations of Labor Code section 226(a).

118. Labor Code section 210 provides that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections…204…shall be subject to a civil penalty as follows: (1) [f]or any initial violation, one hundred dollars ($100) for each failure to pay each employee; (2) [f]or each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld." As a result of the faulty compensation policies and/or practices, Plaintiff and Aggrieved Employees are also entitled to recover penalties under Labor Code section 210 through the PAGA.

119. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and liquidated damages, in the amount of: "(1) [f]or 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…[and] (2) [f]or each subsequent violation for the same specific

offense, two hundred fifty dollars ($250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed." Accordingly, through the PAGA and to the extent permitted by law, Plaintiff and Aggrieved Employees are entitled to recover pursuant to Labor Code section 1197.1.

120. On May 10, 2022, Plaintiff filed her PAGA Notice with the LWDA, paid the filing fee, and sent a letter by certified mail to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code sections 2698, *et seq*. The LWDA has not provided notice of its intent to investigate the alleged violations within sixty-five (65) calendar days of the postmark date of the aforesaid letter; Plaintiff has thereby exhausted the statute's pre-filing requirements.

121. Plaintiff, as a personal representative of the general public, on behalf of Aggrieved Employees and the State of California, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the PAGA period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with 75 percent of the penalties recovered being reimbursed to the State of California and the LWDA.

122. Plaintiff was compelled to retain the services of counsel to file this action to protect her interests and those of Aggrieved Employees, and to assess and collect the wages and penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he are entitled to recover under Labor Code section 2699(g)(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;

2. For compensatory damages in the amount of the unpaid minimum wage and overtime compensation for work performed by Plaintiff and Class Members, as may be proven;

3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, as may be proven;

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4. For compensatory damages in the amount of the regular rate of pay made by Plaintiff and Class Members for each non-compliant meal period for which premium pay was deficient, as may be proven;

5. For compensatory damages in the amount of the regular rate of pay made by Plaintiff and Class Members for each day of non-compliant rest breaks for which premium pay was deficient, as may be proven;

6. For penalties pursuant to Labor Code section 203 for Plaintiff and Class Members who quit or were fired in an amount equal to their daily wage multiplied by thirty (30) days, as may be proven;

7. For actual damages and/or penalties pursuant to Labor Code section 226(e) for Plaintiff and Class Members, as may be proven;

8. For reimbursement of business expenditures, as may be proven;

9. For restitution for unfair competition pursuant to the California Business & Professions Code sections 17200, *et seq*., including disgorgement of profits, as may be proven;

10. For a civil penalty in the amount of $100.00 for the initial violation and $200.00 for each subsequent violation as specified in section 2699(f)(2) of the Labor Code in the representative action brought on behalf of Plaintiff and Aggrieved Employees pursuant to the Private Attorneys General Act of 2004;

11. For all civil penalties available under section 210 of the Labor Code and the Private Attorneys General Act of 2004;

12. For all civil penalties available under section 226.3 of the Labor Code and the Private Attorneys General Act of 2004;

13. For all civil penalties available under section 1174.5 of the Labor Code and the Private Attorneys General Act of 2004;

14. For all civil penalties available under section 1197.1 of the Labor Code and the Private Attorneys General Act of 2004;

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15. For an order enjoining Defendants and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this complaint;

16. For an award of pre-judgment and post-judgment interest;

17. For an award providing for the payment of the costs of this suit;

18. For an award of attorneys' fees, to the extent provided by law; and

19. For such other and further relief as the Court may deem proper and just.

Respectfully submitted,

Dated: November 23, 2022 COUNSELONE, PC

By ______________________________

Anthony J. Orshansky
Jennifer L. Connor
Justin Kachadoorian

Attorneys for Plaintiff, putative Class Members, and Aggrieved Employees

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

Respectfully submitted,

Dated: November 23, 2022 COUNSELONE, PC

By ______________________________

Anthony J. Orshansky
Jennifer L. Connor
Justin Kachadoorian

Attorneys for Plaintiff, putative Class Members, and Aggrieved Employees