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County of Alameda
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

MARLENY MEJIA IRIAS, an individual, on
behalf of herself, others similarly situated,
and as a private attorney general on behalf of
the State of California,

PLAINTIFF,

v.

CARDENAS MARKETS LLC, a Delaware
Limited Liability Company, MI PUEBLO
NEWCO, LLC, a Delaware Limited Liability
Company, and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO.: **22CV010993**

**CLASS ACTION AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay Minimum Wages In Violation of Labor Code §§ 1194 and 1194.2
2. Failure to Pay Overtime Wages In Violation of Labor Code § 510
3. Failure to Provide Lawful Meal Periods And Pay Meal Period Premiums Pursuant to Labor Code §§ 226.7 and 512
4. Failure to Provide Lawful Rest Periods And Pay Rest Period Premiums Pursuant to Labor Code § 226.7
5. Penalties Pursuant to Labor Code § 226(e)
6. Waiting Time Penalties Pursuant to Labor Code § 203
7. Failure to Reimburse Business Expenses In Violation of Labor Code § 2802
8. Violation of Business & Professions Code § 17200
9. Penalties Pursuant to Labor Code § 2699, et seq. for violations of Labor Code §§ 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802 and IWC Wage Order No. 7-2001 and/or other applicable wage order.

Plaintiff MARLENY MEJIA IRIAS, an individual, on behalf of herself and others similarly situated, and as a private attorney general on behalf of the State of California complains of Defendants CARDENAS MARKETS LLC and MI PUEBLO NEWCO, LLC (collectively “Cardenas”) and the Doe Defendants (“Defendants”) and each of them, as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of Plaintiff and the following classes and subclasses:

- (1) all non-exempt, hourly employees who were employed by Cardenas Markets LLC or its predecessor, merged or related entities in California at any point from September 14, 2020 and continuing into the present. (“Cardenas Non-Exempt Class”);
- (2) all non-exempt, hourly employees who were employed by Mi Pueblo Newco, LLC or its predecessor, merged or related entities in California at any point from September 14, 2020 and continuing into the present. (“Mi Pueblo Non-Exempt Class”);

Collectively, Classes (1) and (2) may be referred to as the “Non-Exempt Class.”

- (3) all individuals who were employed by Cardenas Markets LLC or its predecessor, merged or related entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from September 14, 2020 and continuing into the present. (“Cardenas Overtime Class”);
- (4) all individuals who were employed by Mi Pueblo Newco, LLC or its predecessor, merged or related entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from September 14, 2020 and continuing into the present. (“Mi Pueblo Overtime Class”);
- (5) all individuals who were employed by Cardenas Markets LLC or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and who worked a shift of more than eight

(8) hours in a day and/or forty (40) hours in a week during a period where they also received a non-discretionary bonus, incentive payment/pay, shift differential, hazard pay, and/or a payment under the pay codes “Special Pay,” “HP Earns,” “HPRRO,” “Premium Pay” pay codes from September 14, 2020 and continuing into the present; (“Cardenas Incentive Pay Overtime Subclass”);

(6) all individuals who were employed by Mi Pueblo Newco, LLC or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a period where they also received a non-discretionary bonus, incentive payment/pay, shift differential, hazard pay, and/or a payment under the pay codes “Special Pay,” “HP Earns,” “HPRRO,” “Premium Pay” pay codes from September 14, 2020 and continuing into the present; (“Mi Pueblo Incentive Pay Overtime Subclass”);

Collectively, groups three (3), four (4), five (5), and six (6) may be referred to as the “Overtime Class.”

(7) all individuals who were employed by Cardenas Markets LLC or its predecessor, merged or related entities. in California who worked one or more shifts of more than six (6) hours as a non-exempt, hourly employee or other similar position from September 14, 2020 and continuing into the present. (“Cardenas Meal Period Class”);

(8) all individuals who were employed by Mi Pueblo Newco, LLC or its predecessor, merged or related entities. in California who worked one or more shifts of more than six (6) hours as a non-exempt, hourly employee or other similar position from September 14, 2020 and continuing into the present. (“Mi Pueblo Meal Period Class”);

(9) All individuals who were employed by Cardenas Markets LLC or its predecessor, merged or related entities in California who were paid a meal and/or rest period premium within the same week that they also received a non-discretionary bonus, incentive payment/pay, and/or a payment under the “Special Pay,” “HP Earns,” “HPRRO,” “Premium Pay” pay codes from September 14, 2020 and continuing into the present. (“Cardenas Meal/Rest Period Premium Class”);

(10) All individuals who were employed by Mi Pueblo Newco, LLC or its predecessor, merged or related entities in California who were paid a meal and/or rest period premium within the same week that they also received a non-

1 discretionary bonus, incentive payment/pay, and/or a payment under the
2 “Special Pay,” “HP Earns,” “HPRRO,” “Premium Pay” pay codes from
3 September 14, 2020 and continuing into the present. (“Mi Pueblo Meal/Rest
4 Period Premium Class”);

5 Collectively, groups seven (7), eight (8), nine (9), and ten (10) may be referred to as the
6 “Meal Period Class.”

7 (11)all individuals who were employed by Cardenas Markets LLC or its
8 predecessor, merged or related entities in California as a non-exempt hourly
9 employee, or other similar position, who worked one or more shifts of more
10 than four (4) hours in length or major fraction thereof from September 14, 2020
11 and continuing into the present. (“Cardenas Rest Period Class”);

12 (12)all individuals who were employed by Mi Pueblo Newco, LLC or its
13 predecessor, merged or related entities in California as a non-exempt hourly
14 employee, or other similar position, who worked one or more shifts of more
15 than four (4) hours in length or major fraction thereof from September 14, 2020
16 and continuing into the present. (“Mi Pueblo Rest Period Class”);

17 Collectively, groups nine (9), ten (10), eleven (11), and twelve (12) may be referred to as
18 the “Rest Period Class.”

19 (13)all individuals who were employed by Cardenas Markets LLC or its
20 predecessor, merged or related entities for one or more pay periods in California
21 as a non-exempt, hourly employee and whose employment concluded at any
22 time between September 14, 2020 and continuing into the present. (“Cardenas
23 General Late Payment Class”);

24 (14)all individuals who were employed by Mi Pueblo Newco, LLC or its
25 predecessor, merged or related entities for one or more pay periods in California
26 as a non-exempt, hourly employee and whose employment concluded at any
27 time between September 14, 2020 and continuing into the present. (“Mi Pueblo
28 General Late Payment Class”);

(15)all individuals who were employed by Cardenas Markets LLC or its
predecessor, merged or related entities for one or more pay periods in
California, who received sick pay, and whose employment concluded at any
time between September 14, 2020 and continuing into the present; (“Cardenas
Sick Pay Late Payment Class”);

(16) all individuals who were employed by Mi Pueblo Newco, LLC or its predecessor, merged or related entities for one or more pay periods in California, who received sick pay, and whose employment concluded at any time between September 14, 2020 and continuing into the present; (“Mi Pueblo Sick Pay Late Payment Class”);

Collectively, groups thirteen (13), fourteen (14), fifteen (15), and sixteen (16) may be referred to as the “Late Payment Class.”

(17) all non-exempt, hourly employees who were employed by Cardenas Markets LLC or its predecessor, merged or related entities in California at any point from January 24, 2021 and continuing into the present. (“Cardenas Wage Statement Subclass”);

(18) all non-exempt, hourly employees who were employed by Mi Pueblo Newco, LLC or its predecessor, merged or related entities in California at any point from January 24, 2021 and continuing into the present. (“Mi Pueblo Wage Statement Subclass”);

These Classes and Subclasses may all collectively be referred to herein as the “Class” where appropriate and for ease of reference.

2. This is also a representative action brought pursuant to Labor Code § 2698, *et seq.*, on behalf of the State of California and several groups of aggrieved employees defined as follows:

(1) all non-exempt, hourly employees who were employed by Cardenas Markets LLC or its predecessor, merged or related entities in California at any point from January 24, 2021 and continuing into the present. (“Cardenas Non-Exempt Aggrieved Employees”);

(2) all non-exempt, hourly employees who were employed by Mi Pueblo Newco, LLC or its predecessor, merged or related entities in California at any point from January 24, 2021 and continuing into the present. (“Mi Pueblo Non-Exempt Aggrieved Employees”);

Collectively, aggrieved employee groups one (1) and (2) may be referred to as the “Non-Exempt Aggrieved Employees.”

(3) all individuals who were employed by Cardenas Markets LLC or its predecessor, merged or related entities in California as a non-exempt, hourly

employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from January 24, 2021 and continuing into the present. (“Cardenas Overtime Aggrieved Employees”);

(4) all individuals who were employed by Mi Pueblo Newco, LLC or its predecessor, merged or related entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from January 24, 2021 and continuing into the present. (“Mi Pueblo Overtime Aggrieved Employees”);

(5) all individuals who were employed by Cardenas Markets LLC or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a period where they also received a non-discretionary bonus, incentive payment/pay, shift differential, hazard pay, and/or a payment under the pay codes “Special Pay,” “HP Earns,” “HPRRO,” “Premium Pay” pay codes from January 24, 2021 and continuing into the present; (“Cardenas Incentive Pay Overtime Aggrieved Employees”);

(6) all individuals who were employed by Mi Pueblo Newco, LLC or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a period where they also received a non-discretionary bonus, incentive payment/pay, shift differential, hazard pay, and/or a payment under the pay codes “Special Pay,” “HP Earns,” “HPRRO,” “Premium Pay” pay codes from January 24, 2021 and continuing into the present; (“Mi Pueblo Incentive Pay Overtime Aggrieved Employees”);

Collectively, aggrieved employee groups three (3), four (4), five (5), and six (6) may be referred to as the “Overtime Aggrieved Employees.”

(7) all individuals who were employed by Cardenas Markets LLC or its predecessor, merged or related entities. in California who worked one or more shifts of more than six (6) hours as a non-exempt, hourly employee or other similar position from January 24, 2021 and continuing into the present. (“Cardenas Meal Period Aggrieved Employees”);

1 (8) all individuals who were employed by Mi Pueblo Newco, LLC or its
2 predecessor, merged or related entities. in California who worked one or more
3 shifts of more than six (6) hours as a non-exempt, hourly employee or other
4 similar position from January 24, 2021 and continuing into the present. ("Mi
Pueblo Meal Period Aggrieved Employees");

5 (9) All individuals who were employed by Cardenas Markets LLC or its
6 predecessor, merged or related entities in California who were paid a meal
7 and/or rest period premium within the same week that they also received a non-
8 discretionary bonus, incentive payment/pay, and/or a payment under the
9 "Special Pay," "HP Earns," "HPRRO," "Premium Pay" pay codes from January
24, 2021 and continuing into the present. ("Cardenas Meal/Rest Period Premium
Aggrieved Employees");

10 (10) All individuals who were employed by Mi Pueblo Newco, LLC or its
11 predecessor, merged or related entities in California who were paid a meal
12 and/or rest period premium within the same week that they also received a non-
13 discretionary bonus, incentive payment/pay, and/or a payment under the
14 "Special Pay," "HP Earns," "HPRRO," "Premium Pay" pay codes from January
24, 2021 and continuing into the present. ("Mi Pueblo Meal/Rest Period
Premium Aggrieved Employees");

15
16 Collectively, aggrieved employee groups seven (7), eight (8), nine (9), and ten (10) may
be referred to as the "Meal Period Aggrieved Employees."

17
18 (11) all individuals who were employed by Cardenas Markets LLC or its
19 predecessor, merged or related entities in California as a non-exempt hourly
20 employee, or other similar position, who worked one or more shifts of more
21 than four (4) hours in length or major fraction thereof from January 24, 2021
and continuing into the present. ("Cardenas Rest Period Aggrieved Employee");

22 (12) all individuals who were employed by Mi Pueblo Newco, LLC or its
23 predecessor, merged or related entities in California as a non-exempt hourly
24 employee, or other similar position, who worked one or more shifts of more
25 than four (4) hours in length or major fraction thereof from January 24, 2021
and continuing into the present. ("Mi Pueblo Rest Period Aggrieved
Employee");

26 Collectively, aggrieved employee groups nine (9), ten (10), eleven (11), and twelve (12)
27 may be referred to as the "Rest Period Aggrieved Employees."

1 (13)all individuals who were employed by Cardenas Markets LLC or its
2 predecessor, merged or related entities for one or more pay periods in California
3 as a non-exempt, hourly employee and whose employment concluded at any
4 time between January 24, 2021 and continuing into the present. (“Cardenas
General Late Payment Aggrieved Employees”);

5 (14)all individuals who were employed by Mi Pueblo Newco, LLC or its
6 predecessor, merged or related entities for one or more pay periods in California
7 as a non-exempt, hourly employee and whose employment concluded at any
8 time between January 24, 2021 and continuing into the present. (“Mi Pueblo
General Late Payment Aggrieved Employees”);

9 (15)all individuals who were employed by Cardenas Markets LLC or its
10 predecessor, merged or related entities for one or more pay periods in
11 California, who received sick pay, and whose employment concluded at any
12 time between January 24, 2021 and continuing into the present; (“Cardenas Sick
Pay Late Payment Aggrieved Employee”);

13 (16)all individuals who were employed by Mi Pueblo Newco, LLC or its
14 predecessor, merged or related entities for one or more pay periods in
15 California, who received sick pay, and whose employment concluded at any
16 time between January 24, 2021 and continuing into the present; (“Mi Pueblo
Sick Pay Late Payment Aggrieved Employee”);

17 Collectively, aggrieved employee groups thirteen (13), fourteen (14), fifteen (15), and
18 sixteen (16) may be referred to as the “Late Payment Aggrieved Employees.”

19 These groups may all collectively be referred to herein as aggrieved employees and/or all
20 aggrieved employees where appropriate.

21 3. Plaintiff, the Classes, and the aggrieved employees were employed by Defendants
22 CARDENAS MARKETS LLC and MI PUEBLO NEWCO, LLC and any subsidiaries or
23 affiliated companies and Does 1 through 50 (who include individuals acting on behalf an
24 employer within the meaning of Labor Code § 558.1) within the State of California as a non-
25 exempt, hourly employees at some point within four (4) years of the filing of the Complaint and
26 continuing into the present. Plaintiff is a former employee of Defendants who worked for
27 Defendants in Oakland within Alameda County.
28

1 4. At times throughout her employment with Defendants from September 14, 2020
2 and continuing into the present and within the past year, Plaintiff, the Classes, and the aggrieved
3 employees worked shifts in excess of six (6) hours in a day, worked shifts in excess of eight (8)
4 hours in a day, ten (10) hours in a day and/or worked in excess of forty (40) hours in a week or
5 more.

6 5. At times throughout her employment with Defendants from September 14, 2020
7 and continuing into the present and within the past year, Plaintiff, the Classes, and the aggrieved
8 employees worked enough hours to be eligible to receive overtime wages under IWC Wage Order
9 Nos. 7-2001 and/or Labor Code section 510.

10 6. Defendants hire employees to work within the state of California who are covered
11 by California Industrial Welfare Commission Occupational Wage Order No. 7-2001. Based upon
12 information and belief, Defendants classified Plaintiff, the Classes, and the aggrieved employees
13 as non-exempt for the purposes of overtime, meal periods, and rest periods.

14 7. Plaintiff and the Wage Statement Subclass received at least one wage statement
15 between January 24, 2021 and continuing into the present.

16 8. Labor Code § 1197 states the California requirement that employees must be paid
17 at least the minimum wage fixed by the Commission or by any applicable state or local law, and
18 any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles
19 “any employee receiving less than the legal minimum wage...to recover in a civil action the
20 unpaid balance of the full amount of this minimum wage.” IWC Wage Order 7-2001 and other
21 applicable wage orders obligate employers to pay each employee minimum wages for all hours
22 worked.

23 9. In addition, Labor Code § 1198 provides that “the maximum hours of work and the
24 standard conditions of labor fixed by the commission shall be the maximum hours of work and
25 the standard conditions of labor for employees. The employment of any employee for longer
26 hours than those fixed by the order or under conditions of labor prohibited by the order is
27 unlawful.”
28

1 10. At times throughout her employment with Defendants from September 14, 2020
2 and continuing into the present and within the past year, Defendants engaged in a common policy
3 and practice for at least part of the time since the onset of the COVID-19 pandemic of requiring
4 Plaintiff, the Class, and the aggrieved employees to undergo temperature checks and/or other
5 medical screenings prior to the start of their shifts while off-the-clock for which they did not
6 receive compensation in violation of Labor Code §§ 1194 and 510. This includes, but is not
7 limited, to requiring Plaintiff, the Class, and the aggrieved employees to fill out a questionnaire
8 prior to clocking-in for the day.

9 11. At times throughout her employment with Defendants from September 14, 2020
10 and continuing into the present and within the past year, Defendants also required Plaintiff, the
11 Class, and the aggrieved employees to undergo security checks whenever they purchased an item
12 from Defendants and provide a proof of receipt while on meal/rest periods. *Barrett Business*
13 *Services, Inc.*, 29 Cal. App. 5th 778, 808 (2018) (affirming the award of PAGA penalties for
14 violations of Labor Code § 512 where employees meal periods were interrupted and remanding to
15 the trial court the amount of PAGA penalties that should be awarded based upon the minimum
16 wage violations associated with the same interrupted meal periods under Labor Code section
17 1194.).

18 12. Defendants' conduct in failing to pay Plaintiff, the Class, and the aggrieved
19 employees for such time was willful within the meaning of the California Labor Code. The
20 Department of Industrial Relations issued guidance on July 28, 2020 advising that employers that
21 they must compensate employees for the time associated with medical checks before shifts
22 (including temperature checks).

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

1 In accordance with Labor Code § 1194, Plaintiff, the Class, and the aggrieved employees could
2 not agree to work for a lesser wage.

3 14. At times throughout her employment with Defendants from September 14, 2020
4 and continuing into the present and within the past year, Defendants engaged in a common policy
5 and practice for at least part of the time since the onset of the COVID-19 pandemic of requiring
6 Plaintiff, the Class, and the aggrieved employees to undergo temperature checks and/or other
7 medical screenings and answering questionnaires prior to the start of their shift while off-the-
8 clock for which they did not receive compensation in violation of Labor Code §§ 1194 and 510.
9 Defendants also required Plaintiff, the Class, and the aggrieved employees to undergo security
10 checks and verify their receipts/purchases if they purchased food to consume during a break
11 and/or before the start of their shift regardless of whether or not they received a discount. Due to
12 the application of this policy, Plaintiff, the Class, and the aggrieved employees were never
13 relieved of all duties during their meal/rest periods. Since Plaintiff, the Class, and the aggrieved
14 employees later worked eight (8) hours aside from the off-the-clock time associated with
15 temperature checks/medical screenings or security checks, many of the hours worked by Plaintiff,
16 the Class, and the aggrieved employees were misclassified as regular hours instead of overtime
17 hours resulting in the underpayment of overtime wages in addition to the failure to pay for all
18 hours worked. Such conduct violated Labor Code § 510.

19 15. At times throughout her employment with Defendants from September 14, 2020
20 and continuing into the present and within the past year, Defendants paid Plaintiff, the Class, and
21 the aggrieved employees with non-discretionary bonuses, incentive payments, hazard pay and
22 other compensation that was required to be included within the regular rate (including but not
23 limited to compensation under they pay codes “Special Pay,” “HP Earns,” “HPRRO,” “Premium
24 Pay”), but failed to include such compensation when calculating and paying overtime wages. For
25 instance for the pay period of May 24, 2021 to May 30, 2021, Plaintiff earned an additional \$5.00
26 per hour in Hazard Pay—believed to include, but not limited to, hazard pay under Oakland’s
27 Grocery Worker Hazard Pay Emergency Ordinance—or other properly includable compensation
28

1 under the pay code "HP Earns," but Defendants failed to include such compensation entirely
2 when calculating and paying her overtime wages.

3 16. At times throughout her employment with Defendants from September 14, 2020
4 and continuing into the present and within the past year, in addition, for the pay period of
5 November 22, 2021 to November 28, 2021, Plaintiff earned \$43.63 in undefined premium pay,
6 but Defendants failed to include this undefined and necessarily includable "premium pay" when
7 calculating and paying overtime wages in violation of Labor Code § 510.

8 17. At times throughout her employment with Defendants from September 14, 2020
9 and continuing into the present and within the past year, instead of including all required
10 compensation when calculating and paying overtime wages, Defendants instead improperly paid
11 overtime wages only at one and one-half times Plaintiff, the Class, and the aggrieved employees'
12 regular hourly base rate instead of at one and one-half time their regular rate of pay. In other
13 words, Defendants improperly failed to include shift differentials, non-discretionary bonuses,
14 incentive payments, hazard pay and pay under the pay codes "Special Pay," "HP Earns,"
15 "HPRRO," "Premium Pay" when calculating and paying overtime wages.

16 18. Based upon the foregoing, Defendants violated Labor Code § 510 with respect to
17 Plaintiff and all aggrieved employees. Employees, including Plaintiff and the other aggrieved
18 employees who experience a violation of Labor Code § 510 may pursue PAGA penalties under
19 Labor Code § 558. Labor Code § 558 imposes a penalty upon employers "who violates, or causes
20 to be violated...any provision regulating hours and days of work in any order of the Industrial
21 Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation,
22 fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was
23 underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each
24 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
25 period for which the employee was underpaid in addition to an amount sufficient to recover
26 underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected
27 employee." For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only
28

1 the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and
2 not any underpaid wages.

3 19. Labor Code § 1197.1 authorizes employees who are paid less than the minimum
4 fixed by an applicable state or local law, or by an order of the commission a civil penalty,
5 restitution of wages, and liquidate damages as follows: (1) for any initial violation that is
6 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
7 period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the
8 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
9 period for which the employee is underpaid regardless of whether the initial violation is
10 intentionally committed. As set forth above, Defendants failed to compensate Plaintiff and all
11 aggrieved employees for all overtime wages at the proper rates. Accordingly, through PAGA and
12 to the extent permitted by law, Plaintiff and all aggrieved employees are entitled to recover civil
13 penalties for violations of Labor Code § 1197.1.

14 20. Labor Code § 512 requires employers to provide employees with thirty (30)
15 minute uninterrupted and duty-free meal period within the first five (5) hours of work. Moreover,
16 an employee who works more than ten (10) hours per day is entitled to receive a second thirty
17 (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512, an employer
18 may not employ an employee for a work period of more than ten (10) hours, without providing
19 the employee with a second meal period of not less than thirty (30) minutes. Moreover, the
20 second meal period may not be waived if the total hours worked is more than twelve (12) hours.

21 21. Similarly, IWC Wage Order No. 7-2001 and other applicable wage orders prohibit
22 an employer from “employ[ing] any person for a work period of more than five (5) hours without
23 a meal period of not less than 30 minutes. IWC Wage Order No. 7-2001 and other applicable
24 wage orders further obligates employers to provide an employee to “pay the employee one (1)
25 hour of pay at the employee’s regular rate of compensation for each workday that the meal period
26 is not provided. Labor Code section 1198 prohibits an employer from requiring an employee to
27 work beyond the “standard conditions of labor fixed by the commission...or under conditions of
28 labor prohibited by the order.”

22. Labor Code § 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, IWC Wage Order No. 7-2001 prohibit an employer from “employ[ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order No. 7-2001 further obligates employers to provide an employee to “pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided. Accordingly, for each day that Plaintiff, the Class, and all aggrieved employees did not receive compliant meal periods, they were entitled to receive meal period premiums pursuant to Labor Code § 226.7 and IWC Wage Order No. 7-2001.

23. At times throughout her employment with Defendants from September 14, 2020 and continuing into the present and within the past year, Defendants failed to authorize and permit Plaintiff, the Class, and the aggrieved employees to receive lawful meal periods, failed to advise them of their right to such meal periods, failed to authorize and permit them to take timely first meal periods, and failed to authorize and permit employees to take 30-minute meal periods on occasion.

24. At times throughout her employment with Defendants from September 14, 2020 and continuing into the present and within the past year, Defendants’ meal period policies and practices also disincentivized and discouraged Plaintiff, the Class, and the aggrieved employees from taking timely first meal periods within the first five (5) hours of their shift. Defendants’ understaffing policies and practices also pressured, coerced, and forced employees to take untimely first meal periods and/or forgo meal periods due to a lack of sufficient coverage. In addition, Defendants were aware of their obligation to provide timely first meal periods, but intentionally manipulated Plaintiff, the Class, and the aggrieved employees’ time entries—in violation of Labor Code sections 226.7, 512, 1174, and 1174.5—to show that they received a timely meal period even though they did not receive a timely meal period. Defendants’ and its supervisory employees referred to this policy and practice as correcting or fixing their time entries/hours. Specifically, Plaintiff was told not to punch out for these meal periods because it

1 was already too late. Although this could happen at any point in time, this happened more
2 frequently when Defendants had long lines of customers and did not want their customers to wait
3 for lengthy periods of time. In other words, it resulted directly from a failure to provide adequate
4 staffing to service Defendants clients.

5 25. At times throughout her employment with Defendants from September 14, 2020
6 and continuing into the present and within the past year, Defendants also failed to pay Plaintiff,
7 the Class, and the aggrieved employees meal period premiums for each workday that the
8 employees did not receive a compliant meal period and/or at the proper rate. Labor Code § 226.7
9 provides “an employer shall not require an employee to work during a meal or rest or recovery
10 period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of
11 the Industrial Welfare Commission (“IWC”).

12 26. At times throughout her employment with Defendants from September 14, 2020
13 and continuing into the present and within the past year, on the rare occasion if any that
14 Defendants paid meal period premiums to Plaintiff, the Class, and the aggrieved employees,
15 Defendants improperly paid the premium at the employee’s hourly base rate instead of at their
16 regular rate resulting in the underpayment of meal period premiums. Plaintiff contends that
17 Defendants’ policies and practices as alleged above violated Labor Code § 226.7 and seeks
18 penalties pursuant to PAGA related thereto consistent with the California Supreme Court’s
19 decision in *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 878 (2021) (“we hold that the
20 term ‘regular rate of compensation’ in section 226.7(c) has the same meaning of regular rate of
21 pay’ in section 510(a) and encompasses not only hourly wages, but all nondiscretionary payments
22 for work performed by the employee.”).

23 27. Based upon the foregoing, Defendants violated Labor Code §§ 226.7, 512, 558,
24 117, 1174.5, and 1198 as well as IWC Wage Order No. 7-2001 and other applicable wage orders
25 with respect to Plaintiff and the aggrieved employees. As such, Plaintiff and the aggrieved
26 employees are entitled to penalties under Labor Code § 558. Labor Code § 558 imposes a penalty
27 upon employers “who violates, or causes to be violated...any provision regulating hours and days
28 of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as

1 follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay
2 period for which the employee was underpaid in addition to an amount sufficient to recover
3 underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each
4 underpaid employee for each pay period for which the employee was underpaid in addition to an
5 amount sufficient to recover underpaid wages; and (3) Wages recovered pursuant to this section
6 shall be paid to the affected employee.” For purposes of Labor Code § 558, Plaintiff and the
7 aggrieved employees seek only the penalties assessed as civil penalties pursuant to *ZB, N.A. v.*
8 *Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages.

9 28. Labor Code § 226.7 provides “an employer shall not require an employee to work
10 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
11 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage
12 Order Nos. 7-2001, an employer must authorize and permit all employees to take ten (10) minute
13 duty free rest periods for every major fraction of four hours worked. *See Augustus v. ABM*
14 *Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that “during rest periods employers
15 must relieve employees of all duties and relinquish control over how employees spend their
16 time.”).

17 29. At times throughout her employment with Defendants from September 14, 2020
18 and continuing into the present and within the past year, Defendants failed to provide Plaintiff,
19 the Class, and the aggrieved employees with rest periods of not less than ten (10) minutes for
20 every major fraction of four (4) hours worked in violation of Labor Code § 226.7 and IWC Wage
21 Order No. 7-2001 and other applicable wage orders. Instead, Defendants regularly and
22 consistently required Plaintiff, the Class, and the aggrieved employees to forgo rest periods and/or
23 required them to remain on the premises and failed to relieve them of all duties.

24 30. At times throughout her employment with Defendants from September 14, 2020
25 and continuing into the present and within the past year, Plaintiff, the Class, and the aggrieved
26 employees were denied rest periods as a result of Defendants’ understaffing practices and
27 policies. Notably, although Defendants’ rest period policies and practices are not compliant, they
28 also pressured and coerced employees to forgo rest periods and made it difficult for employees to

1 take lawful duty-free rest periods both due to their understaffing policies and practices and
2 otherwise. At times during her employment, Plaintiff would ask her manager Patty if she could
3 take a rest period and her Manager would instead direct Plaintiff to take care of her line. When
4 Plaintiff advised Manager Patty that she had not been able to take her rest period and that her shift
5 was ending, her Manager Patty would tell her to keep working and that overtime wasn't permitted
6 by the Company thereby forcing Plaintiff to forgo her rest period due to the company's overtime,
7 staffing budget, and staffing policies and practices. Plaintiff often did not receive rest period
8 premiums on these occasions.

9 31. At times throughout her employment with Defendants from September 14, 2020
10 and continuing into the present and within the past year, further, on the rare occasion if any that
11 Defendants paid rest period premiums, Defendants improperly paid the premium at the
12 employee's hourly base rate instead of at their regular rate. Plaintiff contends that Defendants'
13 policies and practices as alleged above violated Labor Code § 226.7 and seeks penalties pursuant
14 to PAGA related thereto consistent with the California Supreme Court's decision in *Ferra v.*
15 *Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 878 (2021) ("we hold that the term 'regular rate of
16 compensation' in section 226.7(c) has the same meaning of regular rate of pay' in section 510(a)
17 and encompasses not only hourly wages, but all nondiscretionary payments for work performed
18 by the employee.").

19 32. Labor Code § 558 imposes a penalty upon employers "who violates, or causes to
20 be violated...any provision regulating hours and days of work in any order of the Industrial
21 Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation,
22 fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was
23 underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each
24 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
25 period for which the employee was underpaid in addition to an amount sufficient to recover
26 underpaid wages; and (3) Wages recovered pursuant to this section shall be paid to the affected
27 employee." For purposes of Labor Code § 558, Plaintiff and the aggrieved employees seek only
28

the penalties assessed as civil penalties pursuant to *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019) and not any underpaid wages.

33. As to Plaintiff, the Wage Statement Subclass, and the aggrieved employees, from at least January 24, 2021 and continuing into the present, Defendants also failed to provide accurate itemized wage statements in accordance with Labor Code § 226(a)(1, 2, 5, and 9). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage 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...;
- (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...

Similarly, Labor Code § 226(e) provides:

(e) (1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

(2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer during the pay period.

(iv) 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.

34. As to Plaintiff, the Wage Statement Subclass, and the aggrieved employees, from at least January 24, 2021 and continuing into the present, due to Defendants' failure to pay Plaintiff, the Wage Statement Subclass, and all aggrieved employees all minimum wages, overtime wages, meal period premiums, and rest period premiums, the wage statements issued by Defendants do not indicate the correct amount of gross wages earned, the total hours worked, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Thus, Defendants have violated Labor Code §226(a)(1), (2), (5), and (9) with respect to Plaintiff, the Wage Statement Subclass, and all aggrieved employees.

35. Separate and independent from the foregoing, from at least January 24, 2021 and continuing into the present, to the extent that "Special Pay," "HP Earns," "HPRRO," "Premium Pay" pay turns out not to be based upon hours worked, Plaintiff contends that Defendants failed to include the number of hours worked at these rates on Plaintiff, the Wage Statement Subclass, and aggrieved employees' itemized wage statements in violation of Labor Code § 226(a)(9):

Earnings	rate	hours	this period	year to date
Regular	15.5000	31.82	493.21	24,516.71
Overtime	23.2500	.02	0.47	159.95
Holiday-Work	23.2500	7.85	182.51	182.51
Premium Pay			43.63	43.63
HP Earns				3,327.90
HPRRO				9.29
MealPremium				61.55
PaidSickLeave				744.00
Sick Pay				596.75
Vacation				86.99
Gross Pay			\$719.82	29,729.28

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Earnings	rate	hours	this period	year to date
Regular	15.5000	39.87	617.99	12,530.20
Overtime	23.2500	.07	1.63	45.52
HP Earns	5.0000	39.93	199.65	3,129.45
HPRRO			0.60	8.77
MealPremium				15.05
Sick Pay				248.00
Vacation				86.99
Gross Pay			\$819.87	16,063.98

36. In addition, the wage statements issued to Plaintiff, the Wage Statement Subclass, and all aggrieved employees did not include the actual total hours worked by the employee in violation of Labor Code § 226(a)(2). As previously explained, in express violation of Section 7(A)(3) of IWC Wage Order No. 7-2001 which requires employers to record “when the employee begins and ends each work period.” Instead, Defendants failed to report the time that it knew that Plaintiff, the Wage Statement Subclass, and the aggrieved employees were working while off-the-clock including the time associated with uncompensated temperature checks/medical screenings or the hours worked associated with interrupted meal periods. In other words, Defendants did not include the total hours worked by the employee during the pay period including hours that it knew they had worked regardless of whether or not compensation was provided for such time in violation of Labor Code § 226(a)(2).

37. In addition to violating Labor Code § 226(a), Defendants also knowingly and intentionally failed to pay Plaintiff, the Class, the Wage Statement Subclass, and all aggrieved employees minimum wages, overtime wages, meal period premiums, and rest periods premiums including at the proper rates.

38. In addition to violating Labor Code § 226(a), Defendants also knowingly and intentionally failed to include the number of hours worked and rates associated with several categories of pay in violation of Labor Code section 226(a)(9).

39. Moreover, Plaintiff, the Class, the Wage Statement Subclass, and all aggrieved employees also suffered legal “injury” for purposes of Labor Code section 226(e) insofar as they were unable to readily and easily determine from the wage statements themselves the information

1 required to be set forth by Section 226(a), the information provided by Defendants were
2 confusing and inaccurate. In addition, Plaintiff, the Wage Statement Subclass, and the aggrieved
3 employees were unable to determine at all the total hours worked by the employee, the gross
4 wages earned, the net wages earned, and all applicable hourly rates in effect during the pay period
5 and the corresponding number of hours worked at each hourly rate by the employee for the
6 reasons discussed above.

7 40. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
8 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
9 per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee
10 for each violation in a subsequent citation, for which the employer fails to provide the employee a
11 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As
12 explained in detail above, Defendants failed to provide Plaintiff and the other aggrieved
13 employees with accurate itemized wage statements. Accordingly, Plaintiff and the other
14 aggrieved employees may also recover Labor Code § 226.3 and/or 2699.3 penalties for
15 Defendants’ violations of Labor Code § 226(a).

16 41. There is currently a split of authority regarding which PAGA penalties apply to
17 violations of Labor Code § 226(a). *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 355
18 (2021) (holding that such violations give rise to a 2699.3 penalty) *cf.*; *Raines v. Coastal Pacific*
19 *Food Distributors, Inc.*, 23 Cal.App.5th 667, 675 (2018) (holding that such violations give rise to
20 a Labor Code § 226.3 penalty). Labor Code § 226.3 provides that “[a]ny employer who violates
21 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred
22 fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars
23 (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to
24 provide the employee a wage deduction statement or fails to keep the required in subdivision (a)
25 of Section 226.” As explained in detail above, Defendant failed to provide Plaintiff and the other
26 aggrieved employees with accurate itemized wage statements. Accordingly, to the extent it
27 applies, Plaintiff and the other aggrieved employees may also recover Labor Code § 226.3 or
28 2699 penalties for Defendant’s violations of Labor Code § 226(a).

1 42. IWC Wage Order No. 7-2001, § 5 provides that “[e]ach workday that an employee
2 is required to report to the work site and does report, but is not put to work or is furnished less
3 than half of his/her usual or scheduled day’s work, the employer shall pay him/her for half the
4 usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4)
5 hours at the employee’s regular rate of pay, which shall not be less than the minimum wage.”

6 43. Labor Code § 200 provides that “Wages” includes all amounts for labor performed
7 by employees of every description, whether the amount is fixed or ascertained by the standard of
8 time, task, piece, commission basis, or other method of calculation.” Moreover, Labor Code §
9 1198 provides that the maximum hours of work and the standard conditions of labor fixed by the
10 commission shall be the maximum hours of work and the standard conditions of labor for
11 employees. The employment of any employee for longer hours than those fixed by the order or
12 under conditions of labor prohibited by the order is unlawful.

13 44. On several occasions, Plaintiff, the Class, and the aggrieved employees were
14 required to report to work and would stay for approximately two (2) hours and would be sent
15 home for lack of work despite being scheduled to work eight (8) hours or more. On these
16 occasions, Defendants failed to pay Plaintiff and the other aggrieved employees reporting time
17 pay consistent with IWC Wage Order No. 7-2001 and Labor Code §§ 200 and 200-204, 210, and
18 1198. The text and information about Labor Code sections 201-204 and 210 can be found later in
19 this letter and are hereby incorporated by reference for brevity purposes.

20 45. On the rare occasions that Defendants paid reporting time pay to Plaintiff and the
21 Class, Defendants paid reporting time pay at their hourly base rate instead of at their regular rate.

22 46. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in
23 any employment are due and payable twice during each calendar month, on days designated in
24 advance by the employer as the regular paydays.” Defendants pay Plaintiff and all aggrieved
25 employees on a weekly basis.

26 47. As described in detail above, due to Defendants’ failure to pay Plaintiff, the Class,
27 the Late Payment Class, and the aggrieved employees all minimum wages, all overtime wages,
28 meal period premiums, rest period premiums, and reporting time pay (including at the proper

1 rate) for the reasons discussed above, Defendants failed to timely pay Plaintiff, the Class, and the
2 aggrieved employees all wages owed within seven (7) days of the close of the payroll period in
3 accordance with Labor Code § 204(d) on a regular and consistent basis or within the time
4 constraints of Labor Code §§ 201-202 upon the conclusion of their employment.

5 48. Labor Code § 210 provides that “in addition to, an entirely independent and apart
6 from, any other penalty provided in this article, every person who fails to pay the wages of each
7 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For
8 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
9 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
10 each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of
11 the faulty compensation policies and practices described in detail above, Plaintiff and the other
12 aggrieved employees are entitled to recover penalties under Labor Code § 210 through PAGA.
13 *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008) (affirming an award of
14 Labor Code section 210 penalties under PAGA due to the employer’s failure to timely pay wages
15 at the proper rate in accordance with a local wage ordinance).

16 49. Under Labor Code §§ 201-202, an employer must provide an employee wages at
17 the time of discharge or within up to seventy-two (72) hours of their resignation. Labor Code §
18 203 provides “if an employer willfully fails to pay . . . any wages of an employee who is
19 discharged or who quits, the wages of the employee shall continue as a penalty. . .” for up to 30
20 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

21 50. In addition, separate and independent of the foregoing at times between September
22 14, 2020 and continuing into the present, Defendants failed to pay Plaintiff, the Late Payment
23 Class, and the Late Payment Aggrieved employees sick pay at the correct rate.

24 51. Labor Code § 246 requires employer to calculate sick leave pay based upon one of
25 the following formulas:

26 (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the
27 regular rate of pay for the workweek in which the employee uses paid sick time, whether
28 or not the employee actually works overtime in that workweek.

1 (2) Paid sick time for nonexempt employees shall be calculated by dividing the
2 employee's total wages, not including overtime premium pay, by the employee's total
3 hours worked in the full pay periods of the prior 90 days of employment.

4 (3) Paid sick time for exempt employees shall be calculated in the same manner as the
5 employer calculates wages for other forms of paid leave time.

6 Lab. Code § 246.

7 52. In addition, separate and independent of the foregoing at times between September
8 14, 2020 and continuing into the present, Defendants failed to include the incentive pay, other
9 non-discretionary bonuses hazard pay and compensation under the pay codes "Special Pay," "HP
10 Earns," "HPRRO," "Premium Pay" when calculating and paying sick pay. As a result when
11 Plaintiff, the Late Payment Class, and the Late Payment Aggrieved Employees employment
12 ended, they left their employment without having received compensation for all of their sick pay
13 that they were owed under Labor Code § 246 and resulting in a violation of Labor Code §§ 201-
14 203. As a result of Defendant's underpayment of sick pay, Plaintiff and the other Late Payment
15 Aggrieved Employees experienced a violation of Labor Code §§ 201-202 upon separation from
16 Defendant. *See Powell v. Walmart Inc.*, No. 3:20-cv-2412-BEN-LL, 2021 U.S. Dist. LEXIS
17 20777, at *6 (S.D. Cal. Feb. 2, 2021) (denying a motion to dismiss claims under Labor Code
18 section 203 based upon the employer's alleged failure to include incentive pay when calculating
19 and paying sick pay); *accord Flores v. Dart Container Corp.*, No. 2:19-cv-00083 WBS EFB,
20 2020 U.S. Dist. LEXIS 93524, at *7 (E.D. Cal. May 27, 2020).

21 53. Defendants failed to pay Plaintiff, the Late Payment Class, and the aggrieved
22 employees whose employment concluded all wages owed, including but not limited to minimum
23 wages, overtime wages, sick pay wages (at the correct rate), meal period premiums, and rest
24 period premiums within the time constraints proscribed in Labor Code §§ 201-202 at the time of
25 their termination/separation. Thus, as result of Defendants' faulty policies described above,
26 Plaintiff, the Late Payment Class, and all the Late Payment Aggrieved Employees left their
27 employment with Defendants without being compensated for each and every hour worked at the
28 appropriate rate in violation of Labor Code §§ 201, 202, and 203.

1 54. Labor Code § 1174 provides that each employer shall keep “payroll records
2 showing the hours worked daily by and the wages paid to...employees employed
3 at...establishments.” An employer who fails to maintain the records proscribed by Labor Code §
4 1174 is subject to a civil penalty of five hundred (\$500) dollars under Labor Code § 1174.5.

5 55. As previously explained, due to Defendants’ regular and consistent practice of not
6 recording all hours worked, including the time associated with temperature checks, medical
7 screenings, security checks, and time where they were not relieved of all duties during meal/rest
8 periods or required to perform work during meal periods, the time records maintained by
9 Defendants do not show the actual hours worked daily by Plaintiff and the aggrieved employees.
10 This caused Plaintiff and the other aggrieved employees time records not to actually show the
11 total hours worked daily by each of them throughout the PAGA period in violation of Labor Code
12 §§ 1174 and 1174.5. As a result, Defendants failed to maintain accurate records of the total hours
13 worked by employees on a regular and consistent basis. Thus, Defendants violated Labor Code §§
14 1174 and 1174.5.

15 56. Labor Code §2802 provides that “[a]n employer shall indemnify his or her
16 employee for all necessary expenditures or losses incurred by the employee in direct consequence
17 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
18 even though unlawful, unless the employee, at the time of obeying the directions, believed them
19 to be unlawful.”

20 57. At times between September 14, 2020 and within the past year, Defendants failed
21 to provide any masks and/or other safety equipment as required by California law during the
22 COVID-19 pandemic. Instead, Defendants expected and/or required Plaintiff, the Class, and the
23 aggrieved employees provide their own masks. By failing to provide Plaintiff, the Class, and the
24 aggrieved employees with masks and other safety equipment during the COVID-19 pandemic,
25 Defendants caused Plaintiff, the Class, and the aggrieved employees to make expenditures and
26 incur losses in the direct consequence of the discharge of their job duties in violation of Labor
27 Code § 2802.

JURISDICTION AND VENUE

59. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

60. This Court has personal jurisdiction over Defendant CARDENAS MARKETS LLC because Defendant has caused injuries in the County of Alameda, including in Oakland, and State of California through their acts, and by their violation of the California Labor Code and California law in Alameda County.

61. This Court has personal jurisdiction over Defendant MI PUEBLO NEWCO, LLC because Defendant has caused injuries in the County of Alameda, including in Oakland, and State of California through their acts, and by their violation of the California Labor Code and California law in Alameda County.

62. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure §395. Defendants operates within California and do business within Alameda County. The unlawful acts alleged herein have a direct effect on Plaintiff and the Classes within the State of California and the County of Alameda.

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

III.

PARTIES

A. PLAINTIFF

64. Plaintiff MARLENY MEJIA IRIAS is a former employee of Defendants who worked for Defendants in Alameda County.

65. Plaintiff and the Class were regularly required to:

- a. Work hours without receiving compensation and/or minimum wages for all hours worked;
- b. Work overtime hours without receiving any compensation and/or the proper amount of compensation;
- c. Work without being provided lawful meal periods;
- d. Work without being provided lawful rest periods;
- e. Were denied meal/rest period premiums including payments at the proper amounts;
- f. Work without being provided an accurate itemized wage statement that accurately indicates the gross wages earned, the total hours worked by the employee, the net wages earned, as well as all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee;
- g. Were deprived of wages that Defendants knew were due and owing, yet failed to pay at the time of termination and/or within 72 hours of resignation for those former employees who did not provide advance notice; and
- h. Work without being reimbursed for expenses incurred in direct consequence of the discharge of his or her duties.

66. Defendant CARDENAS MARKETS LLC is a Delaware limited liability company with a principal place of business is 2501 E. Guasti Road Ontario, CA 91761. Upon information and belief, Defendant employed Plaintiff and the Classes within California and in Alameda County, including in Oakland, California. Defendant has done and does business throughout the State of California and in Alameda County.

67. Defendant CARDENAS MARKETS LLC is a Delaware limited liability company with a principal place of business is 2501 E. Guasti Road Ontario, CA 91761. Upon information and belief, Defendant employed Plaintiff and the Classes within California and in Alameda County, including in Oakland, California. Defendant has done and does business throughout the State of California and in Alameda County.

68. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a 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.

69. 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 the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the Class and/or as alter egos of each other.

CLASS ACTION ALLEGATIONS

70. Plaintiff brings this action on behalf of herself and all others similarly situated as a Class Action pursuant to §382 of the Code of Civil Procedure. Plaintiff seeks to represent a Class and Subclasses composed of and defined as follows:

- (1) all non-exempt, hourly employees who were employed by Cardenas Markets LLC or its predecessor, merged or related entities in California at any point from September 14, 2020 and continuing into the present. ("Cardenas Non-Exempt Class");
- (2) all non-exempt, hourly employees who were employed by Mi Pueblo Newco, LLC or its predecessor, merged or related entities in California at any point from September 14, 2020 and continuing into the present. ("Mi Pueblo Non-Exempt Class");

Collectively, Classes (1) and (2) may be referred to as the "Non-Exempt Class."

- (3) all individuals who were employed by Cardenas Markets LLC or its predecessor, merged or related entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from September 14, 2020 and continuing into the present. ("Cardenas Overtime Class");
- (4) all individuals who were employed by Mi Pueblo Newco, LLC or its predecessor, merged or related entities in California as a non-exempt, hourly employee or other similar position and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a pay period from September 14, 2020 and continuing into the present. ("Mi Pueblo Overtime Class");
- (5) all individuals who were employed by Cardenas Markets LLC or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and who worked a shift of more than eight (8) hours in a day and/or forty (40) hours in a week during a period where they also received a non-discretionary bonus, incentive payment/pay, shift differential, hazard pay, and/or a payment under the pay codes "Special Pay," "HP Earns," "HPRRO," "Premium Pay" pay codes from September 14, 2020 and continuing into the present; ("Cardenas Incentive Pay Overtime Subclass");
- (6) all individuals who were employed by Mi Pueblo Newco, LLC or its predecessor, merged or related entities for one or more pay periods in California

1 as a non-exempt, hourly employee and who worked a shift of more than eight
2 (8) hours in a day and/or forty (40) hours in a week during a period where they
3 also received a non-discretionary bonus, incentive payment/pay, shift
4 differential, hazard pay, and/or a payment under the pay codes "Special Pay,"
5 "HP Earns," "HPRRO," "Premium Pay" pay codes from September 14, 2020
and continuing into the present; ("Mi Pueblo Incentive Pay Overtime
Subclass");

6 Collectively, groups three (3), four (4), five (5), and six (6) may be referred to as the
7 "Overtime Class."

8 (7) all individuals who were employed by Cardenas Markets LLC or its
9 predecessor, merged or related entities. in California who worked one or more
10 shifts of more than six (6) hours as a non-exempt, hourly employee or other
11 similar position from September 14, 2020 and continuing into the present.
("Cardenas Meal Period Class");

12 (8) all individuals who were employed by Mi Pueblo Newco, LLC or its
13 predecessor, merged or related entities. in California who worked one or more
14 shifts of more than six (6) hours as a non-exempt, hourly employee or other
15 similar position from September 14, 2020 and continuing into the present. ("Mi
Pueblo Meal Period Class");

16 (9) All individuals who were employed by Cardenas Markets LLC or its
17 predecessor, merged or related entities in California who were paid a meal
18 and/or rest period premium within the same week that they also received a non-
19 discretionary bonus, incentive payment/pay, and/or a payment under the
20 "Special Pay," "HP Earns," "HPRRO," "Premium Pay" pay codes from
September 14, 2020 and continuing into the present. ("Cardenas Meal/Rest
Period Premium Class");

21 (10) All individuals who were employed by Mi Pueblo Newco, LLC or its
22 predecessor, merged or related entities in California who were paid a meal
23 and/or rest period premium within the same week that they also received a non-
24 discretionary bonus, incentive payment/pay, and/or a payment under the
25 "Special Pay," "HP Earns," "HPRRO," "Premium Pay" pay codes from
September 14, 2020 and continuing into the present. ("Mi Pueblo Meal/Rest
Period Premium Class");

26
27 Collectively, groups seven (7), eight (8), nine (9), and ten (10) may be referred to as the
28 "Meal Period Class."

(11) all individuals who were employed by Cardenas Markets LLC or its predecessor, merged or related entities in California as a non-exempt hourly employee, or other similar position, who worked one or more shifts of more than four (4) hours in length or major fraction thereof from September 14, 2020 and continuing into the present. (“Cardenas Rest Period Class”);

(12) all individuals who were employed by Mi Pueblo Newco, LLC or its predecessor, merged or related entities in California as a non-exempt hourly employee, or other similar position, who worked one or more shifts of more than four (4) hours in length or major fraction thereof from September 14, 2020 and continuing into the present. (“Mi Pueblo Rest Period Class”);

Collectively, groups nine (9), ten (10), eleven (11), and twelve (12) may be referred to as the “Rest Period Class.”

(13) all individuals who were employed by Cardenas Markets LLC or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and whose employment concluded at any time between September 14, 2020 and continuing into the present. (“Cardenas General Late Payment Class”);

(14) all individuals who were employed by Mi Pueblo Newco, LLC or its predecessor, merged or related entities for one or more pay periods in California as a non-exempt, hourly employee and whose employment concluded at any time between September 14, 2020 and continuing into the present. (“Mi Pueblo General Late Payment Class”);

(15) all individuals who were employed by Cardenas Markets LLC or its predecessor, merged or related entities for one or more pay periods in California, who received sick pay, and whose employment concluded at any time between September 14, 2020 and continuing into the present; (“Cardenas Sick Pay Late Payment Class”);

(16) all individuals who were employed by Mi Pueblo Newco, LLC or its predecessor, merged or related entities for one or more pay periods in California, who received sick pay, and whose employment concluded at any time between September 14, 2020 and continuing into the present; (“Mi Pueblo Sick Pay Late Payment Class”);

Collectively, groups thirteen (13), fourteen (14), fifteen (15), and sixteen (16) may be referred to as the “Late Payment Class.”

1 (17) all non-exempt, hourly employees who were employed by Cardenas Markets
2 LLC or its predecessor, merged or related entities in California at any point
3 from January 24, 2021 and continuing into the present. (“Cardenas Wage
Statement Subclass”);

4 (18) all non-exempt, hourly employees who were employed by Mi Pueblo Newco,
5 LLC or its predecessor, merged or related entities in California at any point
6 from January 24, 2021 and continuing into the present. (“Mi Pueblo Wage
Statement Subclass”);

7 These Classes and Subclasses may all collectively be referred to herein as the “Class”
8 where appropriate and for ease of reference.

9 71. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to
10 amend or modify the class description with greater specificity, by division into subclasses, or by
11 limitation to particular issues.

12 72. This action has been brought and may properly be maintained as a class action
13 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
14 community of interest in the litigation and the Proposed Classes are easily ascertainable.

15 **A. Numerosity**

16 73. The potential members of the Proposed Classes as defined are each so numerous
17 that joinder of all the members of the Proposed Classes is impracticable. While the precise
18 number of proposed Class Members in each Class has not been determined at this time, Plaintiff
19 is informed and believes that Defendants currently employ, and during the relevant time periods
20 employed to be more than 100 members or more of the Proposed Class and Subclasses at any
21 given time.

22 74. Plaintiff alleges that Defendants’ employment records would provide information
23 as to the number and location of all Proposed Class members. Joinder of all members of the
24 Proposed Class and Subclasses is not practicable.

25 **B. Commonality**

1 75. There are questions of law and fact common to the Proposed Classes¹ that
2 predominate over any questions affecting only individual Proposed Class Members. These
3 common questions of law and fact include, without limitation:

4 a. Whether Defendants failed to pay minimum wages for all hours worked as
5 required by Labor Code §§ 1194, 1194.2, and 1197 as well as IWC Wage Order No. 7-2001 to
6 the Class.

7 b. Whether Defendants failed to pay wages and/or overtime compensation
8 and at the correct rate as required by Labor Code § 510 to the Overtime Class;

9 c. Whether Defendants violated Labor Code §§ 226.7 and IWC Wage Order
10 Nos. 7-2001, by failing to authorize and permit the Meal Period Class Members to take a timely,
11 uninterrupted, duty-free meal period within the first five (5) hours of their shift, as well as their
12 failure to pay the Meal Period Class one additional hour of pay at the employees' at their regular
13 rate of compensation when they did not receive a compliant meal period;

14 d. Whether Defendants violated Labor Code § 226.7 and IWC Nos. 7-2001,
15 by failing to inform Plaintiff and the Rest Period Class of their right to receive a ten (10) minute
16 duty-free rest period for every four hours of work or major fraction thereof, failing to relieve
17 employees of all control during rest periods, and by failing to compensate said employees one (1)
18 additional hour of pay at the employee's regular rate of compensation in lieu of rest periods;

19 e. Whether Defendants violated Labor Code § 226(a) and (e) as well as IWC
20 by failing to provide an accurate itemized wage statements that accurately indicated, the gross
21 wages earned, all deductions from wages, the net wages earned, as well as all applicable hourly
22 rates in effect during the pay period and the corresponding number of hours worked at each
23 hourly rate by the employee to the Wage Statement Subclass;

24 f. Whether Defendants violated §§ 201-203 of the Labor Code by failing to
25 pay compensation due and owing at the time that the Late Payment Class' employment with
26 Defendants concluded;

27 _____
28 ¹ Plaintiff reserves his right to designate subclasses within the Classes including designating an Unfair Competition subclass for each class.

g. Whether Defendants violated Labor Code § 2802 by failing to provide Plaintiff and the Class with all tools and implements, including masks, needed to discharge his or her duties;

h. Whether Defendants violated § 17200 et seq. of the Business & Professions Code by engaging in the acts previously alleged against the Class;

C. Typicality

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

D. Adequacy of Representation

77. Plaintiff will fairly and adequately represent and protect the interests of the members of the proposed Classes. Counsel who represents Plaintiff and the Proposed Classes is competent and experienced in litigating large employment class actions, and have the financial resources to litigate the claims at issue.

E. Superiority of Class Action

78. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Proposed Class Members is not practicable, and questions of law and fact common to the Proposed Class predominate over any questions affecting only individual members of the Proposed Class. Each member of the Proposed Class has been damaged and is entitled to recovery by reason of Defendants' illegal policy and/or practice of failing to pay all wages due, failing to provide meal periods, failing to provide rest periods, and failing to provide accurate itemized wage statements.

79. Class action treatment will allow those similarly situated persons to litigate their claims in the 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.

V.

FIRST CAUSE OF ACTION

**FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF LABOR CODE §§
1194 and 1194.2 AND IWC WAGE ORDER NO. 7-2001
[Against All Defendants by Plaintiff, the Class and the Non-Exempt Class]**

80. Plaintiff, on behalf of herself, the Class, and the Non-Exempt Class, realleges and incorporates by reference all previous paragraphs.

81. Section 1194 of the Labor Code provides, in relevant part:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than minimum wage...applicable to the employee is entitle to recover in a civil action the unpaid balance of the full amount of this minimum wage ..., including interest thereon, reasonable attorney's fees, and costs of suit.

82. Section 1194.2 of the Labor Code provides, in relevant part:

In any action under...Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

83. As set forth above, during statutory period applicable to the claims in this action, including within the past year, and continuing into the present, Plaintiff and the Class were not compensated for all hours worked as a result of Defendants' policies and practices described in detail above.

84. In failing to pay Plaintiff, the Class, and the Non-Exempt Class, for all hours worked, for the reasons described above, Defendants willfully and intentionally violated Labor Code § 1194 and acted in bad faith. Accordingly, pursuant to sections 1194 and 1194.2 of the California Labor Code, Plaintiff and the Class are entitled to recover, either their unpaid hourly wages due, or minimum wage plus interest and/or liquidated damages in an additional amount equal to the total amount of wages unlawfully withheld during the class period.

**VI.
SECOND CAUSE OF ACTION
FAILURE TO PAY WAGES AND/OR OVERTIME UNDER
LABOR CODE §§ 510, 1194, and 1199
[Against All Defendants by Plaintiff, the Class, the Non-Exempt Class, the Overtime Class,
and the Incentive Pay Overtime Subclass]**

1 85. Plaintiff, on behalf of herself, the Class, the Class, the Non-Exempt Class, the
2 Non-Exempt Overtime Class, and the Incentive Pay Overtime Subclass realleges and incorporates
3 by reference all previous paragraphs.

4 86. Labor Code § 510 requires an employer to compensate an employee who works
5 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight
6 (8) hours worked on the seventh consecutive day no less than one and one-half times the regular
7 rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate
8 employees at no less than twice the regular rate of pay when an employee works more than
9 twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.
10 In accordance with Labor Code § 1194, Plaintiff and the Class could not agree to work for a
11 lesser wage.

12 87. In addition, Labor Code § 1197 states the California requirement that employees
13 must be paid at least the minimum wage fixed by the Commission or by any applicable state or
14 local law, and any payment of less than the minimum wage is unlawful.

15 88. Similarly, Labor Code § 1198 provides that “the maximum hours of work and the
16 standard conditions of labor fixed by the commission shall be the maximum hours of work and
17 the standard conditions of labor for employees. The employment of any employee for longer
18 hours than those fixed by the order or under conditions of labor prohibited by the order is
19 unlawful.”

20 89. As discussed in detail above, at times from September 14, 2020 and continuing
21 into the present, Defendants failed to pay Plaintiff, the Class, the Non-Exempt Class, the Non-
22 Exempt Overtime Class, and the Incentive Pay Overtime Subclass with wages for all hours
23 worked (including overtime hours) and failed to pay overtime wages at the proper rate.

24 90. Based upon information and belief, at times from September 14, 2020 and
25 continuing into the present, Defendants failed to pay Plaintiff, the Class, the Non-Exempt Class,
26 the Non-Exempt Overtime Class, and the Incentive Pay Overtime Subclass at one and one-half
27 times their regular rate and instead underpaid their overtime wages.

28 91. Defendants conduct, as described above was willful.

92. As a result of the unlawful acts of Defendants, Plaintiff, the Class, the Non-Exempt Class, the Non-Exempt Overtime Class, and the Incentive Pay Overtime Subclass have been deprived of wages and/or overtime in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

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VII.
THIRD CAUSE OF ACTION
FAILURE TO PROVIDE LAWFUL MEAL PERIODS PURSUANT TO LABOR CODE
§§ 226.7 and 512; IWC WAGE ORDER NO. 7-2001
[Against All Defendants by Plaintiff, the Class, and the Meal Period Class]

93. Plaintiff, on behalf of herself, the Class, and the Meal Period Class realleges and incorporates by reference all previous paragraphs.

94. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each non-compliant meal period an employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours.

95. At points between September 14, 2020 and continuing into the present, Plaintiff, the Class, and the Meal Period Class consistently worked shifts over six (6) hours and did not receive timely first meal periods within the first five (5) hours of their shifts.

96. During the statutory period applicable to their claims, Plaintiff, the Class, and the Meal Period Class were not compensated with one (1) hours' worth of pay at their regular rate of compensation when they were not provided with a compliant meal period or at the proper rate based upon Defendants' unlawful compensation policies detailed above.

97. At times between September 14, 2020 and continuing into the present, on the rare occasion, if any, that Defendants paid a meal period premium, Defendants had a common policy and practice of failing to include compensation associated with incentive payments, shift differentials, incentive payments, hazard pay, pay under the pay codes Special Pay," "HP Earns,"

1 “HPRRO,” “Premium Pay” non-discretionary bonuses, production bonuses, efficiency bonuses,
2 or attendance bonuses when calculating and paying meal period premiums. Instead of paying
3 meal/rest period premiums at employees’ regular rates, on the rare occasions that Plaintiff, the
4 Class and the Meal Period Class received a meal period premium, Defendants improperly paid the
5 premium at the employee’s hourly base rate instead of at their regular rate.

6 98. Plaintiff contends that Defendants’ policies and practices as alleged above violated
7 Labor Code § 226.7 consistent with the California Supreme Court’s decision in *Ferra v. Loews*
8 *Hollywood Hotel, LLC*, 11 Cal. 5th 858, 878 (2021) (“we hold that the term ‘regular rate of
9 compensation’ in section 226.7(c) has the same meaning of regular rate of pay’ in section 510(a)
10 and encompasses not only hourly wages, but all nondiscretionary payments for work performed
11 by the employee.”).

12 99. Pursuant to Labor Code §226.7, Plaintiff, the Class, and the Meal Period Class
13 Members are entitled to damages in an amount equal to one (1) hour of wages per non-compliant
14 meal break, per day in a sum to be proven at trial.

VIII.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE LAWFUL REST PERIODS AND PAY NON-COMPLIANT REST PERIOD PREMIUMS PURSUANT TO LABOR CODE § 226.7 AND IWC WAGE ORDER NO. 7-2001, § 12

[Against All Defendants by Plaintiff, Class, and the Rest Period Class]

18 100. Plaintiff, on behalf of herself, the Non-Exempt Class, the Non-Exempt Hourly
19 Class, the Non-Exempt Hourly Foreman Subclass, the Non-Exempt Rest Period Subclass, and the
20 Meal/Rest Period Premium Subclass, realleges and incorporates by reference all previous
21 paragraphs.

22 101. Labor Code § 226.7 provides “an employer shall not require an employee to work
23 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
24 regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Under IWC Wage
25 Order No. 7-2001 an employer must authorize and permit all employees to take ten (10) minute
26 duty free rest periods for every major fraction of four hours worked.

27 102. At times throughout her employment with Defendants from September 14, 2020
28 and continuing into the present and within the past year, Defendants failed to provide Plaintiff,,

1 the Class, and the Rest Period Class with rest periods of not less than ten (10) minutes for every
2 major fraction of four (4) hours worked in violation of Labor Code § 226.7 and IWC Wage Order
3 No. 7-2001 and other applicable wage orders. Instead, Defendants regularly and consistently
4 required Plaintiff, the Class, and the Rest Period Class to forgo rest periods and/or failed to
5 relieve them of all duties.

6 103. At times throughout her employment with Defendants from September 14, 2020
7 and continuing into the present and within the past year, Plaintiff, the Class, and the Rest Period
8 Class were denied rest periods as a result of Defendants' understaffing practices and policies.
9 Notably, although Defendants' rest period policies and practices are not compliant, they also
10 pressured and coerced employees to forgo rest periods and made it difficult for employees to take
11 lawful duty-free rest periods both due to their understaffing policies and practices and otherwise.
12 At times during her employment, Plaintiff would ask her manager Patty if she could take a rest
13 period and her Manager would instead direct Plaintiff to take care of her line. When Plaintiff
14 advised Manager Patty that she had not been able to take her rest period and that her shift was
15 ending, her Manager Patty would tell her to keep working and that overtime wasn't permitted by
16 the Company thereby forcing Plaintiff to forgo her rest period due to the company's overtime,
17 staffing budget, and staffing policies and practices. Plaintiff often did not receive rest period
18 premiums on these occasions. Plaintiff contends that Defendants applied the same policies and
19 practices against the Class.

20 104. In addition to failing to authorize and permit compliant rest periods, Plaintiff, the
21 Class, and the Rest Period Class were not compensated with one (1) hours' worth of pay at their
22 regular rate of compensation when they were not provided with a compliant rest period and/or
23 their rest period was interrupted in accordance with Labor Code § 226.7(b).

24 105. At times throughout her employment with Defendants from September 14, 2020
25 and continuing into the present and within the past year, further, on the rare occasion if any that
26 Defendants paid rest period premiums, Defendants improperly paid the premium to Plaintiff, the
27 Class, and the Rest Period Class at the employee's hourly base rate instead of at their regular rate.
28 Plaintiff contends that Defendants' policies and practices as alleged above violated Labor Code §

226.7 and seeks penalties pursuant to PAGA related thereto consistent with the California Supreme Court's decision in *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 878 (2021) ("we hold that the term 'regular rate of compensation' in section 226.7(c) has the same meaning of regular rate of pay' in section 510(a) and encompasses not only hourly wages, but all nondiscretionary payments for work performed by the employee.").

106. Based upon the foregoing, at all times pertinent hereto, Defendants failed to authorize and permit Plaintiff, the Class, and the Rest Period Class, to take duty-free rest periods of not less than ten (10) minutes net for every major fraction of four (4) hours worked.

107. Pursuant to Labor Code § 226.7, Plaintiff, the Class, and the Rest Period Class are entitled to damages in an amount equal to one (1) hour of wages per missed rest period, in a sum to be proven at trial.

IX.
FIFTH CAUSE OF ACTION
PENALTIES PURSUANT TO LABOR CODE § 226(e)
[Against all Defendants on behalf of Plaintiff and the Wage Statement Class]

108. Plaintiff, on behalf of herself and the Wage Statement Class, realleges and incorporates by reference all previous paragraphs and all subsequent paragraphs.

109. From at least January 24, 2021 and continuing into the present, Defendants knowing and intentionally failed to provide accurate itemized wage statements to Plaintiff and the Wage Statement Subclass in accordance with Labor Code § 226(a)(1, 2, 5, and 9). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage 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...;
- (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...

Similarly, Labor Code § 226(e) provides:

(e) (1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

(2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer during the pay period.

(iv) 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.

110. As to Plaintiff and the Wage Statement Subclass from at least January 24, 2021 and continuing into the present, due to Defendants' failure to pay Plaintiff and the Wage Statement Subclass, all minimum wages, overtime wages, meal period premiums, and rest period premiums, the wage statements issued by Defendants do not indicate the correct amount of gross wages earned, the total hours worked, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Thus, Defendants have violated Labor Code §226(a)(1), (2), (5), and (9).

111. Separate and independent from the foregoing, from at least January 24, 2021 and continuing into the present, to the extent that "Special Pay," "HP Earns," "HPRRO," "Premium Pay" pay turns out not to be based upon hours worked, Plaintiff contends that Defendants failed to include the number of hours worked at these rates on Plaintiff and the Wage Statement Subclass' Wage Statements in violation of Labor Code § 226(a)(9):

Earnings	rate	hours	this period	year to date
Regular	15.5000	31.82	493.21	24,516.71
Overtime	23.2500	.02	0.47	1159.95
Holiday-Work	23.2500	7.85	182.51	182.51
Premium Pay			43.63	43.63
HP Earns				3,327.90
HPRRO				9.29

Earnings	rate	hours	this period	year to date
Regular	15.5000	39.87	617.99	12,530.20
Overtime	23.2500	.07	1.63	45.52
HP Earns	5.0000	39.93	199.65	3,129.45
HPRRO			0.60	8.77
MealPremium				15.05
Sick Pay				248.00
Vacation				86.99
Gross Pay			\$819.87	16,063.98

112. In addition, the wage statements issued to Plaintiff and the Wage Statement Subclass did not include the actual total hours worked by the employee in violation of Labor Code § 226(a)(2). As previously explained, in express violation of Section 7(A)(3) of IWC Wage Order No. 7-2001 which requires employers to record “when the employee begins and ends each work period.” Instead, Defendants failed to report the time that it knew that Plaintiff and the Wage Statement Subclass were working while off-the-clock including the time associated with uncompensated temperature checks/medical screenings or the hours worked associated with interrupted meal periods. In other words, Defendants did not include the total hours worked by the employee during the pay period including hours that it knew they had worked regardless of whether or not compensation was provided for such time in violation of Labor Code § 226(a)(2).

113. In addition, the wage statements issued to Plaintiff and the Wage Statement Subclass did not include the actual total hours worked by the employee in violation of Labor Code § 226(a)(2). As previously explained, in express violation of Section 7(A)(3) of IWC Wage Order No. 7-2001 which requires employers to record “when the employee begins and ends each work period.” Instead, Defendants failed to report the time that it knew that Plaintiff and the Wage Statement Subclass were working while off-the-clock including the time associated with

1 uncompensated temperature checks/medical screenings or the hours worked associated with
2 interrupted meal periods. In other words, Defendants did not include the total hours worked by
3 the employee during the pay period including hours that it knew they had worked regardless of
4 whether or not compensation was provided for such time in violation of Labor Code § 226(a)(2).

5 114. In addition to violating Labor Code § 226(a), Defendants also knowingly and
6 intentionally failed to pay Plaintiff and the Wage Statement Subclass all minimum wages,
7 overtime wages, meal period premiums, and rest periods premiums including at the proper rates.

8 115. In addition to violating Labor Code § 226(a), Defendants also knowingly and
9 intentionally failed to include the number of hours worked and rates associated with several
10 categories of pay in violation of Labor Code section 226(a)(9).

11 116. Moreover, Plaintiff and the Wage Statement Subclass also suffered legal “injury”
12 for purposes of Labor Code section 226(e) insofar as they were unable to readily and easily
13 determine from the wage statements themselves the information required to be set forth by
14 Section 226(a), the information provided by Defendants were confusing and inaccurate. In
15 addition, Plaintiff and the Wage Statement Subclass were unable to determine at all the total
16 hours worked by the employee, the gross wages earned, the net wages earned, and all applicable
17 hourly rates in effect during the pay period and the corresponding number of hours worked at
18 each hourly rate by the employee for the reasons discussed above.

19 117. Moreover, Defendants undeniably knew when paying that the wage statements it
20 issued did not include and/or accurately list, the gross wages earned, the net wages earned, and all
21 applicable hourly rates in effect during the pay period and the corresponding number of hours
22 worked at each hourly rate by the employee for the reasons discussed above. *See Garnett v. ADT*
23 *LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant knowingly
24 and intentionally violated Labor Code § 226 because the “[d]efendant knew that it was not
25 providing total hours worked to plaintiff or other employees paid on commission” even though it
26 believed that employees paid solely on commission or commission and salary “are exempt and
27 therefore we do not record hours on a wage statement.”).

118. Defendants also failed to both comply with and create a policy that complied with Labor Code § 226 prior to the filing of this lawsuit and having been previously sued in 2019 for violating Labor Code section 226. Labor Code § 226(e)(3) provides that when determining whether or not an employer's violation of Labor Code § 226(a) was knowing and intentional, "the relevant factor [is] whether the employer, prior to an alleged violation, has adopted and is in compliance with a set of policies, procedures, and practices that fully comply with this section." Accordingly, Defendants' conduct was knowing and intentional within the meaning of Labor Code § 226(e).

119. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees. *See* Lab. Code § 226(e). Plaintiff and the Wage Statement Subclass seek penalties under Labor Code § 226(e) in amounts to be determined at trial, and are entitled to recovery of such amounts, attorneys' fees, and costs.

X.

SIXTH CAUSE OF ACTION

**WAITING TIME PENALTIES PURSUANT TO LABOR CODE §§201-203
[Against all Defendants on behalf of Plaintiff and the Late Payment Class]**

120. Plaintiff on behalf of herself and the Late Payment Class re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

121. Sections 201 and 202 of the California Labor Code requires Defendants to pay all compensation due and owing to former employees in the Class during the actionable period for this cause of action, at or around the time that their employment is terminated.

122. Section 203 of the California Labor Code 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) workdays.

123. As described in detail above, Defendants failed to pay Plaintiff and the other Class Members whose employment concluded all wages owed, including but not limited to all minimum wages, overtime wages, meal period premiums, and rest period premiums within the time constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation. Thus, as result of Defendants' faulty policies described above, Plaintiff and all Class Members' left their employment with Defendants without being compensated for each and every hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, and 203.

124. At the time of Plaintiff, the other members of the Late Payment Class' separation from Defendants, the sums were certain and known to Defendants.

125. As a result, Defendants are liable to Plaintiff and the Late Payment Class who are no longer employed by Defendants for waiting time penalties amounting to thirty (30) days wages for Plaintiff and each Class Member pursuant to California Labor Code § 203. See, e.g., DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties).

XI.
SEVENTH CAUSE OF ACTION
FAILURE TO REIMBURSE FOR BUSINESS EXPENSES
(LABOR CODE § 2802)
[Against all Defendants on behalf of Plaintiff and the Class]

126. Plaintiffs on behalf of herself and the Class realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

127. Labor Code § 2802 provides that "[a]n 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."

128. At times between September 14, 2020 and within the past year, Defendants failed to provide any masks and/or other safety equipment as required by California law during the COVID-19 pandemic. Instead, Defendants expected and/or required Plaintiff and the Class to provide their own masks. By failing to provide Plaintiff and the Class with masks and other safety equipment during the COVID-19 pandemic, Defendants caused Plaintiff, the Class, and the

1 aggrieved employees to make expenditures and incur losses in the direct consequence of the
2 discharge of their job duties in violation of Labor Code § 2802.

3 129. Defendants' conduct in requiring Plaintiff to engage in the above described
4 activities caused them to incur losses as a direct consequence of their duties in violation of Labor
5 Code § 2802.

6 130. Plaintiff and the Class are entitled to reimbursement for these necessary
7 expenditures, plus interest and attorneys' fees and costs, under Labor Code § 2802.

8 **XII.**
9 **EIGHTH CAUSE OF ACTION**
10 **UNFAIR COMPETITION PURSUANT TO**
11 **BUSINESS & PROFESSIONS CODE § 17200**
12 **[Against all Defendants on behalf of Plaintiff and the Class]**

13 131. Plaintiff, on behalf of herself and the Class realleges and incorporates by reference
14 all previous paragraphs.

15 132. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of herself,
16 on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to
17 Business & Professions Code § 17200, et seq. The conduct of Defendants as alleged in this
18 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general
19 public, and the Proposed Classes. Plaintiff seeks to enforce important rights affecting the public
20 interest within the meaning of Code of Civil Procedure § 1021.5. Plaintiff is a "person" within the
21 meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause
22 of action for injunctive relief, restitution, and other appropriate equitable relief.

23 133. Defendants have engaged in unlawful and unfair business practices that violate
24 fundamental public policies of the state of California and the United States of America As a result
25 of its unlawful and unfair business practices, Defendants have forced employees to work under
26 substandard and unlawful conditions in an effort to gain a competitive advantage over law-
27 abiding employers who comply with California's Labor Code.

28 134. Defendants have violated statutes and public policies as alleged herein. Through
the conduct alleged in this Complaint, Defendants have acted contrary to these public policies,
have violated specific provisions of the Labor Code, and have engaged in other unlawful and

1 unfair business practices in violation of Business & Profession Code § 17200, et seq., depriving
2 Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and
3 privileges guaranteed to all employees under law.

4 135. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
5 violation of § 17200 et seq. of the Business & Professions Code.

6 136. Defendants, by engaging in the conduct herein alleged, either knew or in the
7 exercise of reasonable care, should have known that the conduct was unlawful. As such it is a
8 violation of § 17200 et seq. of the Business & Professions Code.

9 137. As a proximate result of the above-mentioned acts of Defendants, Plaintiff, the
10 Class, others similarly situated, other businesses, and the general public have been damaged in a
11 sum as may be proven.

12 138. As part of their claims against Defendant, Plaintiffs seek not only the unpaid
13 wages, but also the market value of the loss of the statutory protections and the cost to other
14 employers of providing proper pay, breaks, and complying with the California Labor Code
15 provisions identified herein. *See e.g. Safeway, Inc. v. Sup. Ct.*, 238 Cal.App.4th 1138, 1162
16 (2015).

17 139. Unless restrained, Defendants will continue to engage in the unlawful conduct as
18 alleged above. Pursuant to the Business & Professions Code, this court should make such orders
19 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or
20 employment by Defendants, its agents, or employees, of any unlawful or deceptive practices
21 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution
22 and disgorgement of profits which may be necessary to restore Plaintiff and members of the
23 Proposed Classes the money Defendants have unlawfully failed to pay.

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XII.

NINTH CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
FOR PENALTIES PURSUANT TO LABOR CODE § 2698, ET SEQ. FOR VIOLATIONS
OF LABOR CODE §§ 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174,
1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802 and IWC Wage Order No. 7-2001
and/or other applicable wage order.**

140. Plaintiff, on behalf of the State of California, realleges and incorporates by reference all previous paragraphs.

141. Plaintiff filed her PAGA Notice online with the Labor Workforce Development Agency ("LWDA") 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 § 2698 *et seq.* As required by PAGA, Plaintiff submitted the \$75.00 filing fee to the LWDA. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received and/or will have been received by Plaintiff from the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of the postmark date of the PAGA notice. Plaintiff is therefore, entitled to commence and proceed with a civil action pursuant to Labor Code § 2699.

142. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2698, *et seq.* because of Defendants' violations of Labor Code §§ 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802 and IWC Wage Order No. 7-2001 and/or other applicable wage order.

143. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula unless a civil penalty is already proscribed under the Labor Code:

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

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

144. These penalties will be allocated 75% to the Labor Workforce Development Agency and 25% to the affected employees. These penalties may be stacked separately for each of Defendants violations of the California Labor Code. *See e.g. Kaanaana v. Barrett Business*

1 *Services, Inc.*, 29 Cal.App.5th 778, 808 (2018) (acknowledging that the employees could get
 2 separate PAGA penalties for interrupted meal periods because interrupted meal periods violated
 3 Labor Code sections 1194 and 512 and remanding to the trial court to determine the amount of
 4 PAGA penalties to award); *Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx)
 5 2012 U.S. Dist. LEXIS 86975, at *59, fn. 77 (C.D. Cal. June 22, 2012) (holding that although the
 6 plaintiff did not seek stacked PAGA penalties, that “PAGA penalties can be ‘stacked,’ *i.e.*,
 7 multiple PAGA penalties can be assessed for the same pay period for different Labor Code
 8 violations.”); *accord Schiller v. David's Bridal, Inc.*, No. 1:10-cv-00616 AWI SKO) 2010 U.S.
 9 Dist. LEXIS 81128, at *17 (E.D. Cal. July 14, 2010); *Pulera v. F & B, Inc.*, No. 2:08-cv-00275-
 10 MCE-DAD, 2008 U.S. Dist. LEXIS 72659, 2008 WL 3863489, at * 2-3 (E.D. Cal. Aug. 19,
 11 2008); *Smith v. Brinker Intern, Inc.*, No. C 10-0213 VRW, 2010 U.S. Dist. LEXIS 54110, 2010
 12 WL 1838726, at * 2-6 (N.D. Cal. May 5, 2010).

13 145. In addition, Plaintiff and the aggrieved employees seek the default penalty
 14 provided by Labor Code §§ 226.3 and/or 2699.3 for violations of Labor Code section 226(a).²
 15 Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226
 16 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee
 17 per violation in an initial violation and one thousand dollars (\$1,000) per employee for each
 18 violation in a subsequent citation, for which the employer fails to provide the employee a wage
 19 deduction statement or fails to keep the required in subdivision (a) of Section 226.”

20 146. Labor Code § 210 provides that “in addition to, an entirely independent and apart
 21 from, any other penalty provided in this article, every person who fails to pay the wages of each
 22 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For
 23 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
 24 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
 25 each failure to pay each employee, plus 25% of the amount unlawfully withheld.”

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 27
 28 ² There is a split of authority between the appellate courts regarding which penalty applies for a violation of Labor Code section 226(a) at present.

1 147. As a result of the faulty compensation policies and practices described in detail
2 above, the State of California is entitled to recover penalties under Labor Code § 210 through
3 PAGA.

4 148. Further, Labor Code § 558 imposes a penalty upon employers “who violates, or
5 causes to be violated...any provision regulating hours and days of work in any order of the
6 Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial
7 violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the
8 employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For
9 each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
10 period for which the employee was underpaid...” Based upon the above factual allegations
11 related to overtime, meal period, and rest period violations, Plaintiff and the aggrieved employees
12 are entitled to recover civil penalties under Labor Code § 558 and not any underpaid wages under
13 PAGA. *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019).

14 149. Labor Code § 1174 provides that each employer shall keep “payroll records
15 showing the hours worked daily by and the wages paid to...employees employed
16 at...establishments.” An employer who fails to maintain the records proscribed by Labor Code §
17 1174 is subject to a civil penalty of five hundred (\$500) dollars under Labor Code § 1174.5.

18 150. Labor Code § 1197.1 authorizes employees who are paid less than the minimum
19 fixed by an applicable state or local law, or by an order of the commission a civil penalty,
20 restitution of wages, and liquidate damages as follows: (1) for any initial violation that is
21 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
22 period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the
23 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
24 period for which the employee is underpaid regardless of whether the initial violation is
25 intentionally committed. As set forth above, Defendants failed to compensate Plaintiff and all
26 aggrieved employees for all overtime wages at the proper rates. Accordingly, through PAGA and
27 to the extent permitted by law Plaintiff and all aggrieved employees are entitled to recover civil
28 penalties for violations of Labor Code § 1197.1.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. An Order that this action may proceed and be maintained as a Class Action on behalf of the Classes;
2. For compensatory damages in the amount of unpaid minimum wages not paid to Plaintiff and each Class Member from September 14, 2020 and continuing into the present as may be proven;
3. For compensatory damages in the amount of unpaid overtime wages not paid to Plaintiff, each Class Member from September 14, 2020 and continuing into the present as may be proven;
4. For compensatory damages in the amount of Plaintiff and each Class Members unpaid and/or underpaid meal period premiums from September 14, 2020 and continuing into the present as may be proven;
5. For compensatory damages in the amount of Plaintiff and each Class Members unpaid and/or underpaid rest period premiums from September 14, 2020 and continuing into the present as may be proven;
6. For penalties pursuant to Labor Code § 226(e) for violations of Labor Code § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) for the inaccurate itemized wage statements issued to Plaintiff and the Wage Statement Class from January 24, 2021 and continuing into the present as may be proven;
7. An award to Plaintiff and the Late Payment Class of waiting time penalties in the amount of up to 30 days' wages;
8. That the Court award to Plaintiff and Class Members all unreimbursed business expenses, and interest thereon, that they are owed, pursuant to Labor Code § 2802, in an amount to be proved at trial;

1 9. For restitution for unfair competition pursuant to Business & Professions Code
2 § 17200 to Plaintiff and the Unfair Competition Class for actions, including disgorgement of
3 profits, in an amount as may be proven;

4 10. An order enjoining Defendant and its agents, servants, and employees, and all
5 persons acting under, in concert with, or for it from providing Plaintiff and the Proposed Class
6 Members proper compensation for all hours worked, overtime hours worked, meal period
7 premiums, rest period premiums, from failing to provide timely first meal periods within the first
8 five (5) hours of an employee's shift, from failing to provide proper rest periods, from failing to
9 pay meal/rest period premiums at the employee's regular rate instead of at their hourly base rate,
10 from paying reporting time pay at the employee's base rate instead of at their regular rate, and
11 from timely failing to pay all wages.

12 11. For penalties under Labor Code § 2698, *et seq.* for Plaintiff and all aggrieved
13 employees because of Defendants' violation of Labor Code §§ 200, 201, 202, 203, 204, 210, 226,
14 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802 and
15 IWC Wage Order No. 7-2001 and/or other applicable wage order;

16 12. A declaratory judgment that Defendants' violated Labor Code §§ 200, 201, 202,
17 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5,
18 1199, 2802 and IWC Wage Order No. 7-2001 and/or other applicable wage order;

19 13. An award of post judgment interest;

20 14. An award providing for payment of costs of suit;

21 15. An award of attorneys' fees; and

22 16. Such other and further relief as this Court may deem proper and just.

23 **DEMAND FOR JURY TRIAL**

24 Plaintiff hereby demands a trial of his claims by jury for causes of action 1-7, but not
25 claims 8 (unfair competition) or 9 (PAGA) for which a bench trial is required.

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1 DATED: May 9, 2022

WINSTON LAW GROUP, P.C.

DocuSigned by:

David Winston

By:

DAVID S. WINSTON

Attorneys for Plaintiff, the Proposed
Class, and the aggrieved employees