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individually and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

KIMBERLY COBB and OMAR COBB,
individually and on behalf of all others
similarly situated

Plaintiffs,

vs.

MANNA LA, LLC; MANNA
DEVELOPMENT GROUP, LLC; and
DOES 1 through 20, inclusive,

Defendants.

Case No. BC608323
Hon. Kenneth R. Freeman
Dept. 310

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

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks
5. Failure to Provide Accurate Itemized Wage Statements;
6. Failure to Pay All Wages Due Upon Separation of Employment;
7. Violation of Business and Professions Code §§ 17200, *et seq.*; and
8. Enforcement of Labor Code § 2698 *et seq.* ("PAGA")

1 Plaintiffs Kimberly Cobb and Omar Cobb, individually and on behalf of others
2 similarly situated, alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiffs Kimberly Cobb and Omar Cobb ("Plaintiffs") bring this putative class
5 action and representative action against defendants Manna LA, LLC, Manna Development
6 Group, LLC, and DOES 1 through 20, inclusive (collectively, "Defendants"), on behalf of
7 themselves individually, other aggrieved employees, and a putative class of non-exempt
8 employees employed by Defendants throughout California.

9 2. Defendants operate Panera Bread restaurants throughout California.

10 3. Through this action, Plaintiffs are alleging that Defendants have engaged in a
11 systematic pattern of wage and hour violations under the California Labor Code and Industrial
12 Welfare Commission ("IWC") Wage Orders, all of which contribute to Defendants' deliberate
13 unfair competition.

14 4. Plaintiffs are informed and believe, and thereon allege, that Defendants have
15 increased their profits by violating state wage and hour laws by, among other things:

16 (a) Failing to pay all wages (including minimum wages and overtime wages);

17 (b) Failing to provide meal periods or compensation in lieu thereof;

18 (c) Failing to authorize or permit rest breaks or provide compensation in lieu
19 thereof;

20 (d) Failing to provide accurate itemized wage statements; and

21 (e) Failing to pay all wages due upon separation of employment.

22 5. Plaintiffs bring this lawsuit seeking monetary relief against Defendants on
23 behalf of themselves and all others similarly situated in California to recover, among other
24 things, unpaid wages and benefits, interest, attorneys' fees, costs and expenses and penalties
25 pursuant to Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194,
26 1194.2, 1197, 1197.1, 1198, and 2698, *et seq.*

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JURISDICTION AND VENUE

6. This is a class action, pursuant to California Code of Civil Procedure § 382 and representative action brought under the Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* ("PAGA"). The monetary damages and restitution sought by Plaintiffs exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

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

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

9. Venue is proper in this Court because, upon information and belief, Defendants reside, transact business or have offices in this county and the acts and omissions alleged herein took place in this county.

THE PARTIES

10. Plaintiffs are residents of Los Angeles County who worked for Defendants during the relevant time period.

11. Plaintiffs are informed and believe, and thereon allege, that Defendants at all times hereinafter mentioned, were and are employers as defined in and subject to the Labor Code and IWC Wage Orders, whose employees were and are engaged throughout this county and the State of California.

12. Plaintiffs are unaware of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to

1 amend this Complaint and serve such fictitiously named defendants once their names and
2 capacities become known.

3 13. Plaintiffs are informed and believe, and based thereon allege, that each
4 defendant acted in all respects pertinent to this action as the agent of the other defendant,
5 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts
6 of each defendant are legally attributable to the other defendant. Furthermore, defendants in all
7 respects acted as the employer and/or joint employer of Plaintiffs and the class members.

8 14. Plaintiffs are informed and believe, and thereon allege, that each and all of the
9 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
10 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
11 the other's behalf. The acts of any and all Defendants were in accordance with, and represent,
12 the official policy of Defendants.

13 15. At all relevant times, Defendants, and each of them, acted within the scope of
14 such agency or employment, or ratified each and every act or omission complained of herein.
15 At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
16 each and all the other Defendants in proximately causing the damages herein alleged.

17 16. Plaintiffs are informed and believe, and thereon allege, that each of said
18 Defendants is in some manner intentionally, negligently or otherwise responsible for the acts,
19 omissions, occurrences and transactions alleged herein.

20 CLASS ACTION ALLEGATIONS

21 17. Plaintiffs brings this action under Code of Civil Procedure § 382 on behalf of
22 themselves and all others similarly situated who were affected by Defendants' Labor Code,
23 Business and Professions Code §§ 17200 and IWC Wage Order violations.

24 18. All claims alleged herein arise under California law for which Plaintiffs seek
25 relief authorized by California law.

26 19. Plaintiffs' proposed Class consists of and is defined as follows:

27 Class

28 All current and former non-exempt employees employed by Defendants in the
State of California within four years prior to the filing of this action to the present.

1 20. Plaintiffs also seek to certify the following Subclass of employees:

2 Waiting Time Subclass

3 All Class members who separated their employment with Defendants at any time
4 within three years prior to the filing of this action to the present.

5 21. Plaintiffs reserve the right to establish other or additional Subclasses, or modify
6 any Class or Subclass definition, as appropriate.

7 22. Members of the Class and Subclass described above will be collectively referred
8 to as "class members." Plaintiffs reserve the right to re-define the above Class and Subclass
9 and add additional Subclasses as appropriate based on investigation, discovery and specific
10 theories of liability.

11 23. There are common questions of law and fact as to the Class and Subclass that
12 predominate over any questions affecting only individual members including, but not limited to:

13 (a) Whether Defendants required Plaintiffs and class members to clock out
14 and continue working, resulting in a failure to pay all wages (including minimum wages and
15 overtime wages) for all hours worked by Plaintiffs and class members;

16 (b) Whether Defendants required Plaintiffs and class members to work over
17 8 hours per day, over twelve (12) hours per day and/or over forty (40) hours per week and
18 failed to pay them overtime compensation at the proper rate;

19 (c) Whether Defendants deprived Plaintiffs and class members of timely
20 meal periods or required Plaintiffs and class members to work through meal periods without
21 compensation;

22 (d) Whether Defendants deprived Plaintiffs and class members of rest breaks
23 or required Plaintiffs and class members to work through rest breaks without compensation;

24 (e) Whether Defendants failed to provide accurate itemized wage statements
25 to Plaintiffs and class members;

26 (f) Whether Defendants failed to timely pay all wages due to Plaintiffs and
27 Subclass members upon termination or within seventy-two (72) hours of resignation;

28 (g) Whether Defendants' conduct was willful or reckless; and

1 (h) Whether Defendants engaged in unfair business practices in violation of
2 Business and Professions Code §§ 17200, *et seq.*

3 24. There is a well-defined community of interest in this litigation and the proposed
4 Class and Subclass are readily ascertainable:

5 (a) Numerosity: The members of the Class and Subclass are so numerous
6 that joinder of all members is impractical. Although the members of the entire Class and
7 Subclass are unknown to Plaintiffs at this time, on information and belief, the class is estimated
8 to be greater than one hundred (100) individuals. The identities of the Class and Subclass are
9 readily ascertainable by inspection of Defendants' employment and payroll records.

10 (b) Typicality: The claims (or defenses, if any) of Plaintiffs are typical of the
11 claims (or defenses, if any) of the class because Defendants' failure to comply with the
12 provisions of California's wage and hour laws entitled each class member to similar pay,
13 benefits and other relief. The injuries sustained by Plaintiffs are also typical of the injuries
14 sustained by the Class and Subclass, because they arise out of and are caused by Defendants'
15 common course of conduct as alleged herein.

16 (c) Adequacy: Plaintiffs will fairly and adequately represent and protect the
17 interests of all members of the Class and Subclass because it is in their best interests to
18 prosecute the claims alleged herein to obtain full compensation and penalties due them and the
19 Class and Subclass. Plaintiffs' attorneys, as proposed class counsel, are competent and
20 experienced in litigating large employment class actions and versed in the rules governing class
21 action discovery, certification and settlement. Plaintiffs have incurred and, throughout the
22 duration of this action, will continue to incur attorneys' fees and costs that have been and will
23 be necessarily expended for the prosecution of this action for the substantial benefit of each
24 class member.

25 (d) Superiority: The nature of this action makes use of class action
26 adjudication superior to other methods. A class action will achieve economies of time, effort
27 and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because
28 the same issues can be adjudicated in the same manner and at the same time for the entire Class

1 and Subclass. If appropriate this Court can, and is empowered to, fashion methods to
2 efficiently manage this case as a class action.

3 (e) Public Policy Considerations: Employers in the State of California
4 violate employment and labor laws every day. Current employees are often afraid to assert
5 their rights out of fear of direct or indirect retaliation. Former employees are fearful of
6 bringing actions because they believe their former employers might damage their future
7 endeavors through negative references and/or other means. Class actions provide the class
8 members who are not named in the complaint with a type of anonymity that allows for the
9 vindication of their rights at the same time as affording them privacy protections.

10 GENERAL ALLEGATIONS

11 25. At all relevant times mentioned herein, Defendants employed Plaintiffs and
12 other persons as non-exempt employees.

13 26. Plaintiffs are or were employed in non-exempt positions at Defendants'
14 California location(s).

15 27. Defendants continue to employ non-exempt employees within California.

16 28. Plaintiffs are informed and believe, and thereon allege, that at all times herein
17 mentioned, Defendants were advised by skilled lawyers, employees and other professionals
18 who were knowledgeable about California's wage and hour laws, employment and personnel
19 practices and the requirements of California law.

20 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
21 should have known that Plaintiffs and class members were entitled to receive wages for all time
22 worked (including minimum wages and overtime wages) and that they were not receiving all
23 wages earned for work that was required to be performed. In violation of the Labor Code and
24 IWC Wage Orders, Plaintiffs and class members were not paid wages (including minimum
25 wages and overtime wages) for all hours worked when Defendants required Plaintiffs and class
26 members to clock out and continue working, among other things.

27 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
28 should have known that Plaintiffs and class members were entitled to receive all required meal

1 periods or payment of one (1) additional hour of pay at Plaintiffs and class members' regular
2 rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the
3 Labor Code and IWC Wage Orders, Plaintiffs and class members did not receive all meal
4 periods or payment of one (1) additional hour of pay at Plaintiffs and class members' regular
5 rate of pay when they did not receive a timely, uninterrupted meal period.

6 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
7 should have known that Plaintiffs and class members were entitled to receive all rest breaks or
8 payment of one (1) additional hour of pay at Plaintiffs and class members' regular rate of pay
9 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders,
10 Plaintiffs and class members did not receive all rest breaks or payment of one (1) additional
11 hour of pay at Plaintiffs and class members' regular rate of pay when a rest break was missed.

12 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
13 should have known that Plaintiffs and class members were entitled to receive itemized wage
14 statements that accurately showed their gross and net wages earned, total hours worked and all
15 applicable hourly rates in effect and the number of hours worked at each hourly rate in
16 accordance with California law. In violation of the Labor Code, Plaintiffs and class members
17 were not provided with accurate itemized wage statements.

18 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
19 should have known that separated class members were entitled to timely payment of wages due
20 upon separation of employment. In violation of the Labor Code, separated class members did
21 not receive payment of all wages within permissible time periods.

22 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
23 should have known they had a duty to compensate Plaintiffs and class members, and
24 Defendants had the financial ability to pay such compensation but willfully, knowingly and
25 intentionally failed to do so all in order to increase Defendants' profits.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

3 (Violation of Labor Code §§ 1194, 1194.2, and 1197; Violation of IWC Wage Order § 3)

4 35. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
5 though fully set forth herein.

6 36. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
7 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
8 wage than the minimum so fixed is unlawful.

9 37. During the relevant time period, Defendants paid Plaintiffs and class members
10 less than minimum wages when they required Plaintiffs and class members to clock out and
11 keep working, among other things. To the extent these hours do not qualify for the payment of
12 overtime, Plaintiffs and class members were not being paid at least minimum wages for their
13 work.

14 38. During the relevant time period, Defendants regularly failed to pay at least
15 minimum wages to Plaintiffs and class members for all hours worked pursuant to Labor Code
16 §§ 1194 and 1197.

17 39. Defendants' failure to pay Plaintiffs and class members the required minimum
18 wages violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiffs and class
19 members are entitled to recover the unpaid balance of their minimum wage compensation as
20 well as interest, costs and attorneys' fees.

21 40. Pursuant to Labor Code § 1194.2, Plaintiffs and class members are entitled to
22 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
23 thereon.

24 **SECOND CAUSE OF ACTION**

25 **FAILURE TO PAY OVERTIME AND DOUBLE TIME**

26 (Violation of Labor Code §§ 510, 1194 and 1198; Violation of IWC Wage Order § 3)

27 41. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
28 though fully set forth herein.

1 42. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
2 unlawful to employ persons without compensating them at a rate of pay either one and one-half
3 or two times the person's regular rate of pay, depending on the number of hours worked by the
4 person on a daily or weekly basis.

5 43. Pursuant to California Labor Code §§ 510 and 1194, during the relevant time
6 period, Defendants were required to compensate Plaintiffs and class members for all overtime
7 hours worked, calculated at one and one-half (1½) times the regular rate of pay for hours
8 worked in excess of eight (8) hours per day and/or forty (40) hours per week and for the first
9 eight (8) hours of the seventh consecutive work day, with double time after eight (8) hours on
10 the seventh day of any work week, or after twelve (12) hours in any work day.

11 44. Plaintiffs and class members were non-exempt employees entitled to the
12 protections of California Labor Code §§ 510 and 1194.

13 45. During the relevant time period, Defendants failed to pay Plaintiffs and class
14 members overtime wages for all overtime hours worked when they required Plaintiffs and class
15 members to clock out and keep working, among other things. To the extent these hours qualify
16 for the payment of overtime, Plaintiffs and class members were not being paid proper overtime
17 wages.

18 46. In violation of state law, Defendants have knowingly and willfully refused to
19 perform their obligations and compensate Plaintiffs and class members for all wages earned
20 and all hours worked, including work performed off the clock as alleged above.

21 47. Defendants' failure to pay Plaintiffs and class members the unpaid balance of
22 overtime and double time compensation, as required by California law, violates the provisions
23 of Labor Code §§ 510 and 1198, and is therefore unlawful.

24 48. Pursuant to Labor Code § 1194, Plaintiffs and class members are entitled to
25 recover their unpaid overtime and double time compensation as well as interest, costs and
26 attorneys' fees.

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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL PERIODS**

3 (Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

4 49. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
5 though fully set forth herein

6 50. Labor Code § 226.7 provides that no employer shall require an employee to work
7 during any meal period mandated by the IWC Wage Orders.

8 51. Section 11 of the applicable IWC Wage Order states, "no employer shall employ
9 any person for a work period of more than five (5) hours without a meal period of not less than
10 30 minutes, except that when a work period of not more than six (6) hours will complete the
11 day's work the meal period may be waived by mutual consent of the employer and the
12 employee."

13 52. Labor Code § 512(a) provides that an employer may not require, cause or permit
14 an employee to work for a period of more than five (5) hours per day without providing the
15 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if
16 the total work period per day of the employee is not more than six (6) hours, the meal period
17 may be waived by mutual consent of both the employer and the employee.

18 53. Labor Code § 512(a) also provides that an employer may not employ an
19 employee for a work period of more than ten (10) hours per day without providing the employee
20 with a second meal period of not less than thirty (30) minutes, except that if the total hours
21 worked is no more than twelve (12) hours, the second meal period may be waived by mutual
22 consent of the employer and the employee only if the first meal period was not waived.

23 54. During the relevant time period, Plaintiffs and class members did not receive
24 compliant meal periods for working more than five (5) and/or ten (10) hours per day because
25 their meal periods were short, missed, or late and/or they were not permitted to take a second
26 meal period.

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1 55. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
2 an employer to pay an employee one additional hour of pay at the employee's regular rate of
3 compensation for each work day that a meal period is not provided.

4 56. At all relevant times, Defendants failed to pay Plaintiffs and class members meal
5 period premium for missed, late, and untimely meal periods pursuant to Labor Code § 226.7(b)
6 and section 11 of the applicable IWC Wage Order.

7 57. As a result of Defendants' failure to pay Plaintiffs and class members an
8 additional hour of pay for each day a meal period was not provided, Plaintiffs and class
9 members suffered and continue to suffer a loss of wages and compensation.

10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO PERMIT REST BREAKS**

12 (Violation of Labor Code §§ 226.7; Violation of IWC Wage Order § 12)

13 58. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
14 though fully set forth herein.

15 59. Labor Code § 226.7(a) provides that no employer shall require an employee to
16 work during any rest period mandated by the IWC Wage Orders.

17 60. Section 12 of the applicable IWC Wage Order states "every employer shall
18 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
19 the middle of each work period" and the "authorized rest period time shall be based on the total
20 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
21 fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

22 61. During the relevant time period, Plaintiffs and class members did not receive a
23 ten (10) minute rest period for every four (4) hours or major fraction thereof worked because
24 they were required to work through their daily rest periods and/or were not authorized to take
25 their rest periods.

26 62. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order
27 requires an employer to pay an employee one additional hour of pay at the employee's regular
28 rate of compensation for each work day that the rest period is not provided.

1 63. At all relevant times, Defendants failed to pay Plaintiffs and class members rest
2 period premium for missed or interrupted rest periods pursuant to Labor Code § 226.7(b) and
3 section 12 of the applicable IWC Wage Order.

4 64. As a result of Defendants' failure to pay Plaintiffs and class members an
5 additional hour of pay for each day a rest period was not provided, Plaintiffs and class members
6 suffered and continue to suffer a loss of wages and compensation.

7 **FIFTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

9 (Violation of Labor Code § 226)

10 65. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
11 though fully set forth herein.

12 66. Labor Code § 226(a) requires Defendants to provide each employee with an
13 accurate wage statement in writing showing nine pieces of information, including: (1) gross
14 wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units
15 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
16 deductions, provided that all deductions made on written orders of the employee may be
17 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period
18 for which the employee is paid, (7) the name of the employee and the last four digits of his or
19 her social security number or an employee identification number other than a social security
20 number, (8) the name and address of the legal entity that is the employer, and (9) all applicable
21 hourly rates in effect during the pay period and the corresponding number of hours worked at
22 each hourly rate by the employee.

23 67. During the relevant time period, Defendants have knowingly and intentionally
24 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiffs
25 and class members. The deficiencies include, among other things, the failure to correctly state
26 the gross and net wages earned, total hours worked and all applicable hourly rates in effect and
27 the number of hours worked at each hourly rate by Plaintiffs and class members.
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1 68. As a result of Defendants' knowing and intentional failure to comply with Labor
2 Code § 226(a), Plaintiffs and class members have suffered injury and damage to their
3 statutorily-protected rights. Specifically, Plaintiffs and class members are deemed to suffer an
4 injury pursuant to Labor Code § 226(e) where, as here, Defendants intentionally violated Labor
5 Code § 226(a). Plaintiffs and class members were denied both their legal right to receive, and
6 their protected interest in receiving, accurate itemized wage statements under Labor Code
7 § 226(a). In addition, because Defendants failed to provide the accurate rates of pay on wage
8 statements, Defendants have prevented Plaintiffs and class members from determining if all
9 hours worked were paid at the appropriate rate and the extent of the underpayment. Plaintiffs
10 have had to file this lawsuit in order to analyze the extent of the underpayment, thereby causing
11 Plaintiffs to incur expenses and lost time. Plaintiffs would not have had to engage in these
12 efforts and incur these costs had Defendants provided the accurate hours worked, wages
13 earned, and rates of pay. This has also delayed Plaintiffs' ability to demand and recover the
14 underpayment of wages from Defendants.

15 69. Plaintiffs and class members are entitled to recover from Defendants the greater
16 of all actual damages caused by Defendants' failure to comply with Labor Code § 226(a), or
17 fifty dollars (\$50.00) for the initial pay period in which a violation occurred, and one hundred
18 dollars (\$100.00) per employee for each violation in subsequent pay periods, in an amount not
19 exceeding four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

20 70. Defendants' violations of California Labor Code § 226(a) prevented Plaintiffs
21 and class members from knowing, understanding and disputing the wages paid to them, and
22 resulted in an unjustified economic enrichment to Defendants. As a result of Defendants'
23 knowing and intentional failure to comply with California Labor Code § 226(a), Plaintiffs and
24 class members have suffered an injury, the exact amount of damages and/or penalties is all in
25 an amount to be shown according to proof at trial.

26 71. Plaintiffs and class members are also entitled to injunctive relief under
27 California Labor Code § 226(h), compelling Defendants to comply with California Labor Code
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1 § 226, and seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive
2 relief.

3 **SIXTH CAUSE OF ACTION**

4 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

5 (Violation of Labor Code §§ 201, 202 and 203)

6 72. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
7 though fully set forth herein.

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

14 74. During the relevant time period, Defendants willfully failed to pay Waiting
15 Time Subclass members all their earned wages upon termination including, but not limited to,
16 proper minimum wages and overtime compensation, either at the time of discharge or within
17 seventy-two (72) hours of their leaving Defendants' employ.

18 75. Defendants' failure to pay Waiting Time Subclass members all their earned
19 wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants'
20 employ is in violation of Labor Code §§ 201 and 202.

21 76. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
22 immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202,
23 then the wages of the employee shall continue as a penalty from the due date at the same rate
24 until paid or until an action is commenced; but the wages shall not continue for more than thirty
25 (30) days.

26 77. Waiting Time Subclass members are entitled to recover from Defendants the
27 statutory penalty which is defined as Waiting Time Subclass members regular daily wages for
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1 each day they were not paid, at their regular hourly rate of pay, up to a thirty (30) day
2 maximum pursuant to Labor Code § 203.

3 **SEVENTH CAUSE OF ACTION**

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

5 78. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
6 though fully set forth herein.

7 79. Defendants' conduct, as alleged herein, has been and continues to be unfair,
8 unlawful and harmful to Plaintiffs and class members. Plaintiffs seek to enforce important
9 rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

10 80. Defendants' activities, as alleged herein, violate California law and constitute
11 unlawful business acts or practices in violation of California Business and Professions Code
12 §§ 17200, *et seq.*

13 81. A violation of Business and Professions Code §§ 17200, *et seq.* may be
14 predicated on the violation of any state or federal law.

15 82. Defendants' policies and practices have violated state law in at least the
16 following respects:

- 17 (a) Failing to pay all wages earned (including minimum wages and overtime
18 wages) to Plaintiffs and class members in violation of Labor Code
19 §§ 510, 1194, 1197, and 1198;
- 20 (b) Failing to provide meal periods without paying Plaintiffs and class
21 members premium wages for every day said meal periods were not
22 provided in violation of Labor Code §§ 226.7 and 512;
- 23 (c) Failing to authorize or permit rest breaks without paying Plaintiffs and
24 class members premium wages for every day said rest breaks were not
25 authorized or permitted in violation of Labor Code § 226.7;
- 26 (d) Failing to provide Plaintiffs and class members with accurate itemized
27 wage statements in violation of Labor Code § 226; and
28

1 (f) Failing to timely pay all earned wages to Waiting Time Subclass
2 members upon separation of employment in violation of Labor Code
3 §§ 201, 202 and 203.

4 83. Defendants intentionally avoided paying Plaintiffs and class members' wages
5 and monies, thereby creating for Defendants an artificially lower cost of doing business in
6 order to undercut their competitors and establish and gain a greater foothold in the marketplace.

7 84. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiffs and class
8 members are entitled to restitution of the wages unlawfully withheld and retained by
9 Defendants during a period that commences four years prior to the filing of the Complaint; an
10 award of attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and other applicable
11 laws; and an award of costs.

12 EIGHTH CAUSE OF ACTION

13 ENFORCEMENT OF LABOR CODE § 2698 ET SEQ. ("PAGA")

14 85. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
15 though fully set forth herein.

16 86. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that
17 provides for a civil penalty to be assessed and collected by the Labor and Workforce
18 Development Agency ("LWDA") or any of its departments, divisions, commissions, boards,
19 agencies or employees for violation of the code may, as an alternative, be recovered through a
20 civil action brought by an aggrieved employee on behalf of himself and other current or former
21 employees pursuant to the procedures specified in Labor Code § 2699.3.

22 87. For all provisions of the Labor Code except those for which a civil penalty is
23 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one
24 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation
25 and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each
26 subsequent pay period in which Defendants violated these provisions of the Labor Code.

27 88. Defendants' conduct violates numerous Labor Code sections including, but not
28 limited to, the following:

- 1 (a) Violation of Labor Code §§ 201, 202, 203, 204, 510, 1194, 1197 and 1198 for
2 failure to timely pay all earned wages (including minimum wages and overtime
3 wages) owed to Plaintiffs and other aggrieved employees during employment
4 and upon separation of employment as herein alleged;
- 5 (b) Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
6 Plaintiffs and other aggrieved employees and failure to pay premium wages for
7 missed meal periods as herein alleged;
- 8 (c) Violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiffs
9 and other aggrieved employees and failure to pay premium wages for missed
10 rest periods as herein alleged;
- 11 (d) Violation of Labor Code § 226 for failure to provide accurate itemized wage
12 statements to Plaintiffs and other aggrieved employees as herein alleged; and
- 13 (e) Violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate
14 records.

15 89. Further, Labor Code § 558(a) provides “any employer or other person acting on
16 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
17 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
18 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for
19 each pay period for which the employee was underpaid in addition to an amount sufficient to
20 recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for
21 each underpaid employee for each pay period for which the employee was underpaid in
22 addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to
23 this section shall be paid to the affected employee.” Labor Code § 558(c) provides “the civil
24 penalties provided for in this section are in addition to any other civil or criminal penalty
25 provided by law.

26 90. As set forth above, Defendants have violated numerous provisions of the Labor
27 Code regulating hours and days of work as well as the IWC Wage Orders. Accordingly,
28

1 Plaintiffs seek the remedies set forth in Labor Code § 558 for themselves, the underpaid
2 employees, and the State of California.

3 91. Plaintiffs are "aggrieved employees" because they were employed by the alleged
4 violator and had one or more of the alleged violations committed against them, and therefore
5 are properly suited to represent the interests of all other aggrieved employees.

6 92. Plaintiffs have exhausted the procedural requirements under Labor Code
7 § 2699.3 as to Defendants and are therefore able to pursue a claim for penalties on behalf of
8 themselves and all other aggrieved employees under PAGA.

9 93. PAGA imposes a penalty of one hundred dollars (\$100.00) for each aggrieved
10 employee per pay period for the initial violation and two hundred dollars (\$200.00) for each
11 aggrieved employee per pay period for each subsequent violation.

12 94. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiffs are entitled to
13 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
14 cited above.

15 95. For bringing this action, Plaintiffs are entitled to attorney's fees and costs
16 incurred herein.

17 PRAYER FOR RELIEF

18 Plaintiffs, on their own behalf and on behalf of all others similarly situated, pray for
19 relief and judgment against Defendants, jointly and severally, as follows:

20 1. For certification of this action as a class action, including certifying the Class
21 and Subclass alleged by Plaintiffs;

22 2. For appointment of Kimberly Cobb and Omar Cobb, as the class representatives;

23 3. For appointment of Aegis Law Firm, PC as class counsel for all purposes;

24 4. For compensatory damages in an amount according to proof with interest
25 thereon;

26 5. For economic and/or special damages in an amount according to proof with
27 interest thereon;

28 6. For liquidated damages pursuant to Labor Code § 1194.2;

1 7. For reasonable attorneys' fees, costs of suit and interest to the extent permitted
2 by law, including pursuant to PAGA, Code of Civil Procedure § 1021.5, Labor Code §§ 226(e)
3 and 1194;

4 8. For statutory penalties to the extent permitted by law, including those pursuant
5 to the Labor Code and IWC Wage Orders;

6 9. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

7 10. For an order requiring Defendants to restore and disgorge all funds to each
8 employee acquired by means of any act or practice declared by this Court to be unlawful, unfair
9 or fraudulent and, therefore, constituting unfair competition under Business and Professions
10 Code §§ 17200, *et seq.*;

11 11. For an award of damages in the amount of unpaid compensation including, but
12 not limited to, unpaid wages, benefits and penalties, including interest thereon;

13 12. For penalties pursuant to Labor Code § 2699 *et seq.*;

14 13. For pre-judgment interest; and

15 14. For such other relief as the Court deems just and proper.

16
17 Dated: March 7, 2016

AEGIS LAW FIRM, PC

18
19 By: _____



Jessica L. Campbell
Attorneys for Plaintiffs