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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN MATEO**

11 CLAUDIA CHACHAVAC, individually
12 and on behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 KUMAR MANAGEMENT
16 CORPORATION, a California Corporation;
17 and DOES 1-10, inclusive,

18 Defendant.

CASE NO. 22-CIV-03110

**PLAINTIFF'S CLASS AND REPRESENTATIVE
ACTION COMPLAINT FOR:**

- (1) **FAILURE TO PAY MINIMUM WAGES
(LABOR CODE §§ 1194, 1194.2, 1197, 1197.1)**
- (2) **FAILURE TO PAY OVERTIME (LABOR
CODE §§ 510, 1197, 1198)**
- (3) **FAILURE TO PROVIDE COMPLETE WAGE
STATEMENTS (LABOR CODE § 226)**
- (4) **FAILURE TO PROVIDE COMPLIANT
MEAL PERIODS AND/OR PAY MISSED
MEAL PERIOD PREMIUMS (LABOR CODE
§§ 226.7, 512; IWC WAGE ORDER 5-2001 §
11)**
- (5) **FAILURE TO PROVIDE COMPLAINT REST
PERIODS AND/OR PAY MISSED REST
PERIOD PREMIUMS (LABOR CODE § 226.7;
IWC WAGE ORDER NO. 5-2001 § 12)**
- (6) **FAILURE TO REIMBURSE BUSINESS
EXPENSES (LABOR CODE § 2802)**
- (7) **FAILURE TO PAY TIMELY WAGES
(LABOR CODE §§ 204, 210)**
- (8) **FAILURE TO PAY FINAL WAGES (LABOR
CODE §§ 201-203)**
- (9) **FAILURE TO MAINTAIN ACCURATE TIME
RECORDS (LABOR CODE §§ 1174, 1174.5)**
- (10) **UCL VIOLATIONS (BUS. & PROF. CODE
§§ 17200-17204)**
- (11) **PAGA AND OTHER PENALTIES (LABOR
CODE §§ 2698 – 2699.5)**

DEMAND FOR JURY TRIAL

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8 *Attorneys for Plaintiff, the Putative Class, the LWDA, and the Aggrieved Employees*

1 Plaintiff Claudia Chachavac (“Plaintiff”), on behalf of herself, the State of California, other
2 aggrieved employees, and all others similarly situated (hereinafter “Class Members”), complains
3 and alleges as follows:

4 OVERVIEW OF CLAIMS

5 1. Plaintiff brings this action on behalf of herself and all others similarly situated, as a
6 class action, as a representative action pursuant to the California Private Attorneys General Act,
7 Labor Code § 2699, *et seq.* (“PAGA”), and on behalf of the California general public, against
8 Defendant Kumar Management, Corporation and DOES 1 to 10 (“Defendant”) for (1) failure to pay
9 at least minimum wage for all hours worked; (2) failure to pay overtime wages; (3) failure to provide
10 complete and accurate wage statements to current and former employees in California within the
11 one year prior to the filing of this Complaint; (4) failure to provide meal timely, duty-free meal
12 periods and/or pay meal period premiums; (5) failure to provide timely, duty free rest periods for
13 every four hours of work or major fraction thereof and/or pay rest period premiums; (6) failure to
14 reimburse for business expenses; (7) failure to pay timely wages to employees based on the
15 foregoing; (8) failure to pay final wages to employees based on the foregoing; (9) failure to maintain
16 accurate time records; (10) unfair business practices based on the foregoing; and (11) PAGA and
17 other penalties based on the foregoing. As a result of the foregoing, Defendant has violated
18 California statutory laws as described below.

19 2. The “Class Period” is designated as the period from four years prior to the filing of
20 this action through the trial date. The “PAGA Period” is designated as the period from one year from
21 the sending of Plaintiff’s PAGA letter to the LWDA, i.e., July 7, 2021, through the present and
22 ongoing. Defendant’s violations of California’s wage-hour laws and unfair competition laws, as
23 described more fully below, have been ongoing throughout the Class Period and PAGA Period.

24 VENUE

25 3. Venue is proper in this county under Section 396a of the California Code of Civil
26 Procedure. Many of the putative Class Members resided during the Class Period and still reside in
27 San Mateo County. Defendant is in the business of operating fast food restaurant franchises
28 throughout California and in San Mateo County. Many of the facts alleged herein including

1 Defendant's failure to pay minimum wages, failure to pay overtime, failure to provide Labor Code
2 compliant meal and rest periods, failure to provide compliant wage statements, and failure to
3 reimburse business expenses occurred in San Mateo County. Venue is therefore proper in San Mateo
4 County.

5 JURISDICTION

6 4. Defendant is within the jurisdiction of this Court. Defendant conducts business by
7 operating fast food restaurant franchises in California. Thus, Defendant has obtained the benefits of
8 the laws of the State of California. In addition, Plaintiff asserts no claims arising under federal law.
9 Rather, Plaintiff brings causes of action based solely on, and arising from, California law. The claims
10 of the class are also based solely on California law described herein. Furthermore, the total amount
11 at issue in this case, inclusive of attorneys' fees, is less than \$5 million. Therefore, jurisdiction is
12 appropriate in San Mateo County Superior Court.

13 THE PARTIES

14 5. Plaintiff was employed by Defendant during the relevant time period. During the
15 Class Period, Defendant's employees, including Plaintiff during her employment, were not paid all
16 minimum wages for all hours worked; were not paid overtime for hours over 8 per day and/or over
17 40 per week; were not provided compliant wage statements; were not provided timely and duty-free
18 meal and rest periods and/or provided meal and rest period premiums; were not reimbursed for all
19 business expenses; in the case of terminated or resigned employees, did not receive final wages
20 timely; and did not receive timely wages during employment.

21 6. Plaintiff represents the State of California and the following group of aggrieved
22 employees (the "Aggrieved Employees") defined as:

23 Plaintiff and all other hourly-paid individuals who are or were employed by Defendant in
24 California and who worked at least one pay period for Defendant in California during the
PAGA Period (hereinafter referred to as "Aggrieved Employees").

25 7. Plaintiff also seeks to represent a group of individuals (the "Class" defined as:

26 Plaintiff and all other hourly-paid individuals who are or were employed by Defendant in
27 California and who worked at least one pay period for Defendant in California during the
28 Class Period (hereinafter referred to as the "Class" or "Class Members").

8. Defendant is a California Corporation doing business in San Mateo County, California. Defendant.

9. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 100, 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.

10. 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, the Class, and the Aggrieved Employees.

11. Defendant employed Plaintiff, the Class, and the Aggrieved Employees as hourly-paid employees holding various responsibilities in connection with Defendant's operations in California at various times during the Class Period and PAGA Period. On information and belief, Defendant employed several hundred hourly-paid employees in California during the Class Period.

FACTUAL ALLEGATIONS

12. Defendant operates and, at all times during the Class Period and PAGA Period, has done business in California operating fast food restaurant franchises. Defendant, in the course of operating its business in California during the Class Period and PAGA Period, employed Plaintiff, the Class, and the Aggrieved Employees as hourly-paid workers.

13. Labor Code Section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code Section 1194 entitles “any employee receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage.” The applicable IWC Wage Order(s),

1 including IWC Wage Order No. 5-2001, obligate employers to pay each employee minimum wages
2 for all hours worked. These minimum wage standards apply to each hour employees worked or
3 subject to control by the employer for which they were not paid. Therefore, an employer's failure to
4 pay for any particular hour of time worked by an employee or subject to the employer's control is
5 unlawful, even if averaging an employee's total pay over all hours worked, paid or not, results in an
6 average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal.App.4th 314, 324
7 (2005). Time spent by employees pre-shift under the control of an employer is certainly compensable
8 yet unpaid.

9 14. Here, Defendant required Plaintiff, the Class, and all Aggrieved Employees to
10 undergo pre-shift COVID-19 temperature checks upon entering Defendant's premises and before
11 they clocked in for the start of their shifts. Although Defendant maintained a common policy and
12 practice of requiring Plaintiff, the Class, and the Aggrieved Employees to complete temperature
13 checks before clocking in, Defendant failed to compensate Plaintiff, the Class, and the other
14 Aggrieved Employees for such time.

15 15. Employees must be paid for all "hours worked." "Hours worked" is "the time during
16 which an employee is subject to the control of an employer and includes all the time the employee
17 is suffered or permitted to work, whether or not required to do so." *See* Wage Order 8-2001, Subd.
18 2(G); *see also Mendiola v. CPS Sec. Sols., Inc.* (2015) 60 Cal. 4th 833, 839. "[I]t is only necessary
19 that the worker be subject to the control of the employer in order to be entitled to compensation."
20 *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 584. An employee is under the employer's
21 control and entitled to compensation when the employer "directs, commands or restrains" an
22 employee." *Id.* at 583 (citations omitted).

23 16. As the California Supreme Court made clear in *Morillion*, when determining whether
24 employees' activity is under the employer's control entitling them to compensation, the import is
25 not whether the employer requires the activity and thus whether employees can avoid it, but the level
26 of control employers exert over employees during the activity: "The level of the employer's control,
27 rather than the mere fact that the employer requires the employees' activity is determinative." *Id.* at
28 587 (emphasis added).

1 17. In *Frlekin v. Apple Inc.*,¹ the California Supreme Court reaffirmed its holding in
2 *Morillion* that “[t]he level of the employer’s control over its employees, rather than the mere fact
3 that the employer requires the employees’ activity, is determinative” concerning whether an activity
4 is compensable under the “hours worked” control clause. In *Frlekin*, the California Supreme Court
5 found that time employees spent undergoing bag searches on Apple’s premises after their shifts, and
6 after employees had clocked out, was compensable time. The Court came to its decision by analyzing
7 factors in determining whether an employer has exerted compensable control over employees:

8 We also emphasize that whether an activity is required remains probative in determining
9 whether an employee is subject to the employer’s control. But, at least with regard to cases
10 involving ***onsite employer-controlled activities***, the mandatory nature of an activity is not
11 the only factor to consider. We conclude that courts may and should consider additional
12 relevant factors—including, but not limited to, the location of the activity, the degree of
the employer’s control, whether the activity primarily benefits the employee or employer,
and whether the activity is enforced through disciplinary measures—when evaluating
such employer-controlled conduct. (emphasis added).

13 18. To be free of the employer’s control for purposes of “hours worked,” the employee
14 must be free to use his or her time “effectively for his or her own purposes.” *Morillion*, 22 Cal.4th
15 at 583.

16 19. Here, as in *Frlekin*, Defendant’s employees could not avoid Defendant’s COVID-19
17 temperature checks (which took place on Defendant’s premises and before they could clock in) and
18 they could not then use their time effectively for their own purposes. As such, Defendant exercised
19 compensable control over Class Members and Aggrieved Employees who were required to take pre-
20 shift COVID-19 temperature checks and owe wages to those Class Members and Aggrieved
21 Employees for this time.

22 20. As recently confirmed by the United States District Court in *Boone v., Amazon.com*
23 *Services, LLC*, time spent by hourly, non-exempt employees completing mandatory COVID-19
24 screening pre-shift is compensable and should have been, but undisputedly was not, paid by
25 Defendant. *Boone v. Amazon.com Servs., LLC* (E.D. Cal. Mar. 11, 2022, No. 1:21-cv-00241-DAD-
26 BAM) 2022 U.S. Dist. LEXIS 44138, at *22 (“plaintiffs have sufficiently alleged that they were
27
28

¹ 8 Cal.5th 1038, 1051 (2020) (citing *Morillion*, 22 Cal.4th at 587).

1 subject to defendant’s control while they spent time awaiting and undergoing the COVID-19
2 screening checks—time that constitutes ‘hours worked’ under California law”).

3 21. Notably, there is no *de minimis* defense allowing companies not to pay for such time.
4 *Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, 840-41 (the *de minimis* principle was not
5 applicable in the context of an alleged policy requiring employees to work a few minutes off the
6 clock routinely); *see also Frlekin*, 8 Cal.5th at 1051 (“hours worked” is defined as the time during
7 which an employee is subject to the control of an employer, and includes all the time the employee
8 is suffered or permitted to work, whether or not required to do so).

9 22. Furthermore, through its policy and practice of requiring Plaintiff, the Class, and the
10 Aggrieved Employees to perform pre-shift COVID-19 temperature checks before clocking in,
11 Defendant clearly violated Labor Code §§1194 and 1197. In July 2021, the California Labor
12 Commissioner issued guidelines about how to safely return to the workplace. *See*
13 https://www.dir.ca.gov/covid19/FAQs_COVID-19_Safe_Reopening.htm. In Question 10, the
14 DLSE asked and answered the following:

15 **“10. Q: Must my employer pay me for time spent at my employer’s worksite**
16 **completing certain medical checks (including temperature checks) before beginning**
17 **a shift?**

18 **A: Yes.** Employers must pay workers for all hours worked, including time that a worker
19 is under the control of the employer. Employers that require their workers to complete a
20 medical check in order to begin a shift, even if it is recommended under public health
21 orders, must compensate workers for that time worked.

22 The term “hours worked” means the time during which a worker is subject to the control
23 of an employer and includes all the time the worker is suffered or permitted to work,
24 whether or not required to do so. Under this definition, one way to determine whether
25 time a worker spends performing a task is compensable—that is, whether it is time
26 “worked”—is whether the employer exercised control over the worker by requiring the
27 worker to perform that task.

28 *If an employer requires that all workers perform a medical check (such as a*
temperature check) onsite before beginning a shift, the time completing the medical
check, including any time waiting in line, would constitute time worked. This
requirement applies even if such tasks were performed pursuant to a state or local
public health guideline, because the check is done at the request and thus under the
control of the employer.” (emphasis added).

///

1 23. As a result of Defendant's policy and practices described above, Defendant therefore
2 regularly failed to pay Plaintiff, the Class, and all Aggrieved Employees for all hours worked in
3 violation of Labor Code § 1194 and 1197.

4 24. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed
5 by an applicable state or local law, or by an order of the commission a civil penalty, restitution of
6 wages, and liquidated damages as follows: (1) for any initial violation that is intentionally
7 committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which
8 the employee is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense,
9 two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the
10 employee is underpaid regardless of whether the initial violation is intentionally committed. As set
11 forth above, Defendant failed to compensate Plaintiff, the Class, and all Aggrieved Employees for
12 all hours worked during all pay periods during the Class Period (or whenever temperature checks
13 were discontinued). Accordingly, Plaintiff and all Aggrieved Employees are entitled to recover
14 liquidated damages for violations of Labor Code § 1197.1. Based upon these same factual
15 allegations, Plaintiff, the Class, and the other Aggrieved Employees are also entitled to penalties
16 under Labor Code § 1199.

17 25. Similarly, Labor Code § 1194.2 authorizes employees to recover liquidated damages
18 for violations of Labor Code § 1194. Where an employee, as with Plaintiff and the other Class
19 Members and Aggrieved Employees here, is not paid for all hours worked under Labor Code § 1194,
20 the employee may recover minimum wages for the time for which they received no compensation.

21 26. Labor Code § 510 requires an employer to compensate an employee who works more
22 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
23 worked on the seventh consecutive day, no less than one and one-half times the regular rate of pay
24 for an employee. Further, Labor Code § 510 obligates employers to compensate employees at no
25 less than twice the regular rate of pay when an employee works more than twelve (12) hours in a
26 day or more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor
27 Code § 1194, Plaintiff and the Aggrieved Employees could not then agree and cannot now agree to
28 work for a lesser wage than the amount proscribed by Labor Code §§ 510 and 1194.

1 27. Plaintiff, the Class, and the Aggrieved Employees were not paid for all hours worked
2 while employed by Defendant and thus were not paid all overtime wages owed. Here, Plaintiff, the
3 Class, and the Aggrieved Employees were not compensated for time spent undergoing COVID-19
4 temperature checks pre-shift. This additional time spent subject to Defendant's control, pushed many
5 Class Members' and Aggrieved Employees' shifts over eight hours and over forty hours per week.
6 Accordingly, all time over eight hours per shift should have been paid at the applicable overtime
7 rate. As a result, Plaintiff, the Class, and the Aggrieved Employees were denied compensation for
8 all overtime hours worked, in violation of Cal. Labor Code § 510, 1194, and 1198.

9 28. Labor Code § 226 obligates employers, semi-monthly or at the time of each payment
10 to furnish an itemized wage statement in writing showing:

- 11 (1) gross wages earned;
- 12 (2) total hours worked by the employee;
- 13 (5) net wages earned; ... [and]
- 14 (9) all applicable hourly rates in effect during the pay period and the corresponding
15 number of hours worked at each hourly rate by the employee...

16 29. As to Plaintiff, the Class, and all Aggrieved Employees, by virtue of Defendant's
17 non-inclusion of all time spent on pre-shift COVID-19 temperature checks, as well as Defendant's
18 failure to pay meal and rest period premiums, Defendant failed to provide accurate itemized wage
19 statements in accordance with Labor Code § 226(a), (1), (2), (5), and (9). Further, Defendant's failure
20 to pay wages for time associated with pre-shift COVID-19 temperature checks resulted in a violation
21 of section 226(a)(9) because the total hours worked at each hourly rate is inherently wrong.

22 30. Violations of Section 226(a) can result in penalties under Section 226(e) where, as
23 here, there are clear violations by the failure to include the accurate reporting of all hours worked
24 and gross and net earnings and pay for off the clock pre-shift working time that was unpaid, as
25 described above.

26 31. In addition, Plaintiff and the Aggrieved Employees will prevail on their claim for
27 PAGA penalties under Labor Code §§ 226(a), since time spent on temperature checks was not
28 included in hours worked or total earnings on wage statements issued, without having to show injury
or willfulness. *See Lopez v. Friant & Assocs., LLC* (2017) 15 Cal.App.5th 773, 788 ("hold[ing] a

1 plaintiff seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not
2 have to satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section 226(e)(1).”);
3 *Raines v. Coastal Pac. Food Distribs., Inc.* (2018) 23 Cal.App.5th 667, 679 (finding that the
4 “requirements for a section 226(e) claim do not apply to a PAGA claim for a violation of section
5 226(a).”).

6 32. Plaintiff, the Class, and other Aggrieved Employees are covered by Labor Code
7 sections 226.7, 512 and the applicable Wage Order. Plaintiff is informed and believes that Defendant
8 maintains a policy or practice of frequently failing to provide Plaintiff, the Class, and other
9 Aggrieved Employees a thirty (30) minute uninterrupted meal period for days on which the
10 employees worked more than five (5) hours in a work day and a second thirty (30) minute
11 uninterrupted meal period for days on which the employees worked in excess of ten (10) hours in a
12 work day and failing to provide compensation for such unprovided meal periods, failing to provide
13 and schedule duty-free meal breaks on or before the fifth or 10th hour of work to Class Members and
14 Aggrieved Employees, failing to advise all other Class Members and Aggrieved Employees of their
15 meal break rights with respect to the timing of meal breaks, and failing to pay meal break premiums
16 for late meal breaks. Consequently, Plaintiff is informed and believes, and based thereon alleges that
17 Defendant violated Labor Code section 512, entitling Plaintiff, the Class, and other Aggrieved
18 Employees to premium payments under Labor Code section 226.7.

19 33. Plaintiff, the Class, and other Aggrieved Employees are covered by Labor Code
20 section 226.7 and the applicable Wage Order. Plaintiff is informed and believes, and based thereon
21 alleges, that Defendant maintains a policy or practice of failing to provide Plaintiff and similarly
22 situated employees or former employees within the State of California timely paid rest periods of at
23 least ten (10) minutes per four (4) hours worked or major fraction thereof and failing to provide
24 compensation for such unprovided rest periods. As such, Plaintiff is informed and believes, and
25 based thereon allege that he and other Class Members and Aggrieved Employees are entitled to
26 premium payments under Labor Code section 226.7.

27 34. Pursuant to Labor Code § 2802(a) “[a]n employer shall indemnify his or her
28 employee for all necessary expenditures or losses incurred by the employee in direct consequence

1 of the discharge of his or her duties, or of his or her obedience to the directions of the employer....”
2 The purpose of this statute is “to prevent employers from passing their operating expenses on to their
3 employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562 (2007) (quoting legislative
4 history from the 2000 amendment to the statute). Labor Code Section 2802(c) also clarifies that “the
5 term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited
6 to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

7 35. The employer’s obligation to reimburse business-related expenses arises when the
8 employer “knew or should have known” that its employees have incurred a business-related expense.
9 *Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901, 903 (N.D. Cal. 2009) (Hon. Edward Chen); *Wilson*
10 *v. Kiewit Pacific Co.*, 2010 WL 5059522 (N.D. Cal. Dec. 6, 2010) (Hon. Susan Illston) (adopting
11 the “knew or should have known” standard from *RadioShack*). Notably, these claims are not
12 waivable per Section 2804 of the Labor Code.

13 36. Plaintiff is informed and believes and based thereon alleges that Defendant failed,
14 and continues to fail, to reimburse employees, including, without limitation, Plaintiff, the Class, and
15 other Aggrieved Employees, for their business expenses incurred in furtherance of their work duties,
16 as required by Labor Code 2802. These business expenses include, but are not limited to, personal
17 protective equipment and monthly personal cell phone expenses, both used in the furtherance of their
18 job duties on Defendant’s behalf. Defendant knew, or had reason to know, that Plaintiff, the Class,
19 and Aggrieved Employees were incurring these expenses on their behalf.

20 37. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any
21 employment are due and payable twice during each calendar month, on days designated in advance
22 by the employer as the regular paydays.”

23 38. Due to Defendant’s failure to pay all minimum wages due to Plaintiff, the Class, and
24 all Aggrieved Employees for time associated with pre-shift COVID-19 temperature checks, as well
25 as meal and rest period premiums, Defendant failed to timely pay Plaintiff, the Class, and all
26 Aggrieved Employees all wages owed within seven (7) days of the close of each payroll period in
27 accordance with Labor Code § 204(d) on a regular and consistent basis.

28 39. Labor Code § 210 provides that “[i]n addition to, and entirely independent and apart

1 from, any other penalty provided in this article, every person who fails to pay the wages of each
2 employee as provided in [Section 204] shall be subject to a civil penalty as follows: (1) For any
3 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
4 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
5 failure to pay each employee, plus 25% of the amount unlawfully withheld.”

6 40. As a result of the faulty compensation policies and practices described in detail above
7 and Defendant’s failure to pay Plaintiff, the Class, all Aggrieved Employees for all minimum wages
8 associated with pre-shift COVID-19 temperature checks, as well as meal and rest period premiums,
9 within seven (7) days of the close of the payroll period, the State of California is entitled to recover
10 penalties under Labor Code § 210 and through PAGA. *See Amaral v. Cintas Corp. No. 2* (2008) 163
11 Cal.App.4th 1157, 1209 (affirming an award of Labor Code section 210 penalties under PAGA due
12 to the employer’s failure to timely pay wages at the proper rate in accordance with a local wage
13 ordinance).

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

19 42. As described in detail above, Defendant failed to pay Plaintiff, the Class, and other
20 Aggrieved Employees, all wages owed, including but not limited to minimum wages for their time
21 spent on pre-shift COVID-19 temperature checks, as well as meal and rest period premiums, within
22 the time constraints proscribed in Labor Code §§ 201-202 at the time of their termination/separation.
23 Thus, as a result of Defendant’s faulty policies and practices described above, Plaintiff, the Class,
24 and the Aggrieved Employees were not compensated for each and every hour worked at the
25 appropriate rate in violation of Labor Code §§ 201, 202, and 203.

26 43. Labor Code § 1174 requires employers to keep at a central location in the state or at
27 the plants or establishments at which employees are employed, payroll records showing the hours
28 worked daily by and the wages paid to employee employed at the respective plants or establishments.

1 44. Due to Defendant's failure to pay all minimum wages due to Plaintiff, the Class, and
2 all Aggrieved Employees for time associated with pre-shift COVID-19 temperature checks, as well
3 as meal and rest period premiums, Defendant failed to keep accurate payroll and time records
4 showing the hours worked daily by and the wages paid to employees in accordance with Labor Code
5 § 1174.

6 45. The administrative prerequisites of PAGA have been satisfied and Plaintiff has also
7 paid the \$75.00 fee and has otherwise satisfied the administrative prerequisites of PAGA.

8 46. Plaintiff by this action seeks to recover, on behalf of herself and all other current and
9 former Aggrieved Employees of Defendant, the civil penalties provided by PAGA, as specified in
10 Labor Code § 2699(f). Plaintiff seeks to recover the PAGA civil penalties through a representative
11 action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46
12 Cal.4th 969 (2009). Class certification of the PAGA claims is not required. *Id.*

13 **CLASS ACTION ALLEGATIONS**

14 47. Plaintiff brings this action, on behalf of herself and all others similarly situated, as a
15 class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class composed
16 of and defined as: Plaintiff and all other hourly-paid individuals who are or were employed by
17 Defendant in California and who worked at least one pay period for Defendant in California during
18 the Class Period (hereinafter "Class Members"). All such Class Members were subject to
19 Defendant's unlawful policies including, Defendant's failure to pay minimum wages, Defendant's
20 failure to pay overtime wages, Defendant's failure to provide meal/rest breaks or break premiums,
21 Defendant's failure to issue compliant wage statements, Defendant's failure to pay final wages;
22 Defendant's failure to pay timely wages during employment; Defendant's failure to maintain
23 accurate time records, and Defendant's failure to reimburse business expenses.

24 48. This action has been brought and may properly be maintained as a class action under
25 Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation,
26 the proposed class is easily ascertainable, and Plaintiff is proper representative of the Class:

27 a. Numerosity: The potential members of the Class as defined are so numerous
28 that joinder of all the members of the Class is impracticable. Plaintiff is informed and believes that

1 Defendant has employed several hundred Class Members as hourly-paid workers in California who
2 were subject to Defendant's unlawful compensation, meal and rest period, wage statement, final pay,
3 regular payday and reimbursement policies. The Class Members are dispersed throughout
4 California. Joinder of all members of the proposed classes is therefore not practicable.

5 b. Commonality: There are questions of law and fact common to Plaintiff and
6 the Class that predominate over any questions affecting only individual members of the Class. These
7 common questions of law and fact include, without limitation:

8 i. Whether Defendant violated Sections 1194 and 1197 of the Labor Code by
9 failing to pay minimum wages for all hours worked;

10 ii. Whether Defendant violated Section 510 of the Labor Code by failing to pay
11 Plaintiff and the Class all overtime wages owed during the Class Period;

12 iii. Whether Defendant violated Section 226.7 and IWC Wage Order 5-2001
13 section 11 by failing to pay meal period premiums for missed rest periods during the Class Period;

14 iv. Whether Defendant violated Section 226.7 and IWC Wage Order 5-2001
15 section 12 by failing to pay rest period premiums for missed rest periods during the Class Period;

16 v. Whether Defendant failed to provide Plaintiff and the members of the Class
17 compliant wage statements in violation of Labor Code Section 226(a);

18 vi. Whether Defendant violated Sections 204 of the Labor Code by failing to pay
19 member of the Class all wages due on a timely basis;

20 vii. Whether Defendant violated Sections 201-203 of the Labor Code by failing
21 to pay all final wages to members of the Class whose employment with Defendant ended;

22 viii. Whether Defendant violated Labor Code Section 2802 by failing to reimburse
23 Plaintiff and the Class for their business expenses incurred during the Class Period;

24 ix. Whether Defendant violated Labor Code section 1174 by failing to maintain
25 accurate time records during the Class Period;

26 x. Whether Defendant engaged in an unfair practice and violated Section 17200
27 of the California Business and Professions Code by failing to pay Plaintiff and the members of the
28 Class all minimum wages owed;

1 xi. Whether Plaintiff and the Class are entitled to restitution under Business and
2 Professions Code § 17200;

3 xii. The proper formula(s) for calculating damages, interest, and restitution owed
4 to Plaintiff and the Class Members; and

5 xiii. The nature and extent of class-wide damages.

6 c. Typicality: Plaintiff's claims are typical of the claims of the Class. Both
7 Plaintiff and Class Members sustained injuries and damages, and were deprived of property rightly
8 belonging to them, arising out of and caused by Defendant's common course of conduct in violation
9 of law as alleged herein, in similar ways and for the same types of unpaid wages.

10 d. Adequacy of Representation: Plaintiff is a member of the Class and will fairly
11 and adequately represent and protect the interests of the Class and Class Members. Plaintiff's
12 interests do not conflict with those of the Class and Class Members. Counsel who represent Plaintiff
13 are competent and experienced in litigating large wage and hour class actions, and will devote
14 sufficient time and resources to the case and otherwise adequately represent the Class and Class
15 Members.

16 e. Superiority of Class Action: A class action is superior to other available
17 means for the fair and efficient adjudication of this controversy. Individual joinder of all Class
18 Members is not practicable, and questions of law and fact common to the Class predominate over
19 any questions affecting only individual members of the Class. Each Class Member has been
20 damaged or may be damaged in the future by reason of Defendant's unlawful policies and/or
21 practices. Certification of this case as a class action will allow those similarly situated persons to
22 litigate their claims in the manner that is most efficient and economical for the parties and the judicial
23 system. Certifying this case as a class action is superior because it allows for efficient and full
24 disgorgement of the ill-gotten gains Defendant has enjoyed by failing to pay all minimum wages
25 due and will thereby effectuate California's strong public policy of protecting employees from
26 deprivation or offsetting of compensation earned in their employment. If this action is not certified
27 as a Class Action, it will be impossible as a practical matter, for many or most Class Members to
28 bring individual actions to recover monies unlawfully withheld from their lawful compensation due

1 from Defendant's, due to the relatively small amounts of such individual recoveries relative to the
2 costs and burdens of litigation.

3 **FIRST CAUSE OF ACTION**
4 **FAILURE TO PAY MINIMUM WAGES FOR PRE-SHIFT**
5 **TIME ON TEMPERATURE CHECKS**
6 **[Cal. Labor Code §§ 1194, 1194.2 and 1197]**
7 **On behalf of Plaintiff and the Class Against Defendant**

8 49. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
9 in the preceding paragraphs.

10 50. The actionable period for this cause of action is three years prior to the filing of the
11 Complaint through the present, and on-going until the violations are corrected, or the Class is
12 certified.

13 51. Labor Code § 1197 states the California requirement that employees must be paid at
14 least the minimum wage fixed by the Commission, and any payment of less than the minimum wage
15 is unlawful. Similarly, Labor Code § 1194 entitles "any employee receiving less than the legal
16 minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum
17 wage." IWC Wage Order 5-2001 also obligates employers to pay each employee minimum wages
18 *for all hours worked*. These minimum wage standards apply to each hour employees worked for
19 which they were not paid. Therefore, an employer's failure to pay for any particular hour of time
20 worked by an employee is unlawful, even if averaging an employee's total pay over all hours
21 worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose,*
22 *Inc.*, 135 Cal.App.4th 314, 324 (2005).

23 52. Furthermore, pursuant to Labor Code § 1198, "[t]he maximum hours of work and the
24 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
25 standard conditions of labor for employees. The employment of any employee for longer hours than
26 those fixed by the order or under conditions of labor prohibited by the order is unlawful."

27 53. Here, Defendant required Plaintiff and the Class to undergo pre-shift COVID-19
28 temperature checks upon entering Defendant's premises and before they clocked in for the start of
their shifts. Although Defendant maintained a common policy and practice of requiring Plaintiff and

1 the Class to complete temperature checks before clocking in, Defendant failed to compensate
2 Plaintiff and the Class for such time.

3 54. Labor Code § 1194 provides, in part, that any employee receiving less than the legal
4 minimum wage is entitled to recover in a civil action the unpaid balance of the minimum wage,
5 including interest thereon, reasonable attorney's fees, and costs of suit.

6 55. Labor Code § 1194.2 allows an employee to recover liquidated damages in an amount
7 equal to the wages unlawfully unpaid and interest thereon for any action under Labor Code § 1194.
8 Where an employee, such as Plaintiff and the other Class members, is not paid for all hours worked
9 under Labor Code § 1194, the employee may recover minimum wages for the time associated with
10 the overtime for which they received no compensation. *See Sillah v. Command Int'l Sec. Servs.*, 154
11 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing for failure to pay overtime could
12 recover liquidated damages under § 1194.2 if they also showed they were paid less than minimum
13 wage); *accord Andrade v. Arby's Rest. Grp., Inc.*, 225 F.Supp.3d 1115, 1132-33 (N.D. Cal. 2016).

14 56. Plaintiff and the other Class Members suffered and continue to suffer losses related
15 to the use and enjoyment of compensation due and owing to them as a direct result of Defendant's
16 unlawful acts and Labor Code violations in an amount to be shown according to proof at trial and
17 within the jurisdictional limitations of this Court.

18 57. Plaintiff seeks all available remedies for Defendant's violations including, but not
19 limited to, any and all wages due, monies, interest, liquidated damages, penalties attorney's fees,
20 and costs to the extent permitted by law.

21 **SECOND CAUSE OF ACTION**
22 **FAILURE TO PAY OVERTIME WAGES FOR PRE-SHIFT**
23 **TIME OVER 8 HOURS PER DAY OR 40 HOURS PER WEEK**
24 **ON TEMPERATURE CHECKS**
[Cal. Labor Code § 510]
On behalf of Plaintiff and the Class Against Defendant

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

27 59. The actionable period for this cause of action is three years prior to the filing of the
28 Complaint through the present, and on-going until the violations are corrected, or the Class is

1 certified.

2 60. Labor Code § 510 provides that any work in excess of eight hours on any day, as well
3 as all hours worked on the seventh consecutive day a workweek, shall be compensated at the rate of
4 no less than 1.5 times the regular rate of pay. Further, Labor Code § 510 obligates employers to
5 compensate employees at no less than twice the regular rate of pay when an employee works more
6 than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.
7 In accordance with Labor Code § 1194, Plaintiff and the Class could not then agree and cannot now
8 agree to work for a lesser wage than the amount proscribed by Labor Code §§ 510 and 1194.

9 61. Plaintiff and the Class were not paid for all hours worked while employed by
10 Defendant and thus were not paid all overtime wages owed. Here, Plaintiff and the Class were not
11 compensated for time spent undergoing COVID-19 temperature checks pre-shift. This additional
12 time spent subject to Defendant's control pushed many Class Member's shifts over eight hours and
13 over forty hours per week. Accordingly, all time over eight hours per shift should have been paid at
14 the applicable overtime rate. As a result, Plaintiff and the Class were denied compensation for all
15 overtime hours worked, in violation of Cal. Labor Code § 510, 1194, and 1198.

16 **THIRD CAUSE OF ACTION**
17 **FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS**
18 **[Cal. Labor Code § 226(a) and (e)]**
On behalf of Plaintiff and the Class Against Defendant

19 62. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
20 in the preceding paragraphs.

21 63. The actionable period for this cause of action is one year prior to the filing of the
22 Complaint through the present, and on-going until the violations are corrected, or the Class is
23 certified.

24 64. Section 226(a) of the California Labor Code obligates employers, semi-monthly or
25 at the time of each payment to furnish an itemized wage statement in writing showing:

26 (1) gross wages earned, (2) total hours worked by the employee, except for any
27 employee whose compensation is solely based on a salary and who is exempt
28 from payment of overtime under subdivision (a) of Section 515 or any
applicable order of the Industrial Welfare Commission, (3) the number of piece-
rate units earned and any applicable piece rate if the employee is paid on a

1 piece-rate basis, (4) all deductions, provided that all deductions made on written
2 orders of the employee may be aggregated and shown as one item, (5) net wages
3 earned, (6) the inclusive dates of the period for which the employee is paid, (7)
4 the name of the employee and only the last four digits of his or her social
5 security number or an employee identification number other than a social
6 security number, (8) the name and address of the legal entity that is the
7 employer and (9) all applicable hourly rates in effect during the pay period and
8 the corresponding number of hours worked at each hourly rate by the employee
9

10 65. As to Plaintiff and the Class, by virtue of Defendant's non-inclusion of all time spent
11 on pre-shift COVID-19 temperature checks, as well as Defendant's failure to pay meal and rest
12 period premiums, Defendant failed to provide accurate itemized wage statements in accordance with
13 Labor Code § 226(a), (1), (2), (5), and (9). Further, Defendant's failure to pay wages for time
14 associated with pre-shift COVID-19 temperature checks resulted in a violation of section 226(a)(9)
15 because the total hours worked at each hourly rate is inherently wrong.

16 66. Labor Code section 226, subdivision (e)(1) provides that,

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

23 Plaintiff and Class Members suffered legal "injury" for purposes of Labor Code Section 226(e)
24 because Defendant failed to provide accurate and complete information for several of the categories
25 required by Section 226(a).

26 67. Labor Code section 226, subdivision (e)(2)(B) provides that,

27 An employee is deemed to suffer injury for purposes of this subdivision if the
28 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).

Plaintiff and Class Members were unable to determine the actual and accurate hours worked, the

1 gross wages earned, the net wages earned, and other amounts required to be disclosed in their wage
2 statements.

3 68. Defendant's violation of Labor Code § 226 was knowing and intentional. *See Garnett*
4 *v. ADT LLC*, 139 F.Supp. 3d 1121, 1134 (E.D. Cal. 2015) (finding that the defendant knowingly and
5 intentionally violated Labor Code § 226 because the "[d]efendant knew that it was not providing
6 total hours worked to plaintiff or other employees paid on commission" even though it believed that
7 employees paid solely on commission or commission and salary "are exempt and therefore we do
8 not record hours on a wage statement").

9 69. As a result of Defendant's failure to issue compliant wage statements to Plaintiff and
10 Class Members in violation of Section 226(a) of the California Labor Code, Plaintiff and Class
11 Members are each entitled to recover an initial penalty of \$50, and subsequent penalties of \$100, up
12 to an amount not exceeding an aggregate penalty of \$4,000 per each Plaintiff and per every member
13 of the Wage Statement Subclass from Defendant pursuant to Section 226(e) of the Labor Code, costs
14 and reasonable attorneys' fees.

15 **FOURTH CAUSE OF ACTION**
16 **FAILURE TO PROVIDE COMPLIANT MEAL PERIODS**
17 **AND/OR PAY MISSED MEAL PERIOD PREMIUMS**
18 **[Cal. Labor Code § 226.7, 512; IWC Wage Order 5-2001, § 11]**
19 **On behalf of Plaintiff and the Class Against Defendant**

20 70. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
21 in the preceding paragraphs.

22 71. The actionable period for this cause of action is three years prior to the filing of the
23 Complaint through the present, and on-going until the violations are corrected, or the Class is
24 certified.

25 72. California Labor Code § 512, and Section 11 of the Wage Order 5-2001 require
26 employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal period
27 within the first five hours of work. Moreover, an employee who works more than ten (10) hours per
28 day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. *Brinker*
Rest. Corp. v. Superior Court, (2012) 53 Cal. 4th 1004, 1042 ("Accordingly, first meal periods must

1 start after no more than five hours.”); See also *Munoz v. Guimarra Vineyards Corp.*, 2015WL
2 5350563 at *3 (E.D. Cal. Sept. 11, 2015) (holding that meal periods must be taken within the first
3 five hours of work).

4 73. IWC Wage Order 5-2001, Section 11, further obligates employers to provide an
5 employee to “pay the employee one (1) hour of pay at the employee’s regular rate of compensation
6 for each workday that the meal period is not provided.” Labor Code § 226.7 provides “an employer
7 shall not require an employee to work during meal or rest or recovery periods mandated pursuant to
8 an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
9 Commission (“IWC”). IWC Wage Order 5-2001 prohibits an employer from “employ[ing] and
10 person for a work period of more than five (5) hours without a meal period of not less than 30
11 minutes.” Accordingly, for each day that Plaintiff and the Class did not receive complaint meal
12 periods, they are entitled to receive meal period premiums pursuant to Labor Code § 226.7 and Wage
13 Order 5-2001.

14 74. Here, Defendant did not provide meal periods in compliance with Labor Code
15 sections 512, 226.7, and Wage Order 5-2001. As a result of Defendant’s failure to provide code
16 compliant meal periods, Plaintiff is informed and believes, and based thereon alleges that Defendant
17 violated Labor Code section 512, entitling Plaintiff and other Class Members to premium payments
18 under Labor Code section 226.7. Accordingly, for each day that Plaintiff and the other Class
19 Members did not receive compliant meal periods, they are entitled to receive meal period premiums
20 equal to one (1) hour of wages pursuant to Labor Code § 226.7 and Wage Order 5-2001, in a sum to
21 be proven at trial.

22 **FIFTH CAUSE OF ACTION**
23 **FAILURE TO PROVIDE COMPLIANT REST PERIODS**
24 **AND/OR PAY MISSED REST PERIOD PREMIUMS**
25 **[Cal. Labor Code § 226.7; IWC Wage Order 5-2001, § 12]**
26 **On behalf of Plaintiff and the Class Against Defendant**

27 75. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
28 in the preceding paragraphs.

76. The actionable period for this cause of action is three years prior to the filing of the

1 Complaint through the present, and on-going until the violations are corrected, or the Class is
2 certified.

3 77. Plaintiff is informed and believes, and based thereon alleges that Defendant maintain
4 a policy or practice of failing to provide Plaintiff and Class Members timely paid rest periods of at
5 least ten (10) minutes per four (4) hours worked or major fraction thereof and failing to provide
6 compensation for such unprovided rest periods.

7 78. Section 12 of the applicable IWC Wage Order requires California employers to
8 provide a 10- minute duty-free and uninterrupted rest break to employees for each 4 hours of work,
9 or major fraction thereof. Insofar as practicable, the rest period shall be in the middle of each work
10 period. *See*, IWC Wage Order 5-2001, § 12. Labor Code Section 226.7 imposes a premium payment
11 of one hour of pay at the employee’s regular rate of pay for each workday where a compliant rest
12 break is not provided to an employee on a timely basis.

13 79. Under Labor Code § 226.7, if an employer maintains a uniform policy that does not
14 authorize and permit the amount of rest time or the proper timing for rest breaks called for under the
15 law (as specified in the applicable Wage Order), “it has violated the wage order and is liable.” The
16 *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting
17 an unlawful policy:

18 An employer is required to authorize and permit the amount of rest break time called
19 for under the wage order for its industry. If it does not—if, for example, it adopts a
20 uniform policy authorizing and permitting only one rest break for employees working
a seven-hour shift when two are required—***it has violated the wage order and is liable.***
(*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

21 80. Here, Plaintiff and the Class were not authorized or permitted to take rest breaks and
22 did not take their rest breaks during their shifts. Plaintiff and the Class were thus not able to receive
23 their first, second, and/or third rest breaks (for shifts that were longer than 8 hours and 12 hours
24 respectively, or major fractions thereof). As a result of Defendant’s failure to provide code compliant
25 rest breaks, Plaintiff is informed and believe, and based thereon allege that she and the Class are
26 entitled to relief under, without limitation, Labor Code section 226.7.

27 ///

28 ///

SIXTH CAUSE OF ACTION
FAILURE TO REIMBURSE BUSINESS EXPENSES
[Cal. Labor Code § 2802(a) and (c)]
On Behalf of Plaintiff and the Class Against Defendant

81. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraph.

82. The actionable period for this cause of action is three years prior to the filing of the Complaint through the present, and on-going until the violations are corrected, or the Class is certified.

83. Pursuant to Labor Code § 2802(a) “[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, or of his or her obedience to the directions of the employer....” The purpose of this statute is “to prevent employers from passing their operating expenses on to their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562 (2007) (quoting legislative history from the 2000 amendment to the statute). Labor Code Section 2802(c) also clarifies that “the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

84. The employer’s obligation to reimburse business-related expenses arises when the employer “knew or should have known” that its employees have incurred a business-related expense. *Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901, 903 (N.D. Cal. 2009) (Hon. Edward Chen); *Wilson v. Kiewit Pacific Co.*, 2010 WL 5059522 (N.D. Cal. Dec. 6, 2010) (Hon. Susan Illston) (adopting the “knew or should have known” standard from *RadioShack*). Notably, these claims are not waivable per Section 2804 of the Labor Code.

85. Plaintiff is informed and believes and based thereon alleges that Defendant failed, and continues to fail, to reimburse employees, including, without limitation, Plaintiff and other Class Members, for their business expenses incurred in furtherance of their work duties, as required by Labor Code 2802. These business expenses include, but are not limited to, personal protective equipment and monthly personal cell phone expenses, both used in the furtherance of their job duties on Defendant’s behalf. Defendant knew, or had reason to know, that Plaintiff and the Class were

1 incurring these expenses on their behalf.

2 86. Accordingly, Defendant violated Labor Code § 2802 and continue to do so by failing
3 to reimburse Plaintiff and all other Class Members for all work-related charges they incurred in
4 connection with their job duties. By failing to reimburse Plaintiff and the Class for their personal
5 expenses incurred for work-related purposes, Defendant violated Labor Code § 2802.

6 **SEVENTH CAUSE OF ACTION**
7 **FAILURE TO PAY WAGES ON A TIMELY BASIS**
8 **[Cal. Labor Code §§ 204, 210]**
9 **On behalf of Plaintiff and the Class Against Defendant**

10 87. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
11 in the preceding paragraphs.

12 88. The actionable period for this cause of action is three years prior to the filing of the
13 Complaint through the present, and on-going until the violations are corrected, or the Class is
14 certified.

15 89. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any
16 employment are due and payable twice during each calendar month, on days designated in advance
17 by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these requirements are
18 deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages
19 are paid not more than seven calendar days after the end of the pay period.

20 90. Due to Defendant’s failure to pay Plaintiff and Class Members all wages due and
21 owing, Defendant violated Labor Code § 204 by failing to pay all wages due to Plaintiff and the
22 Class Members within seven (7) days of the close of the payroll period on a regular and consistent
23 basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at
24 *3-5 (N.D. Cal. May 2, 2016) (finding that a failure to pay rest period premiums can support claims
25 under Labor Code §§ 203 and 204).

26 91. Labor Code § 210 provides that “in addition to, an entirely independent and apart
27 from, any other penalty provided in this article, every person who fails to pay the wages of each
28 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any
initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each

1 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
2 failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty
3 compensation policies and practices described in detail above, Plaintiff and the Class are entitled to
4 recover penalties under Labor Code § 210. See also AB 673 (amending Section 210 to provide for
5 the existence of a private right of action to recover Section 210 penalties).

6 92. As described in detail above, Defendant failed to pay Plaintiff and Class Members all
7 compensation owed, including but not limited to all wages, as well as meal and rest period premiums
8 owed, within the time constraints proscribed in Labor Code section 204 as a result of its faulty
9 policies and practices. As a result, Plaintiff and Class Members were not paid in a timely manner
10 during employment for each and every hour worked at the appropriate rate in violation of Labor
11 Code sections 204 and 210. As a result of Defendant’s failure to pay wages timely, Plaintiff is
12 informed and believes, and based thereon allege that they and other Class Members entitled to relief
13 under, without limitation, Labor Code section 210 in connection with Defendant’s failure to pay.

14 **EIGHTH CAUSE OF ACTION**
15 **FAILURE TO PAY FINAL WAGES**
16 **[Cal. Labor Code §§201-203]**

17 **On behalf of Plaintiff and the Class Against Defendant**

18 93. Plaintiff re-alleges and incorporates by reference each and every allegation set
19 forth in the preceding paragraphs.

20 94. The actionable period for this cause of action is three years prior to the filing of the
21 Complaint through the present, and on-going until the violations are corrected, or the Class is
22 certified.

23 95. Plaintiff is informed and believes, and based thereon alleges that Defendant failed,
24 and continue to fail, to timely pay compensation to terminated or resigned Class Members, including
25 but not limited to, all wages owed as a result of Defendant’s practice or policy of failing to pay,
26 among other wages, minimum wages, overtime wages, and premium wages.

27 96. Under Labor Code §§ 201-202, an employer must provide an employee wages at the
28 time of discharge or within up to seventy-two (72) hours of their resignation. Labor Code § 203

1 provides “if an employer willfully fails to pay ... any wages of an employee who is discharged or
2 who quits, the wages of the employee shall continue as a penalty...” for up to 30 days. Lab. Code §
3 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

4 97. As described in detail above, Defendant failed to pay Class Members whose
5 employment with Defendant has now ended, all wages owed, including but not limited to minimum
6 wages, overtime wages, and meal and rest period premiums owed, within the time constraints
7 proscribed in Labor Code §§ 201-202. Thus, as a result of Defendant’s faulty policies described
8 above, Class Members, who had separated from Defendant, did not receive their final wages for
9 each and every hour worked at the appropriate rate in violation of Labor Code §§ 201, 202, 203, and
10 210 thus triggering 30 days of wage claims for each former employee.
11

12
13 **NINTH CAUSE OF ACTION**
14 **FAILURE TO MAINTAIN ACCURATE TIME RECORDS**
15 **[Cal. Labor Code §§ 1174 1174.5]**
16 **On behalf of Plaintiff and the Class Against Defendant**

17 98. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
18 in the preceding paragraphs.

19 99. The actionable period for this cause of action is three years prior to the filing of the
20 Complaint through the present, and on-going until the violations are corrected, or the Class is
21 certified.

22 100. Labor Code § 1174 requires employers to keep at a central location in the state or at
23 the plants or establishments at which employees are employed, payroll records showing the hours
24 worked daily by and the wages paid to employee employed at the respective plants or establishments.

25 101. Due to Defendant’s failure to pay all minimum wages due to Plaintiff and all Class
26 Members for time associated with pre-shift COVID-19 temperature checks, as well as meal and rest
27 period premiums, Defendant failed to keep accurate payroll and time records showing the hours
28 worked daily by and the wages paid to employees in accordance with Labor Code § 1174.

///

TENTH CAUSE OF ACTION
UNFAIR COMPETITION LAW VIOLATIONS
(BUS. & PROF. CODE § 17200, ET SEQ.)
On behalf of Plaintiff and the Class Against Defendant

102. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

103. Section 17200 of the California Business & Professions Code prohibits any unlawful, unfair, or fraudulent business practices. Business & Professions Code § 17204 allows “any person who has suffered injury in fact and has lost money or property” to prosecute a civil action for violation of the UCL. Such a person may bring such an action on behalf of himself, and others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

104. Under Section 17208 of the California Business and Professions Code, the statute of limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for this cause of action is four years prior to the filing of this Complaint through the present, and on-going until the violations are corrected, or the Class is certified.

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

106. As a direct and proximate result of Defendant’s unlawful business practices, Plaintiff and the Class Members have suffered economic injuries. Defendant has profited from its unlawful, unfair, and/or fraudulent acts and practices.

107. Plaintiff and similarly situated Class Members are entitled to monetary relief pursuant to Business & Professions Code §§ 17203 and 17208 for all unpaid minimum wages, unpaid overtime wages, unpaid meal and rest premiums, Defendant’s failure to provide accurate itemized wage statements, Defendant’s failure to pay final wages timely, Defendant’s failure to pay timely wages during employment, Defendant’s failure to reimburse business expenses, and interest thereon from at least four years prior to the filing of this Complaint through to the date of such restitution,

1 at rates specified by law. Defendant should be required to disgorge all the profits and gains it has
2 reaped and restore such profits and gains to Plaintiff and Class Members, from whom they were
3 unlawfully taken.

4 108. Through the actions alleged herein, Defendant has engaged in unfair competition
5 within the meaning of Section 17200 of the California Business & Professions Code, because
6 Defendant's conduct, as herein alleged has damaged Plaintiff and the Class Members by wrongfully
7 denying them wage and hour rights under the California Labor Code, and therefore was substantially
8 injurious to Plaintiff and the Class Members.

9 109. Defendant engaged in unfair competition in violation of Sections 17200 et seq. of the
10 California Business & Professions Code by violating Section 1194 of the California Labor Code.

11 110. Defendant's course of conduct, act and practice in violation of the California laws
12 mentioned above constitute independent violations of Sections 17200 et seq. of the California
13 Business and Professions Code.

14 111. Plaintiff and similarly situated Class Members are entitled to enforce all applicable
15 penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

16 112. Plaintiff has assumed the responsibility of enforcement of the laws and public policies
17 specified herein by suing on behalf of herself and other similarly situated Class Members previously
18 or presently employed by Defendant in California. Plaintiff's success in this action will enforce
19 important rights affecting the public interest. Plaintiff will incur a financial burden in pursuing this
20 action in the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is
21 appropriate pursuant to Code of Civil Procedure § 1021.5.

22 **ELEVENTH CAUSE OF ACTION**
23 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT**
24 **PENALTIES FOR LABOR CODE VIOLATIONS**
25 **(Labor Code §§ 2698-2699.5)**

26 **On behalf of Plaintiff, the LWDA and the Aggrieved Employees Against Defendant**

27 113. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
28 in the preceding paragraphs.

114. Plaintiff and the "Aggrieved Employees" under PAGA, i.e., those employees who,

1 during the PAGA Period, suffered the Labor Code violations alleged herein; specifically, violations
2 of §§ 201, 202, 203, 204, 210, 226, 226.7 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, and
3 2802 of the Labor Code bring claims under PAGA. Plaintiff was employed by Defendant during the
4 one year preceding the submission of the PAGA letter to the LWDA on or around July 7, 2022. As
5 such, Plaintiff seeks to recover, on behalf of herself and all other current and former aggrieved
6 employees of Defendant, the civil penalties provided by PAGA.

7 115. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and
8 all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial
9 subject to the following formula:

- 10 • \$100 for the initial violation per employee per pay period; and
- 11 • \$200 for each subsequent violation per employee per pay period.

12 These penalties will be allocated 75% to the Labor Workforce Development Agency and 25% to the
13 affected Aggrieved Employees.

14 116. The Aggrieved Employees are all individuals who worked for Defendant as hourly-
15 paid employees in California during the PAGA Period. These employees were subject to the
16 aforementioned Labor Code violations, during the period of time from one year prior to the
17 submission of Plaintiff's letter to the LDWA.

18 117. In addition, as set forth above, Defendant failed to provide Plaintiff and all Aggrieved
19 Employees with wage statements in compliance with Labor Code § 226(a). Further, Plaintiff, and
20 the Aggrieved Employees, need not demonstrate or prove that Defendant's conduct in refusing to
21 provide itemized wage statements was knowing, intentional, or willful. *See Lopez v. Friant &*
22 *Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017); *see also Willner v. Manpower Inc.* 35 F. Supp. 3d
23 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, "all [plaintiffs] need to establish
24 is a violation of section 226(a), which they have done, as discussed above."); *McKenzie v. Fed.*
25 *Express Corp.*, 765 F.Supp.2d 1222, 1231-1232 (C.D. Cal. 2011) (holding that "for the purposes of
26 recovering PAGA penalties, one need only prove a violation of Section 226(a), and need not
27 establish a Section 226(e) injury."); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at
28 *28 (C.D. Cal. July 3, 2013) ("Plaintiffs do not need to establish a Cal. Lab. Code § 226(e) injury to

1 recover penalties under § 2699(f) of PAGA.”).

2 118. Plaintiff seeks to recover the PAGA civil penalties through a representative action as
3 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*. 46 Cal.4th 969
4 (2009). Therefore, class certification hereby of the PAGA claims is not required. *Id.*

5 119. Pursuant to Labor Code § 2699.3(a), on July 7, 2022, Plaintiff gave written notice by
6 certified mail to Defendant and to the LWDA of her claims, including the facts and theories
7 supporting all claims outlined in this Complaint. Accordingly, Plaintiff has fulfilled all
8 administrative prerequisites to the pursuit of their PAGA claims on behalf of herself and all other
9 current and former aggrieved employees of Defendant.

10 **JURY DEMAND**

11 120. Plaintiff hereby demands trial by jury of her and the Class Members’ claims against
12 Defendant, except for the PAGA and UCL claims which will be tried to the Court.

13 **PRAYER FOR RELIEF**

14 Wherefore, Plaintiff, on behalf of herself and the members of the Class, and the LWDA and
15 the Aggrieved Employees, prays for judgment against Defendant as follows:

16 1. An Order than this action may proceed and be maintained as a class action;

17 2. On the First Cause of Action:

18 a. A declaratory judgment that Defendant has violated California Labor Code
19 §§ 1194 and 1197 in failing to pay Plaintiff, the Class and the Aggrieved Employees all minimum
20 wages due;

21 b. An award to Plaintiff and the other members of the Class in the amount of
22 their unpaid minimum wages owed, plus interest and/or liquidated damages under 1194.2 during the
23 Class Period, as well as attorneys’ fees under Labor Code Section 1194;

24 3. On the Second Cause of Action:

25 a. A declaratory judgment that Defendant has violated California Labor Code §
26 510;

27 b. An award to Plaintiff and the other members of the Class in the amount of
28 their unpaid overtime compensation for work performed, plus interest and/or liquidated damages

1 during the Class Period;

2 4. On the Third Cause of Action:

3 a. A declaratory judgment that Defendant violated California Labor Code § 226
4 by failing to issue compliant wage statements to Plaintiff, the Aggrieved Employees and the Wage
5 Statement Subclass members;

6 b. An award to Plaintiff and Wage Statement Subclass Members of \$50 for each
7 initial pay period in which a violation of Section 226 occurred and \$100 for each subsequent pay
8 period in which a violation of Section 226 occurred, not to exceed \$4,000 for each member of the
9 Class, as well as an award of costs and reasonable attorney's fees, pursuant to Labor Code § 226(e).

10 5. On the Fourth Cause of Action:

11 a. A declaratory judgment that Defendant has violated California Labor Code §
12 226.7, and Section 11 of the IWC Wage Order 5-2001;;

13 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the Class
14 Members for an hour of pay for each day that a timely, duty-free meal period was not provided
15 during the Class Period;

16 6. On the Fifth Cause of Action:

17 a. A declaratory judgment that Defendant has violated California Labor Code §
18 226.7, and Section 12 of the IWC Wage Order 5-2001;

19 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the Class
20 Members for an hour of pay for each day that a timely, duty-free rest period was not provided during
21 the Class Period;

22 7. On the Sixth Cause of Action:

23 a. A declaratory judgement that Defendant violated Labor Code § 2802 as to
24 Plaintiff, the Class and the Aggrieved Employees;

25 b. Pursuant to Labor Code § 2802 (a)-(c), reimbursement for all at the
26 unreimbursed business expenses incurred by Plaintiff and the Class, plus interest and attorney's fees.

27 8. On the Seventh Cause of Action:

28 a. A declaratory judgment that Defendant violated California Labor Code § 204;

1 b. Pursuant to Labor Code § 204, an award to Plaintiff and the Late Wage
2 Subclass for penalties.

3 9. On the Eighth Cause of Action:

4 a. A declaratory judgment that Defendant has violated California Labor Code
5 §203 in failing to pay the Class all final wages due;

6 b. An award to Plaintiff and the other members of the Class whose employment
7 with Defendant ended in the amount 30 days wages under Labor Code section 203;

8 10. On the Ninth Cause of Action:

9 a. A declaratory judgment that Defendant has violated California Labor Code
10 §§ 1174 and 1174.5 in failing to maintain accurate time records;

11 11. On the Tenth Cause of Action:

12 a. That the Court find and declare that Defendant has violated the UCL and
13 committed unfair and unlawful business practices by failing to pay minimum wages owed to Plaintiff
14 and the Class;

15 b. Restitution, including, but not limited to, the relief permitted by sections 1194
16 of the California Labor Code.

17 12. On the Eleventh Cause of Action:

18 a. A civil penalty against Defendant in the amount of \$100 for the initial
19 violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the California
20 Labor Code for Plaintiff and the Aggrieved Employees during all of the pay periods in the one year
21 preceding the submission of Plaintiff's LWDA letter through the present and on-going until the
22 violations are corrected, or this subclass is certified;

23 b. An award of reasonable attorney's fees against Defendant as specified in
24 Labor Code § 2699(g)(1), for all the work performed by Plaintiff's counsel in connection with the
25 PAGA claims;

26 c. An award of all costs incurred by the undersigned counsel for Plaintiff in
27 connection with Plaintiff's and Aggrieved Employees' PAGA claim against Defendant, as provided
28 for in Labor Code § 2699(g)(1); and

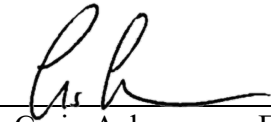
1 13. All other relief as this Court deems proper.
2

3 Dated: July 29, 2022

Respectfully submitted,

4 ACKERMANN & TILAJEF, P.C.
5 WINSTON LAW GROUP, P.C.

6
7 By:



Craig Ackermann, Esq.

8 David Winston, Esq.

9 *Attorneys for Plaintiff, the Putative Class, the*
10 *LWDA, and the Aggrieved Employees*
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