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Case #25CV469130
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Attorneys for Plaintiff and the Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

JANAE WITHERSPOON, an individual, on
behalf of herself and the State of California, as a
private attorney general,

Plaintiff,

v.

AHMADI HOMES, INC., a California
Corporation; and DOES 1 TO 50,

Defendants.

Case Number: 25CV469130

Representative Action Complaint For:

1. Failure to Pay All Minimum Wages,
2. Failure to Pay All Overtime Wages,
3. Failure to Provide Rest Periods and Pay Missed Rest Period Premiums,
4. Failure to Provide Meal Periods and Pay Missed Meal Period Premiums,
5. Failure to Maintain Accurate Employment Records,
6. Failure to Pay Wages Timely during Employment,
7. Failure to Pay All Wages Earned and Unpaid at Separation,
8. Failure to Indemnify All Necessary Business Expenditures,
9. Failure to Furnish Accurate Itemized Wage Statements,
10. Failure to Pay Sick Leave,

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- 11.** Violations of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210), and
- 12.** Penalties Pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”) for Violations of California Labor Code Sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and Other Provisions of the Labor Code.

1 Plaintiff Janae Witherspoon (“Plaintiff”), on behalf of herself and the State of California, as a
2 private attorney general, complains and alleges of defendants Ahmadi Homes, Inc. and Does 1 to 50
3 (collectively, “Defendants”), and each of them, as follows:

4 **I. INTRODUCTION**

5 1. This action is a representative action brought pursuant to the California Labor Code
6 Private Attorneys General Act of 2004 (“PAGA”), codified at California Labor Code sections 2698
7 through 2699.6.

8 2. The “PAGA Period” as used herein, is defined as the period from April 21, 2024, and
9 continuing into the present and ongoing.

10 3. This PAGA action is brought on behalf of Plaintiff, the State of California as private
11 attorney general, and on behalf of the following aggrieved employees: *All individuals who are or were*
12 *employed by Defendants as non-exempt employees in California during the PAGA Period* (the
13 “Aggrieved Employees”).

14 4. Plaintiff is informed and believes and thereon alleges that the California Industrial
15 Welfare Commission (“IWC”) Wage Order applicable to the facts of this case is IWC Wage Order 4-
16 2001 (the “Applicable Wage Order”) and possibly others that may be applicable. (Cal. Code of Regs.,
17 tit. 8, § 11040.) Plaintiff reserves the right to amend or modify the definition of “Applicable Wage
18 Order” with greater specificity or add additional IWC Wage Orders if additional applicable wage orders
19 are discovered in litigation.

20 **II. JURISDICTION & VENUE**

21 5. This Court has subject matter jurisdiction over all causes of action asserted herein
22 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure section
23 410.10 because this is a civil action in which the matter in controversy, exclusive of interest, exceeds
24 \$25,000, and because each cause of action asserted arises under the laws of the State of California or
25 is subject to adjudication in the courts of the State of California.

26 6. This Court has personal jurisdiction over Defendants because Defendants have caused
27 injuries in the County of Santa Clara and the State of California through their acts, and by their violation
28 of the California Labor Code and California state common law. Defendants transact millions of dollars

1 of business within the State of California. Defendants own, maintain offices, transact business, have an
2 agent or agents within the County of Santa Clara, and/or otherwise are found within the County of
3 Santa Clara, and Defendants are within the jurisdiction of this Court for purposes of service of process.

4 7. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of the
5 Code of Civil Procedure. Defendants operate within California and do business within Santa Clara
6 County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all of
7 Defendants' employees identified above within Santa Clara County and surrounding counties where
8 Defendants may remotely operate.

9 **III. THE PARTIES**

10 **A. PLAINTIFF**

11 8. At all relevant times, Plaintiff, who is over the age of 18, was and currently is a citizen
12 of California residing in the State of California. Defendants employed Plaintiff as a non-exempt hourly
13 employee in the County of Santa Clara.

14 9. Plaintiff brings this action on behalf of herself and the State of California, as a private
15 attorney general, and on behalf of the following group of aggrieved employees: *All individuals who*
16 *are or were employed by Defendants as non-exempt employees in California during the PAGA Period*
17 *(the "Aggrieved Employees").*

18 10. The Aggrieved Employees, at all times pertinent hereto, are or were employees of
19 Defendants during the relevant statutory period.

20 **B. DEFENDANTS**

21 11. Plaintiff is informed and believes and thereon alleges that Defendants were authorized
22 to and doing business in Santa Clara County and is and/or was the legal employer of Plaintiff and the
23 other Aggrieved Employees during the applicable statutory periods. Plaintiff and the other Aggrieved
24 Employees were, and are, subject to Defendants' policies and/or practices complained of herein and
25 have been deprived of the rights guaranteed to them by: California Labor Code sections 201, 202, 203,
26 204, 210, 226, 226.3, 226.7, 246, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5,
27 1199, 2802, 2804, and others that may be applicable; California Business and Professions Code
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1 sections 17200 through 17210 (“UCL”); and the Applicable Wage Order (Cal. Code of Regs., tit. 8, §
2 11040).

3 12. Plaintiff is informed and believes, and based thereon alleges, that during the PAGA
4 Period, Defendants did (and continue to do) business in the State of California, County of Santa Clara.

5 13. Plaintiff does not know the true names or capacities, whether individual, partner, or
6 corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said defendants
7 are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this
8 complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and
9 thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were
10 responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff
11 and the other Aggrieved Employees to be subject to the unlawful employment practices, wrongs,
12 injuries, and damages complained of herein.

13 14. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
14 herein, Defendants were and/or are the employers of Plaintiff and the other Aggrieved Employees. At
15 all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
16 alleged to have been done by the named Defendants. Furthermore, the Defendants, and each of them,
17 were the agents, representatives, and employees of each and every one of the other Defendants, and at
18 all times herein mentioned were acting within the course and scope of said agency, representation, and
19 employment. Defendants, and each of them, approved of, condoned, or otherwise ratified every one of
20 the acts or omissions complained of herein.

21 15. Plaintiff is further informed, and believes, and thereon alleges, that at all times
22 mentioned herein, that Defendants, and each of them, are the alter egos of one another and that there
23 existed and now exists a unity of interest and ownership between them such that the individuality and
24 separateness of each of them has ceased. Plaintiff is further informed, and believes, and thereon alleges,
25 that at all times mentioned herein, that Defendants, and each of them, have been and now are mere
26 shells and naked frameworks that their principal uses for the conduct of that Defendant’s own business,
27 property, and affairs, for which Defendants, and each of them, have concealed and misrepresented their
28 identities as the entities responsible for their ownership, management, and financial interests.

1 16. Plaintiff is further informed, and believes, and thereon alleges, that at all times
2 mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture,
3 partnership, and common enterprise, and acting within the course and scope of and in pursuance of said
4 joint venture, partnership, and common enterprise. Further, Plaintiff is informed, and believes, and
5 thereon alleges, that all Defendants were joint employers for all purposes of Plaintiff and the other
6 Aggrieved Employees.

7 **IV. COMMON FACTS & ALLEGATIONS**

8 17. Plaintiff and the other Aggrieved Employees (collectively, the “Aggrieved Employees”)
9 are, and were at all relevant times, employed by the Defendants within the State of California.

10 18. The Aggrieved Employees are, and were, at all relevant times, non-exempt employees
11 for the purposes of minimum wages, overtime, rest breaks, meal periods, and the other claims alleged
12 in this complaint.

13 19. Specifically, Plaintiff was employed by Defendants within the statutory PAGA Period,
14 working as an hourly, non-exempt designer for Defendants. Plaintiff’s duties included staging
15 properties, assisting with construction projects, acquiring materials such as furnishings, decor, tile and
16 light fixtures..

17 **A. MINIMUM WAGE VIOLATIONS**

18 20. Labor Code section 1197 requires employees to be paid at least the minimum wage fixed
19 by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code
20 section 1194 entitles “any employee receiving less than the legal minimum wage . . . to recover in a
21 civil action the unpaid balance of the full amount of this minimum wage.” Likewise, the Applicable
22 Wage Order also obligates employers to pay each employee minimum wages for all hours worked.
23 (Cal. Code of Regs., tit. 8, § 11040.) Labor Code section 1198 makes unlawful the employment of an
24 employee under conditions that the IWC Wage Orders prohibit.

25 21. These minimum wage standards apply to each hour that employees work. Therefore, an
26 employer’s failure to pay for any particular time worked by an employee is unlawful, even if averaging
27 an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above
28 minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)

1 22. Here, Defendants failed to fully conform their pay practices to the requirements of the
2 law during the relevant statutory periods. The Aggrieved Employees were not compensated for all
3 hours worked including, but not limited to, all hours they were subject to the control of Defendants
4 and/or suffered or permitted to work under the California Labor Code and the Applicable Wage Order.
5 Among other violations, the Aggrieved Employees were subject to the control of Defendants while off-
6 the-clock and did not receive minimum wage for each hour worked.

7 23. Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide that an
8 employer who has failed to pay its employees the legal minimum wage is liable to pay those employees
9 the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages
10 due and interest thereon.

11 24. When employees, such as Plaintiff, are not paid for all hours worked under Labor Code
12 section 1194, they are entitled to recover minimum wages for the time which they received no
13 compensation. (See *Sillah v. Command International Security Services* (N.D. Cal. 2015) 154 F.Supp.3d
14 891 [employees suing for failure to pay overtime could recover liquidated damages under Labor Code
15 section 1194.2 if they also showed they were paid less than minimum wage].)

16 25. Labor Code section 1197.1 authorizes employees who are paid less than the minimum
17 wage fixed by an applicable state or local law, or by an order of the IWC, a civil penalty, among other
18 damages, as follows:

19 (1) “For any initial violation that is intentionally committed, one hundred
20 dollars (\$100) for each underpaid employee for each pay period for
21 which the employee is underpaid.”

22 (2) “For each subsequent violation for the same specific offense, two
23 hundred fifty dollars (\$250) for each underpaid employee for each pay
24 period for which the employee is underpaid regardless of whether the
25 initial violation is intentionally committed.” (Lab. Code, § 1197.1, subd.
26 (a).)

1 26. As set forth above, Defendants failed to fully compensate the Aggrieved Employees for
2 all minimum wages. Accordingly, Plaintiff is entitled to recover liquidated damages for violations of
3 Labor Code section 1197.1.

4 27. Based upon these same factual allegations, Plaintiff is likewise entitled to penalties
5 under Labor Code sections 1199.

6 **B. OVERTIME VIOLATIONS**

7 28. Labor Code section 510 requires employers to compensate employees who work more
8 than eight hours in one workday, forty hours in a workweek, and for the first eight hours worked on
9 the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee.
10 (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates employers to compensate
11 employees at no less than twice the regular rate of pay when an employee works more than twelve
12 hours in a day or more than eight hours on the seventh consecutive day of work. (Lab. Code, § 510,
13 subd. (a).) These rules are also reflected in the Applicable Wage Order.

14 29. In accordance with Labor Code section 1194 and the Applicable Wage Order, the
15 Aggrieved Employees could not then agree and cannot now agree to work for a lesser wage than the
16 amount provided by Labor Code sections 510 or the Applicable Wage Order.

17 30. Here, Defendants violated their duty to accurately and completely compensate the
18 Aggrieved Employees for all overtime worked. The Aggrieved Employees periodically worked hours
19 that entitled them to overtime compensation under the law but were not fully compensated for those
20 hours.

21 31. These actions were and are in clear violation of California's overtime laws as set forth
22 in Labor Code sections 510, 1194, 1199, and the Applicable Wage Order. (Cal. Code of Regs., tit. 8, §
23 11040.) As a result of Defendants' faulty policies and practices, the Aggrieved Employees were not
24 compensated for all hours worked or paid accurate overtime compensation.

25 **C. REST BREAK VIOLATIONS**

26 32. Pursuant to Labor Code section 226.7 and the Applicable Wage Order, Defendants were
27 and are required to provide the Aggrieved Employees with compensated, duty-free rest periods of not
28 less than ten minutes for every major fraction of four hours worked. Under the Applicable Wage Order,

1 an employer must authorize and permit all employees to take ten minute duty free rest periods for every
2 major fraction of four hours worked. (Cal. Code of Regs., tit. 8, § 11040.)

3 33. Likewise, Labor Code section 226.7 provides that “[a]n employer shall not require an
4 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,
5 or applicable regulation, standard, or order of the Industrial Welfare Commission” (Lab. Code, §
6 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay their employees one
7 additional hour of pay at the employee’s regular rate for each workday that a “meal or rest or recovery
8 period is not provided.” (Lab. Code, § 226.7, subd. (c).) The “regular rate” for these purposes must
9 factor in all nondiscretionary payments for work performed by the employee, including non-
10 discretionary bonuses, commissions, and other forms of wage payments exceeding the employees’ base
11 hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878.) Thus, the Wage
12 Orders set when and for how long the rest period must take place and the Labor Code establishes that
13 violations of the IWC Wage Orders are unlawful and sets forth the premium pay employer must pay
14 their employees when employers fail to provide rest periods.

15 34. The California Supreme Court has held that, during required rest periods, “employers
16 must relieve their employees of all duties and relinquish any control over how employees spend their
17 break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.) Relinquishing
18 control over employees during rest periods requires that employees be “free to leave the employer’s
19 premises” and be “permitted to attend to personal business.” (*Id.* at p. 275.) The *Brinker* Court
20 explained in the context of rest breaks that employer liability attaches from adopting an unlawful
21 policy:

22 “An employer is required to authorize and permit the amount of rest break time
23 called for under the wage order for its industry. If it does not—if, for example,
24 it adopts a uniform policy authorizing and permitting only one rest break for
25 employees working a seven-hour shift when two are required—it has violated
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1 the wage order and is liable.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53
2 Cal.4th 1004, 1033.)

3 35. Here, Defendants periodically did not permit the Aggrieved Employees to take
4 compliant duty-free rest breaks, free from Defendants’ control as required by Labor Code section
5 226.7, the Applicable Wage Order, and applicable precedent. (See *Augustus v. ABM Security Services,*
6 *Inc.* (2016) 2 Cal.5th 257, 269 [concluding that “during rest periods employers must relieve employees
7 of all duties and relinquish control over how employees spend their time.”].) At all relevant times, the
8 Aggrieved Employees were periodically not provided with legally-compliant and timely rest periods
9 of at least ten minutes for each four hour work period, or major fraction thereof due to Defendants’
10 unlawful rest period policies/practices. The Aggrieved Employees were often expected and required to
11 continue working through rest periods to meet the expectations Defendants and finish the workday. In
12 some cases when the Aggrieved Employees worked more than ten hours in a shift, Defendants failed
13 to authorize and/or permit a third mandated rest period. As a result, the Aggrieved Employees were
14 periodically unable to take compliant rest periods.

15 36. In such cases where Defendants did not offer the Aggrieved Employees the opportunity
16 to receive a compliant off-duty rest period, “the court may not conclude employees voluntarily chose
17 to skip those breaks.” (*Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal.App.4th 388, 410
18 (2015) [“If an employer fails to provide legally compliant meal or rest breaks, the court may not
19 conclude employees voluntarily chose to skip those breaks.”]; *Brinker Rest. Corp. v. Superior Court,*
20 *supra*, 53 Cal.4th at p. 1033 [“No issue of waiver ever arises for a rest break that was required by law
21 but never authorized; if a break is not authorized, an employee has no opportunity to decline to take
22 it.”].)

23 37. In addition to failing to authorize and permit compliant rest periods, the Aggrieved
24 Employees were not compensated with one hour’s worth of pay at their regular rate of compensation
25 when they were not provided with a compliant rest period in accordance with Labor Code section
26 226.7, subdivision (c). Thus, Defendants have violated Labor Code section 226.7 and the Applicable
27 Wage Order.
28

1 38. Based on the foregoing, Plaintiff seeks to recover, on behalf of herself and other non-
2 exempt employees, rest period premiums and penalties.

3 **D. MEAL BREAK VIOLATIONS**

4 39. Labor Code section 512 and the Applicable Wage Order require employers to provide
5 employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of
6 work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for a work period of
7 more than five hours per day without providing the employee with a meal period of not less than 30
8 minutes”]; Cal. Code of Regs., tit. 8, § 11040 [“No employer shall employ any person for a work
9 period of more than five (5) hours without a meal period of not less than 30 minutes”].)
10 Additionally, an employee who works more than ten hours per day is entitled to receive a second thirty-
11 minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a) [“An employer shall not
12 employ an employee for a work period of more than 10 hours per day without providing the employee
13 with a second meal period of not less than 30 minutes”].)

14 40. “An on-duty meal period is permitted only when the nature of the work prevents an
15 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal
16 break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement must
17 include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the California
18 Department of Industrial Relations, Division of Labor Standards Enforcement (“DLSE”) and courts
19 have “found that the nature of the work exception applies: (1) where the work has some particular
20 external force that requires the employee to be on duty at all times, and (2) where the employee is the
21 sole employee of a particular employer.” (*Id.* at p. 945, internal quotation marks omitted; *Abdullah v.*
22 *U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is the employer’s obligation
23 to determine whether the nature of the work prevents an employee from being relieved before requiring
24 an employee to take an on-duty meal period.” (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at
25 p. 946.)

26 41. Here, the Aggrieved Employees were never asked to sign any enforceable document
27 agreeing to an on-duty meal period. Moreover, nothing in the nature of their work involved the kind of
28 “external force” that might justify on-duty meal breaks. (*Lubin v. The Wackenhut Corp.*, *supra*, 5

1 Cal.App.5th at p. 945.) Nevertheless, Defendants periodically did not provide compliant off-duty meal
2 periods within the first five hours of work for the Aggrieved Employees.

3 42. As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v.*
4 *Superior Court* (2012) 53 Cal.4th 1004, 1035 [“The IWC’s wage orders have long made a meal period’s
5 duty-free nature its defining characteristic.”].) Relinquishing control over employees during meal
6 periods requires that employees be “free to leave the employer’s premises” and be “permitted to attend
7 to personal business.” (*Augustus v. ABM Security Services, Inc., supra*, 2 Cal.5th at p. 275.) Under
8 Labor Code section 512, if an employer maintains a uniform policy that does not authorize and permit
9 the amount of meal time called for under the law (as specified in the Labor Code and/or applicable
10 IWC Wage Order), “it has violated the wage order and is liable.” (*Brinker Restaurant Corp. v. Superior*
11 *Court, supra*, 53 Cal.4th at p. 1033.)

12 43. During the applicable statutory periods here, the Aggrieved Employees were
13 periodically denied legally-compliant and timely off-duty meal periods of at least thirty minutes due to
14 Defendants’ unlawful meal period policy and practices. As a result of Defendants’ uniform meal period
15 policies and practices, the Aggrieved Employees were often not permitted to take compliant first meal
16 periods before the end of the fifth hour of work. The Aggrieved Employees were also periodically not
17 permitted to take second meal periods for shifts in excess of ten hours. Defendants thus violated Labor
18 Code section 512 and the Applicable Wage Order by failing to advise, authorize, or permit the
19 Aggrieved Employees to receive thirty-minute, off-duty meal periods within the first five hours of their
20 shifts.

21 44. Labor Code section 226.7 provides that “[a]n employer shall not require an employee
22 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
23 applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab. Code, § 226.7,
24 subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage Order further obligate
25 employers to pay employees one additional hour of pay at the employee’s regular rate of compensation
26 for each workday that the meal period is not provided. (Lab. Code, § 226.7, subd. (c); Cal. Code of
27 Regs., tit. 8, § 11040 [“If an employer fails to provide an employee a meal period in accordance with
28 the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the

1 employee’s regular rate of compensation for each workday that the meal period is not provided.”].)
2 The “regular rate” for these purposes must factor in all nondiscretionary payments for work performed
3 by the employee, including non-discretionary bonuses, commissions, and other forms of wage
4 payments exceeding the employees’ base hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021)
5 11 Cal.5th 858, 878.)

6 45. Accordingly, for each day that the Aggrieved Employees did not receive compliant meal
7 periods, they were and are entitled to receive meal period premiums pursuant to Labor Code section
8 226.7 and the Applicable Wage Order. Defendants, however, failed to pay the Aggrieved Employees
9 applicable meal period premiums for many workdays that the employees did not receive a compliant
10 meal period. Thus, Defendants have violated Labor Code section 226.7 and the Applicable Wage
11 Order.

12 46. Based on the foregoing, Plaintiff seeks to recover, on behalf of herself and other non-
13 exempt employees, meal period premiums and penalties.

14 **E. UNTIMELY WAGES DURING EMPLOYMENT**

15 47. Labor Code section 204 expressly requires employers who pay employees on a weekly,
16 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the
17 close of the payroll period.” Labor Code section 210, subdivision (a), makes employers who violate
18 Labor Code section 204 subject to a penalty of:

19 “(1) For any initial violation, one hundred dollars (\$100) for each failure to
20 pay each employee.

21 “(2) For each subsequent violation, or any willful or intentional violation, two
22 hundred dollars (\$200) for each failure to pay each employee, plus 25
23 percent of the amount unlawfully withheld.” (Lab. Code, § 210, subd.
24 (a).)

25 48. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and
26 entirely independent and apart from, any other penalty provided in this article” (Lab. Code, § 210,
27 subd. (a).)
28

1 49. Due to Defendants’ failure to pay the Aggrieved Employees the wages described above,
2 along with rest and meal break premiums, Defendants failed to timely pay the Aggrieved Employees
3 within seven calendar days following the close of payroll in accordance with Labor Code section 204
4 on a regular and consistent basis. (See *Parson v. Golden State FC, LLC* (N.D. Cal., May 2, 2016, No.
5 16-CV-00405-JST) 2016 WL 1734010, at p. *3–5, 2016 U.S. Dist. LEXIS 58299 [finding that a failure
6 to pay rest period premiums can support claims under Labor Code sections 203 and 204].)

7 **F. UNTIMELY WAGES AT SEPARATION**

8 50. Labor Code section 203 provides “if an employer willfully fails to pay . . . any wages
9 of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty”
10 for up to thirty days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) As a result
11 of Defendants’ failure to pay the Aggrieved Employees for the wages described above, along with rest
12 and meal break premiums, Defendants violated and continue to violate Labor Code section 203.

13 51. Due to Defendants’ faulty pay policies, those Aggrieved Employees whose employment
14 with Defendants concluded were not compensated for each and every hour worked at the appropriate
15 rate. Defendants have failed to pay formerly-employed Aggrieved Employees whose sums were certain
16 at the time of termination within at least seventy-two hours of their resignation and have failed to pay
17 those sums for thirty days thereafter.

18 **G. FAILURE TO REIMBURSE BUSINESS EXPENSES**

19 52. At all relevant times herein, Defendants were subject to Labor Code section 2802, which
20 states that “an employer shall indemnify his or her employees for all necessary expenditures or losses
21 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her
22 obedience to the directions of the employer.” The purpose of this section is to “prevent employers from
23 passing along their operating expenses onto their employees.” (*Gattuso v. Harte-Hanks Shoppers, Inc.*
24 (2007) 42 Cal.4th 554, 562.)

25 53. At all relevant times herein, Defendants were subject to Labor Code section 2804, which
26 states that “any contract or agreement, express or implied, made by any employee to waive the benefits
27 of this article or any part thereof, is null and void, and this article shall not deprive any employee or his
28 personal representative of any right or remedy to which he is entitled under the laws of this State.”

1 54. Thus, the Aggrieved Employees were and are entitled to reimbursement for the expenses
2 they incurred during the course of their duties. The duty to reimburse even extends to the use of
3 equipment the employee may already own and would be required to pay for anyway. (*Cochran v.*
4 *Schwan's Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144 ["The threshold question in this case
5 is this: Does an employer always have to reimburse an employee for the reasonable expense of the
6 mandatory use of a personal cell phone, or is the reimbursement obligation limited to the situation in
7 which the employee incurred an extra expense that he or she would not have otherwise incurred absent
8 the job? The answer is that reimbursement is always required. Otherwise, the employer would receive
9 a windfall because it would be passing its operating expenses on to the employee."].)

10 55. Here, Defendants failed to fully reimburse the Aggrieved Employees for necessary
11 expenditures incurred as a direct consequence and requirement of performing their job duties, including
12 the costs associated with their personal cell phone and mileage they required to perform their work.
13 Consequently, Defendants failed to comply with Labor Code section 2802.

14 **H. WAGE STATEMENT VIOLATIONS**

15 56. Defendants also failed to provide accurate itemized wage statements in accordance with
16 Labor Code sections 226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226, subdivision
17 (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage
18 statement in writing showing:

- 19 (1) The gross wages earned;
- 20 (2) The total hours worked by the employee;
- 21 (3) The number of piece-rate units earned and any applicable piece rate if
22 the employee is paid on a piece rate basis;
- 23 (4) All deductions, provided that all deductions made on written orders of
24 the employee may be aggregated and shown as one item;
- 25 (5) The net wages earned;
- 26 (6) The inclusive dates of the period for which the employee is paid;

- 1 (7) The name of the employee and only the last four digits of his or her social
2 security number or an employee identification number other than a social
3 security number;
4 (8) The name and address of the legal entity that is the employer; and
5 (9) All applicable hourly rates in effect during the pay period and the
6 corresponding number of hours worked at each hourly rate by the
7 employee.

8 57. Due to Defendants' failure to pay the Aggrieved Employees properly as described
9 above, the wage statements issued do not indicate the correct amount of gross wages earned, total hours
10 worked, or the net wages earned, or the applicable hourly rates in effect during the pay period and the
11 corresponding number of hours worked at each hourly rate. Thus, Defendants have violated Labor
12 Code section 226, subdivisions (a)(1), (2), (5), and (9).

13 58. Defendants also failed to include the accrued sick hours on the wage statements
14 provided to the Aggrieved Employees as required by Labor Code section 246, subdivision (i).

15 59. In addition to Labor Code section 226, subdivision (a), Defendants also knowingly and
16 intentionally failed to provide the Aggrieved Employees with accurate itemized wage statements in
17 violation of Labor Code section 226, subdivision (e). Defendants knew that they were not providing
18 the Aggrieved Employees with wage statements required by California law but nevertheless failed to
19 correct their unlawful practices and policies. (See *Garnett v. ADT LLC* (E.D. Cal. 2015) 139 F.Supp.3d
20 1121, 1134 [finding the defendant knowingly and intentionally violated Labor Code section 226
21 because the "[d]efendant knew that it was not providing total hours worked to plaintiff or other
22 employees paid on commission" even though it believed that employees paid solely on commission or
23 commission and salary "are exempt and therefore we do not record hours on a wage statement."].)

24 I. RECORDKEEPING VIOLATIONS

25 60. Labor Code section 226, subdivision (a), requires employers to keep an accurate record
26 of, among other things, all hours worked by employees. Labor Code section 226.3 provides, in pertinent
27 part, as follows:
28

1 “Any employer who violates subdivision (a) of Section 226 shall be subject to a
2 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per
3 violation in an initial citation and one thousand dollars (\$1,000) per employee
4 for each violation in a subsequent citation, for which the employer fails to
5 provide the employee a wage deduction statement or fails to keep the records
6 required in subdivision (a) of Section 226. The civil penalties provided for in
7 this section are in addition to any other penalty provided by law.” (Lab. Code, §
8 226.3, emphasis added.)

9 61. Likewise, Labor Code section 1174, subdivision (d), requires every employer, including
10 Defendants, to:

11 “Keep, at a central location in the state or at the plants or establishments at which
12 employees are employed, payroll records showing the hours worked daily by
13 and the wages paid to, and the number of piece-rate units earned by and any
14 applicable piece rate paid to, employees employed at the respective plants or
15 establishments. These records shall be kept in accordance with rules established
16 for this purpose by the commission, but in any case shall be kept on file for not
17 less than three years. An employer shall not prohibit an employee from
18 maintaining a personal record of hours worked, or, if paid on a piece-rate basis,
19 piece-rate units earned.” (Lab. Code, § 1174, subd. (d), emphasis added.)

20 62. As explained in detail above, Defendants failed to provide the Aggrieved Employees
21 with accurate itemized wage statements. Defendants did so, in part, because they failed to accurately
22 track hours worked by the Aggrieved Employees. Defendants have thus failed to keep accurate records
23 of the “total hours worked by the employee[s]” in violation of Labor Code section 226, subdivision (a),
24 and are therefore subject to the penalties provided by Labor Code section 226.3. These penalties are
25 “in addition to any other penalty provided by law.” (Lab. Code, § 226.3.)

26 63. The failure to accurately track hours worked also resulted in a failure of Defendants to
27 keep a record of all “payroll records showing the hours worked daily by” Defendants’ employees,
28 including Plaintiff, in violation of Labor Code section 1174, subdivision (d).

1 **J. SICK PAY VIOLATIONS**

2 64. Labor Code section 246 provides that every employee who works in California for the
3 same employer for 30 or more days within a year from the commencement of employment is entitled
4 to paid sick days. (Lab. Code, § 246, subd. (a).) These paid sick days generally accrue at a rate of not
5 less than one hour per every 30 hours worked, and must be paid out using the employees’ regular rate
6 of pay. (Lab. Code, § 246, subds. (b), (l).) The “regular rate of pay” for these purposes must factor in
7 all nondiscretionary payments for work performed by the employee, including non-discretionary
8 bonuses, commissions, and other forms of wage payments exceeding the employees’ base hourly rate.
9 (Lab. Code, § 246, subds. (l)(1), (2); see, e.g., *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th
10 858, 878.)

11 65. Here, Defendants employed the Aggrieved Employees for 30 or more days within a year
12 from the commencement of employment. Defendants nevertheless failed to fully pay the Aggrieved
13 Employees for all sick pay that was lawfully earned and accrued.

14 66. By failing to fully pay accrued sick time, Defendants have underpaid the Aggrieved
15 Employees and have violated California Labor Code provisions including, but not limited to, section
16 246.

17 **V. EXHAUSTION OF REMEDIES**

18 67. Plaintiff has fully and completely exhausted administrative remedies under PAGA prior
19 to proceeding with the PAGA claims stated in this complaint. Plaintiff filed a PAGA notice online with
20 the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified mail to Defendants
21 setting forth the facts and theories of the violations alleged against Defendants, as prescribed by PAGA.
22 (Lab. Code, §§ 2698–2699.6.)

23 68. As required by PAGA, Plaintiff submitted the \$75.00 filing fee with the LWDA by
24 regular mail. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), no notice was received by
25 Plaintiff from the LWDA evidencing its intention to investigate within sixty-five calendar days of the
26 postmark date of the PAGA notice. Plaintiff is therefore entitled to commence and proceed with a civil
27 action pursuant to Labor Code section 2699.
28

1 **VI. CAUSES OF ACTION**

2 **First Cause of Action**

3 *Failure to Pay All Minimum Wages*

4 *(Against All Defendants)*

5 69. Plaintiff realleges and incorporates by reference all previous paragraphs.

6 70. Section 4 of the Applicable Wage Order and Labor Code section 1197 establish the right
7 of employees to be paid minimum wages for all hours worked, in amounts set by state law. (Lab. Code,
8 § 1197; Cal. Code of Regs., tit. 8, § 11040.) Labor Code sections 1194, subdivision (a), and 1194.2,
9 subdivision (a), provide that an employee who has not been paid the legal minimum wage as required
10 by Labor Code section 1197 may recover the unpaid balance, together with attorneys' fees and costs
11 of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued
12 thereon.

13 71. Here, Defendants failed to fully conform their pay practices to the requirements of the
14 law during the relevant statutory periods. Plaintiff was not compensated for all hours worked including,
15 but not limited to, all hours she was subject to the control of Defendants and/or suffered or permitted
16 to work under the Labor Code and the Applicable Wage Order.

17 72. Labor Code section 1198 makes unlawful the employment of an employee under
18 conditions that the IWC Wage Orders prohibit. Labor Code sections 1194, subdivision (a), and 1194.2,
19 subdivision (a), provide that an employer who has failed to pay its employees the legal minimum wage
20 is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages
21 in an amount equal to the wages due and interest thereon.

22 73. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
23 Plaintiff has sustained economic damages, including but not limited to unpaid wages and lost interest,
24 in an amount to be established at trial, and she is entitled to recover economic and statutory damages
25 and penalties and other appropriate relief because of Defendants' violations of the Labor Code and
26 Applicable Wage Order.

27 74. Defendants' practices and policies regarding illegal employee compensation are
28 unlawful and create an entitlement to recovery by Plaintiff in a civil action for the unpaid amount of

1 minimum wages, liquidated damages, including interest thereon, statutory penalties, attorneys' fees,
2 and costs of suit according to Labor Code sections 204, 218.5, 1194, 1194.2, 1197, and 1198, and Code
3 of Civil Procedure section 1021.5.

4 **Second Cause of Action**

5 *Failure to Pay All Overtime Wages*

6 *(Against All Defendants)*

7 75. Plaintiff realleges and incorporates by reference all previous paragraphs.

8 76. This cause of action is brought pursuant to Labor Code sections 204, 510, 1194, and
9 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours
10 worked and provide a private right of action for the failure to pay all overtime compensation for
11 overtime work performed. At all times relevant herein, Defendants were required to properly pay
12 Plaintiff for all overtime wages earned pursuant to Labor Code section 1194 and the Applicable Wage
13 Order. Defendants caused Plaintiff to work overtime hours but did not compensate her at one and one-
14 half times her regular rate of pay for such hours in accordance with California law. Likewise,
15 Defendants caused Plaintiff to work double-time hours but did not compensate them at twice her
16 regular rate of pay for such hours in accordance with California law.

17 77. Defendants failed to fully conform their pay practices to the requirements of California
18 law. This unlawful conduct includes but is not limited to Defendants' uniform and unlawful pay
19 policies and practices of failing to accurately record all the time that non-exempt employees were under
20 the supervision and control of Defendants. The foregoing policies and practices are unlawful and allow
21 Plaintiff to recover in a civil action the unpaid amount of overtime premiums owing, including interest
22 thereon, statutory penalties, attorneys' fees, and costs of suit according to Labor Code section 204, 510,
23 1194, and 1198, the Applicable Wage Order, and Code of Civil Procedure section 1021.5.

24 **Third Cause of Action**

25 *Failure to Provide Rest Periods and Pay Missed Rest Period Premiums*

26 *(Against All Defendants)*

27 78. Plaintiff realleges and incorporates by reference all previous paragraphs.
28

1 79. Section 12 of the Applicable Wage Order, and Labor Code section 226.7 establish the
2 right of employees to be provided with a rest period of at least ten minutes for each four hour period
3 worked, or major fraction thereof. (See Cal. Code of Regs., tit. 8, § 11040.)

4 80. Due to Defendants' unlawful rest period policies and practices described in detail above,
5 Defendants did not authorize and permit Plaintiff to take all rest periods to which she was legally
6 entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay to Plaintiff
7 at her respective regular rates of pay for each violation, in accordance with California Labor Code
8 section 226.7.

9 81. The foregoing violations create an entitlement to recovery by Plaintiff in a civil action
10 for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties,
11 and costs of suit pursuant to the Applicable Wage Order, and California Labor Code section 226.7.

12 **Fourth Cause of Action**

13 *Failure to Provide Meal Periods and Pay Missed Meal Period Premiums*

14 *(Against All Defendants)*

15 82. Plaintiff realleges and incorporates by reference all previous paragraphs.

16 83. Plaintiff is informed and believes and thereon alleges, that Defendants failed in their
17 affirmative obligation to provide their hourly non-exempt employees, including Plaintiff, with all
18 required meal periods in accordance with the mandates of the Labor Code and the Applicable Wage
19 Order, for the reasons set forth herein above. Despite Defendants' violations, Defendants have not paid
20 an additional hour of pay to Plaintiff at their respective regular rates of pay for each violation, in
21 accordance with California Labor Code section 226.7.

22 84. As a result, Defendants are responsible for paying premium compensation for meal
23 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the
24 Applicable Wage Order and Labor Code sections 226.7 and 512, and Civil Code sections 3287,
25 subdivision (b), and 3289. (See Cal. Code of Regs., tit. 8, § 11040.)
26
27
28

1 **Fifth Cause of Action**

2 *Failure to Maintain Accurate Employment Records*

3 *(Against All Defendants)*

4 85. Plaintiff realleges and incorporates by reference all previous paragraphs.

5 86. Pursuant to California Labor Code section 1174, subdivision (d), an employer shall keep
6 at a central location in the state or at the plants or establishments at which employees are employed,
7 payroll records showing the hours worked daily by and wages paid to employees employed at the
8 respective plants or establishments. These records must be kept in accordance with rules established
9 for this purpose by the commission, but in any case shall be kept on file for not less than two years.

10 87. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to
11 maintain accurate and complete records.

12 88. Defendant has intentionally and willfully failed to keep accurate and complete records
13 showing the hours worked daily and wages paid to Plaintiff. Thus, Plaintiff has been denied her legal
14 right and protected interest in having available at a central location at the plant or establishment where
15 she is employed, accurate and complete payroll records showing the hours worked daily by, and the
16 wages paid to, employees at those respective locations pursuant to Labor Code 1174.

17 **Sixth Cause of Action**

18 *Failure to Pay Wages Timely during Employment*

19 *(Against All Defendants)*

20 89. Plaintiff realleges and incorporates by reference all previous paragraphs.

21 90. Labor Code section 200 provides that "wages" include all amounts for labor performed
22 by employees of every description, whether the amount is fixed or ascertained by the standard of time,
23 task, pieces, commission basis, or other method of calculation. Labor Code section 204 states that all
24 wages earned by any person in any employment are payable twice during the calendar month and must
25 be paid not more than seven days following the close of the period when the wages were earned. Labor
26 Code section 210, subdivision (a), makes employers who violate Labor Code section 204 subject to a
27 penalty of \$100 for any initial failure to timely pay each employee's full wages and \$200 for each
28 subsequent violation, plus 25% of the amount unlawfully withheld.

91. Labor Code section 216 establishes that it is a misdemeanor for any person, with regards to wages due, to “falsely deny the amount or validity thereof, or that the same is due, with intent to secure himself, his employer or other person, any discount upon such indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due.”

92. Defendants as a matter of established company policy and procedure in the State of California, scheduled, required, suffered, and/or permitted Plaintiff, to work without full compensation, to work without legally-compliant off-duty meal periods, to work without legally-compliant off-duty rest periods, and thereby failed to fully pay Plaintiff within seven days of the close of payroll, as required by law.

93. Defendants, as a matter of established company policy and procedure in the State of California, falsely deny they owe Plaintiff these wages, with the intent of securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress, hinder, delay, and/or defraud Plaintiff.

94. Defendants' pattern, practice, and uniform administration of its corporate policy of illegally denying employees compensation, as described herein, is unlawful and entitles Plaintiff to recover, pursuant to Labor Code section 218, the unpaid balance of the compensation owed to them in a civil action and any applicable penalties, attorney fees, and interest owed to them pursuant to Labor Code sections 210 and 218.5.

Seventh Cause of Action

Failure to Pay All Wages Earned and Unpaid at Separation

(Against All Defendants)

95. Plaintiff realleges and incorporates by reference all previous paragraphs.

96. The actionable period for this cause of action is three years prior to the filing of this complaint through the present, and ongoing until the violations are corrected or the class is certified. (*Pineda v. Bank of America, N.A.* (2010) 50 Cal.4th 1389, 1395; *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1109; Code Civ. Proc., § 338, subd. (a).) Labor Code sections 201 and 202 of the California Labor Code require Defendants to pay all compensation due and owing to its former employees during the actionable period for this cause of action at or around the time that their employment is or was terminated, or ended.

1 97. Section 203 of the Labor Code provides that if an employer willfully fails to pay
2 compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then the
3 employer is liable for penalties in the form of continued compensation up to thirty workdays.

4 98. Due to Defendants' faulty pay policies, Plaintiff, whose employment with Defendants
5 has concluded, was not compensated for each and every hour worked at the appropriate rate. Despite
6 the employment relationship having concluded, Defendants have willfully failed to pay Plaintiff, whose
7 sums were certain at the time of termination of the employment relationship, within seventy-two hours
8 of her discharge and have failed to pay those sums for thirty days thereafter as required by Labor Code
9 sections 201 through 203.

10 99. As a result, Defendants are liable to Plaintiff for waiting time penalties amounting to
11 thirty days wages pursuant to Labor Code section 203. (See, e.g., DLSE Manual, § 4.3.4 [failure to pay
12 any sort of wages due upon termination entitles an employee to recover waiting time penalties].)

13 **Eighth Cause of Action**

14 *Failure to Indemnify All Necessary Business Expenditures*

15 *(Against All Defendants)*

16 100. Plaintiff realleges and incorporates by reference all previous paragraphs.

17 101. California Labor Code Section 2802 states that employers must "indemnify" an
18 employee for "all necessary expenditures or losses incurred by the employee in direct consequence of
19 the discharge of his or her duties, or of his or her obedience to the directions of the employer." Likewise,
20 Labor Code section 2804 states that "any contract or agreement, express or implied, made by any
21 employee to waive the benefits of this article or any part thereof, is null and void, and this article shall
22 not deprive any employee or his personal representative of any right or remedy to which he is entitled
23 under the laws of this State."

24 102. Here, Plaintiff paid out of pocket for necessary business expenditures incurred as a
25 direct consequence and requirement of performing their job duties, including the costs associated with
26 their personal cell phone and mileage they required to perform their work. Despite knowing that
27 Plaintiff incurred these necessary business expenses, and requiring Plaintiff to use such items,
28 Defendants did not reimburse them.

103. Thus, Plaintiff is entitled to recover the cost of such necessary business expenses, plus interest from the date each incurred such business expenses, plus fees and costs. (Lab. Code, § 2802, subds. (b), (c).)

Ninth Cause of Action

Failure to Furnish Accurate Itemized Wage Statements

(Against All Defendants)

104. Plaintiff realleges and incorporates by reference all previous paragraphs.

105. Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

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

106. As set forth above, Defendants issued and continues to issue wage statements to its non-exempt employees including Plaintiff that are inadequate under Labor Code section 226, subdivision (a). By failing to pay Plaintiff properly as described above, Defendants failed to include required

1 information on their wage statements, including, but not limited to, the gross wages earned, the net
2 wages earned in violation of Labor Code section 226, subdivision (a).

3 107. Defendants also failed to include the accrued sick hours on the wage statements
4 provided to Plaintiff as required by Labor Code section 246, subdivision (i).

5 108. Defendants' failure to comply with Labor Code section 226, subdivision (a), of the
6 Labor Code was knowing and intentional. (Lab. Code, § 226, subd. (e)).

7 109. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff
8 in violation of Labor Code section 226, subdivision (a), Plaintiff are each entitled to recover an initial
9 penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty
10 of \$4,000 per Plaintiff from Defendants pursuant to Labor Code section 226, subdivision (e), along
11 with costs and reasonable attorneys' fees.

12 **Tenth Cause of Action**

13 *Failure to Pay Sick Leave*

14 *(Against All Defendants)*

15 110. Plaintiff realleges and incorporates by reference all previous paragraphs.

16 111. Labor Code section 246 provides that an employee who works for the same employer
17 for 30 or more days within a year from the commencement of employment is entitled to paid sick days.
18 (Lab. Code, § 246, subd. (a).) These paid sick days generally accrue at a rate of not less than one hour
19 per every 30 hours worked. (Lab. Code, § 246, subd. (b).)

20 112. The employer must calculate paid sick leave by using one of two calculations: **(1)** "Paid
21 sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay
22 for the workweek in which the employee uses paid sick time, whether or not the employee actually
23 works overtime in that workweek," or **(2)** "Paid sick time for nonexempt employees shall be calculated
24 by dividing the employee's total wages, not including overtime premium pay, by the employee's total
25 hours worked in the full pay periods of the prior 90 days of employment." (Lab. Code, § 246, subds.
26 (1)(1), (2).)

27 113. Here, Defendants employed Plaintiff for 30 or more days within a year from the
28 commencement of employment. Defendants nevertheless failed to fully pay Plaintiff for all sick pay

1 that was lawfully earned and accrued. This resulted in Plaintiff being underpaid for her lawfully-
2 accrued sick leave, and resulted in derivative violations including, among others, of Labor Code section
3 201, 202, and 203, because Defendants did not pay, or timely pay, Plaintiff all owing and unpaid wages
4 for work performed by her during her employment and at the end of her employment.

5 114. As a consequence for violating Labor Code section 246, Plaintiff is have sustained
6 damages in an amount to be established at trial, are entitled to attorneys' fees and costs of suit, and
7 Defendants are subject to all applicable penalties.

8 **Eleventh Cause of Action**

9 *Violations of California's Unfair Competition Law*

10 *(Against All Defendants)*

11 115. Plaintiff realleges and incorporates by reference all previous paragraphs.

12 116. Defendants have engaged and continue to engage in unfair and/or unlawful business
13 practices in California in violation of California Business and Professions Code section 17200 through
14 17210, by committing the unlawful acts described above. Defendants' utilization of these unfair and
15 unlawful business practices deprived and continue to deprive Plaintiff of compensation to which she is
16 legally entitled. These practices constitute unfair and unlawful competition and provide an unfair
17 advantage over Defendants' competitors who have been and/or are currently employing workers and
18 attempting to do so in honest compliance with applicable wage and hour laws.

19 117. Because Plaintiff is a victim of Defendants' unfair and unlawful conduct alleged herein,
20 Plaintiff seeks full restitution of monies, as necessary and according to proof, to restore any and all
21 monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code
22 sections 17203 and 17208.

23 118. The acts complained of herein occurred within the four years prior to the initiation of
24 this action and are continuing into the present and ongoing.

25 119. Plaintiff was compelled to retain the services of counsel to file this Court action to
26 protect her interests, to obtain restitution and injunctive relief on behalf of Defendants' current non-
27 exempt employees and to enforce important rights affecting the public interest. Plaintiff has thereby
28

1 incurred the financial burden of attorneys' fees and costs, which Plaintiff is entitled to recover under
2 Code of Civil Procedure section 1021.5.

3 **Twelfth Cause of Action**

4 *Penalties Pursuant to PAGA for Violations of California Labor Code Sections 201,*
5 *202, 203, 204, 210, 226, 226.3, 226.7, 246, 510, 512, 1174, 1185, 1194, 1194.2, 1197,*
6 *1197.1, 1198, 1198.5, 1199, 2802, 2804, and Other Provisions of the Labor Code*
7 *(Against All Defendants)*

8 120. Plaintiff realleges and incorporates by reference all previous paragraphs.

9 121. Based on the above allegations incorporated by reference, Defendants violated Labor
10 Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 510, 512, 1174, 1185, 1194, 1194.2,
11 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and others that may be applicable; and the Applicable
12 Wage Order (Cal. Code of Regs., tit. 8, § 11040), and others that may be applicable.

13 122. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code sections
14 2698 through 2699.6 because of Defendants' violation of Labor Code sections 201, 202, 203, 204, 210,
15 226, 226.3, 226.7, 246, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802,
16 2804, and others that may be applicable; and the Applicable Wage Order (Cal. Code of Regs., tit. 8, §
17 11040), and others that may be applicable.

18 123. Under Labor Code section 2699, subdivision (f)(2), and 2699.5, for each such violation,
19 Plaintiff and the Aggrieved Employees are entitled to penalties in an amount to be shown at the time
20 of trial subject to the following formula:

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

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

23 124. These penalties must be allocated sixty-five percent to the Labor and Workforce
24 Development Agency ("LWDA") and thirty-five percent to the affected employees. These penalties
25 may be stacked separately for each of Defendants violations of the California Labor Code.

26 125. In addition, to the extent permitted by law, Defendants failed to provide Plaintiff and all
27 Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code section
28 226, subdivision (a). Plaintiff seeks separate PAGA penalties for Defendants' violations of Labor Code

1 section 226, subdivisions (a) and (e). (*Lopez v. Friant & Associates, LLC, supra*, 15 Cal.App.5th at pp.
2 780, 788.)

3 126. For violations of Labor Code section 226, subdivision (a), Plaintiff and all Aggrieved
4 Employees are entitled to recover penalty amounts established by California Labor Code Section
5 2699(f)(2)(A)(i) and California Labor Code Section 226.3. Accordingly, through PAGA and to the
6 extent permitted by law Plaintiff and the Aggrieved Employees seek PAGA penalties for each of
7 Defendants' numerous violations of Labor Code section 226.

8 127. Labor Code section 210 provides that "in addition to, an entirely independent and apart
9 from, any other penalty provided in this article, every person who fails to pay the wages of each
10 employee as provided in Sections . . . 204 . . . shall be subject to a civil penalty as follows: (1) For any
11 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
12 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure
13 to pay each employee, plus 25% of the amount unlawfully withheld." As a result of the faulty
14 compensation policies and practices, Plaintiff and the Aggrieved Employees are also entitled to recover
15 penalties under Labor Code section 210 through PAGA.

16 128. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
17 liquidated damages, in the amount of: (1) one hundred dollars (\$100) for any initial violation that is
18 intentionally committed for each underpaid employee for each pay period for which the employee is
19 underpaid, and (2) two hundred fifty dollars (\$250) for each subsequent violation for the same specific
20 offense for each underpaid employee for each pay period for which the employee is underpaid
21 regardless of whether the initial violation is intentionally committed. Accordingly, through PAGA and
22 to the extent permitted by law, Plaintiff and the Aggrieved Employees are entitled to recover pursuant
23 to Labor Code section 1197.1.

24 129. Plaintiff was compelled to retain the services of counsel to file this action to protect her
25 interests and those of the Aggrieved Employees, and to assess and collect the wages and penalties owed
26 by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which Plaintiff is also entitled
27 to recover under Labor Code section 2699, subdivision (g)(1).
28

1 **VII. PRAYER FOR RELIEF**

2 Plaintiff prays for judgment for herself and for all others on whose behalf this suit is brought
3 against Defendants, as follows:

- 4 **1.** For the failure to pay all minimum wages, compensatory, consequential, general, and
5 special damages according to proof pursuant to Labor Code sections 1194, 1194.2,
6 1197, and others as may be applicable;
- 7 **2.** For the failure to pay all overtime wages, compensatory, consequential, general, and
8 special damages according to proof pursuant to Labor Code sections 204, 510, 1194,
9 1198, and others as may be applicable;
- 10 **3.** For the failure to provide rest periods and pay missed rest period premiums,
11 compensatory, consequential, general, and special damages according to proof pursuant
12 to Labor Code section 226.7;
- 13 **4.** For the failure to provide meal periods and pay missed meal period premiums,
14 compensatory, consequential, general, and special damages according to proof pursuant
15 to Labor Code sections 226.7 and 512;
- 16 **5.** For the failure to maintain accurate employment records, penalties pursuant to Labor
17 Code sections 226.3, 1174.5, and others that may be applicable;
- 18 **6.** For the failure to pay wages timely during employment, the unpaid balance of the
19 compensation owed to Plaintiff and any applicable penalties owed to them pursuant to
20 Labor Code section 210;
- 21 **7.** For the failure to pay all wages earned and unpaid at separation, statutory waiting time
22 penalties pursuant to Labor Code sections 201 through 203, for Plaintiff in an amount
23 equal to her daily wage multiplied by thirty days, as may be proven;
- 24 **8.** For the failure to indemnify all necessary business expenditures, all unreimbursed
25 business expenses, and interest thereon, that are owed, pursuant to Labor Code section
26 2802, and attorney fees, pursuant to Labor Code section 2802, subdivision (c);
27
28

- 1 **9.** For the failure to pay all sick time wages due and owed, compensatory, consequential,
2 general, and special damages according to proof pursuant to Labor Code section 246,
3 and others as may be applicable;
- 4 **10.** For the violations of California’s Unfair Competition Law, restitution to Plaintiff of all
5 money and/or property unlawfully acquired by Defendants by means of any acts or
6 practices declared by this Court to be in violation of Business and Professions Code
7 sections 17200 through 17210;
- 8 **11.** For the claim of penalties pursuant to PAGA and other provisions of the California
9 Labor Code, a civil penalty in the amount of \$100 for the initial violation and \$200 for
10 each subsequent violation as specified in Labor Code section 2699, subdivision (f)(2),
11 in the representative action brought on behalf of Plaintiff and the Aggrieved Employees
12 pursuant the Labor Code Private Attorneys General Act of 2004, and for civil penalties
13 available under Labor Code section 210;
- 14 **12.** Prejudgment interest on all due and unpaid wages pursuant to Labor Code section 218.6
15 and Civil Code sections 3287 and 3289;
- 16 **13.** On all causes of action for which attorneys’ fees may be available, for attorneys’ fees
17 and costs as provided by Labor Code sections 218.5, 226, Code of Civil Procedure
18 section 1021.5, and others as may be applicable;
- 19 **14.** For an order enjoining Defendants, and each of them, and their agents, servants, and
20 employees, and all persons acting under, in concert with, or for them, from acting in
21 derogation of any rights or duties adumbrated in this complaint; and
- 22 **15.** For such other and further relief, this Court may deem just and proper.

23
24 Dated: June 25, 2025

MELMED LAW GROUP P.C.



LYNSEY D. JOHNSON

Attorneys for Plaintiff and the Aggrieved
Employees