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11 individually and on behalf of others similarly situated

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SANTA CLARA

14 **22CV405260**

15 SUYAPA LILIANA PALMA-HERNANDEZ,
16 individually and on behalf of all others similarly
17 situated,

18 PLAINTIFF,

19 v.

20 JC HAMBURGERS, INC., a California
21 corporation d/b/a/ McDonald's; DANIEL
22 BORBA, an individual; and DOES 1 through 50,
23 inclusive,

24 DEFENDANTS.

CASE NO.:

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

- 1) FAILURE TO PROVIDE MEAL PERIODS
AND/OR PAY MEAL PERIOD PREMIUMS
(LABOR CODE § 226.7, 512)
- 2) FAILURE TO AUTHORIZE AND PERMIT
REST BREAKS AND/OR PAY REST
BREAK PREMIUMS (LABOR CODE §
226.7)
- 3) FAILURE TO PROVIDE COMPLETE AND
ACCURATE WAGE STATEMENTS
(LABOR CODE § 226)
- 4) FAILURE TO TIMELY PAY FINAL
WAGES (LABOR CODE §§ 201-203)
- 5) FAILURE TO REIMBURSE NECESSARY
BUSINESS EXPENSES (LABOR CODE §
2802)
- 6) UCL VIOLATIONS (BUS. & PROF. CODE
§§ 17200-17204);
- 7) PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(LABOR CODE §§ 2698 – 2699.5)

DEMAND FOR JURY TRIAL

1 Plaintiff SUYAPA LILIANA PALMA-HERNANDEZ (“Plaintiff”), individually, and on behalf
2 of others similarly situated (hereinafter “Class Members”), complains and hereby alleges as follows:

3 **OVERVIEW OF CLAIMS**

4 1. Plaintiff brings this action on behalf of himself and others similarly situated, as a class
5 action, and as a representative action pursuant to the California Private Attorneys General Act
6 (“PAGA”), against Defendants JC HAMBURGERS, INC., a California corporation d/b/a/
7 McDonald’s; DANIEL BORBA, an individual, and DOES 1 to 50 (collectively, “Defendants”) for
8 California Labor Code violations, unfair business practices, and civil penalties stemming from
9 Defendants’ failure to provide meal periods, failure to authorize and permit rest periods, failure to
10 timely pay wages, failure to timely pay final wages, failure to provide accurate wage statements, failure
11 to maintain accurate time and payroll records, and failure to reimburse necessary business-related
12 expenses. Defendants have violated California statutory laws as described below.

13 2. Plaintiff’s first through sixth causes of action are brought as a class action on behalf of
14 herself and similarly situated current and former employees of Defendants (hereinafter collectively
15 referred to as the “Class” or “Class Members,” as defined more fully in Paragraph 17, below) pursuant
16 to California Code of Civil Procedure Section 382. The monetary damages and restitution sought by
17 Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according
18 to proof at trial.

19 3. Plaintiff’s seventh cause of action is brought as a representative action on behalf of
20 herself and other current and former non-exempt employees of Defendants in the State of California at
21 any time beginning September 29, 2021 and ending at the time this action settles or proceeds to final
22 judgment (hereafter, the “PAGA Period”) pursuant to California Labor Code sections 2698, *et seq.*
23 (hereinafter collectively referred to as the “Aggrieved Employees”). Plaintiff is an aggrieved employee
24 against whom one or more of the alleged violations occurred. The civil penalties sought by Plaintiff
25 exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof
26 at trial.

27 4. The Court has jurisdiction over this action pursuant to the California Constitution,
28 Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except

1 those given by statute to other courts. The statutes under which this action is brought do not specify
2 any other basis for jurisdiction.

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

7 6. Venue is proper in this Court because, upon information and belief, Defendants maintain
8 offices, have agents, and/or transact business in the State of California, County of Santa Clara. Many
9 of the putative Class Members were employed by Defendants and/or performed work for Defendants
10 during the Class Period in Santa Clara County. Defendants operate restaurants in Santa Clara County.
11 Many of the acts alleged herein, including Defendants' failure to provide compliant meal periods,
12 failure to provide compliant rest breaks, failure to issue complete and accurate itemized wage
13 statements, and failure to pay wages on a timely basis, occurred in Santa Clara County. Venue is
14 therefore proper in Santa Clara County.

15 **PARTIES**

16 7. PLAINTIFF is a resident of the State of California. At all times relevant to this action,
17 PLAINTIFF was employed by DEFENDANTS in the County of San Jose, State of California as an
18 hourly, non-exempt employee.

19 8. Defendant JC HAMBURGERS, INC. d/b/a/ McDonald's, is and at all times herein
20 mentioned was, a corporation organized and existing under the laws of the State of California, and
21 registered to do business in the State of California. PLAINTIFF is informed and believes, and thereon
22 alleges, that JC HAMBURGERS, INC. owns and operates several McDonald's restaurant(s) in
23 California.

24 9. Plaintiff is informed and believes, and thereon alleges, that Defendant DANIEL
25 BORBA, an individual, is an owner and Chief Executive Officer of Defendant JC HAMBURGERS,
26 INC. Plaintiff is informed and believes, and thereon alleges, that Defendant DANIEL BORBA is
27 resident of the State of California.

28 10. Plaintiff is ignorant of the identities of defendants Does 1 through 50, inclusive, and

1 therefore sues these defendants by such fictitious names. The Doe defendants may be individuals,
2 partnerships, or corporations. Plaintiff is informed and believes, and thereon alleges, that, at all times
3 mentioned herein, each of the Doe defendants was the parent, subsidiary, agent, servant, employee, co-
4 venturer, and/or co-conspirator of each of the other defendants, and was at all times mentioned acting
5 within the scope, purpose, consent, knowledge, ratification and authorization of such agency,
6 employment, joint venture and conspiracy. Plaintiff will amend this Complaint to allege their true
7 names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each
8 of the fictitiously named Doe defendants is responsible in some manner for the occurrences herein
9 alleged, and that Plaintiff's damages as herein alleged were proximately caused by its conduct.
10 Defendants JC HAMBURGERS, INC. d/b/a/ McDonald's, DANIEL BORBA, and Doe Defendants 1
11 through 50 are collectively referred to herein as "Defendants."

12 11. Defendants are and at all times herein mentioned were, (a) conducting business in the
13 County of Santa Clara, State of California, and (b) the employer of Plaintiff consistent with the
14 California Labor Code and Industrial Welfare Commission Wage Orders ("Wage Orders").

15 12. Plaintiff further alleges that Defendants, directly or indirectly controlled or affected the
16 working conditions, wages, working hours, and conditions of employment of Plaintiff, the Class, and
17 the Aggrieved Employees so as to make each of said Defendants employers and employers jointly
18 liable under the statutory provisions set forth herein.

19 13. Plaintiff is informed and believes, and thereon alleges, that at all times relevant to this
20 action, Defendants were the alter egos, predecessors, divisions, affiliates, integrated enterprises, joint
21 employers, subsidiaries, parents, principals, related entities, co-conspirators, authorized agents,
22 partners, joint venturers, and/or guarantors, actual or ostensible, of each other. Each defendant was
23 dominated by his, her, or its codefendants, and each was the alter ego of the other.

24 14. Plaintiff is informed and believes, and based thereon alleges, that in perpetrating the acts
25 and omissions alleged herein, Defendants, and each of them, acted pursuant to, and in furtherance of,
26 their policies and practices of not paying Plaintiff, the Class, and the Aggrieved Employees all wages
27 earned and due, through methods and schemes which include, but are not limited to: failing to provide
28 meal periods; failing to authorize and permit rest breaks; failing to properly maintain records; failing

1 to provide accurate itemized statements for each pay period; failing to timely pay wages during
2 employment; and failing to reimburse necessary business expenses in violation of the California Labor
3 Code (“Labor Code”) and applicable Industrial Welfare Commission (“IWC”) Wage Order(s).

4 15. Plaintiff is informed and believes, and based thereon alleges, that in accordance with
5 Labor Code Section 558.1, Defendants and any person acting on behalf of Defendants are liable for
6 violating, or causing to violate, any provision regulating minimum wages or hours and days of work in
7 any order of the Industrial Welfare Commission, or Labor Code Sections 203, 226, 226.7, 1193.6, or
8 1194.

9 **CLASS ACTION ALLEGATIONS**

10 16. Plaintiff brings the first through sixth causes of action as a class action on her own behalf
11 and on behalf of all other members of the general public similarly situated, and, thus, seeks class
12 certification under Code of Civil Procedure section 382.

13 17. The proposed class is defined as follows: All current and former non-exempt employees
14 of any of the Defendants within the State of California at any time commencing four (4) years preceding
15 the filing of Plaintiff’s original complaint up until the time that notice of the certified class action is
16 provided to the class (hereinafter referred to as the “Class” or “Class Members”).

17 18. Plaintiff reserves the right to establish other subclasses as appropriate.

18 19. The Class is ascertainable and there is a well-defined community of interest in the
19 litigation:

20 a. Numerosity: The Class Members are so numerous that joinder of all Class Members
21 is impracticable. The membership of the entire Class is unknown to Plaintiff at this time; however,
22 the Class is estimated to be over fifty (50) individuals and the identity of such membership is readily
23 ascertainable by inspection of Defendants’ employment records.

24 b. Typicality: Plaintiff’s claims are typical of all other Class Members demonstrated
25 herein. Plaintiff will fairly and adequately protect the interests of the other Class Members with whom
26 she has a well-defined community of interest.

27 c. Adequacy: Plaintiff will fairly and adequately protect the interests of each Class
28 Member, with whom she has a well-defined community of interest and typicality of claims, as

1 demonstrated herein. Plaintiff has no interest that is antagonistic to the other Class Members. Plaintiff's
2 attorneys, the proposed class counsel, are versed in the rules governing class action discovery,
3 certification, and settlement. Plaintiff has incurred, and during the pendency of this action will continue
4 to incur, costs and attorneys' fees, that have been, are, and will be necessarily expended for the
5 prosecution of this action for the substantial benefit of each Class Member.

6 d. Superiority: A class action is superior to other available methods for the fair and
7 efficient adjudication of this litigation because individual joinder of all Class Members is impractical.

8 e. Public Policy Considerations: Certification of this lawsuit as a class action will advance
9 public policy objectives. Current employees are often afraid to assert their rights out of fear of direct
10 or indirect retaliation. However, class actions provide the Class Members who are not named in the
11 complaint anonymity that allows for the vindication of their rights.

12 20. There are common questions of law and fact as to the Class that predominate over
13 questions affecting only individual members. The following common questions of law or fact, among
14 others, exist as to the members of the Class:

- 15 a. Whether Defendants had a corporate policy and practice of failing to pay Plaintiff and
16 the other Class Members for all hours worked, and for missed, short, late or interrupted
17 meal periods and rest breaks in violation of California law;
- 18 b. Whether Defendants deprived Plaintiff and the other Class Members of meal and/or rest
19 periods or required Plaintiff and the other Class Members to work during meal and/or
20 rest periods without compensation;
- 21 c. Whether Defendants failed to pay meal period premium wages to Class Members when
22 they were not provided legally compliant meal periods;
- 23 d. Whether Defendants failed to pay rest period premium wages to Class Members when
24 they were not authorized and permitted to take legally compliant rest periods;
- 25 e. Whether Defendants failed to pay all wages due to Plaintiff and the other Class
26 Members within the time required upon their discharge or resignation from
27 employment;

- 1 f. Whether Defendants are liable to Class Members for penalty wages under Labor Code
2 Section 203;
- 3 g. Whether Defendants failed to reimburse Plaintiff and the other Class Members for all
4 necessary business-related expenses in violation of California Labor Code Section
5 2802;
- 6 h. Whether Defendants failed to timely pay all wages due to Plaintiff and the other Class
7 Members during their employment;
- 8 i. Whether Defendants complied with wage reporting as required by the California Labor
9 Code, including Section 226;
- 10 j. Whether Defendants engaged in unfair business practices in violation of California
11 Business & Professions Code Section 17200, *et seq.* based on their improper
12 withholding of compensation;
- 13 k. The appropriate amount of damages, restitution, and/or monetary penalties resulting
14 from Defendants' violation of California law; and
- 15 l. Whether Plaintiff and the other Class Members are entitled to compensatory damages
16 pursuant to the California Labor Code.

17 **GENERAL ALLEGATIONS**

18 21. On information and belief, Defendants are owners of multiple McDonald's franchise
19 locations in the State of California.

20 22. Defendants employed Plaintiff to work as a full-time hourly-paid employee from
21 approximately December 2019 to August 2022. Plaintiff worked at Defendants' McDonald's fast-food
22 restaurant located at 715 W. Capitol, Capitol Expressway Auto Mall in San Jose, California. Plaintiff's
23 main job duties were to prepare meals in the kitchen; however, she was often assigned additional duties
24 outside of the kitchen.

25 23. At all relevant times set forth herein, Defendants employed Plaintiff, the Class, and the
26 Aggrieved Employees as hourly-paid or non-exempt employees.

27 24. Throughout the time period involved in this case, Defendants had the authority to hire
28 and terminate Plaintiff, the Class, and the Aggrieved Employees; to directly or indirectly control work

1 rules, working conditions, wages, working hours, and conditions of employment of Plaintiff, the Class,
2 and the Aggrieved Employees; and to hire and terminate the employment of Plaintiff, the Class, and
3 the Aggrieved Employees.

4 25. At all times herein mentioned, Defendants were subject to the Labor Code of the State
5 of California and the applicable Industrial Welfare Commission Orders.

6 26. Plaintiff is informed and believes, and thereon alleges that Defendants engaged in an
7 ongoing and systematic scheme of wage abuse against their hourly-paid or non-exempt employees. As
8 set forth in more detail below, this scheme involved, *inter alia*, failing to permit Plaintiff, the Class,
9 and the Aggrieved Employees to take timely and duty-free meal periods and rest periods in violation
10 of California law, and failed to pay associated meal and rest period premium wages. Defendants also
11 failed to reimburse Plaintiff, the Class, and the Aggrieved Employees for all necessary business-related
12 expenses, failure to provide accurate itemized wage statements for each pay period, and failed to timely
13 pay all wages owed during and upon termination of employment.

14 27. Throughout the time period involved in this case, Defendants have implemented policies
15 and practices which failed to provide Plaintiff, the Class, and the Aggrieved Employees with timely
16 and duty-free meal periods. Defendants routinely failed to relieve Plaintiff, the Class, and the Aggrieved
17 Employees of all duties during their meal periods, regularly failed to relinquish control over Plaintiff,
18 the Class, and the Aggrieved Employees during their meal periods, regularly failed to provide Plaintiff,
19 the Class, and the Aggrieved Employees a reasonable opportunity to take their meal periods, and
20 regularly impeded or discouraged Plaintiff, the Class, and the Aggrieved Employees from taking thirty
21 (30) minute uninterrupted meal breaks no later than the end of their fifth hour of work and/or from
22 taking a second thirty (30) minute uninterrupted meal break no later than their tenth hour of work for
23 shifts lasting more than ten (10) hours.

24 28. Moreover, Defendants systematically disregarded their own written policies regarding
25 the provision and timing of meal periods for Plaintiff, the Class, and the Aggrieved Employees. Instead,
26 Defendants' actual policy and practice was to schedule Plaintiff, the Class, and the Aggrieved
27 Employees in a way that prohibited them from taking timely and duty-free meal periods, and to require
28 Plaintiff, the Class, and the Aggrieved Employees to work through their meal periods, for which they

1 were not compensated.

2 29. Throughout the time period involved in this case, Defendants failed to pay Plaintiff, the
3 Class, and the Aggrieved Employees premium wages for meal periods that were missed, late,
4 interrupted, or shortened in violation of California law. Defendants knew or should have known that
5 Plaintiff, the Class, and the Aggrieved Employees were entitled to receive all meal periods or payment
6 of one (1) additional hour of pay at their regular rate of pay when a meal period was missed, short, late,
7 and/or interrupted. Notwithstanding this knowledge, Defendants routinely failed to provide legally
8 compliant meal periods to Plaintiff, the Class, and the Aggrieved Employees, and routinely failed to
9 pay one (1) additional hour of pay to Plaintiff, the Class, and the Aggrieved Employees at their regular
10 rate of pay when a meal period was missed, short, late, and/or interrupted.

11 30. Throughout the time period involved in this case, Defendants have implemented policies
12 and practices which prohibited Plaintiff, the Class, and the Aggrieved Employees from taking timely
13 and duty-free rest periods. Defendants regularly failed to authorize and permit Plaintiff, the Class, and
14 the Aggrieved Employees to take full, uninterrupted, off-duty rest periods for every shift lasting three
15 and one-half (3.5) to six (6) hours and/or two full, uninterrupted, off-duty rest periods for every shift
16 lasting six (6) to ten (10) hours, and failed to make a good faith effort to authorize, permit, and provide
17 such rest breaks in the middle of each work period.

18 31. Moreover, Defendants systematically disregarded their own written policies regarding
19 the provision and timing of rest periods for Plaintiff, the Class, and the Aggrieved Employees. Instead,
20 Defendants' actual policy and practice was to schedule Plaintiff, the Class, and the Aggrieved
21 Employees in a way that regularly prohibited them from taking timely and duty-free rest periods, and
22 to regularly require Plaintiff, the Class, and the Aggrieved Employees to work through their rest
23 periods.

24 32. Throughout the time period involved in this case, Defendants failed to pay Plaintiff, the
25 Class, and the Aggrieved Employees premium wages for rest periods that were missed, late, interrupted,
26 or shortened in violation of California law. Defendants knew or should have known that Plaintiff, the
27 Class, and the Aggrieved Employees were entitled to receive all rest periods or payment of one (1)
28 additional hour of pay at their regular rate of pay when a rest period was missed, short, late, and/or

1 interrupted. Notwithstanding this knowledge, Defendants routinely failed to authorize and permit
2 Plaintiff, the Class, and the Aggrieved Employees to take duty-free rest periods, and failed to pay one
3 (1) additional hour of pay to Plaintiff, the Class, and the Aggrieved Employees at their regular rate of
4 pay when a rest period was missed, short, late and/or interrupted.

5 33. Throughout the time period involved in this case, Defendants regularly failed to pay
6 Plaintiff, the Class, and the Aggrieved Employees all wages owed to them upon discharge or
7 resignation. Defendants knew or should have known that Plaintiff, the Class, and the Aggrieved
8 Employees were entitled to receive all wages owed to them upon termination within the time
9 permissible under California Labor Code Section 202. Plaintiff, the Class, and the Aggrieved
10 Employees did not receive payment of all final wages owed to them upon discharge or resignation,
11 including premium wages, within any time permissible under California Labor Code Section 202.

12 34. Throughout the time period involved in this case, Defendants regularly failed to pay
13 Plaintiff, the Class, and the Aggrieved Employees all wages within any time permissible under
14 California law, including, *inter alia*, California Labor Code Section 204. Defendants knew or should
15 have known that Plaintiff, the Class, and the Aggrieved Employees were entitled to receive all wages
16 owed to them during their employment. Plaintiff, the Class, and the Aggrieved Employees did not
17 receive payment of all wages, including meal and rest period premium wages. *Naranjo v. Spectrum*
18 *Security Services, Inc.*, 13 Cal.5th 93 (2022).

19 35. Throughout the time period involved in this case, and as a result of Defendants' unlawful
20 policies and practices, including failure to pay all meal premium and rest premium pay, Defendants
21 regularly failed to provide complete or accurate wage statements to Plaintiff, the Class, and the
22 Aggrieved Employees. Defendants knew or should have known that Plaintiff, the Class, and the
23 Aggrieved Employees were entitled to receive complete and accurate wage statements in accordance
24 with California law, but, in fact, they did not receive complete and accurate wage statements from
25 Defendants. *Naranjo v. Spectrum Security Services, Inc.*, 13 Cal.5th 93 (2022).

26 36. Throughout the time period involved in this case, Defendants regularly failed to keep
27 complete or accurate payroll records for Plaintiff, the Class, and the Aggrieved Employees. Defendants
28 knew or should have known that Defendants were required to keep complete and accurate payroll

1 records for Plaintiff, the Class, and the Aggrieved Employees in accordance with California law, but,
2 in fact, did not keep complete and accurate payroll records.

3 37. Throughout the time period involved in this case, Defendants regularly failed to
4 maintain accurate records relating to Plaintiff's, the Class's, and the Aggrieved Employees' work
5 periods, meal periods, total daily hours, hours per pay period, and applicable pay rates.

6 38. Throughout the time period involved in this case, Defendants failed to reimburse
7 Plaintiff, the Class, and the Aggrieved Employees for all necessary business-related expenses,
8 including but not limited to costs and associated with maintenance of employer-mandated uniforms,
9 travel-related costs, including for gas and mileage, and other items necessary for discharge of their
10 work-related duties. Defendants required Plaintiff to travel with her personal car to run business errands
11 for Defendants, such as to obtain inventory and supplies. Defendants knew or should have known that
12 Defendants were required to reimburse Plaintiff, the Class, and the Aggrieved Employees for all
13 necessary business-related expenses and costs, but, in fact, failed to do so in violation of California law.

14 39. Throughout the time period involved in this case, Defendants knew or should have
15 known that they had a duty to compensate Plaintiff, the Class, and the Aggrieved Employees pursuant
16 to California law. Defendants had the financial ability to pay such compensation, but willfully,
17 knowingly, and intentionally failed to do so, and falsely represented to Plaintiff, the Class, and the
18 Aggrieved Employees that they paid all wages owed to them, all in order to increase Defendants'
19 profits.

20 40. California Labor Code Section 218 states that nothing in Article 1 of the Labor Code
21 shall limit the right of any wage claimant to "sue directly ... for any wages or penalty due to him [or
22 her] under this article."

23 **FIRST CAUSE OF ACTION**

24 **(Violation of California Labor Code §§ 226.7 and 512(a))**

25 **(Against All Defendants)**

26 41. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every
27 allegation set forth above.

28 42. At all relevant times, the relevant IWC Order and California Labor Code Sections 226.7

1 and 512(a) were applicable to Plaintiff and the other Class Members' employment by Defendants.

2 43. At all relevant times, California Labor Code Section 226.7 provides that no employer
3 shall require an employee to work during any meal or rest period mandated by an applicable order of
4 the California IWC.

5 44. At all relevant times, the applicable IWC Wage Order and California Labor Code
6 Section 512(a) provide that an employer may not require, cause or permit an employee to work for a
7 work period of more than five (5) hours per day without providing the employee with a meal period of
8 not less than thirty (30) minutes, except that if the total work period per day of the employee is no more
9 than six (6) hours, the meal period may be waived by mutual consent of both the employer and
10 employee.

11 45. At all relevant times, California Labor Code Section 512(a) further provides that an
12 employer may not require, cause or permit an employee to work for a work period of more than ten
13 (10) hours per day without providing the employee with a second uninterrupted meal period of not less
14 than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the
15 second meal period may be waived by mutual consent of the employer and the employee only if the
16 first meal period was not waived.

17 46. During the relevant time period, Plaintiff and the other Class Members who were
18 scheduled to work for a period of time longer than six (6) hours, and who did not waive their legally-
19 mandated meal periods by mutual consent, were required to work for periods longer than five (5) hours
20 without an uninterrupted meal period of not less than thirty (30) minutes.

21 47. During the relevant time period, Plaintiff and the other Class Members who were
22 scheduled to work for a period of time in excess of ten (10) hours were required to work for periods
23 longer than ten (10) hours without a second uninterrupted meal period of not less than thirty (30)
24 minutes.

25 48. During the relevant time period, Defendants intentionally and willfully required Plaintiff
26 and the other Class Members to miss their meal periods and to take meal periods that were late,
27 shortened, or interrupted, and failed to compensate Plaintiff and the other Class Members the full meal
28 period premium for missed, shortened, late, or interrupted meal periods.

49. During the relevant time period, Defendants failed to pay Plaintiff and the other Class Members the full meal period premiums due pursuant to California Labor Code section 226.7.

50. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7 and 512(a).

51. Pursuant to the applicable IWC Wage Order and California Labor Code Section 226.7(b), Plaintiff and the other Class Members are entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each work day that the meal period was not provided.

SECOND CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against All Defendants)

52. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

53. At all times herein set forth, the applicable IWC Wage Order and California Labor Code Section 226.7 were applicable to Plaintiff and the other Class Members' employment by Defendants.

54. At all relevant times, California Labor Code Section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

55. At all relevant times, the applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof unless the total daily work time is less than three and one-half (3.5) hours.”

56. During the relevant time period, Defendants required Plaintiff and other Class Members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

57. During the relevant time period, Defendants willfully required Plaintiff and the other Class Members to work during rest periods, failed to allow Plaintiff and the other Class Member to

1 take any rest period and/or failed to authorize and permit Plaintiff and the other Class Members to take
2 uninterrupted, duty-free rest breaks.

3 58. During the relevant time period, Defendants failed to pay Plaintiff and the other Class
4 Members the full rest period premium due pursuant to California Labor Code Section 226.7 for work
5 performed during rest periods, and/or for failure to authorize and permit Plaintiff and other Class
6 Members from taking uninterrupted rest periods.

7 59. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code
8 Section 226.7.

9 60. Pursuant to the applicable IWC Wage Orders and California Labor Code section
10 226.7(b), Plaintiff and the other Class Members are entitled to recover from Defendants one additional
11 hour of pay at the employees' regular hourly rate of compensation for each work day that the rest period
12 was not provided.

13 **THIRD CAUSE OF ACTION**

14 **(Violation of California Labor Code §§ 201, 202, 203)**

15 **(Against All Defendants)**

16 61. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every
17 allegation set forth above.

18 62. At all relevant times herein set forth, California Labor Code Sections 201 and 202
19 provide that if an employer discharges an employee, the wages earned and unpaid at the time of
20 discharge are due and payable immediately, and if an employee quits his or her employment, his or her
21 wages shall become due and payable not later seventy-two (72) hours thereafter, unless the employee
22 has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is
23 entitled to his or her wages at the time of quitting.

24 63. During the relevant time period, the employment of Plaintiff and many other Class
25 Members with Defendants ended, *i.e.*, was terminated by quitting or discharge. Defendants
26 intentionally and willfully failed to pay Plaintiff and other Class Members who are no longer employed
27 by Defendants all of their wages, earned and unpaid, including but not limited to premium wages,
28 within seventy-two (72) hours of their leaving Defendants' employ.

64. Defendants' failure to pay Plaintiff and other Class Members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code Sections 201 and 202.

65. California Labor Code Section 203 provides that if an employer willfully fails to pay wages owed, in accordance with Sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

66. Plaintiff and other Class Members who are no longer employed by Defendants are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

FOURTH CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

(Against All Defendants)

67. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

68. At all material times set forth herein, California Labor Code Section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her 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. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

69. Defendants have intentionally and willfully failed to provide Plaintiff and the Class with complete and accurate wage statements.

70. Because of Defendants' violation of California Labor Code Section 226, subdivision (a), Plaintiff and the Class have suffered injury and damage to their statutorily-protected rights.

71. More specifically, Plaintiff and the Class have been injured by Defendants' violation of California Labor Code Section 226, subdivision (a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate and itemized wage statements pursuant to California Labor Code Section 226, subdivision (a).

72. Plaintiff and the Class are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code Section 226, subdivision (a), or an aggregate penalty not exceeding four thousand dollars per employee.

73. Plaintiff and the Class are also entitled to injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226, subdivision (h).

74. Pursuant to Labor Code sections 226, subdivision (e), Plaintiff and the other members of the Wage Statement Class are entitled to recover the full amount of penalties plus an award of reasonable attorneys' fees and costs of suit.

FIFTH CAUSE OF ACTION

(Violation of California Labor Code §§ 2800 and 2802)

(Against All Defendants)

75. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

76. Pursuant to California Labor Code Sections 2800 and 2802, an employer must reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

77. Plaintiff and the Class incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants. Defendants' failure to reimburse for all necessary business-related expenses and costs included their failure to reimburse Plaintiff and the Class for costs incurred as a

1 result of, including but not limited to, simple negligence.

2 78. Defendants have intentionally and willfully failed to reimburse Plaintiff and the Class
3 for all necessary business-related expenses and costs. Plaintiff and the Class are entitled to recover from
4 Defendants their business-related expenses and costs incurred during the course and scope of their
5 employment, plus interest accrued from the date on which the employee incurred the necessary
6 expenditures at the same rate as judgments in civil actions in the State of California.

7 **SIXTH CAUSE OF ACTION**

8 **(Violation of Cal. Business & Professions Code §§ 17200, et seq.)**

9 **(Against All Defendants)**

10 79. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every
11 allegation set forth above.

12 80. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful
13 and harmful to Plaintiff and the Class, to the general public, and Defendants' competitors. Accordingly,
14 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of
15 Civil Procedure Section 1021.5.

16 81. Defendants' activities as alleged herein are violations of California law, and constitute
17 unlawful business acts and practices in violation of California Business & Professions Code Section
18 17200, *et seq.*

19 82. A violation of California Business & Professions Code section 17200, *et seq.* may be
20 predicated on the violation of any state or federal law. In this instant case, Defendants' policies and
21 practices of requiring employees, including Plaintiff and the Class, to work through their meal and rest
22 periods without paying them proper compensation violate California Labor Code sections 226.7 and
23 512(a). Moreover, Defendants' policies and practices of failing to timely pay wages to Plaintiff and the
24 Class violate California Labor Code Sections 201, 202, 203 and 204.

25 83. Defendants also violated California Labor Code Sections 226(a), 1174(d), 2800, and
26 2802.

27 84. As a result of the herein described violations of California law, Defendants unlawfully
28 gained an unfair advantage over other businesses.

85. Plaintiff and the Class have been personally injured by Defendants' unlawful business acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or property.

86. Pursuant to California Business & Professions Code Sections 17200, *et seq.*, Plaintiff and the Class are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this Complaint; an award of attorneys' fees pursuant to California Code of Civil Procedure Section 1021.5 and other applicable laws; and an award of costs.

SEVENTH CAUSE OF ACTION

(Violation of California Labor Code §§ 2698, et seq.)

(Against All Defendants)

87. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

88. Plaintiff brings her seventh cause of action as a representative action on behalf of herself and similarly Aggrieved Employees in the capacity as a private attorney general pursuant to the Private Attorneys General Act of 2004, California Labor Code Section 2698, *et seq.* (“PAGA”).

89. PAGA specifically provides for a private right of action to recover civil penalties for violations of the Labor Code as follows: “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.” Cal. Lab. Code § 2699(a).

90. Plaintiff was employed by Defendants and the Labor Code violations alleged above were committed against her during her time of employment. Plaintiff is therefore, an “aggrieved employee” under PAGA.

91. As set forth in detail above, during all times relevant to this action, Defendants have routinely subjected Plaintiff and the Aggrieved Employees to violations of California Labor Codes by,

1 among other things:

2 a. Failing to provide legally required and compliant meal periods to Plaintiff and the
3 Aggrieved Employees, and failing to pay Plaintiff and the Aggrieved Employees an additional hour of
4 premium pay for meal period violations in violation of Labor Code §§ 226.7 and 512.

5 b. Failing to provide authorize and permit Plaintiff and the Aggrieved Employees to take
6 duty-free and compliant rest periods, and failing to pay Plaintiff and the Aggrieved Employees an
7 additional hour of premium pay for rest period violations in violation of Labor Code §§ 226.7 and 512.

8 c. Failing to timely pay Plaintiff and the Aggrieved Employees all wages at the end of their
9 employment in violation of Labor Code § 203.

10 d. Failing to timely pay Plaintiff and the Aggrieved Employees all wages owed during
11 employment in violation of Labor Code § 204.

12 e. Failing to furnish Plaintiff and the Aggrieved Employees with complete, accurate,
13 itemized wage statements in violation of Labor Code § 226.

14 f. Failing to maintain accurate records relating to Plaintiff and the Aggrieved Employees’
15 work periods, meal periods, total daily hours, hours per pay period, total wages and compensation, and
16 applicable pay rates in violation of Labor Code § 1174(d) and the applicable IWC Wage Order.

17 g. Failing to reimburse Plaintiff and the Aggrieved Employees for necessary business-
18 related expenses in violation of Labor Code §§ 2800 and 2802.

19 92. California Labor Code sections 2699 and 2699.5, Plaintiff, individually and on behalf of
20 the Aggrieved Employees and the State of California, requests and is entitled to recover penalties against
21 Defendants for the Labor Code violations described above, including but not limited to penalties under
22 California Code of Regulations Title 8 section 11050, penalties under California Labor Code sections
23 2699, 558, 210, 226, 226.3 and 1174.5, and any and all additional penalties and sums as provided by the
24 California Labor Code and/or other statutes. The exact amount of the applicable penalties, in all, is in
25 an amount to be shown according to proof at trial.

26 93. In accordance with Labor Code Section 2698, *et seq.*, Plaintiff provided written notice to
27 the California Labor and Workforce Development Agency (“LWDA”), by filing a PAGA Notice online,
28 a copy of which was sent by certified mail to Defendants, notifying them of the specific provisions of

1 the Labor Code and IWC Wage Order(s) alleged to have been violated, including the facts and theories
2 to support the alleged violations. Plaintiff has also paid the \$75.00 fee to the LWDA. Pursuant to Labor
3 Code § 2699.3, no notice has been received and/or will have been received by Plaintiff from the LWDA
4 evidencing its intention to investigate within sixty-five (65) days from the postmark of Plaintiff's PAGA
5 Notice. Thus, Plaintiff has or will soon have complied with all of the requirements set forth in Labor
6 Code Section 2699.3 to commence and proceed with a representative civil action under the PAGA.

7 94. Plaintiff by this action seeks to recover, on behalf of herself and all other current and
8 former Aggrieved Employees of Defendants, the civil penalties provided by PAGA.

9 95. Plaintiff was compelled to retain the services of counsel to file this court action to protect
10 her interests and the Aggrieved Employees, and to assess and collect the civil penalties owed by
11 Defendants. Plaintiff therefore seeks an award of reasonable attorneys' fees and costs pursuant to Labor
12 Code § 2699, subdivision (g)(1), and any other applicable statute.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff, individually and on behalf of all other members of the general public
15 similarly situated, and as a private attorney general, prays for relief and judgment against Defendants,
16 jointly and severally, as follows:

17 **Class Certification**

- 18 1. That this action be certified as a class action;
19 2. That Plaintiff be appointed as the representative of the Class;
20 3. That counsel for Plaintiff be appointed as Class Counsel; and
21 4. That Defendants provide to Class Counsel immediately the names and most current/last
22 known contact information (address, e-mail and telephone numbers) of all class members.

23 **As to the First Cause of Action**

24 5. That the Court declare, adjudge and decree that Defendants violated California Labor
25 Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal
26 periods (including second meal periods) to Plaintiff and the Class;

27 6. That the Court make an award to Plaintiff and the Class of one (1) hour of pay at each
28 employee's regular rate of compensation for each workday that a meal period was not provided;

- 1 7. For all actual, consequential, and incidental losses and damages, according to proof;
2 8. For premium wages pursuant to California Labor Code section 226.7;
3 9. For pre-judgment interest on any unpaid wages from the date such amounts were due;
4 10. For reasonable attorneys' fees and costs of suit incurred herein; and
5 11. For such other and further relief as the Court may deem just and proper.

6 **As to the Second Cause of Action**

7 12. That the Court declare, adjudge and decree that Defendants violated California Labor
8 Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to
9 Plaintiff and the Class;

10 13. That the Court make an award to Plaintiff and the Class of one (1) hour of pay at each
11 employee's regular rate of compensation for each workday that a rest period was not provided;

12 14. For all actual, consequential, and incidental losses and damages, according to proof;

13 15. For premium wages pursuant to California Labor Code section 226.7;

14 16. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15 and

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

17 **As to the Third Cause of Action**

18 18. That the Court declare, adjudge and decree that Defendants violated the record keeping
19 provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff
20 and the Class, and willfully failed to provide accurate itemized wage statements thereto;

21 19. For actual, consequential and incidental losses and damages, according to proof;

22 20. For statutory penalties pursuant to California Labor Code section 226(e); and

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

24 **As to the Fourth Cause of Action**

25 21. That the Court declare, adjudge and decree that Defendants violated California Labor
26 Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of
27 termination of the employment of Plaintiff and other Class Members no longer employed by
28 Defendants;

22. For all actual, consequential, and incidental losses and damages, according to proof;

23. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff and other Class Members who have left Defendants' employ;

24. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

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

As to the Fifth Cause of Action

26. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the Class for all necessary business-related expenses as required by California Labor Code sections 2800 and 2802;

27. For actual, consequential and incidental losses and damages, according to proof;

28. For the imposition of civil penalties and/or statutory penalties;

29. For reasonable attorneys' fees and costs of suit incurred herein; and

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

As to the Sixth Cause of Action

31. That the Court declare, adjudge and decree that Defendants violated California Business and Professions Code sections 17200, *et seq.* by, among other things, failing to provide all meal and rest periods to Plaintiff and the Class, failing to pay Plaintiff's and other Class Members' wages timely as required by California Labor Code section 201, 202 and 204 and by violating California Labor Code sections 226(a), 1174(d), 2800, and 2802;

32. For restitution of unpaid wages to Plaintiff and the Class and all pre-judgment interest from the day such amounts were due and payable;

33. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violation of California Business and Professions Code sections 17200, *et seq.*;

34. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

35. For injunctive relief to ensure compliance with this section, pursuant to California

1 Business and Professions Code sections 17200, *et seq.*; and

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

3 **As to the Seventh Cause of Action**

4 37. For statutory attorneys' fees and costs pursuant to 2699(g)(1) of California Labor Code;

5 38. For the imposition of civil penalties pursuant to California Labor Code §§ 2699, 210,
6 558, 226, 226.3, 1174.5, and all other penalties allowed by the California Labor Code and/or other
7 applicable statutes; and

8 39. For such other relief as the Court deems just and proper.

9
10 DATED: October 24, 2022

11 Respectfully submitted,

12 **PROXY LAW FIRM LLP**

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14 

15 _____
16 Hengameh S. Safaei
17 Attorneys for Plaintiff SUYAPA LILIANA
18 PALMA-HERNANDEZ, individually and
19 on behalf of others similarly situated
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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff Suyapa Liliana Palma-Hernandez, individually and on behalf of others similarly
3 situated hereby demands a jury trial with respect to all issues triable of right by jury.

4
5 DATED: October 24, 2022

6 Respectfully submitted,

7 **PROXY LAW FIRM LLP**

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11 _____
12 Hengameh S. Safaei
13 Attorneys for Plaintiff SUYAPA LILIANA
14 PALMA-HERNANDEZ, individually and
15 on behalf of others similarly situated
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