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11 **SUPERIOR COURT OF CALIFORNIA**
12 **COUNTY OF FRESNO**
13

14 ISMAEL CALDERON, as an individual, and on
behalf of all others similarly situated; OSCAR
15 GARCIA, as an individual, and on behalf of all
others similarly situated; EFRAIN DIAZ
16 LOPEZ, as an individual, and on behalf of all
others similarly situated; FRANCISCO
17 MONTES, as an individual, and on behalf of all
others similarly situated; EMMANUEL
18 NAVARRO CARRILLO, as an individual, and
on behalf of all others similarly situated;

19
20 Plaintiffs,

21 vs.

22 KENYON PLASTERING OF FRESNO, INC.,
a California Corporation; KENYON
23 PLASTERING OF VISALIA, INC., a
California Corporation; KENYON
24 PLASTERING OF CALIFORNIA, INC., a
California Corporation; KENYON
25 PLASTERING, INC., a California Corporation
and Does 1 through 100, inclusive,

26
27 Defendants.
28

Case No. 22CECG03006

*[Assigned for all purposes to: The Hon.
Kristi Culver Kapetan, Dept. 403]*

**PLAINTIFFS' FIRST AMENDED
COMPLAINT FOR DAMAGES AND
PENALTIES FOR:**

**CLASS ACTION PURSUANT TO
CAL. CODE OF CIV. PROC. § 382**

**(1) Failure To Pay Minimum and
Overtime Wages In Violation Of
Labor Code §§ 510, 1194, 1194.2, &
1197.1;**

**(2) Failure To Provide All Mandated
Meal Periods Or Additional Wages In
Lieu Thereof;**

**(3) Failure To Provide All Mandated
Rest Periods Or Additional Wages In
Lieu Thereof;**

**(4) Failure To Issue Accurate Wage
Statements In Violation Of Labor
Code §§ 226.2, 226;**

(5) Failure To Timely Pay Wages Due in Violation Of Labor Code §§ 201, 202, 203, 204;

(6) Unfair Competition (Bus. & Prof. Code § 17200)

(7) PAGA Civil Penalties

JURY TRIAL DEMANDED

Plaintiffs ISMAEL CALDERON, OSCAR GARCIA, EFRAIN DIAZ LOPEZ, FRANCISCO MONTES, EMMANUEL NAVARRO CARRILLO (hereinafter "PLAINTIFFS" or "Plaintiffs"), as individuals and on behalf of all similarly-situated current and former employees, alleges against Defendant KENYON PLASTERING OF FRESNO, INC., KENYON PLASTERING OF CALIFORNIA, INC., and KENYON PLASTERING, INC., California Corporations, and Does 1 through 100 (hereinafter to be collectively referred to as "DEFENDANTS" or "Defendants"), inclusive as follows:

GENERAL ALLEGATIONS

A. THE PARTIES

1. PLAINTIFFS are and/or were non-exempt employees of DEFENDANTS who, at all times relevant herein, were domiciled in California and who worked for DEFENDANTS in the county of Fresno, CA.

2. PLAINTIFFS are informed and believe, and thereon allege that, at all times relevant herein, DEFENDANTS are and/or were California corporations with employees in Fresno, California.

3. PLAINTIFFS are unaware of the true names and/or capacities, whether individual, partnership, limited partnership, corporate, or otherwise, of the Defendants sued herein as DOES 1 through 100, inclusive, and each of them, and therefore sues such Defendants by such fictitious names pursuant to Code of Civil Procedure section 474. PLAINTIFFS are informed and believe, and thereon allege, that each of the Defendants sued herein, including DOES 1 through 100,

1 inclusive, is and was proximately the cause of or contributed to cause the damages hereinafter
2 alleged, or in some other manner is responsible in whole or in part for the damages which have
3 been, are being, and will be suffered by PLAINTIFFS as alleged herein. When the true names
4 and/or capacities of the Defendants are ascertained, PLAINTIFFS will seek leave to amend this
5 Complaint to insert the same herein with appropriate charging allegations.

6 4. PLAINTIFFS are informed and believe and thereon allege that DEFENDANT and
7 each of the DOE Defendants, were acting at all relevant times herein, as the agent, ostensible agent,
8 joint-venturer, joint-employer, servant, employee, co-conspirator and/or associate of each of the
9 other Defendants, and were at all times acting within the course and scope of said agency,
10 servitude, employment, joint-venture, association, and/or conspiracy and with the permission and
11 consent of the other Defendants.

12 5. PLAINTIFFS are informed and believe, and thereon allege, that, at all times
13 relevant herein, the above DEFENDANTS and/or each of its managing agents and supervisors
14 aided, abetted, condoned, permitted, approved, authorized, and/or ratified the unlawful acts
15 described herein.

16 6. PLAINTIFFS are informed and believe, and thereon allege that, at all times relevant
17 herein, the various acts and representations of DEFENDANTS, including each of the DOE
18 Defendants, and each agent or representative of DEFENDANTS, were the result of, and in
19 furtherance of, an agreement whereby the DEFENDANTS and each agent or representative of the
20 DEFENDANTS knowingly conspired to engage in the acts described herein, including, but not
21 limited to, DEFENDANTS' violation of the California Labor Code.

22 7. PLAINTIFFS brings Causes of Action ONE through SEVEN on behalf of
23 themselves and all other similarly situated current and former California employees of
24 DEFENDANTS as a class action pursuant to California Code of Civil Procedure section 382.
25 PLAINTIFFS seek to represent a class and/or subclasses composed of and defined as follows:

26 Class 1
27
28

1 All current and former non-exempt employees of DEFENDANTS who performed
2 work for DEFENDANTS in California at any time within four (4) years preceding
3 the filing of this action.

4 Subclass A (“First Meal Period Sub-Class”)

5 All current and former non-exempt employees of DEFENDANTS who
6 performed work for DEFENDANTS in California and who worked more
7 than five (5) hours in a work day at any time within four (4) years preceding
8 the filing of this action.

9 Subclass B (“Rest Period Sub-Class”)

10 All current and former non-exempt employees of DEFENDANTS who
11 performed work for DEFENDANTS in California and who worked three
12 and one-half (3 1/2) or more hours in a work day at any time within four (4)
13 years preceding the filing of this action.

14 Subclass C (“Minimum and Overtime Wage Sub-Class”)

15 All current and former non-exempt employees of DEFENDANTS in
16 California who performed work for DEFENDANTS in California and who
17 were required to work for DEFENDANTS, or whom DEFENDANTS
18 permitted or suffered to work off-the-clock, without compensation at any
19 time within four (4) years preceding the filing of this action, at minimum
20 and overtime wages.

21 Subclass D (“Waiting Time Penalty Sub-Class”)

22 All former non-exempt employees of DEFENDANTS in California within
23 three (3) years preceding the filing of this action.

24 Class 2

25 All current and former employees of DEFENDANTS in California who received a
26 wage statement that did not comply with the provisions of Labor Code section
27 226(a) and 226.2.

28 8. These individuals shall hereinafter be referred to collectively as the “Class

Members.”

9. PLAINTIFFS reserve the right under California Rules of Court Rule 3.765(b) to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues.

B. THE ACTION

10. This action is brought, in part, to remedy the following:

- (a) DEFENDANTS’ failure to pay PLAINTIFFS and the Class Members the minimum/overtime wages in accordance with California law;
- (b) DEFENDANTS’ failure to provide PLAINTIFFS and the Class Members with a reasonable opportunity to take a net thirty-minute, duty-free meal period for each workday during which such employees worked more than five hours, as mandated by California law, or to pay such employees one (1) hour of additional wages at the employees’ regular rate of compensation for each workday for which the duty-free meal period was and/or is not provided, as required by California Labor Code sections 226.7 and 512 and Industrial Welfare Commission Wage Orders 16 or 1, and/or any other applicable Wage Order;
- (c) DEFENDANTS’ failure to provide PLAINTIFFS and the Class Members with a reasonable opportunity to take a paid net ten-minute, duty-free rest period per four hours worked or major fraction thereof, as mandated by California law, or to pay such employees one (1) hour of additional wages at the employees’ regular rate of compensation for each workday for which the duty-free rest period was and/or is not provided, as required by Industrial Welfare Commission Wage Orders 16 or 1, and/or any other applicable Wage Order;
- (d) DEFENDANTS’ failure to issue accurate, itemized wage statements to PLAINTIFFS and the Class Members in accordance with California law;
- (e) DEFENDANTS’ failure to pay Class Members all wages due and owing

1 upon the termination of employment with DEFENDANT;

2 (f) DEFENDANTS' engagement in unfair business practices against
3 PLAINTIFFS and the Class Members.

4 ///

5 **C. VENUE**

6 11. Venue is proper in this county because, among other reasons, certain of the
7 violations of the California Labor Code were committed in Fresno County and DEFENDANTS
8 conduct business in Fresno County and have their principal place of business in Fresno County.
9 The unlawful acts alleged had a direct effect on PLAINTIFFS and other Class Members.
10 PLAINTIFFS and the Class Members will continue to suffer the same harm as PLAINTIFFS as a
11 result of DEFENDANTS' wrongful conduct unless the relief requested herein is granted.

12 12. PLAINTIFFS are informed and believe, and thereon allege, that during the four-
13 year period preceding the filing of this class action, no other class action has been filed asserting
14 the same or similar factual allegations against DEFENDANTS on behalf of the same or similar
15 Class Members.

16 **D. CLASS ACTION ALLEGATIONS**

17 13. Causes of Action One through Six have been brought and properly may be
18 maintained as a class action under the provisions of section 382 of the California Code of Civil
19 Procedure because: a) there is a well-defined community of interest in the litigation; and b) the
20 proposed class is easily ascertainable.

21 **Numerosity**

22 14. The potential members of the class as defined are so numerous that joinder of all
23 members of the class is impracticable. PLAINTIFFS are informed and believe, and thereon allege
24 that, at all times mentioned herein, PLAINTIFFS and the Class Members are or have been affected
25 by DEFENDANTS and DOES 1-100's unlawful practices as alleged herein.

26 15. Accounting for employee turnover during the relevant period covered by this action
27 necessarily and substantially increases the number of employees covered by this action.
28 PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANTS and DOES 1-

1 100's employment records would provide information as to the actual number and location of all
2 Class Members. Joinder of all members of the proposed class is not practicable.

3 **Commonality**

4 16. There are questions of law and fact common to the class predominating over any
5 questions affecting only individual Class Members. These common questions of law and fact
6 include, without limitation:

- 7 a. Whether DEFENDANTS violated the California Labor Code and Industrial
8 Welfare Commission Wage Orders by failing to pay minimum/overtime wages to
9 PLAINTIFFS and the Class Members;
- 10 b. Whether DEFENDANTS violated California Labor Code sections 226.7 and 512
11 and Industrial Welfare Commission Wage Orders 1 or 16 and/or any other
12 applicable Wage Order by failing to provide PLAINTIFFS and the Class Members
13 with a thirty-minute, duty-free meal period for each workday during which such
14 employees worked more than five hours, or by paying such employees one (1) hour
15 of additional wages at the employees' regular rate of compensation;
- 16 c. Whether DEFENDANTS violated Industrial Welfare Commission Wage Orders 1
17 or 16 and/or any other applicable Wage Order by failing to permit PLAINTIFFS
18 and the Class Members to take a paid net ten-minute, duty-free rest period per four
19 hours worked or major fraction thereof or to pay such employees one (1) hour of
20 additional wages at the employees' regular rate of compensation for each workday
21 for which a rest period was and/or is not provided;
- 22 d. Whether DEFENDANTS violated California Labor Code sections 226 and 226.2
23 by failing to issue accurate, itemized wage statements to PLAINTIFFS and the
24 Class Members;
- 25 e. Whether DEFENDANT violated California Labor Code sections 201, 202, 203 and
26 204 by failing to pay all wages in a timely manner and due and owing at the time
27 that any Class Member's employment with DEFENDANTS and/or DOES 1-100
28 ended, whether voluntarily or involuntarily;

- 1 f. Whether DEFENDANTS violated California Business and Professions Code
2 section 17200 *et seq.* and engaged in unlawful, unfair, and deceptive business
3 practices by violating California Labor Code sections 201, 202, 203, 226, 226.2,
4 226.7, 512, 510, 1194, 1194.2, 1197.1, and Industrial Welfare Commission Wage
5 Orders 1 or 16 and/or any other applicable Wage Order and failing to: (1) pay
6 minimum/overtime wage to the Class Members; (2) permit the Class Members to
7 take a net thirty-minute, duty-free first when they worked more than 5 hours in a
8 workday and/or pay such employees additional wages as required by California
9 law; (3) permit the Class Members to take a paid net ten-minute, duty-free rest
10 period for every four hours of work or major fraction thereof and/or pay such
11 employees additional wages as required by California law; (4) issue mandated
12 accurate, itemized wage statements; and (5) pay all owed wages at the time that any
13 Class Member's employment with DEFENDANT ended, whether voluntarily or
14 involuntarily; and
- 15 g. Whether PLAINTIFF and the Class Members are entitled to equitable relief
16 pursuant to California Business and Professions Code section 17200 *et seq.*

17 **Typicality**

18 17. The claims of the named PLAINTIFFS are typical of the claims of the class.
19 PLAINTIFFS and all members of the class sustained injuries and damages arising out of, and
20 caused by, DEFENDANTS and DOES 1-100's common course of conduct in violation of
21 California laws, regulations, and statutes as alleged herein.

22 **Adequacy of Representation**

23 18. PLAINTIFFS will fairly and adequately represent and protect the interests of the
24 members of the class. Counsel who represents PLAINTIFFS is competent and experienced in
25 litigating wage and hour class actions and California Business and Professions Code section 17200
26 *et seq.* cases.

27 **Superiority of Class Action**

19. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the class predominate over any questions affecting only individual members of the Class. Each member of the Class has been damaged and is entitled to recovery as a result of DEFENDANTS' and DOES 1-100's unlawful policies and practices alleged in this Complaint.

20. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. PLAINTIFFS are unaware of any difficulties likely to be encountered in the management of this action that would preclude its maintenance as a class action.

BACKGROUND ALLEGATIONS

21. PLAINTIFFS are informed and believe, and thereon allege, that PLAINTIFFS, at all relevant time herein, were non-exempt employees of DEFENDANTS.

22. PLAINTIFFS are informed and believe, and thereon allege, that at all times mentioned herein, DEFENDANTS had statutory obligations to pay PLAINTIFFS and all other similarly situated Class Members minimum/overtime wages according to California law.

23. PLAINTIFFS are further informed and believe, and thereon allege, that at all times mentioned herein, DEFENDANTS had statutory obligations to provide PLAINTIFFS and all other similarly situated Class Members a net thirty-minute, duty-free meal period during any workday during which such employee worked more than five hours and/or pay such employees additional wages.

24. PLAINTIFFS are further informed and believe, and thereon allege, that at all times mentioned herein, DEFENDANTS had statutory obligations to permit PLAINTIFFS and all other similarly situated Class Members to take a paid net ten-minute, duty-free rest period per four hours worked or major fraction thereof and/or pay such employees additional wages.

25. PLAINTIFFS are further informed and believe, and thereon allege, that at all times mentioned herein, DEFENDANTS had statutory obligations to issue to PLAINTIFFS and all other

1 similarly situated Class Members wage statements compliant with Labor Code sections 226 and
2 226.2.

3 26. PLAINTIFFS are further informed and believe, and thereon allege, that at all times
4 mentioned herein, DEFENDANTS had statutory obligations to pay Class Members all wages
5 earned upon termination of employment.

6 27. However, PLAINTIFFS are informed and believe, and thereon allege, that
7 DEFENDANT improperly, and in violation of California law, failed to pay minimum/overtime
8 wages by, among other things, failing to compensate PLAINTIFFS and other similarly situated
9 Class Members for all hours worked, and thereby causing underpayment of minimum wages, in
10 addition to failing to properly calculate the regular rate of pay by excluding compensable work
11 time, in the regular rate calculation. PLAINTIFFS also allege that Class Members also worked in
12 excess of eight daily hours or forty weekly work hours, and yet, were not compensated at the
13 appropriate overtime premiums for all overtime worked.

14 28. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANTS
15 improperly, and in violation of California law, failed to provide a net thirty-minute, duty-free meal
16 period for employees who worked more than five hours in a workday, and/or failed to pay such
17 employees one (1) hour of additional wages at the employees' regular rate of compensation for
18 each workday for which a meal period was not provided in accordance to California law by, among
19 other things, establishing and carrying out policies through its managing agents and supervisors
20 that violated California Labor Code sections 226.7 and 512 and Industrial Welfare Commission
21 Wage Order 14 and/or any other applicable Wage Order that requires DEFENDANTS to provide
22 meal periods to PLAINTIFFS and other similarly situated Class Members.

23 29. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANTS
24 improperly, and in violation of California law, failed to authorize and permit a paid net ten-minute,
25 duty-free rest period for employees per four hours worked or major fraction thereof and/or failed
26 to pay such employees one (1) hour of additional wages at the employees' regular rate of
27 compensation for each workday for which a rest break was not provided by, among other things,
28 establishing and carrying out policies through its managing agents and supervisors that violated

1 California Labor Code sections 226.2 and 226.7, and Industrial Welfare Commission Wage Orders
2 1 or 16 and/or any other applicable Wage Order that requires DEFENDANT to provide paid rest
3 breaks to PLAINTIFFS and other similarly situated Class Members. In addition, PLAINTIFFS
4 allege on information and belief that DEFENDANTS failed to pay PLAINTIFFS and other
5 similarly situated Class Members at the regular rate of pay required by California law as a result
6 of its failure to compensate for all time worked, and thus, failing to properly compensate all wages
7 due and owing for purported rest breaks.

8 30. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANTS
9 improperly, and in violation of California law, failed to issue accurate wage statements to
10 PLAINTIFFS and other similarly situated Class Members by, among other things and missing
11 items, failing to account for all hours worked and wages earned, including failing to itemize and
12 list the following items: net wages earned, gross wages earned, and all applicable hourly rates in
13 effect during the pay period, including but not limited to the amount of hours worked at such
14 respective hourly rates. PLAINTIFFS also allege that DEFENDANTS failed to provide proper,
15 itemized statements in compliance with Labor Code Section 226.2.

16 31. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANTS
17 improperly, and in violation of California law, failed to pay Class Members all wages earned upon
18 termination of employment by, among other things, failing to pay wages for all hours worked and
19 failing to pay all meal and rest break premiums due and owing.

20 32. As a result of the actions of DEFENDANTS, PLAINTIFFS and other similarly
21 situated Class Members suffered damages, including lost pay, wages, and interest.

22 33. PLAINTIFFS are informed and believe, and thereon allege, that Class Members
23 did not secret or absent themselves from DEFENDANTS nor did they refuse to accept the earned
24 but unpaid wages from DEFENDANTS. Accordingly, DEFENDANTS are liable for waiting time
25 penalties for the unpaid wages pursuant to Labor Code sections 201, 202, and 203 and section 20
26 of the applicable Industrial Welfare Commission Order.

27 **FIRST CAUSE OF ACTION**

28 **FAILURE TO PAY MINIMUM AND OVERTIME WAGES IN VIOLATION OF**

1 **LABOR CODE §§ 510, 1194, 1194.2, AND 1197.1**

2 **(PLAINTIFFS, Individually and on Behalf of the Class Members, Against DEFENDANTS**
3 **and DOES 1 through 100)**

4 34. All prior allegations are re-alleged and incorporated herein by this reference.

5 35. DEFENDANT failed to pay PLAINTIFF and Class Members minimum wages for
6 all hours worked.

7 36. California Labor Code section 1197 provides that “[t]he minimum wage for
8 employees fixed by the commission is the minimum wage to be paid to employees, and payment
9 of less than the minimum so fixed is unlawful.”

10 37. The applicable minimum wage fixed by the commission for employees, such as
11 Plaintiff and Class Members is found in section 4(A) of Industrial Welfare Commission Wage
12 Order Nos. 1 and 16 and/or any other applicable Wage Order.

13 38. The minimum wage provisions of the California Labor Code are enforceable by
14 private action pursuant to California Labor Code section 1194(a), which states:

15 Notwithstanding any agreement to work for a lesser wage, any
16 employee receiving less than the legal minimum wage or the legal
17 overtime compensation applicable to the employee is entitled to
18 recover in a civil action the unpaid balance of the full amount of this
minimum wage or overtime compensation, including interest
thereon, reasonable attorney’s fees, and costs of suit.

19 39. As described in California Labor Code sections 1185 and 1194.2, any such action
20 incorporates the applicable Wage Order of the Industrial Welfare Commission.

21 40. California Labor Code section 1194.2 also provides for the following remedies:

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

26 41. Labor Code §510 requires employers to pay their non-exempt employees one and
27 one-half times their regular hourly rate (overtime) for time worked in excess of eight hours in a
28 single day, or 40 hours per week, and double their regular hourly rate (double-time) for all hours

1 worked in excess of 12 hours in a single day. It also requires employers to pay their non-exempt
2 employees overtime compensation for the first eight hours of work done on the seventh
3 consecutive day of work done in any work week and double-time compensation for any work done
4 beyond the first eight hours on the seventh consecutive day of work.

5 42. Labor Code §558(a) requires that any person acting on behalf of an employer who
6 violates, or causes to be violated, overtime rules pay a civil penalty in the amount of \$50 for each
7 underpaid employee for each pay period in which the employee was underpaid in addition to an
8 amount sufficient to recover underpaid wages. Also, Labor Code §558(a) for each subsequent
9 violation, the person acting on behalf of an employer is liable in the amount of \$100 for each
10 underpaid employee for each pay period for which the employee was underpaid in addition to an
11 amount sufficient to recover the underpaid wages.

12 43. PLAINTIFFS are informed and believe, and thereon allege, that during all times
13 mentioned herein DEFENDANTS required, allowed, suffered, and/or permitted PLAINTIFFS and
14 Class Members to engage in a variety of off the clock work without being compensated at the
15 applicable minimum wage in accordance with the provisions of California Labor Code sections
16 1197, 1194, and 1194.2, and Section 4 of the Industrial Welfare Commission Wage Orders 1 or
17 16 and/or any other applicable Wage Order.

18 44. This occurred primarily through DEFENDANT's policies and procedures of failing
19 to institute a proper time record keeping system, causing loss of compensable time. This violation
20 of law further unlawfully depreciated PLAINTIFF and class members' compensation as it denied
21 a proper calculation of their adjusted regular rate—for purposes of calculating piece-break rate
22 wages due and owing both for piece-rate earning and non-piece rate earning activities—all of
23 which had to be compensated at least at the minimum wage, and at the regular adjusted rate as
24 required by California law pursuant to Labor Code Sections 226.2 This failure also lead to
25 derivative overtime violations as PLAINTIFFS and the putative class members regularly worked
26 in excess of eight daily hours, or forty weekly hours, resulting in earned overtime premiums that
27 were not properly compensated and paid to the putative class and PLAINTIFFS.

45. As such, PLAINTIFFS, individually and on behalf of Class Members, may bring this action for minimum wages and overtime wages, interest, costs of suit, and attorneys' fees pursuant to California Labor Code sections 1194(a) and 1194.2.

46. Wherefore, PLAINTIFF and the Class Members are also entitled to recover liquidated damages in an amount equal to the minimum wages unlawfully unpaid, and interest thereon, pursuant to California Labor Code section 1194.2 and reasonable attorneys' fees, costs of suit, and penalties pursuant to section 1197.1.

SECOND CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 226.7 AND 512

(MEAL PERIODS)

**(PLAINTIFFS, Individually and on Behalf of the Class Members, Against DEFENDANTS
and DOES 1 through 100)**

47. All prior allegations are re-alleged and incorporated herein by this reference.

48. California Labor Code section 512, subsection (a), provides, in pertinent part, as follows:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is not more than six hours. The meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

49. Similarly, section 11 of Industrial Welfare Commission Wage Orders 1 or 16 provides, in pertinent part, as follows:

No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will

complete the day's work the meal period may be waived by mutual consent of the employer and the employee...

50. California Labor Code section 226.7 provides, in pertinent part, as follows:

An employer shall not require an employee to work during any meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

If an employer fails to provide an employee a meal or rest or recovery period in accordance with an with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

51. PLAINTIFFS are informed and believe, and thereon allege, that they and Class Members systematically worked periods of more than 5 hours in a workday without being provided a mandated thirty-minute, duty-free meal period while in the employ of DEFENDANTS. Specifically, PLAINTIFFS are informed and believe, and thereon allege, that, at all times mentioned herein, DEFENDANTS maintained company policies that did not provide its employees the opportunity to take all of their first meal periods in strict accordance to California law. PLAINTIFFS are further informed and believe, and thereon allege, that DEFENDANTS did not pay PLAINTIFFS or any of the other affected Class Members an additional one (1)-hour's wage at the regular rate of pay for each meal period that was not provided as stated above.

52. Accordingly, DEFENDANTS violated California Labor Code sections 226.7 and 512 and section 11 of Industrial Welfare Commission Wage Orders 1 or 16 and/or any other applicable Wage Order by failing to provide a meal period for days on which non-exempt employees work(ed) in excess of five hours, and failing to pay one hour of additional wages in lieu of each meal period not provided. DEFENDANTS are liable for one hour of additional wages at each of the affected Class Members' regular rate of compensation for each workday for which a meal period was not lawfully provided.

53. As a result of the unlawful acts of DEFENDANTS, PLAINTIFFS and Class Members have been deprived of additional wages in amounts to be proven at trial and are entitled to recover such amounts, plus interest and penalties thereon, and costs of suit in addition to any other relief requested below.

THIRD CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 226.7, 226.2 AND INDUSTRIAL WELFARE

COMMISSION WAGE ORDER NOS 1 and 16

(REST PERIODS)

(PLAINTIFFS, Individually and on Behalf of the Class Members, Against DEFENDANTS and DOES 1 through 100)

54. All prior allegations are re-alleged and incorporated herein by this reference..

55. Section 12 of Industrial Welfare Commission Wage Orders 1 and 16 provides, in pertinent part, as follows:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized 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....Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

56. California Labor Code section 226.7 provides, in pertinent part, as follows:

(b) An employer shall not require an employee to work during any meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with an with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of

Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

57. PLAINTIFFS are informed and believe, and thereon allege, that they and Class Members systematically worked periods of more than 3 ½ hours in a workday without being provided a mandated paid ten-minute, duty-free compensated rest period while in the employ of DEFENDANTS for every four hours worked or major fraction thereof. PLAINTIFFS are informed and believe, and thereon allege, that, at all times mentioned herein, DEFENDANTS maintained company policies that did not permit its employees to take a compensated rest period for every four hours worked or major fraction thereof during any given workday including workdays during which their employees worked more than 3 ½ hours. PLAINTIFFS are informed and believe, and thereon allege, that they and Class Members were not provided with all of their daily rest periods, and corresponding pay, while in the employ of DEFENDANTS in accordance to California law and in strict accordance to Labor Code Section 226.2. PLAINTIFFS are further informed and believe, and thereon allege, that DEFENDANTS never paid PLAINTIFFS or any of the other affected Class Members an additional one (1)-hour's wage for each rest period that was not provided as stated above.

58. Accordingly, DEFENDANTS violated California Labor Code sections 226.2, 226.7 and section 12 of Industrial Welfare Commission Wage Orders 1 and 16 and/or any other applicable Wage Order by failing to provide their employees who worked more than 3 ½ hours in a workday with a rest period every four hours or major fraction thereof as required by California law and failing to pay one hour of additional wages in lieu of each rest period not provided. DEFENDANTS are liable for one hour of additional wages at each of the affected Class Members' regular rate of compensation for each workday for which a rest period was not lawfully provided.

59. As a result of the unlawful acts of DEFENDANTS, PLAINTIFFS and Class Members have been deprived of additional wages in amounts to be proven at trial and are entitled to recover such amounts, plus interest and penalties thereon, attorneys' fees, and costs of suit, in addition to any other relief requested below.

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO FURNISH ITEMIZED STATEMENTS OF WAGES**

3 **(PLAINTIFFS, Individually and on Behalf of the Class Members, Against DEFENDANTS**
4 **and DOES 1 through 100)**

5 60. All prior allegations are re-alleged and incorporated herein by this reference.

6 61. DEFENDANTS are required to maintain accurate records of, among other things,
7 gross wages, total hours worked, all deductions, net wages earned, rest break wages earned, rest
8 break hourly rate, amount of productive and non-productive hours worked, and all applicable
9 hourly rates and the corresponding number of hours worked at each hourly rate for each pay period
10 for PLAINTIFFS and each of the Class Members.

11 62. DEFENDANTS were required to furnish such records to PLAINTIFFS and Class
12 Members semi-monthly or at the time of payment of wages and to properly itemize the paycheck
13 as required by the California Labor Code, Industrial Welfare Commission Order, and the
14 California Code of Regulations, including, but not limited to, California Labor Code sections 226
15 and 226.2.

16 63. PLAINTIFFS are informed and believe, and on that basis allege, that
17 DEFENDANTS failed to accurately maintain and furnish records of the above information
18 required/wages earned by PLAINTIFFS and Class Members. Plaintiffs are informed and believe
19 that, as a result of the aforementioned practices alleged throughout this complaint, DEFENDANTS
20 failed to provide and possibly maintain accurate records of total hours worked, net wages and gross
21 wages earned, deductions, and all applicable hourly rates and the corresponding number of hours
22 worked at each hourly rate for each pay period for PLAINTIFFS and each of the Class Members.
23 DEFENDANTS also failed to provide all of the required information as set forth in Labor Code
24 Section 226.2.

25 64. As a direct and proximate result of DEFENDANTS' failure to issue accurate,
26 itemized wages statements to PLAINTIFFS and Class Members, PLAINTIFFS and Class
27 Members suffered damage.

65. PLAINTIFFS and Class Members are, therefore, entitled to penalties pursuant to Labor Code sections 226, 226.2, along with interest on those penalties and attorneys' fees, as required by Labor Code sections 226 and 226.2, in addition to the relief requested below.

FIFTH CAUSE OF ACTION

**FAILURE TO TIMELY PAY WAGES DUE IN VIOLATION OF LABOR CODE §§ 201,
202, 203, 204**

(PLAINTIFFS, On Behalf of the Class Members, Against DEFENDANTS and DOES 1 through 100)

66. All prior allegations are re-alleged and incorporated herein by this reference.

67. California Labor Code section 201 provides, in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately . . .” Cal. Lab. Code § 201.

68. California Labor Code section 202 provides, in pertinent part, as follows:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

69. California Labor Code section 203 provides, in pertinent part, as follows:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or quit, 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 therefore is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to him or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment. Suit may be filed for these penalties at any time

1 before the expiration of the statute of limitations on an action for the
2 wages from which the penalties arises.

3 70. At all relevant times, Labor Code section 204 provided that all wages earned by
4 any employee, such as PLAINTIFFS and Class Members, in any employment between the 1st
5 and 15th days, inclusive, of any calendar month, other than those wages due upon termination of
6 an employee, are due and payable between the 16th and 26th day of the month during which the
7 work was performed. Furthermore, at all times relevant hereto, Labor Code section 204
8 provided that all wages earned by any employee, such as PLAINTIFF and Class Members, in
9 any employment between the 16th and the last day, inclusive, of any calendar month, other than
10 those wages due upon termination of an employee, are due and payable between the 1st and 10th
11 day of the following month.

12 71. PLAINTIFFS are informed and believe, and on that basis allege, that
13 DEFENDANTS failed to pay PLAINTIFFS and Class Members all of their entitled wages on a
14 timely basis in violation of Labor Code 204.

15 72. PLAINTIFFS are informed and believe, and on that basis allege, that Class
16 Members were terminated or have voluntarily left DEFENDANTS' employ, and PLAINTIFFS
17 are informed and believe, and on that basis allege, that they have not received compensation for
18 all wages earned, including, but not limited to, minimum wages, overtime wages, and meal/rest
19 break premiums owed in accordance with the provisions of California Labor Code sections 201,
20 202, and 203.

21 73. PLAINTIFFS are informed and believe, and on that basis allege, that this failure by
22 DEFENDANTS to pay was willful and intentional.

23 74. In addition, PLAINTIFFS are informed and believe, and on that basis allege, that
24 since Class Members' termination from employment with DEFENDANTS, DEFENDANTS
25 continually, failed to pay all wage compensation that is due and owing, thereby entitling the Class
26 Members to waiting time penalties for the unpaid wages owed pursuant to California Labor Code
27 sections 201, 202, and 203.

28 75. PLAINTIFFS are informed and believe, and thereon allege, that Class Members
did not secret or absent themselves from DEFENDANTS nor did they refuse to accept the earned

1 and unpaid wages from DEFENDANTS. Accordingly, DEFENDANTS are liable for waiting
2 time penalties for the unpaid wages pursuant to California Labor Code sections 201, 202, and
3 203.

4 76. In addition, PLAINTIFFS, on behalf of the Class Members, have incurred, and will
5 continue to incur, legal expenses, including costs. PLAINTIFFS, on behalf of the Class Members,
6 are presently unaware of the precise amount of these fees and expenses and prays for leave of this
7 Court to amend the Complaint when the amounts are fully known. PLAINTIFFS and Class
8 Members are entitled to recover expenses, and costs according to proof.

9 **SIXTH CAUSE OF ACTION**

10 **VIOLATION OF UNFAIR COMPETITION LAW**

11 **(BUSINESS AND PROFESSIONS CODE §17200, ET SEQ.)**

12 **(PLAINTIFFS, Individually and on Behalf of the Class Members, Against DEFENDANTS**
13 **and DOES 1 through 100)**

14 77. All prior allegations are re-alleged and incorporated herein by this reference.

15 78. DEFENDANTS have engaged and continues to engage in unfair business practices
16 in California by practicing, employing, and utilizing the employment policy of failing to pay
17 PLAINTIFFS and Class Members employment compensation as required by the California law
18 cited herein above and by violating applicable provisions of the California Labor Code, including,
19 but not limited to, California Labor Code sections 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512,
20 1194, 1194.2, 1197, certain provisions of the Industrial Welfare Commission Wage Orders 1 and
21 16, and/or any other applicable Wage Order, and certain provisions of Title 8 of the California
22 Code of Regulations, as alleged herein. DEFENDANTS' utilization of such illegal and unfair
23 business practices constitutes unfair competition and provides DEFENDANTS with an unfair
24 advantage over DEFENDANTS' competitors.

25 79. PLAINTIFFS seeks on their own behalf, on behalf of those similarly situated, and
26 on behalf of the general public full restitution and disgorgement of all employment compensation
27 wrongfully withheld, as necessary and according to proof, to restore any and all monies withheld,
28 acquired, and/or converted by the DEFENDANTS by means of the unfair and unlawful practices

1 complained of herein. The restitution and disgorgement requested includes all wages earned and
2 unpaid, including interest thereon. The acts complained of herein occurred, at least in part, within
3 the last four (4) years preceding the filing of the Complaint in this action and continue to the
4 present.

5 80. PLAINTIFFS are informed and believe, and on that basis allege, that at all times
6 herein mentioned DEFENDANTS have engaged in unlawful and unfair business practices as
7 proscribed by California Business and Professions Code 17200 *et seq.* by depriving PLAINTIFFS
8 and Class Members of the minimum working conditions and standards due to them under the
9 California Labor Code, Industrial Welfare Commission Wage Orders, and Title 8 of the California
10 Code of Regulations, as identified herein.

11 81. California Business and Professions Code 17200 *et seq.* prohibits acts of unfair
12 competition, which mean and include any unlawful, unfair, or fraudulent business act or practice.
13 Under California law, wages unlawfully withheld from an employee constitutes an unfair business
14 act, entitling PLAINTIFFS and Class Members to a restitution remedy authorized by California
15 Business and Professions Code section 17203. PLAINTIFFS and Class Members and the general
16 public are, therefore, entitled to the relief requested below, in addition to any other forms of
17 declaratory and/or injunctive relief that the Court may order to remedy these unfair and unlawful
18 practices.

19 82. In addition, PLAINTIFFS have incurred, on behalf of themselves, and on behalf of
20 the Class Members, and will continue to incur, legal expenses and attorneys' fees. PLAINTIFFS,
21 and on behalf of the Class Members, are presently unaware of the precise amount of these fees and
22 expenses and prays for leave of this Court to amend the Complaint when the amounts are fully
23 known. Pursuant to California Labor Code sections 226, 226.2, 510, 1194 and California Code of
24 Civil Procedure section 1021.5, PLAINTIFFS and Class Members are entitled to recover
25 attorneys' fees, expenses, and costs according to proof.

26 **SEVENTH CAUSE OF ACTION**

27 **CIVIL PENALTIES PRUSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**
28 **(LABOR CODE §2699, ET SEQ.)**

1 **(PLAINTIFFS, Individually and on Behalf of the Class Members, Against DEFENDANTS**
2 **and DOES 1 through 100)**

3 83. All prior allegations are re-alleged and incorporated herein by this reference.

4 84. During the statute of limitations' period preceding the filing of the initial complaint
5 in this action, PLAINTIFFS alleges on behalf of themselves and all others—on information and
6 belief—that Defendants violated Labor Code sections 201, 202, 203, 204, 210, 226, 226(a), 226.3,
7 226.6, 256, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 1288, as well as 1199,
8 and all applicable Wage Orders.

9 85. As described throughout this complaint, and as the violations are described and
10 flow from both the allegations in this complaint and/or the aforementioned statutes, Defendants
11 thus violated all of the aforementioned labor code violations. These violations subject Employer
12 and individuals to civil penalties as set forth in (1) the foregoing statutes to the extent that they are
13 specified and contained therein, which Plaintiff will be seeking on her own behalf and on the behalf
14 of all aggrieved employees; or to (2) other PAGA relief. To the extent that that the statutes do not
15 provide for PAGA civil penalties or PAGA available relief, then Plaintiff will seek the default
16 PAGA penalties for each of the preceding statutory violations in accordance with Labor Code
17 section 2699(f) for herself and for all aggrieved employees, as well as the LWDA.

18 86. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
19 reasonable attorney's fees and costs in connection with her claim for civil penalties.

20 87. Plaintiff exhausted her administrative remedies by providing notice to the LWDA
21 and to Defendants as required by the PAGA statute, complying with all requirements to exhaust
22 her administrative remedies on or about September 27, 2022. Neither Plaintiff nor Plaintiff's
23 counsel received a response from Defendants or the LWDA.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, PLAINTIFFS pray as follows:

- 26 1. That the Court determine that Causes of Action One through Six may be maintained
27 as a Class Action;
28 2. For the attorneys appearing in the above caption to be named as Class Counsel;

- 1 3. With respect to the First through Third Causes of Action:
- 2 a. For damages, including all wages due and owing;
- 3 b. For liquidated damages as provided by law;
- 4 c. For interest thereon from the date such amounts were due;
- 5 d. For an award of costs of suit and reasonable attorney fees.
- 6 4. With respect to the Fourth Cause of Action:
- 7 a. For penalties as authorized by California Labor Code sections 226.2, 226(e);
- 8 b. For injunctive relief pursuant to California Labor Code section 226(h);
- 9 c. For an award of costs of suit and reasonable attorney fees.
- 10 5. With respect to the Fifth Cause of Action:
- 11 a. For penalties as authorized by California Labor Code section 203(a);
- 12 b. For penalties as authorized by California Labor Code section 210(a);
- 13 c. For an award of costs of suit and reasonable attorney fees.
- 14 6. With respect to the Sixth Cause of Action:
- 15 a. For an accounting, under administration of Plaintiffs and/or the receiver and
- 16 subject to Court review, to determine the amount to be returned by Defendants,
- 17 and the amounts to be refunded to members of the classes who are owed monies
- 18 by Defendants;
- 19 b. For an Order requiring Defendants to make full restitution and payment
- 20 pursuant to California law;
- 21 c. For an Order for preliminary and/or permanent injunction prohibiting
- 22 Defendants from engaging in the acts complained of herein;
- 23 d. For all other appropriate injunctive, declaratory and equitable relief;
- 24 e. For interest to the extent permitted by law; and
- 25 f. For an award of costs of suit and reasonable attorney fees incurred in the
- 26 investigation, filing and prosecution of this action pursuant to California Code
- 27 of Civil Procedure section 1021.5, California Business and Professions Code
- 28

1 section 17200 *et. seq.*, California Labor Code sections 1194, 226, 226.2, and/or
2 any other applicable provision of law.

3 7. With respect to the Seventh Cause of Action:

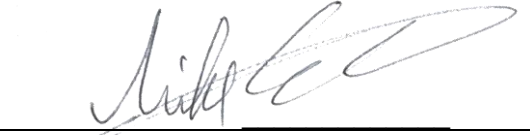
4 a. For civil penalties under the Labor Code;

5 b. For an award of costs of suit and reasonable attorney fees pursuant to Labor
6 Code § 2699(g).

7 PLAINTIFFS, on behalf of themselves and all similarly situated Class Members, hereby
8 demand trial by jury of Causes of Action One through Six to the extent authorized by law.

9
10
11 Dated: December 12, 2022

KYLE TODD, P.C./ ELKIN GAMBOA LLP

12
13
14 By: 

KYLE TODD

MICHAEL ELKIN

JESSICA GAMBOA

Attorneys for Plaintiffs, as individuals, and
on behalf of all others similarly situated