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RENE LOPEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

RENE LOPEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

SUNNY DELIGHT BEVERAGES CO., a
Florida corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 30-2022-01280502-CU-OE-CXC

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

- (1) FAILURE TO PAY ALL MINIMUM
WAGES OWED (LABOR CODE §§
1194, 1194.2, 1197);**
- (2) FAILURE TO PAY ALL OVERTIME
WAGES OWED (LABOR CODE §§ 204,
510, 558, 1194, 1198);**
- (3) FAILURE TO PROVIDE MEAL
PERIODS (LABOR CODE §§ 226.7,
512, 558);**
- (4) FAILURE TO AUTHORIZE AND
PERMIT REST PERIODS (LABOR
CODE §§ 226.7, 516, 558);**
- (5) FAILURE TO REIMBURSE
NECESSARY BUSINESS EXPENSES
(LABOR CODE § 2802);**

1 (6) FAILURE TO PROVIDE ACCURATE,
2 ITEMIZED WAGE STATEMENTS
(LABOR CODE § 226 *et seq.*);

3 (7) FAILURE TO PAY ALL WAGES
4 UPON TERMINATION (LABOR
5 CODE §§ 201-203);

6 (8) UNFAIR COMPETITION (BUS &
7 PROF CODE § 17200 *et seq.*); and

8 (9) CIVIL PENALTIES UNDER THE
9 PRIVATE ATTORNEYS GENERAL
10 ACT (LABOR CODE § 2698 *et seq.*)

11 DEMAND FOR JURY TRIAL
12 UNLIMITED CIVIL CASE
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1 Plaintiff Rene Lopez (“Plaintiff”), on behalf of himself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint (“FAC”) against
3 Sunny Delight Beverages Co., a Florida corporation; and DOES 1 to 100, inclusive (collectively
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 FAC for recovery of unpaid wages and penalties under California Business and Professions Code
8 § 17200 *et seq.*, Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1194, 1194.2,
9 1197, 1198, 2802, 2698 *et seq.*, and Industrial Welfare Commission Wage Order 1 (“Wage Order
10 1”), in addition to seeking declaratory relief and restitution. This FAC is brought pursuant to
11 California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations
12 of the California Labor Code because the amount in controversy exceeds this Court's
13 jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
16 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
17 County of Orange. Defendants transact business throughout Southern California, including
18 Orange County and Defendants are within the jurisdiction of this Court for purposes of service of
19 process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is, a California resident. During the four years immediately preceding
23 the filing of the lawsuit in this action and within the statute of limitations periods applicable to
24 each cause of action pled herein, Plaintiff was employed by Defendants as an hourly, non-exempt
25 employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
26 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
27 §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1194, 1194.2, 1197, 1198, 2802, 2698 *et seq.*,
28 and California Business and Professions Code § 17200 *et seq.* (“Unfair Competition Law”); and

1 Wage Order 1, which sets employment standards for the manufacturing industry, which includes
2 the industry in which Plaintiff worked for Defendants.

3 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
4 years preceding the filing of the Lawsuit in this action and continuing to the present, Defendants
5 did (and continue to do) business by being a leading producer of juice-based drinks. Defendants
6 employed Plaintiff and other, similarly-situated non-exempt, hourly employees within, among
7 other counties, Orange County and the state of California and, therefore, were (and are) doing
8 business in Orange County and the State of California.

9 5. Plaintiff does not know the true names or capacities, whether individual, partner,
10 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
11 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
12 amend this FAC when such true names and capacities are discovered. Plaintiff is informed, and
13 believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
14 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
15 and proximately caused Plaintiff and the Classes (as defined in Paragraph 20) to be subject to the
16 unlawful employment practices, wrongs, injuries and damages complained of herein.

17 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
18 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

19 7. At all times herein mentioned, each of said Defendants participated in the doing
20 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
21 Defendants, and each of them, were the agents, servants, and employees of each and every one of
22 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
23 were acting within the course and scope of said agency and employment. Defendants, and each
24 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
25 omissions complained of herein.

26 8. At all times mentioned herein, Defendants, and each of them, were members of
27 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
28 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,

1 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
2 members of the Classes.

3 **GENERAL FACTUAL ALLEGATIONS**

4 9. Plaintiff, a current employee, has been employed by Defendants since
5 approximately September 1995 through the present. Plaintiff worked as a non-exempt Machine
6 Operator/Mechanic and job duties included without limitation, making, packing and ship
7 Defendants' products at Defendants' facility located in Anaheim, California.

8 10. Throughout Plaintiff's employment with Defendants, Plaintiff was generally
9 scheduled to work Monday through Friday from approximately 5:00 a.m. to approximately 1:30
10 p.m. During his employment with Defendants, Plaintiff was not fully paid for all time worked
11 due to Defendants' timekeeping policies and practices because Defendants would unlawfully
12 shave Plaintiff's work time and/or round Plaintiff's work time such that Plaintiff would not be
13 fully paid all wages he was rightfully owed. This time shaving/rounding practice utilized by
14 Defendants was not-even handed over time and would round and/or shave in Defendants' favor
15 such that Plaintiff was routinely underpaid for his time worked, including minimum wages. As a
16 result of this policy or practice, Defendants failed to properly account for and track all time
17 actually worked by Plaintiff, and also failed to pay Plaintiff all required minimum wages. Further,
18 Plaintiff and other non-exempt, hourly employees often worked over eight hours in a day and/or
19 40 hours in a week, and Defendants' policy and practice of failing to compensate them for all
20 hours worked also deprived them of all overtime wages owed.

21 11. Further, during his employment with Defendants, Plaintiff often worked in excess
22 of eight hours per workday and/or forty hours per workweek, but did not receive proper overtime
23 compensation equal to one and one-half time his regular rate of pay for all overtime hours worked.
24 Specifically, Defendants paid Plaintiff attendance bonuses and/or other forms of pay not properly
25 excludable as a matter of law when calculating Plaintiff's regular rate of pay (hereinafter referred
26 to as "Incentive Pay"). Despite Defendants' payment of Incentive Pay to Plaintiff, Defendants
27 failed to include the Incentive Pay when calculating his regular rate of pay for purposes of
28 overtime, thereby causing Plaintiff to be underpaid for all his required overtime wages. In

1 addition, despite Defendants' payment of Incentive Pay to Plaintiff and other non-exempt
2 employees, Defendants' policies and/or procedures failed to include all forms of Incentive Pay
3 when calculating the regular rate of pay for purposes of paying sick pay in a manner that fully
4 complies with Labor Code § 246(1) in that Defendants failed to pay sick days at the regular rate
5 of pay and unlawfully paid sick days at the straight time or base rate of pay.

6 12. During his employment with Defendants, Plaintiff was not provided all legally
7 required meal periods due to Defendants' unlawful meal period policies and practices.
8 Throughout his employment with Defendants, Plaintiff was not provided all required meal periods
9 due to Defendants' meal period policies/practices which fail to provide uninterrupted, duty-free
10 and timely 30-minute meal periods when employees work in excess of 5.0 hours in a day.
11 Specifically, due to Plaintiff's job duties, Plaintiff was often prevented from taking meal periods
12 that commenced before the end of the 5th hour of work. As a result of Defendants' unlawful meal
13 period policies and practices, Plaintiff meal periods were often late or otherwise unlawful.

14 13. In addition, Defendants failed to maintain policies and practices requiring
15 employees to record the start and stop times for meal periods, in violation of California law.
16 Therefore, upon information and belief, Defendants unlawfully automatically deducted thirty
17 minutes from Plaintiff's work time each shift for his meal period regardless of whether a meal
18 period was taken or not. Additionally, during times when Plaintiff worked in excess of 10.0 hours
19 per shift, Defendants failed to provide Plaintiff with a second, timely meal period of at least 30
20 minutes in length.

21 14. Although Plaintiff was not provided with all legally-compliant meal periods to
22 which he was entitled, Defendants failed to compensate Plaintiff with the required meal period
23 premium for each workday in which he experienced a meal period violation as mandated by Labor
24 Code § 226.7.

25 15. Plaintiff was also not authorized and permitted to take all legally required paid rest
26 periods due to Defendants' unlawful rest period policies and practices. Specifically, Plaintiff
27 worked shifts in excess of 3.5 hours, but was not authorized or permitted to take a ten-minute paid
28 rest period for every four (4) hour period worked, or *major fraction thereof*. As a result of the

work demands imposed by Defendants, Defendants failed to authorize and permit duty-free rest periods for every four hours worked, or *major fraction thereof*.

16. On those occasions when Plaintiff was not authorized and permitted to take all legally-compliant rest periods to which he was entitled, Defendants failed to compensate Plaintiff with the required rest period premium for each workday in which he experienced a rest period violation as mandated by Labor Code § 226.7.

17. Throughout Plaintiff's employment with Defendants, Defendants failed to reimburse Plaintiff for expenses he incurred in direct consequence of the discharge of his duties including, without limitation, costs incurred for using his personal cellular phone. Specifically, the Shift Leader would often text or call Plaintiff and other non-exempt employees. Despite the necessity of incurring expenses in the discharge of his duties, Plaintiff was never reimbursed for all necessary expenditures he incurred as a direct consequence of the discharge of his duties, as mandated by Labor Code section 2802 and *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137.

18. As a result of Defendants' failure to pay all minimum and overtime wages, as well as meal and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff.

19. As a further result of Defendants' failure to pay all minimum and overtime wages, and failure to pay all meal and rest period premium wages, Defendants failed to pay all wages owed to Plaintiff upon separation of his employment with Defendants. Further, as a result of Defendants' failure to pay overtime wages and as a result of Defendants' failure to pay Plaintiff and other non-exempt employees' their sick pay at their regular rate of pay pursuant to Labor Code section 246(l), Defendants failed to pay all wages owed to Plaintiff and other former non-exempt employees upon their separation of employment with Defendants.

CLASS ACTION ALLEGATIONS

20. **Class Definitions:** Plaintiff brings this action on behalf of himself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

- 1 a. The Minimum Wage Class consists of all of Defendants' current and former
2 hourly, non-exempt employees in California who were subject to Defendants'
3 timekeeping policies/practices, during the four years preceding the filing of this
4 lawsuit through the present.
- 5 b. The Overtime Class consists of all of Defendants' current and former hourly, non-
6 exempt employees in California who worked more than eight hours per day and/or
7 forty hours per week, and were subject to Defendants' timekeeping policies and
8 practices, during the four years immediately preceding the filing of this lawsuit
9 through the present.
- 10 c. The Meal Period Class consists of all of Defendants' current and former hourly,
11 non-exempt employees in California who worked at least one shift in excess of 5.0
12 hours during the four years immediately preceding the filing of this lawsuit
13 through the present.
- 14 d. The Rest Period Class consists of all of Defendants' current and former hourly,
15 non-exempt employees in California who worked at least one shift of 3.5 hours or
16 more, during the four years immediately preceding the filing of this lawsuit
17 through the present.
- 18 e. The Wage Statement Class consists of all of Defendants' current and former
19 hourly, non-exempt employees in California, as well as all members of the: (i)
20 Minimum Wage Class; (ii) Overtime Class; (iii) Meal Period Class; and/or (iv)
21 Rest Period Class during the one year immediately preceding the filing of this
22 lawsuit through the present.
- 23 f. The Reimbursement Class consists of all of Defendants' current and former
24 hourly, non-exempt employees who worked in California who were required to
25 use their personal cellular phones in connection with the discharge of their work
26 duties, during the four years immediately preceding the filing of this Lawsuit
27 through the present.
28

g. The Waiting Time Penalty Class consists of consists of Defendants' formerly employed members of the: (i) Overtime Class; (ii) Minimum Wage Class; (iii) Meal Period Class; (iv) Rest Period Class, (v) Wage Statement Class; and/or (vi) any formerly employed non-exempt employees of Defendants who were paid sick pay at less than the regular rate of pay, who separated from employment during the three years immediately preceding the filing of the lawsuit through the present.

h. The UCL Class consists of members of the: (i) Minimum Wage Class; (ii) Overtime Class; (iii) Meal Period Class; (iv) Rest Period Class; (v) Wage Statement Class; (vi) Waiting Time Penalty Class; and/or (vii) Reimbursement Class, during the four years immediately preceding the filing of this Lawsuit through the present.

21. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court, to amend or modify the description of the various classes with greater specificity or further division into subclasses or limitation to particular issues.

22. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

23. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members. Those common questions include, without limitation:

i. Whether Defendants properly paid all minimum wages and/or overtime wages at the correct regular rate of pay and/or paid for all hours worked pursuant to Labor Code §§ 204, 510, 558, 1194, 1194.2, 1197, and 1198;

ii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

- iii. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- iv. Whether Defendants properly reimbursed the members of the Reimbursement Class for all necessary business expenses incurred;
- v. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of separation from employment were unlawful;
- vi. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226;
- vii. Whether Defendants failed to pay Plaintiff and other non-exempt employees' their sick pay at their regular rate of pay pursuant to Labor Code § 246(1); and
- viii. Whether Defendants engaged in unlawful, unfair, illegal, and/or deceptive business practices by and through the wage and hour policies and practices described above, and whether as a result Defendants owe the classes restitution.

24. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform timekeeping, minimum wage payment, overtime wage payment, meal and/or rest period policies/practices, payment of final wages due upon separation of employment, and reimbursement policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

25. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as an hourly, non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the FAC. As alleged herein, Plaintiff, like the members of the Classes, was not provided all legally required minimum and overtime wages, was not provided with all required meal periods, was not authorized and

permitted to take all required rest periods, did not receive all meal and rest period premium wages when he was not provided compliant meal and rest periods, was not properly reimbursed for all necessarily incurred business expenses, was not paid all final wages due upon separation of employment, and was not provided with accurate, itemized wage statements.

26. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

27. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal

1 determinations with respect to individual class members which would, as a practical matter, be
2 dispositive of the interest of the other class members not parties to adjudications or which would
3 substantially impair or impede the ability of the class members to protect their interests. Further,
4 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
5 individual prosecution considering all of the concomitant costs and expenses attending thereto.
6 As such, the Classes identified in Paragraph 20 are maintainable as a Class under § 382 of the
7 Code of Civil Procedure.

8 **FIRST CAUSE OF ACTION**

9 **FAILURE TO PROVIDE MINIMUM WAGES OWED**

10 **(AGAINST ALL DEFENDANTS)**

11 28. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though
12 fully set forth herein.

13 29. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194
14 and 1198 which provide that all non-exempt hourly employees are entitled to all minimum wages
15 for all hours worked, and provide a private right of action for the failure to pay all minimum wage
16 compensation for all work performed.

17 30. At all times relevant herein, Defendants were required to properly compensate
18 Plaintiff and the members of the Minimum Wage Class for all hours worked pursuant to California
19 Labor Code §§ 1194, 1197 and 1198, and Wage Order 1. Wage Order 1, Section 4 requires an
20 employer to pay to every employee on the established payday for the period involved not less
21 than the applicable minimum wage for all hours worked in the payroll period. Defendants caused
22 Plaintiff and the members of the Minimum Wage Class to work hours in a workweek but did not
23 properly compensate Plaintiff and the members of the Minimum Wage Class at least minimum
24 wages for such hours.

25 31. At all relevant times herein, Defendants lacked good faith and had no reasonable
26 grounds for believing that their practices in failing to pay all minimum wages owed at the
27 applicable rate was not a violation of any provision of the Labor Code relating to minimum wage,
28 or an order of the Industrial Welfare Commission. Defendants therefore, in addition to owing

1 minimum wages to Plaintiff and the members of the Minimum Wage Class, also owe liquidated
2 damages in an amount equal to the wages unlawfully unpaid, and interest thereon, pursuant to
3 Labor Code § 1194.2.

4 32. The foregoing practices and policies are unlawful and create entitlement to
5 recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid
6 amount of minimum wages owing, including interest thereon, as well as statutory penalties,
7 liquidated damages, civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code
8 §§ 204, 218.5, 218.6, 558, 1194, 1194.2, 1197, 1197.1 and 1198, Wage Order 1, California Code
9 of Civil Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PAY ALL OVERTIME WAGES OWED**

12 **(AGAINST ALL DEFENDANTS)**

13 33. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

14 34. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194 and
15 1198 which provide that all non-exempt employees are entitled to all overtime wages for all
16 overtime worked (hours in excess of 8 in one day and/or 40 in one week), and provide a private
17 right of action for the failure to pay all overtime compensation for overtime work performed.

18 35. At all times relevant herein Defendants were required to properly compensate
19 Plaintiff and the members of the Overtime Class for all overtime hours worked pursuant to
20 California Labor Code §§ 510 and 1194, and Wage Order 16. Labor Code § 510 and Wage Order
21 1, Section 3 require an employer to pay an employee "one and one-half (1½) times the regular
22 rate of pay" for work in excess of 8 hours per workday and/or in excess of 40 hours per workweek.
23 Labor Code § 510 and Wage Order 1, Section 3 also require an employer to pay an employee
24 double the employee's regular rate for work in excess of 12 hours each workday and/or in excess
25 of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff
26 and the members of the Overtime Class to work in excess of 8 hours in a workday and/or 40 hours
27 in a workweek but did not properly compensate Plaintiff and the members of the Overtime Class
28 at one and one-half their regular rate of pay for such hours.

1 36. The foregoing practices and policies are unlawful and create entitlement to
2 recovery by Plaintiff and the members of the Overtime Class in a civil action for the unpaid
3 amount of overtime premium owing, including interest thereon, as well as statutory penalties,
4 civil penalties, and attorneys' fees and costs of suit, pursuant to Labor Code §§ 204, 218.5, 218.6,
5 510, 558, 1194 and 1198, Wage Order 1, California Code of Civil Procedure § 1021.5, and Civil
6 Code §§ 3287(b) and 3289.

7 **THIRD CAUSE OF ACTION**

8 **FAILURE TO PROVIDE MEAL PERIODS**

9 **(AGAINST ALL DEFENDANTS)**

10 37. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

11 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed
12 in their affirmative obligation to provide all of their non-exempt employees in California, including
13 Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in
14 accordance with the mandates of the California Labor Code and Wage Order 1, § 11. Despite
15 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
16 of the Meal Period Class at their respective regular rates of compensation, in accordance with
17 California Labor Code §§ 226.7, and 512.

18 39. As a result, Defendants are responsible for paying premium compensation for meal
19 period violations including interest thereon, as well as statutory penalties, civil penalties, and costs
20 of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 1, California Code of Civil
21 Procedure § 1021.5 and Civil Code §§ 3287(b) and 3289.

22 **FOURTH CAUSE OF ACTION**

23 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

24 **(AGAINST ALL DEFENDANTS)**

25 40. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

26 41. Wage Order 1, § 12 and California Labor Code §§ 226.7, 516 and 558 establish
27 the right of employees to be authorized and permitted to take a paid rest period of at least ten (10)
28 minutes net rest time for each four (4) hour period worked, or *major fraction thereof*.

42. As alleged herein, Defendants failed to authorize and permit Plaintiff and members of the Rest Period Class to take all required rest periods.

43. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(AGAINST ALL DEFENDANTS)

44. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though fully set forth herein.

45. This cause of action is brought pursuant to Labor Code § 2802, which requires an employer to “indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

46. As alleged herein, and due to their unlawful reimbursement policies and/or practices, Defendants failed to indemnify Plaintiff and the members of the Reimbursement Class all of their necessary business expenses, including, among other things, expenses related to use of personal cellular phones.

47. As a proximate result of Defendants’ failure to indemnify Plaintiff and the members of the Reimbursement Class for their necessary business expenses incurred, Plaintiff and members of the Reimbursement Class are entitled to damages, attorneys’ fees and costs of suit, and interest thereon, in sums to be shown according to proof at trial, pursuant to Labor Code § 2802.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS

(AGAINST ALL DEFENDANTS)

48. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

1 49. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
3 and members of the Wage Statement Class with complete and accurate wage statements with
4 respect to their actual regular and overtime hours worked, total gross wages earned, total
5 deductions, employer address, and total net wages earned, all in violation of Labor Code § 226 *et*
6 *seq.*

7 50. Defendants' failures in furnishing Plaintiff and members of the Wage Statement
8 Class with complete and accurate itemized wage statements resulted in actual injury, as said
9 failures led to, among other things, unpaid wages and unpaid rest period premium wages, and
10 deprived them of the information necessary to identify the discrepancies in Defendants' reported
11 data.

12 51. Defendants' failures create an entitlement to recovery by Plaintiff and members of
13 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
14 Code § 226 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and
15 costs of suit according to California Labor Code § 226 *et seq.*

16 **SEVENTH CAUSE OF ACTION**

17 **FAILURE TO PAY ALL WAGES UPON TERMINATION**

18 **(AGAINST ALL DEFENDANTS)**

19 52. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

20 53. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
21 an employer to pay all wages immediately at the time of termination of employment in the event
22 the employer discharges the employee or the employee provides at least 72 hours of notice of
23 his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her
24 intent to quit, said employee's wages become due and payable not later than 72 hours upon said
25 employee's last date of employment.

26 54. Defendants failed to timely pay Plaintiff all of his final wages at the time of
27 termination, which include, among other things, underpaid minimum and overtime wages, and
28 meal and rest period premium wages. Further, Plaintiff is informed and believes, and based

thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

EIGHTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

55. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

56. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to authorize and permit all required rest periods, or pay premium payments in lieu thereof.

57. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

58. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

59. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

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1 **NINTH CAUSE OF ACTION**

2 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

3 **(AGAINST ALL DEFENDANTS)**

4 60. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 61. Defendants have committed several Labor Code violations against Plaintiff and
6 other Aggrieved Employees. Plaintiff, an “Aggrieved Employee” within the meaning of Labor
7 Code § 2698 et seq., acting on behalf of himself and other Aggrieved Employees, brings this
8 representative action against Defendants to recover the civil penalties due to Plaintiff, the other
9 aggrieved employees, and the State of California according to proof pursuant to Labor Code §
10 2699 (a) and (f) including, but not limited to: (1) \$250.00 for each initial violation and \$1,000.00
11 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or
12 (2) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per
13 pay period for those violations of the Labor Code for which no civil penalty is specifically
14 provided, based on the following Labor Code violations:

- 15 a) Defendants violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay
16 Plaintiff and other Aggrieved Employees the statutory minimum wage for all
17 hours worked;
- 18 b) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to
19 pay Plaintiff and other Aggrieved Employees all overtime compensation earned;
- 20 c) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all
21 legally required meal periods and failing to pay meal period premiums to
22 Plaintiff and other Aggrieved Employees;
- 23 d) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to provide all
24 legally required rest periods and failing to pay rest period premiums to Plaintiff
25 and other Aggrieved Employees;
- 26 e) Defendants violated Labor Code § 2802 by failing to reimburse Plaintiff and
27 other Aggrieved Employees for necessary work expenditures;
- 28

- 1 f) Defendants violated Labor Code § 226 by failing to furnish Plaintiff and other
2 Aggrieved Employees with accurate and compliant itemized wage statements;
3 g) Defendants violated Labor Code §§ 201, 202 and 203 by failing to timely pay
4 all final wages due to Plaintiff and other Aggrieved Employees;
5 h) Defendants violated Labor Code § 204 by failing to pay Plaintiff and other
6 Aggrieved Employees all earned wages at least twice during each calendar
7 month;
8 i) Defendants violated Labor Code § 246 by failing to pay Plaintiff and other
9 Aggrieved Employees sick pay at the legal pay rate; and
10 j) Defendants violated Labor Code § 1174 by failing to maintain accurate records
11 on behalf of Plaintiff and other Aggrieved Employees.

12 62. On September 14, 2022, Plaintiff notified Defendants via certified mail, and the
13 California Labor and Workforce Development Agency (“LWDA”) via e-mail, of Defendants’
14 violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties
15 under California Labor Code § 2698 et seq. with respect to violations of the California Labor
16 Code identified in Paragraph 61 (a)-(i). Attached hereto as **Exhibit 1** is a true and correct copy of
17 the September 14, 2022 correspondence. Now that sixty-five days have passed from Plaintiff
18 notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements
19 for bringing a claim under the Labor Code Private Attorneys General Act with respect to these
20 violations.

21 63. Plaintiff was compelled to retain the services of counsel to file this court action to
22 protect his interests and the interests of other aggrieved employees, and to assess and collect the
23 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which
24 she is entitled to recover under California Labor Code § 2699(g).

25 **PRAYER**

26 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
27 this suit is brought against Defendants, as follows:

- 28 1. For an order certifying the proposed Classes;

2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 558, 1194, 1194.2, 1197, 1197.1 and 1198;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
8. Upon the Fifth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code § 2802;
9. Upon the Sixth Cause of Action, for statutory wage statement penalties pursuant to Labor Code § 226 *et seq.*;
10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant to Labor § 203;
11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;
12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3)

1 \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor
2 Code § 558 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00
3 for each subsequent violation per employee per pay period for those violations of the Labor Code
4 for which no civil penalty is specifically provided, based on the Labor Code violations cited in
5 Paragraph 61 (a)-(i) above.

6 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor
7 Code § 218.6 and Civil Code §§ 3287 and 3289;

8 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
9 218.5 and Code of Civil Procedure § 1021.5 and all other applicable statutes; and

10 15. For such other and further relief the Court may deem just and proper.

11
12 Dated: November 21, 2022

Respectfully submitted,
LIDMAN LAW, APC

13
14 By:



15 Scott M. Lidman
16 Attorneys for Plaintiff
RENE LOPEZ

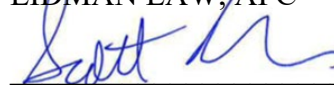
17 **DEMAND FOR JURY TRIAL**

18 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

19
20 Dated: November 21, 2022

Respectfully submitted,
LIDMAN LAW, APC

21
22 By:



23 Scott M. Lidman
24 Attorneys for Plaintiff
25 RENE LOPEZ
26
27
28

EXHIBIT A

EXHIBIT A

LIDMAN LAW

2155 CAMPUS DRIVE, SUITE 150, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

September 14, 2022

VIA LWDA WEBSITE

Labor and Workforce Development Agency

Attn: PAGA Administrator

1515 Clay Street, Suite 801

Oakland, CA 94612

VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Sunny Delight Beverages Co., a Florida corporation

c/o Harvest Hill Beverage Company

1 High Ridge Park

Stamford, CT 06905

VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Sunny Delight Beverages Co., a Florida corporation

c/o National Registered Agents, Inc., Registered Agent for Service of Process

330 N. Brand Blvd., Ste. 700

Glendale, CA 91203

Re: *Rene Lopez v. Sunny Delight Beverages Co.*

To Whom It May Concern:

Please be advised that this law firm represents Rene Lopez in claims arising from his employment with Sunny Delight Beverages Co., a Florida corporation (“Defendant”). Mr. Lopez is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendant’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, if the LWDA decides not to investigate, Mr. Lopez intends to pursue a lawsuit on behalf of other “Aggrieved Employees”, which should be considered to include all of Defendant’s all current and former non-exempt employees in California who have worked for Defendant, at least in part, during the one year immediately preceding the date of this letter through the date of trial, the date judgment is entered, the date of settlement and/or other date approved by the Court.

Mr. Lopez, a current employee, has been employed by Defendant since approximately September 1995 through the present. Mr. Lopez worked as a non-exempt Machine Operator/Mechanic and job duties included without limitation, making, packing and ship Defendant’s products at Defendant’s facility located in Anaheim, California.

Throughout Mr. Lopez’s employment with Defendant, Mr. Lopez was generally scheduled to work Monday through Friday from approximately 5:00 a.m. to approximately

1:30 p.m. During his employment with Defendant, Mr. Lopez was not fully paid for all time worked due to Defendant's timekeeping policies and practices because Defendant would unlawfully shave Mr. Lopez's work time and/or round Mr. Lopez's work time such that Mr. Lopez would not be fully paid all wages he was rightfully owed. This time shaving/rounding practice utilized by Defendant was not-even handed over time and would round and/or shave in Defendant's favor such that Mr. Lopez was routinely underpaid for his time worked, including minimum wages. As a result of this policy or practice, Defendant failed to properly account for and track all time actually worked by Mr. Lopez, and also failed to pay Mr. Lopez all required minimum wages. Further, Mr. Lopez and other non-exempt, hourly employees often worked over eight hours in a day and/or 40 hours in a week, and Defendant's policy and practice of failing to compensate them for all hours worked also deprived them of all overtime wages owed.

Further, during his employment with Defendant, Mr. Lopez and other non-exempt, hourly employees often worked in excess of eight hours per workday and/or forty hours per workweek, but did not receive proper overtime compensation equal to one and one-half time their regular rate of pay for all overtime hours worked. Specifically, Defendant paid Mr. Lopez and other non-exempt, hourly employees attendance bonuses and/or other forms of pay not properly excludable as a matter of law when calculating Mr. Lopez's regular rate of pay (hereinafter referred to as "Incentive Pay"). Despite Defendant's payment of Incentive Pay to Mr. Lopez and other non-exempt, hourly employees, Defendant failed to include the Incentive Pay when calculating their regular rate of pay for purposes of overtime, thereby causing Mr. Lopez and other non-exempt, hourly employees to be underpaid for all their required overtime wages. In addition, despite Defendant's payment of Incentive Pay to Mr. Lopez and other non-exempt employees, Defendant's policies and/or procedures failed to include all forms of Incentive Pay when calculating the regular rate of pay for purposes of paying sick pay in a manner that fully complies with Labor Code § 246(l) in that Defendant failed to pay sick days at the regular rate of pay and unlawfully paid sick days at the straight time or base rate of pay.

During his employment with Defendant, Mr. Lopez and other non-exempt, hourly employees were not provided all legally required meal periods due to Defendant's unlawful meal period policies and practices. Throughout his employment with Defendant, Mr. Lopez and other non-exempt, hourly employees were not provided all required meal periods due to Defendant's meal period policies/practices which fail to provide uninterrupted, duty-free and timely 30-minute meal periods when employees work in excess of 5.0 hours in a day. Specifically, due to their job duties, Mr. Lopez and other non-exempt, hourly employees were often prevented from taking meal periods that commenced before the end of the 5th hour of work. As a result of Defendant's unlawful meal period policies and practices, Mr. Lopez and other non-exempt, hourly employees meal periods were often late or otherwise unlawful.

In addition, Defendant failed to maintain policies and practices requiring employees to record the start and stop times for meal periods, in violation of California law. Therefore, upon information and belief, Defendant unlawfully automatically deducted thirty minutes from Mr. Lopez and other non-exempt, hourly employees' work

time each shift for their meal period regardless of whether a meal period was taken or not. Additionally, during times when Mr. Lopez and other non-exempt, hourly employees worked in excess of 10.0 hours per shift, Defendant failed to provide Mr. Lopez and other non-exempt, hourly employees with a second, timely meal period of at least 30 minutes in length.

Although Mr. Lopez and other non-exempt, hourly employees were not provided with all legally-compliant meal periods to which they were entitled, Defendant failed to compensate Mr. Lopez and other non-exempt, hourly employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Mr. Lopez and other non-exempt, hourly employees were also not authorized and permitted to take all legally required paid rest periods due to Defendant's unlawful rest period policies and practices. Specifically, Mr. Lopez and other non-exempt, hourly employees worked shifts in excess of 3.5 hours, but was not authorized or permitted to take a ten-minute paid rest period for every four (4) hour period worked, or *major fraction thereof*. As a result of the work demands imposed by Defendant, Defendant failed to authorize and permit duty-free rest periods for every four hours worked, or *major fraction thereof*.

On those occasions when Mr. Lopez and other non-exempt, hourly employees were not authorized and permitted to take all legally-compliant rest periods to which they were entitled, Defendant failed to compensate Mr. Lopez and other non-exempt, hourly employees with the required rest period premium for each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7.

Throughout Mr. Lopez's employment with Defendant, Defendant failed to reimburse Mr. Lopez and other non-exempt, hourly employees for expenses they incurred in direct consequence of the discharge of their duties including, without limitation, costs incurred for using their personal cellular phones. Specifically, the Shift Leader would often text or call Mr. Lopez and other non-exempt employees. Despite the necessity of incurring expenses in the discharge of his duties, Mr. Lopez and other non-exempt, hourly employees were never reimbursed for all necessary expenditures they incurred as a direct consequence of the discharge of his duties, as mandated by Labor Code section 2802 and *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137.

As a result of Defendant's failure to pay all minimum and overtime wages, as well as meal and rest period premium wages, Defendant maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Lopez and other non-exempt, hourly employees.

As a further result of Defendant's failure to pay all minimum and overtime wages, and failure to pay all meal and rest period premium wages, Defendant failed to pay all wages owed to Mr. Lopez and other former non-exempt, hourly employees upon separation of their employment with Defendant. Further, as a result of Defendant's failure to pay

overtime wages and as a result of Defendant's failure to pay Mr. Lopez and other non-exempt employees' their sick pay at their regular rate of pay pursuant to Labor Code section 246(l), Defendant failed to pay all wages owed to Mr. Lopez and other former non-exempt employees upon their separation of employment with Defendant.

As described above, Defendant committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 1 ("Wage Order 1"):

Overtime Violations

Defendant was required to pay Mr. Lopez and other aggrieved employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; the Wage Order 1, § 3. According to Labor Code § 510(a), "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." This Section further provides, "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated equal to one and one-half times their regular rate of pay for all overtime hours worked." As explained above, Mr. Lopez and other Aggrieved Employees often worked over eight hours in a day and/or 40 hours in a week, and Defendant's policy and practice of failing to compensate them for all hours worked also deprived them of all overtime wages owed due to Defendant's unlawful time shaving/rounding practice. Further, Defendant paid Mr. Lopez attendance bonuses and/or other forms of pay not properly excludable as a matter of law when calculating Mr. Lopez's regular rate of pay (hereinafter referred to as "Incentive Pay"). Despite Defendant's payment of Incentive Pay to Mr. Lopez, Defendant failed to include the Incentive Pay when calculating his regular rate of pay for purposes of overtime, thereby causing Mr. Lopez and other Aggrieved Employees to be underpaid for all his required overtime wages.

Minimum Wage Violations

Defendant was required to pay Mr. Lopez and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1194; 1194.2, 1197; The Wage Order 1, § 4. Mr. Lopez and other aggrieved employees were not paid for all hours worked due to Defendant's timekeeping and compensation practices. As alleged above, , Mr. Lopez was not fully paid for all time worked due to Defendant's timekeeping policies and practices because Defendant would unlawfully shave Mr. Lopez's work time and/or round Mr. Lopez's work time such that Mr. Lopez would not be fully paid all wages he was rightfully owed. This time shaving/rounding practice utilized by Defendant was not-even handed over time and would round and/or shave in Defendant's favor such that Mr. Lopez was routinely underpaid for his time worked, including minimum wages. As a result of this policy or practice, Defendant failed to properly account for and track all time actually worked by Mr. Lopez, and also failed to

pay Mr. Lopez all required minimum wages. Further, Mr. Lopez and other non-exempt, hourly employees often worked over eight hours in a day and/or 40 hours in a week, and Defendant's policy and practice of failing to compensate them for all hours worked also deprived them of all overtime wages owed.

Meal Period Violations

As alleged above, Defendant failed to provide Mr. Lopez and other Aggrieved Employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 1, § 11. S Specifically, due to Mr. Lopez's job duties, Mr. Lopez was often prevented from taking meal periods that commenced before the end of the 5th hour of work. As a result of Defendant's unlawful meal period policies and practices, Mr. Lopez meal periods were often late or otherwise unlawful. Therefore, Mr. Lopez and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... 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."). Although Mr. Lopez and other Aggrieved Employees were not provided with all legally-compliant meal periods to which they were entitled, Defendant failed to compensate Mr. Lopez and other Aggrieved Employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Rest Period Violations

Defendant also failed to authorize and permit Mr. Lopez and other Aggrieved Employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 1, § 12. As alleged above, Defendant's rest period policies/practices fail to authorize and permit all rest periods for every four hours worked, or *major fraction thereof*. Specifically, as a result of the work demands imposed by Defendant, Defendant did not authorize and permit one rest period for every four hours worked, or *major fraction thereof*. As a result, Mr. Lopez and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, 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 period is not provided.")

Failure to Reimburse Business Expenses

Defendant failed to reimburse Mr. Lopez and other aggrieved employees for necessary work expenses, including, but not limited to, expenses incurred for the reasonable portion of cellular phone expenses incurred in the direct discharge of the job

duties of such employees. Defendant's policy of not providing reimbursement for necessary work-related expenses is in violation of Wage Order 1, § 9, and Labor Code § 2802 ("An employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.") Mr. Lopez and other aggrieved employees are therefore entitled to reimbursement of such unpaid work expenses with interest.

Failure to Pay Sick Pay at the Legal Pay Rate

Defendant's pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement, pursuant to Labor Code §§ 246, 248.5 and/or Labor Code §§ 2699, *et seq.*, to recovery by Mr. Lopez and other Aggrieved Employees, in a civil action, to the extent allowed by law.

Labor Code §246(a) states: "(a) An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section." Labor Code § 246(b)(1) states: "An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section." Labor Code §246(l) states: "For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations: (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek. (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. (3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time."

Defendant, as a matter of established company policy and procedure, at each and every one of the individual facilities owned and/ or operated by Defendant, during the relevant time period: (a) administered a uniform company policy and practice as to the pay policies regarding Mr. Lopez and other Aggrieved Employees; and (b) failed to pay Mr. Lopez and other Aggrieved Employees for paid sick days in a manner that fully complies with Labor Code § 246(l), failed to pay sick days at the regular rate of pay, and/or unlawfully paid sick days at the straight time or base rate of pay.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendant failed to timely pay Mr. Lopez and other Aggrieved Employees all of their final wages at the time of separation, which

included, among other things, underpaid minimum and overtime wages, and meal and rest period premium wages. Pursuant to Labor Code § 203, Defendant's failure to pay all final wages due to Mr. Lopez and other aggrieved employees was willful and, consequently, entitles Mr. Lopez and other similarly aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Defendants failed to pay their final wages after their separation, up to a maximum of thirty days.

Wage Statement Violations

Defendant knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Mr. Lopez and other aggrieved employees with accurate and complete, itemized wage statements that included, among other requirements, all minimum and overtime wages earned, meal and rest period premiums, and total gross and net wages earned, in violation of Labor Code § 226 *et seq.* Defendant's failure to furnish Mr. Lopez and other aggrieved employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all minimum and overtime wages earned, and meal and rest period premium wages, and deprived them of the information necessary to identify discrepancies in Defendant's reported data.

As an "aggrieved employee," Mr. Lopez will initiate a civil action on behalf of himself and other Aggrieved Employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Lopez's own investigation, and on information and belief, Defendant committed the following Labor Code violations:

- a) Defendant violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Mr. Lopez and other Aggrieved Employees the statutory minimum wage for all hours worked;
- b) Defendant violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Lopez and other Aggrieved Employees all overtime compensation earned;
- c) Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Mr. Lopez and other Aggrieved Employees;
- d) Defendant violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Mr. Lopez and other Aggrieved Employees;
- e) Defendant violated Labor Code § 2802 by failing to reimburse Mr. Lopez and other Aggrieved Employees for necessary work expenditures;

- f) Defendant violated Labor Code § 226 by failing to furnish Mr. Lopez and other Aggrieved Employees with accurate and compliant itemized wage statements;
- g) Defendant violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Mr. Lopez and other Aggrieved Employees;
- h) Defendant violated Labor Code § 204 by failing to pay Mr. Lopez and other Aggrieved Employees all earned wages at least twice during each calendar month;
- i) Defendant violated Labor Code § 246 by failing to pay Mr. Lopez and other Aggrieved Employees sick pay at the legal pay rate; and
- j) Defendant violated Labor Code § 1174 by failing to maintain accurate records on behalf of Mr. Lopez and other Aggrieved Employees.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendant if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,

LIDMAN LAW, APC



Scott M. Lidman

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2155 Campus Drive, Suite 150, El Segundo, CA 90245.

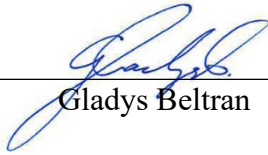
On November 21, 2022 I served the foregoing document(s) described as: **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested party(ies) in this action as follows:

Sunny Delight Beverages Co., a Florida corporation
c/o National Registered Agents, Inc., Registered Agent for Service of Process
330 N. Brand Blvd., Ste. 700
Glendale, CA 91203

☒ (BY MAIL) I am "readily familiar" with Lidman Law, APC's practice of collection and processing correspondence for mailing. I enclosed the document(s) in a sealed envelope or package addressed to the persons at the address(es) listed above. Under the practice the correspondence would be deposited with the U.S. postal service on the same day with postage thereof fully prepaid at El Segundo, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage date is more than one day after date of deposit for mailing in affidavit.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 21, 2022, at El Segundo, California.



Gladys Beltran