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13 similarly situated

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF FRESNO**
16

17 DOLORES GALLEGOS, an individual, and
18 on behalf of all others similarly situated,

19 Plaintiffs,

20 vs.

21 TOUCHSTONE PISTACHIO COMPANY,
LLC, a California Limited Liability Company;
22 PARTNERS PERSONNEL-MANAGEMENT
SERVICES, LLC; NEXEM PARTNERS,
23 LLC; and DOES 1 through 50 inclusive,

24 Defendants.
25
26

FIRST AMENDED CLASS ACTION
COMPLAINT

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

Case No. 22CECG03043

1. **FAILURE TO PAY MINIMUM
WAGES (CAL. LABOR CODE
§§1182.12, 1194, 1194.2, 1197)**
2. **FAILURE TO PAY OVERTIME
COMPENSATION (CAL. LABOR
CODE §§510, 1194)**

3. **FAILURE TO PAY MEAL AND REST PERIOD COMPENSATION (CAL. LAB. CODE §§ 226.7, 512, 218.5)**
 4. **WAITING TIME PENALTIES (CAL. LAB. CODE § 203)**
 5. **FAILURE TO PAY ALL WAGES BY THE APPROPRIATE PAY PERIOD (CAL. LAB. CODE § 204)**
 6. **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS (CAL. LAB. CODE § 226, IWC Wage Order)**
 7. **UNFAIR BUSINESS PRACTICES (CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200, ET SEQ.)**
 8. **PAGA CIVIL PENALTIES**
- DEMAND FOR JURY TRIAL**

PLAINTIFF DOLORES GALLEGOS as an individual, and on behalf of all others similarly situated, complains, and alleges on information and belief the following against TOUCHSTONE PISTACHIO COMPANY, LLC, and DOES 1 through 100, inclusive, (collectively, and hereinafter referred to as “DEFENDANTS”):

INTRODUCTION

1. This is a class action lawsuit being brought on behalf of all non-exempt employees who work(ed) for DEFENDANTS in California. PLAINTIFF and members of the PLAINTIFF CLASS (defined below) work(ed) as laborers at DEFENDANTS’ various locations in California. PLAINTIFF and members of the PLAINTIFF CLASS have been subjected to numerous wage and hour violations which are the result of systemic policies and procedures implemented by DEFENDANTS.

2. DEFENDANTS' actions give rise to violations of state wage and hour laws, including laws mandating the payment of wages. Through this lawsuit, PLAINTIFF, and others similarly situated, seek to recover all wages which they and other employees of DEFENDANTS rightfully earned but have been denied, as well as any penalties associated with DEFENDANTS' rampant and willful violations of the law, interest on the unpaid wage amounts, and attorneys' fees.

JURISDICTION

3. The Court has personal jurisdiction over DEFENDANTS because they are residents and/or doing business in the state of California.

4. Venue is proper in this Court in accordance with Section 395(a) of the California Code of Civil Procedure because DEFENDANTS, or some of them, have their principal place of business and/or are doing business in Fresno County.

THE PARTIES

5. PLAINTIFF DOLORES GALLEGOS is, and at all times relevant hereto was, a resident of the State of California.

6. PLAINTIFF is informed and believes and based thereon alleges that DEFENDANTS are limited liability companies which, at all times relevant herein, employed California persons throughout the state including the County of Fresno, State of California.

7. Section 2 of the applicable Industrial Wage Commission Order defines an "employer" as any "person as defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours or working conditions of any person." PLAINTIFF, and others similarly situated including the PLAINTIFF CLASS (defined below), are informed and believe and on this basis allege that DEFENDANTS employ or exercise control over the wages, hours or working conditions of PLAINTIFF and the rest of the PLAINTIFF CLASS as defined below.

8. PLAINTIFF DOLORES GALLEGOS is informed and believes and based thereon alleges that PLAINTIFF was employed by DEFENDANTS from on or about August 2021 through

1 and including October 2021.

2 9. Whenever in this Complaint reference is made to DEFENDANTS, such allegations
3 shall be deemed to mean the acts of all defendants acting individually, jointly, and/or severally.

4 10. PLAINTIFF is informed and believes, and on that basis allege, that DEFENDANTS
5 and DOES 1 through 100 constitute an integrated enterprise based on their interrelation of
6 operations, common management, centralized control of labor relations, common ownership, and
7 financial control. Specifically, PLAINTIFF is informed and believes and thereon alleges that: each
8 of the DEFENDANTS operate according to uniform policies and procedures for controlling the
9 work of PLAINTIFF and the PLAINTIFF CLASS (described below); DEFENDANTS operate as
10 an interrelated operation; DEFENDANTS are operated by a small group of shared officers and
11 directors; and each of the DEFENDANTS share and control the management of the premises where
12 PLAINTIFF and members of the PLAINTIFF CLASS work. PLAINTIFF allege on information and
13 belief that DEFENDANTS are and/or were joint employers of PLAINTIFF. Thus, adherence to the
14 fiction of the separate existence of each defendant here would permit abuse, sanction, fraud and
15 promote injustice.

16 11. The true names and capacities of defendants named herein as DOES 1-100,
17 inclusive, whether individual, corporate, associate, or otherwise, are unknown to PLAINTIFF, who
18 therefore sue these defendants by such fictitious names. PLAINTIFF will amend this Complaint to
19 show true names and capacities of these defendants when they are ascertained.

20 12. At all times mentioned herein, DEFENDANTS, and each of them, were the agents,
21 representatives, employees, successors, assigns, parents, subsidiaries, and/or affiliates, each of the
22 other, and at all times pertinent hereto were acting within the course and scope of their authority as
23 such agents, representatives, employees, successors, assigns, parents, subsidiaries and/or affiliates.
24 PLAINTIFF also alleges that DEFENDANTS were, at all times relevant hereto, the alter egos of
25 each other and jointly employed PLAINTIFF. Wherever reference is made to DEFENDANTS
26 herein, it is intended to include all of the named DEFENDANTS as well as the DOE defendants.

Each of the fictitiously named DOE defendants is responsible for the occurrences herein alleged and proximately caused PLAINTIFF's damages as well as damages of members of the PLAINTIFF CLASS (described below).

CLASS ACTION ALLEGATIONS

13. PLAINTIFF brings this action on behalf of herself, and all others similarly situated as a class action pursuant to California Code of Civil Procedure section 382. The class that PLAINTIFF seeks to represent ("PLAINTIFF CLASS") is composed and defined as follows: **All California persons who are or have been non-exempt employees of DEFENDANTS since four (4) years prior to the filing of the initial Complaint until the entry of final judgment in this action (the "CLASS PERIOD").**

14. There exists a well-defined community of interests among the PLAINTIFF CLASS with respect to the claims asserted herein, and the PLAINTIFF CLASS is readily ascertainable for the following reasons:

a. Numerosity and Ascertainability: The members of the class are so numerous that joinder of all members would be unfeasible and not practicable. While PLAINTIFF does not know the exact number and identity of all Class members, PLAINTIFF alleges, on information and belief, that the members of the PLAINTIFF CLASS exceed one hundred (100) persons. PLAINTIFF alleges, on information and belief, that the identity of such membership is readily ascertainable via inspection of the personnel records and other documents maintained by DEFENDANTS;

b. Typicality: The claims of PLAINTIFF pleaded as class action claims are typical of the claims of all members of the class as they arise out of the same course of conduct and are predicated on the same violation(s) of the law. PLAINTIFF and all members of the PLAINTIFF CLASS sustained injuries and damages arising out of DEFENDANTS' common course of conduct in violation of laws as complained of herein.

c. Commonality: Common issues of fact and law predominate in this action over any allegedly individual issues. The claims of PLAINTIFF and the PLAINTIFF CLASS members arise

1 from the same events or patterns or practices and are based on the same legal theories. Specially,
2 the following issues of fact and law, without limitation, predominate and make this action superior
3 to individual actions:

4 i. Whether DEFENDANTS denied PLAINTIFF and members of the
5 PLAINTIFF CLASS all of the wages to which they are entitled pursuant to the California Labor
6 Code, California IWC Wage Orders, and all other applicable employment laws and regulations

7 ii. Whether DEFENDANTS violated California Labor Code section 204 by
8 failing to pay all wages earned in a timely manner;

9 iii. Whether DEFENDANTS failed to pay the required rest break or meal
10 premium to PLAINTIFF and members of the PLAINTIFF CLASS for all missed rest or meal breaks.

11 iv. Whether DEFENDANTS owe PLAINTIFF and members of the PLAINTIFF
12 CLASS waiting time penalties pursuant to California Labor Code section 203;

13 v. Whether DEFENDANTS have failed to properly provide accurate itemized
14 wage statements as well as keep accurate records as required by California Labor Code section 226
15 and the applicable Industrial Welfare Commission's ("IWC") Wage Order;

16 vi. Whether DEFENDANTS engaged in unfair business practices under section
17 17200, *et. seq* of the California Business and Professions Code;

18 vii. The effect upon and the extent of damages suffered by PLAINTIFF and
19 members of the PLAINTIFF CLASS and the appropriate amount of compensation.

20 d. Adequacy: PLAINTIFF and the PLAINTIFF CLASS all worked for
21 DEFENDANTS, share the same interests, and were subjected to DEFENDANTS' unlawful policy
22 and practice of failing to adequately compensate employees and/or provide them with their statutory
23 entitlements including but not limited to: all owed wages, meal and rest breaks, wage statements, as
24 required by law. PLAINTIFF and members of the PLAINTIFF CLASS do not have any conflicts
25 of interest with other members. Given the significance of the deprivation of their rights,
26 PLAINTIFF will prosecute this action vicariously on behalf of the PLAINTIFF CLASS. They have

1 retained competent and experienced legal counsel who specialize in employment, wage and hour,
2 and class action litigation to represent themselves and the proposed PLAINTIFF CLASS.

3 e. Superiority of Class Action: The disposition of PLAINTIFF and the proposed
4 PLAINTIFF CLASS members' claims in a class action will provide substantial benefits to both the
5 parties and the Court. The nature of this action and the nature of the laws available to the
6 PLAINTIFF CLASS make use of the class action format a particularly efficient and appropriate
7 procedure to afford relief to the PLAINTIFF CLASS. Further, this case involves a corporate
8 employer and a large number of individual employees possessing claims with common issues of
9 law and fact. If each employee were required to file an individual lawsuit, the corporate defendant
10 would necessarily gain an unconscionable advantage since each defendant would be able to exploit
11 and overwhelm the limited resources of each individual plaintiff with its vastly superior financial
12 and legal resources. Requiring each class member to pursue an individual remedy would also
13 discourage the assertion of lawful claims by employees who would be disinclined to pursue an action
14 against their present and/or former employer for an appreciable and justifiable fear of retaliation and
15 permanent damage to their careers at present and/or subsequent employment. Proof of a common
16 business practice or factual pattern, of which the named PLAINTIFF experienced, is representative
17 of the class mentioned herein and will establish the right of each of the members of the class to
18 recovery on the claims alleged herein.

19 The prosecution of separate actions by the individual class members, even if possible, would
20 create: (a) a substantial risk of inconvenient or varying verdicts or adjudications with respect to the
21 individual class members against the defendants herein; and/or (b) legal determinations with respect
22 to individual class members which would, as a practical matter, be dispositive of the other class
23 members' claims who are not parties to the adjudications and/or would substantially impair or
24 impede the ability of class members to protect their interests. Further, the claims of the individual
25 members of the class are not sufficiently large to warrant vigorous individual prosecution
26 considering all of the concomitant costs and expenses attending thereto.

15. PLAINTIFF is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

FACTS COMMON TO ALL CAUSES OF ACTION

16. PLAINTIFF and members of the PLAINTIFF CLASS are current or former non-exempt employees of DEFENDANTS. PLAINTIFF and members of the PLAINTIFF CLASS have been subjected to a variety of wage and hour violations during their employment with DEFENDANTS.

17. Throughout their employment with DEFENDANTS, DEFENDANTS have wrongfully failed to authorize and permit PLAINTIFF and members of the PLAINTIFF CLASS to take their uninterrupted 10-minute rest breaks, for every four hours of work or major fraction thereof, as required by the Labor Code and the applicable Wage Order. DEFENDANTS have also wrongfully failed to authorize and permit PLAINTIFF and members of the PLAINTIFF CLASS to take their uninterrupted, all off-duty 30-minute meal periods for every five hours of work.

18. PLAINTIFF and members of the PLAINTIFF CLASS are also routinely not provided with compensation in lieu of rest or meal breaks as required by California law. DEFENDANTS employed policies and procedures that prevented the PLAINTIFF CLASS from being relieved of all duty for purposes of taking their statutorily entitled breaks, and thus, owe PLAINTIFF CLASS all unpaid wages, including but not limited to meal and rest break premiums.

19. Further, due to the failure to incorporate non-discretionary pay into meal and rest break premiums which included the regular hourly rate, DEFENDANTS failed to properly calculate and pay owed meal and rest break premiums in accordance to law--to the extent that it was attempted and to the extent they were not paid at all.

20. DEFENDANTS also required and/or permitted off-the-clock work, including but not limited to pre- and post-shift duties and work done while clocked out for meal periods, further precluding the PLAINTIFF class from being paid for all time worked, including but not limited to overtime premiums as required by law. As a result of these derivative violations, overtime was not

1 properly captured, and overtime premiums were thus denied. In addition, because of the failure to
2 capture the off-the-clock work as well as the failure to calculate the corresponding non-discretionary
3 pay, the regular adjusted rate was not properly calculated, and thus, overtime premiums were not
4 properly calculated and paid.

5 21. DEFENDANTS furthermore did not timely pay for all wages due, as the paychecks
6 that PLAINTIFF and members of the PLAINTIFF CLASS were provided with did not account for
7 all wages earned, as a result, did not pay PLAINTIFF and members of the PLAINTIFF CLASS all
8 wages owed on a timely basis.

9 22. DEFENDANTS also provided inaccurate and incomplete wage statements to
10 PLAINTIFF and members of the PLAINTIFF CLASS. The wage statements are inaccurate with
11 respect to the actual hours worked by employees, the gross wages earned, and the net wages earned,
12 among other deficiencies. In addition, all applicable hourly rates in effect, and hours worked at said
13 rates, were not properly itemized and listed. The inaccurate wage statements create an actual injury,
14 including making it more difficult for PLAINTIFF and members of the PLAINTIFF CLASS to
15 determine what compensation they are owed but were not paid. Overall, DEFENDANTS' itemized
16 statements to PLAINTIFF and members of the PLAINTIFF CLASS make it appear as if they have
17 been paid for all hours worked when in fact there are numerous hours for which they were not paid.

18 23. The aforementioned acts constitute unfair and unlawful practices as defined by law
19 pursuant to California Business and Professions Code section 17200, et seq. By virtue of this action,
20 PLAINTIFF seek to restore all wages to PLAINTIFF and members of the PLAINTIFF CLASS that
21 DEFENDANTS wrongfully took or withheld.

22 24. DEFENDANTS' violations of the law were willful and done according to
23 DEFENDANTS' established policies and procedures applicable to PLAINTIFF and all members of
24 the PLAINTIFF CLASS.

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26 ///

1 **FIRST CAUSE OF ACTION**

2 **Failure to Pay Minimum Wages**

3 [Cal. Lab. Code §§ 1182.12, 1194, 1194.2, 1197]

4 (By PLAINTIFF in her individual capacity and in her capacity as representatives of all similarly
5 situated members of the PLAINTIFF CLASS against DEFENDANTS)

6 25. Plaintiff incorporates by reference all allegations in the foregoing paragraphs of this
7 Complaint as though fully set forth herein.

8 26. Pursuant to Labor Code §1197, payment of less than the minimum wage fixed by
9 law is unlawful. An employer violates the minimum wage statute even if the average rate for paid
10 and unpaid hours exceeded the minimum wage.

11 27. At all relevant times, DEFENDANTS failed and refused to pay PLAINTIFFS and
12 members of the PLAINTIFF CLASS the legal minimum wage in the State of California, as set forth
13 in Labor Code §1182.12. Specifically, DEFENDANTS did not pay PLAINTIFFS and members of
14 the PLAINTIFF CLASS all of their earned wages. Under California law, PLAINTIFFS and
15 members of the PLAINTIFF CLASS are entitled to at least the minimum wage for every hour
16 worked.

17 28. DEFENDANTS' failure to pay the legal minimum wage to PLAINTIFFS and
18 members of the PLAINTIFF CLASS as alleged herein is unlawful and creates entitlement, pursuant
19 to Labor Code §1197, to recovery by PLAINTIFF and members of the PLAINTIFF CLASS in a
20 civil action for the unpaid balance of the full amount of the unpaid wages owed, calculated as the
21 difference between the straight time compensation paid and applicable minimum wage, including
22 interest thereon.

23 29. Pursuant to Labor Code §1194, PLAINTIFF and members of the PLAINTIFF
24 CLASS request that the court award reasonable attorneys' fees and costs incurred by PLAINTIFFS
25 and members of the PLAINTIFF CLASS in this action.

26 30. In addition, pursuant to Labor Code §1194.2, PLAINTIFFS and members of the

1 PLAINTIFF CLASS are entitled to recover liquidated damages in an amount equal to the minimum
2 wages unlawfully unpaid in the amounts set forth above, and interest thereon.

3 **SECOND CAUSE OF ACTION**

4 **Failure to Pay Overtime Wages**

5 [Cal. Lab. Code §§ 510, 1194, 1194.2]

6 (By PLAINTIFF in her individual capacity and in her capacity as representatives of all similarly
7 situated members of the PLAINTIFF CLASS against DEFENDANTS)

8 31. Plaintiff incorporates by reference all allegations in the foregoing paragraphs of this
9 Complaint as though fully set forth herein.

10 32. Labor Code §510 requires employers to pay their non-exempt employees one and
11 one-half times their regular hourly rate (overtime) for time worked in excess of eight hours in a
12 single day, or 40 hours per week, and double their regular hourly rate (double-time) for all hours
13 worked in excess of 12 hours in a single day. It also requires employers to pay their non-exempt
14 employees overtime compensation for the first eight hours of work done on the seventh consecutive
15 day of work done in any work week and double-time compensation for any work done beyond the
16 first eight hours on the seventh consecutive day of work.

17 33. Labor Code §558(a) requires that any person acting on behalf of an employer who
18 violates, or causes to be violated, overtime rules pay a civil penalty in the amount of \$50 for each
19 underpaid employee for each pay period in which the employee was underpaid in addition to an
20 amount sufficient to recover underpaid wages. Also, Labor Code §558(a) for each subsequent
21 violation, the person acting on behalf of an employer is liable in the amount of \$100 for each
22 underpaid employee for each pay period for which the employee was underpaid in addition to an
23 amount sufficient to recover the underpaid wages.

24 34. At all relevant times, DEFENDANTS required PLAINTIFFS and members of the
25 PLAINTIFF CLASS to work more than eight hours per day and/or more than 40 hours per
26 workweek but failed to pay for all overtime premiums due and owing, as described throughout this

1 complaint.

2 35. At all relevant times, DEFENDANTS failed and refused to pay PLAINTIFFS and
3 members of the PLAINTIFF CLASS all the overtime compensation required by Labor Code §510,
4 and applicable Industrial Welfare Commission Orders.

5 36. As alleged herein, PLAINTIFFS and members of the PLAINTIFF CLASS are not
6 exempt from the overtime pay requirements of Labor Code §510 and the Industrial Welfare
7 Commission Orders.

8 37. In addition to the above withheld overtime wages, PLAINTIFFS and members of the
9 PLAINTIFF CLASS are entitled to civil penalties in this amount stated above based upon
10 DEFENDANTS underpayment of overtime wages. DEFENDANTS violated Labor Code §558 and,
11 thus, also owe statutory penalties.

12 38. PLAINTIFFS and members of the PLAINTIFF CLASS have been deprived of their
13 rightfully earned overtime compensation as a direct and proximate result of DEFENDANTS' failure
14 and refusal to pay said compensation. PLAINTIFFS and members of the PLAINTIFF CLASS are
15 entitled to recover such amounts, plus interest thereon, attorneys' fees, and costs.

16 **THIRD CAUSE OF ACTION**

17 **Failure to Pay Meal and Rest Period Compensation**

18 [Cal. Lab. Code §§ 218.5, 226.7, 512]

19 (By PLAINTIFF in her individual capacity and in her capacity as representative of all similarly
20 situated members of the PLAINTIFF CLASS against DEFENDANTS)

21 39. Plaintiff incorporates by reference all allegations in the foregoing paragraphs of this
22 Complaint as though fully set forth herein.

23 40. DEFENDANTS failed to give PLAINTIFF and members of the PLAINTIFF CLASS
24 uninterrupted rest breaks for shifts lasting four (4) hours or a major fraction thereof as required by
25 law and failed to compensate them for missed rest breaks. In addition, DEFENDANTS failed to
26 give them off-duty meal breaks for every five hours of work, as required by the relevant wage order

1 and Labor Code Section 512. In addition, DEFENDANTS also failed to pay the appropriate
2 premiums due to the failure to account for non-discretionary pay in paying said premiums, to the
3 extent that there was an attempt to pay or to the extent that they were not paid at all.

4 41. PLAINTIFF is informed and believes and alleges that the failure of DEFENDANTS
5 to provide meal and rest breaks and to compensate PLAINTIFF and members of the PLAINTIFF
6 CLASS for these missed rest and meal breaks was willful, purposeful, and unlawful and done in
7 accordance with the policies and practices of DEFENDANTS' operations.

8 42. As a proximate cause of the aforementioned violations, PLAINTIFF and members
9 of the PLAINTIFF CLASS have been damaged in an amount according to proof at time of trial, but
10 in an amount in excess of the jurisdiction of this Court. PLAINTIFF and members of the
11 PLAINTIFF CLASS are entitled to recover the unpaid balance of wages owed; penalties, including
12 penalties available pursuant to California Labor Code Sections 226, 226.7, and 558, plus interest;
13 and costs of suit. PLAINTIFF is also entitled to attorney's fees and costs pursuant to Labor Code
14 Section 218.5 for DEFENDANTS' failure to pay all earned wages to PLAINTIFF and PLAINTIFF
15 CLASS.

16 **FOURTH CAUSE OF ACTION**

17 **Waiting Time Penalties**

18 [Cal. Lab. Code §§ 201, 202, 203]

19 (By PLAINTIFF in her individual capacity and in her capacity as representative of all similarly
20 situated members of the PLAINTIFF CLASS against DEFENDANTS)

21 43. Plaintiff incorporates by reference all allegations in the foregoing paragraphs of this
22 Complaint as though fully set forth herein.

23 44. Pursuant to California Labor Code section 201, if an employer discharges an
24 employee, the wages earned and unpaid at the time of the discharge are due and payable
25 immediately. Pursuant to California Labor Code section 202, if an employee quits his or her
26 employment, the wages earned and unpaid at the time of the discharge are due and payable within

1 seventy-two (72) hours of the resignation. Pursuant to California Labor Code section 203, if an
2 employer willfully fails to pay compensation upon discharge, then the employer is liable for waiting
3 time penalties in the form of compensation of up to thirty (30) workdays.

4 45. To this day, neither PLAINTIFF nor members of the PLAINTIFF CLASS have
5 received all the wages and other compensation they rightfully earned as the paychecks that
6 PLAINTIFF and members of the PLAINTIFF CLASS were provided with did not correctly and
7 accurately account for all wages earned, including all minimum wages, proper overtime wages, and
8 proper meal and rest period premiums when due.

9 46. DEFENDANTS, and each of them, willfully refused and continue to refuse to timely
10 pay PLAINTIFF and members of the PLAINTIFF CLASS all wages earned in a timely manner, as
11 required by California Labor Code section 203. PLAINTIFF therefore requests restitution and
12 penalties as provided by California Labor Code section 203.

13 47. At all times, PLAINTIFF and members of the PLAINTIFF CLASS have been ready,
14 willing, and available to accept payment of these monies.

15 48. PLAINTIFF and members of the PLAINTIFF CLASS are entitled to compensation
16 for all forms of wages earned, including, but not limited to, sums for unpaid wages, but to date have
17 not received such compensation therefore entitling PLAINTIFF and the class to penalties under
18 California Labor Code section 203.

19 **FIFTH CAUSE OF ACTION**

20 **Failure to Pay all Wages by the Appropriate Pay Period**

21 [Cal. Lab. Code § 204]

22 (By PLAINTIFF in her individual capacity and in her capacity as representative of all similarly
23 situated members of the PLAINTIFF CLASS against DEFENDANTS)

24 49. Plaintiff incorporates by reference all allegations in the foregoing paragraphs of this
25 Complaint as though fully set forth herein.

26 50. During the CLASS PERIOD, Labor Code section 204 applied to DEFENDANTS'

1 employment of PLAINTIFF and the PLAINTIFF CLASS. At all relevant times, Labor Code section
2 204 provided that all wages earned by any employee, such as PLAINTIFF and members of the
3 PLAINTIFF CLASS, in any employment between the 1st and 15th days, inclusive, of any calendar
4 month, other than those wages due upon termination of an employee, are due and payable between
5 the 16th and 26th day of the month during which the work was performed. Furthermore, at all times
6 relevant hereto, Labor Code section 204 provided that all wages earned by any employee, such as
7 PLAINTIFF and members of the PLAINTIFF CLASS, in any employment between the 16th and
8 the last day, inclusive, of any calendar month, other than those wages due upon termination of an
9 employee, are due and payable between the 1st and 10th day of the following month.

10 51. During the CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFF and
11 members of the PLAINTIFF CLASS all of their entitled wages on a timely basis.

12 52. During the CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFF and
13 members of the PLAINTIFF CLASS for all wages earned, and therefore violated Labor Code
14 section 204. Accordingly, PLAINTIFF and members of the PLAINTIFF CLASS are entitled to
15 recover all damages, penalties, and other remedies available for violation of Labor Code section
16 204.

17 **SIXTH CAUSE OF ACTION**

18 **Failure to Furnish Accurate, Itemized Wage Statements**

19 [Cal. Lab. Code §§ 226; IWC Wage Orders]

20 (By PLAINTIFF in her individual capacity and in her capacity as representative of all similarly
21 situated members of the PLAINTIFF CLASS against DEFENDANTS)

22 53. Plaintiff incorporates by reference all allegations in the foregoing paragraphs of this
23 Complaint as though fully set forth herein.

24 54. California Labor Code section 226(a) and the applicable IWC Wage Order requires
25 that DEFENDANTS keep accurate records and semimonthly or at the time of payment of wages,
26 furnish each of his or her employees, itemize in wage statements, among other things, time records

1 showing when an employee ends and begins, meal periods, split shift intervals and total daily hours
2 worked shall also be recorded, when a piece rate or incentive plan is in operation, piece rates or an
3 explanation of the incentive plan formula shall be provided to the employees, an accurate production
4 record shall be maintained by the employer. Every employer shall also semimonthly or at the time
5 of each payment of wages furnish each employee, an itemized statement showing, among other
6 things all deductions.

7 55. DEFENDANTS knowingly and intentionally failed to comply with California Labor
8 Code section 226(a) and the applicable IWC Wage Order by failing to keep required accurate payroll
9 records and by failing, on each and every wage statement that was provided to PLAINTIFF and
10 members of the PLAINTIFF CLASS, to accurately reflect wage information and properly itemize
11 deductions.

12 56. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS
13 knowingly and intentionally provided inaccurate payroll records to PLAINTIFF and members of
14 the PLAINTIFF CLASS. PLAINTIFF and members of the PLAINTIFF CLASS have suffered
15 actual damages as a result of DEFENDANTS' violation of Cal. Labor Code § 226(a) and the
16 applicable IWC Wage Order. In addition, PLAINTIFF and the PLAINTIFF CLASS have also
17 suffered, and will continue to suffer, actual damages in the form of additional litigation expenses
18 incurred to calculate lost wages. These additional litigation expenses include, but are not limited to,
19 attorney's fees, expert witness, and other costs attendant to the calculation of lost wages when such
20 costs would not need to be incurred if DEFENDANTS had provided proper itemized wage
21 statements to PLAINTIFF and members of the PLAINTIFF CLASS that complied with California
22 Labor Code section 226(a) and the applicable IWC Wage Order.

23 57. California Labor Code section 226(e) and (g) provide that an employee suffering
24 injury as a result of a knowing and intentional failure by an employer to comply with subdivision
25 (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay
26 period in which a violation occurs and one hundred dollars (\$100) per employee for each violation

1 in subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) and
2 is entitled to an award of costs and reasonable attorney's fees.

3 58. PLAINTIFF and members of the PLAINTIFF CLASS are therefore entitled to
4 recover all amounts for all such wages and expenses and benefits on such wage statements, statutory
5 penalties, interest, attorney's fees, and other court costs and expenses of suit, according to proof at
6 trial. PLAINTIFF and members of the PLAINTIFF CLASS are also entitled to recover, in addition
7 to or in lieu of some or all wages and expenses and benefits, nominal, actual and compensatory
8 damages in amounts according to proof at trial.

9 **SEVENTH CAUSE OF ACTION**

10 **Unfair Business Practices**

11 [Bus. & Prof. Code § 17200, et seq.]

12 (By PLAINTIFF in her individual capacity and in her capacity as representative of all similarly
13 situated members of the PLAINTIFF CLASS against DEFENDANTS)

14 59. Plaintiff incorporates by reference all allegations in the foregoing paragraphs of this
15 Complaint as though fully set forth herein.

16 60. DEFENDANTS' violations of the Employment Laws and Regulations, as alleged,
17 include, among other things DEFENDANTS' failure and refusal to pay all wages earned by
18 PLAINTIFF and the PLAINTIFF CLASS pursuant to DEFENDANTS' illegal practices described
19 above. The aforementioned statutory violations derivatively constitute unfair business practices in
20 violation of the Unfair Competition Law, California Business and Professions Code Section 17200,
21 et seq.

22 61. As a result of DEFENDANTS' unfair business practices, DEFENDANTS have
23 reaped unfair benefits and illegal profits at the expense of PLAINTIFF and the PLAINTIFF CLASS.
24 DEFENDANTS should be compelled to restore such monies to PLAINTIFF and the PLAINTIFF
25 CLASS.

26 62. DEFENDANTS' unfair business practices entitle PLAINTIFF and the PLAINTIFF

1 CLASS to seek preliminary and permanent injunctive relief, including but not limited to, orders that
2 DEFENDANTS account for and restore to PLAINTIFF and the PLAINTIFF CLASS the
3 compensation unlawfully withheld from them. Thus, they are entitled to restitution, in addition to
4 interest, costs, and attorney's fees for the underlying statutory violations incorporated herein,
5 including but not limited to Labor Code Sections 1194, 1194.2, 218.5, et seq., amongst other
6 violations.

7 **EIGHTH CAUSE OF ACTION**

8 **Civil Penalties for Labor Code Violations Pursuant to The Private Attorneys General Act**

9 [Labor Code § 2698 *et seq.*]

10 (By PLAINTIFF, on behalf of herself and all aggrieved employees, against all DEFENDANTS)

11 63. Plaintiff incorporates by reference all allegations in the foregoing paragraphs of this
12 Complaint as though fully set forth herein.

13 64. During the the statute of limitations' period preceding the filing of the initial
14 complaint in this action, Plaintiff alleges on behalf of herself **and** all others—on information and
15 belief—that Defendants violated Labor Code sections 201, 202, 203, 204, 210, 226, 226(a), 226.3,
16 226.6, 256, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 1288, as well as 1199,
17 and all applicable Wage Orders.

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

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

67. Plaintiff exhausted her administrative remedies by providing notice to the LWDA and to Defendants as required by the PAGA statute, complying with all requirements to exhaust her administrative remedies on or about September 7, 2022. Neither Plaintiff nor Plaintiff's counsel received a response from Defendants or the LWDA.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF and the PLAINTIFF CLASS pray for judgment against DEFENDANTS as follows:

1. That the Court determine that Causes of Action 1 through 7 may be maintained as a class action;

2. For injunctive relief to stop DEFENDANTS' illegal practices described above, including, but not limited to, the failure to pay all earned wages, including overtime wages, the failure to provide accurate itemized statements, and other practices as mentioned herein;

3. For general and compensatory damages, according to proof;

4. For statutory and civil penalties, including under PAGA as provided by law;

5. For restitution of all monies due to PLAINTIFF and the PLAINTIFF CLASS;

6. For waiting time penalties pursuant to California Labor Code section 203; and

7. Attorney's Fees Pursuant to Labor Code Sections 1194, 1194.2, 218.5, and 226.

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1 Dated: November 28, 2022

2 ELKIN | GAMBOA, LLP
3 KYLE TODD, P.C.

4
5 By: 

6 MICHAEL ELKIN

7 JESSICA GAMBOA

8 KYLE TODD

9 ALFREDO NAVA

10 Attorneys for PLAINTIFF DOLORES
11 GALLEGOS, as an individual, and on behalf of
12 all others similarly situated

13
14 **DEMAND FOR JURY TRIAL**

15 PLAINTIFF and members of the PLAINTIFF CLASS, and aggrieved employees, demand
16 a trial by jury on all issues so triable.

17 Dated: November 28, 2022

18 ELKIN | GAMBOA, LLP
19 KYLE TODD, P.C.

20 By: 

21 MICHAEL ELKIN

22 JESSICA GAMBOA

23 KYLE TODD

24 ALFREDO NAVA

25 Attorneys for PLAINTIFF DOLORES
26 GALLEGOS, as an individual, and on behalf of
27 all others similarly situated