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CALIFORNIA SUPERIOR COURT

IN AND FOR THE COUNTY OF CONTRA COSTA

AMERICA MORALES, an individual, and on
behalf of the State of California and other
current or former employees,

Plaintiff,

vs.

ACORN SOLUTIONS, LLC, dba
CHOCOLATE WORKS EAST BAY, a
California corporation; UMANG SAINI, an
individual; and DOES 1-20, inclusive,

Defendants.

Case No.: C22-01372

FIRST AMENDED COMPLAINT FOR:

1. Failure to Compensate for All Hours Worked, Cal. Lab. Code §§ 204, 204b, 223, 226.2, 1194 Wage Orders;
2. Failure to Pay Overtime Wages, Cal. Lab. Code §§ 510, 1194, IWC Wage Orders;
3. Failure to Provide Rest Breaks or Pay Wages in Lieu Thereof, Cal. Labor Code § 226.7, IWC Wage Orders;
4. Failure to Provide Meal Periods or Pay Wages in Lieu Thereof, Cal. Lab. Code §§ 226.7, 512, IWC Wage Orders;
5. Failure to Provide Accurate Wage Statements, Cal. Lab. Code § 226;
6. Waiting Time Penalties, Cal. Labor Code §§ 201-203; and
7. Violation of Unfair Competition Law ("UCL"), Bus. & Prof. Code §§ 17200 *et seq.*
8. Private Attorney Generals Act, Cal. Lab. Code § 2698, *et seq.*

DEMAND FOR JURY TRIAL

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I. INTRODUCTION

1. Plaintiff America Morales brings this action against Acorn Solutions, LLC (doing business as “Chocolate Works East Bay”), Umang Saini, and Does 1-20, (collectively referred to herein as “Defendants”) for wages, interest, and penalties, and other relief as described herein.

2. The following allegations are based on Plaintiffs’ knowledge, except allegations made on information and belief, which are based on a reasonable investigation under the circumstances and are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

3. At all times relevant to this action, Defendants violated wage and hour provisions of the Labor Code and Wage Orders. Defendants failed to compensate Plaintiff for all hours worked in violation of the minimum wage, overtime laws, and numerous provisions of the Labor Code and Wage Orders. Defendants also denied proper rest and meal periods or wages in lieu thereof, failed to provide accurate wage statements, and failed to pay all wages owed timely upon termination of the employment relationship. Defendants’ conduct constitutes unfair and unlawful business practices that violate the Unfair Competition Law (“UCL”), California Business & Professions Code section 17200, *et seq.* Plaintiff seeks all remedies available to her under the UCL.

4. Plaintiff brings this action on behalf of herself to recover wages, penalties, interest, attorney’s fees and cost of suit. She also brings this action to enforce the state’s labor laws and recover civil penalties payable to the State of California and other current or former employees of Defendants, pursuant to the Private Attorneys General Act, California Labor Code section 2699, *et seq.* (“PAGA”).

5. Plaintiff has exhausted administrative requirements to bring a claim under the Private Attorneys General Act (“PAGA”), Labor Code sections 2698, *et seq.*, by giving notice to the employer and the Labor & Workforce Development Agency (LWDA) of the alleged violations and facts and theories supporting them. Should the LWDA decline to investigate and/or intervene, Plaintiff intends to amend this complaint upon expiration of the administrative period to assert a PAGA claim on behalf of other current or former employees of Defendants (hereinafter the “Aggrieved Employees” or “PAGA Pool”) pursuant to Labor Code sections 2699, *et seq.*

1 wages, interest, statutory and civil penalties, attorney's fees, costs, and other damages and remedies
2 described herein.

3 10. On information and belief, Defendant Umang Saini is an individual residing in
4 California who is an owner, officer, director, and/or managing agent of Acorn. Plaintiff alleges that
5 Saini is liable to Plaintiff, the state, and Aggrieved Employees for wages, interest, statutory penalties,
6 civil penalties, attorney's fees and costs as alleged in this complaint, under California Labor Code
7 sections 558.1. Umang Saini exercised authority over working conditions, hours and wages,
8 supervised Plaintiff and other employees, and set and enforced employment, labor, and payroll
9 policies, including those at issue in this action. Plaintiff is informed and believes that Umang Saini
10 authorized or ratified the labor, employment, and compensation practices which denied Plaintiff and
11 Aggrieved Employees compensation for all hours worked, overtime, and rest and meal periods or
12 premium wages in lieu of breaks. Plaintiff is further informed and believes that Umang Saini had
13 authority to compensate Plaintiff and the Aggrieved Employees properly and provide rest and meal
14 periods in conformance with the Labor Code and applicable Wage Order(s) but failed to do so. Umang
15 Saini violated or caused violations of Labor Code sections 203, 226, 226.7, 510, 512, 1194, and
16 provisions regulating minimum wages and hours and days of work in the applicable Wage Order(s), as
17 described herein. Consequently, Umang Saini is liable to Plaintiff, the state and Aggrieved Employees
18 for wages, interest, statutory penalties, attorney's fees and cost of suit as the employer under Labor
19 Code section 558.1 and is also liable for civil penalties payable to the state, Plaintiff, and Aggrieved
20 Employees, pursuant to Labor Code sections 558, 1197.1, and 2699.

21 11. The true names and capacities, whether individual, plural, corporate, partnership,
22 associate, or otherwise, of DOES 1 through 20, inclusive, are unknown to Plaintiff who are therefore
23 sued under such fictitious names. The full extent of the facts linking such fictitiously sued Defendants
24 is unknown to Plaintiff.

25 12. Plaintiff is informed and believes, and thereon alleges, that each of the Defendants
26 designated herein as a Doe was, and is, legally responsible in some manner for the unlawful acts
27 referred to herein. Each Doe defendant is liable as an employer, joint employer or person who caused
28 the alleged violations. Plaintiff will hereafter seek leave of the Court to amend this Complaint to show

1 the Defendants' true names and capacities after the same have been ascertained. Plaintiff is informed
2 and believes and thereon alleges that each of the fictitiously named defendants is legally responsible in
3 some manner for the events and occurrences alleged herein, and for the damages suffered by Plaintiff
4 and the Class.

5 13. Plaintiff are informed and believe, and thereon allege, that at all times mentioned
6 herein, all Defendants, including DOE defendants, and each of them, were agents, servants,
7 employees, successors in interest, and/or joint venturers of their co-Defendants, and were, as such,
8 acting within the course, scope, and authority of said agency, employment, and/ or venture, and with
9 the consent of their co-Defendants, and/or said acts were ratified by their co-Defendants, and that each
10 and every Defendant, as aforesaid, when acting as a principal, was negligent in the selection and
11 hiring, training, and supervision of each and every other Defendant as an agent, servant, employee,
12 successor in interest, and/or joint venture.

13 IV. FACTUAL ALLEGATIONS

14 14. Plaintiff worked for Defendants from October 8, 2020 to August 31, 2021,
15 approximately. During this time, she was denied proper compensation for all hours worked and for
16 overtime, and was denied rest and meal periods or additional wages in lieu thereof. When her
17 employment with Defendants ended, Plaintiff was not timely paid all wages owed, entitling her to
18 waiting time penalties.

19 15. Defendants systematically failed to comply with the rest and meal period requirements
20 of the Labor Code and Wage Orders by failing to relieve Plaintiff of all duty for timely meal periods of
21 at least 30 minutes in length. Plaintiff routinely had to work straight through her shifts without a meal
22 period. These shifts exceeded five and six hours without a timely meal period of at least 30 minutes.

23 16. Plaintiff did not provide or sign a valid waiver of meal periods. To the extent any
24 waiver exists, it was not voluntary or valid.

25 17. Despite the systematic failure to provide timely and off duty meal periods, Defendants
26 consistently denied Plaintiff payment of meal period premiums.

27 18. Plaintiff is informed and believes that the practice or policy of denying proper meal
28 periods and denying additional wages in lieu of meal periods applied to Aggrieved Employees.

1 19. Defendants similarly failed to relieve Plaintiff of all duty for rest periods of at least net
2 10 minutes of break time for work periods lasting four hours or major fraction thereof, denying
3 Plaintiff proper rest periods at the required rate of one rest break for shifts of at least 3.5 hours and up
4 to six hours, two breaks for shifts greater than six hours and up to 10 hours, and so on. Despite the
5 failure to comply with the rest period requirements of the applicable Wage Order(s), Defendants failed
6 to pay rest period premiums.

7 20. Plaintiff is informed and believes that the practice or policy of denying proper rest
8 periods and denying additional wages in lieu of rest periods applied to Aggrieved Employees.

9 21. Defendants failed to compensate Plaintiff for all hours worked, including for time spent
10 performing activities related to opening the store, and time worked at the end of the shift performing
11 closing activities. The failure to compensate Plaintiff for all hours worked violated the minimum
12 wage, the overtime laws, and other provisions of the Labor Code and Wage Orders.

13 22. Similarly, Defendants failed to compensate Plaintiff for time that was recorded but not
14 properly paid. This also resulted in violation of the overtime provisions of California law.

15 23. Plaintiff is informed and believes and thereon alleges that Defendants similarly violated
16 the rights of other aggrieved employee members of the PAGA Pool by failing to compensate them for
17 all hours worked and failing to pay all overtime wages earned.

18 24. Plaintiff was provided inaccurate itemized wage statements that failed to state
19 accurately the gross and net wages earned, all applicable rates of pay and corresponding hours worked,
20 as well as total hours worked, available sick leave, and the true and correct name and address of the
21 employer.

22 25. Plaintiff is informed and believes that the failure to provide accurate wage statements
23 affected Aggrieved Employees.

24 26. When Plaintiff's employment ended, Defendants failed to pay all wages owed timely
25 upon the separation from employment, entitling Plaintiff to waiting time penalties.

26 27. Plaintiff is informed and believes that the failure to provide proper payment of all
27 wages owed timely upon separation from employment applied to Aggrieved Employees.

1 **V. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

4 (Violation of Wage Orders and California Labor Code §§ 204, 223, 226.2, 1194, 1197, and 1198)

5 Plaintiff Against all Defendants

6 28. Plaintiff re-alleges and incorporates herein by reference each and every allegation and statement in the preceding paragraphs, as though fully set forth herein.

7 29. Defendants are required to compensate employees for all hours worked pursuant to the Industrial Welfare Commission Order 5-2001 and California Labor Code sections 204, 1194, 1197, and 8 1198.

9 30. California Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Orders for all hours 10 worked.

11 31. California Labor Code section 223 makes it unlawful to secretly pay below the rate designated by statute or agreement while purporting to comply with the rate designated by contract or 12 statute.

13 32. California Labor Code section 204 requires payment of all wages earned b-weekly or semi-monthly on the regularly-established pay dates.

14 33. Defendants violated the provisions of Labor Code sections 204, 223, 1194, 1197 and 15 1198, and applicable Wage Order(s), by failing to pay Plaintiff and the PAGA Pool for all hours worked and for overtime.

16 34. Defendants' violation of Labor Code sections 204, 223, 1194, 1197 and 1198, and Wage Order(s) serves as predicates for liability under PAGA.

17 35. California Labor Code section 1194 entitles employees to bring an action to recover wages, interest, attorney's fees and cost of suit for failure to pay all hours worked and violation of the 18 minimum wage. California Labor Code section 1194.2 entitles Plaintiff and the PAGA Pool to seek 19 liquidated damages for violations of the minimum wage.

20 36. Pursuant to Labor Code section 558.1, any employer or other person (owner, officer, 21 director, or managing agent) acting on behalf of an employer who violates or causes a violation of 22

1 Labor Code sections 203, 226, 226.7, 1194, or of any provision regulating minimum wages or hours
2 and days of work in any order of the Industrial Welfare Commission (IWC), may be held liable as the
3 employer. Umang Saini is liable as the employer for violating and causing the violations described
4 herein.

5 37. Plaintiff seeks wages and interest thereon in an amount to be established at trial and is
6 entitled to recover attorneys' fees and costs of suit, pursuant to Labor Code section 1194. Plaintiff also
7 seeks liquidated damages, plus interest thereon, pursuant to Labor Code section 1194.2.

8
9 **SECOND CAUSE OF ACTION**
10 **FAILURE TO PAY OVERTIME WAGES**

11 (Violation of Wage Orders and California Labor Code §§ 510, 515, 1185, 1194)
12 Plaintiff Against all Defendants

13 38. Plaintiff re-alleges and incorporates herein by reference each and every allegation and
14 statement contained in the prior paragraphs, as though fully set forth herein.

15 39. California Labor Code section 510 and Wage Order(s) mandate employers, including
16 Defendants, to pay premium wages for hours worked in excess of 8 in a workday and 40 in a
17 workweek.

18 40. Defendants violated the provisions of Labor Code section 510 and Wage Order(s) by
19 failing to pay Plaintiff and members of the PAGA Pool for all hours worked and failing to pay for time
20 that was unrecorded and time that was recorded. Plaintiff worked more than eight hours in a workday
21 without overtime pay.

22 41. Defendants' violation of Labor Code section 510 and Wage Order(s) serves as
23 predicates for liability under PAGA.

24 42. California Labor Code section 1194 entitles employees to bring an action to recover
25 wages, interest, attorney's fees and cost of suit for failure to pay overtime wages.

26 43. Pursuant to Labor Code section 558.1, any employer or other person (owner, officer,
27 director, or managing agent) acting on behalf of an employer who violates or causes a violation of
28 Labor Code sections 203, 226, 226.7, 1193.6, 1194, or 2802, or of any provision regulating minimum
wages or hours and days of work in any order of the Industrial Welfare Commission (IWC), may be

1 held liable as the employer. Umang Saini is liable as the employer for violating and causing the
2 violations described herein.

3 44. Plaintiff seeks overtime wages, interest, attorney's fees and costs of suit pursuant to
4 Labor Code sections 510 and 1194.

5
6 **THIRD CAUSE OF ACTION**
7 **FAILURE TO PROVIDE REST BREAKS OR COMPENSATION IN LIEU THEREOF**
8 (Violation of Wage Orders and California Labor Code § 226.7)
9 Plaintiff Against all Defendants

10 45. Plaintiff re-alleges and incorporates herein by reference each and every allegation and
11 statement contained in the prior paragraphs, as though fully set forth herein.

12 46. California Labor Code § 226.7 states:

13 No employer shall require any employee to work during any meal or rest period
14 mandated by an applicable order of the Industrial Welfare Commission."

15 If an employer fails to provide an employee a meal period or rest period in accordance
16 with an applicable order of the Industrial Welfare Commission, the employer shall pay
17 the employee one additional hour of pay at the employees regular rate of compensation
18 for each work day that the meal or rest period is not provided.

19 47. IWC Wage Orders provide with respect to rest periods as follows:

20 (A) Every employer shall authorize and permit all employees to take rest periods, which
21 insofar as practicable shall be in the middle of each work period. The authorized rest
22 period time shall be based on the total hours worked daily at the rate of ten (10) minutes
23 net rest time per four (4) hours or major fraction thereof. However, a rest period need
24 not be authorized for employees whose total daily work time is less than three and one-
25 half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for
26 which there shall be no deduction from wages.

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

48. Defendants failed to authorize and permit statutory rest breaks at the mandatory rate of
one break for shifts greater than 3.5 hours up to six hours, two breaks for shifts greater than six hours
and up to 10 hours, and so on. Plaintiff and members of the PAGA Pool were not relieved of all duty
for proper rest breaks, was discouraged from taking rest breaks, and was routinely required to work

1 through rest periods.

2 49. Defendants failed to pay rest period premiums to Plaintiff and members of the PAGA
3 Pool in lieu of proper rest periods.

4 50. The violation of the rest break laws, including Labor Code section 226.7, serves as a
5 predicate for PAGA.

6 51. Pursuant to Labor Code section 558.1, any employer or other person (owner, officer,
7 director, or managing agent) acting on behalf of an employer who violates or causes a violation of
8 Labor Code sections 203, 226, 226.7, 1193.6, 1194, or 2802, or of any provision regulating minimum
9 wages or hours and days of work in any order of the Industrial Welfare Commission (IWC), may be
10 held liable as the employer. Umang Saini is liable as the employer for violating and causing the
11 violations described herein.

12 52. Wherefore, Plaintiff seek rest breaks premiums and interest thereon pursuant to the
13 Wage Orders and Labor Code section 226.7.

14
15 **FOURTH CAUSE OF ACTION**
16 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**
(Violation of California Labor Code §§ 226.7, 512, IWC Wage Order 5)
17 Plaintiff Against all Defendants

18 53. Plaintiff re-alleges and incorporates herein by reference each and every allegation and
19 statement contained in the prior paragraphs, as though fully set forth herein.

20 54. California Labor Code § 226.7 states:

21 (a) No employer shall require any employee to work during any meal or rest period
22 mandated by an applicable order of the Industrial Welfare Commission.

23 (b) If an employer fails to provide an employee a meal period or rest period in
24 accordance with an applicable order of the Industrial Welfare Commission, the
25 employer shall pay the employee one additional hour of pay at the employee's regular
26 rate of compensation for each work day that the meal or rest period is not provided.

27 55. Section 512(a) of the California Labor Code provides, in relevant part, that:

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

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

6 56. IWC Wage Order 2-2001 § 11 states:

7 (A) No employer shall employ any person for a work period of more than five (5) hours
8 without a meal period of not less than 30 minutes, except that when a work period of not
9 more than six (6) hours will complete the day's work the meal period may be waived by
10 mutual consent of the employer and employee. Unless the employee is relieved of all
11 duty during a 30 minute meal period, the meal period shall be considered an "on duty"
12 meal period and counted as time worked. An "on duty meal period shall be permitted
13 only when the nature of the work prevents an employee from being relieved of all duty
14 and when by written agreement between the parties an on-the-job paid meal period is
15 agreed to. The written agreement shall state that the employee may, in writing revoke
16 the agreement at any time.

17 (B) If an employer fails to provide an employee a meal period in accordance with the
18 applicable provisions of this Order, the employer shall pay the employee one (1) hour of
19 pay at the employee's regular rate of compensation for each work day that the meal
20 period is not provided.

21 57. Defendants failed to relieve Plaintiff and, on information and belief, members of the
22 PAGA Pool, of all duty for timely, uninterrupted meal periods lasting at least 30 minutes. Plaintiff was
23 required routinely to work without a meal period and discouraged from taking meal periods.
24 Defendants failed to pay meal period premiums to Plaintiff and members of the PAGA Pool for
25 unprovided, short, and untimely meal periods.

26 58. The violation of the meal period laws, including Labor Code section 226.7, serves as a
27 predicate for PAGA.

28 59. Pursuant to Labor Code section 558.1, any employer or other person (owner, officer,
director, or managing agent) acting on behalf of an employer who violates or causes a violation of
Labor Code sections 203, 226, 226.7, 1193.6, 1194, or 2802, or of any provision regulating minimum
wages or hours and days of work in any order of the Industrial Welfare Commission (IWC), may be
held liable as the employer. Umang Saini is liable as the employer for violating and causing the
violations described herein.

60. Plaintiff seeks meal period premiums and interest thereon pursuant to the Wage Orders
and Labor Code sections 226.7 and 512.

FIFTH CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(Violation of Wage Orders and Labor Code section 226)
Plaintiff Against All Defendants

61. Plaintiff re-alleges and incorporates the above allegations as if fully stated herein.

62. California Labor Code section 226(a) provides, in relevant part, that every employer must furnish each employee with an itemized wage statement that accurately shows the following:

(1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee....

63. The wage statements provided by Defendants failed to contain accurate information required by Labor Code section 226, including gross and net wages earned, total hours worked by the employee, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, available sick leave, and the true and correct name and address of the employer.

64. Defendants' failure to comply with the requirements of Labor Code section 226 and provide accurate wage statements to Plaintiff was knowing and intentional within the meaning of that provision. Plaintiff is deemed to have suffered injury pursuant to Labor Code section 226(e)(2).

65. Pursuant to Labor Code section 226(e), Plaintiff is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000).

66. The violation of Labor Code sections 226 serves as a predicate for liability under PAGA.

1 67. Pursuant to Labor Code section 558.1, any employer or other person (owner, officer,
2 director, or managing agent) acting on behalf of an employer who violates or causes a violation of
3 Labor Code sections 203, 226, 226.7, 1193.6, 1194, or 2802, or of any provision regulating minimum
4 wages or hours and days of work in any order of the Industrial Welfare Commission (IWC), may be
5 held liable as the employer. Umang Saini is liable as the employer for violating and causing the
6 violations described herein.

7 68. Plaintiff seeks penalties, damages, and injunctive relief under Labor Code section
8 226(e) and (h), as well as attorney's fees and costs.

9
10 **SIXTH CAUSE OF ACTION**
 WAITING TIME PENALTIES

11 (Violation of Wage Orders and California Labor Code §§ 201-203)
12 Plaintiff Against all Defendants

13 69. Plaintiff re-alleges and incorporates herein by reference each and every allegation and
14 statement contained in the prior paragraphs, as though fully set forth herein.

15 70. Labor Code section 201(a) provides that "If an employer discharges an employee, the
16 wages earned and unpaid at the time of discharge are due and payable immediately...."

17 71. Under Labor Code section 202(a), if the employee "quits his or her employment, his or
18 her wages shall become due and payable not later than 72 hours thereafter, unless the employee has
19 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to
20 his or her wages at the time of quitting."

21 72. Employers who violate Labor Code sections 201 and 202 are liable for waiting time
22 penalties pursuant to Labor Code section 203(a), which states:

23 If an employer willfully fails to pay, without abatement or reduction, in accordance with
24 Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an
25 employee who is discharged or who quits, the wages of the employee shall continue as a
26 penalty from the due date thereof at the same rate until paid or until an action therefor is
27 commenced; but the wages shall not continue for more than 30 days....

28 73. Plaintiffs' employment with Defendants ended in or around the end of August or
beginning of September 2021. At the time her employment ended, Defendants failed to pay Plaintiff
all wages owed timely, including all rest and meal premiums owed, all overtime wages, and all regular

1 wages earned but unpaid. This failure was, in part, a result of Defendants' practice of failing to pay
2 rest and meal premiums, all wages owed, overtime, resulting in violation of the minimum wage and
3 overtime laws of this state.

4 74. Plaintiff is informed and believes that members of the PAGA Pool have similarly left
5 Defendants' employ without payment of all wages timely upon separation from employment.

6 75. The violation of Labor Code sections 201, 202, and 203 serves predicate liability under
7 PAGA.

8 76. Pursuant to Labor Code section 558.1, any employer or other person (owner, officer,
9 director, or managing agent) acting on behalf of an employer who violates or causes a violation of
10 Labor Code sections 203, 226, 226.7, 1193.6, 1194, or 2802, or of any provision regulating minimum
11 wages or hours and days of work in any order of the Industrial Welfare Commission (IWC), may be
12 held liable as the employer. Umang Saini is liable as the employer for violating and causing the
13 violations described herein.

14 77. Plaintiff seeks waiting time penalties pursuant to Labor Code section 203.

15
16 **SEVENTH CAUSE OF ACTION**
UNFAIR COMPETITION LAW

17 (California Business & Professions Code §§ 17200 *et seq.*)
18 Plaintiff Against all Defendants

19 78. Plaintiff re-alleges and incorporates herein by reference each and every allegation and
20 statement contained in the prior paragraphs, as though fully set forth herein.

21 79. Section 17200 of the California Business and Professions Code (the "UCL") prohibits
22 any unlawful, unfair, or fraudulent business practices.

23 80. Through its action alleged herein, Defendants have engaged in unfair competition
24 within the meaning of the UCL by failing to compensate Plaintiff and members of the PAGA Pool for
25 all wages owed, failing to pay overtime premiums, and failing to pay rest and meal period premiums.
26 These acts, (among others alleged herein) constitute unlawful, unfair, and/or fraudulent business
27 practices under the UCL.

28 81. Plaintiff has standing to assert this claim because she has suffered injury in fact and lost

1 money as a result of Defendants' conduct.

2 82. Plaintiff seeks all remedies available under the UCL, including restitution and
3 injunctive and declaratory relief.

4 **EIGHTH CAUSE OF ACTION**
PRIVATE ATTORNEYS GENERAL ACT
5 (Cal. Labor Code § 2698 *et seq.*)

6 Plaintiff Individually and on Behalf of the State of California and Other Current or Former Employees
Against all Defendants

7 83. Plaintiff realleges and incorporates herein by reference each and every allegation and
8 statement contained in the prior paragraphs, as though fully set forth herein.

9 84. PAGA provides that any provision of law under the Labor Code and applicable IWC
10 Wage Order that provides for a civil penalty to be assessed and collected by the Labor and Workforce
11 Development Agency for violations of the California Labor Code and applicable IWC Wage Order
12 may, as an alternative, be recovered by aggrieved employees in a civil action brought on behalf of
13 themselves and other current or former employees pursuant to procedures outlined in California Labor
14 Code section 2699.3. Plaintiff asserts this PAGA claim on behalf of a PAGA Pool comprised of non-
15 exempt workers employed by Defendants within the PAGA period in California, as well as the State of
16 California.

17 85. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any person
18 who was employed by the alleged violator and against whom one or more of the alleged violations was
19 committed." Plaintiffs and other current and former employees of Defendants are "aggrieved
20 employees" as defined by Labor Code section 2699(c) in that Defendants' committed one or more of
21 the alleged violations of employment law against them.

22 86. PAGA is an enforcement action that empowers aggrieved employees to seek penalties
23 on behalf of themselves, current and former employees, and the State, without the need to certify a
24 class.

25 87. Plaintiff is an aggrieved employee as defined in Labor Code § 2699(a) who has
26 complied with the administrative requirements of Labor Code section 2699.3 by giving written notice
27 by certified mail to the employer and to the LWDA of the Labor Code and IWC Wage Order
28 provisions alleged to have been violated, and the facts and theories supporting the alleged violations.

1 The LWDA declined to investigate these violations.

2 88. Pursuant to Labor Code section 2699(a), Plaintiff seeks civil penalties for all violations
3 alleged as provided under applicable Labor Code sections. To the extent that any violation alleged
4 herein does not carry a penalty, Plaintiffs seek civil penalties for violations described herein under
5 Labor Code section 2699(f).

6 89. Defendants are liable to Plaintiff, the state, and Aggrieved Employees for civil penalties
7 arising from the violations alleged in this Complaint pursuant to Labor Code sections 558 and
8 1197.1. Liability under these provisions attaches to the employer or any person acting on behalf of the
9 employer who violates or causes a violation of the provisions described herein. Defendants are sued
10 under these provisions as employers and, alternatively, persons who violated or caused the violations
11 of the pertinent Labor Code and Wage Order provisions.

12 90. Defendants violated the Wage Orders and Labor Code sections 204, 223, 1194, 1197,
13 and 1198 by failing to compensate Plaintiffs and members of the PAGA Pool for all hours worked and
14 for violating the minimum wage, including local minimum wage ordinances, as described in this
15 complaint. Consequently, Defendants are liable to Plaintiffs, the PAGA Pool, and the state for civil
16 penalties pursuant to Labor Code sections 210, 225.5, 1197.1 and 2699(f).

17 91. Defendants violated the Wage Orders and Labor Code sections 510 and 1198 by failing
18 to pay overtime to Plaintiff and members of the PAGA Pool. Consequently, Defendants are liable to
19 Plaintiff, the PAGA Pool, and the state for civil penalties pursuant to Labor Code sections 558 and
20 2699(f).

21 92. Defendants violated the Wage Orders and Labor Code sections 226.7 and 512 by
22 failing to comply with the state's rest and meal period requirements and failing to pay premiums for
23 non-compliance. Consequently, Defendants are liable to Plaintiffs, the PAGA Pool, and the state for
24 civil penalties pursuant to Labor Code sections 558 and 2699(f).

25 93. Defendants violated the Wage Orders and Labor Code section 226 by failing to provide
26 to Plaintiffs and members of the PAGA Pool with accurate wage statements. Consequently,
27 Defendants are liable to Plaintiffs, the PAGA Pool, and the state for civil penalties pursuant to Labor
28 Code section 226.3.

1 94. Defendants violated Labor Code sections 201, 202, and 203 by failing to pay Plaintiff
2 and members of the PAGA Pool all wages owed timely upon separation from employment.
3 Consequently, Defendants are liable to Plaintiff, the PAGA Pool, and the state for civil penalties
4 pursuant to Labor Code sections 256, 1197.1 and/or 2699(f).

5 95. Defendants violated the Wage Orders and Labor Code sections 1174 and 1198 by
6 failing to maintain accurate payroll records and failing to maintain accurate records of when
7 employees begin and end each work period and meal period. Consequently, Defendants are liable to
8 Plaintiffs, the PAGA Pool, and the state for civil penalties pursuant to Labor Code sections 1174.5 and
9 2699(f).

10 96. Defendants violated the Healthy Workplaces, Healthy Families Act of 2014.
11 Defendants failed to state the available sick leave in wage statements or in separate writing and failed
12 properly to pay for sick leave at the “regular rate of pay” in the workweek when sick pay is taken, or at
13 the average rate paid to the employee in the full pay periods of the prior 90 days of employment. As a
14 result of its violations of Labor Code sections 226, 246, 246.5, 247, 247.5, 248.5, 1174, 1174.5 and
15 2698, *et seq.* Defendants are liable for civil penalties pursuant to PAGA and the Healthy Workplaces,
16 Healthy Families Act of 2014.

17 97. Plaintiff, on behalf of herself, Aggrieved Employees, and the state seek and award of
18 civil penalties, attorney’s fees and cost of suit pursuant to PAGA.

19 **VI. DEMAND FOR JURY TRIAL**

20 Plaintiff demands a trial by jury on all claims so triable.

21 **VII. PRAYER FOR RELIEF**

22 Wherefore, Plaintiff prays for the following forms of relief, individually and on behalf of the
23 PAGA Pool, and the State of California:

24 1. For penalties pursuant to all provisions of the Labor Code referenced herein which
25 provide for penalties as a result of the conduct alleged herein, including waiting time penalties
26 pursuant to Labor Code section 203 and wage statement penalties under Labor Code section 226;

27 2. For costs of suit incurred herein and attorneys’ fees pursuant to the statutes cited herein,
28 including Labor Code sections 226 and 1194, and California Code of Civil Procedure section 1021.5;

1 3. For compensatory damages and wages pursuant to Labor Code sections 1194, 223,
2 1197, 204, 210, and 510;

3 4. For meal period premium wages to Plaintiff and the Class pursuant to Labor Code
4 section 226.7;

5 5. For rest break premium wages to Plaintiff and the Class pursuant to Labor Code section
6 226.7;

7 6. For liquidated damages pursuant to Labor Code section 1194.2;

8 7. For overtime compensation and overtime premiums pursuant to Labor Code sections
9 510 and 1194;

10 8. For restitution of all monies due to Plaintiff from the unlawful business practices of
11 Defendants, pursuant to the UCL;

12 9. For declaratory judgment that the actions, conduct, and practices of Defendants
13 complained of herein constitute unfair business practices under the UCL;

14 10. For an injunction and order permanently restraining Defendants from engaging in the
15 unlawful business practices complained of herein;

16 11. For pre-judgment interest of ten percent (10%) on the unpaid wages owed to Plaintiff
17 and the Class under Labor Code section 218.6;

18 12. For civil penalties pursuant to PAGA under Labor Code section 2699(a), 2699(f), 201,
19 202, 203, 204, 210, 223, 225.5, 256, 226, 226.3, 226.7, 246, 246.5, 247, 247.5, 248.5, 510, 512, 558,
20 1194, 1197, 1198, 1174, 1174.5, 1197.1;

21 13. For attorney's fees and costs pursuant to PAGA and Labor Code section 2699; and

22 14. For such other and further relief as this Court deems just and proper.

23 Respectfully submitted.

24 Dated: September 2, 2022

ADVOCATES FOR WORKER RIGHTS LLP



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