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on behalf of herself and all others similarly situated

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SOLANO**

12 YARITZA MARTINEZ, individually and
13 on behalf of herself and all others
similarly situated,

14 Plaintiff,

15 v.

16 PANDA EXPRESS, INC., a California
17 corporation, PANDA RESTAURANT
GROUP, INC., a California corporation;
18 PANDA EXPRESS, LLC, a California
limited liability company; and DOES 1-
19 10, inclusive.

20 Defendants.

FILED/ENDORSED
Clerk of the Superior Court

FEB 09 2023

By **K. FUENTES**
DEPUTY CLERK

Case No. **FCS059627**

REPRESENTATIVE COMPLAINT

Assigned for All Purposes To:

Hon. **ALESIA JONES**
Dept.:

COMPLAINT FOR DAMAGES FOR:

- 1) **Civil Penalties Under Private
Attorneys' General Act, Labor Code
Section 2698 et seq.**

COMES NOW, Plaintiff YARITZA MARTINEZ (“Plaintiff”), individually and on behalf of others similarly situated, and asserts claims against defendants PANDA EXPRESS, INC., a California Corporation; PANDA RESTAURANT GROUP, INC., a California corporation; PANDA EXPRESS, LLC, a California limited liability company; and DOES 1-10, inclusive (collectively “Defendants” or “Panda Express”) as follows:

INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys’ General Act of 2004 (“PAGA”), Cal. Lab. Code section 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of themselves and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. Plaintiff brings this action pursuant to the PAGA on a representative basis on behalf of all non-exempt employees working directly or indirectly for Defendants Panda Express in the State of California (the “Aggrieved Employees”) from one year prior to the filing of the PAGA notice to the conclusion of this action.

3. Plaintiff brings this action on behalf of herself and the Aggrieved Employees to recover civil penalties and address Defendants’ violations of the California Labor Code and the IWC Wage Orders.

4. Pursuant to *Huff v. Securitas Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state and not only for that violation, but for violations affecting other employees as well. Accordingly, Ms. Martinez has standing to pursue penalties on behalf of the state of violations affecting all the aggrieved employees working for Defendants, regardless of their classification, job title, or locations in California.

5. In this case, Defendants violated various provisions of the California Labor Code and IWC Wage Orders. Defendants’ violations include: (1) failure to pay minimum wages; (2) failure to accurately pay overtime wages; (3) failure to provide lawful meal periods; (4) failure

1 to authorize and permit rest periods; (5) failure to timely pay wages during employment; (6) failure
2 to timely pay wages owed upon separation from employment; (7) failure to reimburse necessary
3 expenses; (8) knowing and intentional failure to comply with itemized wage statement provisions;
4 (9) failure to keep accurate records; (10) failure to pay sick leave at the proper rate; and (11) failure
5 to provide suitable seating.

6 6. This action is timely because Plaintiff suffered from a violation or numerous
7 violations of the California Labor Code within one year of the date on which a PAGA notice was
8 sent to the LWDA via online submission. More than 65 days have passed, and no response has
9 been received by the LWDA. Plaintiff thereby satisfied the notice requirement under the statute
10 and is permitted to proceed with this action in a representative capacity.

11 **JURISDICTION AND VENUE**

12 7. This Court has jurisdiction over this action pursuant to the California Constitution
13 Article VI §10, which grants the California Superior Court original jurisdiction in all causes except
14 those given by statute to other courts.

15 8. Further, there is no federal question at issue, as the issues herein are based solely on
16 California statutes and law, including the Labor Code, IWC Wage Orders, the California Code of
17 Civil Procedure, the California Civil Code, and the California Business and Professions Code.

18 9. Venue is proper in this Court because one or more of the Defendants reside, transact
19 business, or have offices in this County, Plaintiff is a resident of this County, and the acts or
20 omissions alleged herein took place in this County.

21 **PARTIES**

22 10. Defendant Panda Express, Inc. is a California corporation, doing business in the
23 state of California. It is located at 1683 Walnut Grove Ave., Rosemead, CA 91770.

24 11. Defendant Panda Restaurant Group, Inc. is a California corporation in good
25 standing that is authorized to do business throughout the state. Panda Restaurant Group, Inc.'s
26 headquarters are located at 1683 Walnut Grove Ave., Rosemead, CA 91770.

1 12. Defendant Panda Express, LLC is a California limited liability company that is in
2 good standing and authorized to do business throughout the state. Panda Express, LLC's
3 headquarters are located at 1683 Walnut Grove Ave., Rosemead, CA 91770.

4 13. Upon information and belief, Panda Express employs Non-Exempt Employees, like
5 Plaintiff, throughout the State of California.

6 14. Plaintiff Yaritza Martinez is and during the liability period has been, a resident of
7 California.

8 15. Plaintiff was employed in an hourly, non-exempt position by Defendants during the
9 relevant time period.

10 16. Plaintiff and the members of the aggrieved group were employed, directly or
11 indirectly, by Defendants as non-exempt employees in the State of California from one year prior
12 to the filing of the PAGA notice to the conclusion of this action.

13 17. Whenever in this complaint reference is made to any act, deed, or conduct of
14 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through
15 one or more of Defendants' officers, directors, agents, employees, or representatives, who was
16 actively engaged in the management, direction, control, or transaction of the ordinary business and
17 affairs of Defendants.

18 18. The true names and capacities of Defendants, whether individual, corporate,
19 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
20 Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure
21 § 474. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
22 capacities of the Defendants designated hereinafter as DOES when such identities become known.

23 19. Plaintiff is informed and believes, and thereon alleges, that the Doe Defendants are
24 the partners, agents, or principals and co-conspirators of Defendants and of each other; that
25 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided
26 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits
27 of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the
28 liability of the Defendants as alleged herein.

20. Plaintiff is further informed and believes, and thereon alleges, that at all times material herein, each Defendant was completely dominated and controlled by its co-Defendants and each was the alter ego of the other. Whenever and wherever reference is made in this complaint to any conduct by Defendant or Defendants, such allegations and references shall also be deemed to mean the conduct of each of the Defendants, acting individually, jointly, and severally. Whenever and wherever reference is made to individuals who are not named as Defendants in this complaint, but were employees and/or agents of Defendants, such individuals, at all relevant times acted on behalf of Defendants named in this complaint within the scope of their respective employments.

FACTUAL ALLEGATIONS

21. During the relevant time frame, Defendants compensated Plaintiff and the Non-Exempt Employees based upon an hourly wage.

22. Plaintiff and the Aggrieved Employees were, and at all times pertinent hereto, have been non-exempt employees within the meaning of the California Labor Code, and the implementing rules and regulations of the IWC California Wage Orders. They are subject to the protections of the IWC Wage Orders and the Labor Code.

23. During the relevant time, Plaintiff was employed by Defendants in an hourly, non-exempt position. She worked as an Assistant Manager in one of the Defendants' locations in California, approximately 6 days a week, 40+ hours per week.

24. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the requirements of California's wage and employment laws.

25. All Aggrieved Employees are similarly situated in that they are all subject to Defendants' uniform policies and systemic practices as specified herein.

26. Plaintiff and the Aggrieved Employees were required to clock in at the beginning of their shifts, clock out for lunch, in at the end of their lunch periods and out at the end of their shifts. However, Plaintiff and the Aggrieved Employees were not paid for all hours worked because employees were required to work off the clock before and after shifts, and during purported meal

1 periods.

2 27. In addition, Plaintiff and the Aggrieved Employees worked in excess of eight (8)
3 hours in day and/or over forty (40) hours in a workweek, but were not properly paid for such time
4 at a rate of time and one-half the employee's regular rate of pay per hour.

5 28. Upon information and belief, Defendants failed to incorporate all forms of non-
6 discretionary compensation into the regular rate for overtime, sick pay, and meal and rest period
7 premiums, including bonuses, shift differentials and incentives.

8 29. Plaintiff and the Aggrieved Employees were regularly required to work shifts in
9 excess of five hours without being provided a lawful meal period and over ten hours in a day
10 without being provided a second lawful meal period as required by law.

11 30. Indeed, during the relevant time, as a consequence of Defendants' scheduling
12 practices, work demands, and Defendants' policies and practices, Defendants frequently failed to
13 provide Plaintiff and the Aggrieved Employees timely, legally complaint uninterrupted 30-minute
14 meal periods as required by law. Not only were Plaintiff's and the Aggrieved Employees' first
15 meal breaks frequently not provided, untimely or short, but also Plaintiff and the Aggrieved
16 Employees were not provided a second meal period when working shifts in excess of 10 hours and
17 in excess of 12 hours.

18 31. In addition, due to Defendants chronic understaffing issues, Plaintiff and the
19 Aggrieved Employees would often be required to remain on the premises during meal periods and
20 work through meal periods due to work demands.

21 32. On information and belief, Plaintiff and Aggrieved Employees did not waive their
22 rights to a second meal period and did not sign an on-duty meal period agreement.

23 33. Despite the above-mentioned meal period violations, Defendants failed to
24 compensate Plaintiff, and on information and belief, failed to compensate Aggrieved Employees,
25 one additional hour of pay at their regular rate as required by California law when meal periods
26 were not timely or lawfully provided in a compliant manner.

27 34. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
28 should know, knew, and/or should have known that Plaintiff and the other Aggrieved Employees

1 were entitled to receive accurate premium wages under Labor Code §226.7 but were not receiving
2 accurately calculated compensation.

3 35. In addition, during the relevant time frame, Plaintiff and the Non-Exempt
4 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
5 period for every four hours worked or major fraction thereof, which is a violation of the Labor Code
6 and IWC Wage Orders.

7 36. Defendants maintained and enforced scheduling practices, policies, and imposed
8 work demands that frequently required Plaintiff and Aggrieved Employees to forego their lawful,
9 paid rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
10 requisite rest periods were not timely authorized and permitted.

11 37. To the extent any rest periods were taken they were not compliant because
12 employees were essentially required to remain on duty by Defendants' prohibition of Plaintiff and
13 Aggrieved Employees to leave the premises during rest periods and requirement that employees
14 remain available.

15 38. Despite the above-mentioned rest period violations, Defendants did not compensate
16 Plaintiff, and on information and belief, did not pay Aggrieved Employees one additional hour of
17 pay at their regular rate as required by California law, including Labor Code section 226.7 and the
18 applicable IWC Wage Orders, for each day on which lawful rest periods were not authorized and
19 permitted.

20 39. Moreover, Plaintiff and the Aggrieved Employees were required to incur necessary
21 expenses in the discharge of their duties. Expenses included, but are not limited to, cell phone
22 usage, and mileage. By way of example, Plaintiff, and upon information and belief the Aggrieved
23 Employees, were required to use their personal vehicles to travel for work related purposes. By
24 way of further example, Plaintiff, and upon information and belief the Aggrieved Employees, were
25 required to purchase mandatory uniform items, including but not limited to shoes, and pay for all
26 laundering of uniforms.

27 40. Defendants also failed to provide accurate, lawful itemized wage statements to
28 Plaintiff and the Aggrieved Employees in part because of the above specified violations. Further,

1 Defendants failed to accurately indicate total hours worked on wage statements and failed to
2 identify the rates paid.

3 41. Defendants have also made it difficult to determine applicable rates of pay and
4 account with precision for the unlawfully withheld wages and deductions due to be paid to Non-
5 exempt Employees, including Plaintiff, during the liability period because they did not implement
6 and preserve a lawful record-keeping method to record all hours worked, and non-provided rest
7 and meal periods owed to employees as required for non-exempt employees by 29 U.S.C. section
8 211(c), California Labor Code section 226, and applicable California Wage Orders.

9 42. Plaintiff is informed and believes, and thereon alleges, that at all times herein
10 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
11 thereof for resignations without prior notice as the case may be) they had a duty to accurately
12 compensate Plaintiff and Aggrieved Employees for all wages owed including straight time,
13 overtime, meal and rest period premiums, and that Defendants had the financial ability to pay such
14 compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part
15 because of the above-specified violations.

16 43. Plaintiff further contends that Defendants failed to keep accurate records as required
17 by Wage Orders 5-2001 and 7-2001, Labor Code 1174, and 1198.

18 44. On information and belief and based thereon, Defendants have knowingly and
19 intentionally failed to comply with Labor Code section 1174, including by implementing the
20 policies and procedures and committing the violations alleges in the complaint, including without
21 limitation failing to keep records of meal periods and all wages earned at the proper rates.

22 45. Plaintiff alleges also that Defendants failed to pay sick leave pay to Plaintiff and the
23 Aggrieved Employees at the proper rate.

24 46. In this case, Plaintiff alleges that Defendants failed to pay sick leave at the proper
25 rate because it failed to take all forms of compensation, including incentives, bonuses, shift
26 differentials, commissions and other wages into account in calculating the regular rate. This
27 constitutes a violation of Labor Code.

28 47. Defendants failed to provide seating to Aggrieved Employees throughout the state of

1 California, despite the fact that the nature of the work reasonably permitted the use of seats.

2 48. Plaintiff and the Aggrieved Employees are covered by applicable California IWC
3 Wage Orders and corresponding applicable provisions of the California Code of Regulations, Title
4 8, section 11000 *et seq.*

5
6 ***FAILURE TO PAY MINIMUM WAGES***

7 49. Plaintiff incorporates each and every allegation set forth in all of the foregoing
8 paragraphs as if fully set forth herein.

9 50. Labor Code section 204 establishes the fundamental right of all employees in the
10 State of California to be paid wages, including minimum wage, straight time, in a timely fashion
11 for their work.

12 51. Labor Code section 1194(a) provides that notwithstanding any agreement to work
13 for a lesser wage, any employee receiving less than the legal minimum wage compensation
14 applicable to the employee is entitled to recover in a civil action the unpaid balance of the full
15 amount of this minimum wage or overtime compensation, including interest thereon, reasonable
16 attorney's fees, and costs of suit.

17 52. Labor Code section 1197 provides: The minimum wage for employees fixed by the
18 commission or by any applicable state or local law, is the minimum wage to be paid to employees,
19 and the payment of a lower wage than the minimum so fixed is unlawful.

20 53. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer
21 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC
22 Wage Order(s).

23 54. The applicable Wage Orders and California Labor Code sections 1197 and 1182.12
24 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by
25 state law.

26 55. Labor Code section 2698 provides that any violation of Labor Code sections 1194(a)
27 and 1194.2(a) allows an employee who has not been paid the legal minimum wage as required by
28 Labor Code section 1197 to recover the civil penalties together with attorneys' fees and costs of

1 suit.

2 56. During all relevant periods, the California Labor Code and Wage Orders required
3 that Defendants fully and timely pay its non-exempt, hourly employees all wages earned and due
4 for all hours worked.

5 57. The IWC Wage Orders define “hours worked” as “the time during which an
6 employee is subject to the control of an employer, and includes all the time the employee is suffered
7 or permitted to work, whether or not required to do so.”

8 58. At all times relevant, Plaintiff and Aggrieved Employees consistently worked hours
9 for which they were not paid because Defendants frequently required Plaintiff and the Aggrieved
10 Employees to work off the clock, before and after shifts, and during purported meal periods.

11 59. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the
12 Aggrieved Employees were working off the clock.

13 60. Defendant’s policy and practice of not paying all minimum wages violates
14 California Labor Code sections 204, 210, 216, 558, 1182.12, 1194, 1197, 1197.1, 1198, and the
15 applicable Wage Orders 5-2001 and 7-2001.

16 ***FAILURE TO PAY OVERTIME OWED***

17 61. Plaintiff incorporates each and every allegation set forth in all of the foregoing
18 paragraphs as if fully set forth herein.

19 62. During all relevant periods, Defendant required Plaintiff and the Aggrieved
20 Employees to work shifts in excess of eight (8) hours per workday and/or to work in excess of forty
21 (40) hours per workweek.

22 63. During all relevant periods, both the California Labor Code sections 1194, 1197,
23 510, 1198, and the pertinent Wage Orders 5-2001 and 7-2001 required that all work performed by
24 an employee in excess of eight (8) hours in any workday, on the seventh day of work in any
25 workweek, or in excess of forty (40) hours in any workweek be compensated at one and one-half
26 (1.5) times the employee’s regular rate of pay. Any work in excess of twelve (12) hours in one (1)
27 day is required to be compensated at the rate of no less than twice the regular rate of pay for an
28 employee. In addition, any work in excess of eight (8) hours on any seventh (7th) day of a

workweek is required to be compensated at the rate of no less than twice the regular rate of pay of an employee.

64. During all relevant periods, Defendants had a uniform policy of requiring Plaintiff and the Aggrieved Employees to work in excess of eight (8) hours in a workday and/or in excess of forty (40) hours in a workweek without compensating them at a rate of one and one-half (1.5) times their regular rate of pay. Upon information and belief, Defendants also failed to properly compensate Plaintiff and the Aggrieved Employees for hours worked in excess of twelve (12) hours in one (1) day, or eight (8) hours on the seventh (7th) day of a workweek.

65. The IWC Wage Orders define “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

66. At all times relevant, Plaintiff and Aggrieved Employees consistently worked hours for which they were not paid because Plaintiff and the Aggrieved Employees were required to work off the clock—some of these hours were over eight (8) hours in one (1) workday or in excess of forty (40) hours in a workweek and should have been paid at the overtime rate.

67. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the Aggrieved Employees were working off the clock and that they should have been paid for this time.

68. By way of example, Plaintiff and Aggrieved Employees were required to do pre-shift and post-shift activities, as well as work related activities during purported meal periods. Defendants did not compensate Plaintiff and Aggrieved Employees for this time spent off the clock.

69. In addition, upon information and belief, Defendants failed to incorporate all forms of non-discretionary compensation into the regular rate, including shift differentials and incentives.

70. As a result, Defendants failed to pay Plaintiff and the Aggrieved Employees earned overtime wages and violated the law.

71. Defendants knew or should have known Plaintiff and the Aggrieved Employees were undercompensated as a result of these practices.

FAILURE TO PROVIDE LAWFUL MEAL PERIODS

72. Plaintiff incorporates each and every allegation set forth in all of the foregoing

1 paragraphs as if fully set forth herein.

2 73. Pursuant to Labor Code § 512, no employer shall employ an employee for a work
3 period of more than five (5) hours without providing a meal break of not less than thirty (30)
4 minutes in which the employee is relieved of all of his or her duties, except that when a work period
5 of not more than six (6) hours will complete the day's work the meal period may be waived by
6 mutual consent of the employer and employee.

7 74. During the relevant time, Defendants failed to provide Plaintiff and Aggrieved
8 Employees timely and uninterrupted first meal periods of not less than thirty (30) minutes within
9 the first five hours of a shift.

10 75. As a consequence of Defendants' policies and practices, requirements, scheduling
11 practices, work demands, coverage and staffing, Plaintiff and the Aggrieved Employees were often
12 required to forego such meal periods, take shortened meal periods, and/or commence their meal
13 periods into and beyond the sixth hour of their shifts.

14 76. In addition, due to Defendants chronic understaffing issues, Plaintiff and the
15 Aggrieved Employees would often be required to remain on the premises during meal periods and
16 work through meal periods due to work demands. On information and belief, Plaintiff and
17 Aggrieved Employees did not waive their rights to a second meal period and did not sign an on-
18 duty meal period agreement

19 77. Upon information and belief, Plaintiff and the Aggrieved Employees were not paid
20 one hour of pay at their regular rate for each day that a meal period was not lawfully provided.

21 78. Moreover, as a matter of policy and practice, upon information and belief, the
22 Aggrieved Employees were also not provided second meal periods on days when shifts exceeded
23 ten hours (and twelve hours), nor were they provided premium wages in lieu of a second meal
24 period. On information and belief, Plaintiff and the Aggrieved Employees did not waive their rights
25 to a second meal period on shifts in excess of ten hours.

26 79. As a proximate result of the aforementioned violations, Plaintiff and the Aggrieved
27 Employees have been damaged in an amount according to proof at time of trial.

28 80. Pursuant to Labor Code § 226.7, Plaintiff and Aggrieved Employees are entitled to

1 recover one (1) hour of premium pay at the regular rate for each day in which a meal period
2 violation occurred. They are also entitled to recover reasonable attorneys' fees, cost, interest, and
3 penalties as applicable.

4 81. As a result of the unlawful acts of Defendants, Defendants violated Labor Code
5 section 512, 226.7, 1198, and the Wage Orders.

6 ***FAILURE TO AUTHORIZE AND PERMIT LAWFUL REST PERIODS***

7 82. Plaintiff incorporates by reference and realleges each and every allegation contained
8 above, as though fully set forth herein.

9 83. Pursuant to the IWC Wage Orders applicable to Plaintiff's and Aggrieved
10 Employees' employment by Defendants, "Every employer shall authorize and permit all employees
11 to take rest periods, which insofar as practicable shall be in the middle of each work period....
12 [The] authorized rest period time shall be based on the total hours worked daily at the rate of ten
13 (10) minutes net rest time per four (4) hours worked or major fraction thereof.... Authorized rest
14 period time shall be counted as hours worked, for which there shall be no deduction from wages."

15 84. Labor Code §226.7(a) prohibits an employer from requiring any employee to work
16 during any rest period mandated by an applicable Orders of the IWC.

17 85. Defendants were required to authorize and permit employees such as Plaintiff and
18 Aggrieved Employees to take rest periods during shifts in excess of 3.5 hours, based upon the total
19 hours worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major fraction
20 thereof, with no deduction from wages.

21 86. Despite said requirements of the IWC Wage Orders applicable to Plaintiff's and
22 Aggrieved Employee's employment with Defendants, Defendants failed and refused to authorize
23 and permit Plaintiff and Aggrieved Employees to take lawful, net ten (10) minute rest periods for
24 every four (4) hours worked, or major fraction thereof as a consequence of Defendants' policies
25 and practices, requirements, scheduling practices, work demands, coverage and staffing. Such
26 rest breaks, when provided, were frequently untimely or less than net ten minutes because of the
27 work requirements imposed by Defendants.

28

1 87. To the extent any rest periods were taken they were not compliant because
2 employees were essentially required to remain on duty by Defendants' prohibition of Plaintiff and
3 Aggrieved Employees to leave the premises during rest periods and requirement that employees
4 remain available.

5 88. Defendants did not pay Plaintiff one additional hour of pay at her regular rate of pay
6 for each day that a rest period violation occurred. On information and belief, the other members of
7 the aggrieved group endured similar violations as a result of Defendants' rest period policies and
8 practices and Defendant did not pay said Aggrieved Employees premium pay as required by law.

9 89. By their failure to authorize and permit Plaintiff and the Aggrieved Employees to
10 take a lawful, net ten (10) minute rest period free from work duties every four (4) hours or major
11 fraction thereof worked, including failure to provide two (2) total rest periods on six to ten hour
12 shifts and three (3) total ten (10) minute rest periods on days on which Plaintiff and the other
13 Aggrieved Employees work(ed) work a third rest period for shifts in excess of ten (10) hours, and
14 by their failure to provide compensation for such unprovided rest periods as alleged herein,
15 Defendants willfully violated the provisions of Labor Code sections 226.7 and the applicable IWC
16 Wage Orders 5-2001 and 7-2001.

17 90. As a result of the unlawful acts of Defendants, Defendants violated Labor Code
18 section 226.7, 512, 1198, and the Wage Orders.

19 ***FAILURE TO TIMELY PAY WAGES DUE AND PAYABLE DURING***
20 ***EMPLOYMENT***

21 91. Plaintiff incorporates by reference and realleges each and every allegation contained
22 above, as though fully set forth herein.

23 92. Labor Code section 204 requires that all wages are due and payable twice in each
24 calendar month.

25 93. The wages required by Labor Code §§ 226.7, 510, 1194 and other sections became
26 due and payable to each employee in each month that he or she was not provided with a meal period
27 or rest period or paid minimum wage, straight or overtime wages to which he or she was entitled.
28

1 94. Defendants violated Labor Code § 204 by systematically refusing to pay wages due
2 under the Labor Code.

3 95. Labor Code section 210 (a) provides that “In addition to, and entirely independent
4 and apart from, any other penalty provided in this article, every person who fails to pay the wages
5 of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and
6 1197.5, shall be subject to a penalty as follow:

7 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
8 employee.

9 (2) For each subsequent violation, or any willful or intentional violation, two hundred
10 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount
11 unlawfully withheld.

12 96. Plaintiff and the Aggrieved Group are entitled to civil penalties, attorneys fees, and
13 costs.

14 ***FAILURE TO TIMELY PAY WAGES OWED AT SEPARATION***

15 97. Plaintiff incorporates by reference and realleges each and every allegation contained
16 above, as though fully set forth herein.

17 98. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages
18 due within seventy-two (72) hours of separation of employment.

19 99. Section 203 of the Labor Code provides that if an employer willfully fails to timely
20 pay such wages the employer must, as a penalty, continue to pay the subject employee’s wages
21 until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30
22 days of wages.

23 100. Plaintiff and Aggrieved Employees are entitled to compensation for all forms of
24 wages earned, including but not limited to minimum wages, overtime, sick pay, and premium meal
25 and rest period compensation, but to date have not received such compensation, therefore entitling
26 them to Labor Code § 203 penalties.

27 101. In addition, irrespective of any derivative violation, Defendants failed to timely pay
28 Plaintiff and, upon information and belief, other Aggrieved Employees earned compensation at the

1 time of termination despite their obligations under Labor Code 201 and 202.

2 102. More than thirty (30) days have passed since affected Aggrieved Employees have
3 left Defendants' employ, and on information and belief, they have not received payment pursuant
4 to Labor Code § 203.

5 103. Plaintiff and the Aggrieved Employees are thus entitled to 30 days' wages as
6 a penalty under Labor Code § 203, together with interest thereon and attorneys' fees and costs.

7 ***FAILURE TO REIMBURSE NECESSARY EXPENSES***

8 104. Plaintiff repeats and incorporates herein by reference each and every allegation set
9 forth above, as though fully set forth herein.

10 105. Labor Code § 2802 requires Defendants to indemnify Plaintiff and Aggrieved
11 Employees for necessary expenditures incurred in direct consequence of the discharge of his or her
12 duties.

13 106. Plaintiff and the members of the Indemnification Aggrieved Group were required to
14 incur expenses in the performance of their assigned job duties, Expenses included, but are not
15 limited to, cell phone usage, and mileage. By way of example, Plaintiff, and upon information and
16 belief the Aggrieved Employees, were required to use their personal vehicles to travel for work
17 related purposes. By way of further example, Plaintiff, and upon information and belief the
18 Aggrieved Employees, were required to purchase mandatory uniform items, including but not
19 limited to shoes, and pay for all laundering of uniforms.

20 107. Upon information and belief, the Defendants did not reimburse Plaintiff or the
21 Aggrieved Group for such expenses.

22 108. As a result of the unlawful acts of Defendants, Defendants violated Labor Code
23 §2800 and 2802.

24 ***KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED***
25 ***EMPLOYEE WAGE STATEMENT PROVISIONS***

26 109. Plaintiff repeats and incorporates herein by reference each and every allegation set
27 forth above, as though fully set forth herein.

28 110. Labor Code section 226(a) reads in pertinent part: "Every employer shall,

1 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either
2 as a detachable part of the check, draft, or voucher paying the employee's wages, or separately
3 when wages are paid by personal check or cash, an accurate itemized statement in writing showing
4 (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions... (5) net
5 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
6 the employee and only the last four digits of his or her social security number or an employee
7 identification number other than a social security number, (8) the name and address of the legal
8 entity that is the employer, and (9) all applicable hourly rates in effect during each the pay period
9 and the corresponding number of hours worked at each hourly rate by the employee....”.

10 111. Further, the IWC Wage Orders require in pertinent part: Every employer shall keep
11 accurate information with respect to each employee including the following: (3) Time records
12 showing when the employee begins and ends each work period. Meal periods, split shift intervals,
13 and total daily hours worked shall also be recorded...(5) Total hours worked in the payroll period
14 and applicable rates of pay....”

15 112. Labor Code section 1174 of the California also requires Defendants to maintain and
16 preserve, in a centralized location, among other items, records showing the names and addresses of
17 all employees employed and payroll records showing the hours worked daily by, and the wages
18 paid to, its employees. On information and belief and based thereon, Defendants have knowingly
19 and intentionally failed to comply with Labor Code section 1174, including by implementing the
20 policies and procedures and committing the violations alleged in the preceding causes of action and
21 herein. Defendants' failure to comply with Labor Code section 1174 is unlawful pursuant to Labor
22 Code section 1175.

23 113. Defendants have failed to record many of the items delineated in applicable
24 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section 1174,
25 including by virtue of the fact that each wage statement which failed to accurately compensate
26 Plaintiff and Aggrieved Employees for all hours worked and for missed and non-provided meal and
27 rest periods, or which failed to include compensation for all minimum wages earned or overtime
28 hours worked, was an inaccurate wage statement. In addition, the wage statements inaccurately

1 stated total hours worked and hours worked at each hourly wage rate. They also failed to accurately
2 state the rates paid.

3 114. On information and belief, Defendants failed to implement and preserve a lawful
4 record-keeping method to record all non-provided meal and rest periods owed to employees or all
5 hours worked, as required for Non-Exempt Employees under California Labor Code section 226
6 and applicable California Wage Orders. In order to determine if they had been paid the correct
7 amount and rate for all hours worked, Plaintiff and Aggrieved Employees have been, would have
8 been, and are compelled to try to discover the required information missing from their wage
9 statements and to perform complex calculations in light of the inaccuracies and incompleteness of
10 the wage statements Defendants provided to them.

11 115. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
12 Wage Orders, Defendants did not and still do not furnish each of the members of the Aggrieved
13 Group with an accurate itemized statement in writing accurately reflecting all of the required
14 information. Here, Plaintiff asserts the Defendant omitted required information, failed to accurately
15 include all applicable hourly rates on the wage statements and the corresponding number of hours
16 worked at such rates or hours paid at such rates. In addition, Defendants have failed to provide
17 accurate itemized wage statements as a consequence of the above-specified violations for failure to
18 accurately pay all wages owed, accurately record all hours worked, and failure to pay meal and rest
19 period premiums as required by law.

20 116. Moreover, upon information and belief, as a pattern and practice, in violation of
21 Labor Code section 226(a) and the IWC Wage Orders, Defendants did not and do not maintain
22 accurate records pertaining to the total hours worked for Defendants by the members of the
23 Aggrieved Group, including but not limited to, beginning and ending of each work period, meal
24 period and split shift interval, the total daily hours worked, and the total hours worked per pay
25 period and applicable rates of pay.

26 ***FAILURE TO KEEP ACCURATE RECORDS***

27 117. Plaintiff repeats and incorporates herein by reference each and every allegation set
28 forth above, as though fully set forth herein.

1 118. The IWC Wage Orders, Labor Code Sections 226(a), 1174, and 1174.5 require that
2 the Defendant keep accurate payroll and timekeeping information.

3 119. The IWC Wage Orders required in pertinent part: Every employer shall keep
4 accurate information with respect to each employee including the following: (3) Time records
5 showing when the employee begins and ends each work period. Meal Periods, split shift intervals,
6 and total daily hours worked shall also be recorded...(5) Total hours worked in the payroll period
7 and applicable rate of pay...”

8 120. Labor Code section 1174 also requires Defendants to maintain and preserve, in a
9 centralized location, among other items, records showing the names and addresses of all employees
10 employed and payroll records showing the hours worked daily by and the wages paid to, its
11 employees.

12 121. On information and belief and based thereon, Defendants have knowingly and
13 intentionally failed to comply with Labor code section 1174, including by implementing the
14 policies and procedures and committing the violations alleged above, including without limitation
15 failing to keep records of meal periods and all wages earned at the proper rates.

16 122. Defendants’ failure to comply with Labor Code section 1174 is unlawful pursuant
17 to Labor Code section 1175.

18 ***FAILURE TO PAY SICK LEAVE AT THE PROPER RATE***

19 123. Plaintiff repeats and incorporates herein by reference each and every allegation set
20 forth above, as though fully set forth herein.

21 124. Labor Code 246(i) provides: An employee who, on or after July 1, 2015, works in
22 California for the same employer for 30 or more days within a year from the commencement of
23 employment is entitled to paid sick days as specified.

24 125. Labor Code section 246(l) provides: “For the purposes of this section, an employer
25 shall calculate paid sick leave using any of the following calculations: (1) Paid sick leave for
26 nonexempt employees shall be calculated in the same manner as the regular rate of pay for the
27 workweek in which the employee uses paid sick time, whether or not the employee actually works
28 overtime in that workweek. (2) Paid sick time for nonexempt employees shall be calculated by

1 dividing the employee's total wages, not including overtime premium pay, by the employee's total
2 hours worked in the full pay periods of the prior 90 days of employment."

3 126. In this case, Plaintiff alleges that Defendants failed to pay sick leave at the proper
4 rate because it failed to take all forms of compensation, including incentives, and other wages into
5 account in calculating the regular rate. This constitutes a violation of Labor Code.

6 ***FAILURE TO PROVIDE SUITABLE SEATING***

7 98. Plaintiff alleges that Defendants failed to provide suitable seats to Aggrieved
8 Employees.

9 99. Sections 14 (A) of both Wage Order 5-2001 and 7-2001 provide: "All working
10 employees shall be provided with suitable seats when the nature of the work reasonably permits the
11 use of seats."

12 100. In addition, Wage Orders 5-2001 and 7-2001 in Sec. 14 (B) provide: "When
13 employees are not engaged in the active duties of their employment and the nature of the work
14 requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to
15 the work area and employees shall be permitted to use such seats when it does not interfere with
16 the performance of their duties. "

17 101. Defendants violated these mandates by failing to provide suitable seats.

18 102. Labor Code section 1198 makes it unlawful to employ an employee under conditions
19 of labor that are prohibited by the applicable Wage Order.

20 103. By failing to provide Plaintiff and the other current and former Aggrieved
21 Employees with suitable seats in violation of Wage Orders 5-2001 and 7-2001, Defendants also
22 violated Labor Code section 1198.

23 **CAUSES OF ACTION**

24 **FIRST CAUSE OF ACTION**

25 **PENALTIES UNDER THE PRIVATE ATTORNEYS' GENERAL ACT, LABOR CODE**

26 **SECTION 2698 ET SEQ.**

27 127. Plaintiff incorporates by reference each and every paragraph above, and realleges
28 each and every allegation contained above as though fully set forth herein.

1 128. Plaintiff gave timely written notice by online submission to the LWDA and by
2 certified mail to Defendants of Defendants' violations of numerous provisions of the California
3 Labor Code and the IWC Wage Orders as alleged in this complaint. All fees were paid as required
4 by statute.

5 129. Plaintiff is an "aggrieved employee" as defined in Labor Code Section 2699(A), as
6 she was employed by Defendants during the statutory period and suffered one or more of the Labor
7 Code violations set forth herein. She seeks to recover of herself and all other current and former
8 aggrieved employees of Defendants the civil penalties provided by PAGA, plus reasonable
9 attorneys' fees and costs.

10 130. 65 days have passed, and no response has been received from the LWDA.
11 Accordingly, the LWAD has permitted Plaintiff to proceed in a representative capacity.

12 131. Plaintiff has exhausted all administrative procedures required of them under the
13 Labor Code §§2698, 2699, 2699.3, and as a result, is justified as a matter of right in bringing
14 forward this cause of action.

15 132. Pursuant to Labor Code section 2699(a) Plaintiff seeks to recover civil penalties for
16 which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint.

17 133. Plaintiff seeks to recover the PAGA civil penalties through a representative action
18 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
19 4th 969. Class certification of the PAGA claims is not required.

20 134. Pursuant to Labor Code section 2698 et seq. and 2699(a), Plaintiff seeks to recover
21 civil penalties for which Defendants are liable due to numerous Labor Code and Wage Order
22 violations as set forth in this Complaint.

23 135. Specifically, Plaintiff, on behalf of herself and the Aggrieved Employees, seek
24 penalties under Labor Code §2699, for, without limitation, the claims set forth herein, including:

- 25 a. Defendants' failure to comply with the requirement of Labor Code §1182.12,
26 1194, 1197, 1198, and Wage Orders to pay at least minimum wage for every
27 hour worked;

- b. Defendants' failure to comply with the requirement of Labor Code §510, 1194, 1197, 1198, and Wage Orders to accurately pay all wages earned, including overtime;
- c. Defendants' failure to comply with the requirement of Labor Code §216 to pay wages after demand was made;
- d. Defendants' failure to comply with the requirement of Labor Code §§204 and 210 to pay, without condition and within the time set by the applicable article, all wages, or parts thereof;
- e. Defendants' failure to comply with the requirement of Labor Code §225.5 to pay wages due;
- f. Defendants' failure to comply with the requirement of Labor Code §§201 and 202 to pay wages due to former employees;
- g. Defendants' failure to comply with the requirement of Labor Code §226.7, 512, 1198, and IWC Wage Orders to provide timely, uninterrupted 30 minute off-duty meal periods;
- h. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Orders to pay one hour of premium pay at the regular rate for each lawful meal break that was not provided;
- i. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Orders to authorize and permit ten (10) minute rest breaks;
- j. Defendants' failure to comply with the requirement of Labor Code §§226.7, 1198, and IWC Wage Orders to pay one hour of premium pay at the regular rate for each statutorily required rest break that was not lawfully authorized and permitted;
- k. Defendants' failure to reimburse necessary expenses in violation of Labor Code § 2802;
- l. Defendants' failure to provide accurate compliant wage statements under Labor Code section 226;

- m. Defendants' failure to maintain required records in violation of Labor Code §226, 1174, and Wage Orders;
- n. Defendants' failure to pay sick leave at the proper rate of pay under Labor Code section 246.
- o. Defendants' failure to provide suitable seating in violation of Labor Code §1198 and IWC Wage Orders;

136. Plaintiff seeks civil penalties for Defendants' violation of Labor Code provisions for which a civil penalty is specifically provided, including but not limited to the following:

- a. Pursuant to Labor Code §210, for violations of Labor Code §204, Defendants are subject to a civil penalty in the amount of one hundred dollars (\$100) for the initial violation for each failure to pay each employee and two hundred (\$200) per employee for violations in subsequent pay periods plus 25% of the amount unlawfully withheld.
- b. Pursuant to Labor Code §226.3, for violations of Labor Code §226 (a) Defendants are subject to a civil penalty in the amount of two hundred and fifty dollars (\$250) per aggrieved employee for the initial pay period where a violation occurs and one thousand dollars (\$1,000) per aggrieved employee for violations in subsequent pay period.
- c. Pursuant to Labor Code §558(a), "[a]ny employer or other person acting on behalf of an employer who violated, or causes to be violated, a section of this chapter or any provisions regulating hours and days of work in any order of the Industrial Welfare Commission," including Labor Code §§510 and 512, shall be subject to a civil penalty, in addition to any other penalty provided by law, of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid and one hundred dollars (\$100) for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid.

1 d. Pursuant to Labor Code §1174.5, for violations of Labor Code §1174(d), Defendants
2 are subject to a civil penalty of five hundred dollars (\$500).

3 e. Pursuant to Labor Code §1197.1, an employer who pays or causes to be paid to any
4 employee a wage less than the minimum fixed by an order of the commission, shall
5 be subject to a civil penalty as follows: for any initial violation that is intentionally
6 committed, one hundred dollars (\$100) for each underpaid employee for each pay
7 period for which the employee is underpaid; and for each subsequent violation of
8 the same offense, two hundred fifty dollars (\$250) for each underpaid employee for
9 each pay period for which the employee is underpaid regardless of whether the
10 initial violation was intentionally committed.

11 137. Further, as a result of the acts alleged hereinabove, Plaintiff seeks penalties under
12 Labor Code §§2698 et seq. and 2699 because of Defendants' violation of numerous provisions of
13 the California Labor Code and IWC Wage Orders.

14 138. Under Labor Code §2699, Plaintiff and Aggrieved Employees are entitled to \$100
15 for any initial violation and \$200 for all subsequent violations of the above-mentioned provisions
16 of the California Labor Code.

17 139. Under Labor Code §2699, Plaintiff and Aggrieved Employees should be awarded
18 twenty-five percent (25%) of all penalties due under California Law, interest, attorneys' fees and
19 costs.

20 140. Under Labor Code §2699, the State of California should be awarded seventy-five
21 percent (75%) of the penalties due under California Law.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff pray judgment against Defendants, jointly and severally, as
24 follows:

- 25 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq. for the
26 violations specified above;
- 27 2. For penalties under Labor Code sections 210, 226.3, 1174.5, 1197.1, and 2699(a) and
28 (f);

3. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;
4. For reasonable attorneys' fees, expenses, and costs under Labor Code §§1194, 226, 2699, and/or Code of Civil Procedure §1021.5, and/or any other applicable provisions providing for attorneys' fees and costs; and
5. For such other and further relief as the Court deems proper.

Respectfully submitted,

FARNAES & LUCIO APC

Dated: February 8, 2023


Malte L. L. Farnæs
Christina M. Lucio
Mitchell J. Murray

Attorneys for Plaintiff YARITZA MARTINEZ
on behalf of herself and all others similarly situated