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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

JEREMY GARCIA, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

BIRCHSTONE MANAGEMENT, LLC., a
Delaware Corporation; and DOES 1-50,
inclusive.

Defendants.

CASE NO.: CIVSB2224564

**FIRST AMENDED CLASS AND PAGA
ACTION COMPLAINT FOR:**

- (1) FAILURE TO PAY ALL MINIMUM WAGES;
- (2) FAILURE TO PAY ALL OVERTIME WAGES;
- (3) FAILURE TO PAY ALL SICK TIME WAGES;
- (4) FAILURE TO IMPLEMENT LAWFUL ALTERNATIVE WORKWEEK SCHEDULES
- (5) MEAL PERIOD VIOLATIONS;
- (6) REST PERIOD VIOLATIONS;
- (7) WAGE STATEMENT VIOLATIONS;
- (8) WAITING TIME PENALTIES;
- (9) UNFAIR COMPETITION; and
- (10) VIOLATIONS OF THE PRIVATE ATTORNEYS' GENERAL ACT

DEMAND FOR JURY TRIAL

1 Plaintiff Jeremy Garcia (“Plaintiff”), on behalf of himself and all other similarly situated non-
2 exempt employees of Defendant Birchstone Management, LLC (“Birchstone” or “Defendant”), as
3 well as on behalf of any and all temporary workers assigned by any temporary staffing agency to
4 work for Birchstone, and DOES 1 to 50 (collectively, Birchstone and the DOEs are referred to
5 hereafter as the “Defendants”), alleges and complains against Defendants and each of them, as
6 follows:

7 **INTRODUCTION**

8 1. Defendant Birchstone manages warehouse logistics for its clients, including pallet
9 management and inventory solutions, and provides skilled labor. Defendant employs hundreds of
10 employees and temporary workers across various locations, including Ontario, California.

11 2. Plaintiff brings this class action and Private Attorneys General Act (“PAGA”)
12 representative action against Defendants for alleged violations of the California Labor Code,
13 California Business and Professions Code, Industrial Welfare Commission Wage Orders (“Wage
14 Orders”), California Code of Civil Procedure, and California Civil Code. The applicable provisions
15 that Defendants have violated and under which Plaintiff seeks relief, include, but are not limited to,
16 California Labor Code §§ 200, 201-204, 210, 218.5, 218.6, 221-223, 226, 226.3, 226.7, 246, 510,
17 511, 512, 516, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2698 *et seq.*,
18 California Business and Professions Code §§ 17200 *et seq.*, 17203, and 17208, all applicable IWC
19 Wage Orders and California Code of Regulations, California Code of Civil Procedure §§ 382, 395,
20 395.5, 1021.5, and California Civil Code §§ 3287 and 3289. Plaintiff also brings this class action
21 and PAGA representative action based on any and all allegations alleged by Plaintiff in his original
22 and amended PAGA notices. Plaintiff incorporates the PAGA notices’ allegations by reference
23 herein.

24 3. As set forth below, Plaintiff alleges that Defendants failed to pay all overtime wages at
25 the proper “regular rate of pay.” Similarly, Plaintiff alleges that Defendants uniformly failed to pay
26 all sick time at the correct “regular rate of pay.” Plaintiff and other non-exempt employees and
27 temporary workers were also not paid all minimum and overtime wages at the correct “regular rate
28 of pay” based on Defendants’ invalid and unlawful alternative workweek schedule arrangements.

4. Moreover, Plaintiff alleges that Defendants' meal and rest period policies and practices did not provide him and all similarly situated employees and temporary workers with all compliant/timely meal and rest periods or premium wages at the "regular rate of pay" in lieu thereof. Likewise, Plaintiff alleges that Defendants failed to pay for all hours worked due to its failure to pay for all paid rest periods. As a result of the foregoing, Plaintiff alleges that Defendants failed to provide their non-exempt employees and the temporary workers with accurate written itemized wage statements and failed to timely pay all final wages upon separation of employment.

5. Based on these alleged Labor Code violations, Plaintiff now brings this class action to recover unpaid wages, restitution, penalties, and other related relief on behalf of himself and all others similarly situated.

JURISDICTION AND VENUE

6. Plaintiff, on behalf of himself and all other similarly situated employees and temporary workers, hereby brings this class action and PAGA representative action for recovery of unpaid wages and penalties under California Labor Code §§ 200, 201-203, 204, 210, 218.5, 218.6, 221-223, 226(a), 226(e), 226.3, 226.7, 246, 510, 511, 512, 516, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1199, 2698 *et seq.* and applicable Industrial Welfare Commission Wage Orders (“Wage Orders”), in addition to seeking declaratory relief and restitution pursuant to California Business and Professions Code § 17200 *et. seq.*

7. This class action is brought pursuant to California Code of Civil Procedure § 382.

8. This Court has jurisdiction over Defendants' violations of the California Labor Code and applicable Wage Orders because the amount in controversy exceeds this Court's jurisdictional minimum.

9. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, Defendants own and/or operate a facility in Ontario, California within the County of San Bernardino, and/or otherwise are found within the County of San Bernardino and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

10. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is a

1 California resident residing in the State of California.

2 11. Plaintiff is informed and believes and thereon alleges that Defendant Birchstone
3 Management, LLC is a corporation authorized to and doing business in California and is and/or was
4 the legal employer of Plaintiff, the Classes, and PAGA group members during the applicable statutory
5 periods. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein
6 and has been deprived of the rights guaranteed to him by California Labor Code §§ 200, 201-203,
7 204, 210, 221-223, 226(a), 226(e), 226.3, 226.7, 246, 510, 511, 512, 516, 558, 1174, 1194, 1194.2,
8 1197, 1197.1, 1199, 2698 *et seq.*, and the California Business and Professions Code § 17200 *et seq.*,
9 and applicable Wage Orders.

10 12. Plaintiff is informed and believes, and based thereon alleges, that during the four years
11 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to
12 do) business in the State of California, County of San Bernardino.

13 13. Plaintiff does not know the true names or capacities, whether individual, partner, or
14 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
15 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
16 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
17 believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or
18 corporate, were responsible in some manner for the acts and omissions alleged herein, and
19 proximately caused Plaintiff, the Classes and PAGA group members to be subject to the unlawful
20 employment practices alleged herein.

21 14. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
22 herein, Defendants were and are the employers of Plaintiff and all members of the Classes and PAGA
23 group. At all times herein mentioned, each of said Defendants participated in doing the acts herein
24 alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of
25 them, were the agents, servants, and employees of each and every one of the other Defendants, as
26 well as the agents of all Defendants, and at all times herein mentioned were acting within the course
27 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
28 and/or otherwise ratified each and every one of the acts or omissions complained of herein.

15. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of the Classes and PAGA group.

COMMON FACTUAL ALLEGATIONS

16. Defendants manage warehouse logistics for their clients, including pallet management, inventory solutions, and providing skilled labor. Defendants employ hundreds of employees and temporary workers across various locations, including, but not limited to, Ontario, California. Plaintiff began working as a non-exempt “Pallet Sorter” employee in March 2022 until his separation from employment in June 2022. Plaintiff and other non-exempt employees and temporary workers (including, but not limited to, pallet sorters, forklift operators, maintenance technicians, warehouse workers, and all other non-exempt positions) were responsible for all aspects of Defendants’ business in the State of California.

17. First, at all relevant times, Defendants have had a practice of failing to pay Plaintiff and other non-exempt employees and temporary workers for all hours worked, including all paid rest periods. Here, although Defendants require that Plaintiff and other non-exempt employees and temporary workers clock in and out during their paid rest periods, Defendants failed to pay Plaintiff, members of the Classes, and aggrieved employees comprising the PAGA group for all daily rest period time. Because Defendants are capable of tracking the time worked by aggrieved employees and temporary workers to the minute, the policy itself exists not for the convenience or benefit of the employees and temporary workers who are trying to accurately report their time on timecards or otherwise but for Defendants' benefit. As a result, Plaintiff and other non-exempt employees and temporary workers were not properly paid for all hours worked in violation of Cal. Labor Code §§ 204, 210, 510, 512, 1194, 1197.1, 1199, 2698 *et seq.* and applicable Wage Orders.

18. In addition, because of the unlawful pay policy/practice, Plaintiff and other non-exempt employees and temporary workers were also not properly paid at the correct overtime rate for hours worked in excess of eight hours per shift in violation of Labor Code § 510. As a result of

1 Defendants uniform pay policies/practices, Plaintiff and other non-exempt employees and temporary
2 workers were not fully compensated for all hours worked. As such, Defendants systematically failed
3 to pay Plaintiff and other non-exempt employees and temporary workers for all hours worked and the
4 associated minimum and overtime wages due.

5 19. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed
6 by an applicable state or local law, or by an order of the commission a civil penalty, restitution of
7 wages, and liquidated damages as follows: (1) for any initial violation that is intentionally committed,
8 one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
9 is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred
10 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
11 underpaid regardless of whether the initial violation is intentionally committed.

12 20. Labor Code § 510 requires an employer to compensate an employee who works more
13 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
14 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate
15 of pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than
16 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or
17 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the
18 applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in
19 any workday or more than 40 hours in any workweek unless the employee receives one and one-half
20 (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

21 21. Accordingly, to the extent permitted by law, Plaintiff and other non-exempt employees
22 and temporary workers are entitled to recover unpaid wages and penalties for violations of Labor
23 Code §§ 204, 210, 510, 1194, 1197.1, 1199, and 1197.1.

24 22. Furthermore, Plaintiff and other non-exempt employees and temporary workers were
25 not paid all minimum and overtime wages based on Defendants' invalid and unlawful alternative
26 workweek schedule arrangements.

27 23. Additionally, at all relevant times, Plaintiff and other non-exempt employees and
28 temporary workers were not properly paid at the correct overtime rate for all hours worked in excess

1 of eight (8) hours per workday and/or forty (40) hours per workweek. While Plaintiff and other non-
2 exempt employees and temporary workers worked overtime hours, they were not compensated at one
3 and one-half times their “regular rate of pay” because Defendants failed to calculate the correct
4 overtime rate at one and a half times the regular rate of pay for Plaintiff, members of the Classes, and
5 aggrieved employees comprising the PAGA group. For example, instead of paying Plaintiff \$30.00
6 for all overtime hours worked, Plaintiff’s wage statement demonstrates that he was paid only \$10.00
7 per hour for his overtime hours.

8 24. Moreover, while Plaintiff and other non-exempt employees and temporary workers
9 often worked overtime hours, they were not compensated at one and one-half times their “regular rate
10 of pay” because Defendants failed to include all forms of compensation, including but not limited to
11 shift differential pay, sign on bonus, attendance bonus, and other non-discretionary bonuses when
12 calculating the “regular rate of pay” used in payment of overtime wages.

13 25. Under the California Labor Code (as well as the FLSA), courts have consistently held
14 that regularly paid non-discretionary bonuses (and other forms of pay) must be included in
15 determining an employee’s “regular rate of pay” for purposes of calculating overtime. (See *Haber v.*
16 *The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency
17 bonuses must be included in calculating the “regular rate”]; *Wang v. Chinese Daily News, Inc.* 435 F.
18 Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgment to Plaintiff under California
19 and federal law on the grounds that Defendant improperly calculated overtime by excluding annual
20 bonuses paid to employees from the “regular rate of compensation”].)

21 26. By their policy of requiring Plaintiff, members of the Classes, and other aggrieved
22 employees comprising the PAGA group to work in excess of eight (8) hours in a workday and/or
23 forty (40) hours in a workweek without compensating them at the lawful rate of one-half (1 ½) their
24 regular rate of pay, Defendants willfully violated the provisions of Labor Code § 510 and the
25 applicable Wage Orders.

26 27. Accordingly, to the extent permitted by law, Plaintiff and other non-exempt employees
27 and temporary workers are entitled to recover unpaid wages and liquidated damages for violations of
28 Labor Code § 1197.1.

1 28. Next, at all relevant times, Defendants also failed in the obligation to provide Plaintiff
2 and other non-exempt employees and temporary workers the legally required paid sick days at the
3 legal rate pursuant to Labor Code §§ 246(a),(b), which requires that “[a]n employee who, on or after
4 July 1, 2015, works in California for the same employer for 30 or more days within a year from the
5 commencement of employment is entitled to paid sick days. . . at the rate of not less than one hour
6 per every 30 hours worked, beginning at the commencement of employment.”

7 29. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must
8 be “calculated in the same manner as the regular rate of pay for the workweek in which the employee
9 uses paid sick time, whether or not the employee actually works overtime in that workweek.”
10 Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated by dividing
11 the employee’s total wages, not including overtime premium pay, by the employee’s total hours
12 worked in the full pay periods of the prior 90 days of employment.” Finally, Labor Code §246(i)
13 requires employers to “provide an employee with written notice that sets forth the amount of paid
14 sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either
15 the employee’s itemized wage statement described in Section 226 or in a separate writing provided
16 on the designated pay date with the employee’s payment of wages.”

17 30. Here, at all relevant times, Defendants failed in its obligation to provide Plaintiff and
18 other non-exempt employees and temporary workers the legally required paid sick days at the legal
19 rate, including all forms of compensation, pursuant to Labor Code §§ 246(a),(b). As such, Defendants
20 paid sick time below his base rate of pay, rather than the “regular rate of pay” as required by Labor
21 Code §§ 246(l)(1-2).

22 31. Based on the foregoing Labor Code violations, Plaintiff seeks all unpaid sick wages
23 and civil and statutory penalties available and applicable under Labor Code §§ 246, 558, 1194.2,
24 1197.1, 1198, 1199 and 2698 *et seq.*

25 32. Next, at all relevant times, Plaintiff, members of the Classes, and aggrieved employees
26 comprising the PAGA group were often not provided with net 10-minute rest periods for every four
27 hours worked, or major fraction thereof, due to Defendants’ uniform rest period policies/practices
28 and work demands. As a result, the non-exempt employees and temporary workers were and are often

1 unable to take a net 10-minute duty-free rest period for every major fraction of four hours worked.
2 This includes a second rest period for shifts in excess of six hours and a third rest period for shifts in
3 excess of 10 hours in a workday.

4 33. Defendants' rest break policy provided in relevant part as follows: "A rest break is
5 paid time when you are relieved of all work duties and responsibilities, **although you must remain**
6 **on the facility premises.**" The policy further provides that "Employees must self-police their rest
7 breaks and ensure they take their breaks every day" and that "it is also the employee's responsibility
8 to clock in/out on the timeclock for meal and rest breaks. If an employee fails to do so, he/she will be
9 disciplined for not following time clock procedures." (emphasis added)

10 34. As a result, Defendants retained control over Plaintiff and other non-exempt
11 employees and temporary workers during their rest periods. *See Augustus v. ABM Security Services,*
12 *Inc.* (2016) 2 Cal.5th 257, 269 (concluding that "during rest periods employers must relieve
13 employees of all duties and relinquish control over how employees spend their time."); *Mendiola v.*
14 *CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833 (on-call time of guards who were required to
15 remain in onsite trailers was considered on-duty and compensable time even when guards were
16 sleeping); *Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575, 582 (time spent under the
17 employer's control, such as compulsory travel time on an employer's bus, is compensable on-duty
18 time even if the employee is not asked to work during that time); *Bono Enterprises, Inc. v. Bradshaw*
19 (1995) 32 Cal.App.4th 968, 975 (employees who were required to remain on the work premises
20 during lunch had to be compensated for that time under the definition of "hours worked", since they
21 were under the control of their employer), disapproved on other grounds; *Aguilar v. Association for*
22 *Retarded Citizens* (1991) 234 Cal.App.3d 21, 30 (employees should be compensated for the time they
23 spent sleeping while on the employer's premises, even though they performed no work during that
24 time). Indeed, *Augustus* expressly rejected the employer's assertion that it could provide an on-duty
25 rest period to employees who worked as security guards, explaining that "employers [must] relinquish
26 any control over how employees spend their break time and relieve their employees of all duties." *Id.*
27 at 273.

28 35. Thus, as California's DLSE has concluded, citing *Augustus* and presumably also

1 relying on the logic of *CPS*, *Bono*, *Morillion*, and *Aguilar*, that requiring a worker to remain on
2 premises means that they are “on duty,” and such a policy is violative of the Wage Order. See also,
3 DLSE website, Q&A page, Question 5, which can be found at:
4 http://www.dir.ca.gov/dlse/faq_restperiods.htm (“Question 5: Q. Can my employer require that I stay
5 on the work premises during my rest period? A: No. ...”).

6 36. Finally, each time Plaintiff, members of the Classes, and aggrieved employees
7 comprising the PAGA group were unable to take a compliant rest period, Defendants failed and
8 continues to fail to adequately pay rest period premium payments at the “regular rate of pay” as
9 required by Labor Code § 226.7.

10 37. Accordingly, due to Defendants uniform rest period policies/practices and work
11 demands, Plaintiff, members of the Classes, and aggrieved employees comprising the PAGA group
12 were also often denied legally compliant rest breaks in violation of Labor Code §§ 226.7, 512, and
13 applicable Wage Orders.

14 38. Moreover, at all relevant times, Plaintiff, members of the Classes, and aggrieved
15 employees comprising the PAGA group were often denied compliant and timely 30-minute off-duty
16 meal periods as mandated by California law. Due to Defendants’ uniform meal period
17 policies/practices and work demands, Plaintiff and the other non-exempt employees and temporary
18 workers were often unable to take timely and uninterrupted 30-minute first meal periods before the
19 end of the fifth hour of work. Further, when Plaintiff and the other non-exempt employees and
20 temporary workers worked in excess of 10.0 hours in a shift, they were not always allowed and
21 permitted to take a mandated second meal period before the end of the tenth hour of work in violation
22 of the Labor Code and applicable Wage Orders.

23 39. Here, Defendants’ meal period policy is facially unlawful because it fails to provide
24 for the timing of first meal periods, (*i.e.*, to be started before the end of the fifth hour of work), and
25 fails to account for the timing of second meal periods (*i.e.*, to be started before the end of the tenth
26 hour of work). Further, the policy fails to state that all non-exempt employees and temporary workers
27 are entitled to meal period premiums for missed or non-compliant meal periods at the “regular rate
28 of pay” pursuant to Labor Code 226.7.

1 40. Although Defendants purport to have meal period waivers, these waivers improperly
2 provide that “[i]f an employee does not take a full meal break, or fails to take it in a timely manner,
3 and fails to notify his/her supervisor, it will be presumed that the employee voluntarily waived the
4 meal break.” Indeed, Defendants fail to include a provision that pays Plaintiff, members of the
5 Classes, and aggrieved employees comprising the PAGA group meal period premiums for missed or
6 non-compliant meal periods at the “regular rate of pay” pursuant to *Ferra v. Loews Hollywood Hotel,*
7 *LLC* (2021) 11 5th 858 and Labor Code 226.7.

8 41. Accordingly, due to Defendants’ uniform unlawful meal period policies/practices,
9 Plaintiff, members of the Classes, and aggrieved employees comprising the PAGA group were also
10 often denied legally compliant meal periods or premium pay at the “regular rate of pay” in lieu thereof
11 in violation of Labor Code §§ 226.7, 512, 516, and applicable Wage Orders.

12 42. As a result of Defendants’ failure to pay Plaintiff and other non-exempt employees
13 and temporary workers for all hours they were subject to the control of Defendants, including all
14 minimum and overtime wages, and Defendants’ failure to pay for meal and rest period premiums and
15 sick pay at the “regular rate of pay”, Defendants issued wage statements which failed to accurately
16 identify the gross wages earned, the total hours worked, the net wages earned, and the correct
17 corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(1, 2,
18 5, and 9). In addition, the wage statements issued by Defendants also fail to include the correct
19 applicable rates of pay in violation of Labor Code § 226(a)(9). For example, instead of paying
20 Plaintiff \$30.00 for all overtime hours worked, Plaintiff’s wage statement shows that his overtime
21 rate was only \$10.00 per hour.

22 43. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
23 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
24 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
25 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
26 deduction statement or fails to keep the required in subdivision (a) of Section 226.”

27 44. As such, the wage statements Defendants issued to Plaintiff and other non-exempt
28 employees and temporary workers are in violation of Labor Code § 226(a). Consequently, because

1 Defendants failed to comply with Labor Code § 226(a), Plaintiff and other non-exempt employees
2 and temporary workers would be entitled to recover penalties under Labor Code §§ 226(e).

3 45. Finally, because of Defendants failure to pay all hours worked, including all minimum
4 overtime wages, sick pay and meal and rest period premiums at the “regular rate of pay,” Defendants
5 also failed and continues to fail to pay Plaintiff and other non-exempt employees and temporary
6 workers all wages owed at their time of separation from employment in violation of Labor Code §§
7 201-203. Thus, Plaintiff, members of the Classes, and aggrieved employees comprising the PAGA
8 group would be entitled to recover penalties under Labor Code §§ 201-203.

9 **CLASS ACTION ALLEGATIONS**

10 46. Plaintiff brings this action on behalf of himself and the following Classes pursuant to
11 § 382 of the Code of Civil Procedure:

12 All non-exempt employees who work or worked for Defendants in
13 California, as well as any and all temporary workers assigned by any
14 temporary staffing agency to work for Defendants in California, during the
15 four years immediately preceding the filing of the Complaint through the
date of trial. (“Class”);

16 All non-exempt employees who worked for Defendants in California, as
17 well as any and all temporary workers assigned by any temporary staffing
18 agency to work for Defendants in California, who worked overtime hours
19 during at least one shift during the four years immediately preceding the
filing of the Complaint through the date of trial. (“Overtime Subclass”);

20 All non-exempt employees who work or worked for Defendants in
21 California, as well as any and all temporary workers assigned by any
22 temporary staffing agency to work for Defendants in California, during one
23 year immediately preceding the filing of the Complaint through the date of
trial. (“Wage Statement Subclass”)

24 All non-exempt employees who work or worked for Defendants in
25 California, as well as any and all temporary workers assigned by any
26 temporary staffing agency to work for Defendants in California, who left
27 their employment during the three years immediately preceding the filing
of the Complaint through the date of trial. (“Waiting Time Penalty
Subclass”)

28 (collectively “the Classes”)

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

6 48. **Common Questions of Law and Fact Predominate/Well Defined Community of**
7 **Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated
8 employees and temporary workers, which predominate over questions affecting only individual
9 members including, without limitation to:

10 1. Whether Defendants' policies/practices resulted in a failure to pay all minimum and
11 overtime wages for all hours worked;

12 2. Whether Defendants' policies/practices resulted in a failure to pay all overtime wages
13 at the "regular rate of pay" because Defendants failed to include all forms of compensation, including,
14 but not limited to, shift differentials, non-discretionary bonuses, incentive pay, and other forms of
15 compensation;

16 3. Whether Defendants' policies/practices resulted in a failure to pay all sick pay at the
17 "regular rate of pay";

18 4. Whether Defendants provided Plaintiff and all other similarly situated employees and
19 temporary workers lawful alternative workweek schedule arrangements;

20 5. Whether Defendants provided legally compliant meal and rest periods or proper
21 compensation in lieu thereof to members of the Class;

22 6. Whether Defendants furnished legally compliant wage statements to members of the
23 Wage Statement Subclass pursuant to Labor Code § 226(a); and

24 7. Whether the timing and amount of payment of final wages to members of the Waiting
25 Time Penalty Subclass at the time of separation from employment were unlawful.

26 49. **Predominance of Common Questions:** Common questions of law and fact
27 predominate over questions that affect only individual members of the Classes. The common
28 questions of law set forth above are numerous and substantial and stem from Defendants' policies

1 and/or practices applicable to each individual class member, such as Defendants' failure to pay for
2 all hours worked, failure to pay for all overtime wages and sick pay at the "regular rate" including all
3 forms of compensation, Defendants' practice of failing to provide lawful alternative workweek
4 schedule arrangements, Defendants' practice of failing to provide all compliant meal and rest periods
5 or adequate compensation at the "regular rate of pay" in lieu thereof, Defendants' failure to provide
6 accurate itemized wage statements and to pay for all wages due upon separation of employment. As
7 such, the common questions predominate over individual questions concerning each individual Class
8 member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

9 50. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
10 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)
11 of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein,
12 Plaintiff, like the members of the Classes was deprived of minimum wages, sick pay, and overtime
13 wages and sick pay at the correct "regular rate," was subject to Defendants' unlawful meal and rest
14 period policies/practices, was not provided accurate itemized wage statements, and was not paid all
15 wages owed upon separation of employment.

16 51. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
17 represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's
18 attorneys are ready, willing and able to fully and adequately represent the members of the Classes.
19 Plaintiff's attorneys have prosecuted and are actively litigating several wage-and-hour class actions
20 in state and federal courts and are committed to vigorously prosecuting this action on behalf of the
21 members of the Classes.

22 52. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
23 important public interest in establishing minimum working conditions and standards in California.
24 These laws and labor standards protect the average working employee from exploitation by
25 employers who have the responsibility to follow the laws and who may seek to take advantage of
26 superior economic and bargaining power in setting onerous terms and conditions of employment. The
27 nature of this action and the format of laws available to Plaintiff and members of the Classes make
28 the class action format a particularly efficient and appropriate procedure to redress the violations

1 alleged herein. If each employee were required to file an individual lawsuit, Defendants would
2 necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the
3 limited resources of each individual plaintiff with their vastly superior financial and legal resources.

4 53. Moreover, requiring each member of the Classes to pursue an individual remedy would
5 also discourage the assertion of lawful claims by employees who would be disinclined to file an action
6 against their former and/or current employer for real and justifiable fear of retaliation and permanent
7 damages to their careers at subsequent employment. Further, the prosecution of separate actions by
8 the individual Class members, even if possible, would create a substantial risk of inconsistent or
9 varying verdicts or adjudications with respect to the individual Class members against Defendants
10 herein; and which would establish potentially incompatible standards of conduct for Defendants;
11 and/or legal determinations with respect to individual Class members which would, as a practical
12 matter, be dispositive of the interest of the other Class members not parties to adjudications or which
13 would substantially impair or impede the ability of the Class members to protect their interests.
14 Further, the claims of the individual members of the Class are not sufficiently large to warrant
15 vigorous individual prosecution considering all of the concomitant costs and expenses attending
16 thereto. As such, the Classes identified in Paragraph 46 above are maintainable as Classes under §
17 382 of the Code of Civil Procedure.

18 **FIRST CAUSE OF ACTION**

19 **FAILURE TO PAY MINIMUM WAGES**

20 **(AGAINST ALL DEFENDANTS)**

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

22 55. As a result of Defendants' policies or practices described herein above, including but
23 not limited to Defendants' failure to pay for all rest periods, Plaintiff and the Class were not paid the
24 minimum wage for all hours worked.

25 56. Consequently, Defendants violated California Labor Code laws and minimum wage
26 laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, applicable IWC Wage Orders, § 4, and Cal.
27 Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

28 57. Plaintiff is informed and believes and thereon alleges that Defendants intentionally,

1 willfully, and improperly failed to pay wages to Plaintiff and members of the Classes for each hour
2 worked in violation of Labor Code §§ 221-223, 1194 and 1197.

3 58. Defendants' conduct was willful, as Defendants knew that Plaintiff and members of
4 the Classes were entitled to be paid wages throughout the statutory period for each hour worked,
5 including proper minimum wages, yet Defendants chose not to pay them in accordance thereto.

6 59. At all material times, Defendants Does 1 through 50 were and/or are the employers of
7 Plaintiff and members of the Classes or were persons acting on behalf of said employer(s), within the
8 meaning of California Labor Code § 558, who violated or caused to be violated Labor Code § 204
9 and a provision or provisions of Part 2, Chapter 1 of the California Labor Code regulating hours and
10 days of work respectively.

11 60. At all relevant times, Defendants failed to pay all wages to which Plaintiff and
12 members of the Classes were entitled, thereby receiving an economic benefit.

13 61. As a result of Defendants' wrongful conduct, Plaintiff and members of the Classes
14 have been damaged in amounts to be proven at trial.

15 62. Plaintiff, on behalf of herself, and members of the Class, seeks recovery of all unpaid
16 minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs of suit, pursuant to
17 Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be proven at trial.

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO PAY ALL OVERTIME WAGES**

20 **(AGAINST ALL DEFENDANTS)**

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

22 64. This cause of action is brought pursuant to Labor Code §§ 204, 210, 510, 558, 1194,
23 and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime
24 hours worked and provide a private right of action for the failure to pay all overtime compensation
25 for overtime work performed.

26 65. At all times relevant herein, Defendants were required to properly pay Plaintiff and
27 members of the Overtime Subclass for all overtime hours worked pursuant to California Labor Code
28 § 1194 and the applicable Wage Orders.

66. Section 3 of the applicable Wage Order requires an employer to pay an employee “one and one-half (1 1/2) times the employee’s regular rate of pay” for work in excess of 8 hours per workday and/or in excess of 40 hours of work in the workweek. The same section also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of twelve hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff to work overtime hours but did not compensate Plaintiff or members of the Overtime Subclass at one and one-half times their regular rate of pay for such hours.

67. Defendants failed to (1) properly pay Plaintiff and other members of the Overtime Subclass for the correct hourly rate for all overtime hours worked; and also (2) failed to include all forms of compensation, including, but not limited to, shift differentials, non-discretionary bonuses, incentive pay, and other forms of remuneration when calculating the “regular rate of pay” used in payment of overtime wages, all of which resulted in Plaintiff and the Overtime Subclass not being paid all overtime wages owed.

68. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the members of the Overtime Subclass in a civil action for the unpaid amount of overtime wages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code §§ 204, 210, 510, 1194, and 1198, the applicable Wage Orders, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

FAILURE TO PAY ALL SICK TIME

(AGAINST ALL DEFENDANTS)

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

70. This cause of action is brought pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1, 1198, and 1199 which provide that non-exempt employees are entitled to have their sick time paid at the regular rate, including all forms of compensation/remuneration.

71. At all times relevant herein, Defendants were required to properly pay Plaintiff and members of the Class for all accrued sick leave taken, pursuant to California Labor Code § 246.

72. Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes but is not limited to, Defendants' unlawful policy/practice of failing to properly pay all overtime wages, including, all forms of compensation, including but not limited to shift differentials, non-discretionary bonuses, and other forms of remuneration into the calculation of the "regular rate of pay," which resulted in Plaintiff and the Class not being paid all sick time wages owed.

73. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the members of the Class in a civil action for the unpaid amount of sick time wages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code §§ 246, 558, 1194.2, 1197.1, 1198, the applicable Wage Orders, and Code of Civil Procedure § 1021.5.

FOURTH CAUSE OF ACTION

**FAILURE TO IMPLEMENT LAWFUL ALTERNATIVE WORKWEEK SCHEDULES
(AGAINST ALL DEFENDANTS)**

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

75. Labor Code § 510 provides, in pertinent part: “Eight hours of labor constitutes a day’s work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at a rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at a rate of no less than twice the regular rate of pay of an employee.”

76. Labor Code § 511 states, in pertinent parts: “(a) Upon the proposal of an employer, the employees of an employer may adopt a regularly scheduled alternative workweek that authorizes work by the affected employees for no longer than 10 hours per day within a 40-hour workweek without the payment to the affected employees of an overtime rate of compensation pursuant to this section. A proposal to adopt an alternative workweek schedule shall be deemed adopted only if it

1 receives approval in a secret ballot election by at least two-thirds of affected employees in a work
2 unit [..].”

3 77. All applicable Wage Orders provide, in relevant part as follows:

4 (1) Each proposal for an alternative workweek schedule shall be in the form of a written
5 agreement proposed by the employer.

6 (2) In order to be valid, the proposed alternative workweek schedule must be adopted in a
7 secret ballot election, before the performance of work, by at least a two-thirds (2/3) vote
8 of the affected employees in the work unit. The election shall be held during regular
9 working hours at the employees’ work site.

10 (3) Prior to the secret ballot vote, any employer who proposed to institute an alternative
11 workweek schedule shall have made a disclosure in writing to the affected employees,
12 including the effects of the proposed arrangement on the employees’ wages, hours, and
13 benefits. Such a disclosure shall include meeting(s), duly noticed, held at least fourteen
14 (14) days prior to voting, for the specific purpose of discussing the effects of the
15 alternative workweek schedule. An employer shall provide that disclosure in a non-
16 English language, as well as in English, if at least five (5) percent of the affected
17 employees primarily speak that non-English language. The employer shall mail the
18 written disclosure to employees who do not attend the meeting. Failure to comply with
19 this paragraph shall make the election null and void.

20 (6) The results of any election conducted pursuant to this order shall be a public document
21 and shall be reported by the employer to the Division of Labor Statistics and Research
22 within 30 days after the results are final. The report of the election results shall also be
23 posted at the job site in an area frequented by employees where it may easily be read
24 during the workday . . . that an employer may not pay employees less than the applicable
25 minimum wage for all hours worked.

26 78. At all relevant times, Defendants failed to comply with the statutorily mandated
27 election procedures required to implement a four-10-hour or 12-hour long shift day in violation of
28 Labor Code § 511 and the applicable Wage Orders and California Code of Regulations.

79. As a result of Defendants' failure to comply with the statutorily mandated election procedures, Plaintiff and the Classes who worked in excess of eight (8) hours per day and forty (40) hours per week were not properly compensated for their overtime hours worked and/or for all minimum wages due.

80. At all relevant times, Defendants were and/or are Plaintiff's, the Classes', and aggrieved employees' employers or persons acting on behalf of Defendants within the meaning of Labor Code §§ 558 and 558.1, who violated or caused to be violated, the California Labor Code and any provision regulating hours and days of work in the applicable Wage Orders and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code §§ 558 and 558.1, including the payment of the underpaid wages to affected employees.

81. As a direct result of Defendants' violations alleged herein, Plaintiff, the Classes, and aggrieved employees have suffered and continue to suffer substantial losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses and attorneys' fees in seeking to compel Defendants to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limits of this Court.

82. Accordingly, Plaintiff, on behalf of himself and the Classes, seeks to recover the unpaid balance of the full amount of the unpaid wages resulting from Defendants' minimum wage and overtime wage violations related to Defendants' unlawful alternative workweek schedule arrangements, including interest thereon, reasonable attorneys' fees and costs of this lawsuit, penalties, and liquidated damages to the fullest extent permissible, including those permitted pursuant to Labor Code §§ 558, 1194, 1194.2, and Code of Civil Procedure § 1021.5, etc.

FIFTH CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

84. Labor Code § 512(a), in part, provides that employers, including Defendants, may not employ an employee for a work period of more than five (5) hours per day without providing the employee the opportunity to take an uninterrupted meal period of not less than thirty (30) minutes,

1 except that if the total work period per day of the employee is no more than six (6) hours, the meal
2 period may be waived by mutual consent of both the employer and the employee. Employers may
3 not employ an employee for a work period of more than ten (10) hours per day without providing the
4 employee with a second meal period of not less than thirty (30) minutes. Furthermore, Labor Code §
5 512(b) requires employers to provide uninterrupted meal periods to employees prior to the
6 commencement of the employees' sixth (6th) hour of work.

7 85. Pursuant to Labor Code § 226(b) and the applicable IWC Wage Order, Defendants
8 shall pay an employee one (1) additional hour of pay at the employee's "regular rate of pay" for each
9 meal period that is missed.

10 86. At all relevant times, Plaintiff and the Class were denied compliant and timely 30-
11 minute off-duty meal periods as mandated by California law. Specifically, due to Defendants'
12 uniform meal period policies/practices and operating requirements, Plaintiff and the Class were often
13 unable to take timely and uninterrupted 30-minute first meal periods before the end of the fifth hour
14 of work. Further, when Plaintiff and the Class worked in excess of 10.0 hours in a shift, they were
15 not always allowed and permitted to take a mandated second meal period before the end of the tenth
16 hour of work in violation of the Labor Code and applicable Wage Orders.

17 87. Additionally, for each missed or non-compliant meal period, Defendants failed to
18 maintain a mechanism by which aggrieved employees were paid meal period premiums at the
19 "regular rate of pay" pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858 and Labor
20 Code § 226.7.

21 88. Accordingly, as a result of Defendants' failure to provide legally compliant meal
22 periods in violation of Labor Code 226.7, 510, 516, and applicable IWC Wage Orders, Plaintiff, on
23 behalf of himself and the Class, are each entitled to recover one hour of meal premium pay at the
24 regular rate of pay per violation pursuant to California Labor Code § 226.7(b), recovery of the full
25 amount of unpaid wages pursuant to California Labor Code §§ 1194, 1197.1, and 558, interest on all
26 unpaid wages pursuant to California Labor Code §§ 218.6 and 1194, reasonable attorneys' fees and
27 costs pursuant to California Labor Code §§ 218.5, 1194, and 1021.5, and any other relief the Court
28 may deem just and proper.

1 **SIXTH CAUSE OF ACTION**

2 **REST PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

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

5 90. During the relevant time period, Plaintiff and the Class were not provided with all 10-
6 minute rest periods for every four hours worked, or major fraction thereof due to Defendants' uniform
7 rest period policies/practices and scheduling practices. As a result, Plaintiff and the Classes were and
8 are often unable to take a net 10-minute duty free rest periods for every major fraction of four hours
9 worked. This includes a second rest period for shifts in excess of six hours, and a third rest period for
10 shifts in excess of 10 hours in a workday.

11 91. By not relieving all members of the Class of all duties during rest periods, Defendants
12 failed to provide legally compliant rest periods. See *Augustus, supra*, 2 Cal. 5th at p. 269 [concluding
13 that "during rest periods employers must relieve employees of all duties and relinquish control over
14 how employees spend their time."]. In *Augustus*, the California Supreme Court expressly rejected the
15 employers' assertion that it could provide an on-duty rest period to employees who worked as security
16 guards and further explained "that employers [must] relinquish any control over how employees
17 spend their break time and relieve their employees of all duties." *Id.* at 273.

18 92. Additionally, for each missed or non-compliant rest period, Defendants failed to
19 maintain a mechanism by which members of the Class were paid rest period premiums at the "regular
20 rate of pay" pursuant to Labor Code § 226.7.

21 93. Accordingly, as a result of Defendants' failure to provide legally compliant rest
22 periods in violation of Labor Code 226.7, 512, and applicable IWC Wage Orders, Plaintiff, on behalf
23 of himself and the Class, are each entitled to recover one hour of rest premium pay at the regular rate
24 of pay per violation pursuant to California Labor Code § 226.7(b), recovery of the full amount of
25 unpaid wages pursuant to California Labor Code §§ 1194, 1197.1, and 558, interest on all unpaid
26 wages pursuant to California Labor Code §§ 218.6 and 1194, reasonable attorneys' fees and costs
27 pursuant to California Labor Code §§ 218.5, 1194, and 1021.5, and any other relief the Court may
28 deem just and proper.

1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

3 **(AGAINST ALL DEFENDANTS)**

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

5 95. Labor Code 226(a) states in pertinent part the following:

6 “(a) An employer, semimonthly or at the time of each payment of
7 wages, shall furnish to his or her employee, either as a detachable part
8 of the check, draft, or voucher paying the employee’s wages, or
9 separately if wages are paid by personal check or cash, an accurate
10 itemized statement in writing showing (1) gross wages earned, (2) total
11 hours worked by the employee, (3) the number of piece-rate units earned
12 and any applicable piece rate if the employee is paid on a piece-rate
13 basis, (4) all deductions, provided that all deductions made on written
14 orders of the employee may be aggregated and shown as one item, (5)
15 net wages earned, (6) the inclusive dates of the period for which the
16 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 (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.”

17 96. As set forth above, during the Class period, Defendants issued and continue to issue
18 wage statements to its employees including Plaintiff and members of the Wage Statement Subclass,
19 which are inadequate under Labor Code Section 226(a).

20 97. As a result of Defendants’ failure to pay Plaintiff and the Wage Statement Subclass
21 for all and overtime wages and sick pay at the regular rate off pay, Defendants failed to include
22 required information on Plaintiff and the Wage Statement Subclass’ wage statements, including, but
23 not limited to, the gross wages earned, the net wages earned in violation of Labor Code section
24 226(a)(1,2,5, and 9).

25 98. Further, during the relevant time period, Defendants’ wage statements also failed to
26 state “all applicable rates of pay and units” in violation of Labor Code 226(a)(9).

27 99. Defendants’ failure to comply with section 226(a) of the Labor Code was knowing
28 and intentional.

100. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff and members of the Wage Statement Subclass in violation of section 226(a) of the California Labor Code, Plaintiff and members of the Wage Statement Subclass are each entitled to recover an initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per every member of the Wage Statement Subclass from Defendants pursuant to section 226 of the Labor Code, costs and reasonable attorneys' fees.

EIGHTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

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

102. The actionable period for this cause of action is three years prior to the filing of this Complaint through the present, and on-going until the violation is corrected or the class is certified.

103. Labor Code §§ 201 and 202 require Defendants to pay all compensation due and owing to Plaintiff and the Waiting Time Subclass during the actionable period for this cause of action at or around the time that their employment is or was terminated or ended.

104. Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Labor Code sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty (30) workdays.

105. Defendants willfully failed to pay all minimum and overtime wages, sick pay, and premium wages for missed meal and rest periods prior to or upon termination or separation from employment with Defendants as required by Labor Code §§ 201 and 202.

106. As a result, Defendants are liable to the Waiting Time Subclass for waiting time penalties amounting to thirty (30) days wages for Plaintiff and the Waiting Time Subclass pursuant to Labor Code § 203. *See, e.g., DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties).*

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1 **NINTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL DEFENDANTS)**

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

5 108. Defendants have engaged and continue to engage in unfair and/or unlawful business
6 practices in California in violation of California Business and Professions Code §§ 17200 *et seq.*, by
7 failing to pay all minimum and overtime wages, sick pay, and premium wages for missed meal and
8 rest periods.

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

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

18 111. The acts complained of herein occurred within the last four years immediately
19 preceding the filing of the Complaint in this action.

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

25 **TENTH CAUSE OF ACTION**

26 **PRIVATE ATTORNEYS GENERAL ACT**

27 **(AGAINST ALL DEFENDANTS)**

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

1 114. Defendants have committed several Labor Code violations against Plaintiff and other
2 non-exempt employees and temporary workers. Plaintiff, an “aggrieved employee” within the
3 meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other non-exempt employees,
4 brings this representative action against Defendants to recover the civil penalties due to Plaintiff, all
5 other similarly situated non-exempt employees and temporary workers, and the State of California
6 according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to (1) \$100
7 for each initial violation and (2) \$200 for each subsequent violation per employee per pay period for
8 those violations of the Labor Code for which no civil penalty is specifically provided based on the
9 following Labor Code violations:

10 a. Failing to provide Plaintiff and all other aggrieved non-exempt employees and
11 temporary workers all minimum and overtime wages (including, but not limited to, failing to provide
12 all wages owed due to an unlawful alternative workweek schedule, failure to pay the correct regular
13 rate, failure to compensate properly for all time worked at the legally mandated rate, etc.) in violation
14 of Labor Code § 204, 246, 510, 1194 & 1198, etc.;

15 b. Failing to provide Plaintiff and all other aggrieved non-exempt employees and
16 temporary workers with all of their statutorily mandated meal periods or compensation at the “regular
17 rate of pay” in lieu thereof in violation of Labor Code §§ 204, 510, 1194, and 1198;

18 c. Failing to authorize and permit Plaintiff and all other aggrieved non-exempt
19 employees and temporary workers with all of their statutorily mandated rest periods or compensation
20 at the “regular rate of pay” in lieu thereof in violation of Labor Code §§ 226.7, and 516;

21 d. Failing to timely compensate Plaintiff and all other aggrieved non-exempt
22 employees and temporary workers with all earnings upon their separation of employment in violation
23 of Labor Code §§ 201-203.

24 e. Failing to furnish Plaintiff and all other aggrieved non-exempt employees and
25 temporary workers with complete, accurate, itemized wage statements in violations of Labor Code §
26 226(a); and

27 115. Plaintiff has timely notified Defendant via certified mail and the California Labor and
28 Workforce Development Agency (“LWDA”) via its website of Defendant’s violations of the

1 California Labor Code § 2698 et seq., with respect to violations of the California Labor Code
2 identified in Paragraph 114(a)-(e), including by filing an original notice and subsequent amendments
3 thereto.

4 116. Plaintiff has thus exhausted his administrative requirements for bringing a claim under
5 the Private Attorneys General Act with respect to these violations.

6 117. Plaintiff was compelled to retain the services of counsel to file this court action to
7 protect their interests and the interests of all other aggrieved non-exempt employees and temporary
8 workers and to assess and collect the civil penalties owed by Defendants. Plaintiff has hereby incurred
9 attorneys' fees and costs, which she is entitled to receive under California Labor Code § 2699.

10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, Plaintiff prays for judgment for herself and for all others on whose behalf
12 this suit is brought against Defendants, as follows:

- 13 1. For an order certifying the proposed Classes;
- 14 2. For an order appointing Plaintiff as representative of the Classes;
- 15 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 16 4. Upon the First Cause of Action, for compensatory, consequential, general and
17 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;
- 18 5. Upon the Second Cause of Action, for compensatory, consequential, general and
19 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;
- 20 6. Upon the Third Cause of Action, for compensatory, consequential, general and
21 special damages according to proof pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1, 1198, and
22 1199;
- 23 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
24 special damages according to proof pursuant to Labor Code §§ 204, 210, 510, 1194, and 1198;
- 25 8. Upon the Fifth Cause of Action, for compensatory, consequential, general and
26 special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 27 9. Upon the Sixth Cause of Action, for compensatory, consequential, general and
28 special damages according to proof pursuant to Labor Code §§ 226.7 and 516;

1 10. Upon the Seventh Cause of Action, penalties pursuant to Labor Code § 226(a), and
2 reasonable costs and attorneys' fees;

3 11. Upon the Eighth Cause of Action, for statutory waiting time penalties pursuant to
4 Labor Code §§ 201-203;

5 12. Upon the Ninth Cause of Action, for restitution to Plaintiff and members of the
6 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
7 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;

8 13. Upon the Tenth Cause of Action, for civil penalties due to Plaintiff, all other
9 aggrieved employees (i.e., all non-exempt employees and/or temporary workers), and the State of
10 California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to:
11 (1) \$100 for each initial violation and \$200 for each subsequent violation per employee per pay period
12 for those violations of the Labor Code for which no civil penalty is specifically provided under the
13 Labor Code;

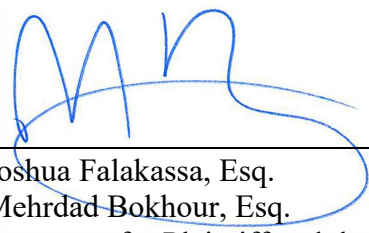
14 14. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
15 § 218.6 and Civil Code §§ 3287 and 3289;

16 15. For attorneys' fees and costs as provided by Labor Code §§ 218.5, 226, 1194, and
17 Code of Civil Procedure § 1021.5; and

18 16. For such other relief that the Court may deem just and proper.

19
20 Dated: April 24, 2024

FALAKSSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

21
22
23 By: 

Joshua Falakassa, Esq.

Mehrdad Bokhour, Esq.

Attorneys for Plaintiff and the Putative Class

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the action; my business address is 1901 Avenue of the Stars, Suite 450, Los Angeles, California 90067.

On April 24, 2024, I served the following document(s) described as **FIRST AMENDED CLASS AND PAGA ACTION COMPLAINT** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Drew R. Hansen, Esq.
dhansen@nossaman.com
Pavneet Singh Mac, Esq.
pmac@nossaman.com
NOSSAMAN, LLP
18101 Von Karman Avenue, Suite 1800
Irvine, California 92612

Counsel for defendant Birchstone Management, LLC

BY ELECTRONIC SERVICE: I transmitted the above-referenced document(s) via electronic service provider First Legal to the person(s) identified above at the email address(es) indicated and did not, within a reasonable time after transmission, receive any message or communication indicating that delivery failed or that any other error had occurred which would delay or caused failure in transmission and delivery of the document and/or any attachments thereto.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 24, 2024, at Los Angeles, California.

/s/ Carlos Garcia

Carlos Garcia