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all others similarly situated and aggrieved

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

PAULA JUAREZ, an individual, on behalf of
themselves and all others similarly situated
and aggrieved,

Plaintiff,

v.

KYOCHON USA, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 22STCV39925

[Assigned to the Hon. Elihu M. Berle in Dept.
6]

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

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. VIOLATION OF LABOR CODE § 2802;
8. VIOLATION OF LABOR CODE § 227.3; an
9. UNFAIR COMPETITION
10. CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS' GENERAL
ACT OF 2004 FOR VIOLATIONS OF
LABOR CODE SECTIONS 210, 226.3,
558. 1174.5, 1197.1 AND 2699, *et seq.*

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW plaintiff PAULA JUAREZ (“Plaintiff”), on behalf of herself, and all others similarly situated and aggrieved, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against KYOCHON USA, INC. (“KYOCHON USA”), a California Corporation, and any of its respective subsidiaries or affiliated companies within the State of California (and with DOES 1 through 100, as further defined below, “Defendants”), on behalf of Plaintiff and all other current and former non-exempt California employees employed by or formerly employed by Defendants (“Class Members”).

2. This is also a representative action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against Defendants, as a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on behalf of Plaintiff and all other current and former non-exempt employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 227.3, Labor Code section 246, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

PARTIES

A. Plaintiff

3. Plaintiff PAULA JUAREZ is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges, that Defendants employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to, preparing ingredients and food. Plaintiff is informed and believes, and based thereon alleges, that she worked for Defendants from approximately May of 2021 through approximately April of 2022.

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1 **B. Defendants**

2 4. Plaintiff is informed and believes, and based thereon alleges, that defendant
3 KYOCHON USA is, and at all times relevant hereto was, a corporation organized and existing under
4 and by virtue of the laws of the State of California, and doing business in the County of Los Angeles,
5 State of California.

6 5. The true names and capacities, whether individual, corporate, associate or otherwise,
7 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
8 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
9 Plaintiff is informed and believes, and based thereon alleges, that each of the defendants designated
10 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
11 Plaintiff will seek leave of court to amend this First Amended Complaint to reflect the true names
12 and capacities of the defendants designated hereinafter as DOES when such identities become
13 known. Plaintiff is informed and believes, and based thereon alleges, that each defendant acted in
14 all respects pertinent to this action, as the agent of the other defendant(s), carried out a joint scheme,
15 business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally
16 attributable to the other defendants. Whenever, heretofore or hereinafter, reference is made to
17 “Defendants,” it shall include KYOCHON USA and any of their parent, subsidiary, or affiliated
18 companies within the State of California, as well as DOES 1 through 100 identified herein.

19 **JOINT LIABILITY ALLEGATIONS**

20 6. Plaintiff is informed and believes, and based thereon alleges, that all the times
21 mentioned herein, each of the Defendants was the agent, principal, employee, employer,
22 representative, joint venture or co-conspirator of each of the other defendants, either actually or
23 ostensibly, and in doing the things alleged herein, acted within the course and scope of such agency,
24 employment, joint venture and conspiracy.

25 7. All of the acts and conduct described herein of each and every corporate defendant
26 was duly authorized, ordered, and directed by the respective and collective defendant corporate
27 employers, and the officers and management-level employees of said corporate employers. In
28 addition thereto, said corporate employers participated in the aforementioned acts and conduct of

1 their said employees, agents, and representatives, and each of them; and upon completion of the
2 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
3 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
4 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
5 aforementioned corporate employees, agents and representatives.

6 8. Plaintiff is informed and believes, and based thereon alleges, that despite the
7 formation of the purported corporate existence of KYOCHON USA, and DOES 1 through 50,
8 inclusive (the “Alter Ego Defendants”), they, and each of them, are one and the same with DOES
9 51 through 100 (“Individual Defendants”), and each of them, due to, but not limited to, the following
10 reasons:

11 A. The Alter Ego Defendants are completely dominated and controlled by the
12 Individual Defendants who personally committed the wrongful and illegal acts and violated the laws
13 as set forth in this Complaint, and who have hidden and currently hide behind the Alter Ego
14 Defendants to perpetrate frauds, circumvent statutes, or accomplish some other wrongful or
15 inequitable purpose;

16 B. The Individual Defendants derive actual and significant monetary benefits by
17 and through the Alter Ego Defendants’ unlawful conduct, and by using the Alter Ego Defendants as
18 the funding source for the Individual Defendants’ own personal expenditures;

19 C. Plaintiff is informed and believes, and thereon alleges, that the Individual
20 Defendants and the Alter Ego Defendants, while really one and the same, were segregated to appear
21 as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
22 accomplishing some other wrongful or inequitable purpose;

23 D. Plaintiff is informed and believes, and thereon alleges, that the business affairs
24 of the Individual Defendants and the Alter Ego Defendants are, and at all relevant times mentioned
25 herein were, so mixed and intermingled that the same cannot reasonably be segregated, and the same
26 are inextricable confusion. The Alter Ego Defendants are, and at all relevant times mentioned herein
27 were, used by the Individual Defendants as mere shells and conduits for the conduct of certain of
28 their, and each of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned

1 herein were, the alter egos of the Individual Defendants.

2 E. The recognition of the separate existence of the Individual Defendants from
3 the Alter Ego Defendants would promote injustice insofar as it would permit these defendants to
4 insulate themselves from liability to Plaintiffs for violations to the Civil Code, Government Code,
5 and other statutory violations. The corporate existence of these defendants should thus be
6 disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud
7 and injustice to Plaintiff herein.

8 F. Accordingly, the Alter Ego Defendants constitute the alter ego of the
9 Individual Defendants (and vice versa), and the fiction of their separate corporate existence must be
10 disregarded.

11 9. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
12 thereon alleges, that Defendants and each of them, are joint employers.

13 **JURISDICTION**

14 10. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
15 of Civil Procedure section 410.10.

16 11. Venue is proper in Los Angeles County, California pursuant to Code of Civil
17 Procedure sections 392, et seq. because, among other things, Los Angeles County is where the
18 causes of action complained of herein arose; the county in which the employment relationship
19 began; the county in which performance of the employment contract, or part of it, between Plaintiff
20 and Defendants was due to be performed; the county in which the employment contract, or part of
21 it, between Plaintiff and Defendants, was actually performed; and the county in which Defendants,
22 or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff
23 and Class Members in Los Angeles County, and because Defendants employ numerous Class
24 Members in Los Angeles County.

25 12. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
26 Defendants during the applicable statutory period and suffered one or more of the Labor Code
27 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term “civil
28 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code

1 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”),
2 plus reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former
3 employees of Defendants during the civil penalty period.

4 13. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative
5 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
6 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
7 PAGA allegations described herein is not required.

8 14. During the period beginning one (1) year preceding the provision of notice to the
9 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
10 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
11 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,
12 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

13 15. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
14 such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within
15 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
16 specified in Labor Code section 2699.3.

17 16. On or around December 22, 2022, Plaintiff provided written notice pursuant to Labor
18 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’
19 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
20 as well as by certified mail, with return receipt requested to Defendants, and each of them.

21 17. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
22 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)
23 calendar days of the December 22, 2022, postmarked date of the herein-described notice sent by
24 Plaintiff to the LWDA and Defendants.

25 18. On or around December 22, 2022, Plaintiff filed a class action complaint alleging a
26 number of putative wage and hour claims including: (1) failure to pay overtime wages; (2) failure
27 to pay minimum wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5)
28 waiting time penalties; (6) wage statement violations; (7) violation of labor code § 2802; (8)

1 violation of labor code § 227.3; and (9) engaged in unfair competition (the “Class Action
2 Complaint”).

3 19. On or around March 28, 2023, Plaintiff filed a separate representative complaint in
4 Los Angeles County Superior Court, alleging a single cause of action for civil penalties pursuant to
5 PAGA for various alleged Labor Code violations specified in the PAGA Notice (the “PAGA
6 Complaint”).

7 20. The Parties have agreed to stipulate to Plaintiff’s filing a First Amended Complaint
8 alleging against Defendants the same causes of action identified above, plus a cause of action for
9 PAGA penalties. Hence, this First Amended Complaint, which will be the operative complaint in
10 the Action (the “Operative Complaint”).

11 **FACTUAL BACKGROUND**

12 21. For at least four (4) years prior to the filing of this action and continuing to the
13 present, Defendants have, at times, failed to pay overtime wages to Plaintiff and Class Members, or
14 some of them, in violation of California state wage and hour laws as a result of, without limitation,
15 Plaintiff and Class Members working over eight (8) hours per day, forty (40) hours per week, and
16 seven consecutive work days in a work week without being properly compensated for hours worked
17 in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours
18 worked on the seventh consecutive work day in a work week by, among other things, failing to
19 accurately track and/or pay for all minutes actually worked at the proper overtime rate of pay to the
20 detriment of Plaintiff and Class Members.

21 22. For at least four (4) years prior to the filing of this Action and continuing to the
22 present, Defendants have, at times, failed to pay minimum wages to Plaintiff and Class Members,
23 or some of them, in violation of California state wage and hour laws as a result of, among other
24 things, at times, failing to accurately track and/or pay for all hours actually worked at their regular
25 rate of pay that is above the minimum wage to the detriment of Plaintiff and Class Members.

26 23. For at least four (4) years prior to the filing of this Action and continuing to the
27 present, Defendants have, at times, failed to provide Plaintiff and Class Members, or some of them,
28 full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than

1 five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on
2 which they worked in excess of ten (10) hours in a work day, and failing to provide compensation
3 for such unprovided meal periods as required by California wage and hour laws.

4 24. For at least four (4) years prior to the filing of this action and continuing to the
5 present, Defendants have, at times, failed to authorize and permit Plaintiff and Class Members, or
6 some of them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major
7 fraction thereof and failed to provide compensation for such unprovided rest periods as required by
8 California wage and hour laws.

9 25. For at least three (3) years prior to the filing of this action and continuing to the
10 present, Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the
11 full amount of their wages owed to them upon termination and/or resignation as required by Labor
12 Code sections 201 and 202, including for, without limitation, failing to pay overtime wages,
13 minimum wages, premium wages, and vacation pay pursuant to Labor code section 227.3.

14 26. For at least one (1) year prior to the filing of this Action and continuing to the present,
15 Defendants have, at times, failed to furnish Plaintiff and Class Members, or some of them, with
16 itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages
17 earned; all applicable hourly rates in effect during the pay period and the corresponding number of
18 hours worked at each hourly rate; and other such information as required by Labor Code section
19 226, subdivision (a). As a result thereof, Defendants have further failed to furnish employees with
20 an accurate calculation of gross and gross wages earned, as well as gross and net wages paid.

21 27. For at least one (1) year prior to the filing of this action and continuing to the present,
22 Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the full
23 amount of their wages for labor performed in a timely fashion as required under Labor Code section
24 204.

25 28. For at least three (3) years prior to the filing of this action and continuing to the
26 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the
27 costs incurred in purchasing and/or providing unreturned deposits for mandatory work uniforms;
28 laundering mandatory work uniforms; mileage and/or gas costs incurred in driving personal vehicles

1 for work-related purposes; and using cellular phones for work-related purposes.

2 29. For at least three (3) years prior to the filing of the action and continuing to the
3 present, Defendants have, at times, failed to return interest on deposits made by Plaintiff and Class
4 Members, or some of them, for uniforms.

5 30. For at least four (4) years prior to the filing of this action and continuing to the
6 present, Defendants have had a consistent policy of failing to provide Plaintiff and similarly situated
7 employees or former employees within the State of California with compensation at their final rate
8 of pay for unused vested paid vacation days pursuant to Labor Code section 227.3.

9 31. At all relevant times mentioned herein, Defendants had and have a policy or practice
10 of failing to pay overtime wages to Plaintiff and other Aggrieved Employees in the State of
11 California in violation of California state wage and hour laws as a result of, without limitation,
12 Plaintiff and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours per
13 week, and/or seven (7) straight workdays in a workweek without paying them proper overtime
14 wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually
15 worked; engaging, suffering, or permitting employees to work off the clock, including, without
16 limitation, by requiring employees: to remain on-call, to suffer under Defendants' control to
17 complete pre-shift tasks before clocking in and post-shift tasks after clocking out (including
18 answering calls from dispatch and others), to clock out for meal periods and continue working, to
19 don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the
20 clock, to make phone calls or drive off the clock; failing to include all forms of remuneration,
21 including non-discretionary bonuses, incentive pay, meal allowances, and other forms of
22 remuneration into the regular rate of pay for the pay periods where overtime was worked and the
23 additional compensation was earned for the purpose of calculating the overtime rate of pay;
24 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show
25 less hours than actually worked, and for paying straight pay instead of overtime pay and engaging,
26 suffering, or permitting employees to go through temperature checks off the to the detriment of
27 Plaintiff and other Aggrieved Employees.

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1 32. At all relevant times mentioned herein, Defendants had and have a practice or policy
2 of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for all hours
3 worked or otherwise under Defendants' control as a result of, without limitation, failing to
4 accurately track and/or pay for all minutes actually worked; by requiring employees: to remain on-
5 call; to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift
6 tasks after clocking out (including answering calls from dispatch and others), to clock out for meal
7 periods and continue working, to don and doff uniforms and/or safety equipment off the clock, to
8 attend company meetings off the clock, to make phone calls or drive off the clock; detrimental
9 rounding of employee time entries, editing and/or manipulation of time entries to show less hours
10 than actually worked; failing to pay reporting time pay; failing to pay split shift premiums; and
11 engaging, suffering, or permitting employees to go through temperature checks off the clock to the
12 detriment of Plaintiff and other Aggrieved Employees.

13 33. At all relevant times mentioned herein, Defendants had and have a policy or practice
14 of failing to provide Plaintiff and other Aggrieved Employees a thirty (30) minute uninterrupted,
15 timely, and complete meal period for days on which the employee worked in excess of five (5) and
16 ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal
17 periods or compensation in lieu thereof including, without limitation, by interrupting meal periods;
18 not providing timely meal periods; failing to provide first and second meal periods; providing short
19 meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal
20 periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal
21 periods; and/or auto-deducting meal periods that could not be auto-deducted by law or during which
22 employees worked, as required by California wage and hour laws.

23 34. At all relevant times mentioned herein, Defendants had and have a policy or practice
24 of failing to provide Plaintiff and other Aggrieved Employees paid, uninterrupted, timely, and
25 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions
26 thereof, or compensation in lieu thereof, including, without limitation, by failing to provide rest
27 periods all together; requiring that they be bundled together and/or with meal periods; interrupting
28 them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not

1 providing them in a timely fashion; and not permitting employees to leave the premises; and/or
2 otherwise requiring on-duty/on-call rest periods, as required by California wage and hour laws.

3 35. At all relevant times mentioned herein, Defendants had and have a policy or practice
4 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
5 Plaintiff and other Aggrieved Employees with itemized wage statements that accurately reflect gross
6 wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable
7 hourly rates in effect during the pay period and the corresponding number of hours worked at each
8 hourly rate by the employee; the legal name of the employer and/or the name and address of the
9 legal entity securing the employer's services if the employer is a farm labor contractor; and other
10 such information as required by Labor Code section 226, subdivision (a).

11 36. At all relevant times mentioned herein, Defendants had and have a policy or practice
12 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
13 Plaintiff and other Aggrieved Employees with documents signed to obtain or hold employment
14 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
15 under Labor Code section 1174, making it difficult for Plaintiff and other Aggrieved Employees to
16 calculate their unpaid wages and/or premium payments, to the detriment of Plaintiffs and other
17 Aggrieved Employees.

18 37. At all relevant times mentioned herein, Defendants had and have a policy or practice
19 of failing to timely pay Plaintiff and other Aggrieved Employees, among other wages, all wages
20 owed as a result of Defendants' practice or policy of failing to pay, among other wages, overtime
21 wages, minimum wages, premium wages, paid time off and vacation time owed as required by Labor
22 Code sections 201, 202, and 203.

23 38. At all relevant times herein, Defendants had and have a policy or practice of failing
24 to pay Plaintiff and Aggrieved Employees their paid time off and vacation time owed upon
25 separation of employment as wages at their final rate of pay in violation of Labor Code section 227.3
26 and applicable Wage Orders.

27 39. At all relevant times mentioned herein, Defendants have had a policy or practice of
28 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without

1 limitation, Plaintiff and other Aggrieved Employees, with their costs incurred for driving personal
2 vehicles (i.e., mileage and gas), purchasing uniforms, providing uniform and other deposits,
3 separately laundering mandatory uniforms, for the purchase of tools and safety equipment (including
4 work boots to handle oil), for the purchase and maintenance of cellular phones and cellular phone
5 plans, in direct consequence of the discharge of their duties, or of their obedience to the directions
6 of Defendants, as required by Labor Code 2802.

7 40. At all relevant times mentioned herein, Defendants have had a policy or practice of
8 failing to comply with the notice requirements of Labor Code section 2810.5 (i.e., the Wage Theft
9 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other Aggrieved
10 Employees with the rates of pay and overtime rates of pay applicable to their employment;
11 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
12 name, address, and telephone number of the workers' compensation insurance carrier; information
13 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
14 under Labor Code section 2810.5.

15 41. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and
16 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
17 California law (including, without limitation Labor Code section 246, et seq.), and also did not
18 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and
19 all other Aggrieved Employees.

20 42. At all relevant times mentioned herein, Defendants have had a policy or practice of
21 failing to pay Plaintiff and Aggrieved Employees their wages in accordance with Labor Code
22 Section 204, which requires that: "[l]abor performed between the 1st and 15th days, inclusive, of
23 any calendar month shall be paid for between the 16th and 26th day of the month during which the
24 labor was performed, and labor performed between the 16th and the last day, inclusive of any
25 calendar month, shall be paid for between the 1st and 10th day of the following month."

26 43. At all relevant times mentioned herein, Defendants had and have a policy or practice
27 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge
28 and experience they obtained at Defendants for purposes of competing with Defendants, including,

1 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
2 a prospective employer, and from disclosing who else works at Defendants and under what
3 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
4 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
5 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
6 Code sections 232, 232.5, and 1197.5, subdivision (k).

7 44. Defendants had and have a policy or practice of preventing Plaintiff and/or other
8 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
9 to their managers or outside to private attorneys or government officials, among others, in violation
10 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
11 1102.5. In addition, Plaintiff is informed and believes that Defendants' herein-described policies
12 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
13 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
14 of Labor Code section 232 and 232.5.

15 45. Defendants had and have a policy or practice of preventing Plaintiff and/or other
16 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state
17 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,
18 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,
19 subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the exercise of
20 Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and
21 economic liberty.

22 46. Plaintiff, on their own behalf and on behalf of Class Members, brings this action
23 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.7,
24 404, 227.3 510, 512, 1194, 1194.2, 1197, 2802., and California Code of Regulations, Title 8, section
25 11040, seeking overtime wages, minimum wages, payment of premium wages for missed meal and
26 rest periods, waiting time penalties, wage statement penalties, failure to indemnify work-related
27 expenses, failure to pay interest on deposits made, other such provisions of California law, and
28 reasonable attorneys' fees and costs.

47. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, pursuant to Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s) prohibiting Defendants from further violating the Labor Code and requiring the establishment of appropriate and effective means to prevent further violations, as well as all monies owed but withheld and retained by Defendants to which Plaintiff and Class Members are entitled, as well as restitution of amounts owed.

48. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate the California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved Employees pursuant to PAGA.

CLASS ACTION ALLEGATIONS

49. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all current and former non-exempt employees of Defendants within the State of California at any time commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice of the class action is provided to the class (collectively referred to as "Class Members").

50. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision (b) to amend or modify the class description with greater specificity, further divide the defined class into subclasses, and to further specify or limit the issues for which certification is sought.

51. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

A. Numerosity

52. The potential Class Members as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined yet, Plaintiffs are informed and believe that there are over seventy-five (75) Class Members employed by Defendants within the State of California.

53. Accounting for employee turnover during the relevant periods necessarily increases

1 this number. Plaintiff alleges Defendants' employment records would provide information as to the
2 number and location of all Class Members. Joinder of all members of the proposed Class is not
3 practicable.

4 **B. Commonality**

5 54. There are questions of law and fact common to Class Members. These common
6 questions include, but are not limited to:

- 7 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all
8 hours worked at a proper overtime rate of pay?
- 9 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to
10 pay for all other time worked at the employee's regular rate of pay and a rate of
11 pay that is greater than the applicable minimum wage?
- 12 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
13 Class Members to take compliant meal periods?
- 14 D. Did Defendants violate Labor Code section 226.7 by not providing Class
15 Members with additional wages for missed or interrupted meal periods?
- 16 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
17 Class Members to take compliant rest periods?
- 18 F. Did Defendants violate Labor Code section 226.7 by not providing Class
19 Members with additional wages for missed rest periods?
- 20 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
21 Members upon termination or resignation all wages earned?
- 22 H. Are Defendants liable to Class Members for waiting time penalties under Labor
23 Code section 203?
- 24 I. Did Defendants violate Labor Code section 226, subdivision (a) by not
25 furnishing Class Members with accurate wage statements?
- 26 J. Did Defendants fail to indemnify Class Members for all necessary expenditures
27 or losses incurred in direct consequence of the discharge of their duties or by
28 obedience to the directions of Defendants as required un Labor Code section

1 2802?

2 K. Did Defendants violate Labor Code section 227.3 by not providing Class
3 Members with compensation at their final rate of pay for vested paid vacation
4 time?

5 L. Did Defendants fail to return deposits made by Class Members with accrued
6 interest thereon as required under Labor Code section 404?

7 M. Did Defendants violate the Unfair Competition Law, Business and Professions
8 Code section 17200, et seq., by their unlawful practices as alleged herein?

9 N. Are Class Members entitled to restitution of wages under Business and
10 Professions Code section 17203?

11 O. Are Class Members entitled to costs and attorneys' fees?

12 P. Are Class Members entitled to interest?

13 **C. Typicality**

14 55. The claims of Plaintiff herein alleged are typical of those claims which could be
15 alleged by any Class Members, and the relief sought is typical of the relief which would be sought
16 by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and
17 damages arising out of and caused by Defendants' common course of conduct in violation of laws
18 and regulations that have the force and effect of law and statutes as alleged herein.

19 **D. Adequacy of Representation**

20 56. Plaintiff will fairly and adequately represent and protect the interest of Class
21 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and
22 hour class actions.

23 **E. Superiority of Class Action**

24 57. A class action is superior to other available means for the fair and efficient
25 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
26 questions of law and fact common to Class Members predominate over any questions affecting only
27 individual Class Members. Class Members, as further described therein, have been damaged and
28 are entitled to recovery by reason of Defendants' policies and/or practices that have resulted in the

1 violation of the Labor Code at times, as set out herein.

2 58. Class action treatment will allow Class Members to litigate their claims in a manner
3 that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of
4 any difficulties that are likely to be encountered in the management of this action that would
5 preclude its maintenance as a class action.

6 **FIRST CAUSE OF ACTION**

7 **(Failure to Pay Overtime Wages – Against All Defendants)**

8 59. Plaintiff realleges and incorporates by reference all of the allegations contained in the
9 preceding paragraphs as though fully set forth hereat.

10 60. At all relevant times, Plaintiff and Class Members were employees or former
11 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable
12 Wage Orders.

13 61. At all times relevant to this Complaint, Labor Code section 510 was in effect and
14 provided: “(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in
15 one workday and any work in excess of forty hours in any one workweek . . . shall be compensated
16 at the rate of no less than one and one-half times the regular rate of pay for an employee.”

17 62. At all times relevant to this Complaint, Labor Code section 510 further provided that
18 “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice
19 the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh
20 day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay.”

21 63. Four (4) years prior to the filing of the Complaint in this Action through the present,
22 Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more
23 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)
24 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a
25 result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours
26 actually worked at the proper overtime rate of pay to the detriment of Plaintiff and Class Members.

27 64. Accordingly, by requiring Plaintiff and Class Members to, at times, work greater than
28 eight (8) hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays

1 without properly compensating overtime wages at the proper overtime rate of pay, Defendants, on,
2 occasion, willfully violated the provisions of the Labor Code, among others, sections 510, 1194, and
3 applicable IWC Wage Orders, and California law.

4 65. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have
5 been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery,
6 plus interest and penalties thereon, attorneys' fees and costs, pursuant to Labor Code section 1194
7 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

8 **SECOND CAUSE OF ACTION**

9 **(Failure to Pay Minimum Wages – Against All Defendants)**

10 66. Plaintiff realleges and incorporates by reference all of the allegations contained in
11 the preceding paragraphs as though fully set forth hereat.

12 67. At all relevant times, Plaintiff and Class Members were employees or former
13 employees of Defendants covered by Labor Code sections 1197, 1199 and applicable Wage Orders.

14 68. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and
15 Class Members were entitled to receive minimum wages for all hours worked or otherwise under
16 Defendants' control.

17 69. For four (4) years prior to the filing of the Complaint in this Action through the
18 present, Defendants failed, at times, to accurately track and/or pay for all hours actually worked at
19 their regular rate of pay that is above the minimum wage to the detriment of Plaintiff and Class
20 Members.

21 70. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
22 suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages
23 for all hours worked or otherwise due.

24 71. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure
25 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to
26 recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated
27 damages, reasonable attorneys' fees and costs of suit.

28 ///

1 **THIRD CAUSE OF ACTION**

2 **(Failure to Provide Meal Periods – Against All Defendants)**

3 72. Plaintiff realleges and incorporates by reference all of the allegations contained in the
4 preceding paragraphs as though fully set forth hereat.

5 73. At all relevant times, Plaintiff and Class Members were employees or former
6 employees of Defendants covered by Labor Code section 512 and applicable Wage Orders.

7 74. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall
8 employ an employee for a work period of more than five (5) hours without a timely meal break of
9 not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.
10 Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours
11 per day without providing the employee with a second timely meal period of not less than thirty (30)
12 minutes in which the employee is relieved of all of his or her duties.

13 75. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
14 with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission,
15 the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate
16 of compensation for each workday that the meal period is not provided.

17 76. For four (4) years prior to the filing of the Complaint in this Action through the
18 present, Plaintiff and Class Members were, at times, not provided complete, timely 30-minute, duty
19 free uninterrupted meal periods every five hours of work without waiving the right to take them, as
20 permitted. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the
21 Class Member's regular rate of compensation on the occasions that Class Members were not
22 provided compliant meal periods.

23 77. By their failure to provide Plaintiff and Class Members compliant meal periods as
24 contemplated by Labor Code section 512, among other California authorities, and failing, at times,
25 to provide compensation for such unprovided meal periods, as alleged above, Defendants willfully
26 violated the provisions of Labor Code section 512 and applicable Wage Orders.

27 78. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
28 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay

1 owed for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

2 79. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
3 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus
4 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,
5 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

6 **FOURTH CAUSE OF ACTION**

7 **(Failure to Provide Rest Periods – Against All Defendants)**

8 80. Plaintiff realleges and incorporates by reference all of the allegations contained in
9 the preceding paragraphs as though fully set forth hereat.

10 81. At all relevant times, Plaintiff and Class Members were employees or former
11 employees of Defendants covered by applicable Wage Orders.

12 82. California law and applicable Wage Orders require that employers “authorize and
13 permit” employees to take ten (10) minute rest periods in about the middle of each four (4) hour
14 work period “or major fraction thereof.” Accordingly, employees who work shifts of three and-a
15 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who
16 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes
17 of paid rest period, and employees who work shifts of more than ten (10) hours must be provided
18 thirty (30) minutes of paid rest period.

19 83. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
20 with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare
21 Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's
22 regular rate of compensation for each work day that the rest period is not provided.

23 84. For four (4) years prior to the filing of the Complaint in this Action through the
24 present, Plaintiff and Class Members were, at times, not authorized or permitted to take complete,
25 timely 10-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction
26 thereof. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class
27 Member's regular rate of compensation on the occasions that Class Members were not authorized
28 or permitted to take compliant rest periods.

85. By their failure, at times, to authorize and permit Plaintiff and Class Members to take rest periods contemplated by California law, and one (1) additional hour of pay at the employee's regular rate of compensation for such unprovided rest periods, as alleged above, Defendants willfully violated the provisions of Labor Code section 226.7 and applicable Wage Orders.

86. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid additional pay owed for rest periods that they were not authorized or permitted to take.

87. Plaintiff and Class Members are entitled to recover the full amount of their unpaid additional pay for unprovided compliant rest periods, in amounts to be determined at trial, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

FIFTH CAUSE OF ACTION

(Failure to Pay All Wages Due Upon Termination – Against All Defendants)

88. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

89. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable Wage Orders.

90. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were entitled upon termination to timely payment of all wages earned and unpaid prior to termination. Discharged Class Members were entitled to payment of all wages earned and unpaid prior to discharge immediately upon termination. Class Members who resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and unpaid at the time of resignation.

91. Plaintiff is informed and believes, and based thereon alleges, that in the three (3) years before the filing of the Complaint in this Action through the present, Defendants, due to the failure, at times, to provide overtime wages mentioned above, failed to pay Plaintiff and Class

1 Members all wages earned prior to resignation or termination in accordance with Labor Code
2 sections 201 or 202.

3 92. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and
4 Class Members all wages earned prior to termination or resignation in accordance with Labor Code
5 sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff
6 and Class Members at the time of termination in accordance with Labor Code sections 201 and 202,
7 but intentionally adopted policies or practices incompatible with the requirements of Labor Code
8 sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination
9 or resignation.

10 93. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to
11 waiting time penalties from the date their earned and unpaid wages were due, upon termination or
12 resignation, until paid, up to a maximum of thirty (30) days.

13 94. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
14 suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned
15 prior to termination or resignation.

16 95. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
17 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
18 waiting time penalties, interest, and their costs of suit, as well.

19 **SIXTH CAUSE OF ACTION**

20 **(Failure to Provide Accurate Wage Statements – Against All Defendants)**

21 96. Plaintiff realleges and incorporates by reference all of the allegations contained in
22 the preceding paragraphs as though fully set forth hereat.

23 97. At all relevant times, Plaintiff and Class Members were employees or former
24 employees of Defendants covered by Labor Code section 226, as well as applicable Wage Orders.

25 98. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members
26 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
27 statement that accurately reflects, among other things, gross wages earned; total hours worked; net
28 wages earned; all applicable hourly rates in effect during the pay period and the corresponding

1 number of hours worked at each hourly rate; and the name and address of the legal entity that is the
2 employer, among other things.

3 99. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year
4 before the filing of the Complaint in this Action through the present, Defendants failed to comply
5 with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their
6 failure, at times, to furnish Plaintiff and Class Members with accurate itemized statements that
7 accurately reflect, among other things, gross wages earned; total hours worked; net wages earned;
8 all applicable hourly rates in effect during the pay period and the corresponding number of hours
9 worked at each hourly rate; and the name and address of the legal entity that is the employer, among
10 other things.

11 100. Defendants' failure to, at times, provide Plaintiff and Class Members with accurate
12 wage statements was knowing, intentional, and willful. Defendants had the ability to provide
13 Plaintiff and the other Class Members with accurate wage statements, but, at times, willfully
14 provided wage statements that Defendants knew were not accurate.

15 101. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
16 suffered injury. The absence of accurate information on Class Members' wage statements at times
17 has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and
18 mathematical computations to determine the amount of wages owed; causes difficulty and expense
19 in attempting to reconstruct time and pay records; and led to submission of inaccurate information
20 about wages and amounts deducted from wages to state and federal governmental agencies, among
21 other things.

22 102. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and Class Member are
23 entitled to recover \$50 for the initial pay period during the period in which violation of Labor Code
24 section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent pay
25 period, not to exceed an aggregate \$4,000.00 per employee.

26 103. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
27 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to
28 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable

1 attorneys' fees, and costs of suit.

2 **SEVENTH CAUSE OF ACTION**

3 **(Violation of Labor Code § 2802 – Against All Defendants)**

4 104. Plaintiff reallege and incorporate by reference all of the allegations contained in the
5 preceding paragraphs as though fully set forth hereat.

6 105. At all relevant times, Plaintiff and Class Members were employees or former
7 employees of Defendants covered by Labor Code section 2802 and applicable Wage Orders.

8 106. Labor Code section 2802, subdivision (a) provides that “an employer shall indemnify
9 his or her employee for all necessary expenditures or losses incurred by the employee in direct
10 consequence of the discharge of his or her duties . . .”

11 107. For three (3) years prior to the filing of the Complaint in this Action through the
12 present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times,
13 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
14 obedience to the directions of Defendants that included, without limitation: purchasing and/o
15 providing unreturned deposits for mandatory work uniforms; laundering mandatory work uniforms;
16 mileage and/or gas costs incurred in driving personal vehicles for work-related purposes; using
17 cellular phones for work-related purposes; and purchasing tools necessary to perform work duties.

18 108. During that time period, Plaintiff is informed and believes, and based thereon allege
19 that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiff and Class
20 Members for those losses and/or expenditures.

21 109. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
22 suffered damages in an amount subject to proof, to the extent they were not reimbursed for the
23 herein-described losses and/or expenditures.

24 110. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
25 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
26 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees and
27 costs of suit.

28 ///

1 **EIGHT CAUSE OF ACTION**

2 **(Violation of Labor Code § 227.3 – Against All Defendants)**

3 111. Plaintiff re-alleges and incorporates by reference all of the allegations contained in
4 the preceding paragraphs of this Complaint as though fully set forth hereon.

5 112. According to Labor Code section 227.3, whenever a contract of employment or
6 employer policy provides for paid vacations, and an employee is terminated without having taken
7 off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in
8 accordance with such contract of employment or employer policy respecting eligibility or time
9 served.

10 113. Plaintiff is informed and believes, and based thereon alleges that, at all times relevant
11 hereto, Defendants promulgated and maintained a uniform policy providing for paid vacations, and
12 that Plaintiff's employment contract with Defendants included paid vacations.

13 114. For at least four (4) years prior to the filing of this action and continuing to the
14 present, Defendants have had a consistent policy of failing to provide Plaintiff and similarly situated
15 employees or former employees within the State of California with compensation at their final rate
16 of pay for unused vested paid vacation days pursuant to Labor Code section 227.3.

17 115. As a proximate result of Defendants' failure to pay vested vacation at the final rate
18 of Plaintiff and Class Members upon their resignation or termination, Defendants violated Labor
19 Code section 227.3, entitling Plaintiff and Class Members to all vested and unused vacation pay at
20 their final rate of pay, as set out in Defendants' policy or the contract of employment between
21 Plaintiff and Class Members, on the one hand, and Defendants, on the other hand.

22 116. As a further proximate result of Defendants' above-described acts and/or omissions,
23 Plaintiff and Class Members are entitled to recover reasonable attorneys' fees, costs of suit and
24 prejudgment interest.

25 **NINTH CAUSE OF ACTION**

26 **(Unfair Competition- Against All Defendants)**

27 117. Plaintiff realleges and incorporates by reference all of the allegations contained in
28 the preceding paragraphs as though fully set forth hereat.

1 118. Plaintiff is informed and believes, and based thereon alleges that the unlawful
2 conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business
3 and Professions Code section 17200. Due to their unlawful business practices in violation of the
4 Labor Code, Defendants have gained a competitive advantage over other comparable companies
5 doing business in the State of California that comply with their obligations to compensate employees
6 in accordance with the Labor Code.

7 119. As a result of Defendants' unfair competition as alleged herein, Plaintiff and Class
8 Members have suffered injury in fact and lost money or property.

9 120. Pursuant to Business and Professions Code section 17203, Plaintiff and Class
10 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor
11 Code and requiring the establishment of appropriate and effective means to prevent further
12 violations, as well as restitution of all wages and other monies owed to them under the Labor Code,
13 including interest thereon, in which they had a property interest and which Defendants nevertheless
14 failed to pay them and instead withheld and retained for themselves. Restitution of the money owed
15 to Plaintiff and Class Members is necessary to prevent Defendants from becoming unjustly enriched
16 by their failure to comply with the Labor Code.

17 121. Plaintiff and Class Members are entitled to costs of suit under Code of Civil
18 Procedure section 1032 and interest under Civil Code section 3287.

19 **TENTH CAUSE OF ACTION**

20 **(Civil Penalties under Labor Code Private Attorneys' General Act of 2004 –**
21 **Against All Defendants)**

22 122. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
23 and incorporates each by reference as though fully set forth hereat.

24 **A. Civil Penalties Under Labor Code § 210**

25 123. At all relevant times herein, Labor Code section 204, requires and required that:
26 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid
27 for between the 16th and 26th day of the month during which the labor was performed, and labor
28 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for

1 between the 1st and 10th day of the following month.

2 124. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
3 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
4 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
5 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
6 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
7 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
8 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

9 125. At all relevant times herein, Defendants have had a consistent policy or practice of
10 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as
11 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other
12 Aggrieved Employees are entitled to recover civil penalties for Defendants’ violations of Labor
13 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for
14 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
15 for each subsequent violation in connection with each payment that was made in violation of Labor
16 Code section 204.

17 **B. Civil Penalties Under Labor Code § 226.3**

18 126. Defendants had and have a policy or practice of failing to comply with Labor Code
19 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees
20 with itemized wage statements that accurately reflect gross wages earned; total hours worked; net
21 wages earned; the name and address of each employer with whom they have been placed to work;
22 all applicable hourly rates in effect during the pay period and the corresponding number of hours
23 worked at each hourly rate; the legal name of the employer and/or the name and address of the legal
24 entity securing the employer’s services if the employer is a farm labor contractor; and other such
25 information as required by Labor Code section 226, subdivision (a).

26 127. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a) of
27 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
28 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each

1 violation in a subsequent citation, for which the employer fails to provide the employee a wage
2 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

3 128. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
4 this section are in addition to any other penalty provided by law.”

5 129. Plaintiff is informed and believes, and based thereon alleges, that Defendants had and
6 have a policy or practice of failing to furnish non-exempt employees, including, without limitation,
7 Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total hours
8 worked; net wages earned; all deductions; all applicable hourly rates in effect and the corresponding
9 number of hours worked at each hourly rate in effect during the pay period; the legal name of the
10 employer and/or the name and address of the legal entity securing the employer’s services if the
11 employer is a farm labor contractor; and other such information as required by Labor Code section
12 226, subdivision (a).

13 130. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
14 entitled to recover civil penalties for Defendants’ violation of Labor Code section 226, subdivision
15 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
16 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
17 period for each subsequent violation.

18 C. Violation of Labor Code § 558

19 131. Pursuant to Labor Code section 558, subdivision (a): “Any employer or other person
20 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating
21 hours and days of work in any of the Industrial Welfare Commission” shall be subject to a civil
22 penalty as follows:

- 23 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
24 pay period for which the employee was underpaid in addition to an amount sufficient
25 to recover underpaid wages;
- 26 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
27 employee for each pay period for which the employee was underpaid in addition to
28 an amount sufficient to recover underpaid wages;

1 (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

2 132. Plaintiff is informed and believes, and based thereon allege, that Defendants, and
3 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
4 causing Plaintiff and other Aggrieved Employees not to: be paid overtime wages and minimum
5 wages; receive meal and rest periods or compensation in lieu thereof; be paid timely wages during
6 their employment and after their employment separation; receive accurate, itemized wage
7 statements; be provided with the opportunity to inspect employment records; be provided with
8 notice as required under Labor Code section 2810.5; be provided with the proper accrual and use of
9 paid sick leave; and/or be paid out all paid time off and/or vacation wages owed at the proper rate
10 of pay.

11 133. As a direct and proximate result of the herein-described Labor Code violations,
12 pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover
13 civil penalties for Defendants’ herein-described Labor Code violations in the amount fifty dollars
14 (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars
15 (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

16 **D. Violation of Labor Code § 1174.5**

17 134. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
18 every person employing labor in California to “[a]llow any member of the commission or the
19 employees of the Division of Labor Standards Enforcement free access to the place of business or
20 employment of the person to secure any information or make any investigation that they are
21 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
22 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
23 or papers of the person.”

24 135. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required
25 every person employing labor in California to “[k]eep a record showing the names and addresses of
26 all employees employed and the ages of all minors.”

27 136. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required
28 every person employing labor in California to “[k]eep, at a central location in the state or at the

1 plants or establishments at which employees are employed, payroll records showing the hours
2 worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable
3 piece rate paid to, employees employed at the respective plants or establishments. These records
4 shall be kept in accordance with rules established for this purpose by the commission, but in any
5 case, shall be kept on file for not less than three years. An employer shall not prohibit an employee
6 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units
7 earned.”

8 137. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully
9 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate
10 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any
11 member of the commission or employees of the division to inspect records pursuant to subdivision
12 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

13 138. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
14 willfully failed keep adequate or accurate time records including wage statements and similar
15 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
16 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
17 under Labor Code section 1174.

18 139. As a direct and proximate result of the herein-described Labor Code violations,
19 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to
20 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount of five
21 hundred dollars (\$500) per violation per Aggrieved Employee.

22 **E. Violation of Labor Code § 1197.1**

23 140. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
24 person acting either individually or as an officer, agent, or employee of another person, who pays
25 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
26 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
27 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
28 Section 203 as follows:

- 1 (1) For any initial violation that is intentionally committed, one hundred dollars
2 (\$100) for each underpaid employee for each pay period for which the
3 employee is underpaid. This amount shall be in addition to an amount
4 sufficient to recover underpaid wages, liquidated damages pursuant to Section
5 1194.2, and any applicable penalties imposed pursuant to Section 203.
- 6 (2) For each subsequent violation for the same specific offense, two hundred fifty
7 dollars (\$250) for each underpaid employee for each pay period for which the
8 employee is underpaid regardless of whether the initial violation is
9 intentionally committed. This amount shall be in addition to an amount
10 sufficient to recover underpaid wages, liquidated damages pursuant to Section
11 1194.2, and any applicable penalties imposed pursuant to Section 203.
- 12 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant
13 to Section 203, recovered pursuant to this section shall be paid to the affected
14 employee.”

15 143. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
16 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
17 limitation, routinely failing to pay Plaintiffs or other Aggrieved Employees’ to pay minimum wages
18 for all hours worked, entitling Employee and other aggrieved employees to actual and liquidated
19 damages.

20 144. As a direct and proximate result of the herein-described Labor Code violations,
21 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
22 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one
23 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
24 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
25 subsequent violation.

26 **F. Civil Penalties Under Labor Code § 2699**

27 141. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
28 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed

1 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
2 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
3 action brought by an aggrieved employee on behalf of himself or herself and other current or former
4 employees pursuant to the procedures specified in Labor Code section 2699.3.

5 142. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor
6 Code except those for which a civil penalty is specifically provided, the established civil penalty for
7 a violation of those provisions is as follows: if, at the time of the alleged violation, the person
8 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
9 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
10 employee per pay period for each subsequent violation.

11 143. Plaintiff is informed and believes and based thereon alleges that Defendants,
12 and each of them, violated the Labor Code sections described herein, including, without limitation,
13 for the failure to: pay overtime wages and minimum wages; provide meal and rest periods or
14 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during
15 employment and after employment separation; provide employees the opportunity to inspect
16 employment records; reimburse Aggrieved Employees for costs incurred in furtherance of their
17 work duties; provide notice as required under Labor Code section 2810.5; provide the proper accrual
18 and use of paid sick leave; paying employees all owed paid time off and vacation time owed by
19 separation at the proper rate of pay; and placing restraints on competition, whistleblowing and
20 freedom of speech, entitling Plaintiff and other Aggrieved Employees to civil penalties for each of
21 these Labor Code violations in the amounts set forth in Labor Code section 2699, subdivision (f).

22 144. Moreover, Plaintiff and other Aggrieved Employees within the State of California
23 whom he seeks to represent are entitled to an award of reasonable attorneys' fees and costs in
24 connection with their herein-described claims for civil penalties.

25 **DEMAND FOR JURY TRIAL**

26 145. Plaintiff demands a trial by jury on all causes of action contained herein.

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1 **PRAYER**

2 WHEREFORE, on behalf of himself, Class Members and Aggrieved Employees, Plaintiff
3 prays for judgment against Defendants as follows:

- 4 A. An order certifying this case as a Class Action;
- 5 B. An Order appointing Plaintiff as Class representatives and appointing
6 Plaintiff's counsel as class counsel;
- 7 C. Damages for all wages earned and owed, including minimum overtime
8 wages under Labor Code sections 510, 1194, 1197 and 1199 and 227.3;
- 9 D. Liquidated damages pursuant to Labor Code sections and 1194.2;
- 10 E. Damages for unpaid premium wages from missed meal and rest periods
11 under, among other Labor Code sections, 512, and 226.7;
- 12 F. Penalties for inaccurate wage statements under Labor Code sections 226,
13 subdivision (e);
- 14 G. Waiting time penalties under Labor Code sections 203;
- 15 H. Damages under Labor Code sections 2802;
- 16 I. Damages under Labor Code section 404;
- 17 J. Preliminary and permanent injunctions prohibiting Defendants from further
18 violating the California Labor Code and requiring the establishment of
19 appropriate and effective means to prevent future violations;
- 20 K. Restitution of wages and benefits due which were acquired by means of any
21 unfair business practice, according to proof;
- 22 L. Prejudgment and post-judgment interest at the maximum rate allowed by
23 law;
- 24 M. For attorneys' fees in prosecuting this action;
- 25 N. An award of civil penalties pursuant to Labor Code sections 210, 226.3,
26 558,1174.5, 1197.1, 2699, and 2802, and all other applicable sections listed
27 *infra*;
- 28 O. An award of reasonable attorneys' fees and costs pursuant to Labor Code

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sections 210, 226.3, 558, 1174.5, 1197.1, 2699, 2802, and all other applicable sections listed *infra*;

- P. Pre-judgment and post-judgment interest;
- Q. For costs of suit incurred herein; and
- R. Such other and further relief as the Court deems just and proper.

Dated: July 11, 2024

BIBIYAN LAW GROUP, P.C.

BY: 
BRANDON CHANG
Attorneys for Plaintiff PAULA JUAREZ, on behalf of herself, and all others similarly situated and aggrieved

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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 within action; my mailing address is 1460 Westwood Boulevard, Los Angeles, California 90024.

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**Counsel for Defendant KYOCHON USA INC. erroneously sued as
KYOCHON USA, INC.**

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

Executed on August 13, 2024, at Los Angeles, California.

/s/ Jennifer Echeverria
Jennifer Echeverria