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FILED
Superior Court of California
County of Los Angeles

02/27/2023

David W. Slayton, Executive Officer / Clerk of Court

By: K. Martinez Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ISABEL HERNANDEZ, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

O'REILLY AUTOMOTIVE STORES, INC.,
a Missouri Corporation; and DOES 1 through
100,

Defendants.

CASE NO.: 22STCV39670

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

- (1) **FAILURE TO PAY ALL OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (2) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (3) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (4) **WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226 *et seq.*);**
- (5) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (6) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**
- (7) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE §§ 2698, *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Isabel Hernandez (“Plaintiff”), on behalf of herself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“Complaint”) against O’Reilly Automotive Stores, Inc., a Missouri corporation; and Does 1
4 through 100, inclusive (collectively “Defendants”), and on information and belief alleges as
5 follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
8 action for recovery of unpaid wages and penalties under California Labor Code §§ 201-204, 226
9 *et seq.*, 226.7, 510, 512, 516, 558, 1194, 1198, and 2698 *et seq.*, California Business and
10 Professions Code § 17200 *et. seq.* (“Unfair Competition Law”), and Industrial Welfare
11 Commission Wage Order 7 (“Wage Order 7”) in addition to seeking declaratory relief, injunctive
12 relief, and restitution. This action is brought pursuant to California Code of Civil Procedure § 382.
13 This Court has jurisdiction over Defendants’ violations of the California Labor Code because the
14 amount in controversy exceeds this Court’s jurisdictional minimum.

15 **VENUE**

16 2. Venue is proper in this judicial district pursuant to California Code of Civil
17 Procedure §§ 395(a) and 395.5, as Defendants’ principal place of business is located in the
18 County of Los Angeles. Defendants own, maintain offices, transact business, have an agent or
19 agents within the County of Los Angeles, and/or otherwise are found within the County of Los
20 Angeles, and Defendants are within the jurisdiction of this Court for purposes of service of
21 process.

22 **THE PARTIES**

23 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
24 Plaintiff was, and currently is, a California resident, residing in the County of Los Angeles. During
25 the four years immediately preceding the filing of the Complaint in this action, and within the
26 statute of limitations periods applicable to each cause of action pled herein, Plaintiff was
27 employed by Defendants as a non-exempt employee in Los Angeles County. Plaintiff was, and
28 is, a victim of Defendants’ policies and/or practices complained of herein, lost money and/or

property, and has been deprived of the rights guaranteed to her by California Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1194, 1198, and 2698 *et seq.*, California Business and Professions Code § 17200 *et. seq.*, and Wage Order 7 which sets employment standards for the mercantile industry, which includes auto part retail workers.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of this action and continuing to the present, Defendants did (and continue to do) business within the County of Los Angeles by operating consumer auto part retail stores, and employed Plaintiff and other, similarly situated non-exempt employees within Los Angeles County and the state of California and, therefore, were (and are) doing business in Los Angeles County and the State of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to further amend this Complaint when such true names and capacities are discovered. Plaintiff is informed and believes, and based thereon alleges, that each of said fictitious defendants, whether individual, partner, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined herein) to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

6. Plaintiff is informed and believes, and thereon alleges, that all Defendants, however designated whether by real or fictitious name, were and are in some manner responsible for the events, happenings, occurrence and instrumentalities upon and about which this action is made. At all relevant times mentioned herein, Defendants were and are the employers of Plaintiff and all similarly situated employees.

7. Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants herein, whether designated by real or fictitious name, are, and at all times relevant hereto, were, the agents servants, and employees and hirelings of each of the co-Defendants, as well as the agents of all Defendants, and in doing things and acts herein alleged and complained of or in failing to do that which they should have done, were acting within the scope of

1 employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified
2 each and every one of the acts or omissions alleged herein.

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

8 **GENERAL FACTUAL ALLEGATIONS**

9 9. Defendants operate consumer auto part retail stores across California. Plaintiff was
10 employed by Defendants as a non-exempt “Retail Service Specialist” from October 1986 to
11 approximately December 2021. Plaintiff’s job duties included assisting customers as well as
12 selling Defendant’s products. Unless otherwise stated, all allegations contained herein occurred
13 during Plaintiff’s employment with Defendants.

14 10. Plaintiff routinely worked in excess of 8 hours per workday but did not on all
15 occasions receive overtime compensation equal to one and a half times her regular rate of pay for
16 working overtime hours. Defendants paid Plaintiff and other non-exempt employees non-
17 discretionary incentive pay and/or other forms of pay that are not excludable from an employee’s
18 “regular rate” of compensation including but not limited to commissions, bonuses, and payments
19 denoted as “SPIFFS” (hereinafter referred to as “Incentive Pay”). As a result of paying Plaintiff
20 Incentive Pay, Defendants failed to properly calculate the regular rate of pay, resulting in unpaid
21 overtime wages, and to the extent that Defendants ever paid meal and/or rest period premium
22 payments, such premium payments were also underpaid during time periods when Incentive Pay
23 was also earned.

24 11. On occasions when Defendants failed to provide Plaintiff and other non-exempt
25 employees with compliant meal periods, Defendants failed to provide Plaintiff and other non-
26 exempt employees with an additional hour of premium pay at the regular rate of pay in each
27 instance in which a violation occurred. Specifically, although Plaintiff and other non-exempt
28 employees received Incentive Pay, Defendants paid meal period premiums at the base rate of pay

1 without any adjustments for the receipt of Incentive Pay, thereby miscalculating and underpaying
2 the meal period premiums paid. *See Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th
3 858, 878 (holding that “the term ‘regular rate of compensation’ in section 226.7(c) has the same
4 meaning as ‘regular rate of pay’ in section 510(a) and encompasses not only hourly wages but all
5 nondiscretionary payments for work performed by the employee.”). As a result of Defendants’
6 policies/practices, Defendants failed to provide Plaintiff and other non-exempt employees with
7 legally compliant meal period premiums as required by Labor Code § 226.7.

8 12. Defendants also failed to provide Plaintiff and other non-exempt employees with
9 all required duty-free rest periods because, upon information and belief, Defendants did not
10 maintain a lawful rest period policy. Specifically, Defendants required Plaintiff and other non-
11 exempt employees to remain available to cover the large volume of customers in the store at any
12 given time, which generally did not permit for employees to take duty-free rest periods. Even on
13 occasions when Plaintiff or other non-exempt employees would ask to take a rest period,
14 Defendants’ managers would deny the break on the basis that the store was too busy. Defendants
15 also failed to provide Plaintiff and other non-exempt employees with an additional hour of
16 premium pay for each workday in which a rest period violation occurred, as required by Labor
17 Code § 226.7.

18 13. Defendants also failed to pay Plaintiff and other non-exempt employees all sick
19 pay wages owed to them. Defendants’ policies and practices dictated that sick pay payments be
20 made at an employee’s base rate of pay, as opposed to their regular rate of pay. Because Plaintiff
21 and other non-exempt employees received various forms of non-discretionary compensation that
22 were required to be included in their regular rate of pay, but were not, Plaintiff and other non-
23 exempt employees have not been paid all sick pay wages owed to them.

24 14. As a result of Defendants’ failure to pay all overtime wages, sick pay wages, as
25 well as meal and rest period premium wages owed, Defendants maintained inaccurate payroll
26 records, issued inaccurate wage statements, and failed to pay all final wages to Plaintiff and other
27 non-exempt employees upon their separation of employment.

28 ///

CLASS ACTION ALLEGATIONS

15. **Class Definitions:** Plaintiff brings this action on behalf of herself and the following Classes pursuant to Code of Civil Procedure § 382:

- a. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who worked more than eight (8) hours per day and/or forty hours in a week and received Incentive Pay during the corresponding time period, during the four years immediately preceding the filing of this action through the present.
- b. The Meal Period Class consists of all Defendants' current and former non-exempt employees in California who received a meal period premium in a pay period where their regular rate of pay exceeded their base hourly rate, during the four years immediately preceding the filing of this action through the present.
- c. The Rest Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 3.5 hours, during the four years immediately preceding the filing of this action through the present.
- d. The Wage Statement Class consists of all members of the Overtime Class, Meal Period Class, and/or Rest Period Class who received a wage statement during the one year immediately preceding the filing of this action through the present.
- e. The Waiting Time Class consists of all formerly employed members of the Overtime Class, Meal Period Class, and/or Rest Period Class, and/or all of Defendants' non-exempt employees who earned Incentive Pay and received sick pay wages during the corresponding time period, who separated their employment from Defendants during the three years immediately preceding the filing of this action through the present.

16. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the Classes numbers greater than

one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

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

- i. Whether Defendants paid all overtime wages owed for all hours worked to members of the Overtime Wage Class;
- ii. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class;
- iii. Whether Defendants correctly paid meal and/or rest period premium payments for non-compliant meal and/or rest periods; and
- iv. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class; and
- v. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of separation from employment were unlawful.

18. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform regular rate calculations and meal and rest period policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

19. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff, like the members of the Classes, was employed by Defendants in California during the applicable statute of limitations period and was deprived of all overtime wages owed, was not provided all legally required rest periods, was not correctly paid for all meal and rest period

premiums, did not receive accurate, compliant wage statements, and was not paid all final wages owed at the time of separation of employment.

20. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing, and able to represent the members of the Classes and Plaintiff fully and adequately. Plaintiff's attorneys have prosecuted and defended numerous wage and hour class actions in state and federal courts in the past, and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

21. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws, and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee was required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would

1 substantially impair or impede the ability of the class members to protect their interests. Further,
2 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
3 individual prosecution considering all of the concomitant costs and expenses attending thereto.
4 As such, the Classes identified herein are maintainable under Code of Civil Procedure § 382.

5 **FIRST CAUSE OF ACTION**

6 **FAILURE TO PAY ALL OVERTIME WAGES**

7 **(AGAINST ALL DEFENDANTS)**

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

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

13 24. At all times relevant herein, Defendants were required to properly compensate
14 non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime
15 hours worked pursuant to Labor Code § 1194 and Wage Order 7. Wage Order 7, § 3 requires an
16 employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay”
17 for work in excess of eight hours per workday and/or in excess of forty hours of work in the
18 workweek. Wage Order 7 § 3 also requires an employer to pay an employee double the
19 employee’s regular rate of pay for work in excess of twelve hours each work day and/or for work
20 in excess of eight hours on the seventh consecutive day of work in the workweek. Defendants
21 caused Plaintiff to work overtime hours, but did not compensate Plaintiff or members of the
22 Overtime Pay Class at one and one-half times their regular rate of pay for such hours or double
23 their regular rate of pay for those hours worked in excess of 12 hours in a single workday.

24 25. The foregoing policies and practices alleged herein are unlawful and create
25 entitlement to recovery by Plaintiff and the members of the Overtime Class in a civil action for
26 the unpaid amount of overtime wages, including interest thereon, statutory penalties, civil
27 penalties, attorneys’ fees, and costs of suit according to California Labor Code §§ 204, 210, 216,
28 510, 558, 1194, and 1198; and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

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

27. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to correctly pay meal period premiums in instances when they were required to all of their non-exempt employees in California, including Plaintiff and members of the Meal Period Class, in accordance with the mandates of the California Labor Code and Wage Order 7, § 11. Despite Defendants' violations, Defendants did not in all instances pay an additional hour to Plaintiff and members of the Meal Period Class at their respective regular rates of pay, in accordance with California Labor Code §§ 204, 210, 226.7, and 512.

28. As a result, Defendants are responsible for paying premium compensation for meal period violations pursuant to Labor Code §§ 226.7, 512, 558, and 1198, and Wage Order 7, including interest thereon, statutory penalties, civil penalties, and costs of suit.

THIRD CAUSE OF ACTION
REST PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

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

30. Wage Order 7, § 12 and California Labor Code §§ 226.7, 516, 558, and 1198 establish the right of employees to be authorized and permitted to take a paid rest period of at least ten (10) minutes net rest time for each four (4) hour period worked, or major fraction thereof.

31. As alleged herein, Defendants failed to authorize and permit Plaintiff and members of the Rest Period Class to take all required and legally compliant rest periods, and failed to pay rest period premium wages when rest periods were not authorized and permitted.

32. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

FOURTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(AGAINST ALL DEFENDANTS)

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

34. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and other non-exempted employees with complete and accurate wage statements that included, among other requirements, all overtime wages earned, gross wages earned, and net wages earned, and the incorrect address for the legal entity that employed them in violation of Labor Code § 226 *et seq.*

35. Defendants' failure to furnish Plaintiff with complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all overtime owed, and deprived Plaintiff of the information necessary to identify the discrepancies in Defendants' reported data.

36. Defendants' failures create an entitlement to recovery by Plaintiff and members of the Classes in a civil action for all damages and/or penalties pursuant to Labor Code § 226 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit according to California Labor Code § 226 *et seq.*

FIFTH CAUSE OF ACTION
WAITING TIME PENALTIES
(AGAINST ALL DEFENDANTS)

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

38. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages earned immediately at the time of separation of employment in the event the employer discharges the employee, or if the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

39. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Classes all final wages due to them at the time of their separation including, among other things, underpaid overtime, meal and rest period premiums, and underpaid sick pay wages. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

40. Defendants' failure to timely pay Plaintiff and members of the Classes their earned wages upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and members of the Classes are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

SIXTH CAUSE OF ACTION
UNFAIR COMPETITION
(AGAINST ALL DEFENDANTS)

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

42. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to pay Plaintiff and the Classes all overtime wages owed; failing to correctly pay meal period premiums at the regular rate of pay; failing to authorize and permit Plaintiff and the Classes lawful rest periods; failing to furnish accurate and complete itemized wage statements in violation of § 226 *et seq.*; and failing to pay all final wages at the time of separation from employment.

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

44. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for herself and on behalf of the members of the Classes, seeks full restitution of

monies, as necessary and according to proof, to restore all monies withheld, acquired and/or converted by the Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

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

46. Plaintiff was compelled to retain the services of counsel to file this court action to protect Plaintiff's interests and those of the Class, to obtain restitution, to secure injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff thereby incurred the financial burden of attorneys' fees and costs, which Plaintiff is entitled to recover under Code of Civil Procedure § 1021.5.

SEVENTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

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

48. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each

subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiff and other aggrieved employees all overtime compensation earned in violation of Labor Code §§ 204, 510, 558, 1194 and 1198;
- b. Failing to pay Plaintiff and other aggrieved employees all sick time pay at their respective regular rates of compensation in violation of Labor Code § 246;
- c. Failing to pay meal period premiums in all occasions in which a lawful meal period was not provided and/or not paying the meal period premium to Plaintiff and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations in violation of Labor Code §§ 226.7, 512, and 558;
- d. Failing to authorize and permit Plaintiff and other aggrieved employees to take all of their statutorily mandated, duty-free rest periods and failing to pay rest period premiums to Plaintiff and other aggrieved employees at these employees' respective regular rates of pay for rest period violations in violation of Labor Code §§ 226.7, 516, and 558;
- e. Failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements in violation Labor Code § 226;
- f. Failing to timely pay all final wages due to Plaintiff and other aggrieved employees in violation of Labor Code §§ 201, 202 and 203;
- g. Failing to pay Plaintiff and other aggrieved employees all wages earned at least twice during each calendar month in violation of Labor Code § 204;
- h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation Labor Code §§ 558 and 1174.

49. On December 21, 2022, Plaintiff notified Defendants, via certified mail, and the California Labor and Workforce Development Agency ("LWDA") via its website of Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties

under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified herein. Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

50. Based on the foregoing, Plaintiff seeks to represent herself and all other Aggrieved Employees, as defined by Labor Code § 2699(c), which includes all of Defendants' current and former nonexempt employees who worked for Defendants in California at any time between December 21, 2021, and the present.

51. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which she is entitled to receive under California Labor Code § 2699.

PRAYER

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

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing counsel for Plaintiff as counsel for the Classes;
4. Upon the First Cause of Action for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
5. Upon the Second Cause of Action for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
6. Upon the Third Cause of Action for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
7. Upon the Fourth Cause of Action for statutory wage statement penalties pursuant to Labor Code § 226 *et seq.*;
8. Upon the Fifth Cause of Action for statutory waiting time penalties pursuant to Labor Code §§ 201-203;

1 9. Upon the Sixth Cause of Action for restitution to Plaintiff and members of the
2 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
3 practices declared by this Court to be in violation of California Business and Professions Code
4 § 17200 *et seq.*;

5 10. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff, other
6 aggrieved employees, and the State of California according to proof pursuant to Labor
7 Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial
8 violation for each failure to pay each employee and \$200.00 for each subsequent violation or
9 willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each
10 employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and
11 \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period;
12 (3) \$100.00 for each initial violation and \$250.00 for each subsequent employee pursuant to Labor
13 Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00
14 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period;
15 and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per
16 employee per pay period for those violations of the Labor Code for which no civil penalty is
17 specifically provided, based on the violations of Labor Code sections cited in Paragraph 48 (a)-
18 (h) above;

19 11. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code
20 § 218.6, and Civil Code §§ 3287 and 3289;

21 12. On all causes of action, for attorneys' fees and costs as provided by Labor Code
22 §§ 218.5, 226, 1194 *et seq.*, and 2698 *et seq.*, and Code of Civil Procedure § 1021.5; and

23 13. For such other and further relief the Court may deem just and proper.
24

25 Dated: February 27, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

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27 By:



Fletcher W. Schmidt
Attorney for Plaintiff

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: February 27, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Fletcher W. Schmidt
Attorney for Plaintiff