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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE KERN COUNTY**

Amanda E Ambriz, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

Honeybee Foods Corp, dba Jollibee, a
California Corporation, and DOES 1 to 100,
inclusive

Defendant.

CASE NO: BCV-23-100839

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

1. **Unpaid Missed Rest Breaks** (*Labor Code § 226.7(a) and IWC Wage Order No. 5-2001, Section 12*);
2. **Failure to pay minimum wage and pay for all wages earned** (*Labor Code Section 204, 1194 and 1197*);
3. **Failure to Maintain Accurate Payroll Records** (*Labor Code §§ 226(a), 1174, 1174.5, 1198 and IWC Wage Order No. 5-2001, Section 7*);
4. **Failure to Issue Accurate Wage Statement** (*Labor Code §§ 226(a)*);
5. **Failure to Pay Wages On a Timely Basis** (Cal. Labor Code §§ 204, 210);
6. **Failure to Reimburse Required Business Expenses** (*Labor Code section 2802*);
7. **Violation of California Business and Professions Code §17200, et seq.**;
8. **Civil Penalties Pursuant to Labor Code § 2699** (PAGA Penalties);

DEMAND FOR JURY TRIAL

Plaintiff, Amanda E Ambriz, on behalf of herself, and all others similarly situated
(hereinafter "Class Members") complains and alleges as follows: (The allegations in this First

Amended Complaint, stated on information and belief, have evidentiary support and/or are likely to have more evidentiary support after reasonable opportunity for further investigation and discovery.)

OVERVIEW OF CLAIMS

1. Plaintiff brings this action on behalf of herself and all others similarly situated, as a class action, on behalf of the California general public, against Defendant Honeybee Foods Corp, dba Jollibee, a California Corporation, and DOES 1 to 100 (“Defendant”) for their (1) failure to provide employees with timely, duty-free 10 minute rest periods for every four hours of work or major fraction thereof; (2) failure to provide accurate itemized wage statements to employees; (3) failure to pay timely wages twice per month based on the foregoing; (4) Failure To Reimburse Business Expenses of employees; (5) failure to pay minimum wages; (6) Failure to maintain accurate records and (7) Unfair Competition Law violations based on the foregoing. As a result of the foregoing, Defendant has violated California statutory laws as described below.

VENUE

2. Venue is proper in this county under section 395.5 of the California Code of Civil Procedure. Plaintiff’s work location was in Delano, Kern County. Also, many of the putative Class Members were employed and/or performed work during the Class Period by Defendant in Kern County. Many of the acts alleged herein including Defendant’s failure to provide timely and duty-free rest periods and pay rest period premiums, failure to pay minimum wages, and its failure to provide accurate itemized wage statements, all occurred in Kern County. Venue is therefore proper in Kern County.

JURISDICTION

3. Defendant is within the jurisdiction of this Court. Defendant conducts business throughout the State of California, including in the County of Kern. Thus, Defendant has obtained the benefits of the laws of the State of California. In addition, Plaintiff asserts no claims arising under federal law. Rather, Plaintiff brings causes of action based solely on, and arising from, California law. The claims of the Class Members are also based solely on California law described

herein. Furthermore, the total amount at issue in this case, inclusive of attorneys' fees, is less than \$5 million. Therefore, jurisdiction is appropriate in Kern County Superior Court.

THE PARTIES

A. The Plaintiff

4. Plaintiff is and at all times relevant hereto was a California resident and was a non-exempt employee of Defendant in California during the relevant periods. Plaintiff started working for the Defendant on or about July 7, 2021, as a store crew at Jollibee's 401 Woollomes Ave, Delano, CA 93215. Her last payrate was \$16/hour. Defendant's non-exempt employees, including Plaintiff during her employment, were not provided timely and duty-free rest periods and/or provided rest period premiums; were not provided accurate and/or complete wage statements; were not reimbursed for all business related expenses; were not paid all wages on a timely basis twice per month; and were not paid all minimum wages due and their payroll records, including time records, were not maintained accurately.

5. By way of this action, Plaintiff also seeks to represent the following Classes:

All non-exempt individuals who are or were employed by Honeybee Foods Corp, dba Jollibee, in the State of California during the relevant period. (hereinafter referred to as "Class Members" or the "Class").

- a. All Class Members who were issued one or more wage statements during the relevant period of time (hereinafter referred to as "Wage Statement Class Members");
- b. All Class Members who worked at least one shift of at least 3.51 hours and who did not receive their timely ten-minute, duty free rest breaks while working for Defendant during the relevant period of time (hereinafter referred to as "Rest Break Class Members");
- c. All Class Members who were not paid all their wage and minimum wages (hereinafter referred to "Minimum Wage Class Members");
- d. All Class Members whose payroll records and time sheets were inaccurate (hereinafter referred to "Payroll Class Members");
- e. All Class Members who were not paid on a timely basis (hereinafter referred to "Not Timely Paid Class Members").

1 f. All Class Members who were not reimbursed for their business expenses
2 (hereinafter referred to “Reimbursement Class Members”).

3 **B. The Defendant**

4 6. Defendant Honeybee Foods Corp, employs and has employed non-exempt
5 employees in the State of California.

6 7. The true names and capacities, whether individual, corporate, associate, or otherwise,
7 of Defendants sued herein as DOES 1 to 100, inclusive, are currently unknown to Plaintiff, who
8 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff
9 is informed and believes, and based thereon alleges, that each of the Defendants designated herein
10 as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff
11 will seek leave of court to amend this Complaint to reflect the true names and capacities of the
12 Defendants designated hereinafter as DOES when such identities become known.

13 8. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
14 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
15 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
16 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
17 employer and/or joint employer of Plaintiff, and the Class Members.

18 **FACTUAL ALLEGATIONS**

19 9. Defendant is doing business in California serving the food industry in California and
20 throughout the world. Defendant, in the course of operating its business in California, has employed
21 Plaintiff, and the Class Members.

22 10. Under Labor Code § 226.7, if an employer maintains a uniform policy that does not
23 authorize and permit the amount of rest time on the schedule called for under the law (as specified
24 in Section 12 of the applicable Wage Order), “it has violated the wage order and is liable.” The
25 *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting
26 an unlawful policy:

27 An employer is required to authorize and permit the amount of rest break time called for
28 under the wage order for its industry. If it does not—if, for example, it adopts a uniform

1 policy authorizing and permitting only one rest break for employees working a seven-hour
2 shift when two are required—***it has violated the wage order and is liable.*** (*Brinker Rest.*
Corp. v. Sup. Ct. (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

3 11. Here, Defendant did not authorize Plaintiff, and the Rest Break Class Members, to
4 take their ten-minute rest breaks during each 4 hours of work or major fraction thereof during their
5 shifts.

6 12. Labor Code § 226 obligates employers, semi-monthly or at the time of each payment
7 to furnish an itemized wage statement in writing showing:

- 8 (1) gross wages earned;
- 9 (2) total hours worked by the employee;
- 10 (3) the number of piece-rate units earned and any applicable piece rate if the employee
is paid on a piece rate;
- 11 (4) all deductions, provided that all deductions made on written orders of the employee
may be aggregated and shown as one item;
- 12 (5) net wages earned;
- 13 (6) the inclusive dates of the period for which the employee is paid;
- 14 (7) the name of the employee and only the last four digits of his or her social security
number or an employee identification number other than a social security number;
- 15 (8) the name and address of the legal entity that is the employer...; and,
- 16 (9) all applicable hourly rates in effect during the pay period and the corresponding
number of hours worked at each hourly rate by the employee...

17 13. Due to, *inter alia*, Defendant's failure to pay Plaintiff and Wage Statement Class
18 Members for all minimum and rest break premiums owed, the wage statements issued by Defendant
19 to Plaintiff, the Wage Statement Class Members, do not indicate the correct amount of gross wages
20 earned, net wages earned, or the applicable hourly rates in effect during the pay period and the
corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1),
(2), (5) and (9).

21 14. Defendant's violations of Labor Code § 226 were knowing and intentional. *See*
22 *Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant
23 knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew that it was
24 not providing total hours worked to plaintiff or other employees paid on commission" even though
25 it believed that employees paid solely on commission or commission and salary "are exempt and
26 therefore we do not record hours on a wage statement").

27 15. Defendant's failure to furnish accurate itemized wage statements has caused Plaintiff,
28

1 the Wage Statement Class Members, to incur economic damages in that they were not aware that
2 they were owed and not paid all minimum wages owed and appropriate premiums for their non-
3 compliant statutory rest breaks periods. *See Cicairos v. Summit Logistics*, 133 Cal.App.4th 949, 954
4 (“If it is left to the employee to add up the daily hours shown on the time cards or other records so
5 that the employee must perform arithmetic computations to determine the total hours worked during
6 the pay period, the requirements of section 226 would not be met”); *McKenzie v. Federal Express*
7 *Corp.*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011) (wage statements violated California Labor Code by
8 not including, inter alia, total hours worked giving rise to claims under Section 226); Labor Code §
9 226(e)(2)(B) (clarifying that injury is established where the wage statement violated Section
10 226(a)(1), (2), or (5), among other provisions, and where employees cannot easily determine the
11 gross or net wages earned by the employee during the pay period).

12 16. Labor Code § 226(e) provides that an employee is entitled to recover \$50 for initial
13 pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not
14 to exceed \$4,000, as well as an award of costs and reasonable attorney’s fees, for all pay periods in
15 which the employer fails to provide accurate itemized statements to the employee causing the
16 employee to suffer injury.

17 17. Pursuant to Labor Code § 2802(a) “[a]n employer shall indemnify his or her
18 employee for all necessary expenditures or losses incurred by the employee in direct consequence
19 of the discharge of his or her duties, or of his or her obedience to the directions of the employer....”
20 The purpose of this statute is “to prevent employers from passing their operating expenses on to their
21 employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562 (2007) (quoting legislative
22 history from the 2000 amendment to the statute). Labor Code Section 2802(c) also clarifies that “the
23 term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited
24 to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

25 18. Specifically, under Labor Code § 2802, employers must reimburse employees for
26 required work-related use of personal cell phones, regardless of whether they incur any additional
27 out-of-pocket expense from that work-related use. *See Cochran v. Schwan’s Home Service*, 228 Cal.

1 App. 4th 1137 (2014) (reversing denial of class certification in cell phone reimbursement class
2 action). *Cochran* held that “[i]f an employee is required to make work-related calls on a personal
3 cell phone, then he or she is incurring an expense for the purposes of section 2802. It does not matter
4 whether the phone bill is paid for by a third person, or at all. . . . It is irrelevant whether the employee
5 changed plans to accommodate work-related cell phone usage. . . . *To show liability under section*
6 *2802, an employee need only show that he or she was required to use a personal cell phone to make*
7 *work-related calls, and he or she was not reimbursed.” Id.* at 1144-45 (emphasis added); *see also*
8 *Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. Aug. 27, 2014) (granting plaintiffs’ motion
9 for partial summary judgment on the plaintiffs’ cell phone reimbursement claim); *Ritchie v. Blue*
10 *Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (Hon. Edward Chen)
11 (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*).

12 19. The employer’s obligation to reimburse business-related expenses arises when the
13 employer “knew or should have known” that its employees have incurred a business-related expense.
14 *Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901, 903 (N.D. Cal. 2009) (Hon. Edward Chen); *Wilson*
15 *v. Kiewit Pacific Co.*, 2010 WL 5059522 (N.D. Cal. Dec. 6, 2010) (Hon. Susan Illston) (adopting
16 the “knew or should have known” standard from *RadioShack*). Notably, these claims are not
17 waivable per Section 2804 of the Labor Code.

18 20. Under Labor Code § 2802, if an employer requires employees to use their cell phone
19 for work, as is the case here for obtaining their work schedule and communicating with the
20 Defendant, then Defendant must reimburse employees for a reasonable portion of their monthly cell
21 phone bills. Here, the Class Members were expected to use their cell phones in order to do their job.

22 21. Accordingly, Defendant violated Labor Code § 2802 and continues to do so by failing
23 to reimburse the Class Members for all work-related cell phone charges they incurred in connection
24 with their job duties.

25 22. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any
26 employment are due and payable twice during each calendar month, on days designated in advance
27 by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these requirements are
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1 “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the
2 wages are paid not more than seven calendar days following the close of the payroll period.

3 23. Due to Defendant’s failure to pay Plaintiff, and the Class, all minimum wages owed
4 and rest break period premiums owed, Defendant violated Labor Code § 204 by failing to pay all
5 wages due within seven (7) days of the close of the payroll period on a regular and consistent basis.
6 *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5
7 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support
8 claims under Labor Code §§ 203 and 204).

9 24. Labor Code § 210 provides that “in addition to, an entirely independent and apart
10 from, any other penalty provided in this article, every person who fails to pay the wages of each
11 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any
12 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
13 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
14 failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty
15 compensation policies and practices described in detail above, Plaintiff, and the Class, are entitled
16 to recover penalties under Labor Code § 210.

17 25. Labor Code section 1197 requires employees to be paid at least the minimum wage
18 fixed by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor
19 Code section 1194 entitles “any employee receiving less than the legal minimum wage . . . to recover
20 in a civil action the unpaid balance of the full amount of this minimum wage.” Likewise, the
21 Applicable Wage Orders also obligate employers to pay each employee minimum wages for all
22 hours worked. (Cal. Code of Regs., tit. 8, §§ 11010, 11040, 11050, 11070, 11160.) Labor Code
23 section 1198 makes unlawful the employment of an employee under conditions that the IWC Wage
24 Orders prohibit.

25 26. These minimum wage standards apply to each hour that employees work. Therefore,
26 an employer’s failure to pay for any particular time worked by an employee is unlawful, even if
27 averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly
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1 wage above minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)

2 27. Here, Defendant failed to pay all wages owed for time after employees clocked out.
3 When this occurred, Plaintiff, and Class Members, should have been paid at the applicable wages.

4 **CLASS ACTION ALLEGATIONS**

5 28. Plaintiff brings this action, on behalf of herself and all others similarly situated, as a
6 class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent Classes
7 composed of and defined as:

8 All non-exempt individuals who are or were employed by Honeybee Foods Corp, dba
9 Jollibee, in the State of California during the relevant period. (hereinafter referred to as
10 “Class Members” or the “Class”).

- 11 a. All Class Members who were issued one or more wage statements during the
12 relevant period of time (hereinafter referred to as “Wage Statement Class
13 Members”);
- 14 b. All Class Members who worked at least one shift of at least 3.51 hours and who
15 did not receive their timely ten-minute, duty free rest breaks while working for
16 Defendant during the relevant period of time (hereinafter referred to as “Rest
17 Break Class Members”);
- 18 c. All Class Members who were not paid all their wage and minimum wages
19 (hereinafter referred to “Minimum Wage Class Members”);
- 20 d. All Class Members whose payroll records and time sheets were inaccurate
21 (hereinafter referred to “Payroll Class Members”);
- 22 e. All Class Members who were not paid on a timely basis (hereinafter referred to
23 “Not Timely Paid Class Members”).
- 24 f. All Class Members who were not reimbursed for their business expenses
25 (hereinafter referred to “Reimbursement Class Members”).

26 29. This action has been brought and may properly be maintained as a class action under
27 Code of Civil Procedure § 382 because there is a well-defined community of interest
28 in the litigation, the proposed class is easily ascertainable, and Plaintiff is a proper
representative of the Class:

- a. Numerosity: The potential members of the Class as defined are so numerous

1 that joinder of all the members of the Class is impracticable. While the precise number of Class
2 Members has not been determined at this time, Plaintiff is informed and believes that Defendant has,
3 on average, at any one time during the Class Period employed over 500 Class Members as non-
4 exempt employees who were subject to Defendant's unlawful policies. The Class Members are
5 dispersed throughout California. Joinder of all members of the proposed classes is therefore not
6 practicable.

7 b. Commonality: There are questions of law and fact common to Plaintiff and
8 the Class that predominate over any questions affecting only individual members of the Class. These
9 common questions of law and fact include, without limitation:

10 i. Whether Defendant violated Labor Code section 226.7 and Section 12 of IWC
11 Wage Order No. 8 and 14 by failing to provide timely, duty-free rest periods to Plaintiff and the
12 members of the Rest Break Class in California during the Class Period;

13 ii. Whether Defendant violated Labor Code section 226.7 by failing to provide one
14 hour of premium pay to each member of the Rest Break Class for each day that a timely, duty-free rest
15 period was not provided in California during the Class Period;

16 iii. Whether Defendant failed to provide Plaintiff and the members of the Wage
17 Statement Class complete wage statements in violation of Labor Code Section 226(a);

18 iv. Whether Defendant violated Sections 204 and 210 of the Labor Code by
19 failing to pay member of the Class all wages due on a timely basis;

20 v. Whether Defendant violated Sections 2802 of the Labor Code by failing to
21 reimburse member of the Class for all of their business expenses;

22 vi. Whether Defendant's pay policies/practices resulted in a failure to pay Class
23 Members for all hours worked, including all minimum wages;

24 vii. Whether Defendant engaged in an unfair practice and violated section 17200
25 of the California Business and Professions Code by failing to provide Plaintiff and the members of
26 the Rest Break Class with timely, duty-free rest breaks during the Class Period;

27 viii. Whether Defendant engaged in an unfair practice and violated section 17200
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1 of the California Business and Professions Code by failing to provide Plaintiff and members of the
2 Rest Break Class with rest period premiums for each day they were not provided a compliant rest
3 break;

4 ix. Whether Defendant engaged in an unfair practice and violated section 17200
5 of the California Business and Professions Code by failing to reimburse Plaintiff and the
6 Reimbursement Class for fair business-related expenses including phone expenses during the Class
7 Period;

8 x. Whether Plaintiff and the Class are entitled to restitution under Business and
9 Professions Code § 17200;

10 xi. The proper formula(s) for calculating damages, interest, and restitution owed
11 to Plaintiff and the Class Members;

12 xii. The nature and extent of class-wide damages.

13 c. Typicality: Plaintiff's claims are typical of the claims of the Class. Both
14 Plaintiff and Class Members sustained injuries and damages, and were deprived of property rightly
15 belonging to them, arising out of and caused by Defendant's common course of conduct in violation
16 of law as alleged herein, in similar ways and for the same types of unpaid wages.

17 d. Adequacy of Representation: Plaintiff is a member of the Class and will fairly
18 and adequately represent and protect the interests of the Class and Class Members. Plaintiff's
19 interests do not conflict with those of Class and Class Members. Counsel who represent Plaintiff
20 are competent and experienced in litigating large wage and hour class actions, including numerous
21 cases virtually identical to this one (i.e., wage and hour class action cases), and other employment
22 class actions, and will devote sufficient time and resources to the case and otherwise adequately
23 represent the Class and Class Members.

24 e. Superiority of Class Action: A class action is superior to other available
25 means for the fair and efficient adjudication of this controversy. Individual joinder of all Class
26 Members is not practicable, and questions of law and fact common to the Class predominate over
27 any questions affecting only individual members of the Class. Each Class Member has been
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1 damaged or may be damaged in the future by reason of Defendant's unlawful policies and/or
2 practices. Certification of this case as a class action will allow those similarly situated persons to
3 litigate their claims in the manner that is most efficient and economical for the parties and the judicial
4 system. Certifying this case as a class action is superior because it allows for efficient and full
5 disgorgement of the ill-gotten gains Defendant has enjoyed by maintaining its unlawful break,
6 compensation, and non-reimbursement policies and will thereby effectuate California's strong
7 public policy of protecting employees from deprivation or offsetting of compensation earned in their
8 employment. If this action is not certified as a Class Action, it will be impossible as a practical
9 matter, for many or most Class Members to bring individual actions to recover monies unlawfully
10 withheld from their lawful compensation due from Defendant, due to the relatively small amounts
11 of such individual recoveries relative to the costs and burdens of litigation.

12 **FIRST CAUSE OF ACTION**
13 **FAILURE TO PROVIDE TIMELY AND DUTY-FREE REST BREAKS**
14 **AND PAY MISSED REST BREAK PREMIUMS**
15 **[Cal. Labor Code §§ 226.7; Section 12 of IWC Wage Order 5-2001]**
16 **On behalf of Plaintiff and the Class Members Against Defendant**

17 30. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
18 in the preceding paragraphs.

19 31. Under Labor Code § 226.7, if an employer maintains a uniform policy that does not
20 authorize and permit the amount of rest time on the schedule called for under the law
21 (as specified in Section 12 of the applicable Wage Order), "it has violated the wage
22 order and is liable." The *Brinker* Court explained in the context of rest breaks that
23 employer liability attaches from adopting an unlawful policy:

24 An employer is required to authorize and permit the amount of rest break time called for
25 under the wage order for its industry. If it does not—if, for example, it adopts a uniform
26 policy authorizing and permitting only one rest break for employees working a seven-hour
27 shift when two are required—***it has violated the wage order and is liable.***

28 (*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

32. Here, Defendant did not authorize Plaintiff and the Rest Break Class Members to take
their ten-minute rest breaks during each 4 hours of work or major fraction thereof
during their shifts. Plaintiff and the Rest Break Class Members did not receive timely

rest breaks during their shifts.

SECOND CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
LABOR CODE §§ 1194, 1194.2, 1197, 1197.1, 1198, 1199
On Behalf of Plaintiff and the Class Members Against Defendant

33. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

34. Labor Code section 1197 establishes the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. (Lab. Code, § 1197; Cal. Code of Regs., tit. 8, §§ 11010, 11040, 11050, 11070, 11160.) Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide that an employee who has not been paid the legal minimum wage as required by Labor Code section 1197 may recover the unpaid balance, together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon.

35. Here, Defendant failed to fully conform their pay practices to the requirements of the law during the relevant statutory periods. Plaintiff and the other Class Members were not compensated for all hours worked including, but not limited to, all hours they were subject to the control of Defendant and/or suffered or permitted to work under the Labor Code and the Applicable Wage Orders.

36. Labor Code section 1198 makes unlawful the employment of an employee under conditions that the IWC Wage Orders prohibit. Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

37. As a direct and proximate result of Defendant's unlawful conduct as alleged herein, Plaintiff and the other Class Members have sustained economic damages, including

1 but not limited to unpaid wages and lost interest, in an amount to be established at
2 trial, and they are entitled to recover economic and statutory damages and penalties
3 and other appropriate relief because of Defendant's violations of the Labor Code and
4 Applicable Wage Orders.

5 38. Defendant's practices and policies regarding illegal employee compensation are
6 unlawful and create an entitlement to recovery by Plaintiff and the other Class
7 Members in a civil action for the unpaid amount of minimum wages, liquidated
8 damages, including interest thereon, statutory penalties, attorney's fees, and costs of
9 suit according to Labor Code sections 204, 218.5, 1194, 1194.2, 1197, and 1198, and
10 Code of Civil Procedure section 1021.5.

11 **THIRD CAUSE OF ACTION**

12 **Failure to Maintain and Produce Accurate Payroll Records**
13 **(Labor Code §§ 226(a), 1174, 1174.5, 1198.5 and IWC Wage Order No. 5-2001 section 7)**
14 **On behalf of Plaintiff and the Class Members Against Defendant**

15 39. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
16 in the preceding paragraphs.

17 40. California Labor Code § 226(a), IWC Wage Order No. 5-2001, Sections 7(A) and
18 7(B), and California Labor Code § 1174 require employers to maintain accurate
19 payroll records.

20 41. California Labor Code § 1198 requires employers to allow employees receive and
21 inspect their personnel records and employer's failure to maintain or produce the
22 personnel records is subject to \$750 penalty.

23 42. Defendants have violated California Labor Code §§ 226(a) and 1174, and IWC Wage
24 Order No. 5, Sections 7(A) and 7(B) by willfully failing to keep required payroll
25 records showing the actual hours worked each day by Plaintiff and Class Members.
26 As a direct and proximate result of Defendants' failure to maintain payroll records,
27 Plaintiff and Class Members have suffered economic harm as they have been
28 precluded from accurately monitoring the number of hours worked and thus seeking
payment in connection with the hours for all the missed rest and meal breaks.

43. Plaintiff demanded Defendant to produce time records and to date they are not produced.

44. Plaintiff and Class Members are entitled to \$500 under Labor Code of Labor Code § 1174.5.

FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS
[Cal. Labor Code § 226(a)]
On behalf of Plaintiff and the Class Members Against Defendant

45. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

46. Section 226(a) of the California Labor Code provides, in relevant part:

Every employer shall...furnish each of his or her employees...an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all -deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

47. As set forth above, Defendant's failure to pay Plaintiff and the other Wage Statement Class Members for all minimum wages owed rest break premiums, the wage statements issued by Defendant to Plaintiff and the other Wage Statement Class Members do not indicate the correct amount of gross wages earned, net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9). Additionally, Defendant's wage statements issued fail to include the

1 start date of each pay periods in violation of Labor Code § 226(a)(6).

2 48. Defendant's violation of Labor Code § 226 was knowing and intentional. *See*
3 *Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding
4 that the defendant knowingly and intentionally violated Labor Code § 226 because
5 the "[d]efendant knew that it was not providing total hours worked to plaintiff or
6 other employees paid on commission" even though it believed that employees paid
7 solely on commission or commission and salary "are exempt and therefore we do not
8 record hours on a wage statement").

9 49. Defendant's failure to furnish accurate itemized wage statements has caused Plaintiff
10 and the other Wage Statement Class Members to incur economic damages in that
11 they were not aware that they were owed and not paid all minimum wages owed and
12 appropriate premiums for their non-compliant statutory rest breaks periods. *See*
13 *Cicairos v. Summit Logistics*, 133 Cal.App.4th 949, 954 ("If it is left to the employee
14 to add up the daily hours shown on the time cards or other records so that the
15 employee must perform arithmetic computations to determine the total hours worked
16 during the pay period, the requirements of section 226 would not be met"); *McKenzie*
17 *v. Federal Express Corp.*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011) (wage statements
18 violated California Labor Code by not including, inter alia, total hours worked giving
19 rise to claims under Section 226); Labor Code § 226(e)(2)(B) (clarifying that injury
20 is established where the wage statement violated Section 226(a)(1), (2), or (5), among
21 other provisions, and where employees cannot easily determine the gross or net
22 wages earned by the employee during the pay period).

23 50. In 2013, the Legislature amended subdivision (e) of Labor Code section 226, adding
24 language explaining that an "employee is deemed to suffer injury for purposes of this
25 subdivision if the employer fails to provide accurate and complete information as
26 required" by subdivision (a) of that statute, and "the employee cannot promptly and
27 easily determine from the wage statement alone one or more" of several of the
28

1 required items, including total hours worked, all applicable hourly rates in effect, and
2 the corresponding number of hours worked at each rate. (Lab. Code, § 226, subd.
3 (e)(2)(B).) The amended statute further provides that “ ‘promptly and easily
4 determine’ means a reasonable person would be able to readily ascertain the
5 information without reference to other documents or information.” (Lab. Code, § 226,
6 subd. (e)(2)(C).) This provision renders the inquiry an objective one; the amendment
7 “clarifies that injury arises from defects in the wage statement, rather than from a
8 showing that an individual experienced harm as a result of the defect.” (*Lubin, supra*,
9 5 Cal.App.5th at p. 959; see also *Garnett v. ADT, LLC* (E.D. Cal. 2015) 139
10 F.Supp.3d 1121, 1133 [“Whether an employee suffered injury is based solely on the
11 information provided on the wage statement.”].)

12 51. Plaintiff has suffered injury and sustained actual damages because the Defendants
13 failed to provide accurate and complete information as required by any one or more
14 of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly
15 and easily determine from the wage statement alone the amount of the gross wages
16 or net wages paid to the employee during the pay period or any of the other
17 information required to be provided on the itemized wage statement pursuant to items
18 (2) to (4), inclusive, (6), and (9) of subdivision (a). Plaintiff cannot determine which
19 deductions the employer made from gross wages to determine the net wages paid to
20 the employee during the pay period. Plaintiff has been damaged in a sum to be proven
21 at trial.

22 52. Plaintiff and Class Members are entitled to actual damages and also entitled to \$4,000
23 in damages for Defendants’ violation and being liable for this cause of action, in
24 addition to an award of costs and reasonable attorneys’ fees under Labor Code §
25 226(e)(1).

26 **FIFTH CAUSE OF ACTION**
27 **FAILURE TO PAY WAGES ON A TIMELY BASIS**
28 **[Cal. Labor Code §§ 204, 210]**
On Behalf of Plaintiff and the Class Against Defendant

1 53. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
2 in the preceding paragraph.

3 54. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any
4 employment are due and payable twice during each calendar month, on days
5 designated in advance by the employer as the regular paydays.” Pursuant to Labor
6 Code § 204(d), these requirements are “deemed satisfied by the payment of wages
7 for weekly, biweekly or semimonthly payroll if the wages are paid not more than
8 seven calendar days following the close of the payroll period.

9 55. Due to Defendant’s failure to pay Plaintiff and the Class all minimum wages owed
10 and all rest break period premiums owed, Defendant violated Labor Code § 204 by
11 failing to pay all wages due within seven (7) days of the close of the payroll period
12 on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S.
13 Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding
14 after *Ling* that a failure to pay rest period premiums can support claims under Labor
15 Code §§ 203 and 204).

16 56. Labor Code § 210 provides that “in addition to, an entirely independent and apart
17 from, any other penalty provided in this article, every person who fails to pay the
18 wages of each employee as provided in Sections...204...shall be subject to a civil
19 penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each
20 failure to pay each employee; (2) For each subsequent violation, or any willful or
21 intentional violation, two hundred dollars (\$200) for each failure to pay each
22 employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty
23 compensation policies and practices described in detail above, Plaintiff and the Class
24 are entitled to recover penalties under Labor Code § 210.

25 **SIXTH CAUSE OF ACTION**
26 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
27 **[Cal. Labor Code § 2802]**
28 **On Behalf of Plaintiff and the Reimbursement Class Against Defendant**

57. Plaintiff re-alleges and incorporates by reference each and every allegation set forth

1 in the preceding paragraph.

2 58. Pursuant to Labor Code § 2802(a) “[a]n employer shall indemnify his or her
3 employee for all necessary expenditures or losses incurred by the employee in direct
4 consequence of the discharge of his or her duties, or of his or her obedience to the
5 directions of the employer....” The purpose of this statute is “to prevent employers
6 from passing their operating expenses on to their employees.” *Gattuso v. Harte-*
7 *Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562 (2007) (quoting legislative history from
8 the 2000 amendment to the statute). Labor Code Section 2802(c) also clarifies that
9 “the term ‘necessary expenditures or losses’ shall include all reasonable costs,
10 including, but not limited to, attorney’s fees incurred by the employee enforcing the
11 rights granted by this section.”

12 59. Specifically, under Labor Code § 2802, employers must reimburse employees for
13 required work-related use of personal cell phones, regardless of whether they incur
14 any additional out-of-pocket expense from that work-related use. *See Cochran v.*
15 *Schwan’s Home Service*, 228 Cal. App. 4th 1137 (2014) (reversing denial of class
16 certification in cell phone reimbursement class action). *Cochran* held that “[i]f an
17 employee is required to make work-related calls on a personal cell phone, then he or
18 she is incurring an expense for the purposes of section 2802. It does not matter
19 whether the phone bill is paid for by a third person, or at all. . . . It is irrelevant whether
20 the employee changed plans to accommodate work-related cell phone usage. . . . *To*
21 *show liability under section 2802, an employee need only show that he or she was*
22 *required to use a personal cell phone to make work-related calls, and he or she was*
23 *not reimbursed.”* *Id.* at 1144-45 (emphasis added); *see also Aguilar v. Zep, Inc.*, 2014
24 WL 4245988 *17 (N.D. Cal. Aug. 27, 2014) (granting plaintiffs’ motion for partial
25 summary judgment on the plaintiffs’ cell phone reimbursement claim); *Ritchie v.*
26 *Blue Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (Hon.
27 Edward Chen) (certifying class of cell phone reimbursement claim and adopting the
28

logic of *Cochran*).

60. The employer's obligation to reimburse business-related expenses arises when the employer "knew or should have known" that its employees have incurred a business-related expense. *Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901, 903 (N.D. Cal. 2009) (Hon. Edward Chen); *Wilson v. Kiewit Pacific Co.*, 2010 WL 5059522 (N.D. Cal. Dec. 6, 2010) (Hon. Susan Illston) (adopting the "knew or should have known" standard from *RadioShack*). Notably, these claims are not waivable per Section 2804 of the Labor Code.

61. Under Labor Code § 2802, if an employer requires employees to use their cell phone for work, as is the case here for having to communicate with the Defendant to obtain their schedule and/or having to communicate with Defendant and other employees, then Defendant must reimburse employees for a reasonable portion of their monthly cell phone bills. Here, the Reimbursement Class Members were expected to use their cell phones in order to do their job.

62. Accordingly, Defendant violated Labor Code § 2802 and continues to do so by failing to reimburse the Reimbursement Class Members for all work-related cell phone charges they incurred in connection with their job duties.

SEVENTH CAUSE OF ACTION
UNFAIR COMPETITION LAW VIOLATIONS
(BUS. & PROF. CODE § 17200, ET SEQ.)
On Behalf of Plaintiff and the Class Members Against Defendant

63. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

64. Section 17200 of the California Business & Professions Code prohibits any unlawful, unfair, or fraudulent business practices. Business & Professions Code § 17204 allows "any person who has suffered injury in fact and has lost money or property" to prosecute a civil action for violation of the UCL. Such a person may bring such an action on behalf of herself and others similarly situated who are affected by the

1 unlawful, unfair, or fraudulent business practice.

2 65. Under section 17208 of the California Business and Professions Code, the statute of
3 limitations for a claim under Section 17200 is four years. Accordingly, the actionable
4 period for this cause of action is October 16, 2016 through November 1, 2022.

5 66. Section 90.5(a) of the Labor Code states that it is the public policy of California to
6 enforce vigorously minimum labor standards in order to ensure employees are not
7 required to work under substandard and unlawful conditions, and to protect
8 employers who comply with the law from those who attempt to gain competitive
9 advantage at the expense of their workers by failing to comply with minimum labor
10 standards.

11 67. As a direct and proximate result of Defendant's unlawful business practices, Plaintiff
12 and the Class Members have suffered economic injuries. Defendant has profited
13 from its unlawful, unfair, and/or fraudulent acts and practices.

14 68. Plaintiff and similarly situated Class Members are entitled to monetary relief pursuant
15 to Business & Professions Code §§ 17203 and 17208 for unpaid rest period premiums
16 and unreimbursed business expenses due and interest thereon, at rates specified by
17 law. Defendant should be required to disgorge all the profits and gains it has reaped
18 and restore such profits and gains to Plaintiff and Class Members, from whom they
19 were unlawfully taken.

20 69. Through its actions alleged herein, Defendant has engaged in unfair competition
21 within the meaning of section 17200 of the California Business & Professions Code,
22 because Defendant's conduct, as herein alleged has damaged Plaintiff and the Class
23 Members by wrongfully denying them all minimum wages owed, wrongfully
24 denying them reimbursement for business expenses, and wrongfully denying them
25 rest period premiums, and therefore was substantially injurious to Plaintiff and the
26 Class Members.

27 70. Defendant engaged in unfair competition in violation of sections 17200 et seq. of the
28

1 California Business & Professions Code by violating Sections 226.7 and 512 of the
2 California Labor Code, and Sections 11 and 12 of the IWC Wage Order 5-2001.

3 71. Defendant's course of conduct, act and practice in violation of the California laws
4 mentioned above constitute independent violations of sections 17200 et seq. of the
5 California Business and Professions Code.

6 72. Plaintiff and similarly situated Class Members are entitled to enforce all applicable
7 penalty provisions of the Labor Code pursuant to Business & Professions Code §
8 17202.

9 73. Plaintiff has assumed the responsibility of enforcement of the laws and public policies
10 specified herein by suing on behalf of themselves and other similarly situated Class
11 Members previously or presently employed by Defendant in California. Plaintiff's
12 success in this action will enforce important rights affecting the public interest.
13 Plaintiff will incur a financial burden in pursuing this action in the public interest.
14 Therefore, an award of reasonable attorneys' fees to Plaintiff is appropriate pursuant
15 to Code of Civil Procedure §1021.5, and Labor Code §§ 1194 and 2802.

16 **EIGHTH CAUSE OF ACTION**

17 **Civil Penalties Pursuant to Labor Code § 2699**

18 **(PAGA penalties)**

19 **(By Plaintiff, as the representatives of Aggrieved Employees, Against all Defendants)**

20 74. Plaintiffs incorporate by reference and re-allege, as if fully stated herein, the material
21 allegations set out in previous paragraphs of this Complaint.

22 75. Plaintiffs on behalf of the people of the State of California and as "Aggrieved
23 Employees" acting as private attorney under the California Labor Code Private
24 Attorneys General Act of 2004, §2698, *et seq.*, brings this action, on a representative
25 basis. All current and former employees of Defendant within one year of serving notice
26 on the LWDA to the present are Aggrieved Employees.

27 76. Defendants failed to comply with Labor Code requirements due to erroneous, willful
28 and intentional employment practices and policies. Plaintiffs brings this representative
action on behalf of himself, all other similarly situated aggrieved employees, and the

1 State of California, based upon the claims articulated below. Plaintiffs provided notice
2 of their claims pursuant to § 2698 *et. seq.*, to the Labor and Workforce and
3 Development Agency (“LWDA”) as illustrated by the attached Exhibit, the content of
4 which is expressly incorporated herein. The LWDA has not provided any notice to
5 Plaintiffs following the exhaustion of the 65-day notice period required by
6 2699.3(a)(2)(B). Accordingly, Plaintiffs now brings this Complaint for civil penalties
7 under the Private Attorneys General Act (“PAGA”), *Labor Code* §2698 *et seq.*

77. As a result of the actions alleged herein, Plaintiffs seeks penalties under Labor Code
8 sections 2698 and 2699 because of Defendants’ violation of Labor Code sections 98.6,
9 201-204, 210, 216, 218.5, 221, 225.5, 223, 226, 226(a), 226(b), 226.2, 226.3, 226.7,
10 226.8, 233, 234, 246, 256, 510-512, 551-553, 558, 558.1, 1174, 1174.5, 1193.6, 1194-
11 1197.5, 1198-1199.5 and 2698-2699, 2699.5, 2802 and applicable IWC, which call
12 for civil penalties.

78. Plaintiffs and Aggrieved Parties request for penalties pursuant to Labor Code § 2699:

13 G. As applicable, for civil penalties under Labor Code § 2699(f), for all violations of the
14 Labor Code except for those for which a civil penalty is specifically provided, in the
15 amount of one hundred dollars (\$100.00) for each aggrieved employee per pay period
16 for the initial violation; and two hundred dollars (\$200.00) for each aggrieved
17 employee per pay period for each subsequent violation;

18 H. As applicable, civil penalties under Labor Code § 558 (in addition to and entirely
19 independent and apart from any other penalty provided in the Labor Code), for
20 violations of Labor Code sections 500-556, in the amount of \$50.00 for each
21 underpaid aggrieved employee for each pay period the aggrieved employee was
22 underpaid in addition to an amount sufficient to recover underpaid wages, and
23 \$100.00 for each subsequent violation for each underpaid employee for each pay
24 period for which the employee was underpaid in addition to an amount sufficient to
25 recover underpaid wages;

26 I. As applicable, for civil penalties under Labor Code section 1197.1 (in addition to and
27 entirely independent and apart from any other penalty provided in the Labor Code),
28 for violations of Labor Code sections 1194 and 1197, in the amount of \$100.00 for
each underpaid aggrieved employee for each pay period the aggrieved employee was
intentionally underpaid in addition to an amount sufficient to recover underpaid

wages, and \$250.00 for each subsequent violation for each underpaid aggrieved employees regardless of whether the initial violation was intentionally committed in addition to an amount sufficient to recover underpaid wages;

J. As applicable, for civil penalties under Labor Code § 210 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for each employee who is/was not paid wages in accordance with Labor Code §§ 201.3, 204, 204b, 204.1, 204.2, 205, 205.5 and 1197.5) in the amount of a civil penalty of \$100.00 for each aggrieved employee per pay period for each initial violation, and \$200.00 for each aggrieved employee per pay period for each subsequent violation;

K. As applicable, for civil penalties under Labor Code § 226.3 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for each violation of Labor Code § 226(a), in the amount of \$250.00 for each aggrieved employee per pay period for each violation and \$1,000.00 for each aggrieved employee per pay period for each subsequent violation; and

L. As applicable, for any and all additional civil penalties and sums as provided by the Labor Code and/or other relevant statutes.

79. In addition, Plaintiffs seeks seventy-five percent (75%) of all penalties obtained under Labor Code section 2699 to be allocated to the LWDA, for education of employers and employees about their rights and responsibilities under the Labor Code, and twenty-five percent (25%) to Plaintiffs and all other similarly situated aggrieved employees.

80. Further, Plaintiffs is entitled to recover reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1) and any other applicable statute.

81. Labor Code section 2699.3 provides: "The aggrieved employee or representative shall give written notice by certified mail to the Labor and Workforce Development Agency and the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation."

82. Plaintiffs complied with Labor Code section 2699.3. Written notice was served on Defendant in accordance with the provision of Section 2699.3, on January 30, 2023. To date, the California Labor and Workforce Development Agency has not provided Plaintiffs with a notice of intent to investigate these violations, and more than 65 days have since passed from the postmark date of the notice provided by Plaintiffs.

Attached to this complaint as **Exhibit “A”**, is a copy of the proof of mailing. Moreover, Defendant has failed to provide Plaintiffs with notice that it has cured the violations, will cure the violations now, or will cure the violations in the future. Consequently, pursuant to Labor Code section 2699.3(a)(2)(A), Plaintiffs may proceed and file a complaint for penalties pursuant to Labor Code section 2699.

REQUEST FOR JURY TRIAL

Plaintiffs and Class Members demand a trial by jury of all issues in this action triable by a jury, including but not limited to issues of liability and damages, except for the UCL and PAGA claims which are subject to a bench trial

PRAYER FOR RELIEF

1. That this action be certified as a class action;
2. That Plaintiffs be appointed as the representative of the Class; and
3. That counsel for Plaintiffs is appointed as Class counsel.
4. For general and special compensatory damages, according to proof;
5. For statutory damages;
6. For payments pursuant to California Labor Code sections 226.8 and 226.7;
7. For payments pursuant to California Labor Code sections 1402 and 1404;
8. For payments pursuant to California Code of Civil Procedure section 338;
9. For reasonable attorney's fees and for costs of suit incurred herein pursuant to Labor Code sections 218.5 and 226(e);
10. For pre-judgment interest on any unpaid wages from the date such amounts were due pursuant to Labor Code section 218.6;
11. For civil penalties pursuant to Labor Code section 558;
12. For the disgorgement of any and all “unpaid wages” and incidental losses, according to proof;
13. For restitution of “unpaid wages” and pre-judgment interest from the day such amounts were due and payable;
14. A declaratory judgment that Defendant violated California Labor Code § 226.7, and Section 12 of IWC Wage Order 5-2001;
15. A declaratory judgment that Defendant violated California Labor Code §226 by issuing inaccurate and/or incomplete wage statements that failed to include the start date for each pay period, the correct amount of gross wages earned, net wages earned, or the applicable

hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate to Plaintiff and the wage statement Class Members;

16. A declaratory judgement that Defendant violated Labor Code § 2802; Pursuant to 2802 (a)-(c), reimbursement for all the unreimbursed business related expenses including cell phones bills, plus interest and attorney's fees;
17. For reasonable attorney's fees pursuant to Code of Civil Procedure section 1021.5;
18. For exemplary and punitive damages;
19. For to injunctive relief including reinstatement, reimbursement of lost wages/benefits;
20. For such other and further relief as the court deems just and proper.

DATED: April 6, 2023

LAW OFFICES OF FARRAH MIRABEL

BY: Farrah Mirabel
Farrah Mirabel, Esq.
ATTORNEYS FOR PLAINTIFF

EXHIBIT “A”

Law Offices of
Farrak Mirabel
Fmesq@fmirabel.com
1070 Stradella Rd.
Los Angeles, California 90077
Tel (714) 972-0707 Fax (949) 417-1796

January 30, 2023

via CERTIFIED MAIL

Attn. PAGA Administrator
California Labor and Workforce Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612
(510) 286-1362

Honeybee Foods Corporation dba Jollibee
100 N. Barranca Street
Suite 1200
West Covina, CA 91791

CT CORPORATION SYSTEM
Agent for Honeybee Foods Corporation dba Jollibee
AMANDA GARCIA or any other authorized agent
330 N BRAND BLVD
SUITE 700
GLENDALE, CA 91203

In Re PAGA NOTICE: *Amanda Ambriz v. Honeybee Foods Corporation dba Jollibee*

Dear PAGA Administrator:

Our firm represents the interests of Amanda Ambriz (Plaintiff), against Honeybee Foods Corporation dba Jollibee (referred to as the “Defendant”). Plaintiff has worked as a crew member since July 2021.

The purpose of this notice is to comply with the statutory exhaustion requirements of Labor Code section 2699.3 prior to commencing an action pursuant to Labor Code section 2699, *et seq.* We request that your agency investigate the claims in this letter and the labor code and wage order violations as listed below.

This notice is submitted, at a foundation level, on behalf of the Plaintiff and all other Defendants’ employees, both current and former, impacted by the alleged Labor Code violations including, *inter alia*, Labor Code sections:

1. Violation of Labor Code § 226.7(a) (Missed Rest Breaks);

2. **Violation of Labor Code §§ 226.7, 512 and 1198 (Missed Meal Breaks);**
3. **Violation of Labor Code § §1194 & §1197-98 (Failure to Pay Minimum Wages);**
4. **Violation of Labor Code § §510 and 1194, 1198 (Failure to Pay All Overtime Worked);**
5. **Violation of Labor Code § 204 (Failure to Pay All Wages Earned);**
6. **Violation of Labor Code §§ 226, 1174, 1198.5 and 226, (Failure to Keep Records, Improper Wage Statements and maintain accurate personnel and payroll records);**
7. **Unpaid sick leave *Labor Code* §§ 246, 248.5;**
8. **Violation of Labor Code §§ 201-203, 256 (Failure to Pay Wages Upon Separation);**
9. **Violation of Labor Code § 2802 (Failure to reimburse business expenses);**
10. **Violation of California *Business and Professions Code* §17200, et seq.**

During the relevant timeframe, Defendants employed Plaintiff as non-exempt hourly employee beginning in July 2021. Plaintiff's breaks were interrupted by her managers, Eliza, Angel, etc., demanding her to cut her breaks short and return to work. After clocking out, Plaintiff was required to work off-clock to mop the floors and clean the tables.

Defendants failed to maintain accurate payroll records, such that Plaintiff was given wage statements which were inaccurate and Plaintiff was not paid for all the wages and overtime compensation. Also the number of the working hours and pay rate are missing from the wage statements.

In 2013, the Legislature amended subdivision (e) of Labor Code section 226, adding language explaining that an "employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required" by subdivision (a) of that statute, and "the employee cannot promptly and easily determine from the wage statement alone one or more" of several of the required items, including total hours worked, all applicable hourly rates in effect, and the corresponding number of hours worked at each rate. (Lab. Code, § 226, subd. (e)(2)(B).) The amended statute further provides that " 'promptly and easily determine' means a reasonable person would be able to readily ascertain the information without reference to other documents or information." (Lab. Code, § 226, subd. (e)(2)(C).) This provision renders the inquiry an objective one; the amendment "clarifies that injury arises from defects in the wage statement, rather than from a showing that an individual experienced harm as a result of the defect." (*Lubin, supra*, 5 Cal.App.5th at p. 959; see also *Garnett v. ADT, LLC* (E.D. Cal. 2015) 139 F.Supp.3d 1121, 1133 ["Whether an employee suffered injury is based solely on the information provided on the wage statement."].) Because the inquiry is objective, relying on whether a "reasonable person would be able to readily ascertain the information" (Lab. Code, § 226, subd. (e)(2)(C)), and not on whether any particular plaintiff could have, the

inquiry now appears to be one easily amenable to common proof in a class action.¹⁵(*Lubin*, at p. 959,.)

Furthermore, Plaintiff was not allowed to take any rest breaks for full day of work which lasted minimum of 4 hours. Defendants failed to compensate Plaintiff at the required rate for each occasion in which Plaintiff was unable to take rest breaks.

Also, during her employment, Plaintiff did not receive a thirty-minute, uninterrupted, off-duty meal break for every shift she worked that lasted more than five hours.

Defendants failed to keep accurate records to document Plaintiff's working hours and meal breaks. Recently the Supreme Court of California held that:

“Every employer shall keep accurate information with respect to each employee ... [¶] ... [¶] ... Meal periods ... shall also be recorded.”.) It is important that employers keep accurate records so that enforcement agencies can “ ‘adequately investigate and enforce’ a wage order's meal period provisions.” (*Brinker*, at p. 1053, 139 Cal.Rptr.3d 315, 273 P.3d 513 (conc. opn. of Werdegar, J.).) Because time records are required to be accurate, it makes sense to apply a rebuttable presumption of liability when records show noncompliant meal periods. If the records are accurate, then the records reflect an employer's true liability; applying the presumption would not adversely affect an employer that has complied with meal period requirements and has maintained accurate records. If the records are incomplete or inaccurate — for example, the records do not clearly indicate whether the employee chose to work during meal periods despite bona fide relief from duty — then the employer can offer evidence to rebut the presumption. It is appropriate to place the burden on the employer to plead and prove, as an affirmative defense, that it genuinely relieved employees from duty during meal periods. (*Ibid.*) “To place the burden elsewhere would offer an employer an incentive to avoid its recording duty and a potential windfall from the failure to record meal periods.” (*Id.* at p. 1053, fn. 1, 139 Cal.Rptr.3d 315, 273 P.3d 513.) “ ‘ “[W]here the employer has failed to keep records required by statute, the consequences for such failure should fall on the employer, not the employee.” ’ ” (*Ibid.*)

Donohue v. AMN Servs., LLC, (2021) 11 Cal. 5th 58, 76, 481 P.3d 661, 674

Therefore, Plaintiff claims that Defendants were intentionally underpaying all the employees by false misrepresentations about applicable law. Plaintiff also claims that Defendants did not provide her and all other past and present employees with rest and meal breaks. Furthermore, Plaintiff claims that the past and present employees did not receive an hour of premium pay, for each missed break, for all days they did not receive a proper rest or meal break. As a result, Defendants failed to pay its employees for all wages earned. Therefore, Plaintiff and other employees received wages and wage statements which did

not account for all the hours worked and did not account for the premiums due to employees for the missed breaks, nor accounted for overtime pay for hours employees worked.

Defendants also refused to acknowledge employees need for sick leave and pay accurate wages for their sick days.

Defendants did not issue an accurate final paycheck to Plaintiff in accordance with the timeframes prescribed by law.

Plaintiff claims on her own behalf and also on behalf of all past and present employees that she worked in excess of statutory hours per day and per week but did not receive compensation for all the hours worked and was not paid overtime.

Plaintiff claims that because Defendants did not properly compensate its employees for all the hours worked, did not pay for an hour of pay, for each missed break, for all days they did not receive a proper rest and meal break, and failed to pay them overtime for all hours worked, the employees' wage statements did not accurately reflect all the hours worked and the wages earned. As such, Plaintiff claims that Defendants provided all its past and present employees with improper wage statements.

Moreover, Defendants failed to pay timely accurate paycheck upon the separation of the employees. Therefore, Plaintiff also claims a violation of Labor Code section 201-203 on behalf of all employees who were fired or stopped working for the Defendants.

Plaintiff claims that Defendants' conduct, as stated herein, including not keeping track of actual working hours and meal periods, not paying their employees all wages owed, including wages for all hours worked, overtime, missed rest and meal breaks, and not providing its employees with accurate wage statements, not paying timely paycheck upon the separation of the employee, and not reimbursing business expenses, has been unfair, unlawful, and harmful to all its past and present employees, including Plaintiff, and to the general public. As such, this letter is written to comply with the notice and reporting requirements of Labor Code section 2699.3.

Plaintiff can be contacted through their attorney of record:

Farrah Mirabel, Esq.
LAW OFFICES OF FARRAH MIRABEL
1070 Stradella Rd.
Los Angeles, California 90077

Plaintiff and other similarly situated individuals, past and present employees, may also be entitled to penalties pursuant to Labor Code section 2699, et seq.

On behalf of Plaintiff, and all other past and present employees, our office will be filing a civil complaint against Defendants, alleging the above causes of action including PAGA claim and request damages pursuant to but not limited to the following labor code sections **98.6, 201-205, 210, 216, 218.5, 221, 225.5, 223, 226.2, 226.3, 226.7, 227.3, 256, 233, 234, 246, 246.5, 248.5, 510-512, 551-553, 558, 558.1, 1174, 1174.5, 1193.6, 1194-1197.1, 1198-1199.5 and 2698-2699, 2699.5 and 2802 and applicable IWC.**

Very truly yours,
LAW OFFICES OF FARRAH MIRABEL
/s/ Farrah Mirabel
Farrah Mirabel, Esq.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Honeybee Foods Corporation dba
Tollie bee
100 N. Barranca, ST. Suite 1200
West Covina, CA 91791



9590 9402 7655 2122 3641 39

2. Article Number (Transfer from service label)

7022 1670 0002 1705 2909

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

CYNTHIA

C. Date of Delivery

2-1-23

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Insured Mail☐ Insured Mail Restricted Delivery

500)

☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

USPS TRACKING #



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

9590 9402 7655 2122 3641 39

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

Law offices of Farrah Mirabel

1070 Stradella Rd.

Los Angeles, CA 90077

re: Amanda Ambriz v. Honeybee foods
Corporation dba Jollibee

