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County of Los Angeles

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David W. Slayton, Executive Officer / Clerk of Court

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As an individual and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

JIHYUN KWON, as an individual on
behalf of herself and on behalf of all others
similarly situated,

Plaintiff,

v.

WOOLTARI USA, INC., a Delaware
corporation; and DOES 1-100, inclusive,

Defendants.

Case No.: 22STCV37161

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

- 1. Recovery of Unpaid Minimum Wages
and Liquidated Damages**
- 2. Recovery of Unpaid Overtime Wages**
- 3. Failure to Provide Meal Periods or
Compensation in Lieu Thereof**
- 4. Failure to Provide Rest Periods or
Compensation in Lieu Thereof**
- 5. Failure to Furnish Accurate Itemized
Wage Statements**
- 6. Failure to Timely Pay All Wages Due
Upon Separation of Employment**
- 7. Failure to Provide One Day of Rest for
Every WorkWeek**
- 8. Failure to Reimburse Business Expenses**
- 9. Unfair Competition and**
- 10. Violation of the Private Attorneys
General Act of 2004**

DEMAND FOR JURY TRIAL

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2
3 Plaintiff, JIHYUN KWON (“PLAINTIFF”), an individual on behalf of herself and all other
4 similarly situated Class Members (as defined below) and Aggrieved Employees (as defined below),
5 hereby files this First Amended Complaint against Defendants WOOLTARI USA, INC.; and DOES
6 1-100, inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is informed
7 and believes and thereon alleges as follows:

8 **JURISDICTION AND VENUE**

9 1. This court possesses original subject matter jurisdiction over this matter. Venue is
10 proper in the County of Los Angeles pursuant to California Code of Civil Procedure section 395.5
11 because DEFENDANTS transact business within this judicial district, DEFENDANTS employed
12 PLAINTIFF to work in this judicial district and some of the acts, omissions, and conduct alleged by
13 PLAINTIFF herein occurred in this this judicial district. See also *Crestwood Behavioral Health,*
14 *Inc. v. Superior Court* (2021) 60 Cal. App. 5th 1069 (venue in a PAGA action is proper in any
15 county where the defendants committed Labor Code violations against some of its employees).
16 Venue is also proper pursuant to section 393 of the California Code of Civil Procedure because the
17 cause, or some part of the cause, arose in the County of Los Angeles.

18 **THE PARTIES**

19 2. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
20 California and a citizen of the State of California. PLAINTIFF was employed by DEFENDANTS
21 in the State of California as a non-exempt employee from on or around September 26, 2020 through
22 on or about April 18, 2022.

23 3. PLAINTIFF worked for DEFENDANTS as a designer and/or similar title(s) in Los
24 Angeles County.

25 4. DEFENDANTS are a Delaware corporation that, at all relevant times, were
26 authorized to do business within the State of California and are doing business in the State of
27 California.

28 5. DEFENDANTS own, operate, or otherwise manage a business that distributes
PLAINTIFF’S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL

1 mainly Korean food products to customers via, stores located throughout the United States and
2 online, including but not limited to, DEFENDANTS' online marketplace and/or via
3 DEFENDANTS' mobile app.¹

4 6. The true names and capacities of the DOE Defendants sued herein as DOES 1
5 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such
6 Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally
7 responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend this
8 Complaint to reflect the true names and capacities of the Doe Defendants when such identities
9 become known.

10 7. PLAINTIFF is further informed and believes that, at all relevant times, each
11 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
12 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
13 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
14 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
15 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
16 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant
17 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
18 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
19 controlled, aided and abetted the conduct of all other Defendants.

20 **JOINT LIABILITY**

21 8. Under California law, the definition of the terms "to employ" are broadly construed
22 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
23 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3)
24 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49
25 Cal.4th 35, 64 (2010). One reason that the IWC defined "employer" in terms of exercising control
26 was to reach situations in which multiple entities control different aspects of the employment

27 ¹ See https://wooltariusainc-com.translate.google/?_x_tr_sl=ko&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=sc. Last visited
28 on November 16, 2022.

See also: <https://wooltarius.com/en/pages/all-products>. Last visited on November 16, 2022.

1 relationship. Supervision of the work, in the specific sense of exercising control over how services
2 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
3 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
4 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
5 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
6 California, applying a less stringent standard to what constitutes sufficient control by a business
7 over its vendor’s employees’ wages and working conditions to render that business liable as a joint
8 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative
9 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
10 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
11 employment,” *Id.* at 875 [emphasis added].

12 9. During PLAINTIFF’s employment by DEFENDANTS, PLAINTIFF and the Class
13 Members (defined below) were jointly employed by DEFENDANTS for purposes of the Wage
14 Orders, under the alternative definitions of “to employ” adopted by the California Supreme Court
15 in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control over wages,
16 hours and working conditions of PLAINTIFF and the Class Members and Aggrieved Employees;
17 (2) suffered or permitted PLAINTIFF and Class Members and Aggrieved Employees to work for
18 them; and (3) engaged PLAINTIFF and Class Members and Aggrieved Employees to work for them.

19 10. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
20 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
21 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
22 across all of their locations/facilities and subjected all of the Class Members and Aggrieved
23 Employees to these same policies and practices regardless of the location(s) where they worked.
24 Among other things, PLAINTIFF is informed and believes that: (1) there is common ownership in,
25 and financial control, in DEFENDANTS’ companies, (2) DEFENDANTS utilize common
26 management, who have control over the day-to-day operations and employment matters, including
27 the power to hire and fire, set schedules, issue employee policies, and determine rates of
28 compensation across its locations in California; (3) DEFENDANTS utilize the same policies and

1 procedures for all California employees, including issuing the same employee handbooks and other
2 form agreements; (4) DEFENDANTS use at least some of the same Human Resources personnel
3 and attorneys to oversee employment matters; and, (6) DEFENDANTS share employees.

4 11. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
5 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and the Class Members
6 and Aggrieved Employees upon whose behalf PLAINTIFF brings these allegations and causes of
7 action, in that DEFENDANTS, exercised sufficient control over PLAINTIFF and the Class
8 Members and Aggrieved Employees' wages, hours and working conditions, and/or suffered or
9 permitted PLAINTIFF and the Class Members and Aggrieved Employees to work so as to be
10 considered the joint employers of PLAINTIFF and the Class Members and Aggrieved Employees.

11 12. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
12 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
13 time-keeping practices, meal and rest periods, reimbursement of business expenses and other
14 working conditions that were distributed to, and/or applied to PLAINTIFF and the Class Members
15 and Aggrieved Employees, and further that DEFENDANTS uniformly compensated and controlled
16 the wages of PLAINTIFF and the Class Members and Aggrieved Employees in a uniform manner.
17 DEFENDANTS collectively represented to PLAINTIFF and the Class Members and Aggrieved
18 Employees that each was an "at-will" employee of DEFENDANTS, and that DEFENDANTS
19 collectively retained the right to terminate PLAINTIFF's and Class Members and Aggrieved
20 Employees' employment with or without cause. Upon information and belief, DEFENDANTS
21 further collectively represented to PLAINTIFF and Class Members and Aggrieved Employees in
22 writing the details of their compensation, and the manner in which they were to take meal and rest
23 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked
24 and the policies applicable to PLAINTIFF and Class Members and Aggrieved Employees by which
25 DEFENDANTS collectively would evaluate the wage rates of PLAINTIFF and Class Members and
26 Aggrieved Employees.

27 13. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
28 and working conditions of PLAINTIFF and Class Members and Aggrieved Employees. As such,

1 DEFENDANTS collectively held the right to control virtually every aspect of PLAINTIFF's and
2 the Class Members and Aggrieved Employees' employment, including the instrumentality that
3 resulted in the illegal conduct for which PLAINTIFF seeks relief in this Complaint.

4 14. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
5 control over, applied the same policies and practices, and engaged in the same acts and omissions
6 with regard to the other Class Members and Aggrieved Employees.

7 **CLASS ALLEGATIONS**

8 15. PLAINTIFF brings this action on behalf of herself, and all others similarly situated
9 as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF seeks to
10 represent are defined as follows and referred to as the "Class" or "Class Members":

11 All current and former non-exempt employees that worked either
12 directly or via a staffing agency for DEFENDANTS at any location
13 in California at any time within the four years prior to the filing of the
14 initial Complaint ("Class Period").

15 a. Numerosity. While the exact number of Class Members is unknown to
16 PLAINTIFF at this time, the Class is so numerous that the individual joinder of
17 all members is impractical under the circumstances of this case. PLAINTIFF is
18 informed and believes the Class consists of at least 100 individuals.

19 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
20 because common questions of law and fact predominate over individual issues.
21 Common questions include, but are not limited to, the following: (1) whether
22 DEFENDANTS understated hours worked and failed to pay all amounts due to
23 PLAINTIFF and the Class Members for wages earned, including minimum and
24 overtime wages, under California law; (2) whether DEFENDANTS provided
25 PLAINTIFF and the Class Members with all meal periods or premium payments
26 in lieu thereof in compliance with California law; (3) whether DEFENDANTS
27 provided PLAINTIFF and the Class Members with all rest periods or premium
28 payments in lieu thereof, in compliance with California law; (4) whether

1 DEFENDANTS provided PLAINTIFF and Class Members with accurate,
2 itemized wage statements in compliance with California law, displaying,
3 including but not limited to, the total hours worked during the pay period; (5)
4 whether DEFENDANTS timely paid PLAINTIFF and the Class Members all
5 wages due upon separation of employment; (6) whether DEFENDANTS failed
6 to provide PLAINTIFF and the Class Members one day of rest for every
7 workweek; (7) whether DEFENDANTS failed to reimburse PLAINTIFF and
8 the Class Members for all business expenses; and (8) whether DEFENDANTS
9 violated California Business and Professions Code sections 17200, *et seq.*

10 c. Ascertainable Class. The proposed Class is ascertainable as members can be
11 identified and located using information in DEFENDANTS' business, payroll
12 and personnel records.

13 d. Typicality. PLAINTIFF's claims are typical of the claims of the Class Members.
14 PLAINTIFF suffered a similar injury as members of the Class as a result of
15 DEFENDANTS' common practices regarding, *inter-alia*, failure to calculate
16 and pay all owed minimum and overtime wages, failure to provide proper meal
17 periods and rest periods or premium compensation in lieu thereof, failure to
18 provide accurate wage statements, failure to provide one day of rest for every
19 workweek, failure to reimburse business expenses, and failure to timely pay all
20 wages due upon separation of employment.

21 e. Adequacy. PLAINTIFF will fairly and adequately protect the interests of the
22 Class Members. PLAINTIFF has no interests adverse to the interests of the other
23 Class Members. Counsel who represent PLAINTIFF are competent and
24 experienced in litigating similar class action cases and are California lawyers in
25 good standing. Counsel for PLAINTIFF have the experience and resources to
26 vigorously prosecute this case.

27 f. Superiority. A class action is superior to other available means for the fair and
28 efficient adjudication of this controversy since individual joinder of all members

1 of the class is impractical. Class action treatment will permit a large number of
2 similarly situated persons to prosecute their common claims in a single forum
3 simultaneously, efficiently, and without the unnecessary duplication of effort
4 and expense that numerous individual actions would engender. Furthermore, as
5 the damages suffered by each individual member of the Class may be relatively
6 small, the expenses and burden of individual litigation would make it difficult
7 or impossible for individual members of the Class to redress the wrongs done to
8 them, while an important public interest will be served by addressing the matter
9 as a class action. The cost to the court system of adjudication of such
10 individualized litigation would be substantial. Individualized litigation would
11 also present the potential for inconsistent or contradictory judgments. Finally,
12 the alternative of filing a claim with the California Labor Commissioner is not
13 superior, given the lack of discovery in such proceedings, the fact that there are
14 fewer available remedies, and the losing party has the right to a trial de novo in
15 the Superior Court.

16 **FACTUAL AND LEGAL ALLEGATIONS**

17 16. During the relevant period, PLAINTIFF, and each of the Class Members and
18 Aggrieved Employees worked for DEFENDANTS in the State of California. At all times referenced
19 herein, DEFENDANTS exercised control over PLAINTIFF and Class Members and Aggrieved
20 Employees, and suffered and/or permitted them to work.

21 17. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
22 PLAINTIFF worked for DEFENDANTS in Los Angeles County as a designer and/or similar title(s)
23 from on or around September 26, 2020 through on or about April 18, 2022. PLAINTIFF regularly
24 worked at least eight (8) hours per day, often working at least eleven (11) hours per day, at least five
25 (5) days per week. At times, PLAINTIFF worked every day of the workweek, working more than
26 six (6) hours in each consecutive shift.

27 18. Based on information and belief, at times, DEFENDANTS misclassified
28 PLAINTIFF as an exempt employee and compensated PLAINTIFF on a salaried basis. Based on

1 information and belief, at times, PLAINTIFF was compensated on an hourly basis but only for time
2 counted by DEFENDANTS as hours worked.

3 19. At times during the relevant period, DEFENDANTS misclassified PLAINTIFF and
4 other Class Members and Aggrieved Employees as exempt employees to try to evade California
5 wage and hour laws including but not limited to, payment of minimum and overtime wages and
6 provision of meal and rest periods even though PLAINTIFF and other misclassified aggrieved
7 employees did not satisfy any test for exemption under California law. For example, PLAINTIFF
8 did not regularly exercise discretion/independent judgment in her job and typically spent more than
9 fifty percent of her workday performing non-exempt duties. PLAINTIFF's duties involved trade
10 techniques rather than invention, imagination, originality or talent in a recognized field or artistic or
11 creative endeavor. Moreover, PLAINTIFF did not earn a salary equivalent to at least twice the state
12 minimum wage for full-time work. Based on further information and belief, other Class Members
13 and Aggrieved Employees were also not compensated with a monthly salary that equated to twice
14 the California minimum wage rate. See, Labor Code section 515 and Cal. Code of Regs., tit. 8, §
15 11040 [providing that, for each exempted category, the employee must earn "a monthly salary
16 equivalent to no less than two (2) times the state minimum wage for full-time employment"]. Based
17 on information and belief, DEFENDANTS misclassified other Class Members and Aggrieved
18 Employees as salaried/exempt even though those Class Members and Aggrieved Employees spent
19 more than fifty percent of their workdays performing non-exempt job duties, did not regularly
20 exercise discretion and independent judgment on the job, and/or did not otherwise satisfy any test
21 for exemption under California law.

22 20. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
23 PLAINTIFF and Class Members and Aggrieved Employees for all hours worked, resulting in the
24 underpayment of minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF
25 and Class Members and Aggrieved Employees for all hours worked by virtue of, DEFENDANTS'
26 misclassification scheme, failure to account for all hours worked, automatic deduction and time
27 rounding policies, and failure to relieve employees of all duties/employer control during unpaid
28 meal periods or otherwise unlawful practices for missed or improper meal periods, as explained

1 below.

2 21. Based on information and belief, DEFENDANTS implemented a policy and/or
3 practice of rounding meal period start and end times and/or automatically deducting at least thirty
4 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
5 PLAINTIFF and other Class Members and Aggrieved Employees were subject to DEFENDANTS'
6 control during purported meal periods and/or were otherwise not afforded lawful meal periods,
7 depriving PLAINTIFF and Class Members and Aggrieved Employees of all wages owed.

8 22. Based on information and belief, Class Members and Aggrieved Employees were
9 not paid for all hours worked due to DEFENDANTS' policy and/or practice of rounding time entries
10 or paying according to scheduled hours worked instead of actual time worked, and/or mandated off-
11 the clock work policies and/or practices. For example, at times, including but not limited to, on
12 various diverse dates, from in or about November 2021 through at least February 2022,
13 DEFENDANTS' electronic/computer employee time-keeping system consistently malfunctioned
14 (or did not work at all) such that PLAINTIFF and other Class Members and Aggrieved Employees
15 were required to either reinitiate and/or otherwise troubleshoot the system prior to being able to
16 clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in from
17 meal periods, resulting in off-the-clock work and the underpayment of wages owed to PLAINTIFF
18 and other Class Members and Aggrieved Employees. Based on information and belief, Class
19 Members and Aggrieved Employees experienced the same issues when clocking out for shifts and/or
20 back in for meal periods. This time spent under DEFENDANTS' control was not recorded and not
21 compensated and resulted in unpaid minimum wages owed to Class Members and Aggrieved
22 Employees.

23 23. Moreover, PLAINTIFF and other Class Members and Aggrieved Employees were
24 consistently required to perform work off-the-clock on purported days off and/or during their
25 vacations. For example, PLAINTIFF was required to perform work off-the-clock that was neither
26 recorded nor compensated, including but not limited to, on various diverse Saturdays and/or
27 Sundays, from in or about October 2020 and continuing through at least February 2022. Based on
28 information and belief, Class Members and Aggrieved Employees were also pressured to complete

1 at least some of their work tasks off-the-clock in order to meet DEFENDANTS' goals and
2 expectations. For example, on information and belief, Class Members and Aggrieved Employees
3 were also required to complete off-the-clock work outside of scheduled shifts due to work-related
4 phone calls and/or messages they received and were required to respond to, including but not limited
5 to, communications from supervisors regarding scheduling and/or other work tasks, resulting in the
6 underpayment of wages owed to Class Members and Aggrieved Employees.

7 24. Based on information and belief, DEFENDANTS failed to pay Class Members and
8 Aggrieved Employees for time they were required to spend completing orientation, policy
9 questionnaires, and/or time spent completing the onboarding process including but not limited to
10 reviewing various documents and policies provided by DEFENDANTS. Based on information and
11 belief, this work time was completed off-the-clock and was not compensated.

12 25. Based on further information and belief, DEFENDANTS implemented a time-
13 rounding system that as applied systematically deprived PLAINTIFF and other Class Members and
14 Aggrieved Employees of compensable time because the time-rounding system implemented by
15 DEFENDANTS would almost always, if not always, result in understating actual compensable work
16 time.

17 26. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
18 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
19 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
20 minimum wages owed to PLAINTIFF and Class Members and Aggrieved Employees as well as
21 unpaid overtime wages for those Class Members and Aggrieved Employees who worked more than
22 eight (8) hours in a day and/or more than forty (40) hours in a week.

23 27. Based on information and belief, DEFENDANTS had actual and/or constructive
24 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to
25 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the
26 underpayment of minimum wages owed to PLAINTIFF and other Class Members and Aggrieved
27 Employees, in violation of California's minimum and overtime wage laws.

28 28. Based on information and belief, DEFENDANTS failed and continue to fail to pay
PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
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1 Class Members and Aggrieved Employees two times their regular rate of pay for time worked
2 beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh
3 consecutive day of work in a work week, in violation of California's overtime laws.

4 29. Based on information and belief, DEFENDANTS failed to incorporate all non-
5 discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or
6 other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s),
7 resulting in the miscalculation and underpayment of overtime wages owed to PLAINTIFF and other
8 Class Members and Aggrieved Employees.

9 30. Based on information and belief, PLAINTIFF and other Class Members and
10 Aggrieved Employees that were paid on a salary basis and/or otherwise misclassified as exempt
11 were denied all owed minimum and overtime wages due to DEFENDANTS' misclassification
12 scheme.

13 31. **Meal Period Violations.** PLAINTIFF and other Class Members and Aggrieved
14 Employees consistently worked shifts of at least five and one-half hours or more, entitling them to
15 at least one meal period. However, PLAINTIFF and other Class Members and Aggrieved
16 Employees would not receive legally compliant thirty (30) minute first and second meal periods.
17 Based on information and belief, Class Members and Aggrieved Employees were consistently
18 unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take
19 late meal periods, interrupted meal periods, and/or work through part or all their meal periods due
20 to understaffing, the nature and constraints of their job duties and/or commentary from supervisors
21 pressuring them to take non-compliant meal periods or skip meal periods completely.

22 32. Based on information and belief, other Class Members and Aggrieved Employees
23 were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had
24 their meal periods interrupted, cut short, restricted to DEFENDANTS' premises and/or otherwise
25 on duty due to commentary from supervisors, understaffing, the nature and constraints of their job
26 duties, and/or the need to meet DEFENDANTS' goals and expectations.

27 33. Based on information and belief, DEFENDANTS implemented policies and/or
28 practices that failed to relieve Class Members₁₂ and Aggrieved Employees of all duties and

1 DEFENDANTS' control during unpaid meal periods.

2 34. Based on information and belief, DEFENDANTS required Class Members and
3 Aggrieved Employees to complete off-the-clock work prior to their scheduled shift time which
4 DEFENDANTS failed to take into account when scheduling meal periods for Class Members and
5 Aggrieved Employees. Based on information and belief, meal periods were late, in part due to
6 unaccounted pre-shift off-the-clock work.

7 35. Based on information and belief, despite DEFENDANTS' failure to provide lawful
8 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
9 times of PLAINTIFF's and other Class Members and Aggrieved Employees' meal periods and/or
10 automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal
11 periods despite having actual and/or constructive knowledge that PLAINTIFF and other Class
12 Members and Aggrieved Employees did not receive lawful meal periods.

13 36. Moreover, per DEFENDANTS' uniform policy and practice, Class Members and
14 Aggrieved Employees who worked shifts of more than ten hours did not receive a second legally
15 compliant thirty (30) minute second meal period. For example, during PLAINTIFF's employment,
16 including but not limited, from October 2020, through at least August 2021, PLAINTIFF
17 consistently worked shifts lasting approximately eleven hours per day, if not longer, at least five (5)
18 days per week and was not provided with a first or second meal period during those shifts.

19 37. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
20 other Class Members and Aggrieved Employees as to the timing and duty-free nature of meal
21 periods. Based on further information and belief, DEFENDANTS did not have a compliant written
22 meal period policy, nor did DEFENDANTS have any sort of compliant policy in practice.

23 38. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
24 records of the true start and end times of PLAINTIFF's and Class Members and Aggrieved
25 Employees' meal periods. Based on information and belief, to the extent meal period were recorded,
26 DEFENDANTS illegally rounded the start and end times of purported meal periods resulting in
27 PLAINTIFF and other Class Members and Aggrieved Employees not being paid for all time worked
28 as well as late and/or shortened meal periods. See *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th

1 58.

2 39. Based on information and belief, DEFENDANTS had actual and/or constructive
3 knowledge that its policies and practices resulted in the denial of uninterrupted meal periods which
4 were free of DEFENDANTS' control owed to PLAINTIFF and other Class Members and Aggrieved
5 Employees, in violation of California's meal period laws.

6 40. DEFENDANTS failed to pay PLAINTIFF and other Class Members and Aggrieved
7 Employees, an additional hour of wages at their respective regular rates of compensation for each
8 workday a lawful meal period was not provided. DEFENDANTS either failed to pay a meal period
9 premium at all for each workday a lawful meal period was not provided and/or failed to pay the
10 proper meal period premium for failure to incorporate all non-discretionary remuneration, including
11 but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into
12 the regular rate or compensation for purposes of calculating the owed meal period premium.

13 41. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide
14 PLAINTIFF and other Class Members and Aggrieved Employees with legally compliant rest
15 periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable,
16 are provided in the middle of the work period, as required by law.

17 42. PLAINTIFF and other Class Members and Aggrieved Employees were not
18 adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest
19 periods per California law. Based on information and belief, DEFENDANTS had no policy in place
20 nor instruction as to the taking of duty-free rest periods.

21 43. Based on information and belief, DEFENDANTS did not have a have a compliant
22 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
23 practice.

24 44. Based on information and belief, Class Members and Aggrieved Employees' rest
25 periods were interrupted, cut short, on duty, restricted to work premises and/or late due to
26 understaffing, the nature and constraints of their job duties, and/or due to commentary from
27 supervisors/managers pressuring them to skip rest periods completely or otherwise take non-
28 compliant rest periods.

1 45. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
2 lasting longer than ten hours. For example, during PLAINTIFF's employment, including but not
3 limited, from October 2020, through at least August 2021, PLAINTIFF consistently worked shifts
4 lasting approximately eleven hours per day, if not longer, at least five (5) days per week and was
5 not provided with any form of a third rest period during those shifts.

6 46. Based on information and belief, DEFENDANTS implemented policies and/or
7 practices that failed to relieve PLAINTIFF and other Class Members and Aggrieved Employees of
8 all duties and DEFENDANTS' control during rest periods.

9 47. Based on information and belief, Class Members and Aggrieved Employees were
10 pressured to complete their work duties according to a designated schedule such that rest periods
11 were only taken once tasks were completed, and/or as time permitted.

12 48. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
13 which PLAINTIFF and Class Members and Aggrieved Employees experienced a missed/unlawful
14 rest period in violation of California law. DEFENDANTS either failed to pay a rest period premium
15 at all for each workday a proper rest period was not provided and/or failed to pay the proper rest
16 period premium for failure to incorporate all non-discretionary remuneration, including but not
17 limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
18 regular rate of compensation for purposes of calculating the owed rest period premium.

19 49. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
20 provide PLAINTIFF and other Class Members and Aggrieved Employees with accurate wage
21 statements that complied with Labor Code section 226. As DEFENDANTS failed to provide
22 PLAINTIFF and Class Members and Aggrieved Employees with meal and rest periods that
23 complied with Labor section 226.7, the wage statements DEFENDANTS issued to PLAINTIFF and
24 Class Members and Aggrieved Employees failed and continue to fail to correctly set forth the gross
25 wages earned, the total hours worked, the net wages earned, and all applicable hourly rates in effect
26 during the pay period and the corresponding number of hours worked at each hourly rate by the
27 employee.

28 50. DEFENDANTS issued wage statements to PLAINTIFF and Class Members and
15
PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL

1 Aggrieved Employees that also failed to indicate the earned gross and net wages earned during the
2 pay period, the correct applicable rates of pay for all hours worked, and the total hours worked by
3 PLAINTIFF and Class Members and Aggrieved Employees (by virtue of rounded time entries,
4 automatic deduction for meal periods/failure to relieve Class Members and Aggrieved Employees
5 of all duties and employer control during unpaid meal periods, payment according to scheduled
6 hours worked rather than actual hours worked, and/or other off-the-clock work policies and
7 practices) which results in a violation of Labor Code section 226(a).

8 51. As described herein, based on information and belief, DEFENDANTS also failed to
9 incorporate all forms of non-discretionary compensation earned during the pay period into the
10 overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour
11 of overtime worked by PLAINTIFF and other Class Members and Aggrieved Employees.

12 52. Moreover, based on information and belief, DEFENDANTS issued wage statements
13 to PLAINTIFF and Class Members and Aggrieved Employees that further violate Labor Code
14 section 226(a), by among other things, failing to list the correct name and/or address of the legal
15 entity that is the employer.

16 53. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Class
17 Members and Aggrieved Employees that were not accurate and did not include all of the statutorily
18 required information. As such, DEFENDANTS violated Labor Code section 226.

19 54. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
20 information and belief, DEFENDANTS failed to timely pay Class Members and Aggrieved
21 Employees all wages that were due and owing upon termination or resignation. Based on
22 information and belief, DEFENDANTS untimely provide final wages to Class Members and
23 Aggrieved Employees without regard to the timing requirements of Labor Code sections 201-202.

24 55. Upon separation of employment, Class Members and Aggrieved Employees' final
25 paychecks were not timely provided and/or were not timely provided with all owed vacation pay
26 and/or paid time off. Moreover, PLAINTIFF's and Class Members and Aggrieved Employees' final
27 paychecks, once provided, did not include all wages owed as they were devoid of, including but not
28 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed

1 sick leave and/or paid time off wages at the properly accrued rates. For example, on April 18, 2022,
2 DEFENDANTS terminated PLAINTIFF's employment but failed to provide PLAINTIFF with a
3 final paycheck containing all owed wages, including, but not limited to, compensation for her last
4 day worked, unused paid vacation, all owed minimum wages, overtime wages, premium wages, and
5 all owed sick leave and/or other paid time off wages at the properly accrued rates.

6 56. These violations subject DEFENDANTS to civil penalties under Labor Code section
7 203, 210, and/or 256.

8 57. **Failure to Provide One Day of Rest.** During the Class Period, DEFENDANTS
9 failed and refused to provide PLAINTIFF and other Class Members and Aggrieved Employees with
10 one day of rest for every workweek in violation of, including but not limited to, California Labor
11 Code sections 551 and 552.

12 58. Based on information and belief, DEFENDANTS have a policy and practice of
13 failing to provide one day of rest for every workweek. For example, at times, DEFENDANT
14 required PLAINTIFF to work seven (7) consecutive days in a workweek without a day of rest,
15 performing more than six (6) hours of work during each consecutive shift. Such a practice and/or
16 policy is in violation of Labor Code section 551 and 552.

17 59. **Unreimbursed Business Expenses.** Based on information and belief,
18 DEFENDANTS required PLAINTIFF and Class Members and Aggrieved Employees to incur
19 business expenses as a direct consequence of the performance of their job duties without providing
20 reimbursement, in violation of Labor Code section 2802. Based on information and belief,
21 PLAINTIFF and Class Members and Aggrieved Employees were improperly required to provide
22 and maintain work tools that are supposed to be the responsibility of the employer.

23 60. Based on information and belief, DEFENDANTS shifted DEFENDANTS' costs of
24 doing business onto Class Members and Aggrieved Employees by requiring them to pay for its
25 business expenses, including but not limited to, uniforms/clothing/safety/protective equipment,
26 personal tools, personal vehicles and/or the use of Class Members and Aggrieved Employees'
27 personal mobile phone/computers and data usage for work related purposes, including but not
28 limited to, receiving and responding to work related messages and/or phone calls. For example,

1 based on information and belief, at times, Class Members and Aggrieved Employees received
2 calls/messages to their personal cell phones/mobile devices from supervisors and/or other Class
3 Members and Aggrieved Employees regarding scheduling and/or other work tasks but were not
4 provided any reimbursement from DEFENDANTS for this personal cell phone use. On further
5 information and belief, DEFENDANTS have a policy in practice of failing to reimburse
6 PLAINTIFF and other Class Members and Aggrieved Employees for all expenses that were incurred
7 as a result of being required to work remotely and/or from their homes. For example, as explained
8 above, PLAINTIFF was regularly required to perform off-the-clock work outside of her scheduled
9 shifts, including but not limited to, during purported days off and/or on her vacation days.
10 Oftentimes, if not always, this off-the-clock work PLAINTIFF performed on purported days off
11 and/or outside of her scheduled shifts was performed at PLAINTIFFs home. As a result of being
12 required to work from home, PLAINTIFF and other Class Members and Aggrieved Employees were
13 necessarily required to use their home internet, electricity, and other utilities in the discharge of their
14 duties, yet, did not receive any and/or full reimbursement from DEFENDANTS' for these business
15 expenses.

16 61. Based on information and belief, DEFENDANTS regularly failed to reimburse and
17 indemnify Class Members and Aggrieved Employees for business expenses. Pursuant to California
18 Labor Code section 2802, PLAINTIFF and Class Members and Aggrieved Employees were entitled
19 to be reimbursed for all reasonable expenses associated with carrying out DEFENDANTS' orders
20 and/or carrying out the duties assigned by DEFENDANTS.

21 62. DEFENDANTS' failure to provide Class Members and Aggrieved Employees with
22 full reimbursement for all reasonable expenses associated with carrying out their duties required
23 that Class Members and Aggrieved Employees subsidize and/or carry the burden of business
24 expenses in violation of Labor Code section 2802.

25 63. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
26 engaged in these same herein described unlawful practices and that DEFENDANTS applied these
27 same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

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FIRST CAUSE OF ACTION

**Recovery of Unpaid Minimum Wages and Liquidated Damages
(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

64. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

65. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage Commission (“IWC”) Wage Orders, an employer must pay its employees for all hours worked, up to 40 hours per week or 8 hours per day, at a regular rate no less than the mandated minimum wage. Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

66. DEFENDANTS violated California’s minimum wage laws by failing to compensate PLAINTIFF and the Class Members for all hours worked by virtue of, among other things, DEFENDANTS’ misclassification scheme, time rounding, automatic deduction for meal periods, off-the-clock/unpaid work completed during meal periods, other pre-shift, post-shift and/or otherwise off-the-clock work, and/or payment according to scheduled hours worked rather than actual hours worked (described above), which resulted in the failure to account for all hours worked and thus the denial of minimum wages.

67. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and Class Members for all hours worked.

68. Based on information and belief, DEFENDANTS had actual or constructive knowledge that its time-rounding policies and practices, auto-deduction policies and practices for meal periods, failure to relieve employees of all duties and employer control during unpaid meal periods, policy and practice of payment according to scheduled work time rather than actual work time, and/or other mandated off-the-clock work resulted in the underpayment of minimum wages owed to PLAINTIFF and other Class Members.

69. Based on information and belief, PLAINTIFF and other Class Members that were paid on a salary basis and/or otherwise misclassified as exempt were denied all owed minimum wages for all hours worked due to DEFENDANTS’ misclassification scheme.

70. Pursuant to Labor Code sections 1194 and 1194.2, PLAINTIFF and the Class
PLAINTIFF’S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL

1 Members are entitled to recover all unpaid minimum wages and liquidated damages thereon, plus
2 attorney's fees and costs, in an amount to be proved at trial.

3 **SECOND CAUSE OF ACTION**

4 **Recovery of Unpaid Overtime Wages**
5 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

6 71. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

7 72. Employees in California must be paid overtime, equal to one and one-half times the
8 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
9 12 hours in any workday, and for the first eight (8) hours worked on the seventh consecutive day of
10 work in a workweek, and they must be paid double the regular rate of pay for all hours worked in
11 excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh
12 consecutive day of work in a workweek, unless they are exempt.

13 73. PLAINTIFF and the Class Members worked overtime hours for which they were not
14 compensated by DEFENDANTS by virtue of, among other things, DEFENDANTS' time rounding,
15 automatic deduction for meal periods, off-the-clock/unpaid work completed during meal periods,
16 other pre-shift, post-shift and/or otherwise off-the-clock work, and/or payment according to
17 scheduled hours worked rather than actual hours worked (described above), which resulted in the
18 failure to account for all hours worked and thus the denial of all owed overtime wages.

19 74. Based on information and belief, PLAINTIFF and other Class Members that were
20 paid on a salary basis and/or otherwise misclassified as exempt were denied all owed overtime
21 wages for all hours worked due to DEFENDANTS' misclassification scheme.

22 75. Based on information and belief, DEFENDANTS failed to pay twice Class
23 Members' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for
24 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in
25 violation of California's overtime laws.

26 76. Based on information and belief, DEFENDANTS further violated California's
27 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
28 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary
compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to

1 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
2 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
3 other Class Members.

4 77. DEFENDANTS' conduct described above is in violation of California Labor Code
5 sections 510 and 1194 and all applicable Wage Orders.

6 78. PLAINTIFF and the Class Members are entitled to recover all unpaid overtime
7 wages, plus attorney's fees and costs, in an amount to be proved.

8 **THIRD CAUSE OF ACTION**

9 **Failure to Provide Meal Periods or Compensation in Lieu Thereof
(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

10 79. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

11 80. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
12 DEFENDANTS were required to provide PLAINTIFF and the Class Members with one 30-minute
13 meal break free from all duties and employer control for all shifts longer than 5 hours, and a second
14 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be
15 waived, but only under the following circumstances: (1) if an employee's total work period in a day
16 is over five (5) hours but no more than six (6) hours, the required meal period may be waived by
17 mutual consent of the employer and employee, and (2) if an employee's total work period in a day
18 is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be
19 waived by mutual consent of the employer and employee, but only if the first meal period was not
20 waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their
21 employees for at least one meal period for shifts over five hours (see above), and (2) to record having
22 done so.

23 81. Employers must pay employees an additional hour of wages at the employees'
24 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
25 meal period, first meal period provided after five (5) hours, second meal period provided after 10
26 hours). Lab. Code § 226.7.

27 82. As explained above, PLAINTIFF and other Class Members were consistently unable
28 to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often being

1 forced to take late meal periods, interrupted meal periods, and/or work through part or all of their
2 meal periods due to understaffing, the nature and constraints of their job duties, and/or commentary
3 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
4 completely.

5 83. Based on information and belief, DEFENDANTS had and continue to have a policy
6 of rounding the start and end times of employees' meal periods and/or automatically deducting thirty
7 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and Class
8 Members did not receive compliant meal periods.

9 84. Moreover, based on information and belief, Class Members did not receive a timely,
10 uninterrupted second meal period when working shifts over ten (10) hours in a workday.

11 85. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
12 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
13 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in
14 violation of California's meal period laws.

15 86. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
16 periods in violation of California law and/or failed to pay the proper meal period premium for failure
17 to incorporate all non-discretionary remuneration including but not limited to, bonuses, shift
18 differential pay and/or other non-discretionary compensation into the regular rate or compensation
19 for purposes of calculating the owed meal period premium.

20 87. As a result, under Labor Code section 226.7, PLAINTIFF and the Class Members
21 are entitled to one additional hour's pay at the employee's regular rate of compensation for each day
22 a meal period was missed, late, interrupted, or otherwise unlawful, plus attorneys' fees and costs,
23 all in an amount to be proved at trial.

24 **FOURTH CAUSE OF ACTION**

25 **Failure to Provide Rest Periods or Compensation in Lieu Thereof (By PLAINTIFF and the Class Members Against all DEFENDANTS)**

26 88. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

27 89. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
28 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours

1 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
2 “insofar as practicable.” In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the
3 California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts
4 from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10
5 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029).
6 The rest period requirement obligates employers to permit and authorize employees to take off-duty
7 rest periods, meaning employers must relieve employees of all duties and relinquish control over
8 how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257.

9 90. If the employer fails to provide any required rest period, the employer must pay the
10 employee one hour of pay at the employee’s regular rate of compensation for each workday the
11 employer did not provide at least one legally required rest period, pursuant to Labor Code section
12 226.7.

13 91. PLAINTIFF and the Class Members did not receive legally compliant, timely 10-
14 minute rest periods for every four (4) hours worked or major fraction thereof. As explained above,
15 any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject to
16 DEFENDANTS’ control due to the nature and constraints of Class Members’ job duties,
17 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Class Members to
18 skip rest periods completely or otherwise take non-compliant rest periods.

19 92. Based on information and belief, DEFENDANTS implemented policies and/or
20 practices that failed to relieve PLAINTIFF and other Class Members of all duties and employer
21 control during rest periods. Based on further information and belief, Class Members were pressured
22 to complete their work duties according to a designated schedule such that rest periods were only
23 taken once tasks were completed, and/or as time permitted.

24 93. As a result, PLAINTIFF and Class Members did not receive legally compliant first,
25 second, or third rest periods as required by California law.

26 94. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
27 period premium to PLAINTIFF and other Class Members for each workday in which there was a
28 missed or otherwise unlawful rest period. Based on further information and belief, when a rest

1 premium was paid, DEFENDANTS failed to include non-discretionary compensation including but
2 not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the
3 regular rate of compensation for purposes of determining the owed rest period premium.

4 95. DEFENDANTS are therefore liable to PLAINTIFF and the Class Members for one
5 hour of additional pay at the regular rate of compensation for each workday that a required rest
6 period was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage
7 Order, plus pre-judgment interest, plus attorneys' fees and costs, all in an amount to be proved at
8 trial.

9 **FIFTH CAUSE OF ACTION**
10 **Failure to Furnish Accurate Itemized Wage Statements**
11 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

12 96. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

13 97. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFF and the Class
14 Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized
15 wage statement accurately stating the following:

16 (1) gross wages earned, (2) total hours worked by the employee,
17 except for any employee whose compensation is solely based on a
18 salary and who is exempt from payment of overtime under
19 subdivision (a) of Section 515 or any applicable order of the Industrial
20 Welfare Commission, (3) the number of piece-rate units earned and
21 any applicable piece rate if the employee is paid on a piece-rate basis,
22 (4) all deductions, provided that all deductions made on written orders
23 of the employee may be aggregated and shown as one item, (5) net
24 wages earned, (6) the inclusive dates of the period for which the
25 employee is paid, (7) the name of the employee and his or her social
26 security number, except that by January 1, 2008, only the last four
27 digits of his or her social security number or an employee
28 identification number other than a social security number may be
shown on the itemized statement, (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.

98. As DEFENDANTS failed to provide PLAINTIFF and other Class Members with
meal and rest periods that complied with Labor Code section 226.7, the wage statements
DEFENDANTS issued to PLAINTIFF and other Class Members failed and continue to fail to
correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the
total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages

1 earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect
2 during the pay period and the corresponding number of hours worked at each hourly rate by the
3 employee, in violation of Labor Code section 226(a)(9).

4 99. Moreover, due to violations detailed above, including but not limited to,
5 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide
6 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
7 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
8 PLAINTIFF and other Class Members with accurate, itemized wage statements that listed the gross
9 and net wages earned and the correct applicable rates of pay for all hours worked. Based on
10 information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
11 compensation earned during the pay period into the regular rate of pay for purposes of calculating
12 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
13 overtime worked by PLAINTIFF and other Class Members. Based on further information and
14 belief, DEFENDANTS violated Labor Code section 226(a), including, but not limited to, Labor
15 Code section 226(a)(9) by failing to list an overtime rate category at all and/or failing to list an
16 accurate overtime rate for failure to incorporate all forms of non-discretionary compensation,
17 including without limitation, bonuses/incentive pay, multiple base rates of pay, shift differential pay
18 and/or other non-discretionary remuneration into the regular rate used to calculate the overtime rate.

19 100. As explained above, wage statements issued by DEFENDANTS failed to list the
20 "total hours worked" by PLAINTIFF and Class Members (by virtue of rounded time entries,
21 automatic deduction for meal periods/failure to relieve Class Members of all duties and employer
22 control during unpaid meal periods, payment according to scheduled hours worked rather than actual
23 hours worked, and/or other off-the-clock work policies and practices all described in greater detail
24 *supra*), which results in a violation of Labor Code section 226(a). Failure to list all hours worked on
25 a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v.*
26 *Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

27 101. Separately, and independent from the above allegations, DEFENDANTS issued
28 wage statements to PLAINTIFF and Class Members that violate Labor Code section 226(a)(8), by

1 failing to list the correct name and/or address of the legal entity that is the employer.

2 102. Based on information and belief, wage statements issued by DEFENDANTS failed
3 to list the inclusive dates of the pay period for which the Class Member is being paid.

4 103. DEFENDANTS' failure to accurately list all hours worked on all wage statements
5 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Class
6 Members over whether they received all wages owed to them.

7 104. As a result, PLAINTIFF and other Class Members have suffered injury as they could
8 not easily determine whether they received all wages owed to them and whether they were paid for
9 all hours worked.

10 105. Moreover, as a result of DEFENDANTS' failure to list the correct name and/or
11 address of the legal entity that is the employer, PLAINTIFF and Class Members have suffered injury
12 as they could not contact their employer regarding any question(s) they had about wages paid.

13 106. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
14 Class Members with accurate, itemized wage statements.

15 107. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Class Members
16 have suffered injury. The absence of accurate information on their wage statements has prevented
17 earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
18 mathematical computations to determine the amount of wages owed, and will cause difficulty and
19 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
20 submission of inaccurate information about wages and amounts deducted from wages to state and
21 federal government agencies. As a result, PLAINTIFF and Class Members are required to
22 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
23 and pay records than if DEFENDANT had complied with its legal obligations.

24 108. Pursuant to California Labor Code section 226(e), PLAINTIFF and Class Members
25 are entitled to recover fifty dollars per employee for the initial pay period in which a Section 226
26 violation occurred and one hundred dollars per employee per violation for each subsequent pay
27 period, not to exceed an aggregate penalty of four thousand dollars per employee.

28 109. Pursuant to California Labor Code § 226(h), PLAINTIFF and Class Members are
26
PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL

1 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
2 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
3 provide currently employed Class Members with inaccurate wage statements in violation of
4 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
5 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
6 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
7 with California Labor Code § 226(a).

8 110. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFF and Class
9 Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable
10 attorneys' fees, and costs of suit.

11 **SIXTH CAUSE OF ACTION**
12 **Failure to Timely Pay All Wages Due Upon Separation of Employment**
13 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

14 111. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

15 112. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
16 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
17 payable immediately."

18 113. California Labor Code section 202(a) provides, in relevant part, that "[i]f an
19 employee not having a written contract for a definite period quits his or her employment, his or her
20 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
21 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
22 to his or her wages at the time of quitting."

23 114. Based in information and belief, DEFENDANTS failed and continue to fail to timely
24 pay final wages to PLAINTIFF and Class Members upon separation of employment in violation of
25 Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF and Class
26 Members do not include all wages owed as they are devoid of, including but not limited to, all owed
27 minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or
28 paid time off wages at the properly accrued rates.

115. Under Labor Code section 203, PLAINTIFF and the Class Members who are no
27
PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL

1 longer employed by DEFENDANTS are entitled to recover waiting time penalties of up to 30 days'
2 pay, plus attorney's fees and costs, in an amount to be proved at trial.

3 **SIXTH CAUSE OF ACTION**

4 **Failure to Provide One Day of Rest For Every Work Week**
5 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

6 116. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

7 117. During the Class Period, DEFENDANTS failed and refused to provide PLAINTIFF
8 and other Class Members with one day of rest for every workweek in violation of, including but not
9 limited to, California Labor Code sections 551 and 552.

10 118. At all times referenced herein, PLAINTIFF and other Class Members were not
11 exempt from the requirements of Labor Code sections 551, 552, and the applicable Industrial
12 Welfare Commission Order.

13 119. California Labor Code section 551 requires that, "[e]very person employed in any
14 occupation of labor is entitled to one day's rest therefrom in seven."

15 120. California Labor Code section 552 further requires that, "[n]o employer of labor shall
16 cause his employees to work more than six days in seven."

17 121. Based on information and belief, DEFENDANTS have a policy and practice of
18 failing to provide one day of rest for every workweek. For example, at times, DEFENDANT
19 required PLAINTIFF to work for seven consecutive days in a workweek, performing more than six
20 (6) hours of work during each consecutive shift.

21 122. As a result of DEFENDANTS' failure to provide PLAINTIFF and the Class
22 Members with one day of rest every workweek, pursuant to California Labor Code section 558,
23 PLAINTIFF and the Class Members are entitled to recover any underpaid wages and a civil penalty
24 of up to \$100 per Class Member for each pay period the violations occurred.

25 **EIGHTH CAUSE OF ACTION**

26 **Failure to Reimburse Business Expenses**
27 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

28 123. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

124. California law requires employers to indemnify their employees for all necessary
expenditures incurred by the employee in direct consequence of the discharge of their duties or of

1 their obedience to the directions of the employer. See Cal. Lab. Code s. 2802 and all applicable
2 Wage Orders section 9(b). Furthermore, “for purposes of [section 2802], the term ‘necessary
3 expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees
4 incurred by the employee enforcing the rights granted by this section.”

5 125. Among other things, under California law, when employees must use their personal
6 cellphones for work-related purposes, the employer must reimburse them for a reasonable
7 percentage of their cell phone bills. See *Cochran v. Schwan’s Home Services, Inc.* (2014) 228
8 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
9 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
10 Id. 1144-1145. California law also requires employers to reimburse employees for automobile
11 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
12 and tear on the vehicle. See *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

13 126. As described above, PLAINTIFF and the Class Members were improperly required
14 to pay for business expenses that are legally the responsibility of the employer.

15 127. DEFENDANTS’ failure to provide PLAINTIFF and the Class Members with full
16 reimbursement for all reasonable expenses associated with carrying out their duties required that
17 PLAINTIFF and the Class Members subsidize and/or carry the burden of business expenses in
18 violation of Labor Code section 2802.

19 128. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and the Class
20 Members have suffered injury in that they were not completely reimbursed as mandated by
21 California law.

22 129. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members
23 are entitled to recover the full amount of reimbursable expenses due, in addition to reasonable
24 attorneys’ fees, and costs of suit.

25 **NINTH CAUSE OF ACTION**

26 **Unfair Competition**

27 **(By PLAINTIFF and the Class Members Against all DEFENDANTS)**

28 130. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

131. DEFENDANTS’ unlawful conduct alleged herein constitutes unfair competition

1 within the meaning of California Business and Professions Code section 17200 *et seq.* This unfair
2 conduct includes all unlawful conduct alleged herein, including but not limited to: DEFENDANTS'
3 failure to pay minimum and overtime wages by virtue of its illegal policies and practices;
4 DEFENDANTS' failure to authorize or permit, or provide, all required meal and rest periods or pay
5 proper premiums in lieu thereof; DEFENDANTS' failure to furnish complete and accurate itemized
6 wage statements; DEFENDANTS' failure to provide one day of rest for each workweek;
7 DEFENDANTS' failure to reimburse business expenses; DEFENDANTS' failure to timely pay all
8 wages owed upon separation of employment; and DEFENDANTS' failure to provide paid sick leave
9 (or paid time off in lieu thereof) at the properly accrued rates (due to, including but not limited to,
10 DEFENDANTS' failure to incorporate all non-discretionary compensation into the sick pay
11 calculation and failure to base the accrued sick leave on the correct number of hours worked as a
12 result of DEFENDANTS' time-rounding/auto deduction policies and practices, payment according
13 to scheduled hours worked and/or other off-the-clock work policies and practices).

14 132. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
15 California Labor Code, DEFENDANTS have gained a competitive advantage over other
16 comparable companies doing business in the State of California that comply with their obligations
17 to authorize or permit rest periods and meal periods or pay proper meal and rest period premiums
18 in lieu thereof, to properly accrue and pay sick time benefits, to provide complete and accurate
19 itemized wage statements, to provide one day of rest for each workweek, to reimburse employees
20 for all business expenses, to pay all owed minimum and overtime wages and to pay all wages due
21 upon separation of employment of their employees.

22 133. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFF
23 and Class Members have suffered injury in fact and lost money or property, as described in more
24 detail above. Pursuant to California Business and Professions Code section 17200, *et seq.*,
25 PLAINTIFF and Class Members are entitled to restitution of all wages and other monies rightfully
26 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of their
27 unlawful and unfair business practices.

28 134. PLAINTIFF also seeks an injunction against DEFENDANTS on behalf of the Class
30
PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL

1 Members, enjoining DEFENDANTS and any and all persons acting in concert with them from
2 engaging in each of the unlawful practices and policies set forth herein.

3 135. PLAINTIFF also seeks an award of attorney's fees pursuant to Code Civ. Proc
4 Section 1021.5 and as permitted by law, and an award for costs reasonably incurred, as permitted
5 by law.

6 **TENTH CAUSE OF ACTION**

7 **Violation of the Private Attorneys General Act of 2004**

8 **(By PLAINTIFF and the Aggrieved Employees Against All DEFENDANTS)**

9 136. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

10 137. PLAINTIFF brings this action under the Private Attorneys General Act of 2004,
11 Labor Code sections 2698, et seq., ("PAGA"), as a representative action on behalf of PLAINTIFF,
12 the State of California and Aggrieved Employees, regarding violations of the California Labor Code
as set forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

13 All current and former non-exempt employees that worked either
14 directly or via a staffing agency for any one or more of the
15 DEFENDANTS at any location in California at any time from one
16 year plus 65 days from the filing of the initial Complaint through the
17 present ("PAGA Period").

18 138. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
19 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
20 limitations period and suffered one or more of the Labor Code violations set forth herein.
21 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California and all Aggrieved
22 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
23 PLAINTIFF has standing to bring a PAGA cause of action on behalf of PLAINTIFF, the State of
24 California, and all Aggrieved Employees, as PLAINTIFF was jointly employed by DEFENDANTS
25 and is thereby affected by one or more of the alleged violations. See *Huff v. Securitas Security*
26 *Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties
27 for all known violations committed by the employer - regardless of whether Plaintiff experienced
28 all violations personally. *Id.* at 760-761.

1 **COMPLIANCE WITH PAGA'S NOTIFICATION REQUIREMENTS**

2 139. On January 3, 2023, PLAINTIFF, through counsel, gave written notice by online
3 filing with the California Labor and Workforce Development Agency ("LWDA") informing it that
4 DEFENDANTS failed to comply with California's labor laws with regard to the allegations alleged
5 in this Complaint ("PAGA Notice").

6 140. The LWDA did not provide notice of its intention to investigate DEFENDANTS'
7 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
8 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
9 Accordingly, PLAINTIFF has exhausted the administrative remedies as required by Labor Code
10 section 2699.3. Consequently, PLAINTIFF's right to file the instant lawsuit against DEFENDANTS
11 has duly accrued.

12 141. PLAINTIFF seeks to recover the PAGA civil penalties through a representative
13 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
14 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

15 142. From one year prior to PLAINTIFF's filing of the required PAGA notice with the
16 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated California
17 Labor Code sections, 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 432, 432.5, 432.7, 510,
18 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all
19 applicable Wage Orders.

20 143. As set forth above, DEFENDANTS have committed numerous violations of the
21 California Labor Code due to including but not limited to their failure to pay all owed minimum
22 wages and all owed overtime wages, failure to provide lawful meal and rest periods or compensation
23 in lieu thereof, failure to provide accurate wage statements, failure to reimburse business expenses,
24 and failure to pay all wages owed upon separation of employment as alleged above. PAGA penalties
25 are in addition to any other relief available under the Labor Code.

26 144. Additionally, DEFENDANTS have violated the following Labor Code sections and
27 provisions of the applicable Wage Order as to the PLAINTIFF and other Aggrieved Employees.

28 **Failure to Keep Accurate Records**

1 145. California Labor Code § 1174 requires employers to keep “accurate and complete”
2 payroll records showing, among other things, the hours worked daily by all non-exempt employees.
3 All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the
4 times during which all owed meal periods were provided each day.

5 146. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate
6 and complete records as required by law, including but not limited to the following records: total
7 daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other
8 Aggrieved Employees began and ended each work period, time records of meal periods, and
9 accurate itemized wage statements.

10 147. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
11 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
12 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
13 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
14 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
15 period during which the referenced statutes and Wage Order provisions were violated.²

16 **Failure to Produce Records in Violation of Labor Code §§ 226(b)-(c), 1198.5, and 432**

17 148. Time and Pay Records: Labor Code section 226 and all applicable IWC Wage
18 Orders, section 7 require that employers keep the following information on file for each employee
19 for a minimum of three years: The employee’s dates of employment; the employee’s hourly rates
20 and the corresponding number of hours worked by the employee at each hourly rate, when the
21 employee begins and ends each work period (including meal periods) and split intervals; total hours
22 worked by the employee; all deductions; gross wages earned; and net wages earned.

23 149. Section (b) of Labor Code section 226 further requires employers to “afford current
24 and former employees the right to inspect or receive a copy of records pertaining to their

25 ² Labor Code § 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Labor
26 Code § 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the
27 employee was underpaid”); All applicable wage orders, § 20 (establishing that “[i]n addition to any other civil
28 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid”) (emphasis added).

1 employment upon reasonable request to the employer.” Section (c) of Labor Code section 226
2 provides that, “an employer who receives a written or oral request to inspect or receive a copy of
3 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
4 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A
5 violation of this subdivision is an infraction.” An employer’s failure to comply within this timeframe
6 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from
7 the employer. Lab. Code section 226(f).

8 150. Personnel Records. In addition to their right to time and pay records, employees, and
9 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
10 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code
11 section 432 further specifies that employers must furnish copies of all employment records bearing
12 the employee’s signature. Labor Code section 1198.5 also requires that the file be made available
13 for inspection or receipt within a “reasonable” amount of time, but “not later than 30 calendar days
14 from the date the employer receives a written request.” An employer’s failure to comply within this
15 timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar
16 (\$750) penalty from the employer. Lab. Code section 1198.5(k).

17 151. Based on information and belief, DEFENDANTS fail to timely produce or make
18 available Aggrieved Employees’ personnel records and/or payroll records when requested pursuant
19 to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations subject
20 DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

21 **Statutory Wage Violations**

22 152. California Labor Code section 223 makes it unlawful for an employer to secretly pay
23 wages lower than required by statute while purporting to pay legal wages. As described above,
24 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
25 earned minimum and overtime compensation for all hours worked which resulted in the payment of
26 less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of
27 statutory wages, including, but not limited to, minimum and overtime wages, to which they were
28 entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other Aggrieved

1 Employees lower wages than those they were entitled to while purporting that PLAINTIFF and
2 other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other Aggrieved
3 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
4 Labor Code § 2699(f)-(g).

5 **Refusal to Make Payment**

6 153. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
7 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
8 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
9 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
10 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
11 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
12 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
13 each Aggrieved Employee, for each pay period during which the statute provisions were violated.³

14 **Standard Conditions of Labor Violations**

15 154. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
16 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
17 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
18 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
19 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
20 seating, and minimum/overtime wages result in separate violations of sections 1198 and 1199, which
21 subject DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

22 **Seating Violations**

23 155. Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be
24 provided with suitable seats when the nature of the work reasonably permits the use of seats and
25 when they are not actively engaged in the work duties that would not permit them to be seated.

26
27 ³ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

1 156. All applicable IWC Wage Orders, Section 14(A-B) provides:

2 (A) All working employees shall be provided with suitable seats when the nature of the
3 work reasonably permits the use of seats.

4 (B) When employees are not engaged in the active duties of their employment and the
5 nature of the work requires standing, an adequate number of suitable seats shall be placed in
6 reasonable proximity to the work area and employees shall be permitted to use such seats when it
7 does not interfere with the performance of their duties.

8 157. Suitable seating is one of the worker protections covered by California's Wage
9 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly
10 construed to effectuate the goal of protecting the comfort and welfare of employees. Brinker
11 Restaurant Corp. v. Superior Court, 53 Cal.4th 1004, 1027 (2012).

12 158. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF and
13 other Aggrieved Employees with suitable seating, and when such employees were not engaged in
14 duties which required them to stand, no seating was placed in reasonable proximity to their
15 workstations.

16 159. Moreover, based on information and belief, the nature of the work reasonably
17 permitted the use of seats for at least part of the time that Aggrieved Employees were working.
18 Lastly, there were periods of time when Aggrieved Employees were not engaged in active duties of
19 their employment, yet there were no suitable seats in reasonable proximity to the work area and use
20 of seats would not interfere with the performance of their duties.

21 160. The Aggrieved Employees worked in various positions. The nature of PLAINTIFF's
22 and other Aggrieved Employees' work reasonably permitted the use of seats. However,
23 DEFENDANTS failed to provide suitable seating in reasonable proximity to Aggrieved Employees'
24 work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections
25 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and
26 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each
27 Aggrieved Employee, results in a separate civil penalty.

28 **Sick Leave Violations**

1 161. DEFENDANTS violated California's paid sick leave laws including, Labor Code
2 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
3 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
4 DEFENDANTS' failure to account for actual hours worked (as explained above), and/or failure to
5 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but
6 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
7 compensation into the sick leave pay rate calculation.

8 162. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
9 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
10 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
11 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
12 Aggrieved Employees' intelligent exercise of their paid sick leave.

13 163. But for this failure, PLAINTIFF and other Aggrieved Employees would have used
14 their paid sick leave at least prior to their respective separations, for as on several occasions
15 thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate
16 compensation.

17 164. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
18 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
19 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
20 were entitled to the maximum number of hours accruable.

21 165. Upon information and belief, DEFENDANTS failed and continue to fail to comply
22 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with
23 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
24 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
25 wages.

26 166. These practices violated California's sick leave laws, Labor Code section 245, *et seq.*

27 167. On information and belief, PLAINTIFF alleges that all of these practices were
28 experienced and continue to be experienced by other Aggrieved Employees.

1 168. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the
2 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and
3 seeks injunctive relief, attorney's fees, declaratory relief, and penalties as permitted by law.

4 **Failure To Provide Supplemental Paid Sick Leave**

5 169. Labor Code § 248.2 provides that all employers with 26 or more employees are
6 required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental
7 Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related.
8 DEFENDANTS violated Labor Code § 248.2 by not providing PLAINTIFF and other Aggrieved
9 Employees with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information
10 and belief, DEFENDANTS failed to provide Supplemental Paid Sick Leave in 2022 in violation of
11 Labor Code section 248.6.

12 **Failure to Pay Vested Vacation/Paid Time Off**

13 170. California Labor Code section 227.3 provides that when an employer policy provides
14 for paid vacations and/or paid time off, and an employee is terminated without having taken off his,
15 her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the
16 employee's final rate in accordance with such contract of employment or employer policy respecting
17 eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time
18 off upon termination.

19 171. Based on information and belief, DEFENDANTS had and continue to have a
20 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
21 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
22 to Aggrieved Employees upon separation of employment, in violation of California law, including
23 but not limited to, Labor Code section 227.3.

24 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

25 172. *Unlawful Agreements.* Labor Code section 432.5 provides that "no employer...shall
26 require any employee or applicant for employment to agree, in writing, to any term or condition
27 which is known by such employer...to be prohibited by law." DEFENDANTS required and
28 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful

1 conditions of employment including but not limited to unlawful criminal and/or financial checks as
2 a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

3 173. The California Labor Code places certain procedural and substantive limits on an
4 employers' ability to conduct employee background checks and on how employers can use the
5 information they obtain through those background checks. Labor Code section 1024.5 states that
6 employers, except for financial institutions, may order a credit check only if the individual works
7 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
8 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
9 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
10 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
11 background check, including but not limited to identifying an appropriate reason for the background
12 check, a separate consent form with required disclosures and certain formatting requirements,
13 additional forms such as a summary of rights, a way by which to request a copy of the report, as
14 well as proper notice of adverse actions taken, among other statutory requirements.

15 174. Based on information and belief, DEFENDANTS ordered unlawful financial credit
16 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required them to
17 provide ongoing written consent to the unlawful credit checks as a condition of employment, in
18 violation of California and Federal law, which results in a violation of Labor Code section 432.5.

19 175. Based on information and belief, DEFENDANTS required Aggrieved Employees to
20 submit and/or agree to submit in writing to unlawful criminal background checks as a condition of
21 obtaining and/or holding employment in violation of the ICRAA and the FCRA as alleged above.

22 176. Based on further information and belief, DEFENDANTS required Aggrieved
23 Employees to agree in writing to provide DEFENDANTS with ongoing consent to conduct
24 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
25 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
26 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

27 177. Based on further information and belief, DEFENDANTS knew that requiring
28 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a

1 condition of obtaining and/or holding employment was unlawful.

2 178. By requiring that Aggrieved Employees sign off on the illegal background and/or
3 financial checks, DEFENDANTS violated Labor Code section 432.5.

4 Unlawful Inquires into Criminal History

5 179. Labor Code section 432.7 prohibits an employer from asking applicants about past
6 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
7 information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in
8 convictions on its employment application, in violation of California law.

9 180. Upon information and belief, DEFENDANTS, in violation of California law,
10 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
11 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
12 employment and/or otherwise impermissibly inquired into criminal history on its employment
13 application in violation of California law.

14 181. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
15 Code section 432.7. By asking about convictions at the application phase or prior to extending an
16 employment offer, DEFENDANTS violated California’s Fair Chance Act, and thereby violated
17 Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to
18 disclose arrests and/or convictions as a condition of employment.

19 **Failure to Provide a Safe and Healthful Workplace.**

20 182. Pursuant to California Labor Code sections 6400-6404 and 6406-6407 of the
21 California Occupational Safety and Health Act (“Cal OSHA”), employers must maintain a safe and
22 healthful place of employment. Specifically, Labor Code section 6400, requires the following:

23 183. (a) Every employer shall furnish employment and a place of employment that is safe
24 and healthful for the employees therein...

25 184. Labor Code section 6401 provides as follows:

26 185. Every employer shall furnish and use safety devices and safeguards, and shall adopt
27 and use practices, means, methods, operations, and processes which are reasonably adequate to
28 render such employment and place of employment safe and healthful. Every employer shall do every

1 other thing reasonably necessary to protect the life, safety, and health of employees.

2 186. Labor Code section 6402 prohibits the following:

3 187. No employer shall require, or permit any employee to go or be in any employment
4 or place of employment which is not safe and healthful.

5 188. Similarly, Labor Code section 6404 provides as follows:

6 189. No employer shall occupy or maintain any place of employment that is not safe and
7 healthful.

8 190. In addition to the above, Labor Code section 6403 requires that employees provide
9 safety devices to its employees. Labor Code section 6403 states:

10 191. No employer shall fail or neglect to do any of the following:

11 192. (a) To provide and use safety devices and safeguards reasonably adequate to render
12 the employment and place of employment safe.

13 193. (b) To adopt and use methods and processes reasonably adequate to render the
14 employment and place of employment safe.

15 194. (c) To do every other thing reasonably necessary to protect the life, safety, and health
16 of employees.

17 195. Similarly, Labor Code section 6406(d) states the following:

18 196. No person shall do any of the following ... (d) Fail or neglect to do every other thing
19 reasonably necessary to protect the life, safety, and health of employees.

20 197. Finally, Labor Code section 6407 provides:

21 198. Every employer and every employee shall comply with occupational safety and
22 health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations,
23 and orders pursuant to this division which are applicable to his own actions and conduct.

24 199. Moreover, Labor Code section 6409.6 sets forth the actions an employer (or
25 representative of employer) must take within one business day of receiving notice of potential
26 exposure to COVID-19, including but not limited to employee-notice and reporting requirements.

27 200. At all relevant times, DEFENDANTS employed PLAINTIFF and Aggrieved
28 Employees subject to Labor Code sections 6400-6404, 6406, and 6407. At all relevant times,

1 DEFENDANTS had and have a policy and practice of failing to furnish and use safety devices and
2 safeguards and of failing to adopt and use practices, means, methods, operations, and/or processes
3 which are reasonably adequate to render such employment and place of employment safe and
4 healthful, pursuant to, including but not limited to, Labor Code section 6401. At all relevant times
5 DEFENDANTS had and have a policy and practice of requiring or permitting employees to go or
6 be in in any employment or place of employment which is not safe and healthful, pursuant to Labor
7 Code section 6402. At all relevant times, DEFENDANTS had and have a policy and practice of
8 failing or neglecting to: provide and use safety devices and safeguards reasonably adequate to render
9 the employment and place of employment safe; adopt and use methods and processes reasonably
10 adequate to render the employment and place of employment safe; and do every other thing
11 reasonably necessary to protect the life, safety, and health of employees, pursuant to Labor Code
12 section 6403.

13 201. PLAINTIFF is informed and believes and thereon alleges that these failures include,
14 without limitation, failing to disinfect time clocks and other surfaces after use by PLAINTIFF and/or
15 other Aggrieved Employees; failing to provide adequate protection equipment (e.g., face masks) to
16 PLAINTIFF, other Aggrieved Employees; and failing to provide adequate distance in working
17 conditions between PLAINTIFF and/or other Aggrieved Employees.

18 202. At all relevant times, DEFENDANTS had a policy and practice of failing to give
19 sufficient, adequate and proper notice to PLAINTIFF and/or other Aggrieved Employees of the
20 COVID-19 exposure within one business day of receiving notice of potential COVID-19 workplace
21 exposure from a qualifying individual as required by Labor Code section 6409.6. PLAINTIFF is
22 informed and believes that numerous employees contracted COVID-19 during the relevant time
23 periods, but that DEFENDANTS failed to provide notice to employees. Based on further
24 information and belief, DEFENDANTS do not or did not keep adequate records of written
25 notifications required in subdivision (a) for a period of at least three years.

26 203. At all relevant times, DEFENDANTS had and have a policy and practice of failing
27 within one business day after DEFENDANTS or a representative of DEFENDANTS received notice
28 of potential exposure to COVID-19 to provide⁴² written notice to PLAINTIFF, other Aggrieved

1 Employees and/or their exclusive representatives, who were on the premises at the same worksite
2 as a qualifying individual who was within the infectious period that they may have been exposed to
3 COVID-19. Based on further information and belief, DEFENDANTS had and have a policy and
4 practice of failing within one business day after DEFENDANTS or a representative of EMLOYER
5 received a notice of potential exposure to COVID-19 to provide PLAINTIFF and other Aggrieved
6 Employees who were on the premises at the same worksite as the qualifying individual within the
7 infectious period and the exclusive representative, if any, with information regarding COVID-19-
8 related benefits to which the employee may be entitled under applicable federal, state or local laws,
9 including but not limited to, workers' compensation, and options for exposed employees, including
10 COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or
11 negotiated leave provisions, as well as antiretaliation and antidiscrimination protections of the
12 employee. As such, DEFENDANTS violated, without limitation, Labor Code sections 6409.6 and
13 6432.

14 204. At all relevant times, DEFENDANTS had and have a policy and practice of failing
15 within one business day after DEFENDANTS or a representative of DEFENDANTS received a
16 notice of potential exposure to COVID-19 to notify PLAINTIFF and other Aggrieved Employees
17 who were on the premises at the same worksite as the qualifying individual within the infectious
18 period, and the employers of the subcontracted employees who were on the premises at the same
19 worksite as the qualifying individual within the infectious period and the exclusive representative,
20 if any, of the cleaning and disinfection plan that the employer is implementing per the guidelines of
21 the federal Centers for Disease Control and Prevention and the COVID-19 prevention program per
22 the CAL-OSHA COVID-19 Emergency Temporary Standards. As such, DEFENDANTS violated,
23 without limitation, Labor Code sections 6409.6 and 6432.

24 205. At all relevant times, DEFENDANTS had and have a policy and practice of failing
25 to notify the local public health agency in the jurisdiction of the worksite of the names, number,
26 occupation and worksite of employees who had a laboratory-confirmed case of COVID-19, as
27 defined by the State Department of Public Health; a positive COVID-19 diagnosis from a licensed
28 health care provider; a COVID-19 related order⁴³ to isolate provided by a public health official; or

1 died due to COVID-19, in the determination of a county public health department or per inclusion
2 in the COVID-19 statistics of a county. As such, DEFENDANTS violated, without limitation,
3 Labor Code sections 6409.6 and 6432.

4 206. PLAINTIFF is informed and believes , and based thereon alleges that
5 DEFENDANTS violated California Code of Regulations, title 8, sections 1527, 3366, 3457, and
6 8397.4 by failing to provide adequate and readily accessible sanitation facilities; a regular schedule
7 for servicing, cleaning, and supplying each facility to ensure it is maintained in a clean, sanitary and
8 serviceable condition; an adequate supply of suitable cleansing agents, water, single-use towels or
9 blowers; and a sufficient number of toilets to be used.

10 207. PLAINTIFF is informed and believes and based thereon alleges that DEFENDANTS
11 violated the Labor Code sections described herein, including without limitation, for failure to:
12 furnish and use safety devices and safeguards; give sufficient, adequate and proper notice to
13 employees of COVID-19 exposures, to provide written notice to PLAINTIFF and/or other
14 Aggrieved Employees, who were on the premises at the same worksite as a qualifying individual
15 who was within the infectious period that they may have been exposed to COVID-19 pursuant to
16 California and local laws.

17 208. Based on information and belief, DEFENDANTS failed to protect Aggrieved
18 Employees from exposure to COVID-19 due to, including but not limited to, failing to
19 maintain/update DEFENDANTS' workplace safety plans and/or procedures to properly address
20 hazards related to the COVID-19 virus.

21 209. As such, DEFENDANTS failed to comply with the occupational safety and health
22 standards, failed to do everything reasonably necessary to protect the health and safety of
23 employees, failed to maintain a safe and healthful workplace, and failed to provide the safety devices
24 necessary to maintain a safe and healthful workplace.

25 210. As a result of DEFENDANTS' acts and omissions, DEFENDANTS violated Labor
26 Code section 6400-6404, 6406-6407, and 6409.6 as to PLAINTIFF and Aggrieved Employees and
27 is subject to civil penalties.

28 211. Under the provisions of PAGA⁴⁴ and the above mentioned Labor Code sections,
PLAINTIFF'S FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT AND DEMAND
FOR JURY TRIAL

1 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
2 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1194, 1197,
3 1197.1, 1198, 1199, 2699, 2699.3, 2802, 2810.5, 6400-6404, 6406-6407, 6409.6, 6432, and all
4 applicable Wage Orders as well as all interpretations of these laws by California Courts and
5 administrative bodies, as well as any other law that is enforceable through PAGA, DEFENDANTS
6 are liable for the following penalties:

- 7 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
8 relevant California Labor Code provisions listed herein only if permitted by the
9 PAGA statute, pursuant to Labor Code section 2699(a); and
- 10 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
11 violations without a civil penalty recoverable under the PAGA, all in the default
12 amounts provided by Labor Code section 2699(f).
- 13 c. The proper measure of penalties under PAGA is the number of violations,
14 whether those violations were committed as against PLAINTIFF or any
15 Aggrieved Employee, whether a party to this action or not.

16 212. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
17 PLAINTIFF is entitled to recover civil penalties, costs, and attorney's fees.

18 **PRAYER FOR RELIEF**

19
20 WHEREFORE, PLAINTIFF prays for relief and judgment, on behalf of PLAINTIFF and
21 Class Members and Aggrieved Employees as follows:

- 22 1. For an order that the action be certified as a class action;
- 23 2. For an order that PLAINTIFF be appointed as class representative;
- 24 3. For an order that counsel for PLAINTIFF be appointed as class counsel;
- 25 4. For compensatory damages according to proof;
- 26 5. For liquidated damages according to proof;
- 27 6. For penalties according to proof;
- 28 7. For an order requiring DEFENDANTS⁴⁵ to make restitution of all amounts wrongfully

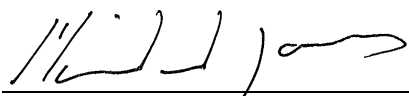
- 1 withheld from PLAINTIFF and the Class Members;
- 2 8. For an order finding DEFENDANTS have engaged in unfair competition in violation of
- 3 section 17200, *et seq.*, of the California Business and Professions Code;
- 4 9. For an order enjoining DEFENDANTS from further acts of unfair competition;
- 5 10. For pre-judgment interest as permitted by law;
- 6 11. For attorney's fees and costs reasonably incurred;
- 7 12. For civil penalties under Labor Code Section 2699 (75% payable to the LWDA and 25%
- 8 payable to Aggrieved Employees); and
- 9 13. For such other and further relief that the Court deems just and proper.

10

11 Dated: November 16, 2023

CROSNER LEGAL, PC

12

13 By: 

14 Jamie Serb, Esq.
Michael W. Jones, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiff

15

16

17 **DEMAND FOR JURY TRIAL**

18 PLAINTIFF demands a trial by jury on all claims so triable.

19

20 Dated: November 16, 2023

CROSNER LEGAL, PC

21

22 By: 

23 Jamie Serb, Esq.
Michael W. Jones, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiff

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PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 9440 Santa Monica Blvd., Ste. 301, Beverly Hills, CA 90210.

On November 20, 2023, I served true copies of the following document(s) described as

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

on the interested parties in this action as follows:

☒ BY ELECTRONIC TRANSMISSION. Pursuant to the Court's Order re Electronic Service, I caused the documents described above to be E-Served through Case Anywhere by electronically mailing a true and correct copy through Case Anywhere to the addressee(s) listed

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Attorney for Defendants
WOOLTARI USA, INC.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on November 20, 2023, at Los Angeles, California.



Maria Monterrey