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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

ANDREA OTANEZ VERDUGO, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

CAPSTONE LOGISTICS, LLC, a Delaware
limited liability company with its principal place
of business in Georgia, and DOES 1 to 100,
inclusive

Defendants.

) Case No. 2:22-cv-03141 FMO (Ex)

)
)
) **EXHIBIT IN SUPPORT OF**
) **PLAINTIFF'S MOTION FOR LEAVE**
) **TO AMEND PLAINTIFF'S**
) **COMPLAINT**

Exhibit A

POTTER HANDY LLP

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CAPSTONE LOGISTICS, LLC, a Delaware
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Defendants.

CASE NO: 2:22-cv-03141-FMO (Ex)

FIRST AMENDED CLASS ACTION AND
REPRESENTATIVE ACTION COMPLAINT
FOR

(1) FAILURE TO PROVIDE MEAL
PERIODS AND PAY MISSED MEAL
PERIOD PREMIUMS (LABOR CODE §§
226.7, 512, AND WAGE ORDER NO. 9);

(2) FAILURE TO PROVIDE REST PERIODS
AND PAY MISSED REST PERIOD PREMIUMS
(LABOR CODE § 226.7 AND WAGE ORDER
NO. 9);

(3) FAILURE TO PAY ALL WAGES OWED
(LABOR CODE §§ 1194, 1194.2, 1198, AND
WAGE ORDER NO. 9);

(4) FAILURE TO PAY ALL OVERTIME
WAGES OWED (LABOR CODE §§ 510,
1194, 1194.2, 1198, AND WAGE ORDER NO.
9);

(5) FAILURE TO PROVIDE ACCURATE
WAGE STATEMENTS (LABOR CODE §
226 AND 226.3);

(6) FAILURE TO PAY ALL WAGES OWED
IN A TIMELY MANNER (LABOR CODE
§204);

(7) WAITING TIME PENALTIES (LABOR
CODE § 201 – 203);

(8) UNLAWFUL DEDUCTIONS (LABOR
CODE §§ 218, 218.5, 218.6, 221, 222, 222.5,
223, 224, 225, AND 225.5);

(9) FAILURE TO KEEP REQUISITE
PAYROLL RECORDS (LABOR CODE §

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PLAINTIFF'S FIRST AMENDED COMPLAINT

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1174(d);
(10) FAILURE TO REIMBURSE NECESSARY
BUSINESS EXPENSES (LABOR CODE §§ 2800
AND 2802;
(11) UNFAIR COMPETITION IN
VIOLATION OF CALIFORNIA BUSINESS
& PROFESSIONS CODE §17200, et seq.; AND
(12) VIOLATION OF THE CALIFORNIA
LABOR CODE PRIVATE ATTORNEYS'
GENERAL ACT OF 2004, LABOR CODE §
2698, et seq.

DEMAND FOR JURY TRIAL

Plaintiff Andrea Otanez Verdugo ("Plaintiff"), on behalf of herself, the State of California, and all others similarly situated (hereinafter "Class Members") and aggrieved employees pursuant to the California Private Attorneys' General Act of 2004 ("PAGA"), complains and alleges as follows:

OVERVIEW OF CLAIMS

1. Plaintiff brings this action on behalf of herself and all others similarly situated and aggrieved employees pursuant to PAGA as a class action and representative action on behalf of the California general public, against Defendants Capstone Logistics, LLC ("Defendant") and DOES 1 to 100 (collectively "Defendants") for their (1) failure to provide Plaintiff and her fellow employees meal periods and pay missed meal period premiums; (2) failure to provide Plaintiff and her fellow employees rest periods and pay missed rest period premiums; (3) failure to pay Plaintiff and her fellow employees for all hours worked; (4) failure to pay Plaintiff and her fellow employees for overtime wages; (5) failure to provide accurate wage statements to Plaintiff and her fellow employees within the four years prior to the filing of this Complaint; (6) failure to pay Plaintiff and her fellow employees all wages owed in a timely manner; (7) failure to pay all wages due to Plaintiff and other former employees based on the foregoing; (8) unlawful deductions from wages; (9) failure to maintain the requisite payroll records; (10) failure to reimburse employees for necessary business expenses; and (11) unfair business practices based on the foregoing. As a result of the foregoing, Defendants have violated California statutory laws as described below.

2. The Class Period shall be August 1, 2019, through the Effective Date. The Effective
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PLAINTIFF'S FIRST AMENDED COMPLAINT

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1 Date shall be either September 29, 2022, or the date of approval of the Parties' Settlement,
2 whichever occurs later.

3 VENUE

4 3. Venue is proper in this Court under 28 U.S.C. § 1391(b). Many, if not all, of the
5 putative Class Members and aggrieved employees were employed and/or performed work during
6 the Class Period by Defendants in Los Angeles County, which is in the Central District of
7 California. Many of the acts alleged herein including Defendant's failure to provide Labor Code
8 compliant paid meal and rest periods and pay missed meal and rest period premiums, occurred in
9 Los Angeles County. Venue is therefore proper in the U.S. District Court for the Central District
10 of California.

11 JURISDICTION

12 4. Defendants are within the jurisdiction of this Court. Defendants transact millions of
13 dollars as providers of supply chain solutions throughout the country, operating in more than 550
14 locations, including in the State of California and the County of Los Angeles. Thus, Defendants
15 have obtained the benefits of the laws of the State of California.

16 5. Further, this Court has subject-matter jurisdiction and removal jurisdiction pursuant
17 to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §§ 1332(d)(2), 1441(a), 1446, and
18 1453. This Court has original subject-matter jurisdiction over this action under CAFA because (i)
19 the alleged amount in controversy exceeds \$5,000,000, exclusive of interest and costs; (ii) this
20 matter is a purported class action in which a class member is a citizen of a State different from that
21 of a Defendant; and (iii) the number of putative class members is greater than 100.

22 THE PARTIES

23 A. The Plaintiff

24 6. Plaintiff is a California resident and, from October to December 2020, was
25 employed by Defendants as a lump sum assigned in Venice, California. At all relevant times,
26 Plaintiff was hired to provide services for Defendants. At all relevant times through the present,
27 and on-going, Defendants' employees, including Plaintiff during her and their employment, were,

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PLAINTIFF'S FIRST AMENDED COMPLAINT

Deleted: The "Class Period" is designated as the period from four years prior to the filing of this Complaint through the trial date. Defendants' violations of California's wage and hour laws and unfair competition laws, as described more fully below, have been ongoing throughout the Class Period.¶

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Deleted: section 395.5 of the California Code of Civil Procedure.

Deleted: Los Angeles County

Deleted: In addition, Plaintiff asserts no claims arising under federal law. Rather, Plaintiff brings causes of action based solely on, and arising from, California law. The claims of the Class are also based solely on California law described herein... Further, this <#>Further, this action is not amenable to federal jurisdiction pursuant to 28 U.S.C. §1332, as (1) more than two-thirds of the members of the Class as defined below are citizens of the state of California,(2) the defendants from whom significant relief is sought (Capstone Logistics, LLC), whose alleged conduct forms a significant basis for the claims asserted by the Class, does business in the state of California, and (3) the principal injuries resulting from the conduct alleged herein incurred in the state of California.¶

Deleted: <#>Further, this action is not amenable to federal jurisdiction pursuant to 28 U.S.C. §1332, as (1) more than two-thirds of the members of the Class as defined below are citizens of the state of California,(2) the defendants from whom significant relief is sought (Capstone Logistics, LLC), whose alleged conduct forms a significant basis for the claims asserted by the Class, does business in the state of California, and (3) the principal injuries resulting from the conduct alleged herein incurred in the state of California.¶

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1 inter alia, not provided timely duty free meal and rest breaks or paid missed meal and rest break
2 premiums; were not provided accurate and/or complete wage statements; were not paid all wages
3 owed within seven days of the close of payroll; and did not receive all of their wages due upon
4 termination of employment.

5 7. Plaintiff seeks to represent the following classes:

6 (a) The Non-Exempt Settlement Class shall consist of all current and former employees
7 who worked for Capstone within the State of California in a non-exempt position at
8 any time during the Class Period.

9 (a) The Waiting Time Settlement Class shall consist of all non-exempt former
10 employees who worked for Capstone within the State of California during the Class
11 Period but were no longer employed at the Effective Date.

12 (collectively referred to as "Class Members" and/or the "Class");

13 **B. The Defendants**

14 8. Defendant Capstone Logistics, LLC is a Delaware limited liability company
15 headquartered in Peachtree Corners, Georgia. Defendant is a provider of supply chain solutions
16 throughout the country, operating in more than 550 locations, including in the State of California.
17 To provide its services, Defendant employs lumpers, such as the Plaintiff and the Class Members
18 and aggrieved employees.

19 9. The true names and capacities, whether individual, corporate, associate, or
20 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
21 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure §
22 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
23 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
24 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
25 capacities of the Defendants designated hereinafter as DOES when such identities become known.

26 10. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
27 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
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PLAINTIFF'S FIRST AMENDED COMPLAINT

Deleted: all individuals who are or were employed by Defendant or its predecessor or merged entities in California as hourly, non-exempt employees, who were not provided with meal periods during the Class Period ("meal period class members");
<#>all individuals who are or were employed by Defendant or its predecessor or merged entities in California as hourly, non-exempt employees, who were not paid their final wages upon the end of their employments with Defendants during the Class Period ("waiting time class members"); and
<#>all individuals who are or were employed by Defendant, or its predecessor or merged entities in California as hourly, non-exempt employees during the Class Period ("wage statement class members").

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1 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
2 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
3 employer and/or joint employer of Plaintiff and the Class Members.

4 11. California courts have recognized that the definition of “employer” for purposes of
5 enforcement of the California Labor Code goes beyond the concept of traditional employment to
6 reach irregular working arrangements for the purpose of preventing evasion and subterfuge of
7 California’s labor laws. *Martinez v. Combs* (2010) 49 Cal. 4th 35, 65. As such, anyone who
8 directly or indirectly, or through an agent or any other person, engages, suffers, or permits any
9 person to work or exercises control over the wages, hours, or working conditions of any person,
10 may be liable for violations of the California Labor Code as to that person. Cal. Labor Code §§558
11 and 558.1.

12 12. California law also permits and recognizes the piercing of a corporate veil between
13 sister companies and under the single enterprise rule. *Hasso v. Hapke* (2014) 227 Cal. App. 4th
14 107, 155; *Greenspan v. LADT, LLC* (2010) 191 Cal. App. 4th 486, 512. The single enterprise rule
15 applies where “there are two or more personalities, there is but one enterprise; and that this
16 enterprise has been so handled that it should respond, as a whole, for the debts of certain
17 component elements of it.” *Hasso* 227 Cal. App. 4th at 155; *Greenspan*, 191 Cal. App. 4th at 512.

18 **FACTUAL ALLEGATIONS**

19 13. Plaintiff and the Class Members and aggrieved employees are and were employed
20 by Capstone Logistics, LLC, a provider of supply chain solutions throughout the country with
21 more than 550 operating locations. Defendants have capabilities in freight management,
22 warehouse and distribution center support, last mile delivery, supply chain analytics and
23 optimization, among others. Their integrated, end-to-end logistics solutions help their partners
24 reduce warehousing and transportation costs.

25 14. In October 2020, Plaintiff was hired by Defendants as a lumper assigned to work in
26 Venice, California. Defendants hired Plaintiff as an hourly-paid, non-exempt employee.

27 15. Defendant paid Plaintiff \$15 per hour until she was terminated in December 2020.

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1 16. In addition, Defendant hired Plaintiff and other class members and aggrieved
2 employees and classified them as hourly-paid and/or non-exempt employees and failed to
3 compensate them for all hours worked and missed meal periods and/or rest breaks.

4 17. Defendant had the authority to hire and terminate Plaintiff and the other class
5 members and aggrieved employees, to set work rules and conditions governing Plaintiff's and the
6 other class members' and aggrieved employees' employment, and to supervise their daily
7 employment activities.

8 18. Defendant exercised sufficient authority over the terms and conditions of Plaintiff's
9 and the other class members' and aggrieved employees' employment.

10 19. Like all Class Members and aggrieved employees, Plaintiff had to take her lunch
11 breaks late at least four times a week. Defendants required Plaintiff and the Class Members and
12 aggrieved employees to work beyond their sixth hour causing them to take their meal periods late
13 most of the time. Plaintiff and the Class Members and aggrieved employees did not sign any meal
14 period waiver. Defendants likewise failed to pay Plaintiff and the Class Members and aggrieved
15 employees any meal period premiums.

16 20. In addition, Defendant failed to provide all requisite uninterrupted rest periods to
17 Plaintiff, Class Members, and aggrieved employees, and also failed pay Plaintiff and the Class
18 Members and aggrieved employees any rest period premiums.

19 21. During their employment with Defendants, Plaintiff and the Class Members and
20 aggrieved employees were also subjected to unlawful deductions from their pay.

21 22. Further, Plaintiff and the Class Members and aggrieved employees were not paid by
22 Defendants for all hours worked and for their overtime wages.

23 23. During the relevant time period, Defendants also failed to keep complete or
24 accurate payroll records for Plaintiff and the other class members and aggrieved employees.

25 24. During the relevant time period, Defendant failed to reimburse Plaintiff and the
26 other class members and aggrieved employees for all necessary business-related expenses and
27 costs, including but not limited to expenses and costs associated with using their cell phones for
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PLAINTIFF'S FIRST AMENDED COMPLAINT

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1 [work-related tasks.](#)

2 25. When Plaintiff was terminated by Defendants in December 2020, Defendants failed
3 to pay Plaintiff her final wages. To date, Plaintiff has yet to receive her final pay.

4 26. Labor Code § 512 requires employers to provide employees with [a](#) thirty (30)
5 minute uninterrupted and duty-free meal period within the first five hours of work. “An on-duty
6 meal period is permitted only when the nature of the work prevents an employee from being
7 relieved of all duty and the parties agree in writing to an on-duty paid meal break.” (*Lubin v. The*
8 *Wackenhut Corp.* (2016) 5 Cal. App. 5th 926, 932.) The written agreement must include a
9 provision allowing the employee to revoke it at any time. *Id.*

10 27. Generally, the DLSE and courts have “found that the nature of the work exception
11 applies: ‘(1) where the work has some particular external force that requires the employee to be on
12 duty at all times, and (2) where the employee is the sole employee of a particular employer.’” (*Id.* at
13 p. 945; *Abdullah v. U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is
14 the employer’s obligation to determine whether the nature of the work prevents an employee from
15 being relieved before requiring an employee to take an on-duty meal period.” (*Lubin, supra*, 5 Cal.
16 App. 5th at p. 946.) Nor may an employer “discharge its duty by arguing that its clients who
17 requested on-duty meal periods determined that the nature of the work prevented officers from
18 being relieved of all duty.” (*Id.* at p. 947; *Benton, supra*, 220 Cal. App. 4th at p. 729.

19 28. As with rest periods, under Labor Code § 512, if an employer maintains a uniform
20 policy that does not authorize and permit the amount of meal time called for under the law (as
21 specified in the applicable Wage Order), “it has violated the wage order and is liable.” The
22 *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting
23 an unlawful policy:

24 An employer is required to authorize and permit the amount of rest break
25 time called for under the wage order for its industry. If it does not—if, for
26 example, it adopts a uniform policy authorizing and permitting only one
27 rest break for employees working a seven-hour shift when two are
28 required—***it has violated the wage order and is liable.*** *Brinker Rest.*
Corp. v. Sup. Ct. (2012) 53 Cal.4th 1004, 1033. (Emphasis added.)

29. As a result of its meal period policies of requiring Plaintiff and the Class Members
30 [and aggrieved employees](#) to work beyond their sixth hour and to take their meal periods late at

1 least four times a week, Defendant violated Labor Code § 512 and IWC Wage Order No. 9 by
2 failing to provide duty-free meal periods to Plaintiff and the Class Members of 30 minutes or
3 more.

4 30. Thus, Defendant unlawfully retained control of Plaintiff and the Class Members and
5 aggrieved employees during their meal periods, even though the nature of the work did not
6 necessitate an on-duty meal period (and by failing to enter into proper on-duty meal period
7 agreements). See *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 275 (holding that
8 on-premises breaks violate California law). As a result of Defendant's failure to authorize or
9 permit lawful meal periods, Plaintiff and the Class Members and aggrieved employees did not take
10 their meal periods on time. Defendant also failed to pay Plaintiff and the meal period class
11 members meal period premiums for each workday that the employees did not receive a compliant
12 meal period.

13 31. Labor Code § 226.7 provides "an employer shall not require an employee to work
14 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
15 regulation, standard, or order of the Industrial Welfare Commission" ("IWC"). Similarly, IWC
16 Wage Order 9-2001 prohibits an employer from "employ[ing] any person for a work period of
17 more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order 9-
18 2001 further obligates employers to provide an employee to "pay the employee one (1) hour of pay
19 at the employee's regular rate of compensation for each workday that the meal period is not
20 provided." Accordingly, for each day that Plaintiff and the Class Members and aggrieved
21 employees did not receive compliant meal periods, they are entitled to receive meal period
22 premiums pursuant to Labor Code § 226.7 and Wage Order 9-2001.

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

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1 33. Due to Defendant's failure to pay Plaintiff and the Class Members [and aggrieved](#)
2 [employees](#) for all meal period premiums, Defendant failed to timely pay the Class Members [and](#)
3 [aggrieved employees](#) within seven (7) days of the close of the payroll period in accordance with
4 Labor Code § 204 on a regular and consistent basis. See *Parson v. Golden State FC, LLC*, 2016
5 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding that a
6 failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

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

15 35. As a result of Defendant's failure to pay Plaintiff and the Class Members [and](#)
16 [aggrieved employees](#) meal period minimum wages and meal period premiums, Defendant violated
17 Labor Code § 203. Labor Code § 203 provides "if an employer willfully fails to pay . . . any
18 wages of an employee who is discharged or who quits, the wages of the employee shall continue as
19 a penalty. . ." for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487,
20 492.

21 36. In addition, when Defendants terminated Plaintiff in December 2020, Defendants
22 failed to pay Plaintiff her final wages. To date, Plaintiff has yet to receive her final check from
23 Defendants.

24 37. Due to Defendant's faulty policies described above, all Class Members [and](#)
25 [aggrieved employees](#) whose employment with Defendant concluded were not compensated at the
26 appropriate rate. Additionally, Defendant has failed to pay all Class Members [and aggrieved](#)
27 [employees](#) meal period premiums, whose sums were certain, at the time of termination or within

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seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter.

38. As to Plaintiff and all Class Members and aggrieved employees, Defendants also failed to provide accurate itemized wage statements in accordance with Labor Code § 226(a)(1, 2, 5, 9). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

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

39. Similarly, Labor Code § 226(e) provides:

(e) (1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

(2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay

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period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer during the pay period.

(iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

40. Due to Defendant's failure to provide Plaintiff and the Class Members [and aggrieved employees](#) lawful meal periods (and pay missed meal period premiums), the wage statements issued by Defendant do not indicate the correct amount of gross wages earned, the correct total hours worked, the correct net wages earned, or the applicable and/or correct hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

41. Thus, Defendant has violated Labor Code § 226(a)(1), (2), (5), and (9) with respect to Plaintiff and the Class Members [and aggrieved employees](#).

42. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226." As explained in detail above, Defendant failed to provide Plaintiff and the Class Members [and aggrieved employees](#) with accurate itemized wage statements. Accordingly, Plaintiff and the Class Members [and aggrieved employees](#) may also recover Labor Code § 226.3 penalties for Defendant's violations of Labor Code § 226(a). See *Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151, at *7 ["the weight of authority counsels that violations of Section 226.3 may be the basis of a PAGA claim."]; *Pedroza v. PetSmart, Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL 9506073, at *6 (C.D. Cal. June 14, 2012) ("Lab. Code § 226.3 merely provides that failure to perform actions mandated by § 226(a) may trigger civil

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PLAINTIFF'S [FIRST AMENDED COMPLAINT](#)

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penalties.”).

43. Labor Code § 221 provides that, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”

44. Furthermore, Labor Code § 222 provides that, “It shall be unlawful, in case of any wage agreement arrived at through collective bargaining, either wilfully or unlawfully or with intent to defraud an employee, a competitor, or any other person, to withhold from said employee any part of the wage agreed upon.”

45. Labor Code § 222.5 further provides that, “No person shall withhold or deduct from the compensation of any employee, or require any prospective employee or applicant for employment to pay, any fee for, or cost of, any pre-employment medical or physical examination taken as a condition of employment, nor shall any person withhold or deduct from the compensation of any employee, or require any employee to pay any fee for, or costs of, medical or physical examinations required by any law or regulation of federal, state or local governments or agencies thereof.”

46. In addition, Labor Code § 223 provides that, “Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.”

47. Labor Code § 224 further provides as follows:

The provisions of Sections 221, 222 and 223 shall in no way make it unlawful for an employer to withhold or divert any portion of an employee’s wages when the employer is required or empowered so to do by state or federal law or when a deduction is expressly authorized in writing by the employee to cover insurance premiums, hospital or medical dues, or other deductions not amounting to a rebate or deduction from the standard wage arrived at by collective bargaining or pursuant to wage agreement or statute, or when a deduction to cover health and welfare or pension plan contributions is expressly authorized by a collective bargaining or wage agreement.

Nothing in this section or any other provision of law shall be construed as authorizing an employer to withhold or divert any portion of an employee’s wages to pay any tax, fee or charge prohibited by § 50026 of the Government Code, whether or not the employee authorizes such withholding or diversion.

48. Labor Code § 225 provides that, “The violation of any provision of Sections 221,

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1 222, 222.5, or 223 is a misdemeanor.”

2 49. Labor Code § 225.5 further provides that:

3 In addition to, and entirely independent and apart from, any other penalty
4 provided in this article, every person who unlawfully withholds wages due any
5 employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a
6 civil penalty as follows:

7 (a) For any initial violation, one hundred dollars (\$100) for each failure to pay
8 each employee.

9 (b) For each subsequent violation, or any willful or intentional violation, two
10 hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of
11 the amount unlawfully withheld.

12 The penalty shall be recovered by the Labor Commissioner as part of a hearing
13 held to recover unpaid wages and penalties or in an independent civil action. The
14 action shall be brought in the name of the people of the State of California and the
15 Labor Commissioner and attorneys thereof may proceed and act for and on behalf
16 of the people in bringing the action. Twelve and one-half percent of the penalty
17 recovered shall be paid into a fund within the Labor and Workforce Development
18 Agency dedicated to educating employers about state labor laws, and the
19 remainder shall be paid into the State Treasury to the credit of the General Fund.

20 50. Based on the foregoing, the deductions made to the Plaintiff and Class Members’
21 and aggrieved employees’ wages were unlawful.

22 51. As to Plaintiff and the Class Members’ and aggrieved employees’ right to sue for the
23 violations committed by Defendants, Labor Code § 218 provides that, “Nothing in this article shall
24 limit the authority of the district attorney of any county or prosecuting attorney of any city to
25 prosecute actions, either civil or criminal, for violations of this article or to enforce the provisions
26 thereof independently and without specific direction of the division. Nothing in this article shall
27 limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty
28 due him under this article.”

52. Moreover, Labor Code § 218.5 provides that, “In any action brought for the
nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the
court shall award reasonable attorney’s fees and costs to the prevailing party if any party to the
action requests attorney’s fees and costs upon the initiation of the action. This section shall not

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PLAINTIFF’S FIRST AMENDED COMPLAINT

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1 apply to an action brought by the Labor Commissioner.”

2 53. Finally, Labor Code § 218.6 provides that, “In any action brought for the
3 nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of
4 interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the
5 date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of
6 Division 2.”

7 54. Labor Code § 1197 states the California requirement that employees must be paid at
8 least the minimum wage fixed by the Commission, and any payment of less than the minimum
9 wage is unlawful.

10 55. Labor Code § 1194 entitles “any employee receiving less than the legal minimum
11 wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage.”

12 56. IWC Wage Order 9-2001 § 4 also obligates employers to pay each employee
13 minimum wages for all hours worked.

14 57. As noted above, Defendants required Plaintiff and the Class Members and
15 aggrieved employees to work certain hours off the clock. Although this was related to their
16 employment with Defendants and they often had to work beyond 40 hours per week because of
17 these, Defendants never paid Plaintiff and the Class Members for time spent doing work off the
18 clock nor were they paid for all overtime work. As a result, Plaintiff and the Class Members and
19 aggrieved employees are not compensated for all hours worked.

20 58. In 2018, the California Supreme Court held in *Troester v. Starbucks, Inc.* (2018) 5
21 Cal. 5th 829, that an employee must be compensated for any time in which they are under the
22 control of their employer, and performing work, even if that amount of time, as here, is limited to a
23 few minutes per day. Thus, by not compensating Plaintiff and the Class Members and aggrieved
24 employees for the time spent working beyond 40 hours per week, Defendants have violated the
25 Labor Code and the Wage Order.

26 59. Labor Code § 1194.2 authorizes employees to recover wages and liquidated damages
27 for violations of Labor Code § 1194. Where an employee, such as Plaintiff and the Class Members,

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PLAINTIFF'S FIRST AMENDED COMPLAINT

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1 is not paid for all hours worked under Labor Code § 1194, the employee may recover minimum
2 wages for the time associated with the overtime for which they received no compensation. (See
3 *Sillah v. Command Int'l Sec. Servs.* (N.D. Cal. 2015) 154 F. Supp. 3d 891 [holding that employees
4 suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also
5 showed they were paid less than minimum wage]; accord *Andrade v. Arby's Rest. Grp., Inc.* (N.D.
6 Cal. Dec. 12, 2016) No. 15-cv-03175 NC, 2016 U.S. Dist. LEXIS 172319, at *20-21.) Since
7 Defendant failed to provide Plaintiff and all Class Members and aggrieved employees with
8 compensation for all hours worked, including overtime hours, each are entitled to recover liquidated
9 damages under Labor Code § 1194.2. Based upon these same factual allegations, Plaintiff also
10 seeks penalties on behalf of all Class Members and aggrieved employees under Labor Code § 1199.

11 60. Labor Code § 510 requires an employer to compensate an employee who works
12 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight
13 (8) hours worked on the seventh consecutive day no less than one and one-half times the regular
14 rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate
15 employees at no less than twice the regular rate of pay when an employee works more than twelve
16 (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work. In
17 accordance with Labor Code § 1194, Plaintiff and the overtime class members and aggrieved
18 employees could not then agree and cannot now agree to work for a lesser wage than the amount
19 proscribed by Labor Code §§ 510 and 1194.

20 61. For the reasons stated above, Plaintiff and the Class Members and aggrieved
21 employees worked certain hours for which they were not paid. Defendants required Plaintiff and
22 the Class Members and aggrieved employees to work certain hours off the clock. Because Plaintiff
23 and the Class Members and aggrieved employees spent eight hours or more working on
24 "compensated" time, this uncompensated time for work done beyond eight hours each day should
25 have been compensated at the overtime rate. Instead, no compensation was paid at all, in violation
26 of Cal. Labor Code §§ 510, 1194, and Wage Order 9-2001.

27 CLASS ACTION ALLEGATIONS

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62. Plaintiff brings this action, on behalf of herself and all others similarly situated, as a class action pursuant to [Rule 23 of the Federal Rules](#) of Civil Procedure.

63. Plaintiff seeks to represent the following classes:

(a) [The Non-Exempt Settlement Class shall consist of all current and former employees who worked for Capstone within the State of California in a non-exempt position at any time during the Class Period.](#)

(b) [The Waiting Time Settlement Class shall consist of all non-exempt former employees who worked for Capstone within the State of California during the Class Period but were no longer employed at the Effective Date.](#)

64. This action has been brought and may properly be maintained as a class action under [Rule 23](#) because there is a well-defined community of interest in the litigation, the proposed class is easily ascertainable, and Plaintiff is a proper representative of the Class:

a. Numerosity: The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined at this time, Plaintiff is informed and believes that Defendants have, on average, during the Class Period employed over 300 Class Members. The Class Members are dispersed throughout California. Joinder of all members of the proposed classes is therefore not practicable.

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

i. Whether Defendants violated Labor Code sections 512 and 226.7, and section 11 of IWC Wage Order No. 9 by failing to pay one hour of premium pay to each member of the Class for each day that an unpaid meal break was not provided during the Class Period;

ii. Whether Defendants violated Labor Code sections 204 and 210 by failing to pay Plaintiff and the Class Members all wages owed with seven days of the close of payroll;

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Deleted: all individuals who are or were employed by Defendant or its predecessor or merged entities in California as hourly, non-exempt employees, who were not provided with meal periods during the Class Period ("meal period class members");
<#>all individuals who are or were employed by Defendant or its predecessor or merged entities in California as hourly, non-exempt employees, who were not paid their final wages upon the end of their employments with Defendants during the Class Period ("waiting time class members"); and
<#>all individuals who are or were employed by Defendant, or its predecessor or merged entities in California as hourly, non-exempt employees during the Class Period ("wage statement class members").

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1 iii. Whether Defendants violated Section 203 of the Labor Code by failing to pay
2 members of the Waiting Time Penalty Subclass (those class members who have terminated their
3 employment with the Defendants) for all wages due to them (including their pay due for unpaid rest
4 breaks) upon their separation of employment from Defendant;

5 iv. Whether Defendants failed to provide Plaintiff and the Class Members
6 complete wage statements in violation of Labor Code Section 226(a);

7 v. Whether Defendants violated Labor Code sections 221, 222, 222.5, 223,
8 224, 225, and 225.5 for subjecting Plaintiff and Class Members to unlawful deductions from their
9 pay;

10 vi. Whether Defendants violated sections 1194, 1194.2, and 1198 of the Labor
11 Code by failing to pay Plaintiff and the members of the Class for all wages owed during the Class
12 Period;

13 vii. Whether Defendants violated Sections 510, 1194, 1194.2, and 1198 of the
14 Labor Code and IWC Wage Order No. 9 during the Class Period by failing to pay Plaintiff and the
15 Class Members all overtime wages owed;

16 viii. Whether Defendants engaged in an unfair practice and violated section
17 17200 of the California Business and Professions Code by failing to provide off-duty meal breaks
18 to members of the Class in violation of Labor Code sections 512, 226.7 and Section 11 of IWC
19 Wage Order No. 9;

20 ix. Whether Defendants engaged in an unfair practice and violated section
21 17200 of the California Business and Professions Code by failing to pay Plaintiff and the members
22 of the Class for all wages and overtimes wages owed during the Class Period;

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

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

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

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

5 d. Adequacy of Representation: Plaintiff is a member of the Class and will
6 fairly and adequately represent and protect the interests of the Class and Class Members.
7 Plaintiff's interests do not conflict with those of Class and Class Members. Counsel who represent
8 Plaintiff are competent and experienced in litigating large wage and hour class actions, and other
9 employment class actions, and will devote sufficient time and resources to the case and otherwise
10 adequately represent the Class and Class Members.

11 e. Superiority of Class Action: A class action is superior to other available
12 means for the fair and efficient adjudication of this controversy. Individual joinder of all Class
13 Members is not practicable, and questions of law and fact common to the Class predominate over
14 any questions affecting only individual members of the Class. Each Class Member has been
15 damaged or may be damaged in the future by reason of Defendants' unlawful policies and/or
16 practices. Certification of this case as a class action will allow those similarly situated persons to
17 litigate their claims in the manner that is most efficient and economical for the parties and the
18 judicial system. Certifying this case as a class action is superior because it allows for efficient and
19 full disgorgement of the ill-gotten gains Defendants have enjoyed by maintaining its unlawful
20 meal period and final pay policies and will thereby effectuate California's strong public policy of
21 protecting employees from deprivation or offsetting of compensation earned in their employment.
22 If this action is not certified as a Class Action, it will be impossible as a practical matter, for many
23 or most Class Members to bring individual actions to recover monies unlawfully withheld from
24 their lawful compensation due from Defendants, due to the relatively small amounts of such
25 individual recoveries relative to the costs and burdens of litigation.

26 PAGA ALLEGATIONS

27 65. At all times herein set forth, PAGA was applicable to Plaintiff's and the aggrieved

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employees' respective employments with Defendant.

66. At all times herein set forth, PAGA has provided that any provision of law under the California Labor Code that provides for a civil penalty, including unpaid wages and premium wages, to be assessed and collected by the LWDA for violations of the California Labor Code may, as an alternative, be recovered through civil action brought by an aggrieved employee on behalf of themselves and other current or former employees pursuant to procedures outlined in California Labor Code § 2699.3.

67. Pursuant to PAGA, a civil action may be brought by an "aggrieved employee," who is any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

68. Plaintiff was employed by Defendant and the alleged violations were committed against her during her employment and she is, therefore, an aggrieved employee. Plaintiff and the other employees are "aggrieved employees" as defined by California Labor Code § 2699(c) in that they are current or former employees of Defendant, and one or more of the alleged violations were committed against them.

STATEMENT OF LWDA NOTICE COMPLIANCE

69. Plaintiff provided written notice by certified mail to the Labor and Workforce Development Agency (the "LWDA") and to Defendant of the legal claims and theories of this case. Plaintiff will amend her complaint to plead exhaustion of administrative remedies following the statutorily prescribed sixty-five day waiting period in which no response was received from the LWDA. Labor Code § 2699.3.

FIRST CAUSE OF ACTION **FAILURE TO PROVIDE OFF-DUTY MEAL BREAKS AND FAILURE** **TO PAY MISSED MEAL BREAK PREMIUMS** **[Cal. Labor Code §§ 226.7, 512]** **On behalf of Plaintiff and the Class Against All Defendants**

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

71. California Labor Code § 226.7(a) provides, "No employer shall require any

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PLAINTIFF'S FIRST AMENDED COMPLAINT

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1 employee to work during any meal or rest period mandated by an applicable order of the Industrial
2 Welfare Commission.”

3 72. Section 11(A) and (B) of IWC Wage Order No. 9 provide that:

4 No employer shall employ any person for a work period of more than five (5)
5 hours without a meal period of not less than 30 minutes, except that when a
6 work period of not more than six (6) hours will complete the day’s work the
7 meal period may be waived by mutual consent of the employer and the
8 employee...An employer may not employ an employee for a work period of
9 more than ten (10) hours per day without providing the employee with a
10 second meal period of not less than 30 minutes, except that if the total hours
11 worked is no more than 12 hours, the second meal period may be waived by
12 mutual consent of the employer and the employee only if the first meal period
13 was not waived.

14 73. Section 11(C) of IWC Wage Order No. 9 provides that

15 Unless the employee is relieved of all duty during a 30-minute meal period,
16 the meal period shall be considered an on-duty meal period and counted as
17 time worked. An on-duty meal period shall be permitted only when the nature
18 of the work prevents an employee from being relieved of all duty and when by
19 written agreement between the parties an on-the-job paid meal period is
20 agreed to. The written agreement shall state that the employee may, in writing,
21 revoke the agreement at any time.

22 74. Finally, Section 11(D) of IWC Wage Order No. 9 provides that

23 If an employer fails to provide an employee a meal period in accordance with
24 the applicable provisions of this order, the employer shall pay the employee
25 one (1) hour of pay at the employee’s regular rate of compensation for each
26 workday that the meal period is not provided.

27 75. As alleged herein, as a result of its meal period policies of requiring Plaintiff and
28 the Class Members to work beyond their sixth hour and to take their meal breaks late, Defendant
violated Labor Code § 512 and IWC Wage Order No. 9 by failing to provide duty-free meal
periods to Plaintiff and the Class Members of 30 minutes or more, and are liable to Plaintiff and
the Class.

76. As a result of the unlawful acts of Defendants, Plaintiff and the Class were not
provided timely duty-free meal breaks, and are entitled to recovery under Cal. Labor Code § 226.7
in the amount of one additional hour of pay at the employee’s regular rate of compensation for
each work period greater than 5 hours in California during each day in which Defendants failed to

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1 provide employees with timely duty-free meal periods as required by California law.

2 **SECOND CAUSE OF ACTION**
3 **FAILURE TO PROVIDE OFF-DUTY REST BREAKS AND FAILURE**
4 **TO PAY MISSED REST BREAK PREMIUMS**

5 [Cal. Labor Code §§ 226.7, 512]

6 **On behalf of Plaintiff and the Class Against All Defendants**

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

9 78. At all times herein set forth, the applicable IWC Wage Order and California Labor
10 Code § 226.7 were applicable to Plaintiff and the other class members' employment by Defendant.

11 79. At all relevant times, California Labor Code § 226.7 provides that no employer
12 shall require an employee to work during any rest period mandated by an applicable order of the
13 California IWC.

14 80. At all relevant times, the applicable IWC Wage Order provides that "[e]very
15 employer shall authorize and permit all employees to take rest periods, which insofar as
16 practicable shall be in the middle of each work period" and that the "rest period time shall be based
17 on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or
18 major fraction thereof unless the total daily work time is less than three and one-half (3 ½) hours."

19 81. During the relevant time period, Defendant required Plaintiff and other class
20 members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest
21 period per each four (4) hour period worked.

22 82. During the relevant time period, Defendant willfully required Plaintiff and the other
23 class members to work during rest periods and failed to pay Plaintiff and the other class members
24 the full rest period premium for work performed during rest periods.

25 83. During the relevant time period, Defendant failed to pay Plaintiff and the other class
26 members the full rest period premium due pursuant to California Labor Code § 226.7.

27 84. Defendant's conduct violates applicable IWC Wage Orders and California Labor
28 Code § 226.7.

85. Pursuant to the applicable IWC Wage Orders and California Labor Code §

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1 226.7(b), Plaintiff and the other class members are entitled to recover from Defendant one
2 additional hour of pay at the employees' regular hourly rate of compensation for each workday that
3 the rest period was not provided.

4 **THIRD CAUSE OF ACTION**
5 **FAILURE TO PAY FOR ALL HOURS WORKED**
6 **[Cal. Labor Code §§ 1194; 1194.2, and 1198]**
7 **On behalf of Plaintiff and the Class Against All Defendants**

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

10 87. Section 1194 of the Labor Code provides, in relevant part:

11 Notwithstanding any agreement to work for a lesser wage, any employee
12 receiving less than minimum wage...applicable to the employee is entitled to
13 recover in a civil action the unpaid balance of the full amount of this
14 minimum wage ..., including interest thereon, reasonable attorney's fees, and
15 costs of suit.

16 88. Section 1194.2 of the Labor Code provides, in relevant part:

17 In any action under...Section 1194 to recover wages because of the payment
18 of a wage less than the minimum wage fixed by an order of the commission,
19 an employee shall be entitled to recover liquidated damages in an amount
20 equal to the wages unlawfully unpaid and interest thereon.

21 89. As noted above, Defendants required Plaintiff and the class members to work
22 certain hours off the clock. Although this was related to their employment with Defendants and
23 they often had to work beyond 40 hours per week because of this, Defendants never paid Plaintiff
24 and the class members for time spent working off the clock nor were they paid for overtime work.
25 As a result, Plaintiff and the Class Members are not compensated for all hours worked in violation
26 of Labor Code § 1194.

27 90. Pursuant to sections 1194, 1194.2, and 1198 of the California Labor Code, Plaintiff
28 and the Class are entitled to recover, either their unpaid hourly wages due, or minimum wage plus
interest and/or liquidated damages in an additional amount equal to the total amount of wages
unlawfully withheld during the Class Period for unpaid work hours.

91. Pursuant to section 1194.2 of the Labor Code, Plaintiff and the Class are also

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entitled to recover interest, costs, and attorneys' fees associated with this cause of action.

FOURTH CAUSE OF ACTION
FAILURE TO PAY ALL OVERTIME WAGES
(Violation of Labor Code §§ 510, 1194, 1197, 1197.1, and 1198, and the "Hours and Days of
Work" section of IWC Wage Order No. 9)
By Plaintiff and the Overtime Class Against All Defendants

92. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

93. Labor Code § 510 provides, "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee." The "Hours and Days of Work" section of the applicable IWC Wage Order mandate the same requirements.

94. Labor Code § 1194 provides that any employee receiving less than the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

95. Furthermore, pursuant to Labor Code § 1198, "[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

96. The IWC Wage Order 9-2001 defines the term "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

97. In California, overtime is computed based on the regular rate of pay. The regular rate of pay includes all different types of remuneration, including hourly earnings, salary,

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Deleted: <#>Cal. Labor Code §204 states that all wages earned by any person in any employment are payable twice during the calendar month, and must be paid not more than seven days following the close of the period when the wages were earned. ¶ <#>Cal. Lab. Code §216 establishes that it is a misdemeanor for any person, with regards to wages due, to "falsely deny the amount or validity thereof, or that the same is due, with intent to secure himself, his employer or other person, any discount upon such indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due."¶ Defendants, as a matter of established company policy and procedure, in the State of In

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1 piecework earnings, commissions, and non-discretionary bonuses, and the value of meals and
2 lodging.

3 98. Plaintiff and members of the Overtime Class regularly worked over eight hours per
4 day and 40 hours per week while employed by Defendants. Plaintiff and members of the Overtime
5 Class did not receive all overtime compensation owed for all overtime hours worked over eight
6 hours per day and/or 40 hours per week, and/or for every hour worked during the seventh day of
7 work, at the applicable overtime rate during their employment with Defendants.

8 99. Defendants failed to pay Plaintiff and members of the Overtime Class at the proper
9 overtime rate for all the time spent working and under the control of Defendants. Defendants also
10 failed to pay overtime compensation for all overtime hours worked over eight hours per day and/or
11 40 hours per week.

12 100. Plaintiff and members of the Overtime Class suffered and continue to suffer losses
13 related to the use and enjoyment of compensation due and owing to them as a direct result of
14 Defendants' unlawful acts and Labor Code violations in an amount to be shown according to proof
15 at trial and within the jurisdictional limitations of this Court.

16 101. Plaintiff seeks all available remedies for Defendants' violations including, but not
17 limited to any and all wages due, monies, interest, attorney's fees, and costs to the extent permitted
18 by law.

19 **FIFTH CAUSE OF ACTION**
20 **FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS**
21 **[Cal. Labor Code § 226(a) and 226.2(a)(2)(A)-(B)]**
22 **On behalf of Plaintiff and the Wage Statement and Penalty Subclass Against All Defendants**

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

25 103. The actionable period for this cause of action is one year prior to the filing of the
26 initial Complaint through the present, and on-going until the violations are corrected or the
27 subclass is certified.

28 104. Section 226(a) of the California Labor Code provides, in relevant part:
Every employer shall...furnish each of his or her employees...an accurate

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Deleted: <#>In addition, Defendants, as a matter of established company policy and procedure in the State of California, scheduled, required, suffered and/or permitted Plaintiff and the members of the Class, to work without legally compliant off-duty meal periods, and failed to pay Plaintiff and the members of the Class meal period premiums within seven days of the close of payroll, as required by law.
<#>Defendants, as a matter of established company policy and procedure in the State of California, falsely deny they owe Plaintiff and the other members of the Class these wages, with the intent of securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress, hinder, delay, and/or defraud Plaintiff and the Class Members.
<#>Defendants' pattern, practice and uniform administration of its corporate policy of illegally denying employees compensation, as described herein, is unlawful and entitles Plaintiff and members of the Class, to recover, pursuant to Cal. Lab. Code §218, the unpaid balance of the compensation owed to them in a civil action.
<#>Pursuant to Cal. Lab. Code §218.6 and to Cal. Civ. Code §§3287 (b) and 3289, Plaintiff and members of the Class, seek to recover pre-judgment interest on all amounts recovered herein.
Pursuant to Cal. Lab. Code §218.5,

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

14 105. As set forth above, during the Class Period, due to, inter alia, its unlawful meal
15 period policies, Defendants failed to issue wage statements to its employees in California,
16 including Plaintiff, that complied with Labor Code Section 226(a).

17 106. Defendants' "wage statements" failed to comply with either section 226 or 226.2.
18 First, Defendants failed to identify themselves as the employer. Second, Defendants' "wage
19 statements" also did not include total hours worked, the total amount of time spent on rest periods
20 and other nonproductive tasks, and all applicable hourly rates in effect during the pay period and
21 the corresponding number of hours worked at each hourly rate in violation of Labor Code Sections
22 226(a) and 226.2.

23 107. Defendants' failure to comply with section 226(a) of the Labor Code was knowing
24 and intentional, particularly following the issuance of *McKenzie v. Federal Express Corp.*, 765
25 F.Supp.2d 1222, 1229 (C.D.Cal. 2011) and/or the passage of Section 226.2.

26 108. As a result of Defendants' issuance of inaccurate itemized wage statements to
27 Plaintiff and members of the wage statement and penalty subclass (i.e., those members of the class
28 who were employed by Defendants during the actionable period for this cause of action) in
violation of section 226(a) of the California Labor Code, Plaintiff and the Class are each entitled to
recover an initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding
an aggregate penalty of \$4,000 per Plaintiff and per every member of the Class from Defendants
pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys' fees.

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SIXTH CAUSE OF ACTION
FAILURE TO PAY ALL WAGES WITHIN A TIMELY MANNER
[Cal. Labor Code §§ 204]
On behalf of Plaintiff, and the Class Against All Defendants

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109. Plaintiff incorporates by this reference, as though fully set forth herein, the preceding paragraphs of this Complaint.

110. Cal. Lab. Code § 200 provides that “‘wages’ include all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, pieces, commission basis, or other method of calculation.”

111. Cal. Labor Code § 204 states that all wages earned by any person in any employment are payable twice during the calendar month, and must be paid not more than seven days following the close of the period when the wages were earned.

112. Cal. Lab. Code § 216 establishes that it is a misdemeanor for any person, with regards to wages due, to “falsely deny the amount or validity thereof, or that the same is due, with intent to secure himself, his employer or other person, any discount upon such indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due.”

113. Defendants, as a matter of established company policy and procedure, in the State of California, scheduled, required, suffered, and/or permitted Plaintiff and other members of the Class, to work during pay periods, and not compensate them for their work within seven days of the close of payroll.

114. In addition, Defendants, as a matter of established company policy and procedure in the State of California, scheduled, required, suffered and/or permitted Plaintiff and the members of the Class, to work without legally compliant off-duty meal periods, and failed to pay Plaintiff and the members of the Class meal period premiums within seven days of the close of payroll, as required by law.

115. Defendants, as a matter of established company policy and procedure in the State of California, falsely deny they owe Plaintiff and the other members of the Class these wages, with the intent of securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress,

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1 hinder, delay, and/or defraud Plaintiff and the Class Members.

2 116. Defendants' pattern, practice and uniform administration of its corporate policy of
3 illegally denying employees compensation, as described herein, is unlawful and entitles Plaintiff
4 and members of the Class, to recover, pursuant to Cal. Lab. Code § 218, the unpaid balance of the
5 compensation owed to them in a civil action.

6 117. Pursuant to Cal. Lab. Code § 218.6 and to Cal. Civ. Code §§ 3287 (b) and 3289,
7 Plaintiff and members of the Class, seek to recover pre-judgment interest on all amounts recovered
8 herein.

9 118. Pursuant to Cal. Lab. Code § 218.5, Plaintiff and members of the Class, request that
10 the Court award them reasonable attorneys' fees and the costs incurred by them in this action, as
11 well as any statutory penalties Defendants' may owe under the California Labor Code and/or any
12 other statute.

13 **SEVENTH CAUSE OF ACTION**
14 **WAITING TIME PENALTIES FOR**
15 **FAILURE TO PAY WAGES DUE ON TERMINATION**
16 **[Cal. Labor Code §§ 201-203]**

17 **On Behalf of Plaintiff and the Waiting Time Penalty Subclass Against All Defendants**

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

20 120. The actionable period for this cause of action is three years prior to the filing of the
21 Complaint through the present, and on-going until the violations are corrected, or the subclass is
22 certified.

23 121. Sections 201 and 202 of the California Labor Code require Defendants to pay all
24 compensation due and owing to former employees in the Class during the actionable period for
25 this cause of action, at or around the time that their employment is terminated.

26 122. Section 203 of the California Labor Code provides that if an employer willfully
27 fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and
28 202, then the employer is liable for penalties in the form of continued compensation up to thirty
(30) work days.

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PLAINTIFF'S FIRST AMENDED COMPLAINT

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123. By virtue of its unlawful meal period policies, Defendants willfully failed to pay Plaintiff and other members of the Waiting Time Penalty Subclass (i.e., those members of the Class whose employment with Defendants ended the actionable period for this cause of action) who are no longer employed by Defendants for all time worked and all wages owed prior to or upon termination or separation from employment with Defendants as required by California Labor Code §§ 201 and 202.

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124. Defendants also failed to pay Plaintiff her final wages when she was terminated in December 2020. To date, Plaintiff has yet to receive her final check from Defendants.

125. As a result, Defendants are liable to Plaintiff and other members of the waiting time penalty subclass who are no longer employed by Defendants for waiting time penalties amounting to thirty (30) days wages for Plaintiff and each such subclass member pursuant to California Labor Code § 203. See, e.g., DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties).

EIGHTH CAUSE OF ACTION
UNLAWFUL DEDUCTIONS FROM PAY

[Cal. Labor Code §§ 218, 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, and 225.5]
On Behalf of Plaintiff and the Class Against All Defendants

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

127. Labor Code § 221 provides that, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”

128. Furthermore, Labor Code § 222 provides that, “It shall be unlawful, in case of any wage agreement arrived at through collective bargaining, either wilfully or unlawfully or with intent to defraud an employee, a competitor, or any other person, to withhold from said employee any part of the wage agreed upon.”

129. Labor Code § 222.5 further provides that, “No person shall withhold or deduct from the compensation of any employee, or require any prospective employee or applicant for employment to pay, any fee for, or cost of, any pre-employment medical or physical examination taken as a condition of employment, nor shall any person withhold or deduct from the

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1 compensation of any employee, or require any employee to pay any fee for, or costs of, medical or
2 physical examinations required by any law or regulation of federal, state or local governments or
3 agencies thereof.”

4 130. In addition, Labor Code § 223 provides that, “Where any statute or contract
5 requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a
6 lower wage while purporting to pay the wage designated by statute or by contract.”

7 131. Labor Code § 224 further provides as follows:

8 The provisions of Sections 221, 222 and 223 shall in no way make it unlawful for
9 an employer to withhold or divert any portion of an employee’s wages when the
10 employer is required or empowered so to do by state or federal law or when a
11 deduction is expressly authorized in writing by the employee to cover insurance
12 premiums, hospital or medical dues, or other deductions not amounting to a rebate
13 or deduction from the standard wage arrived at by collective bargaining or
14 pursuant to wage agreement or statute, or when a deduction to cover health and
15 welfare or pension plan contributions is expressly authorized by a collective
16 bargaining or wage agreement.

17 Nothing in this section or any other provision of law shall be construed as
18 authorizing an employer to withhold or divert any portion of an employee’s wages
19 to pay any tax, fee or charge prohibited by § 50026 of the Government Code,
20 whether or not the employee authorizes such withholding or diversion.

21 132. Moreover, Labor Code § 225 provides that, “The violation of any provision of
22 Sections 221, 222, 222.5, or 223 is a misdemeanor.”

23 133. Labor Code § 225.5 further provides that:

24 In addition to, and entirely independent and apart from, any other penalty
25 provided in this article, every person who unlawfully withholds wages due any
26 employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a
27 civil penalty as follows:

28 (a) For any initial violation, one hundred dollars (\$100) for each failure to pay
29 each employee.

(b) For each subsequent violation, or any willful or intentional violation, two
hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of
the amount unlawfully withheld.

The penalty shall be recovered by the Labor Commissioner as part of a hearing
held to recover unpaid wages and penalties or in an independent civil action. The
action shall be brought in the name of the people of the State of California and the
Labor Commissioner and attorneys thereof may proceed and act for and on behalf

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of the people in bringing the action. Twelve and one-half percent of the penalty recovered shall be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws, and the remainder shall be paid into the State Treasury to the credit of the General Fund.

134. As to Plaintiff and the Class Members' right to sue for the violations committed by Defendants, Labor Code § 218 provides that, "Nothing in this article shall limit the authority of the district attorney of any county or prosecuting attorney of any city to prosecute actions, either civil or criminal, for violations of this article or to enforce the provisions thereof independently and without specific direction of the division. Nothing in this article shall limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due him under this article."

135. Further, Labor Code § 218.5 provides that, "In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action. This section shall not apply to an action brought by the Labor Commissioner."

136. Finally, Labor Code § 218.6 provides that, "In any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2."

137. Based on the foregoing, the deductions made on the Plaintiff and Class Members' wages were unlawful and they are entitled to the remedies provided above.

NINTH CAUSE OF ACTION
FAILURE TO MAINTAIN PAYROLL RECORDS
(Violation of Labor Code § 1174(d))
On Behalf of Plaintiff and the Class Against All Defendants

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

139. Pursuant to California Labor Code § 1174(d), an employer shall keep at a central

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1 location in the state or at the plants or establishments at which employees are employed, payroll
2 records showing the hours worked daily by and the wages paid to, and the number of piece-rate
3 units earned by, and any applicable piece rate paid to, employees employed at the respective plants
4 or establishments. These records shall be kept in accordance with rules established for this purpose
5 by the commission, but in any case, shall be kept on file for not less than two years.

6 140. Defendant has intentionally and willfully failed to keep accurate and complete
7 payroll records showing the hours worked daily and the wages paid to Plaintiff and the other class
8 members.

9 141. As a result of Defendant's violation of California Labor Code § 1174(d), Plaintiff
10 and the other class members have suffered injury and damage to their statutorily protected rights.

11 142. More specifically, Plaintiff and the other class members have been injured by
12 Defendant's intentional and willful violation of California Labor Code § 1174(d) because they
13 were denied both their legal right and protected interest, in having available, accurate and complete
14 payroll records pursuant to California Labor Code § 1174(d).

15 **TENTH CAUSE OF ACTION**
16 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES**
17 **(Violation of Labor Code §§ 2800 and 2802)**
18 **On Behalf of Plaintiff and the Class Against All Defendants**

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

21 144. Pursuant to California Labor Code §§ 2800 and 2802, an employer must reimburse
22 its employee for all necessary expenditures incurred by the employee in direct consequence of the
23 discharge of his or her job duties or in direct consequence of his or her obedience to the directions
24 of the employer.

25 145. Plaintiff and the other class members incurred necessary business-related expenses
26 and costs that were not fully reimbursed by Defendant.

27 146. Defendant has intentionally and willfully failed to reimburse Plaintiff and the other
28 class members for all necessary business-related expenses and costs. Plaintiff and the other class
29 members are entitled to recover from Defendant their business-related expenses and costs incurred
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1 during the course and scope of their employment, plus interest accrued from the date on which the
2 employee incurred the necessary expenditures at the same rate as judgments in civil actions in the
3 State of California.

4 **ELEVENTH CAUSE OF ACTION**
5 **UNFAIR COMPETITION LAW VIOLATIONS**
6 **(BUS. & PROF. CODE § 17200, ET SEQ.)**
7 **On Behalf of Plaintiff and the Class Against All Defendants**

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

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

15 149. Under section 17208 of the California Business and Professions Code, the statute of
16 limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for
17 this cause of action is four years prior to the filing of the initial Complaint through the present, and
18 on-going until the violations are corrected, or the Class is certified.

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

24 151. As a direct and proximate result of Defendants’ unlawful business practices,
25 Plaintiff and the Class Members have suffered economic injuries. Defendants have profited from
26 their unlawful, unfair, and/or fraudulent acts and practices.

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27 152. Plaintiff and similarly situated Class Members are entitled to monetary relief
28 pursuant to Business & Professions Code §§ 17203 and 17208 for, *inter alia*, all unpaid meal
period premiums, due and interest thereon, from at least four years prior to the filing of this
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1 complaint through to the date of such restitution, at rates specified by law. Defendants should be
2 required to disgorge all the profits and gains it has reaped and restore such profits and gains to
3 Plaintiff and Class Members, from whom they were unlawfully taken.

4 153. Through its actions alleged herein, Defendants have engaged in unfair competition
5 within the meaning of section 17200 of the California Business & Professions Code, because
6 Defendants' conduct, as herein alleged has damaged Plaintiff and the Class Members by, inter
7 alia, wrongfully denying them missed meal and rest period premiums, wages for all hours worked,
8 and overtime wages, and therefore was substantially injurious to Plaintiff and the Class Members.

9 154. Defendants engaged in unfair competition in violation of sections 17200 et seq. of
10 the California Business & Professions Code by violating Sections §§ 201, 202, 203, 204, 210, 218,
11 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, 225.5, 226, 226(e), 226.3, 226.7, 510, 512, 1194,
12 1194.2, 1197, 1197.1, 1198, 1199, as well as IWC Wage Order No. 9-2001.

13 155. Defendants' course of conduct, act and practice in violation of the California laws
14 mentioned above constitute independent violations of sections 17200 et seq. of the California
15 Business and Professions Code.

16 156. Plaintiff and similarly situated Class Members are entitled to enforce all applicable
17 penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

18 157. Plaintiff has assumed the responsibility of enforcement of the laws and public
19 policies specified herein by suing on behalf of herself and other similarly situated Class Members
20 previously or presently employed by Defendants in California. Plaintiff's success in this action
21 will enforce important rights affecting the public interest. Plaintiff will incur a financial burden in
22 pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to
23 Plaintiff is appropriate pursuant to Code of Civil Procedure §1021.5, and Labor Code § 1194.

24 **TWELFTH CAUSE OF ACTION**
25 **(Violation of PAGA, Labor Code §§ 2698, et seq.)**
26 **On Behalf of Plaintiff and Aggrieved Employees Against All Defendants**

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

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159. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

160. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

161. Plaintiff and the other hourly-paid, non-exempt employees are “aggrieved employees” as defined by California Labor Code § 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

162. **Failure to Pay Overtime.** Defendant’s failure to pay legally required overtime wages to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code §§ 510 and 1198.

163. **Failure to Provide Meal Periods.** Defendant’s failure to provide legally required meal periods to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code §§ 226.7 and 512(a).

164. **Failure to Provide Rest Periods.** Defendant’s failure to provide legally required rest periods to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code § 226.7.

165. **Failure to Pay Minimum Wages.** Defendant’s failure to pay legally required minimum wages to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code §§ 1194, 1197, and 1197.1.

166. **Failure to Timely Pay Wages Upon Termination.** Defendant’s failure to timely pay wages to Plaintiff and the other aggrieved employees upon termination in accordance with

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PLAINTIFF’S FIRST AMENDED COMPLAINT

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1 Labor Code §§ 201 and 202 constitutes unlawful and/or unfair activity prohibited by California
2 Labor Code §§ 201 and 202.

3 167. *Failure to Provide Complete and Accurate Wage Statements.* Defendant's failure
4 to provide complete and accurate wage statements to Plaintiff and the other aggrieved employees
5 in accordance with Labor Code § 226(a) constitutes unlawful and/or unfair activity prohibited by
6 California Labor Code § 226(a).

7 168. *Failure to Keep Complete and Accurate Payroll Records.* Defendant's failure to
8 keep complete and accurate payroll records relating to Plaintiff and the other aggrieved employees
9 in accordance with California Labor Code § 1174(d) constitutes unlawful and/or unfair activity
10 prohibited by California Labor Code § 1174(d).

11 169. *Failure to Reimburse Necessary Business-Related Expenses and Costs.*
12 Defendant's failure to reimburse Plaintiff and the other aggrieved employees for necessary
13 business-related expenses and costs in accordance with California Labor Code §§ 2800 and 2802
14 constitutes unlawful and/or unfair activity prohibited by California Labor Code §§ 2800 and 2802.

15 170. Pursuant to California Labor Code § 2699, Plaintiff, individually, and on behalf of
16 all aggrieved employees, requests and is entitled to recover from Defendant business expenses,
17 unpaid wages, and/or untimely wages according to proof, interest, attorneys' fees, and costs
18 pursuant to California Labor Code § 218.5, as well as all statutory penalties against Defendant.

19 **JURY DEMAND**

20 171. Plaintiff hereby demands trial by jury of her and the Class's claims against
21 Defendants.

22 **PRAYER FOR RELIEF**

23 Wherefore, Plaintiff, on behalf of herself and the members of the Class and aggrieved
24 employees, pray for judgment against Defendants as follows:

25 1. A declaratory judgment that the actions, conduct, and practices of Defendant
26 complained of herein violated the laws of the United States and the State of California;

27 2. An injunction and order permanently restraining Defendant from engaging in such
28

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unlawful conduct;

3. An order that the action be certified as a class action;

4. An order that the named Plaintiff herein be appointed class representative;

5. An order that counsel for Plaintiff be appointed class counsel;

6. An award of damages in an amount to be determined at trial, plus prejudgment interest, to compensate Plaintiff for all monetary and/or economic hardship, including, but not limited to, the loss of past and future income, wages, compensation, and other benefits of employment;

7. An award of damages in an amount to be determined at trial, plus prejudgment interest, to compensate Plaintiff for all non-monetary and compensatory harm;

8. An award of damages for any and all other monetary and/or non-monetary losses suffered by Plaintiff in an amount to be determined at trial, plus prejudgment interest;

9. For reasonable attorneys' fees and costs, including expert witness fees;

10. For costs of suit herein incurred; and

11. For such other and further relief as the Court deems just and proper.

Dated: February 2, 2023,

Respectfully,

POTTER HANDY LLP.

James Treglio

By: James M. Treglio
Counsel for Plaintiff and the Putative Class

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PLAINTIFF'S FIRST AMENDED COMPLAINT

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a. A declaratory judgment that Defendants violated California Labor Code §§ 226.7 and 512, and Section 11 of IWC Wage Order No. 9-2001;

b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the Class Members for an hour of pay for each day that an off-duty meal period was not provided during the Class Period;

<#>On the Second Cause of Action:

a. A declaratory judgment that Defendants violated California Labor Code § 204 by paying Plaintiff, and the Class more than seven days after the close of payroll;

b. For compensatory damages, including lost wages, bonuses, and other losses, according to proof;

c. For general

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d. For an award of interest, including

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Deleted: 4. On the Third Cause of Action:

<#>A declaratory judgment that Defendants violated California Labor Code § 226 by issuing inaccurate and/or incomplete wage statements that failed to include total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate to Plaintiff and the wage statement and penalty subclass members;

<#>An award to Plaintiff and Class Members of \$50 for each initial pay period, one year prior to the filing of this Complaint through the date of trial, in which a violation of Section 226 occurred and \$100 for each subsequent pay period, one year prior to the filing of this Complaint through the date of trial, in which a violation of Section 226 occurred, not to exceed \$4,000 for each member of the Class, as well as an award of costs and reasonable attorney's fees, pursuant to Labor Code § 226(e);

5. On the Fourth Cause of Action:

<#>A declaratory judgment that Defendants violated California Labor Code §§ 201 through 203;

<#>Pursuant to Cal. Labor Code §§ 201 through 203, an award to Plaintiff and the Waiting Time Penalty Subclass members for waiting time penalties in the amount of 30 days' wages per waiting time penalty subclass Class Member;

6. On the Fifth Cause of Action:

<#>That the Court find and declare that Defendants have violated the UCL and committed unfair and unlawful business practices by failing to pay Plaintiff and Class Members on a separate and hourly basis for their meal period, and by failing to pay missed meal break premiums;

<#>Restitution, including, but not limited to, the relief permitted by sections 201, 202, 203, 204, 210, 226, 226(e), 226.3, 226.7, 512, 1194, 1194.2, 1197, 1197.1, 1198, 1199, of the California Labor Code (i.e., rest days that were not provided, and time spent on rest periods by Plaintiff and the members of the Class during the Class Period), as well as a disgorgement of all profits associated with Defendants' unlawful policies as described above;

7. All other relief as this Court deems proper.

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Exhibit B

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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

ANDREA OTANEZ VERDUGO,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

CAPSTONE LOGISTICS, LLC, a Delaware
limited liability company with its principal
place of business in Georgia, and DOES 1 to
100, inclusive

Defendants.

CASE NO: 2:22-cv-03141-FMO (Ex)

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

- (1) FAILURE TO PROVIDE MEAL PERIODS AND PAY MISSED MEAL PERIOD PREMIUMS (LABOR CODE §§ 226.7, 512, AND WAGE ORDER NO. 9);**
- (2) FAILURE TO PROVIDE REST PERIODS AND PAY MISSED REST PERIOD PREMIUMS (LABOR CODE § 226.7 AND WAGE ORDER NO. 9);**
- (3) FAILURE TO PAY ALL WAGES OWED (LABOR CODE §§ 1194, 1194.2, 1198, AND WAGE ORDER NO. 9);**
- (4) FAILURE TO PAY ALL OVERTIME WAGES OWED (LABOR CODE §§ 510, 1194, 1194.2, 1198, AND WAGE ORDER NO. 9);**
- (5) FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS (LABOR CODE § 226 AND 226.3);**
- (6) FAILURE TO PAY ALL WAGES OWED IN A TIMELY MANNER (LABOR CODE §204);**
- (7) WAITING TIME PENALTIES (LABOR CODE § 201 – 203);**
- (8) UNLAWFUL DEDUCTIONS (LABOR CODE §§ 218, 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, AND 225.5);**
- (9) FAILURE TO KEEP REQUISITE PAYROLL RECORDS (LABOR CODE §**

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1174(d);
(10) FAILURE TO REIMBURSE NECESSARY
BUSINESS EXPENSES (LABOR CODE §§ 2800
AND 2802;
(11) UNFAIR COMPETITION IN
VIOLATION OF CALIFORNIA BUSINESS
& PROFESSIONS CODE §17200, et seq.; AND
(12) VIOLATION OF THE CALIFORNIA
LABOR CODE PRIVATE ATTORNEYS'
GENERAL ACT OF 2004, LABOR CODE §
2698, et seq.

DEMAND FOR JURY TRIAL

Plaintiff Andrea Otanez Verdugo ("Plaintiff"), on behalf of herself, the State of California, and all others similarly situated (hereinafter "Class Members") and aggrieved employees pursuant to the California Private Attorneys' General Act of 2004 ("PAGA"), complains and alleges as follows:

OVERVIEW OF CLAIMS

1. Plaintiff brings this action on behalf of herself and all others similarly situated and aggrieved employees pursuant to PAGA as a class action and representative action on behalf of the California general public, against Defendants Capstone Logistics, LLC ("Defendant") and DOES 1 to 100 (collectively "Defendants") for their (1) failure to provide Plaintiff and her fellow employees meal periods and pay missed meal period premiums; (2) failure to provide Plaintiff and her fellow employees rest periods and pay missed rest period premiums; (3) failure to pay Plaintiff and her fellow employees for all hours worked; (4) failure to pay Plaintiff and her fellow employees for overtime wages; (5) failure to provide accurate wage statements to Plaintiff and her fellow employees within the four years prior to the filing of this Complaint; (6) failure to pay Plaintiff and her fellow employees all wages owed in a timely manner; (7) failure to pay all wages due to Plaintiff and other former employees based on the foregoing; (8) unlawful deductions from wages; (9) failure to maintain the requisite payroll records; (10) failure to reimburse employees for necessary business expenses; and (11) unfair business practices based on the foregoing. As a result of the foregoing, Defendants have violated California statutory laws as described below.

2. The Class Period shall be August 1, 2019, through the Effective Date. The Effective

1 Date shall be either September 29, 2022, or the date of approval of the Parties' Settlement,
2 whichever occurs later.

3 **VENUE**

4 3. Venue is proper in this Court under 28 U.S.C. § 1391(b). Many, if not all, of the
5 putative Class Members and aggrieved employees were employed and/or performed work during
6 the Class Period by Defendants in Los Angeles County, which is in the Central District of
7 California. Many of the acts alleged herein including Defendant's failure to provide Labor Code
8 compliant paid meal and rest periods and pay missed meal and rest period premiums, occurred in
9 Los Angeles County. Venue is therefore proper in the U.S. District Court for the Central District
10 of California.

11 **JURISDICTION**

12 4. Defendants are within the jurisdiction of this Court. Defendants transact millions of
13 dollars as providers of supply chain solutions throughout the country, operating in more than 550
14 locations, including in the State of California and the County of Los Angeles. Thus, Defendants
15 have obtained the benefits of the laws of the State of California.

16 5. Further, this Court has subject-matter jurisdiction and removal jurisdiction pursuant
17 to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §§ 1332(d)(2), 1441(a), 1446, and
18 1453. This Court has original subject-matter jurisdiction over this action under CAFA because (i)
19 the alleged amount in controversy exceeds \$5,000,000, exclusive of interest and costs; (ii) this
20 matter is a purported class action in which a class member is a citizen of a State different from that
21 of a Defendant; and (iii) the number of putative class members is greater than 100.

22 **THE PARTIES**

23 **A. The Plaintiff**

24 6. Plaintiff is a California resident and, from October to December 2020, was
25 employed by Defendants as a lump sum assigned in Venice, California. At all relevant times,
26 Plaintiff was hired to provide services for Defendants. At all relevant times through the present,
27 and on-going, Defendants' employees, including Plaintiff during her and their employment, were,
28

1 *inter alia*, not provided timely duty free meal and rest breaks or paid missed meal and rest break
2 premiums; were not provided accurate and/or complete wage statements; were not paid all wages
3 owed within seven days of the close of payroll; and did not receive all of their wages due upon
4 termination of employment.

5 7. Plaintiff seeks to represent the following classes:

6 (a) The Non-Exempt Settlement Class shall consist of all current and former employees
7 who worked for Capstone within the State of California in a non-exempt position at
8 any time during the Class Period.

9 (a) The Waiting Time Settlement Class shall consist of all non-exempt former
10 employees who worked for Capstone within the State of California during the Class
11 Period but were no longer employed at the Effective Date.

12 (collectively referred to as “Class Members” and/or the “Class”);

13 **B. The Defendants**

14 8. Defendant Capstone Logistics, LLC is a Delaware limited liability company
15 headquartered in Peachtree Corners, Georgia. Defendant is a provider of supply chain solutions
16 throughout the country, operating in more than 550 locations, including in the State of California.
17 To provide its services, Defendant employs lumpers, such as the Plaintiff and the Class Members
18 and aggrieved employees.

19 9. The true names and capacities, whether individual, corporate, associate, or
20 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
21 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure §
22 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
23 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
24 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
25 capacities of the Defendants designated hereinafter as DOES when such identities become known.

26 10. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
27 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
28

1 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
2 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
3 employer and/or joint employer of Plaintiff and the Class Members.

4 11. California courts have recognized that the definition of “employer” for purposes of
5 enforcement of the California Labor Code goes beyond the concept of traditional employment to
6 reach irregular working arrangements for the purpose of preventing evasion and subterfuge of
7 California’s labor laws. *Martinez v. Combs* (2010) 49 Cal. 4th 35, 65. As such, anyone who
8 directly or indirectly, or through an agent or any other person, engages, suffers, or permits any
9 person to work or exercises control over the wages, hours, or working conditions of any person,
10 may be liable for violations of the California Labor Code as to that person. Cal. Labor Code §§558
11 and 558.1.

12 12. California law also permits and recognizes the piercing of a corporate veil between
13 sister companies and under the single enterprise rule. *Hasso v. Hapke* (2014) 227 Cal. App. 4th
14 107, 155; *Greenspan v. LADT, LLC* (2010) 191 Cal. App. 4th 486, 512. The single enterprise rule
15 applies where “there are two or more personalities, there is but one enterprise; and that this
16 enterprise has been so handled that it should respond, as a whole, for the debts of certain
17 component elements of it.” *Hasso* 227 Cal. App. 4th at 155; *Greenspan*, 191 Cal. App. 4th at 512.

18 **FACTUAL ALLEGATIONS**

19 13. Plaintiff and the Class Members and aggrieved employees are and were employed
20 by Capstone Logistics, LLC, a provider of supply chain solutions throughout the country with
21 more than 550 operating locations. Defendants have capabilities in freight management,
22 warehouse and distribution center support, last mile delivery, supply chain analytics and
23 optimization, among others. Their integrated, end-to-end logistics solutions help their partners
24 reduce warehousing and transportation costs.

25 14. In October 2020, Plaintiff was hired by Defendants as a lumper assigned to work in
26 Venice, California. Defendants hired Plaintiff as an hourly-paid, non-exempt employee.

27 15. Defendant paid Plaintiff \$15 per hour until she was terminated in December 2020.

1 16. In addition, Defendant hired Plaintiff and other class members and aggrieved
2 employees and classified them as hourly-paid and/or non-exempt employees and failed to
3 compensate them for all hours worked and missed meal periods and/or rest breaks.

4 17. Defendant had the authority to hire and terminate Plaintiff and the other class
5 members and aggrieved employees, to set work rules and conditions governing Plaintiff's and the
6 other class members' and aggrieved employees' employment, and to supervise their daily
7 employment activities.

8 18. Defendant exercised sufficient authority over the terms and conditions of Plaintiff's
9 and the other class members' and aggrieved employees' employment.

10 19. Like all Class Members and aggrieved employees, Plaintiff had to take her lunch
11 breaks late at least four times a week. Defendants required Plaintiff and the Class Members and
12 aggrieved employees to work beyond their sixth hour causing them to take their meal periods late
13 most of the time. Plaintiff and the Class Members and aggrieved employees did not sign any meal
14 period waiver. Defendants likewise failed to pay Plaintiff and the Class Members and aggrieved
15 employees any meal period premiums.

16 20. In addition, Defendant failed to provide all requisite uninterrupted rest periods to
17 Plaintiff, Class Members, and aggrieved employees, and also failed pay Plaintiff and the Class
18 Members and aggrieved employees any rest period premiums.

19 21. During their employment with Defendants, Plaintiff and the Class Members and
20 aggrieved employees were also subjected to unlawful deductions from their pay.

21 22. Further, Plaintiff and the Class Members and aggrieved employees were not paid by
22 Defendants for all hours worked and for their overtime wages.

23 23. During the relevant time period, Defendants also failed to keep complete or
24 accurate payroll records for Plaintiff and the other class members and aggrieved employees.

25 24. During the relevant time period, Defendant failed to reimburse Plaintiff and the
26 other class members and aggrieved employees for all necessary business-related expenses and
27 costs, including but not limited to expenses and costs associated with using their cell phones for

1 work-related tasks.

2 25. When Plaintiff was terminated by Defendants in December 2020, Defendants failed
3 to pay Plaintiff her final wages. To date, Plaintiff has yet to receive her final pay.

4 26. Labor Code § 512 requires employers to provide employees with a thirty (30)
5 minute uninterrupted and duty-free meal period within the first five hours of work. “An on-duty
6 meal period is permitted only when the nature of the work prevents an employee from being
7 relieved of all duty and the parties agree in writing to an on-duty paid meal break.” (*Lubin v. The*
8 *Wackenhut Corp.* (2016) 5 Cal. App. 5th 926, 932.) The written agreement must include a
9 provision allowing the employee to revoke it at any time. *Id.*

10 27. Generally, the DLSE and courts have “found that the nature of the work exception
11 applies: ‘(1) where the work has some particular external force that requires the employee to be on
12 duty at all times, and (2) where the employee is the sole employee of a particular employer.’” (*Id.* at
13 p. 945; *Abdullah v. U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is
14 the employer’s obligation to determine whether the nature of the work prevents an employee from
15 being relieved before requiring an employee to take an on-duty meal period.” (*Lubin, supra*, 5 Cal.
16 App. 5th at p. 946.) Nor may an employer “discharge its duty by arguing that its clients who
17 requested on-duty meal periods determined that the nature of the work prevented officers from
18 being relieved of all duty.” (*Id.* at p. 947; *Benton, supra*, 220 Cal. App. 4th at p. 729.

19 28. As with rest periods, under Labor Code § 512, if an employer maintains a uniform
20 policy that does not authorize and permit the amount of meal time called for under the law (as
21 specified in the applicable Wage Order), “it has violated the wage order and is liable.” The
22 *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting
23 an unlawful policy:

24 An employer is required to authorize and permit the amount of rest break
25 time called for under the wage order for its industry. If it does not—if, for
26 example, it adopts a uniform policy authorizing and permitting only one
27 rest break for employees working a seven-hour shift when two are
28 required—***it has violated the wage order and is liable.*** *Brinker Rest.*
Corp. v. Sup. Ct. (2012) 53 Cal.4th 1004, 1033. (Emphasis added.)

29 29. As a result of its meal period policies of requiring Plaintiff and the Class Members
and aggrieved employees to work beyond their sixth hour and to take their meal periods late at
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1 least four times a week, Defendant violated Labor Code § 512 and IWC Wage Order No. 9 by
2 failing to provide duty-free meal periods to Plaintiff and the Class Members of 30 minutes or
3 more.

4 30. Thus, Defendant unlawfully retained control of Plaintiff and the Class Members and
5 aggrieved employees during their meal periods, even though the nature of the work did not
6 necessitate an on-duty meal period (and by failing to enter into proper on-duty meal period
7 agreements). See *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 275 (holding that
8 on-premises breaks violate California law). As a result of Defendant's failure to authorize or
9 permit lawful meal periods, Plaintiff and the Class Members and aggrieved employees did not take
10 their meal periods on time. Defendant also failed to pay Plaintiff and the meal period class
11 members meal period premiums for each workday that the employees did not receive a compliant
12 meal period.

13 31. Labor Code § 226.7 provides "an employer shall not require an employee to work
14 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
15 regulation, standard, or order of the Industrial Welfare Commission" ("IWC"). Similarly, IWC
16 Wage Order 9-2001 prohibits an employer from "employ[ing] any person for a work period of
17 more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order 9-
18 2001 further obligates employers to provide an employee to "pay the employee one (1) hour of pay
19 at the employee's regular rate of compensation for each workday that the meal period is not
20 provided." Accordingly, for each day that Plaintiff and the Class Members and aggrieved
21 employees did not receive compliant meal periods, they are entitled to receive meal period
22 premiums pursuant to Labor Code § 226.7 and Wage Order 9-2001.

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

1 33. Due to Defendant’s failure to pay Plaintiff and the Class Members and aggrieved
2 employees for all meal period premiums, Defendant failed to timely pay the Class Members and
3 aggrieved employees within seven (7) days of the close of the payroll period in accordance with
4 Labor Code § 204 on a regular and consistent basis. See *Parson v. Golden State FC, LLC*, 2016
5 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding that a
6 failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

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

15 35. As a result of Defendant’s failure to pay Plaintiff and the Class Members and
16 aggrieved employees meal period minimum wages and meal period premiums, Defendant violated
17 Labor Code § 203. Labor Code § 203 provides “if an employer willfully fails to pay . . . any
18 wages of an employee who is discharged or who quits, the wages of the employee shall continue as
19 a penalty. . .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487,
20 492.

21 36. In addition, when Defendants terminated Plaintiff in December 2020, Defendants
22 failed to pay Plaintiff her final wages. To date, Plaintiff has yet to receive her final check from
23 Defendants.

24 37. Due to Defendant’s faulty policies described above, all Class Members and
25 aggrieved employees whose employment with Defendant concluded were not compensated at the
26 appropriate rate. Additionally, Defendant has failed to pay all Class Members and aggrieved
27 employees meal period premiums, whose sums were certain, at the time of termination or within

seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter.

38. As to Plaintiff and all Class Members and aggrieved employees, Defendants also failed to provide accurate itemized wage statements in accordance with Labor Code § 226(a)(1, 2, 5, 9). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

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

39. Similarly, Labor Code § 226(e) provides:

(e) (1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

(2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay

period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer during the pay period.

(iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

40. Due to Defendant's failure to provide Plaintiff and the Class Members and aggrieved employees lawful meal periods (and pay missed meal period premiums), the wage statements issued by Defendant do not indicate the correct amount of gross wages earned, the correct total hours worked, the correct net wages earned, or the applicable and/or correct hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

41. Thus, Defendant has violated Labor Code § 226(a)(1), (2), (5), and (9) with respect to Plaintiff and the Class Members and aggrieved employees.

42. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226." As explained in detail above, Defendant failed to provide Plaintiff and the Class Members and aggrieved employees with accurate itemized wage statements. Accordingly, Plaintiff and the Class Members and aggrieved employees may also recover Labor Code § 226.3 penalties for Defendant's violations of Labor Code § 226(a). See *Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151, at *7 ["the weight of authority counsels that violations of Section 226.3 may be the basis of a PAGA claim."]; *Pedroza v. PetSmart, Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL 9506073, at *6 (C.D. Cal. June 14, 2012) ("Lab. Code § 226.3 merely provides that failure to perform actions mandated by § 226(a) may trigger civil

1 penalties.”).

2 43. Labor Code § 221 provides that, “It shall be unlawful for any employer to collect or
3 receive from an employee any part of wages theretofore paid by said employer to said employee.”

4 44. Furthermore, Labor Code § 222 provides that, “It shall be unlawful, in case of any
5 wage agreement arrived at through collective bargaining, either wilfully or unlawfully or with intent
6 to defraud an employee, a competitor, or any other person, to withhold from said employee any part
7 of the wage agreed upon.”

8 45. Labor Code § 222.5 further provides that, “No person shall withhold or deduct from
9 the compensation of any employee, or require any prospective employee or applicant for
10 employment to pay, any fee for, or cost of, any pre-employment medical or physical examination
11 taken as a condition of employment, nor shall any person withhold or deduct from the
12 compensation of any employee, or require any employee to pay any fee for, or costs of, medical or
13 physical examinations required by any law or regulation of federal, state or local governments or
14 agencies thereof.”

15 46. In addition, Labor Code § 223 provides that, “Where any statute or contract requires
16 an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower
17 wage while purporting to pay the wage designated by statute or by contract.”

18 47. Labor Code § 224 further provides as follows:

19 The provisions of Sections 221, 222 and 223 shall in no way make it unlawful for
20 an employer to withhold or divert any portion of an employee’s wages when the
21 employer is required or empowered so to do by state or federal law or when a
22 deduction is expressly authorized in writing by the employee to cover insurance
23 premiums, hospital or medical dues, or other deductions not amounting to a rebate
24 or deduction from the standard wage arrived at by collective bargaining or
pursuant to wage agreement or statute, or when a deduction to cover health and
welfare or pension plan contributions is expressly authorized by a collective
bargaining or wage agreement.

25 Nothing in this section or any other provision of law shall be construed as
26 authorizing an employer to withhold or divert any portion of an employee’s wages
27 to pay any tax, fee or charge prohibited by § 50026 of the Government Code,
whether or not the employee authorizes such withholding or diversion.

28 48. Labor Code § 225 provides that, “The violation of any provision of Sections 221,

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222, 222.5, or 223 is a misdemeanor.”

49. Labor Code § 225.5 further provides that:

In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty as follows:

(a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

(b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

The penalty shall be recovered by the Labor Commissioner as part of a hearing held to recover unpaid wages and penalties or in an independent civil action. The action shall be brought in the name of the people of the State of California and the Labor Commissioner and attorneys thereof may proceed and act for and on behalf of the people in bringing the action. Twelve and one-half percent of the penalty recovered shall be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws, and the remainder shall be paid into the State Treasury to the credit of the General Fund.

50. Based on the foregoing, the deductions made to the Plaintiff and Class Members’ and aggrieved employees’ wages were unlawful.

51. As to Plaintiff and the Class Members’ and aggrieved employees’ right to sue for the violations committed by Defendants, Labor Code § 218 provides that, “Nothing in this article shall limit the authority of the district attorney of any county or prosecuting attorney of any city to prosecute actions, either civil or criminal, for violations of this article or to enforce the provisions thereof independently and without specific direction of the division. Nothing in this article shall limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due him under this article.”

52. Moreover, Labor Code § 218.5 provides that, “In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney’s fees and costs to the prevailing party if any party to the action requests attorney’s fees and costs upon the initiation of the action. This section shall not

1 apply to an action brought by the Labor Commissioner.”

2 53. Finally, Labor Code § 218.6 provides that, “In any action brought for the
3 nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of
4 interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the
5 date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of
6 Division 2.”

7 54. Labor Code § 1197 states the California requirement that employees must be paid at
8 least the minimum wage fixed by the Commission, and any payment of less than the minimum
9 wage is unlawful.

10 55. Labor Code § 1194 entitles “any employee receiving less than the legal minimum
11 wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage.”

12 56. IWC Wage Order 9-2001 § 4 also obligates employers to pay each employee
13 minimum wages for all hours worked.

14 57. As noted above, Defendants required Plaintiff and the Class Members and
15 aggrieved employees to work certain hours off the clock. Although this was related to their
16 employment with Defendants and they often had to work beyond 40 hours per week because of
17 these, Defendants never paid Plaintiff and the Class Members for time spent doing work off the
18 clock nor were they paid for all overtime work. As a result, Plaintiff and the Class Members and
19 aggrieved employees are not compensated for all hours worked.

20 58. In 2018, the California Supreme Court held in *Troester v. Starbucks, Inc.* (2018) 5
21 Cal. 5th 829, that an employee must be compensated for any time in which they are under the
22 control of their employer, and performing work, even if that amount of time, as here, is limited to a
23 few minutes per day. Thus, by not compensating Plaintiff and the Class Members and aggrieved
24 employees for the time spent working beyond 40 hours per week, Defendants have violated the
25 Labor Code and the Wage Order.

26 59. Labor Code § 1194.2 authorizes employees to recover wages and liquidated damages
27 for violations of Labor Code § 1194. Where an employee, such as Plaintiff and the Class Members,

1 is not paid for all hours worked under Labor Code § 1194, the employee may recover minimum
2 wages for the time associated with the overtime for which they received no compensation. (See
3 *Sillah v. Command Int'l Sec. Servs.* (N.D. Cal. 2015) 154 F. Supp. 3d 891 [holding that employees
4 suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also
5 showed they were paid less than minimum wage]; accord *Andrade v. Arby's Rest. Grp., Inc.* (N.D.
6 Cal. Dec. 12, 2016) No. 15-cv-03175 NC, 2016 U.S. Dist. LEXIS 172319, at *20-21.) Since
7 Defendant failed to provide Plaintiff and all Class Members and aggrieved employees with
8 compensation for all hours worked, including overtime hours, each are entitled to recover liquidated
9 damages under Labor Code § 1194.2. Based upon these same factual allegations, Plaintiff also
10 seeks penalties on behalf of all Class Members and aggrieved employees under Labor Code § 1199.

11 60. Labor Code § 510 requires an employer to compensate an employee who works
12 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight
13 (8) hours worked on the seventh consecutive day no less than one and one-half times the regular
14 rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate
15 employees at no less than twice the regular rate of pay when an employee works more than twelve
16 (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work. In
17 accordance with Labor Code § 1194, Plaintiff and the overtime class members and aggrieved
18 employees could not then agree and cannot now agree to work for a lesser wage than the amount
19 proscribed by Labor Code §§ 510 and 1194.

20 61. For the reasons stated above, Plaintiff and the Class Members and aggrieved
21 employees worked certain hours for which they were not paid. Defendants required Plaintiff and
22 the Class Members and aggrieved employees to work certain hours off the clock. Because Plaintiff
23 and the Class Members and aggrieved employees spent eight hours or more working on
24 “compensated” time, this uncompensated time for work done beyond eight hours each day should
25 have been compensated at the overtime rate. Instead, no compensation was paid at all, in violation
26 of Cal. Labor Code §§ 510, 1194, and Wage Order 9-2001.

27 **CLASS ACTION ALLEGATIONS**

1 62. Plaintiff brings this action, on behalf of herself and all others similarly situated, as a
2 class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

3 63. Plaintiff seeks to represent the following classes:

4 (a) The Non-Exempt Settlement Class shall consist of all current and former employees
5 who worked for Capstone within the State of California in a non-exempt position at
6 any time during the Class Period.

7 (b) The Waiting Time Settlement Class shall consist of all non-exempt former
8 employees who worked for Capstone within the State of California during the Class
9 Period but were no longer employed at the Effective Date.

10
11 64. This action has been brought and may properly be maintained as a class action
12 under Rule 23 because there is a well-defined community of interest in the litigation, the proposed
13 class is easily ascertainable, and Plaintiff is a proper representative of the Class:

14 a. Numerosity: The potential members of the Class as defined are so
15 numerous that joinder of all the members of the Class is impracticable. While the precise number
16 of Class Members has not been determined at this time, Plaintiff is informed and believes that
17 Defendants have, on average, during the Class Period employed over 300 Class Members. The
18 Class Members are dispersed throughout California. Joinder of all members of the proposed
19 classes is therefore not practicable.

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

23 i. Whether Defendants violated Labor Code sections 512 and 226.7, and
24 section 11 of IWC Wage Order No. 9 by failing to pay one hour of premium pay to each member of
25 the Class for each day that an unpaid meal break was not provided during the Class Period;

26 ii. Whether Defendants violated Labor Code sections 204 and 210 by failing to
27 pay Plaintiff and the Class Members all wages owed with seven days of the close of payroll;

1 iii. Whether Defendants violated Section 203 of the Labor Code by failing to pay
2 members of the Waiting Time Penalty Subclass (those class members who have terminated their
3 employment with the Defendants) for all wages due to them (including their pay due for unpaid rest
4 breaks) upon their separation of employment from Defendant;

5 iv. Whether Defendants failed to provide Plaintiff and the Class Members
6 complete wage statements in violation of Labor Code Section 226(a);

7 v. Whether Defendants violated Labor Code sections 221, 222, 222.5, 223,
8 224, 225, and 225.5 for subjecting Plaintiff and Class Members to unlawful deductions from their
9 pay;

10 vi. Whether Defendants violated sections 1194, 1194.2, and 1198 of the Labor
11 Code by failing to pay Plaintiff and the members of the Class for all wages owed during the Class
12 Period;

13 vii. Whether Defendants violated Sections 510, 1194, 1194.2, and 1198 of the
14 Labor Code and IWC Wage Order No. 9 during the Class Period by failing to pay Plaintiff and the
15 Class Members all overtime wages owed;

16 viii. Whether Defendants engaged in an unfair practice and violated section
17 17200 of the California Business and Professions Code by failing to provide off-duty meal breaks
18 to members of the Class in violation of Labor Code sections 512, 226.7 and Section 11 of IWC
19 Wage Order No. 9;

20 ix. Whether Defendants engaged in an unfair practice and violated section
21 17200 of the California Business and Professions Code by failing to pay Plaintiff and the members
22 of the Class for all wages and overtimes wages owed during the Class Period;

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

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

27 xii. The nature and extent of class-wide damages.
28

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

5 d. Adequacy of Representation: Plaintiff is a member of the Class and will
6 fairly and adequately represent and protect the interests of the Class and Class Members.
7 Plaintiff's interests do not conflict with those of Class and Class Members. Counsel who represent
8 Plaintiff are competent and experienced in litigating large wage and hour class actions, and other
9 employment class actions, and will devote sufficient time and resources to the case and otherwise
10 adequately represent the Class and Class Members.

11 e. Superiority of Class Action: A class action is superior to other available
12 means for the fair and efficient adjudication of this controversy. Individual joinder of all Class
13 Members is not practicable, and questions of law and fact common to the Class predominate over
14 any questions affecting only individual members of the Class. Each Class Member has been
15 damaged or may be damaged in the future by reason of Defendants' unlawful policies and/or
16 practices. Certification of this case as a class action will allow those similarly situated persons to
17 litigate their claims in the manner that is most efficient and economical for the parties and the
18 judicial system. Certifying this case as a class action is superior because it allows for efficient and
19 full disgorgement of the ill-gotten gains Defendants have enjoyed by maintaining its unlawful
20 meal period and final pay policies and will thereby effectuate California's strong public policy of
21 protecting employees from deprivation or offsetting of compensation earned in their employment.
22 If this action is not certified as a Class Action, it will be impossible as a practical matter, for many
23 or most Class Members to bring individual actions to recover monies unlawfully withheld from
24 their lawful compensation due from Defendants, due to the relatively small amounts of such
25 individual recoveries relative to the costs and burdens of litigation.

26 **PAGA ALLEGATIONS**

27 65. At all times herein set forth, PAGA was applicable to Plaintiff's and the aggrieved
28

1 employees' respective employments with Defendant.

2 66. At all times herein set forth, PAGA has provided that any provision of law under
3 the California Labor Code that provides for a civil penalty, including unpaid wages and premium
4 wages, to be assessed and collected by the LWDA for violations of the California Labor Code
5 may, as an alternative, be recovered through civil action brought by an aggrieved employee on
6 behalf of themselves and other current or former employees pursuant to procedures outlined in
7 California Labor Code § 2699.3.

8 67. Pursuant to PAGA, a civil action may be brought by an "aggrieved employee," who
9 is any person that was employed by the alleged violator and against whom one or more of the
10 alleged violations was committed.

11 68. Plaintiff was employed by Defendant and the alleged violations were committed
12 against her during her employment and she is, therefore, an aggrieved employee. Plaintiff and the
13 other employees are "aggrieved employees" as defined by California Labor Code § 2699(c) in that
14 they are current or former employees of Defendant, and one or more of the alleged violations were
15 committed against them.

16 **STATEMENT OF LWDA NOTICE COMPLIANCE**

17 69. Plaintiff provided written notice by certified mail to the Labor and Workforce
18 Development Agency (the "LWDA") and to Defendant of the legal claims and theories of this
19 case. Plaintiff will amend her complaint to plead exhaustion of administrative remedies following
20 the statutorily prescribed sixty-five day waiting period in which no response was received from the
21 LWDA. Labor Code § 2699.3.

22 **FIRST CAUSE OF ACTION**
23 **FAILURE TO PROVIDE OFF-DUTY MEAL BREAKS AND FAILURE**
24 **TO PAY MISSED MEAL BREAK PREMIUMS**
25 **[Cal. Labor Code §§ 226.7, 512]**
26 **On behalf of Plaintiff and the Class Against All Defendants**

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

71. California Labor Code § 226.7(a) provides, "No employer shall require any

1 employee to work during any meal or rest period mandated by an applicable order of the Industrial
2 Welfare Commission.”

3 72. Section 11(A) and (B) of IWC Wage Order No. 9 provide that:

4 No employer shall employ any person for a work period of more than five (5)
5 hours without a meal period of not less than 30 minutes, except that when a
6 work period of not more than six (6) hours will complete the day’s work the
7 meal period may be waived by mutual consent of the employer and the
8 employee...An employer may not employ an employee for a work period of
9 more than ten (10) hours per day without providing the employee with a
10 second meal period of not less than 30 minutes, except that if the total hours
11 worked is no more than 12 hours, the second meal period may be waived by
12 mutual consent of the employer and the employee only if the first meal period
13 was not waived.

14 73. Section 11(C) of IWC Wage Order No. 9 provides that

15 Unless the employee is relieved of all duty during a 30-minute meal period,
16 the meal period shall be considered an on-duty meal period and counted as
17 time worked. An on-duty meal period shall be permitted only when the nature
18 of the work prevents an employee from being relieved of all duty and when by
19 written agreement between the parties an on-the-job paid meal period is
20 agreed to. The written agreement shall state that the employee may, in writing,
21 revoke the agreement at any time.

22 74. Finally, Section 11(D) of IWC Wage Order No. 9 provides that

23 If an employer fails to provide an employee a meal period in accordance with
24 the applicable provisions of this order, the employer shall pay the employee
25 one (1) hour of pay at the employee’s regular rate of compensation for each
26 workday that the meal period is not provided.

27 75. As alleged herein, as a result of its meal period policies of requiring Plaintiff and
28 the Class Members to work beyond their sixth hour and to take their meal breaks late, Defendant
29 violated Labor Code § 512 and IWC Wage Order No. 9 by failing to provide duty-free meal
30 periods to Plaintiff and the Class Members of 30 minutes or more, and are liable to Plaintiff and
31 the Class.

32 76. As a result of the unlawful acts of Defendants, Plaintiff and the Class were not
33 provided timely duty-free meal breaks, and are entitled to recovery under Cal. Labor Code § 226.7
34 in the amount of one additional hour of pay at the employee’s regular rate of compensation for
35 each work period greater than 5 hours in California during each day in which Defendants failed to
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1 provide employees with timely duty-free meal periods as required by California law.

2 **SECOND CAUSE OF ACTION**
3 **FAILURE TO PROVIDE OFF-DUTY REST BREAKS AND FAILURE**
4 **TO PAY MISSED REST BREAK PREMIUMS**

5 **[Cal. Labor Code §§ 226.7, 512]**
6 **On behalf of Plaintiff and the Class Against All Defendants**

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

9 78. At all times herein set forth, the applicable IWC Wage Order and California Labor
10 Code § 226.7 were applicable to Plaintiff and the other class members' employment by Defendant.

11 79. At all relevant times, California Labor Code § 226.7 provides that no employer
12 shall require an employee to work during any rest period mandated by an applicable order of the
13 California IWC.

14 80. At all relevant times, the applicable IWC Wage Order provides that "[e]very
15 employer shall authorize and permit all employees to take rest periods, which insofar as
16 practicable shall be in the middle of each work period" and that the "rest period time shall be based
17 on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or
18 major fraction thereof unless the total daily work time is less than three and one-half (3 ½) hours."

19 81. During the relevant time period, Defendant required Plaintiff and other class
20 members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest
21 period per each four (4) hour period worked.

22 82. During the relevant time period, Defendant willfully required Plaintiff and the other
23 class members to work during rest periods and failed to pay Plaintiff and the other class members
24 the full rest period premium for work performed during rest periods.

25 83. During the relevant time period, Defendant failed to pay Plaintiff and the other class
26 members the full rest period premium due pursuant to California Labor Code § 226.7.

27 84. Defendant's conduct violates applicable IWC Wage Orders and California Labor
28 Code § 226.7.

85. Pursuant to the applicable IWC Wage Orders and California Labor Code §

1 226.7(b), Plaintiff and the other class members are entitled to recover from Defendant one
2 additional hour of pay at the employees' regular hourly rate of compensation for each workday that
3 the rest period was not provided.

4 **THIRD CAUSE OF ACTION**
5 **FAILURE TO PAY FOR ALL HOURS WORKED**
6 **[Cal. Labor Code §§ 1194; 1194.2, and 1198]**
7 **On behalf of Plaintiff and the Class Against All Defendants**

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

10 87. Section 1194 of the Labor Code provides, in relevant part:

11 Notwithstanding any agreement to work for a lesser wage, any employee
12 receiving less than minimum wage...applicable to the employee is entitled to
13 recover in a civil action the unpaid balance of the full amount of this
14 minimum wage ..., including interest thereon, reasonable attorney's fees, and
15 costs of suit.

16 88. Section 1194.2 of the Labor Code provides, in relevant part:

17 In any action under...Section 1194 to recover wages because of the payment
18 of a wage less than the minimum wage fixed by an order of the commission,
19 an employee shall be entitled to recover liquidated damages in an amount
20 equal to the wages unlawfully unpaid and interest thereon.

21 89. As noted above, Defendants required Plaintiff and the class members to work
22 certain hours off the clock. Although this was related to their employment with Defendants and
23 they often had to work beyond 40 hours per week because of this, Defendants never paid Plaintiff
24 and the class members for time spent working off the clock nor were they paid for overtime work.
25 As a result, Plaintiff and the Class Members are not compensated for all hours worked in violation
26 of Labor Code § 1194.

27 90. Pursuant to sections 1194, 1194.2, and 1198 of the California Labor Code, Plaintiff
28 and the Class are entitled to recover, either their unpaid hourly wages due, or minimum wage plus
interest and/or liquidated damages in an additional amount equal to the total amount of wages
unlawfully withheld during the Class Period for unpaid work hours.

91. Pursuant to section 1194.2 of the Labor Code, Plaintiff and the Class are also

1 entitled to recover interest, costs, and attorneys' fees associated with this cause of action.

2 **FOURTH CAUSE OF ACTION**
3 **FAILURE TO PAY ALL OVERTIME WAGES**
4 **(Violation of Labor Code §§ 510, 1194, 1197, 1197.1, and 1198, and the "Hours and Days of**
5 **Work" section of IWC Wage Order No. 9)**
6 **By Plaintiff and the Overtime Class Against All Defendants**

7 92. Plaintiff re-alleges and incorporates by reference the allegations contained in the
8 paragraphs above, as though fully set forth herein.

9 93. Labor Code § 510 provides, "[a]ny work in excess of eight hours in one workday
10 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
11 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
12 one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day
13 shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In
14 addition, any work in excess of eight hours on any seventh day of a workweek shall be
15 compensated at the rate of no less than twice the regular rate of pay of an employee." The "Hours
16 and Days of Work" section of the applicable IWC Wage Order mandate the same requirements.

17 94. Labor Code § 1194 provides that any employee receiving less than the legal
18 overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid
19 balance of the full amount of this overtime compensation, including interest thereon, reasonable
20 attorney's fees, and costs of suit.

21 95. Furthermore, pursuant to Labor Code § 1198, "[t]he maximum hours of work and
22 the standard conditions of labor fixed by the commission shall be the maximum hours of work and
23 the standard conditions of labor for employees. The employment of any employee for longer hours
24 than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

25 96. The IWC Wage Order 9-2001 defines the term "hours worked" as "the time during
26 which an employee is subject to the control of an employer, and includes all the time the employee
27 is suffered or permitted to work, whether or not required to do so."

28 97. In California, overtime is computed based on the regular rate of pay. The regular
rate of pay includes all different types of remuneration, including hourly earnings, salary,

1 piecework earnings, commissions, and non-discretionary bonuses, and the value of meals and
2 lodging.

3 98. Plaintiff and members of the Overtime Class regularly worked over eight hours per
4 day and 40 hours per week while employed by Defendants. Plaintiff and members of the Overtime
5 Class did not receive all overtime compensation owed for all overtime hours worked over eight
6 hours per day and/or 40 hours per week, and/or for every hour worked during the seventh day of
7 work, at the applicable overtime rate during their employment with Defendants.

8 99. Defendants failed to pay Plaintiff and members of the Overtime Class at the proper
9 overtime rate for all the time spent working and under the control of Defendants. Defendants also
10 failed to pay overtime compensation for all overtime hours worked over eight hours per day and/or
11 40 hours per week.

12 100. Plaintiff and members of the Overtime Class suffered and continue to suffer losses
13 related to the use and enjoyment of compensation due and owing to them as a direct result of
14 Defendants' unlawful acts and Labor Code violations in an amount to be shown according to proof
15 at trial and within the jurisdictional limitations of this Court.

16 101. Plaintiff seeks all available remedies for Defendants' violations including, but not
17 limited to any and all wages due, monies, interest, attorney's fees, and costs to the extent permitted
18 by law.

19 **FIFTH CAUSE OF ACTION**
20 **FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS**
21 **[Cal. Labor Code § 226(a) and 226.2(a)(2)(A)-(B)]**

22 **On behalf of Plaintiff and the Wage Statement and Penalty Subclass Against All Defendants**

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

25 103. The actionable period for this cause of action is one year prior to the filing of the
26 initial Complaint through the present, and on-going until the violations are corrected or the
27 subclass is certified.

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

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

105. As set forth above, during the Class Period, due to, *inter alia*, its unlawful meal
period policies, Defendants failed to issue wage statements to its employees in California,
including Plaintiff, that complied with Labor Code Section 226(a).

106. Defendants' "wage statements" failed to comply with either section 226 or 226.2.
First, Defendants failed to identify themselves as the employer. Second, Defendants' "wage
statements" also did not include total hours worked, the total amount of time spent on rest periods
and other nonproductive tasks, and all applicable hourly rates in effect during the pay period and
the corresponding number of hours worked at each hourly rate in violation of Labor Code Sections
226(a) and 226.2.

107. Defendants' failure to comply with section 226(a) of the Labor Code was knowing
and intentional, particularly following the issuance of *McKenzie v. Federal Express Corp.*, 765
F.Supp.2d 1222, 1229 (C.D.Cal. 2011) and/or the passage of Section 226.2.

108. As a result of Defendants' issuance of inaccurate itemized wage statements to
Plaintiff and members of the wage statement and penalty subclass (i.e., those members of the class
who were employed by Defendants during the actionable period for this cause of action) in
violation of section 226(a) of the California Labor Code, Plaintiff and the Class are each entitled to
recover an initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding
an aggregate penalty of \$4,000 per Plaintiff and per every member of the Class from Defendants
pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys' fees.

SIXTH CAUSE OF ACTION
FAILURE TO PAY ALL WAGES WITHIN A TIMELY MANNER
[Cal. Labor Code §§ 204]
On behalf of Plaintiff, and the Class Against All Defendants

109. Plaintiff incorporates by this reference, as though fully set forth herein, the preceding paragraphs of this Complaint.

110. Cal. Lab. Code § 200 provides that “‘wages’ include all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, pieces, commission basis, or other method of calculation.”

111. Cal. Labor Code § 204 states that all wages earned by any person in any employment are payable twice during the calendar month, and must be paid not more than seven days following the close of the period when the wages were earned.

112. Cal. Lab. Code § 216 establishes that it is a misdemeanor for any person, with regards to wages due, to “falsely deny the amount or validity thereof, or that the same is due, with intent to secure himself, his employer or other person, any discount upon such indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due.”

113. Defendants, as a matter of established company policy and procedure, in the State of California, scheduled, required, suffered, and/or permitted Plaintiff and other members of the Class, to work during pay periods, and not compensate them for their work within seven days of the close of payroll.

114. In addition, Defendants, as a matter of established company policy and procedure in the State of California, scheduled, required, suffered and/or permitted Plaintiff and the members of the Class, to work without legally compliant off-duty meal periods, and failed to pay Plaintiff and the members of the Class meal period premiums within seven days of the close of payroll, as required by law.

115. Defendants, as a matter of established company policy and procedure in the State of California, falsely deny they owe Plaintiff and the other members of the Class these wages, with the intent of securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress,

1 hinder, delay, and/or defraud Plaintiff and the Class Members.

2 116. Defendants' pattern, practice and uniform administration of its corporate policy of
3 illegally denying employees compensation, as described herein, is unlawful and entitles Plaintiff
4 and members of the Class, to recover, pursuant to Cal. Lab. Code § 218, the unpaid balance of the
5 compensation owed to them in a civil action.

6 117. Pursuant to Cal. Lab. Code § 218.6 and to Cal. Civ. Code §§ 3287 (b) and 3289,
7 Plaintiff and members of the Class, seek to recover pre-judgment interest on all amounts recovered
8 herein.

9 118. Pursuant to Cal. Lab. Code § 218.5, Plaintiff and members of the Class, request that
10 the Court award them reasonable attorneys' fees and the costs incurred by them in this action, as
11 well as any statutory penalties Defendants' may owe under the California Labor Code and/or any
12 other statute.

13 **SEVENTH CAUSE OF ACTION**
14 **WAITING TIME PENALTIES FOR**
15 **FAILURE TO PAY WAGES DUE ON TERMINATION**
16 **[Cal. Labor Code §§ 201-203]**

17 **On Behalf of Plaintiff and the Waiting Time Penalty Subclass Against All Defendants**

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

20 120. The actionable period for this cause of action is three years prior to the filing of the
21 Complaint through the present, and on-going until the violations are corrected, or the subclass is
22 certified.

23 121. Sections 201 and 202 of the California Labor Code require Defendants to pay all
24 compensation due and owing to former employees in the Class during the actionable period for
25 this cause of action, at or around the time that their employment is terminated.

26 122. Section 203 of the California Labor Code provides that if an employer willfully
27 fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and
28 202, then the employer is liable for penalties in the form of continued compensation up to thirty
(30) work days.

123. By virtue of its unlawful meal period policies, Defendants willfully failed to pay Plaintiff and other members of the Waiting Time Penalty Subclass (i.e., those members of the Class whose employment with Defendants ended the actionable period for this cause of action) who are no longer employed by Defendants for all time worked and all wages owed prior to or upon termination or separation from employment with Defendants as required by California Labor Code §§ 201 and 202.

124. Defendants also failed to pay Plaintiff her final wages when she was terminated in December 2020. To date, Plaintiff has yet to receive her final check from Defendants.

125. As a result, Defendants are liable to Plaintiff and other members of the waiting time penalty subclass who are no longer employed by Defendants for waiting time penalties amounting to thirty (30) days wages for Plaintiff and each such subclass member pursuant to California Labor Code § 203. See, e.g., DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties).

EIGHTH CAUSE OF ACTION
UNLAWFUL DEDUCTIONS FROM PAY
[Cal. Labor Code §§ 218, 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, and 225.5]
On Behalf of Plaintiff and the Class Against All Defendants

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

127. Labor Code § 221 provides that, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”

128. Furthermore, Labor Code § 222 provides that, “It shall be unlawful, in case of any wage agreement arrived at through collective bargaining, either wilfully or unlawfully or with intent to defraud an employee, a competitor, or any other person, to withhold from said employee any part of the wage agreed upon.”

129. Labor Code § 222.5 further provides that, “No person shall withhold or deduct from the compensation of any employee, or require any prospective employee or applicant for employment to pay, any fee for, or cost of, any pre-employment medical or physical examination taken as a condition of employment, nor shall any person withhold or deduct from the

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1 compensation of any employee, or require any employee to pay any fee for, or costs of, medical or
2 physical examinations required by any law or regulation of federal, state or local governments or
3 agencies thereof.”

4 130. In addition, Labor Code § 223 provides that, “Where any statute or contract
5 requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a
6 lower wage while purporting to pay the wage designated by statute or by contract.”

7 131. Labor Code § 224 further provides as follows:

8 The provisions of Sections 221, 222 and 223 shall in no way make it unlawful for
9 an employer to withhold or divert any portion of an employee’s wages when the
10 employer is required or empowered so to do by state or federal law or when a
11 deduction is expressly authorized in writing by the employee to cover insurance
12 premiums, hospital or medical dues, or other deductions not amounting to a rebate
13 or deduction from the standard wage arrived at by collective bargaining or
pursuant to wage agreement or statute, or when a deduction to cover health and
welfare or pension plan contributions is expressly authorized by a collective
bargaining or wage agreement.

14 Nothing in this section or any other provision of law shall be construed as
15 authorizing an employer to withhold or divert any portion of an employee’s wages
16 to pay any tax, fee or charge prohibited by § 50026 of the Government Code,
whether or not the employee authorizes such withholding or diversion.

17 132. Moreover, Labor Code § 225 provides that, “The violation of any provision of
18 Sections 221, 222, 222.5, or 223 is a misdemeanor.”

19 133. Labor Code § 225.5 further provides that:

20 In addition to, and entirely independent and apart from, any other penalty
21 provided in this article, every person who unlawfully withholds wages due any
22 employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a
civil penalty as follows:

23 (a) For any initial violation, one hundred dollars (\$100) for each failure to pay
each employee.

24 (b) For each subsequent violation, or any willful or intentional violation, two
25 hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of
26 the amount unlawfully withheld.

27 The penalty shall be recovered by the Labor Commissioner as part of a hearing
28 held to recover unpaid wages and penalties or in an independent civil action. The
action shall be brought in the name of the people of the State of California and the
Labor Commissioner and attorneys thereof may proceed and act for and on behalf

1 of the people in bringing the action. Twelve and one-half percent of the penalty
2 recovered shall be paid into a fund within the Labor and Workforce Development
3 Agency dedicated to educating employers about state labor laws, and the
remainder shall be paid into the State Treasury to the credit of the General Fund.

4 134. As to Plaintiff and the Class Members' right to sue for the violations committed by
5 Defendants, Labor Code § 218 provides that, "Nothing in this article shall limit the authority of the
6 district attorney of any county or prosecuting attorney of any city to prosecute actions, either civil
7 or criminal, for violations of this article or to enforce the provisions thereof independently and
8 without specific direction of the division. Nothing in this article shall limit the right of any wage
9 claimant to sue directly or through an assignee for any wages or penalty due him under this
10 article."

11 135. Further, Labor Code § 218.5 provides that, "In any action brought for the
12 nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the
13 court shall award reasonable attorney s fees and costs to the prevailing party if any party to the
14 action requests attorney s fees and costs upon the initiation of the action. This section shall not
15 apply to an action brought by the Labor Commissioner."

16 136. Finally, Labor Code § 218.6 provides that, "In any action brought for the
17 nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of
18 interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the
19 date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of
20 Division 2."

21 137. Based on the foregoing, the deductions made on the Plaintiff and Class Members'
22 wages were unlawful and they are entitled to the remedies provided above.

23 **NINTH CAUSE OF ACTION**
24 **FAILURE TO MAINTAIN PAYROLL RECORDS**
25 **(Violation of Labor Code § 1174(d))**
26 **On Behalf of Plaintiff and the Class Against All Defendants**

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

139. Pursuant to California Labor Code § 1174(d), an employer shall keep at a central
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1 location in the state or at the plants or establishments at which employees are employed, payroll
2 records showing the hours worked daily by and the wages paid to, and the number of piece-rate
3 units earned by, and any applicable piece rate paid to, employees employed at the respective plants
4 or establishments. These records shall be kept in accordance with rules established for this purpose
5 by the commission, but in any case, shall be kept on file for not less than two years.

6 140. Defendant has intentionally and willfully failed to keep accurate and complete
7 payroll records showing the hours worked daily and the wages paid to Plaintiff and the other class
8 members.

9 141. As a result of Defendant's violation of California Labor Code § 1174(d), Plaintiff
10 and the other class members have suffered injury and damage to their statutorily protected rights.

11 142. More specifically, Plaintiff and the other class members have been injured by
12 Defendant's intentional and willful violation of California Labor Code § 1174(d) because they
13 were denied both their legal right and protected interest, in having available, accurate and complete
14 payroll records pursuant to California Labor Code § 1174(d).

15 **TENTH CAUSE OF ACTION**
16 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES**
17 **(Violation of Labor Code §§ 2800 and 2802)**
18 **On Behalf of Plaintiff and the Class Against All Defendants**

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

21 144. Pursuant to California Labor Code §§ 2800 and 2802, an employer must reimburse
22 its employee for all necessary expenditures incurred by the employee in direct consequence of the
23 discharge of his or her job duties or in direct consequence of his or her obedience to the directions
24 of the employer.

25 145. Plaintiff and the other class members incurred necessary business-related expenses
26 and costs that were not fully reimbursed by Defendant.

27 146. Defendant has intentionally and willfully failed to reimburse Plaintiff and the other
28 class members for all necessary business-related expenses and costs. Plaintiff and the other class
members are entitled to recover from Defendant their business-related expenses and costs incurred

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1 during the course and scope of their employment, plus interest accrued from the date on which the
2 employee incurred the necessary expenditures at the same rate as judgments in civil actions in the
3 State of California.

4 **ELEVENTH CAUSE OF ACTION**
5 **UNFAIR COMPETITION LAW VIOLATIONS**
6 **(BUS. & PROF. CODE § 17200, ET SEQ.)**
7 **On Behalf of Plaintiff and the Class Against All Defendants**

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

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

15 149. Under section 17208 of the California Business and Professions Code, the statute of
16 limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for
17 this cause of action is four years prior to the filing of the initial Complaint through the present, and
18 on-going until the violations are corrected, or the Class is certified.

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

24 151. As a direct and proximate result of Defendants’ unlawful business practices,
25 Plaintiff and the Class Members have suffered economic injuries. Defendants have profited from
26 their unlawful, unfair, and/or fraudulent acts and practices.

27 152. Plaintiff and similarly situated Class Members are entitled to monetary relief
28 pursuant to Business & Professions Code §§ 17203 and 17208 for, *inter alia*, all unpaid meal
period premiums, due and interest thereon, from at least four years prior to the filing of this

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1 complaint through to the date of such restitution, at rates specified by law. Defendants should be
2 required to disgorge all the profits and gains it has reaped and restore such profits and gains to
3 Plaintiff and Class Members, from whom they were unlawfully taken.

4 153. Through its actions alleged herein, Defendants have engaged in unfair competition
5 within the meaning of section 17200 of the California Business & Professions Code, because
6 Defendants' conduct, as herein alleged has damaged Plaintiff and the Class Members by, *inter*
7 *alia*, wrongfully denying them missed meal and rest period premiums, wages for all hours worked,
8 and overtime wages, and therefore was substantially injurious to Plaintiff and the Class Members.

9 154. Defendants engaged in unfair competition in violation of sections 17200 et seq. of
10 the California Business & Professions Code by violating Sections §§ 201, 202, 203, 204, 210, 218,
11 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, 225.5, 226, 226(e), 226.3, 226.7, 510, 512, 1194,
12 1194.2, 1197, 1197.1, 1198, 1199, as well as IWC Wage Order No. 9-2001.

13 155. Defendants' course of conduct, act and practice in violation of the California laws
14 mentioned above constitute independent violations of sections 17200 et seq. of the California
15 Business and Professions Code.

16 156. Plaintiff and similarly situated Class Members are entitled to enforce all applicable
17 penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

18 157. Plaintiff has assumed the responsibility of enforcement of the laws and public
19 policies specified herein by suing on behalf of herself and other similarly situated Class Members
20 previously or presently employed by Defendants in California. Plaintiff's success in this action
21 will enforce important rights affecting the public interest. Plaintiff will incur a financial burden in
22 pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to
23 Plaintiff is appropriate pursuant to Code of Civil Procedure §1021.5, and Labor Code § 1194.

24 **TWELFTH CAUSE OF ACTION**
25 **(Violation of PAGA, Labor Code §§ 2698, et seq.)**
26 **On Behalf of Plaintiff and Aggrieved Employees Against All Defendants**

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

1 159. PAGA expressly establishes that any provision of the California Labor Code which
2 provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments,
3 divisions, commissions, boards, agencies, or employees for a violation of the California Labor
4 Code, may be recovered through a civil action brought by an aggrieved employee on behalf of
5 himself or herself, and other current or former employees.

6 160. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
7 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is
8 authorized to exercise the same discretion, subject to the same limitations and conditions, to assess
9 a civil penalty.

10 161. Plaintiff and the other hourly-paid, non-exempt employees are “aggrieved
11 employees” as defined by California Labor Code § 2699(c) in that they are all current or former
12 employees of Defendants, and one or more of the alleged violations was committed against them.

13 162. ***Failure to Pay Overtime.*** Defendant’s failure to pay legally required overtime
14 wages to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and
15 constitutes unlawful or unfair activity prohibited by California Labor Code §§ 510 and 1198.

16 163. ***Failure to Provide Meal Periods.*** Defendant’s failure to provide legally required
17 meal periods to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and
18 constitutes unlawful or unfair activity prohibited by California Labor Code §§ 226.7 and 512(a).

19 164. ***Failure to Provide Rest Periods.*** Defendant’s failure to provide legally required
20 rest periods to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and
21 constitutes unlawful or unfair activity prohibited by California Labor Code § 226.7.

22 165. ***Failure to Pay Minimum Wages.*** Defendant’s failure to pay legally required
23 minimum wages to Plaintiff and the other aggrieved employees is in violation of the Wage Orders
24 and constitutes unlawful or unfair activity prohibited by California Labor Code §§ 1194, 1197, and
25 1197.1.

26 166. ***Failure to Timely Pay Wages Upon Termination.*** Defendant’s failure to timely
27 pay wages to Plaintiff and the other aggrieved employees upon termination in accordance with
28

1 Labor Code §§ 201 and 202 constitutes unlawful and/or unfair activity prohibited by California
2 Labor Code §§ 201 and 202.

3 167. ***Failure to Provide Complete and Accurate Wage Statements.*** Defendant's failure
4 to provide complete and accurate wage statements to Plaintiff and the other aggrieved employees
5 in accordance with Labor Code § 226(a) constitutes unlawful and/or unfair activity prohibited by
6 California Labor Code § 226(a).

7 168. ***Failure to Keep Complete and Accurate Payroll Records.*** Defendant's failure to
8 keep complete and accurate payroll records relating to Plaintiff and the other aggrieved employees
9 in accordance with California Labor Code § 1174(d) constitutes unlawful and/or unfair activity
10 prohibited by California Labor Code § 1174(d).

11 169. ***Failure to Reimburse Necessary Business-Related Expenses and Costs.***
12 Defendant's failure to reimburse Plaintiff and the other aggrieved employees for necessary
13 business-related expenses and costs in accordance with California Labor Code §§ 2800 and 2802
14 constitutes unlawful and/or unfair activity prohibited by California Labor Code §§ 2800 and 2802.

15 170. Pursuant to California Labor Code § 2699, Plaintiff, individually, and on behalf of
16 all aggrieved employees, requests and is entitled to recover from Defendant business expenses,
17 unpaid wages, and/or untimely wages according to proof, interest, attorneys' fees, and costs
18 pursuant to California Labor Code § 218.5, as well as all statutory penalties against Defendant.

19 **JURY DEMAND**

20 171. Plaintiff hereby demands trial by jury of her and the Class's claims against
21 Defendants.

22 **PRAYER FOR RELIEF**

23 Wherefore, Plaintiff, on behalf of herself and the members of the Class and aggrieved
24 employees, pray for judgment against Defendants as follows:

- 25 1. A declaratory judgment that the actions, conduct, and practices of Defendant
26 complained of herein violated the laws of the United States and the State of California;
27 2. An injunction and order permanently restraining Defendant from engaging in such

1 unlawful conduct;

2 3. An order that the action be certified as a class action;

3 4. An order that the named Plaintiff herein be appointed class representative;

4 5. An order that counsel for Plaintiff be appointed class counsel;

5 6. An award of damages in an amount to be determined at trial, plus prejudgment
6 interest, to compensate Plaintiff for all monetary and/or economic hardship, including, but
7 not limited to, the loss of past and future income, wages, compensation, and other benefits
8 of employment;

9 7. An award of damages in an amount to be determined at trial, plus prejudgment
10 interest, to compensate Plaintiff for all non-monetary and compensatory harm;

11 8. An award of damages for any and all other monetary and/or non-monetary losses
12 suffered by Plaintiff in an amount to be determined at trial, plus prejudgment interest;

13 9. For reasonable attorneys' fees and costs, including expert witness fees;

14 10. For costs of suit herein incurred; and

15 11. For such other and further relief as the Court deems just and proper.

16
17 Dated: February 2, 2023

Respectfully,

18 POTTER HANDY LLP.

19
20 James Treglio

21 By: James M. Treglio
22 Counsel for Plaintiff and the Putative Class
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