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on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN - STOCKTON COURTHOUSE

JAKLIN ISHOUFAR, on behalf of herself and all others similarly situated, Plaintiffs, v. GOODWILL INDUSTRIES OF SAN JOAQUIN VALLEY, INC., a California corporation; and DOES 1 to 10, inclusive, Defendants.	**CLASS ACTION** Case No.: STK-CV-UOE-2023-0002777 **FIRST AMENDED COMPLAINT FOR:** **1. FAILURE TO PAY ALL WAGES;** **2. FAILURE TO PROVIDE ALL MEAL PERIODS;** **3. FAILURE TO AUTHORIZE AND PERMIT ALL PAID REST PERIODS;** **4. FAILURE TO PROVIDE LEGALLY-COMPLIANT REST PERIODS;** **5. FAILURE TO FULLY REIMBURSE WORK EXPENSES;** **6. FAILURE TO PAY VESTED VACATION PAY;** **7. FAILURE TO TIMELY FURNISH ACCURATE ITEMIZED WAGE STATEMENTS;** **8. VIOLATIONS OF LABOR CODE §§ 201-202;** **9. PENALTIES UNDER LABOR CODE § 2699; AND** **10. UNFAIR BUSINESS PRACTICES** **DEMAND FOR JURY TRIAL** Honorable Erin Guy Castillo Department 10B Action filed: March 22, 2023 Trial Date: Not set yet

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Plaintiff JAKLIN ISHOUFAR, an individual on behalf of herself and all others similarly situated (collectively referred to as "Plaintiffs"), hereby files this First Amended Complaint against Defendant GOODWILL INDUSTRIES OF SAN JOAQUIN VALLEY, INC. and DOES 1 to 10 (collectively referred to as "Defendants"). Plaintiffs are informed and believe, and on the basis of that information and belief, allege as follows:

I.

<u>INTRODUCTION</u>

1. This is a civil action seeking recovery for Defendants' violations of the California Labor Code, California Business and Professions Code, the applicable Wage Orders issued by the California Industrial Welfare Commission (the "IWC Wage Orders") and related common law principles.

2. Plaintiffs' action seeks monetary damages, including full restitution from Defendants as a result of Defendants' unlawful, fraudulent and/or unfair business practices.

3. The acts complained of herein occurred, occur and will occur, at least in part, within the time period from four years preceding the filing of the original Complaint herein, up to and through the time of trial for this matter although this should not automatically be considered the statute of limitations for any cause of action herein.

<u>RELEVANT JOB TITLES</u>

4. For introductory and general information only (and not to be considered a proposed class definition), the relevant individuals in this action are Defendants' hourly-paid, non-exempt employees who were subjected to Defendants' policies and practices as described herein. Any differences in job activities between the different individuals in these positions were and are legally insignificant to the issues presented by this action.

<u>SUMMARY OF CLAIMS</u>

5. With regard to Defendants' hourly-paid, non-exempt employees, Defendants have:

a. Failed to pay straight time, minimum, and/or overtime wages for all hours worked;

b. Failed to provide all legally-requisite meal periods;

c. Failed to authorize and permit all paid legally-requisite rest periods;

d. Failed to provide legally-compliant rest periods;

e. Failed to reimburse for all work-related expenses;

f. Failed to pay all vested vacation time;

g. Failed to timely furnish accurate itemized wage statements;

h. Violated Labor Code §§ 201-202;

i. Incurred penalties under Labor Code §§ 2698, et seq.; and

j. Conducted unfair business practices.

II.

PARTIES

PLAINTIFF JAKLIN ISHOUFAR

6. Plaintiff JAKLIN ISHOUFAR is an individual over the age of 18 and is now and/or at all times mentioned in this Complaint was a citizen of the State of California.

7. Plaintiff JAKLIN ISHOUFAR worked for Defendants as an hourly-paid, non-exempt employee from approximately October 18, 2019 to April 22, 2022, in several of Defendants' California stores.

8. Plaintiff JAKLIN ISHOUFAR seeks recovery herein from Defendants because with regard to Plaintiff JAKLIN ISHOUFAR, while acting for Defendants in her capacity as an hourly-paid employee, Defendants have:

a. Failed to pay straight time, minimum, and/or overtime wages for all hours worked;

b. Failed to provide all legally-requisite meal periods;

c. Failed to authorize and permit all paid legally-requisite rest periods;

d. Failed to provide legally-compliant rest periods;

e. Failed to reimburse for all work-related expenses;

f. Failed to pay all vested vacation time;

g. Failed to timely furnish accurate itemized wage statements;

h. Violated Labor Code §§ 201-202;

i. Incurred penalties under Labor Code §§ 2698, et seq.; and

j. Conducted unfair business practices.

DEFENDANT GOODWILL INDUSTRIES OF SAN JOAQUIN VALLEY, INC.

9. Defendant GOODWILL INDUSTRIES OF SAN JOAQUIN VALLEY, INC., is now and/or at all times mentioned in this Complaint was a California corporation and the owner and operator of an industry, business and/or facility(/ies) licensed to do business and actually doing business in the State of California.

DOES 1 TO 10, INCLUSIVE

10. DOES 1 to 10, inclusive, are now and/or at all times mentioned in this Complaint were licensed to do business and/or actually doing business in California.

11. Plaintiffs do not know the true names or capacities, whether individual, partner or corporate, of DOES 1 to 10, inclusive and for that reason, DOES 1 to 10 are sued under such fictitious names under California Code of Civil Procedure § 474.

12. Plaintiffs will seek leave of court to amend this Complaint to allege such names and capacities as soon as they are ascertained.

ALL DEFENDANTS

13. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were in some manner legally responsible for the events, happenings, and circumstances alleged in this Complaint.

14. Defendants, and each of them, proximately subjected Plaintiffs to the unlawful practices, wrongs, complaints, injuries, and/or damages alleged in this Complaint.

15. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were the agents, servants, and/or employees of some or all other Defendants, and vice-versa, and in doing the things alleged in this Complaint, Defendants are now and/or at all times mentioned in this Complaint were acting within the course and scope of that agency, servitude, and/or employment.

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16. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint venture, partnership, and common enterprise, and were acting within the course and scope and in pursuance of said joint venture, partnership, and common enterprise.

17. Defendants, and each of them, at all times mentioned in this Complaint concurred and contributed to the various acts and omissions of each and every one of the other Defendants in proximately causing the complaints, injuries, and/or damages alleged in this Complaint.

18. Defendants, and each of them, at all times mentioned in this Complaint approved of, condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in this Complaint.

19. Defendants, and each of them, at all times mentioned in this Complaint aided and abetted the acts and omissions of each and every one of the other Defendants thereby proximately causing the damages alleged in this Complaint.

III.

JURISDICTION AND VENUE

20. The California Superior Court has jurisdiction in this matter due to Defendants' aforementioned violations of California statutory law and/or related common law principles.

21. The California Superior Court also has jurisdiction in this matter because both the individual and aggregate monetary damages and restitution sought herein exceed the minimal jurisdictional limits of the Superior Court and will be established at trial, according to proof.

22. The California Superior Court also has jurisdiction in this matter because during their employment with Defendants, Plaintiff JAKLIN ISHOUFAR and the members of the putative Classes herein were all California citizens and Defendant GOODWILL INDUSTRIES OF SAN JOAQUIN VALLEY, INC., is a California corporation. Further, there is no federal question at issue, as the issues herein are based solely on California statutes and law.

23. Venue is proper in San Joaquin County under Code of Civil Procedure § 395(a) and Code of Civil Procedure § 395.5 because that is Defendants' California home office, and liability also arose there because Defendant is either found, maintains offices, transacts business,

and/or has an agent therein, and at least some of the transactions that are the subject matter of this Complaint occurred therein.

IV.

CLASS ACTION ALLEGATIONS

24. Code of Civil Procedure § 382 provides in pertinent part: "[W]hen the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all." Plaintiffs bring this suit as a class action under Code of Civil Procedure § 382.

25. The putative classes Plaintiffs will seek to certify are currently composed of and defined as follows:

a. All California citizens employed by Defendants as hourly-paid, non-exempt employees during the appropriate time period who were subjected to Defendants' policies and practices regarding the payment of straight time, minimum and/or overtime wages as specifically described herein (hereinafter, the "Wage Class");

b. All California citizens employed by Defendants as hourly-paid, non-exempt employees during the appropriate time period who were subjected to Defendants' policies and practices regarding meal periods as specifically described herein (hereinafter, the "Meal Period Class");

c. All California citizens employed by Defendants as hourly-paid, non-exempt employees during the appropriate time period who were subjected to Defendants' policies and practices regarding paid rest periods as specifically described herein (hereinafter, the "Rest Period Class");

d. All California citizens employed by Defendants as hourly-paid, non-exempt management-level employees during the appropriate time period who were subjected to Defendants' policies and practices regarding providing legally-compliant rest periods as specifically described herein (hereinafter, the "On Premise Rest Period Class");

e. All California citizens employed by Defendants as hourly-paid, non-exempt employees during the appropriate time period who were subjected to Defendants' policies and practices regarding business expense reimbursement as specifically described herein (hereinafter, the "Reimbursements Class");

f. All California citizens formerly employed by Defendants as hourly-paid, non-exempt employees during the appropriate time period who were subjected to Defendants' policies and practices regarding vacation pay as specifically described herein (hereinafter, the "Vacation Pay Class");

g. All California citizens employed by Defendants as hourly-paid, non-exempt employees during the appropriate time period who were subjected to Defendants' policies and practices regarding itemized wage statements as specifically described herein (hereinafter, the "Wage Statement Class");

h. All formerly-employed California citizens employed by Defendants as hourly-paid, non-exempt employees during the appropriate time period who were subjected to Defendants' policies and practices regarding Labor Code § 203 and the payment of final wages as specifically described herein (hereinafter, the "LC 203 Class"); and

i. All California citizens employed by Defendants as hourly-paid, non-exempt employees during the appropriate time period regarding whom Defendants have engaged in unlawful, unfair and/or fraudulent business acts or practices prohibited by Business & Professions Code §§ 17200, et seq. as specifically described herein (hereinafter, the "17200 Class").

26. The Wage Class, Meal Period Class, Rest Period Class, On Premises Rest Period Class, Reimbursements Class, Vacation Pay Class, Wage Statement Class, LC 203 Class, and 17200 Class are herein collectively referred to as the "Classes."

27. Throughout discovery in this litigation, Plaintiffs may find it appropriate and/or necessary to amend the definition of the Classes. Plaintiffs will formally define and designate a class definition at such time when Plaintiffs seek to certify the Classes alleged herein.

28. Numerosity (Code of Civil Procedure § 382):

a. The potential quantity of members of the Classes as defined is so numerous that joinder of all members is unfeasible and impractical;

b. The disposition of the claims of the members of the Classes through this class action will benefit both the parties and this Court;

c. The quantity of members of the Classes is unknown to Plaintiffs at this time; however, it is estimated that the membership of the Classes numbers greater than 100 individuals; and

d. The quantity and identity of such membership is readily ascertainable via inspection of Defendants' records.

29. Superiority (Code of Civil Procedure § 382): The nature of this action and the nature of the laws available to Plaintiffs make the use of the class action format particularly efficient and the appropriate procedure to afford relief to Plaintiffs for the wrongs alleged herein, as follows:

a. California has a public policy that encourages the use of the class action device;

b. By establishing a technique whereby the claims of many individuals can be resolved at the same time, the class suit both eliminates the possibility of repetitious litigation and provides small claimants with a method of obtaining redress for claims which would otherwise be too small to warrant individual litigation;

c. This case involves large corporate Defendants and a large number of individual Class members with many relatively small claims and common issues of law and fact;

d. If each individual member of the Classes was required to file an individual lawsuit, the large corporate Defendants would necessarily gain an unconscionable advantage because Defendants would be able to exploit and overwhelm the limited resources of each individual member of the Classes with Defendants' vastly superior financial and legal resources;

e. Requiring each individual member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by the members of the Classes who would be disinclined to pursue an action against Defendants because of an appreciable and justifiable fear of retaliation and permanent damage to their lives, careers, and well-being;

f. Proof of a common business practice or factual pattern, of which the members of the Classes experienced, is representative of the Classes herein and will establish the right of each of the members of the Classes to recover on the causes of action alleged herein;

g. Absent class treatment, the prosecution of separate actions by the individual members of the Classes, even if possible, would likely create:

    i) a substantial risk of each individual plaintiff presenting in separate, duplicative proceedings the same or essentially similar arguments and evidence, including expert testimony;

    ii) a multiplicity of trials conducted at enormous expense to both the judicial system and the litigants;

    iii) inconsistent or varying verdicts or adjudications with respect to the individual members of the Classes against Defendants;

    iv) potentially incompatible standards of conduct for Defendants; and

    v) potentially incompatible legal determinations with respect to individual members of the Classes which would, as a practical matter, be dispositive of the interest of the other members of the Classes who are not parties to the adjudications or which would substantially impair or impede the ability of the members of the Classes to protect their interests.

h. The claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attendant thereto;

i. Courts seeking to preserve efficiency and other benefits of class actions routinely fashion methods to manage any individual questions; and

j. The Supreme Court of California urges trial courts, which have an obligation to consider the use of innovative procedural tools to certify a manageable class, to be procedurally innovative in managing class actions.

30. Well-defined Community of Interest: Plaintiffs also meet the established standards for class certification, as follows:

a. Typicality: The claims of Plaintiff JAKLIN ISHOUFAR are typical of the claims of all members of the Classes she seeks to represent because all members of the Classes sustained injuries and damages arising out of Defendants' common course of conduct in violation of law and the injuries and damages of all members of the Classes were caused by Defendants' wrongful conduct in violation of law, as alleged herein.

b. Adequacy: Plaintiff JAKLIN ISHOUFAR:

i) is an adequate representative of the Classes she seeks to represent;

ii) will fairly protect the interests of the members of the Classes;

iii) has no interests antagonistic to the members of the Classes; and

iv) will vigorously pursue this suit via attorneys who are competent, skilled and experienced in litigating matters of this type.

c. Predominant Common Questions of Law or Fact: There are common questions of law and/or fact as to the members of the Classes which predominate over questions affecting only individual members of the Classes, including, without limitation:

i) Whether Defendants paid the legal and appropriate straight time pay, minimum wage pay and/or overtime pay for all work hours to the members of the Wage Class;

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ii) Whether Defendants failed and continue to fail to provide legally-requisite meal periods to the members of the Meal Period Class in violation of the Labor Code and Section 11 of the IWC Wage Orders;

iii) Whether Defendants failed and continue to fail to authorize and permit paid legally-requisite rest periods to the members of the Rest Period Class in violation of the Labor Code and Section 12 of the IWC Wage Orders;

iv) Whether Defendants failed and continue to fail to provide legally-compliant rest periods to the members of the On Premise Rest Period Class in violation of the Labor Code and Section 12 of the IWC Wage Orders;

v) Whether Defendants paid the legal and appropriate pay rate for meal and/or rest period penalty premium wages to the members of the Premium Rate Class;

vi) Whether Defendants failed to fully reimburse for all work-related expenses incurred by the members of the Reimbursements Class;

vii) Whether Defendants failed to timely pay all vested vacation pay to the members of the Vacation Pay Class;

viii) Whether Defendants failed to timely furnish accurate, itemized and legal wage statements to the members of the Wage Statement Class;

ix) Whether Defendants are liable under Labor Code § 203 to the members of the LC 203 Class;

x) Whether Defendants' conduct constitutes unfair competition within the meaning of Business & Professions Code §§ 17200, et seq.;

xi) Whether Defendants' conduct constitutes unfair business practices within the meaning of Business & Professions Code §§ 17200, et seq.;

xii) Whether the members of the Classes are entitled to compensatory damages, and if so, the means of measuring such damages;

xiii) Whether the members of the Classes are entitled to injunctive relief;

xiv) Whether the members of the Classes are entitled to restitution; and

xv) Whether Defendants are liable for attorneys' fees and costs.

31. Whether each member of the Classes might be required to ultimately justify an individual claim does not preclude maintenance of a class action.

V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES

(On Behalf of the Wage Class)

(Against All Defendants)

32. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

33. Labor Code § 204 establishes the fundamental right of all employees in the State of California to be paid wages, including straight time and overtime, in a timely fashion for their work.

34. Labor Code § 510(a) states in pertinent part: "Any work in excess of eight hours in one workday and any work in excess of 40 hours 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 any employee."

35. Labor Code § 1182.12, effective July 1, 2014, states: "Notwithstanding any other provision of this part, on and after July 1, 2014, the minimum wage for all industries shall be not less than nine dollars ($9) per hour, and on and after January 1, 2016, the minimum wage for all industries shall be not less than ten dollars ($10) per hour." Further, under Labor Code § 1182.12(b)(1)(A), for any employer who employs 26 or more employees, the minimum wage shall be as follows: "From January 1, 2017, to December 31, 2017, inclusive, - ten dollars and fifty cents ($10.50) per hour." Under Labor Code § 1182.12(b)(1)(B), for any employer who

employs 26 or more employees, the minimum wage shall be as follows: “From January 1, 2018, to December 31, 2018, inclusive, - eleven dollars ($11) per hour.” Under Labor Code § 1182.12(b)(1)(C), for any employer who employs 26 or more employees, the minimum wage shall be as follows: “From January 1, 2019, to December 31, 2019, inclusive, - twelve dollars ($12) per hour.” Under Labor Code § 1182.12(b)(1)(D), for any employer who employs 26 or more employees, the minimum wage shall be as follows: “From January 1, 2020, to December 31, 2020, inclusive, - thirteen dollars ($13) per hour.” Under Labor Code § 1182.12(b)(1)(E), for any employer who employs 26 or more employees, the minimum wage shall be as follows: “From January 1, 2021, to December 31, 2021, inclusive, - fourteen dollars ($14) per hour.” Finally, under Labor Code § 1182.12(b)(1)(F), for any employer who employs 26 or more employees, the minimum wage shall be as follows: “From January 1, 2022, and until adjusted by subdivision (c) - fifteen dollars ($15) per hour.”

36. Labor Code § 1194(a) states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or 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 minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

37. Further, under Labor Code § 1197, payment of less than the minimum wage fixed by the Labor Commission is unlawful.

38. Under Labor Code § 1198, it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC Wage Order(s).

39. Under the IWC Wage Order(s), Defendants are required to pay the members of the Wage Class for all hours worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work, whether or not required to do so.

40. Defendants, as a matter of established company policy and procedure, at each and every one of the individual facilities owned and/or operated by Defendants, consistently:

a. Administered a uniform company policy and practice as to the pay policies regarding the members of the Wage Class;

b. Required the members of the Wage Class to go through COVID-19 and/or other health screenings before they clocked in for work;

c. Required the members of the Wage Class to go through mandatory security checks after they clocked out for work; and/or

d. Required the members of the Wage Class to attend mandatory training without pay; and, as such,

e. Scheduled to work and/or required the members of the Wage Class to work without paying for all time they were under Defendants' control.

41. Because Defendants required the members of the Wage Class to remain under Defendants' control without paying therefore, this resulted in the members of the Wage Class earning less than the legal minimum wage in the State of California.

42. Defendants' pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement, under Labor Code § 218, to recovery by Plaintiffs and the members of the Wage Class, in a civil action, of the unpaid balance of the full amount of wages owing, calculated at the appropriate rate.

43. Further, Defendants' pattern and practice in uniform administration of corporate policy regarding Defendants' failure to pay the legal minimum wage to the members of the Wage Class as described herein is unlawful and creates entitlement, under Labor Code § 1194(a), to recovery by the members of the Wage Class, in a civil action, for the unpaid balance of the full amount of the unpaid minimum wages owed, calculated as the difference between the straight time compensation paid and the applicable minimum wage, including interest thereon.

44. Under Labor Code § 1194.2(a) (which provides that in any action under Labor Code § 1194, an employee shall be entitled to recover liquidated damages), the members of the Wage Class seek recovery of liquidated damages on the straight-time portion of uncompensated hours of work (not including the overtime portion thereof) in an amount equal to the wages

unlawfully unpaid and interest thereon.

45. That calculation of individual damages for the members of the Wage Class may at some point be required does not foreclose the possibility of taking common evidence on questions regarding their entitlement to overtime compensation.

46. Under Labor Code §§ 218.6 and 1194(a) and Civil Code § 3287, the members of the Wage Class seek recovery of pre-judgment interest on all amounts recovered herein.

47. Under Labor Code §§ 218.5 and/or 1194, the members of the Wage Class request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE ALL MEAL PERIODS

(On Behalf of the Meal Period Class)

(Against All Defendants)

48. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

49. Labor Code § 226.7(b) provides that "An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health."

50. Labor Code § 512 provides that "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived."

51. Labor Code § 516 provides that the Industrial Welfare Commission "may adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers."

52. Section 11(C) of the IWC Wage Orders provides "Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time."

53. Section 11(D) of the IWC Wage Order(s) provides "If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee 1 hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided."

54. On one or more occasions, the members of the Meal Period Class worked over 5 hours per shift and therefore were entitled to an uninterrupted meal period of not less than 30 minutes prior to exceeding 5 hours of employment.

55. Further, on one or more occasions, some members of the Meal Period Class worked over 10 hours per shift and therefore were entitled to an uninterrupted second meal period of not less than 30 minutes prior to exceeding 10 hours of employment.

56. Defendants' meal period policy did not allow some employees to leave Defendants' premises for meal breaks.

57. The members of the Meal Period Class did not validly or legally waive their meal periods, by mutual consent with Defendants or otherwise.

58. The members of the Meal Period Class did not enter into any written agreement with Defendants agreeing to an on-the-job paid meal period.

59. As a matter of Defendants' established company policy, Defendants failed to always comply with the meal period requirements established by Labor Code §§ 226.7, 512, and 516, and Section 11 of the IWC Wage Order(s) by failing to always provide the members of the

Meal Period Class with a first and in some cases a second legally compliant meal period.

60. Under Section 11(D) of the IWC Wage Order(s) and Labor Code § 226.7(c) which states “If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.,” the members of the Meal Period Class are entitled to damages in an amount equal to one (1) additional hour of pay at each employee’s regular rate of compensation for each work day that the meal period was not provided, in a sum to be proven at trial.

61. Under Labor Code § 218.6 and Civil Code § 3287, the members of the Meal Period Class seek recovery of pre-judgment interest on all amounts recovered herein.

THIRD CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT ALL PAID REST PERIODS

(On Behalf of the Rest Period Class)

(Against All Defendants)

62. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

63. Labor Code § 226.7(b) provides “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

64. Labor Code § 516 provides that the Industrial Welfare Commission “may adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers.”

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65. Section 12(A) of the IWC Wage Order(s) states: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of10 minutes net rest time per 4 hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than 3 ½ hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages."

66. Section 12(B) of the IWC Wage Order(s) states: "If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided."

67. The members of the Rest Period Class sometimes worked over 4 hours per shift. Further, the members of the Rest Period Class sometimes worked over 6 hours per shift, and in some cases over 10 hours per shift.

68. The members of the Rest Period Class were entitled to a rest period of not less than 10 minutes for every 4 hours of work, or major fraction thereof.

69. As a matter of Defendants' established company policy, Defendants failed to always authorize and permit all required rest periods established by Labor Code §§ 226.7 and 516, and Section 12 of the IWC Wage Order(s).

70. Under Section 12 of the IWC Wage Order(s) and Labor Code § 226.7(b) which states "If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided," the members of the Rest Period Class are entitled to damages in an amount equal to one (1) additional hour of pay at each employee's regular rate of compensation for each work day that one or more rest periods were

not so provided.

71. Under Labor Code § 218.6 and Civil Code § 3287, the members of the Rest Period Class seek recovery of pre-judgment interest on all amounts recovered herein.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE LEGALLY-COMPLIANT REST PERIODS

(On Behalf of the On Premise Rest Period Class)

(Against All Defendants)

72. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

73. Labor Code § 226.7(b) provides that "An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health."

74. Labor Code § 516 provides that the Industrial Welfare Commission "may adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers."

75. In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269, the California Supreme Court held that "during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time." The court further held that a policy that "tethered by time and policy to particular locations" is inconsistent with the required relinquishment of control. (*Ibid*.) The court noted that employees must be free to "[take a] brief walk," or "take care of other personal matters …like pumping breast milk …or completing a phone call to arrange child care." (*Id.* at p. 270.)

76. Section 12(A) of the IWC Wage Order states: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages."

77. Section 12(B) of the IWC Wage Order states: "If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided."

78. The members of the On Premise Rest Period Class sometimes worked over four hours per shift. Further, the members of the On Premise Rest Period Class sometimes worked over six hours per shift, and in some cases over ten hours per shift.

79. The members of the On Premise Rest Period Class were entitled to a rest period of not less than ten minutes prior to exceeding four hours of employment.

80. Defendants' rest period policy did not allow some employees to leave Defendants' premises for rest breaks.

81. As such, the members of the On Premise Rest Period Class were discouraged from taking legally-compliant breaks in violation of *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040 ["The wage orders and governing statute do not countenance an employer's exerting coercion against the taking of, creating incentives to forgo, or otherwise encouraging the skipping of legally protected breaks."].

82. As a matter of Defendants' established company policy, Defendants failed to provide legally compliant rest periods established by Labor Code §§ 226.7 and 516 and Section 12 of the IWC Wage Order, by using Defendants' rest period policy to forbid members of the On Premise Rest Period Class from leaving Defendants' facilities.

83. Defendants' policies and practices, separately and in combination, violated the Labor Code and the IWC Wage Order by forbidding the members of the On Premise Rest Period Class from taking legally-compliant rest periods outside of Defendants' premises.

84. These policies violate *Brinker*'s prohibition on "otherwise encouraging the skipping of legally protected breaks."

85. Under Section 12 of the IWC Wage Order and Labor Code § 226.7(b) which states "if an employer fails to provide an employee a meal or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided," the members of the On Premise Rest Period Class are entitled to damages in an amount equal to one additional hour of pay at each employee's regular rate of compensation for each work day that the rest period was not so provided.

86. Under Labor Code § 218.6 and Civil Code § 3287, the members of the On Premise Rest Period Class seek recovery of pre-judgment interest on all amounts recovered herein.

FIFTH CAUSE OF ACTION

FAILURE TO FULLY REIMBURSE WORK EXPENSES

(On Behalf of the Reimbursements Class)

(Against All Defendants)

87. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

88. Under Labor Code § 2802(a), "an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."

89. Labor Code § 2804 states in pertinent part: "Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

90. As a matter of Defendants' established company policy, the members of the Reimbursements Class were and are required by Defendants to personally incur necessary expenditures in direct consequence of the discharge of their duties, including but not limited to 1) mileage-related expenses for the use of their personal vehicles to perform work-related errands

such as bank runs, and 2) mobile devices for work-related calls as well as for accessing Defendants' payroll application.

91. Defendants are legally required to reimburse the members of the Reimbursements Class for all necessary expenditures.

92. Defendants failed to fully and reasonably reimburse the members of the Reimbursements Class for all necessary expenditures, including but not limited to the aforementioned expenditures.

93. As a proximate result of the aforementioned violations of Labor Code § 2802(a), the members of the Reimbursements Class are entitled to recovery from Defendants of the unpaid balance for all necessary expenditures, including but not limited to the aforementioned expenditures.

94. As a proximate result of the aforementioned violations of Labor Code §450(a) and §2802(a), the members of the Reimbursements Class have been damaged in an amount according to proof at the time of trial.

95. Under Labor Code § 2802(b), the members of the Reimbursements Class request that the Court award interest at the same rate as judgments in civil actions, accruing from the date on which each member of the Reimbursements Class incurred the necessary expenditure or loss.

96. Under Labor Code § 2802(c), the members of the Reimbursements Class request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

SIXTH CAUSE OF ACTION

FAILURE TO PAY VESTED VACATION PAY

(On Behalf of the Vacation Pay Class)

(Against All Defendants)

97. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

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98. Labor Code § 227.3 states in pertinent part: "[W]henever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination."

99. At all times relevant to this action, Defendants had a uniform and consistent corporate policy, procedure and practice regarding paid vacations for the members of the Vacation Pay Class.

100. During their employment by Defendants, the members of the Vacation Pay Class were eligible to receive vacation pay pursuant to Defendants' vacation pay policy, as set forth above.

101. During their employment by Defendants, the members of the Vacation Pay Class accrued vacation time as set forth above.

102. The members of the Vacation Pay Class separated from their employment with Defendants during the relevant time period.

103. Each member of the Vacation Pay Class separated from their employment with Defendants without having been paid for all vested vacation time.

104. Defendants' consistent and uniform vacation pay policies, practices and procedures resulted in Defendants failing to timely pay as wages at the final wage rate all vested vacation time due and owing to the members of the Vacation Pay Class after their separation.

105. As such, the members of the Vacation Pay Class are entitled to damages and restitution in an amount according to proof at trial.

106. "Based on the plain and ordinary meaning of the statutory language, Labor Code section 227.3 cannot be interpreted to exclude unused vacation that vested more than two or four years before the employee was terminated from the unused vacation time for which a terminated employee must be paid." (*Church v. Jamison* (2006) 143 Cal.App.4th 1568, 1580.) Further, "Labor Code section 227.3 cannot itself be the source of a look-back period that limits the right

to recover for unused vested vacation." (*Id*. at p. 1581.)

107. Under Labor Code § 218.6 and Civil Code § 3287, the members of the Vacation Pay Class seek recovery of pre-judgment interest on all amounts recovered herein.

108. Under Labor Code § 218.5 and Civil Code § 3287, the members of the Vacation Pay Class request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

SEVENTH CAUSE OF ACTION

FAILURE TO TIMELY FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

(On Behalf of the Wage Statement Class)

(Against All Defendants)

109. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

110. Labor Code § 226(a) states in pertinent part: "Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee… (4) all deductions… (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid… (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee."

111. Further, the IWC Wage Orders § 7(A) states in pertinent part: "(A) Every employer shall keep accurate information with respect to each employee including the following: (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded…(5) Total hours worked in the payroll period and applicable rates of pay."

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112. Therefore, under Labor Code § 226(a) and the IWC Wage Orders § 7(A), California employers are required to maintain accurate records pertaining to the total hours worked for Defendants by the members of the Wage Statement Class, including but not limited to, beginning and ending of each work period, meal period and split shift interval, the total daily hours worked, and the total hours worked per pay period and applicable rates of pay.

113. As a pattern and practice, in violation of Labor Code § 226(a) and the IWC Wage Orders § 7(A), Defendants did not and still do not furnish each of the members of the Wage Statement Class with an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) all deductions, (4) net wages earned and/or (5) all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked at each hourly rate by each respective individual and/or pertaining to the total hours worked for Defendants by the members of the Wage Statement Class, including but not limited to, beginning and ending of each work period, meal period and split shift interval, the total daily hours worked, and the total hours worked per pay period and applicable rates of pay.

114. As of January 1, 2013, SB 1255 amended Labor Code § 226 to clarify that an employee suffers injury if the employer fails to provide accurate and complete information as required by any one or more items listed in Labor Code § 226(a)(1)-(9) and the employee cannot promptly and easily ascertain requisite information without reference to other documents or information.

115. Here, the members of Wage Statement Class suffered injury because Defendants failed to provide accurate and complete information as required by one or more items listed in Labor Code § 226(a)(1)-(9) and the Wage Statement Class members could not and cannot promptly and easily ascertain requisite information without reference to other documents or information.

116. In addition, the members of the Wage Statement Class have suffered injury as a result of Defendants' failure to maintain accurate records for the members of the Wage Statement Class in that the members of the Wage Statement Class were not timely provided written accurate itemized statements showing all requisite information, including but not limited

to total hours worked by the employee, net wages earned 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 § 226 and the IWC Wage Orders § 7(A), such that the members of the Wage Statement Class were misled by Defendants as to the correct information regarding various items, including but not limited to total hours worked by the employee, net wages earned and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

117. The actual injuries suffered by the members of the Wage Statement Class as a result of Defendants' knowing and intentional failure to maintain accurate records for the members of the Wage Statement Class include but are not limited to:

a. Confusion over whether they received all wages owed them by Defendants;

b. The difficulty and expense of attempting to reconstruct time and pay records;

c. Being forced to engage in mathematical computations to analyze whether Defendants' wages in fact compensated for all hours worked;

d. The inability to accurately calculate wage rates complicated by the fact that wage statement information required by Labor Code § 226 is missing;

e. That such practice prevents the members of the Wage Statement Class from being able to effectively challenge information on their wage statements; and/or

f. The difficulty and expense of filing and maintaining this lawsuit, and the discovery required to collect and analyze the very information that California law requires.

118. Under Labor Code § 226(e), the members of the Wage Statement Class are entitled to $50.00 per employee for the initial pay period in which a violation hereunder occurs and $100.00 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of $4,000.00.

119. Under Labor Code § 226(g), the currently-employed members of the Wage Statement Class are entitled to injunctive relief to ensure Defendants' compliance with Labor

Code § 226.

120. Under Labor Code § 226(e) and/or § 226(g), the members of the Wage Statement Class are also entitled to an award of costs and reasonable attorneys' fees.

EIGHTH CAUSE OF ACTION

VIOLATIONS OF LABOR CODE §§ 201-202

(On Behalf of the LC 203 Class)

(Against All Defendants)

121. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

122. Labor Code § 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue at the same rate, for up to thirty (30) days from the due date thereof, until paid or until an action therefore is commenced.

123. The members of the LC 203 Class are no longer employed by Defendants as they were either discharged from or quit Defendants' employ.

124. Defendants had a consistent and uniform policy, practice and procedure of willfully failing to pay the earned wages of Defendants' former employees, according to amendment or proof.

125. Defendants willfully failed to pay the members of the LC 203 Class their entire wages due and owing at the time of their termination or within 72 hours of their separation, and failed to pay those sums for up to 30 days thereafter.

126. Defendants' willful failure to pay wages to the members of the LC 203 Class violates Labor Code § 203 because Defendants knew or should have known wages were due to the members of the LC 203 Class, but Defendants failed to pay them.

127. Thus, the members of the LC 203 Class are entitled to recovery under Labor Code § 203.

NINTH CAUSE OF ACTION

PENALTIES UNDER LABOR CODE § 2699

(On Behalf of the Aggrieved Employees)

(Against All Defendants)

128. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

129. Under Labor Code § 2699(a) (which provides that any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, board agencies or employees, such civil penalties may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees) and Labor Code § 2699(f) (which establishes a civil penalty for violations of all Labor Code provisions except those for which a civil penalty is specifically provided), the aggrieved employees seek recovery of all applicable civil penalties, as follows:

a. As applicable, for civil penalties under Labor Code § 2699(f), for all violations of the Labor Code except for those for which a civil penalty is specifically provided, in the amount of $100 for each aggrieved employee per pay period for the initial violation; and $200 for each aggrieved employee per pay period for each subsequent violation;

b. As applicable, civil penalties under Labor Code § 558 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for violations of Labor Code §§ 500-556, in the amount of $50 for each underpaid aggrieved employee for each pay period the aggrieved employee was underpaid, and $100 for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid;

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c. As applicable, for civil penalties under Labor Code § 1197.1 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for violations of Labor Code §§ 1194 and 1197, in the amount of $100 for each underpaid aggrieved employee for each pay period the aggrieved employee was intentionally underpaid, and $250 for each subsequent violation for each underpaid aggrieved employees regardless of whether the initial violation was intentionally committed;

d. As applicable, for civil penalties under Labor Code § 210 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for each employee who is/was not paid wages in accordance with Labor Code §§ 201.3, 204, 204b, 204.1, 204.2, 205, 205.5 and 1197.5) in the amount of a civil penalty of $100 for each aggrieved employee per pay period for each initial violation, and $200 for each aggrieved employee per pay period for each subsequent violation;

e. As applicable, for civil penalties under Labor Code § 226.3 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for each violation of Labor Code § 226(a), in the amount of $250 for each aggrieved employee per pay period for each violation and $1,000 for each aggrieved employee per pay period for each subsequent violation; and

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

130. In addition, Plaintiff seeks and is entitled to 75% of all penalties obtained under Labor Code § 2699 to be allocated to the LWDA, for education of employers and employees about their rights and responsibilities under the Labor Code, and 25% to Plaintiff and all other similarly situated aggrieved employees.

131. Further, Plaintiff is entitled to recover reasonable attorneys' fees and costs under Labor Code §§ 2699(g)(1) and any other applicable statute.

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132. Labor Code § 2699.3(a) states in pertinent part: "A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5 shall commence only after the following requirements have been met: (1) (A) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation."

133. Labor Code § 2699.3(c)(1) states in pertinent part: "A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision other than those listed in Section 2699.5 or Division 5 (commencing with Section 6300) shall commence only after the following requirements have been met: (1) (A) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation."

134. Here, Plaintiffs' civil action alleges violations of provisions listed in Labor Code § 2699.5 and violations of provisions other than those listed in Labor Code § 2699.5. As such, Labor Code § 2699.3(a) and § 2699.3(c) apply to this action.

135. On March 22, 2023, Plaintiffs complied with Labor Code § 2699.3(a) and Labor Code § 2699.3(c) in that Plaintiffs gave written notice by online filing with the LWDA and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Attached hereto as Exhibit 1 is Plaintiffs' LWDA letter.

136. Labor Code § 2699.3(a) further states in pertinent part: "(2)(A) The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the

aggrieved employee may commence a civil action pursuant to Section 2699."

137. As of May 6, 2023 (65 calendar days after Plaintiffs' March 22, 2023 LWDA letter was filed online), Plaintiffs had not received any notification that the LWDA intended to investigate the alleged violations. As such, Plaintiffs have complied with Labor Code § 2699.3(a) and have been given authorization therefrom to commence a civil action which includes a cause of action under Labor Code § 2699.

138. Further, as of April 29, 2023 (33 calendar days after Plaintiffs' March 22, 2023 LWDA letter was mailed to Defendants via certified mail), Plaintiffs have not received from Defendants written notice by certified mail that the alleged violations have been cured, including a description of actions taken. As such, Plaintiffs have complied with Labor Code § 2699.3(c) and have been given authorization therefrom to commence a civil action which includes a cause of action under Labor Code § 2699.

TENTH CAUSE OF ACTION

UNFAIR BUSINESS PRACTICES

(On Behalf of the 17200 Class)

(Against All Defendants)

139. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

140. Business & Professions Code § 17200 provides, in pertinent part, "[U]nfair competition shall mean and include any unlawful, unfair or fraudulent business act."

141. Business & Professions Code § 17205 provides that unless otherwise expressly provided, the remedies or penalties provided for unfair competition "are cumulative to each other and to the remedies or penalties available under all other laws of this state."

142. Business & Professions Code § 17204 provides that an action for any relief from unfair competition may be prosecuted by any person who has suffered injury in fact and has lost money or property as a result of such unfair competition.

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143. Defendants have engaged in unlawful, unfair and fraudulent business acts or practices prohibited by Business & Professions Code § 17200, including those set forth in the preceding and foregoing paragraphs of the complaint, thereby depriving the members of the 17200 Class of the minimum working standards and conditions due to them under the Labor Code and/or the IWC Wage Orders, as specifically described herein.

144. Defendants have engaged in unfair business practices in California by practicing, employing and utilizing the employment practices outlined in the preceding paragraphs, specifically, by requiring employees to perform the labor services complained of herein without the requisite compensation.

145. Defendants' use of such practices constitutes an unfair business practice, unfair competition and provides an unfair advantage over Defendants' competitors.

146. Plaintiffs have suffered injury in fact and have lost money or property as a result of such unfair competition.

147. Plaintiffs seek full restitution from Defendants, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants by means of the unfair practices complained of herein.

148. Further, if Defendants are not enjoined from the conduct set forth above, Defendants will continue to practice, employ and utilize the employment practices outlined in the preceding paragraphs.

149. Therefore, Plaintiffs request that the Court issue a preliminary and permanent injunction prohibiting Defendants from engaging in the foregoing conduct.

150. Plaintiffs seek the appointment of a receiver, as necessary, to establish the total monetary relief sought from Defendants.

VI.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray:

a. That the Court issue an Order certifying the Classes herein, appointing all named Plaintiffs as representative of all others similarly situated, and appointing all law firms representing all named Plaintiffs as counsel for the members of the Classes;

As to the First Cause of Action for Failure to Pay All Wages:

b. For recovery of the unpaid balance of the full amount of the straight time compensation due and owing, according to proof;

c. For liquidated damages on the straight-time portion of uncompensated hours of work (not including the overtime portion thereof), as authorized by Labor Code § 1194.2(a);

d. For recovery of the unpaid balance of the full amount of overtime compensation due and owing, calculated at the appropriate rate and according to proof;

e. For pre-judgment interest as allowed by Labor Code §§ 218.6 and 1194(a) and Civil Code § 3287;

f. For an award of reasonable attorneys' fees and costs under Labor Code §§ 218.5 and/or 1194(a);

As to the Second Cause of Action for Failure to Provide Meal Periods:

g. For 1 hour of pay at the regular rate of compensation for each member of the Meal Period Class for each workday that a meal period was not provided;

h. For pre-judgment interest as authorized by Labor Code § 218.6 and Civil Code § 3287;

As to the Third Cause of Action for Failure to Authorize and Permit Paid Rest Periods:

i. For 1 hour of pay at the regular rate of compensation for each member of the Rest Period Class for each workday that a rest period was not provided;

j. For pre-judgment interest as authorized by Labor Code § 218.6 and Civil Code § 3287;

As to the Fourth Cause of Action for Failure to Provide Legally-Compliant Rest Periods:

k. For 1 hour of pay at the regular rate of compensation for each member of the On Premise Rest Period Class for each workday that a legally-compliant rest period was not provided;

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l. For pre-judgment interest as authorized by Labor Code § 218.6 and Civil Code § 3287;

<u>As to the Fifth Cause of Action for Unpaid Reimbursements for Work Expenses</u>:

m. For recovery of the unpaid balance for all necessary expenditures and losses incurred in direct consequence of the discharge of Defendants' duties;

n. For interest thereon at the same rate as judgments in civil actions, accruing from the date on which each member of the Reimbursements Class incurred the necessary expenditure or loss, pursuant to Labor Code § 2802(b);

o. For reasonable attorneys' fees and costs pursuant to Labor Code § 2802(c);

<u>As to the Sixth Cause of Action for Failure to Pay Vested Vacation Pay</u>:

p. For damages regarding wages due and owing, according to proof;

q. For pre-judgment interest as authorized by Labor Code § 218.6 and Civil Code § 3287;

r. For an award of reasonable attorneys' fees and costs pursuant to Labor Code § 218.5;

<u>As to the Seventh Cause of Action for Failure to Timely Furnish Accurate Itemized Wage Statements</u>:

s. For recovery as authorized by Labor Code § 226(e);

t. For an award of costs and reasonable attorneys' fees under Labor Code § 226(e) and/or § 226(g);

<u>As to the Eighth Cause of Action for Violations of Labor Code §§ 201-202</u>:

u. For recovery as authorized by Labor Code § 203;

<u>As to the Ninth Cause of Action for Penalties Under Labor Code § 2699:</u>

v. As applicable, for civil penalties under Labor Code § 2699(f), in addition to and entirely independent and apart from other penalties in the Labor Code and for Labor Code violations without a specific civil penalty, in the amount of $100 for each aggrieved employee per pay period for each violation, and $200 for each aggrieved employee per pay period for each subsequent violation;

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w. As applicable, for civil penalties under Labor Code § 558, in addition to and entirely independent and apart from other penalties in the Labor Code, as follows:

   i. For any initial violation, fifty dollars ($50) for each aggrieved underpaid employee for each pay period for which the employee was underpaid; and

   ii. For each subsequent violation, one hundred dollars ($100) for each aggrieved underpaid employee for each pay period for which the employee was underpaid;

x. As applicable, for civil penalties under Labor Code § 1197.1, in addition to and entirely independent and apart from other penalties in the Labor Code, as follows:

   i. For any initial violation that is intentionally committed, $100 for each aggrieved underpaid employee for each pay period for which the employee was underpaid; and

   ii. For each subsequent violation, regardless of whether the initial violation is intentionally committed, $250 for each aggrieved underpaid employee for each pay period for which the employee was underpaid;

y. As applicable, for civil penalties under Labor Code § 210, in addition to and entirely independent and apart from other penalties in the Labor Code, in the amount of $100 for each aggrieved employee per pay period for each violation, and $200 for each aggrieved employee per pay period for each subsequent violation;

z. As applicable, for civil penalties under Labor Code § 226.3, in addition to and entirely independent and apart from other penalties in the Labor Code, in the amount of $250 for each aggrieved employee per pay period for each violation, and $1,000 for each aggrieved employee per pay period for each subsequent violation;

aa. As applicable, for reasonable attorneys' fees and costs incurred under Labor Code §§ 2699(g)(1) and any other applicable statute; and

bb. For such relief as this Court may deem just and proper;

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As to the Tenth Cause of Action for Unfair Business Practices:

cc. For an accounting, under administration of Plaintiffs and/or the receiver and subject to Court review, to determine the amount to be returned by Defendants, and the amounts to be refunded to members of the Classes who are owed monies by Defendants;

dd. For an Order requiring Defendants to identify each of the members of the Classes by name, home address, home telephone number and, if available, email address;

ee. For an Order requiring Defendants to make full restitution and payment under California law;

ff. For an Order for a preliminary and/or permanent injunction prohibiting Defendants from engaging in the acts complained of herein;

gg. For the creation of an administrative process wherein each injured member of the Classes may submit a claim in order to receive his/her money;

hh. For all other appropriate injunctive, declaratory and equitable relief;

ii. For interest to the extent permitted by law;

jj. For an award of attorneys' fees and costs incurred in the investigation, filing and prosecution of this action under Code of Civil Procedure § 1021.5, Business & Professions Code §§ 17200, et seq., Labor Code § 1194 and/or any other applicable provision of law;

As to All Causes of Action:

kk. For such relief as this Court may deem just and proper, including reasonable attorneys' fees and costs incurred.

VII.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

Dated: May 31, 2023

DAVTYAN LAW FIRM

By: Gregg Lander

Emil Davtyan, Esq.
Gregg Lander, Esq.
Vanessa M. Ruggles, Esq.
Attorneys for Plaintiffs

EXHIBIT 1

DAVTYAN LAW FIRM
1635 Pontius Ave, 2nd Floor
Los Angeles, California 90025
(424) 320-6420
(424) 320-6454

March 22, 2023

Submitted at https://www.dir.ca.gov with $75 filing fee

PAGA Administrator
California Labor and Workforce Development Agency
PAGAfilings@dir.ca.gov

Re: GOODWILL INDUSTRIES OF SAN JOAQUIN VALLEY, INC. ("Employer")

NOTICE OF LABOR CODE VIOLATIONS UNDER LABOR CODE § 2699.3

To: PAGA Administrator, California Labor and Workforce Development Agency and the Employer

From: JAKLIN ISHOUFAR ("Employee"), who was subjected to the wage and hour practices set forth below

The Employee, by way of the above-named counsel, submits this Notice, under and in compliance with the requirements of California Labor Code § 2699.3(a)/(c), and alleges the facts and theories to support the alleged violations as follows:

During the applicable time period, the Employer employed the Employee and all other similarly situated aggrieved employees as hourly-paid, non-exempt employees, and utilized consistent policies and procedures regarding the Employee and all such other similarly situated aggrieved employees, as follows:

First, the Employee and all other similarly situated aggrieved employees performed work for the Employer while clocked out, including but not limited to for COVID-19 and other screenings, mandatory security checks, and required training. As such, the Employer failed to pay all straight time, minimum, and overtime wages due for the time the Employee and all other similarly situated aggrieved employees were subject, as stated, to the Employer's control, in violation of Labor Code §§ 510, 1194, 1197 and 1198 and the applicable Industrial Wage Order, and owes penalties under Labor Code §§ 2699(f), 1197.1, and/or 558.

Second, the Employer failed to timely provide all legally compliant meal breaks (including second meal breaks) to the Employee and all other similarly situated aggrieved employees because Employer failed to relinquish all control and also because meal breaks were late, short, missed, or interrupted. The Employee and all other similarly situated aggrieved employees routinely worked over five hours but did not always get lawful full thirty-minute uninterrupted meal breaks within the first five hours of their shift. Further, they sometimes worked over ten and/or twelve hours but were not timely provided a legally compliant second meal break. The Employer did not always pay a meal period penalty for these violations. As such, the Employer violated Labor Code §§ 226.7, 512 and 516 and the applicable Industrial Wage Order ¶11, and owes penalties under Labor Code §§ 2699(f) and/or 558.

Third, the Employer failed to always authorize and permit paid rest breaks to the Employee and all other similarly situated aggrieved employees. The Employee and all other similarly situated aggrieved employees did not always get full ten-minute uninterrupted rest breaks within the first four hours of their shift or major fraction thereof, and each subsequent four hours worked thereafter or major fraction thereof. As such, the Employee and all other similarly situated aggrieved employees were not always authorized and permitted legally compliant rest breaks. The Employer did not pay a rest period penalty for any of these violations. As such, the Employer violated Labor Code §§ 226.7 and 516, and the applicable Industrial Wage Order ¶12(A)/(B), and owes rest period wages and penalties under Labor Code §§ 2699(f) and/or 558.

Fourth, the Employer failed to provide legally compliant paid rest breaks to the Employee and all other similarly situated aggrieved employees. Here, the Employer did not relinquish all control of the Employee and all other similarly situated aggrieved employees during rest breaks. Therefore, the Employee and all other similarly situated aggrieved employees did not always get full ten-minute uninterrupted legally compliant paid rest breaks within the first four hours of their shifts or major fraction thereof, and each subsequent four hours worked thereafter or major fraction thereof. As such, the Employee and all other similarly situated aggrieved employees were not always provided legally compliant rest breaks. (*Augustus v ABM Security Services, Inc.* (2016) 2 Cal 5th 257.) Because the Employer did not pay a rest period penalty for these violations, the Employer violated Labor Code §§ 226.7 and 516 and the applicable Industrial Wage Order ¶12(A)/(B) and owes rest period wages and penalties under Labor Code §§ 2699(f) and/or 558.

Fifth, the Employee and all other similarly situated aggrieved employees incurred expenses while performing reasonable and necessary work-related duties, including but not limited to expenses for the work-required use of their personal vehicles (including but not limited to mileage and insurance), and personal mobile devices. However, the Employer failed to reimburse for any expenses. As such, the Employer violated Labor Code §§ 450 and 2802 by failing to reimburse the Employee and all other similarly situated aggrieved employees for all expenses reasonably incurred in the course of their required work duties, and forcing patronage, and owes penalties under Labor Code § 2699(f).

As a derivative result of some or all of the above claims, the Employer has also violated Labor Code § 226 and §§ 201-203, as follows:

Regarding wage statements, under Labor Code § 226 and the applicable Industrial Wage Order, the Employer is required to include certain information on a paystub. Here, because the Employer allegedly failed to pay all wages as set forth above, improper paystubs were issued by the Employer to the Employee and all other similarly situated aggrieved employees, and the Employee alleges that the Employer has derivatively violated Labor Code § 226, and owes penalties under Labor Code §§ 2699(f) and/or 226.3.

Regarding waiting time penalties, under Labor Code § 203, the Employee and all other similarly situated aggrieved employees are entitled to thirty day of wages at their regular rate of pay for the Employer's alleged failure to pay all wages due upon separation of employment. Here, because the Employer allegedly failed to pay all wages as set forth above, the Employee alleges that the Employer has derivatively violated Labor Code §§ 201-203, and owes penalties under Labor Code §§ 2699(f) and/or 203.

Under Labor Code § 2699.3(a)(2)(A), please advise within 65 calendar days of the postmark date of this notice whether the LWDA intends to investigate these alleged violations.

Further, under Labor Code § 2699.3(c)(2)(A), the Employer may cure the alleged violations within thirty-three (33) calendar days of the postmark date of this notice and within that period, give notice by certified mail if the alleged violation is cured, including a description of actions taken.

In addition, this letter clearly sets forth the Employee's grievances and proposed remedies, under the Labor Code, PAGA and otherwise, as set forth above. The Employee would like to engage in reasonable efforts to settle this dispute before filing a civil action against the Employer. The Employee gives the Employer the opportunity, prior to the expiration of the deadline for the LWDA to investigate, to meet the Employee's demands and settle this dispute.

We understand that if we do not receive a response within 65 calendar days of the postmark and filing date of this notice that the LWDA intends to investigate these allegations and/or a notice from the Employer that the alleged violations are cured, and/or if the alleged violations are not cured, then the Employee may immediately thereafter commence a civil action against the Employer under Labor Code § 2699.

Thank you for your consideration.

Regards,

Vanessa M. Ruggles
Gregg Lander

Cc: (via Certified Mail)
GOODWILL INDUSTRIES
OF SAN JOAQUIN VALLEY, INC.
129 S. Grant Street
Stockton, CA 95202

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, the undersigned, am over the age of 18 years and not a party to this action. My business address is 1635 Pontius Avenue, Second Floor, Los Angeles, CA 90025-3361, which is located in Los Angeles County, where the service herein occurred.

On the date of execution hereof, I caused to be served the following attached document/s:

FIRST AMENDED COMPLAINT

on the interested parties in this action, addressed as follows:

Attorneys for Defendant
Goodwill Industries of San Joaquin Valley, Inc.:

H. Ann Liroff, Esq.
FARBSTEIN & BLACKMAN APC
411 Borel Avenue, Suite 425
San Mateo, CA 94402
Tel.: (650) 554-6202
Email: HAL@farbstein.com

using the following service method:

__**X**__ **VIA MAIL:** I caused the document(s) to be served to be deposited at: 1635 Pontius Avenue, Second Floor, Los Angeles, CA, which is a mailbox or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person(s) on whom the document(s) is/are to be served, at the office address as last given by that/those person(s), otherwise at that/those person(s)' place(s) of residence. I am aware that on motion of any party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing stated herein.

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

Executed on **May 31, 2023**, at Los Angeles, California.

Cindy Rivas