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Behalf of similarly aggrieved employees

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

12/08/2023
Clerk of the Court
BY: WILLIAM TRUPEK
Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

ISIN AL OTAT, an individual and on
behalf of similarly aggrieved employees,

Plaintiff,

vs.

CYCLE GEAR, INC., a California
corporation; COMOTO HOLDINGS, INC.,
a Delaware corporation; COMOTO
HOLDINGS, LLC, a Delaware limited
liability company; and DOES 1 – 50,
inclusive;

Defendants.

CASE NO.: CGC-23-606243

[Jury Trial Demanded]
Complaint filed: May 1, 2023

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

**CLASS ACTION AND PRIVATE
ATTORNEY GENERAL ACT**

- (1) Failure to Provide Required Meal
Periods Cal. Labor Code §§
226.7,510,512,1194,1197;**
- (2) Failure to Provide Required Rest
Periods [Cal. Labor Code §§
226.7,512;**
- (3) Failure to Pay Minimum Wages [Cal
Labor Code §§1194,1197;**
- (4) Failure to Pay Overtime Labor Code
§510**
- (5) Failure to Furnish Accurate
Itemized Wage Statements [Cal.
Labor Code §§ 226;]**

(6) **Waiting Time Penalties Labor Code §§201-203**

(7) **Failure to Pay Reporting Time Pay (Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A))**

(8) **Wages Not Timely Paid (Violation of California Labor Code §§ 201, 202, and 203)**

(9) **Unfair and Unlawful Business Practices [Cal. Bus. & Prof. Code §§ 17200 et. Seq.**

(10) **Private Attorney General Act (Cal Labor Code §2699, et.seq.);**

Plaintiff Isin al-Otat ("Plaintiff") hereby submits this Class Action ("Complaint") against Defendants CYCLE GEAR, INC., COMOTO HOLDINGS, INC., COMOTO HOLDINGS LLC (collectively "Defendants") and Does 1 through 50 (collectively, "Defendants") on behalf of himself and all other similarly situated current and former employees of Defendants, for penalties and/or damages as follows:

INTRODUCTORY ALLEGATIONS

1. This class action is within the Court's jurisdiction under California Labor Code § 226 and the applicable Wage Orders of the California Industrial Welfare Commission ("IWC").

2. This representative action is within the Court's jurisdiction under California Labor Code §§ 226 and 2698, et seq

3. This Complaint challenges systemic illegal employment practices resulting in violations of the California Labor Code against individuals who worked for Defendants.

4. Plaintiff is informed and believes, and based thereon alleges, that Defendants, jointly and severally, have acted intentionally and with deliberate indifference and conscious disregard to the rights of all employees by failing to provide complete and accurate itemized wage statements to Plaintiff and Class Members.

5. Plaintiff is informed and believes, and based thereon alleges, that Defendants have engaged in, among other things a system of willful violations of the California Labor Code and the applicable

1 IWC Wage Orders by creating and maintaining policies, practices, and customs that knowingly deny
2 its employees the above-stated rights and benefits.

3 6. The Court has jurisdiction over the violations of California Labor Code § 226.

4 7. Venue is proper because Defendants do business in San Francisco, California and Plaintiff
5 worked for Defendants in San Francisco County, specifically as store No. 40 at the 1500 Harrison St,
6 San Francisco, CA 94103 location.

7 8. At all relevant times, Plaintiff Isin al-Otat (“Plaintiff” and/or “al-Otat”) was an individual
8 residing in the County of San Mateo, in the City of San Bruno in the State of California.

9 9. At all relevant times, Cycle Gear, Inc., Comoto Holdings, Inc., Comoto Holdings LLC,
10 (collectively, “Defendants”) and DOES 1-25 inclusive was and is existing, doing business and
11 employing individuals in the County of San Francisco, State of California.

12 10. The true names and capacities of Defendants and DOES 1 through 25, inclusive, whether
13 individual, corporate, associate or otherwise, are unknown to Plaintiff at the time of filing this
14 Complaint and Plaintiff, therefore, sues said Defendants by such fictitious names and will ask leave
15 of Court to amend this Complaint to show their true names or capacities when the same have been
16 ascertained. Plaintiff is informed and believes, and based thereon alleges, that each of the DOE
17 Defendants is, in some manner, responsible for the events and happenings herein set forth and
18 proximately caused injury and damages to Plaintiff as herein alleged.

19 11. The true names and capacities of the Defendants. DOES 1 through 25, inclusive, whether
20 individual, corporate, associate or otherwise are unknown to plaintiff at the time of filing this
21 Complaint and Plaintiff, therefore, sues said Defendants by such fictitious names and will ask the
22 level of Court to amend this Complaint to show their true names or capacities when the same have
23 been ascertained. Plaintiff is informed and believes, and based thereon alleges, that each of the DOE
24 Defendants is, in some manner, responsible for the events and happening herein set forth and
25 proximately caused injury and damages to Plaintiff as herein alleged.

26 12. At all times herein mentioned, Defendants were acting as the agents and/or employees of each
27 of the remaining Defendants, and were, at all times herein mentions, acting within the scope of said
28 agency and employment, except where alleged to the contrary.

1 13. Whenever in this Complaint reference is made to any act of Defendants, such allegations shall
2 be deemed to mean all named Defendants and DOES 1 through 25, or their officers, agents, managers,
3 representatives, employees, heirs, assignees, customers, and tenants, did or authorized such acts while
4 actively engaged in the operation, management, direction or control of the affairs of Defendants and
5 while acting within the course and scope of their duties, except where alleged otherwise.

6 14. At all times relevant herein, Defendant was Plaintiff's employer within the meaning of
7 Government Code §§12926(d), 12940, and/or 12950, and regularly employs five (5) or more persons
8 and is therefore subject to the jurisdiction of this court.

9 15. At all times relevant herein, Defendants and DOES 1 - 25 were Plaintiff's employers, joint
10 employers, and/or special employers within the meaning of the Labor Code and 21 Industrial Welfare
11 Commission Order No. 4-2001 and are each any "employer or other person acting on behalf of an
12 employer" as such term is used in Labor Code section 558, and liable to Plaintiff on that basis.

13 16. The true names and capacities, whether individual, corporate, associate or otherwise, of the
14 Defendants named herein as DOES 1 through 25, inclusive, are unknown to Plaintiff at this time and
15 therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this
16 complaint to insert the true names and capacities of said Defendants when the same become known
17 to Plaintiff.

18 17. Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously
19 named Defendants is responsible for the wrongful acts alleged herein and is therefore liable to
20 Plaintiff as alleged hereinafter.

21 18. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
22 hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors,
23 coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of
24 the other Defendants, and each of them, and in doing the things alleged herein, were acting at least in
25 part within the course and scope of said agency, employment, conspiracy, joint employer, alter ego
26 status, successor status and/or joint venture and with the permission and consent of each of the other
27 Defendants.

28 19. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each of
them, and those defendants named as DOES 1 through 25 acted in concert with one another to commit

1 the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another
2 in the wrongful acts alleged herein, and/or attempted to do so, including pursuant to Government
3 Code § 12940(i).

4 20. Plaintiff is further informed and believes, and based thereupon alleges, that Defendants, and
5 each of them, and those defendants named as DOES 1 through 25, and each of them, formed and
6 executed a conspiracy or common plan pursuant to which they would commit the unlawful acts
7 alleged herein, with all such acts alleged herein done as part of and pursuant to the said conspiracy,
8 intended to cause and actually causing Plaintiff harm.

9 21. Whenever and wherever reference is made in this complaint to any act or failure to act by a
10 Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
11 and/or failures to act by each Defendant acting individually, jointly, and severally.

12 22. This Court is the proper court, and this action is properly filed in San Francisco County,
13 because Defendants' obligations and liability arise therein, because Defendants maintain offices and
14 transact business within San Francisco, and because the work that is the subject of this action was
15 performed by Plaintiff in San Francisco County.

16 **ALTER EGO, AGENCY, SUCCESSOR, AND JOINT EMPLOYER**

17 23. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity of
18 interest and ownership between Defendants and DOES 1 through 25 that the individuality and
19 separateness of defendants have ceased to exist.

20 24. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
21 purported corporate existence, DOES 1 through 25 are, in reality, one and the same as Defendants
22 because a) Defendants is completely dominated and controlled by DOES 1-25, who personally
23 committed the frauds and violated the laws as set forth in this complaint, and who have hidden and
24 currently hide behind Defendants to perpetrate frauds, circumvent statutes, or accomplish some other
25 wrongful or inequitable purpose. B. DOES 1-25 derive actual and significant monetary benefits by
26 and through Defendant's unlawful conduct, and by using Defendants as the funding source for their
27 own personal expenditures. c. Plaintiff is informed and believes that Defendants and DOES 1-25,
28 while really one and the same, were segregated to appear as though separate and distinct for purposes
of perpetrating a fraud, circumventing a statute, or accomplishing some other wrongful or inequitable

1 purpose. d. Plaintiff is informed and believes that Defendants does not comply with all requisite
2 corporate formalities to maintain a legal and separate corporate existence. e. Plaintiff is informed and
3 believes, and thereupon alleges, that the business affairs of Defendants and DOES 1-25 are, and at all
4 times relevant were, so mixed and intermingled that the same cannot reasonably be segregated, and
5 the same are in inextricable confusion. Defendants is, and at all times relevant hereto was, used by
6 DOES 1-25 as a mere shell and conduit for the conduct of certain of Defendants' affairs, and is, and
7 was, the alter ego of DOES 1-25. The recognition of the separate existence of Defendants would not
8 promote justice, in that it would permit Defendants to insulate themselves from liability to Plaintiff
9 for violations of the Government Code and other statutory violations. The corporate existence of
10 Defendants and DOES 1-25 should be disregarded inequity and for the ends of justice because such
11 disregard is necessary to avoid fraud and injustice to Plaintiff herein.

12 25. Accordingly, Defendants constitute the alter ego of DOES 1-25, and the fiction of their
13 separate corporate existence must be disregarded.

14 26. As a result of the aforementioned facts, Plaintiff is informed and believes, and based thereon
15 alleges that Defendants and DOES 1 -25 are Plaintiff's joint employers by virtue of a joint enterprise,
16 and that Plaintiff was an employee of Defendants and DOES 1-25. Plaintiff performed services for
17 each and every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants
18 shared control of Plaintiff as an employee, either directly or indirectly, and the manner in which
19 Defendants' business was and is conducted.

20 27. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that there
21 exists an agreement between DOES 1-25 and Defendants (i) there is an express or implied agreement
22 of assumption pursuant to which DOES 1-25 agreed to be liable for the debts of Defendants (2) the
23 transaction between DOES 1 -25 and Defendants amounts to a consolidation or merger of the two
24 corporations, (3) DOES 1-25 is a mere continuation of Defendants or (4) the transfer of assets to
25 DOES 1-25 is for the fraudulent purpose of escaping liability for Defendants debts. Accordingly,
26 DOES 1-25 are the successors of Defendants and are liable on that basis.

27 **THE PARTIES**

28

1 28. Plaintiff Isin al- Otat worked for Defendants as a key card holder/sales associate
2 since February 2022, within the County of San Francisco, California. Plaintiff was employed with
3 Defendants until July 2022.

4 29. Plaintiff al- Otat is an individual over the age of eighteen (18) and is now and at all times
5 mentioned in this Complaint was a citizen of the State of California.

6 30. Plaintiff al-Otat worked for Defendants as a non-exempt hourly employee subject to overtime
7 pay. Al- Otat performed work in excess of 8 hours and 40 hours a week.

8 31. Defendants failed to pay all of Plaintiff's wages on her paystub including her meal and rest,
9 missing overtime.

10 32. Defendants scheduled Plaintiff to work hours at other locations including the Gilroy and Santa
11 Rosa. Instead of honoring, the hours they gave her, they took her off schedule at the last minute
12 including on the day of and failed to pay the minimum 4-hour reporting time pay.

13 33. Defendants scheduled Plaintiff to work at other locations and had her drive out to the Gilroy
14 and Santa Rosa location. Defendants provided Ms. al-Otat with a hotel room but failed to compensate
15 Ms. al-Otat for her time spent driving and working while heading over to the Gilroy and Santa Rosa
16 location. Defendants failed to pay Ms. al-Otat at least minimum wage, travel time pay, and/or
overtime.

17 34. At all relevant times, Plaintiff al-Otat and the other hourly employees have been non-exempt
18 employees, and as such, entitled to the protections of the California Labor Code and the Wage
19 Order. Accordingly, Plaintiff al-Otat and the other hourly employees have been entitled to be paid
20 premium for missed meal and rest breaks her regular rate of pay including all non discretionary
21 payment such as commissions as defined under as Cal. Lab. Code 226.7(c), Cal. Lab. Code 510(a)
22 *See Ferra v. Loews Hollywood Hotel LLC* 456 P.3d 415 (Cal. 2020).

23 35. During her employment, Plaintiff al-Otat was not permitted to take duty-free rest period of at
24 least ten minutes every four hours they worked, as required by California law. Plaintiff al-Otat was
25 also not provided duty-free meal periods of at least thirty-minutes every five hours she worked.

26 36. Defendants paid Plaintiff al-Otat and other employees lower wages than required by statute
27 or contract, failed to maintain working conditions that comply with the Wage Order, failed to provide
28

1 them with accurate written wage statements, and failed to timely pay them earned wages during
2 employment.

3 37. Plaintiff al-Otat alleges that as a result of Defendants' systematic time, payroll policies and
4 practices, Plaintiff al-Otat and other non-exempt employees who were improperly paid during the
5 time period four (4) years preceding the filing of the original Complaint through present who were:

- 6 a) Not paid the statutory minimum wage in violation of the California Labor Code;
- 7 b) Not paid the requisite overtime wages;
- 8 c) Not provided with all legally required meal and rest periods in violation of the California
Labor Code;
- 9 d) Not paid proper premium wages for each workday in which Defendants failed to provide
them with one or more meal periods in violation of the California Labor Code;
- 10 e) Not paid premium wages for each workday in which Defendants failed to provide them
with one or more rest breaks in violation of the California Labor Code;
- 11 f) Not provided with accurate written wage statements in violation of the California Labor
Code;
- 12 g) Failed to pay reporting time;

13 38. Defendants were and are California entities, qualified to do business and doing business at .
14 1500 Harrison St, San Francisco, CA 94103 and throughout the state of California. At all relevant
15 times, Defendants employed 26 or more employees. Defendants have at least 30 stores throughout
16 the state of California.

17 **CLASS ACTION ALLEGATIONS**

18 39. CCP §382 provides in pertinent part: "... [W]hen the question is one of a common or general
19 interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all
20 before the court, one or more may sue or defend for the benefit of all." Plaintiff brings this suit as a
21 class action pursuant to CCP §382.

22 40. This action is appropriately suited for a Class Action because:

23 A. The potential class is a significant number. Joinder of all current and former
24 employees individually would be impractical.

25 B. This action involves common questions of law and fact to the potential class
26 because the action focuses on the DEFENDANTS' systematic course of illegal payroll
27 practices and policies, which was applied to all non-exempt employees in violation of the
28 California Labor Code, IWC Wage Orders, and the California Business and Professions Code
which prohibits unfair business practices arising from such violations.

1 C. The claims of PLAINTIFFS are typical of the class because DEFENDANTS
2 subjected all its non-administrative, non-managerial, non-exempt employees described in the
3 foregoing Paragraphs of this Complaint to the identical violations of the California Labor
4 Code, the applicable IWC wage order, and the California Business and Professions Code.

5 41. PLAINTIFFS are able to fairly and adequately protect the interests of all members of the class
6 because it is in their best interests to prosecute the claims alleged herein to obtain full compensation
7 due to the class for all services rendered and hours worked.

8 42. The putative classes Plaintiff will seek to certify are currently composed of non-exempt
9 sales associates and key card holders (as defined *supra*) who have worked for Defendants in the
10 four years prior to the filing of the original complaint herein and through trial, and defined as
11 follows:

- 12 a. All California citizens employed by Defendants as sales associates and key card holders
13 (as defined *supra*) during the appropriate time period who were subjected to Defendants'
14 policies and practices regarding the payment of overtime wages as specifically described
15 herein (hereinafter, the "Overtime Wage Class");
- 16 b. All California citizens employed by Defendants as sales associates and key card holders
17 (as defined *supra*) during the appropriate time period who were subjected to Defendants'
18 policies and practices regarding the payment of minimum wages as specifically described
19 herein (hereinafter, the "Minimum Wage Class");
- 20 c. All California citizens employed by Defendants as sales associates and key card holders
21 (as defined *supra*) during the appropriate time period who were subjected to Defendants'
22 policies and practices regarding rest periods as specifically described herein (hereinafter,
23 the "Rest Period Class");
- 24 d. All California citizens employed by Defendants as sales associates and key card holders
25 (as defined *supra*) during the appropriate time period who were subjected to Defendants'
26 policies and practices regarding meal periods as specifically described herein (hereinafter,
27 the "Meal Period Class");
- 28 e. All California citizens employed by Defendants as sales associates and key card holders
(as defined *supra*) during the appropriate time period who were subjected to Defendants'
policies and practices regarding time reporting as specifically described herein
(hereinafter, the "Time Reporting Class");
- f. All California citizens employed by Defendants as sales associates and key card holders
(as defined *supra*) 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");
- g. All California citizens employed by Defendants as sales associates and key card holders
(as defined *supra*) during the appropriate time period who have subjected to Defendants'
policies and practices regarding not being paid compensation due immediately upon
termination or within 72 hours of resignation described herein (hereinafter, the "203
Class");

- 1 h. The Overtime Wage Class, Minimum Wage Class Rest Period Class, Meal Period Class,
2 Wage Statement Class, and the 203 Class are herein collectively referred to as the
“Classes.”

3 43. Throughout discovery in this litigation, Plaintiff may find it appropriate and/or necessary to
4 amend the definition of the Classes. Plaintiff will formally define and designate a class definition at
5 such time when Plaintiff seeks to certify the Classes alleged herein.

6 i. Numerosity (CCP §382):

- 7 a. The potential quantity of members of the Classes as defined is so numerous
8 that joinder of all members is unfeasible and impractical;
9 b. The disposition of the claims of the members of the Classes through this
10 class action will benefit both the parties and this Court;
11 c. The quantity of members of the Classes is unknown to Plaintiff at this time;
12 however, it is estimated that the membership of the Classes numbers
13 greater than 100 individuals; and
14 d. The quantity and identity of such membership is readily ascertainable via
inspection of Defendants’ records.

15 ii. Superiority (CCP §382): The nature of this action and the nature of the laws available
16 to Plaintiff make the use of the class action format particularly efficient and the
17 appropriate procedure to afford relief to Plaintiff for the wrongs alleged herein, as
18 follows:

- 19 a. California has a public policy which encourages the use of the class
20 action device;
21 b. By establishing a technique whereby the claims of many individuals
22 can be resolved at the same time, the class suit both eliminates the
23 possibility of repetitious litigation and provides small claimants with a
24 method of obtaining redress for claims which would otherwise be too
25 small to warrant individual litigation;
26 c. This case involves large corporate Defendants and a large number of
27 individual Class members with many relatively small claims and
28 common issues of law and fact;

- 1 d. If each individual member of the Classes were required to file an
2 individual lawsuit, the large corporate Defendants would necessarily
3 gain an unconscionable advantage because Defendants would be able
4 to exploit and overwhelm the limited resources of each individual
5 member of the Classes with Defendants' vastly superior financial and
6 legal resources;
- 7 e. Requiring each individual member of the Classes to pursue an individual
8 remedy would also discourage the assertion of lawful claims by the
9 members of the Classes who would be disinclined to pursue an action
10 against Defendants because of an appreciable and justifiable fear of
11 retaliation and permanent damage to their lives, careers, and well-being;
- 12 f. Proof of a common business practice or factual pattern, of which the
13 members of the Classes experienced, is representative of the Classes herein
14 and will establish the right of each of the members of the Classes to recover
15 on the causes of action alleged herein;
- 16 g. Absent class treatment, the prosecution of separate actions by the
17 individual members of the Classes, even if possible, would likely create:
- 18 h. A substantial risk of each individual plaintiff presenting in separate,
19 duplicative proceedings the same or essentially similar arguments and
20 evidence, including expert testimony;
- 21 i. a multiplicity of trials conducted at enormous expense to both the judicial
22 system and the litigants;
- 23 j. inconsistent or varying verdicts or adjudications with respect to the
24 individual members of the Classes against Defendants;
- 25 k. potentially incompatible standards of conduct for Defendants; and
- 26 l. potentially incompatible legal determinations with respect to individual
27 members of the Classes which would, as a practical matter, be dispositive
28 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.

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

iii. Well-defined Community of Interest: Plaintiff also meets the established standards for class certification (see, e.g. *Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096), as follows:

- a. Typicality: The claims of Plaintiff al-Otat are typical of the claims of all members of the Classes she seeks to represent because she has been subject to all the violations described herein, as have 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 al-Otat is an adequate representative of the Classes she seeks to represent; will fairly protect the interests of the members of the Classes; has no interests antagonistic to the member of the Classes; and will vigorously pursue this suit via attorneys who are competent, skilled and experienced in litigating matters of this type.

iii. 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:

- a. Whether Defendants paid the appropriate overtime wages to the members of the Overtime Wage Class;

- b. Whether Defendants paid the appropriate minimum wages to the members of the Minimum Wage Class;
- c. Whether Defendants failed and continue to fail to authorize and permit legally-requisite rest and meal periods to the members of the Rest Period Class and Meal Period Class in violation of the Labor Code and Section 12 of the IWC Wage Orders;
- d. Whether Defendants failed to timely furnish accurate, itemized and legal wage statements to the members of the Wage Statement Class;
- e. Whether Defendants are derivatively liable pursuant to Labor Code §203 to the members of the 203 Class;
- f. Whether the members of the Classes are entitled to penalties pursuant to Labor Code §§2698, et seq;
- g. Whether Defendants' conduct constitutes unfair, illegal, or fraudulent competition within the meaning of B&PC §17200, et seq.;
- h. Whether Defendants' conduct constitutes unfair, illegal, or fraudulent business practices within the meaning of B&PC § 17200, et seq.;
- i. Whether the members of the Classes are entitled to compensatory damages, and if so, the means of measuring such damages;
- j. Whether the members of the Classes are entitled to injunctive relief;
- k. Whether the members of the Classes are entitled to restitution; and
- l. Whether Defendants are liable for attorneys' fees and costs.

44. Whether each member of the Classes might be required to ultimately justify an individual claim does not preclude maintenance of a class action (see, e.g. *Collins v. Rocha* (1972) 7 Cal.3d 232, 238).

45. PLAINTIFFS, on behalf of themselves and other similarly situated current and former non-exempt employees of DEFENDANTS as described in Paragraph 28, 41 of this Complaint and who were employed by DEFENDANTS at any time during the four (4) years preceding the filing of this action, and continuing while this action is pending, brings this class action to recover, among other things, wages and penalties from unpaid wages earned and due, including but not limited to unpaid minimum wages and unpaid wages, illegal meal and rest period policies, failure to maintain required records, failure to provide accurate itemized wage statements, failure to pay wages, failure to pay overtime, failure to pay minimum wages, reporting time, / and interest, attorneys' fees, costs, and expenses.

46. The statute of limitations as to all claims has been tolled under the doctrine of equitable tolling set forth in *American Pipe & Construction Co. et al. V. Utah et al*, 414 U.S. 538, 550-1 (1974). PLAINTIFFS thereby bring this action on behalf of themselves, and the following similarly situated class of individuals ("CLASS MEMBERS"): all current and former non-exempt employees of

1 DEFENDANTS in the State of California at any time within the period beginning May 1, 2019 and
2 ending at the time this action settles or proceeds to final judgment (the "CLASS PERIOD").
3 PLAINTIFFS reserve the right to name additional class representatives.

4 **FIRST CAUSE OF ACTION**

5 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS CAL. LABOR CODE §§**

6 **226.7,510,512,1194,1197]**

7 **(AGAINST ALL DEFENDANTS AND DOES 1-25)**

8 47. PLAINTIFF incorporates herein by specific reference the foregoing paragraphs, as though
9 fully set forth herein.

10 48. During the CLASS PERIOD, as part of DEFENDANTS' illegal payroll policies and practices
11 to deprive their non-exempt employees of all wages earned and due, DEFENDANTS required,
12 permitted or otherwise suffered PLAINTIFFS and CLASS MEMBERS to take less than the 30-
13 minute meal period, to work through them, or to prevent their employees from leaving the work
14 facility during their meal periods, and have failed to otherwise provide the required meal periods to
15 PLAINTIFFS and CLASS MEMBERS pursuant to California Labor Code § 226.7, 512 and IWC
16 Order No. 7 DEFENDANTS further violated California Labor Code §§ 226.7 and IWC Wage Order
17 No. 7 by failing to compensate PLAINTIFFS and CLASS MEMBERS who were not provided with
18 a meal period, in accordance with the applicable wage order, one additional hour of compensation at
each employees regular rate of pay for each workday that a meal period was not provided.

19 49. DEFENDANTS further violated California Labor Code §§ 226.7, 510, 1194, 1197, and IWC
20 Wage Order No. 7 by failing to compensate PLAINTIFFS and CLASS MEMBERS for all hours
21 worked during their meal periods.

22 50. As a proximate result of the aforementioned violations, PLAINTIFFS and CLASS
23 MEMBERS have been damaged in an amount according to proof at trial, and seek all wages earned
24 and due, interest, penalties, expenses, and costs of suit.

25 **SECOND CAUSE OF ACTION**

26 **FAILURE TO PROVIDE REQUIRED REST PERIODS**

27 **[CAL. LABOR CODE §§ 226.7,512]**

28 **(AGAINST ALL DEFENDANTS AND DOES 1-25)**

1 51. PLAINTIFF incorporates herein by specific reference the foregoing paragraphs, as though
2 fully set forth herein.

3 52. At all times relevant herein, as part of the Defendant' illegal payroll policies and practices to
4 deprive their non-exempt employees all wages earned and due, DEFENDANTS failed to provide rest
5 periods to PLAINTIFFS and CLASS MEMBERS as required under California Labor Code §§ 226.7
6 and 512, and IWC Wage Order No. 7.

7 53. DEFENDANTS further violated California Labor Code § 226.7 and IWC Wage Order No. 7
8 by failing to pay PLAINTIFFS and CLASS MEMBERS who were not provided with a rest period,
9 in accordance with the applicable wage order, one additional hour of compensation at each employee's
10 regular rate of pay for each workday that a rest period was not provided.

11 54. As a proximate result of the aforementioned violations, PLAINTIFFS and CLASS
12 MEMBERS have been damaged in an amount according to proof at trial, and seek all wages earned
13 and due, interest, penalties, expenses, and costs of suit.

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO PAY MINIMUM WAGES**

16 **[CAL LABOR CODE §§1194,1197; IWC WAGE ORDER NO. 7**

17 **(AGAINST ALL DEFENDANTS AND DOES 1-25)**

18 55. PLAINTIFF incorporates herein by specific reference the foregoing paragraphs, as though
19 fully set forth herein.

20 56. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Order No. 7 payment to an
21 employee of less than the applicable minimum wage for all hours worked in a payroll period is
22 unlawful.

23 57. During the CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFFS and CLASS
24 MEMBERS minimum wages for all hours worked by, among other things: requiring, permitting or
25 suffering PLAINTIFFS and CLASS MEMBERS to work off the clock; requiring, permitting or
26 suffering PLAINTIFFS and CLASS MEMBERS to work through meal and rest breaks; illegally and
27 inaccurately recording time in which plaintiffs and CLASS MEMBERS worked; failing to properly
28 maintain PLAINTIFFS' and CLASS MEMBERS' records; failing to provide accurate itemized wage

1 statements to PLAINTIFFS and CLASS MEMBERS for each pay period, and failing to pay the
2 CLASS the actual rate of pay and other methods to be discovered.

3 58. For example, Plaintiff al-Otat was required to report to Goleta and Santa Clara location.
4 Defendants provided Plaintiff al-Otat a hotel room and reimbursed her for travel but refused to pay
5 her minimum wage or for any travel time to the location. Defendant has a company wide policy and
6 practice of refusing to pay minimum wage for its sales associates.

7 59. DEFENDANTS' conduct described herein violates California Labor Code §§ 1194, 1197, and
8 IWC Wage Order No. 7. As a proximate result of the violations, PLAINTIFFS and CLASS
9 MEMBERS have been damaged in an amount according to proof at trial. Therefore, pursuant to
10 California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the
11 Labor Code and IWC Wage Orders, PLAINTIFFS and CLASS MEMBERS are entitled to recover
12 the unpaid balance of wages owed to them by DEFENDANTS, plus interest, penalties, attorneys'
fees, expenses, and costs of suit.

13 **FOURTH CAUSE OF ACTION**

14 **FAILURE TO PAY OVERTIME (LABOR CODE §510)**

15 **(AGAINST ALL DEFENDANTS AND DOES 1-25)**

16 60. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though
17 set forth in full herein.

18 61. Labor Code §510 requires employers to pay their non-exempt employees one and one-half
19 times their regular hourly rate (overtime) for time worked in excess of eight hours in a single day, or
20 40 hours per week, and double their regular hourly rate (double-time) for all hours worked in excess
21 of 12 hours in a single day. It also requires employers to pay their non-exempt employees overtime
22 compensation for the first eight hours of work done on the seventh consecutive day of work done in
23 any workweek, and double-time compensation for any work done beyond the first eight hours on the
24 seventh consecutive day of work.

25 62. At all relevant times, Defendants failed and refused to pay Plaintiff and all CLASS
26 MEMBERS all the overtime compensation required by Labor Code §510, 8 Code of Regulations
27 §11090, and Industrial Welfare Commission Order No. 9-2001.
28

63. At all relevant times, Defendants required Plaintiff and CLASS MEMBERS to work more than eight hours per day and/or more than 40 hours per workweek. Despite this, Defendants failed to pay Plaintiff and OTHER CLASS MEMBERS the requisite overtime wages.

64. As alleged herein, Plaintiff is not exempt from the overtime pay requirements of Labor Code §510, 8 Code Regulations §11090, and Industrial Welfare Commission Order No. 7.

65. Plaintiff and CLASS MEMBERS have been deprived of Plaintiff's rightfully earned overtime compensation as a direct and proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is entitled to recover such amounts, plus interest thereon, attorneys' fees, and costs.

FIFTH CAUSE OF ACTION

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

[CAL. LABOR CODE §§ 226; IWC WAGE ORDER NO. 7]

(AGAINST ALL DEFENDANTS AND DOES 1-25)

66. PLAINTIFF incorporates herein by specific reference the foregoing paragraphs, as though fully set forth herein.

67. During the CLASS PERIOD, DEFENDANTS routinely failed to provide PLAINTIFFS and CLASS MEMBERS with timely, accurate, and itemized wage statements in writing showing each employee's gross wages earned, total hours worked, all deductions made, net wages earned, the name and address of the legal entity or entities employing PLAINTIFFS and CLASS MEMBERS, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of California Labor Code § 226 and IWC Wage Order No. 7.

68. During the CLASS PERIOD, DEFENDANTS knowingly and intentionally failed to provide PLAINTIFFS and CLASS MEMBERS with timely, accurate, and itemized wage statements in accordance with California Labor Code § 226(a).

69. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFFS and CLASS MEMBERS have been damaged in an amount according to proof at trial, and seek all wages earned and due, plus interest thereon. Additionally, PLAINTIFFS and CLASS MEMBERS are entitled to all available statutory penalties, including but not limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable

1 attorneys' fees, including but not limited to those provided in California Labor Code § 226(e), as well
2 as other available remedies.

3 **SIXTH CAUSE OF ACTION**
4 **FOR WAITING TIME PENALTIES**
5 **LABOR CODE §§201-203**

6 **(AGAINST ALL DEFENDANTS AND DOES 1-25)**

7 70. Plaintiff and the class incorporate by reference the foregoing paragraphs as if fully set forth
8 herein. As alleged herein, Plaintiff and Class Members are not exempt from the requirements of Labor
9 Code §226.

10 71. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of hour, wage,
11 and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and expense in
12 attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages Plaintiff is
13 entitled to, causing Plaintiff to be unable to rely on earnings statements in dealings with third parties,
14 eviscerating Plaintiff's right under Labor Code §226(b) to review itemized wage statement
15 information by inspecting the employer's underlying records, and deceiving Plaintiff regarding
16 Plaintiff's entitlement to overtime, meal period, and rest period wages. For the time periods that
17 Plaintiff was not provided with paystubs at all, Plaintiff's aforementioned injuries are presumed as a
18 matter of law.

19 72. Plaintiff was paid on a bi-weekly basis, and therefore Defendants violated Labor Code §226
20 approximately 24 times during the one year preceding the filing of this complaint. Consequently,
21 Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties in the statutory maximum
22 amount of \$4,000.00, whichever is greater.

23 73. In addition thereto, for Defendant's violations, Defendants are penalized \$250.00 for the first
24 violation, and the remainder of which Defendants are penalized \$1,000.00 each, for a total due in
25 Labor Code §226.3 penalties of \$6250.00.

26 74. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and
27 statutory penalties pursuant to Labor Code §226, civil penalties pursuant to Labor Code §226.3, and
28 other applicable provisions, as well as attorneys' fees and costs.

SEVENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 1198 AND CALIFORNIA CODE OF REGULATIONS TITLE
8, SECTION 11050 SUBDIVISION 5(A) – FAILURE TO PROVIDE REPORTING TIME PAY
(AGAINST ALL DEFENDANTS AND DOES 1-25)

75. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

76. California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

77. The applicable wage order, California Code of Regulations, Title 8, section 11050(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.”

78. Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5) because Defendants failed to pay Plaintiff al-Otat and other class members reporting time pay when they presented themselves as ready for work by waiting at home or at work during a scheduled shift and were told to go home as there was no work for them on the day that they were scheduled.

79. Defendants did not pay Plaintiff and class members for at least half of their scheduled day’s work or the required minimum reporting time pay when they were subject to Defendants’ scheduled work day and were not called or told that there was no work for them on the day that they were scheduled.

80. For instance, Plaintiff al-Otat was scheduled to work, presented herself at the Defendants location including at distant locations such as Goleta and Santa Clara waited at home or the hotel during her scheduled “on-call” shifts as required by Defendants’ on-call policy, but was not called or not required to report to work, specifically Defendants told Plaintiff al-Otat that they did not need her to work that day. Defendants fail to pay Plaintiff and class members for at least two (2) hours at their regular rate of pay. Instead, Defendants refused to pay Plaintiff al-Otat or failed to pay her the appropriate reporting time pay. During the relevant time period,

1 Plaintiff al-Otat responded to calls, reported to Defendants' place of work, and was not paid for at least two
2 (2) hours at her regular rate of pay.

3 81. Accordingly, Plaintiff Turner and class members were not properly compensated with reporting time
4 pay in violation of California Labor Code section 1198.

5 **EIGHTH CAUSE OF ACTION**

6 **VIOLATION OF CALIFORNIA LABOR CODE §§ 201, 202, AND 203 –WAGES NOT**

7 **TIMELY PAID UPON TERMINATION**

8 **(AGAINST ALL DEFENDANTS AND DOES 1-25)**

9 82. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set
10 forth above.

11 83. At all times relevant herein set forth, Labor Code sections 201 and 202 provide that if an employer
12 discharges an employee, the wages earned and unpaid at the time of discharge are due and payable
13 immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become
14 due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two
15 (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her
16 wages at the time of quitting.

17 84. At all relevant times, Defendants willfully failed to pay Plaintiffs and class members who are no longer
18 employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime
19 wages, minimum wages, meal and rest period premium wages, and reporting time pay, either at the time of
20 discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

21 85. Defendants' failure to pay Plaintiffs and those class members who are no longer employed by
22 Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their
23 leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiffs and class members are
24 therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at
25 their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

26 **NINTH CAUSE OF ACTION**

27 **UNFAIR AND UNLAWFUL BUSINESS PRACTICES**

28 **[CAL. BUS. & PROF. CODE §§ 17200 ET. SEQ.]**

(AGAINST ALL DEFENDANTS AND DOES 1-25)

1 86. PLAINTIFF incorporates herein by specific reference the foregoing paragraphs, as though
2 fully set forth herein.

3 87. Each and every one of DEFENDANTS' acts and omissions in violation of the California Labor
4 Code and/or the applicable IWC Wage Order as alleged herein, including but not limited to
5 DEFENDANTS' failure and refusal to provide required meal periods, DEFENDANTS' failure and
6 refusal to provide required rest periods, DEFENDANTS' failure and refusal to pay overtime
7 compensation, DEFENDANTS' failure and refusal to pay minimum wages, DEFENDANTS' failure
8 and refusal to furnish accurate itemized wage statements; DEFENDANTS' failure and refusal to
9 maintain required records, DEFENDANTS' failure and refusal to indemnify PLAINTIFFS and
10 CLASS MEMBERS for necessary expenditures and/or losses incurring in discharging their duties,
11 constitute an unfair and unlawful business practice under California Business and Professions Code
12 § 17200 et seq.

13 88. DEFENDANTS' violations of California wage and hour laws constitute a business practice
14 because DEFENDANTS' aforementioned acts and omissions were done repeatedly over a significant
15 period of time, and in a systematic manner, to the detriment of PLAINTIFFS and CLASS
16 MEMBERS.

17 89. DEFENDANTS have avoided payment of wages, overtime wages, meal periods, rest periods,
18 and other benefits as required by the California Labor Code, the California Code of Regulations, and
19 the applicable IWC Wage Order. Further, DEFENDANTS have failed to record, report, and pay the
20 correct sums of assessment to the state authorities under the California Labor Code and other
21 applicable regulations.

22 90. As a result of DEFENDANTS' unfair and unlawful business practices, DEFENDANTS have
23 reaped unfair and illegal profits during the CLASS PERIOD at the expense of PLAINTIFFS, CLASS
24 MEMBERS, and members of the public. DEFENDANTS should be made to disgorge their ill-gotten
25 gains and to restore them to PLAINTIFFS and CLASS MEMBERS.

26 91. DEFENDANTS' unfair and unlawful business practices entitle PLAINTIFFS and CLASS
27 MEMBERS to seek preliminary and permanent injunctive relief, including but not limited to orders
28 that DEFENDANTS account for, disgorge, and restore to PLAINTIFFS and CLASS MEMBERS the
wages and other compensation unlawfully withheld from them. PLAINTIFFS and CLASS

1 MEMBERS are entitled to restitution of all monies to be disgorged from DEFENDANTS in an
2 amount according to proof at the time of trial, but in excess of the jurisdiction of this Court.

3 **TENTH CAUSE OF ACTION**

4 **FOR PRIVATE ATTORNEY GENERAL ACT**

5 **LABOR CODE §2699**

6 **(AGAINST ALL DEFENDANTS AND DOES 1-25)**

7 92. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though
8 set forth in full herein.

9 93. Under Labor Code §2699, Plaintiff, as an aggrieved employee, may bring an action against
10 Defendants, on behalf of herself and other current or former employees, seeking statutory civil
11 penalties for Defendants' violations of the California Labor Code.

12 94. Plaintiff was an aggrieved employee within the meaning of Labor Code §§2699(c) and
13 2699.3(a), as Defendants have committed multiple California Labor Code violations against Plaintiff,
14 as previously pleaded in this Complaint.

15 95. On March 2, 2023, more than 63 calendar days before filing this First Amended Complaint,
16 Plaintiff provided written notice by certified mail to the Labor and Workforce Development Agency
17 and to Defendants of the specific provisions of the California Labor Code that Defendants violated,
18 thereby satisfying the requirements of Labor Code §2699.3(a). These violations included failure to
19 pay the regular rate of pay, meal and rest violations, overtime violations, each of which is enumerated
20 among the serious violations set forth in Labor Code §2699.5.

21 96. As of the filing of this Complaint, Plaintiff has not received any response from the Labor and
22 Workforce Development Agency on its intent to pursue an action against Defendants. Consequently,
23 Plaintiff may now commence a civil action, pursuant to Labor Code §2699.3.

24 97. As a direct and proximate result of Defendants' California Labor Code violations as set forth
25 in this Complaint, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per pay
26 period for the initial violation, and \$200 for each aggrieved employee per pay period for each
27 subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly
28 providing for a penalty, and civil penalties provided by the specific Labor Code sections that do
expressly provide for a penalty, §§226.3, 226.7, 510, 512, and 558.

1 98. Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the recovered civil
2 penalties, pursuant to Labor Code §§2699(g)(1)-(i).

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, PLAINTIFFS, individually and on behalf of all other persons similarly situated,
6 respectfully prays for relief against DEFENDANTS and DOES 1 through 100, inclusive, and each
7 of them, as follows:

- 8 1. For compensatory damages in an amount to be ascertained at trial;
- 9 2. For restitution of all monies due to PLAINTIFFS and CLASS MEMBERS, as well
10 as disgorged profits from the unfair and unlawful business practices of defendants;
- 11 3. For meal and rest period compensation pursuant to California Labor Code § 226.7
12 and IWC Wage Order No. 7.
- 13 4. For liquidated damages pursuant to California Labor Code §§1194.2 and 1197.1.
- 14 5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from
15 violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and
16 from engaging in the unlawful business practices complained of herein.
- 17 6. For waiting time penalties pursuant to California Labor Code § 203;
- 18 7. For statutory and civil penalties according to proof, including but not limited to all
19 penalties authorized by the California Labor Code §§ 226(e) and 2699;
- 20 8. For interest on the unpaid wages at 10% per annum pursuant to California Labor
21 Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable
22 provision providing for pre-judgment interest;
- 23 9. For statutory penalties pursuant to Labor Code §2699(f), in the amount of no less
24 than \$22,500 on Plaintiff's own behalf, and similar amounts on behalf of all of Defendants'
25 aggrieved employees;
- 26 10. For reasonable attorneys' fees and costs pursuant to California Labor Code §§ 1194,
27 2699, 2802, California Civil Code § 1021.5, and/or any other applicable provisions providing
28 for attorneys' fees and costs;
11. For declaratory relief;

12. For an order requiring and certifying the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action as a class action;

13. For an order appointing PLAINTIFFS as class representatives, and PLAINTIFFS' counsel as class counsel; and

14. 13. For such further relief that the Court may deem just and proper.

DATED: December 8, 2023

Law Office of Jessica Gomez

Javier P. Gomez

Jessica P. Gomez, Esq.

Attorney for Plaintiff:

Attorneys for Plaintiff, ISIN AL OTAT and on
Behalf of similarly aggrieved employees

DEMAND FOR JURY TRIAL

Plaintiff hereby requests a demand for a jury trial.

DATED: December 8, 2023

Law Office of Jessica Gomez

Javier P. Gomez

Jessica P. Gomez, Esq.

Attorney for Plaintiff:

Attorneys for Plaintiff, ISIN AL OTAT and on
Behalf of similarly aggrieved employees