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

ADA MENDOZA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

DESERT VALLEY DATE, LLC, a California
company; and DOES 1 through 100,

Defendants.

Case No.: CVRI2301048

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

- (1) **FAILURE TO PAY ALL OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (2) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, AND 1197);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (5) **WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226 *et seq.*);**
- (6) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (7) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**
- (8) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE §§ 2698, *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Ada Mendoza (“Plaintiff”) on behalf of herself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint against Desert
3 Valley Date, LLC, a California company, and DOES 1 to 100, inclusive (collectively
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
7 action for recovery of unpaid wages and penalties under California Labor Code §§ 201-204, 226
8 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and 2698 *et seq.*, Business
9 and Professions Code § 17200 *et. seq.*, and Industrial Welfare Commission Wage Order 8 (“Wage
10 Order 8”), in addition to seeking declaratory relief and restitution. This action is brought pursuant
11 to California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’
12 violations of the California Labor Code because the amount in controversy exceeds this Court’s
13 jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to California Code of Civil
16 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
17 occurred in the County of Riverside. Defendants transact business within the County of Riverside
18 and/or otherwise are found within the County of Riverside, and Defendants are within the
19 jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is, a California resident living within Riverside County. During the
23 four years immediately preceding the filing of this action and within the statute of limitations
24 periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as
25 a non-exempt employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices
26 complained of herein, lost money and/or property, and has been deprived of the rights guaranteed
27 by Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197,
28 1198, and 2698 *et seq.*, California Business and Professions Code § 17200 *et seq.* (“Unfair

Competition Law”), and Wage Order 8, which sets employment standards for industries handling products after harvest.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing this action and continuing to the present, Defendants did (and continue to do) business within the County of Riverside and the State of California by operating an agricultural packaging company and therefore, were (and are) doing business in the County of Riverside and the State of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to further amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and based thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined herein) to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

6. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

7. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,

1 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
2 members of the Classes.

3 **GENERAL FACTUAL ALLEGATIONS**

4 9. Defendants operate a warehouse factory that packages dates from local growers
5 and then ships the packaged dates throughout California. Plaintiff was employed by Defendants
6 as a non-exempt “Packager” from approximately August 2020 to January 2023 in Coachella,
7 California. Plaintiff’s primary job duties consisted of cleaning and packaging dates on an
8 assembly line.

9 10. During Plaintiff’s employment with Defendants, Defendants failed to compensate
10 Plaintiff and other non-exempt employees for all hours actually worked, resulting in unpaid
11 minimum wages and additional unpaid overtime wages. Specifically, Plaintiff clocked in to work
12 through an electronic timekeeping system that used her fingerprint and unique employee code to
13 record her clock-in and clock-out times to the minute. However, during the relevant time period,
14 Defendants’ timekeeping system rounded and/or time-shaved Plaintiff’s hours, which resulted in
15 Plaintiff not being compensated for all hours actually worked. Defendants regularly,
16 systematically, and impermissibly rounded and/or shaved the time worked by Plaintiff and other
17 non-exempt employees in Defendants’ favor. This time shaving/rounding practice utilized by
18 Defendants was not-even handed over time and would round and shave in Defendants’ favor such
19 that Plaintiff was routinely underpaid for her time worked. Due to Defendants’ timekeeping
20 policies and practices that fail to compensate for all hours worked, Plaintiff and other non-exempt
21 employees were deprived of all required minimum wages. *See Camp v. Home Depot U.S.A.,*
22 *Inc.* (2022) 84 Cal.App.5th 638, 654 (“[I]f an employer, as in this case, can capture and has
23 captured the exact amount of time an employee has worked during a shift, the employer must pay
24 the employee for “all the time” worked.”). Further, on occasions when Plaintiff worked over eight
25 hours in a day and/or forty hours in a workweek, this process of time-shaving or rounding also
26 deprived her of all overtime wages owed. As such, Plaintiff and other non-exempt employees
27 were not credited with all hours actually worked and were not paid all minimum and overtime
28

1 wages earned.

2 11. Moreover, Defendants did not compensate their non-exempt employees with
3 overtime pay equal to one and one-half times their regular rate of pay for working overtime hours.
4 Specifically, Defendants paid their employees non-discretionary incentive pay and/or other forms
5 of pay that are not excludable from an employee's "regular rate" of compensation including but
6 not limited to incentive bonuses and/or payments (hereinafter referred to as "Incentive Pay"). As
7 a result of paying their non-exempt employees Incentive Pay, Defendants failed to properly
8 calculate the regular rate of pay, resulting in unpaid overtime wages.

9 12. Defendants also failed to provide Plaintiff and other non-exempt employees with
10 all legally-compliant meal periods due to Defendants' unlawful meal period policies/practices
11 that failed to provide timely, duty-free 30-minute first meal periods commencing before the end
12 of the fifth hour of work and any second duty-free, 30-minute meal periods when they worked
13 shifts in excess of 10.0 hours. For example, Plaintiff and other non-exempt employees' shifts
14 began at 6:00 a.m., yet Defendants did not authorize and permit first meal periods until 11:30
15 a.m., after the beginning of the fifth hour of work. Defendants also failed to provide any second
16 meal periods to Plaintiff and other non-exempt employees when they worked shifts over 10.0
17 hours. Moreover, Defendants failed to provide Plaintiff and other non-exempt employees with
18 uninterrupted, 30-minute meal periods. Specifically, Plaintiff worked on an assembly line
19 cleaning and packaging dates as they flowed down a conveyor belt. For sanitation purposes,
20 Plaintiff and other non-exempt employees could not leave dates on the conveyor belt before
21 ending their shift or commencing their meal periods. As such, Plaintiff and other non-exempt
22 employees relied on a "Quality Control" point person to control the flow of dates and allow them
23 to take their meal periods. However, Defendants' "Quality Control" staff frequently mismanaged
24 the flow of dates, which caused Plaintiff to work through the beginning of her meal period, leading
25 to meal periods that were less than 30-minutes long. Further, since Plaintiff and other non-exempt
26 employees remained onsite for their meal periods, Defendants instructed Plaintiff and other non-
27 exempt employees to return to their shifts at exactly 12:00 p.m., meaning Plaintiff and other non-
28 exempt employees were not allowed to extend their allotted meal period time to compensate for

1 their shortened meal periods. Plaintiff and other non-exempt employees frequently notified
2 Defendants' foreman of their short meal periods; however, Defendants did not change their
3 policies. As a result of Defendants' policies and practices, Plaintiff and other non-exempt
4 employees frequently took untimely meal periods and/or meal periods that were less than 30
5 minutes.

6 13. On occasions when Plaintiff and other non-exempt employees were not provided
7 with all lawful meal periods to which they were entitled, Defendants failed to pay Plaintiff and
8 other non-exempt employees an additional hour of premium pay at their respective regular rates
9 of pay for each workday in which a meal period violation occurred, as required by Labor Code
10 § 226.7. In the event Defendants paid meal period premiums, Defendants failed to properly
11 include Incentive Pay into the regular rate of pay, resulting in underpaid meal period premiums.
12 Based on the foregoing, Plaintiff and other non-exempt employees were not compensated for all
13 required meal period premiums.

14 14. Defendants failed to authorize and permit Plaintiff and other non-exempt
15 employees to take all duty-free 10-minute rest periods to which they were legally entitled, due to
16 Defendants' unlawful rest period policies/practices. Although Defendants scheduled first and
17 second rest periods, Defendants did not authorize and permit third rest periods in instances when
18 employees worked in excess of 10.0 hours, and Plaintiff often worked through her rest periods
19 due to the immediate nature of her work duties. Furthermore, Defendants failed to compensate
20 Plaintiff and other non-exempt employees with an additional hour of premium pay at their
21 respective regular rates of pay for each workday in which a rest period violation occurred, as
22 required by Labor Code § 226.7. In the event Defendants paid rest period premiums, Defendants
23 failed to properly include Incentive Pay into the regular rate of pay, resulting in underpaid rest
24 period premiums. Based on the foregoing, Plaintiff and other non-exempt employees were not
25 compensated for all required rest period premiums.

26 15. Upon information and belief, during at least a portion of the relevant time period,
27 Defendants failed to maintain pay codes for the payment of meal and rest period premium
28 payments as required by Labor Code § 226.7.

1 16. As a result of Defendants' failure to pay all overtime wages, minimum wages, and
2 meal and rest period premium wages owed, Defendants failed to pay all final wages owed to
3 Plaintiff and other non-exempt employees upon their respective separations from employment.

4 17. Due to the extreme heat and cold experienced inside Defendants' warehouse
5 factory where Plaintiff and other non-exempt employees worked, Defendants failed to provide
6 reasonably comfortable temperatures in work areas consistent with industry-wide standards for
7 the nature of the work performed. Specifically, in the summer months, the heavy factory
8 machinery created extreme heat, which combined with the outside heat to create temperatures of
9 over 100 degrees Fahrenheit inside the warehouse. Defendants also failed to provide heating in
10 the winter months, creating a cold work environment. Defendants' failure to provide air
11 conditioning during the summer and heating in the winter exacerbated the extreme temperature
12 conditions in the warehouse. As a result, Defendants failed to maintain reasonably comfortable
13 work areas in violation of Wage Order 8, § 15 and California Labor Code § 558(a).

14 **CLASS ACTION ALLEGATIONS**

15 18. **Class Definitions:** Plaintiff brings this action on behalf of herself and the
16 following Classes pursuant to § 382 of the Code of Civil Procedure:

- 17 a. The Overtime Class consists of all Defendants' current and former non-exempt
18 employees in California who worked more than 8.0 hours per day and/or 40.0
19 hours per workweek and: (i) received Incentive Pay during a corresponding time
20 period; and/or (ii) were subject to Defendants' timekeeping policies and/or
21 practices for non-exempt employees, during the four years immediately preceding
22 the filing of this action through the present.
- 23 b. The Minimum Wage Class consists of all Defendants' current and former non-
24 exempt employees in California who were subject to Defendants' timekeeping
25 policies and/or practices during the four years immediately preceding the filing of
26 the Complaint through the present.
- 27 c. The Meal Period Class consists of all Defendants' current and former non-exempt
28 employees in California who worked at least one shift in excess of 5.0 hours during

the four years immediately preceding the filing of this action through the present.

d. The Rest Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 3.5 hours, during the four years immediately preceding the filing of this action through the present.

e. The Waiting Time Class consists of all formerly employed members of the Overtime Class, Minimum Wage Class, Meal Period Class, and/or Rest Period Class, who separated their employment from Defendants during the three years immediately preceding the filing of this action through the present.

19. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes are unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than two hundred (200) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

20. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated non-exempt employees, which predominate over questions affecting only individual members including, without limitation:

i. Whether Defendants lawfully paid premium wages for all overtime hours worked to members of the Overtime Class pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198;

ii. Whether Defendants lawfully paid all minimum wages for all hours worked to members of the Minimum Wage Class pursuant to Labor Code §§ 1182.12, 1194, 1194.2 and 1197;

iii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

iv. Whether Defendants authorized and permitted all lawful rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;

1 v. Whether Defendants correctly paid meal and/or rest period premium payments for
2 non-compliant meal and/or rest periods pursuant to Labor Code § 226.7;

3 vi. Whether Defendants paid all wages/compensation due upon separation to
4 members of the Waiting Time Class pursuant to Labor Code §§ 201-203.

5 21. **Predominance of Common Questions:** Common questions of law and fact
6 predominate over questions that affect only individual members of the Classes. The common
7 questions of law set forth above are numerous and substantial and stem from Defendants' policies
8 and/or practices applicable to each individual class member, such as Defendants' uniform
9 overtime and minimum wage policies/practices, and meal and rest period policies/practices. As
10 such, common questions predominate over individual questions concerning each individual class
11 member's showing as to their eligibility for recovery or as to the amount of their damages.

12 22. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because
13 Plaintiff was employed by Defendants as a non-exempt employee in California during the
14 statute(s) of limitations period applicable to each cause of action pled in the action. As alleged
15 herein, Plaintiff, like the members of the Classes, was deprived of all overtime and minimum
16 wages owed, was not provided all required meal periods, was not authorized and permitted to
17 take all required rest periods, and did not receive all final wages owed at the time of her separation
18 from employment.

19 23. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
20 to represent fairly and adequately the interests of the members of the Classes. Moreover,
21 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
22 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-
23 hour class actions in state and federal courts in the past, and are committed to vigorously
24 prosecuting this action on behalf of the members of the Classes.

25 24. **Superiority:** The California Labor Code is broadly remedial in nature and serves
26 an important public interest in establishing minimum working conditions and standards in
27 California. These laws and labor standards protect the average working employee from
28 exploitation by employers who have the responsibility to follow the laws and who may seek to

1 take advantage of superior economic and bargaining power in setting onerous terms and
2 conditions of employment. The nature of this action and the format of laws available to Plaintiff
3 and members of the Classes make the class action format a particularly efficient and appropriate
4 procedure to redress the violations alleged herein. If each employee were required to file an
5 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
6 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
7 their vastly superior financial and legal resources. Moreover, requiring each member of the
8 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
9 employees who would be disinclined to file an action against their former and/or current employer
10 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
11 employment. Further, the prosecution of separate actions by the individual class members, even
12 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
13 with respect to the individual class members against Defendants herein; and which would
14 establish potentially incompatible standards of conduct for Defendants; and/or legal
15 determinations with respect to individual class members which would, as a practical matter, be
16 dispositive of the interests of the other class members not parties to adjudications, or which would
17 substantially impair or impede the ability of the class members to protect their interests. Further,
18 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
19 individual prosecution considering all of the concomitant costs and expenses attending thereto.
20 As such, the Classes identified herein are maintainable as a Class under § 382 of the Code of Civil
21 Procedure.

22 **FIRST CAUSE OF ACTION**

23 **FAILURE TO PAY ALL OVERTIME WAGES**

24 **(AGAINST ALL DEFENDANTS)**

25 25. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

26 26. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
27 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
28 overtime hours worked, and provide a private right of action for the failure to pay all overtime

1 compensation for overtime work performed.

2 27. At all times relevant herein, Defendants were required to properly pay Plaintiff
3 and members of the Overtime Class for all overtime hours worked pursuant to California Labor
4 Code § 1194 and Wage Order 8. Wage Order 8, § 3 requires an employer to pay an employee
5 “one and one-half (1½) times the employee’s regular rate of pay for all hours worked in excess
6 of eight (8) hours” per workday and/or in excess of 40 hours of work in the workweek.

7 28. At all times relevant herein, Defendants caused Plaintiff and members of the
8 Overtime Class to work overtime hours but did not compensate Plaintiff or members of the
9 Overtime Class at one and one-half times their regular rate of pay for such hours.

10 29. The foregoing policies and practices are unlawful and create entitlement to
11 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
12 premiums owing, including interest thereon, statutory and civil penalties, attorney’s fees, and
13 costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order
14 8, and Code of Civil Procedure § 1021.5.

15 **SECOND CAUSE OF ACTION**

16 **MINIMUM WAGE VIOLATIONS**

17 **(AGAINST ALL DEFENDANTS)**

18 30. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

19 31. Wage Order 8, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
20 right of employees to be paid minimum wages for all hours worked, in amounts set by state law.
21 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
22 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
23 attorneys’ fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
24 wages and interest accrued thereon.

25 32. At all relevant times herein, Defendants failed to conform their pay practices to
26 the requirements of the law. This unlawful conduct includes but is not limited to all hours they
27 were subject to Defendants’ control. Accordingly, Plaintiff and members of the Minimum Wage
28 Class were not compensated for all hours actually worked as required by the California Labor

Code and Wage Order 8.

33. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the Industrial Welfare Commission prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

34. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including, but not limited to unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and Wage Order 8.

35. Defendants' timekeeping policies/practices are unlawful and create an entitlement to recovery by Plaintiff and members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties, civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 558, 1194, 1194.2, and 1198, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

36. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

37. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 8, § 11, for the reasons set forth in the factual allegations and class definitions sections of this Complaint. Despite Defendants' violations, Defendants did not pay an additional hour of premium pay to Plaintiff and members of the Meal Period Class at their respective regular rates of pay, in accordance with California Labor Code §§ 226.7 and 512.

1 38. As a result, Defendants are responsible for paying premium compensation for meal
2 period violations, including interest thereon, statutory penalties, civil penalties, and costs of suit,
3 pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 8, and Code of Civil Procedure
4 § 1021.5.

5 **FOURTH CAUSE OF ACTION**

6 **REST PERIOD VIOLATIONS**

7 **(AGAINST ALL DEFENDANTS)**

8 39. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

9 40. Wage Order 8, § 12 and Labor Code §§ 226.7 and 516 establish the right of
10 employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour
11 period worked, or major fraction thereof.

12 41. As alleged herein, and due to Defendants' unlawful rest period policies and/or
13 practices, Defendants failed to authorize and permit Plaintiff and members of the Rest Period
14 Class to take all lawful rest periods to which they were legally entitled. Despite Defendants'
15 violations, Defendants failed to pay an additional hour of premium pay to Plaintiff and members
16 of the Rest Period Class at their respective regular rates of pay for each violation, as required by
17 California Labor Code § 226.7.

18 42. The foregoing violations create an entitlement to recovery by Plaintiff and
19 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
20 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according
21 to Labor Code §§ 226.7, 516, and 558, Wage Order 8, and Code of Civil Procedure § 1021.5.

22 **FIFTH CAUSE OF ACTION**

23 **WAGE STATEMENT PENALTIES**

24 **(AGAINST ALL DEFENDANTS)**

25 43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

26 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants
27 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
28 and the Wage Statement Class with wage statements that complied with the requirements of Labor

Code § 226(a).

45. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class with compliant wage statements resulted in actual injury, as said failures rendered Plaintiffs unable to readily ascertain the information on their wage statements.

46. Defendants' failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226 *et. seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit according to California Labor Code § 226 *et. seq.*

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

48. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages earned immediately at the time of separation from employment in the event the employer discharges the employee, or if the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

49. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at the time of their separation including, among other things, underpaid overtime and minimum wages owed, and meal and rest period premium wages. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

50. Defendants' willful failure to timely pay Plaintiff and members of the Waiting Time Class all earned wages upon separation from employment results in a continued payment

1 of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and
2 members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203,
3 plus reasonable attorneys' fees and costs of suit.

4 **SEVENTH CAUSE OF ACTION**

5 **UNFAIR COMPETITION**

6 **(AGAINST ALL DEFENDANTS)**

7 51. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

8 52. Defendants have engaged, and continue to engage, in unfair and/or unlawful
9 business practices in California in violation of California Business and Professions Code § 17200
10 *et seq.*, by, amongst other things, failing to pay Plaintiff and the Classes all overtime and minimum
11 wages owed, failing to pay all required meal and rest period premium wages owed, and failing to
12 pay all final wages at the time of separation from employment.

13 53. Defendants' utilization of these unfair and/or unlawful business practices deprived
14 Plaintiff, and continues to deprive members of the Classes, of compensation to which they are
15 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
16 over Defendants' competitors who have been and/or are currently employing workers and
17 attempting to do so in honest compliance with applicable wage and hour laws.

18 54. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
19 herein, Plaintiff, for herself and on behalf of the members of the Classes, seeks full restitution of
20 monies as necessary and according to proof to restore any and all monies withheld, acquired
21 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

22 55. The acts complained of herein occurred within the last four years immediately
23 preceding the filing this action.

24 56. Plaintiff was compelled to retain the services of counsel to file this court action to
25 protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf
26 of Defendants' current non-exempt employees, and to enforce important rights affecting the
27 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
28 which she is entitled to recover under Code of Civil Procedure § 1021.5.

EIGHTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)

57. Plaintiff re-alleges and incorporates by reference all previous paragraphs. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiff and other aggrieved employees all overtime compensation earned in violation of Labor Code §§ 204, 510, 558, 1194 and 1198;
- b. Failing to pay Plaintiff and other aggrieved employees statutory minimum wages earned in violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
- c. Failing to provide all meal periods as required by law and failing to pay meal period premiums to Plaintiff and similarly aggrieved employees in violation of Labor Code §§ 226.7, 512, 558, and 1198;

- d. Failing to authorize and permit Plaintiff and similarly aggrieved employees to take all of their statutorily mandated, duty-free rest periods and failing to pay rest period premiums to Plaintiff and similarly aggrieved employees in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- e. Failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements in violation of Labor Code § 226;
- f. Failing to provide Plaintiff and other aggrieved employees reasonably comfortable temperatures in work areas consistent with industry-wide standards for the nature of the work performed in violation of Labor Code §§ 558(a) and 1198;
- g. Failing to pay all final wages due to Plaintiff and other aggrieved employees upon separation of employment in violation of Labor Code §§ 201-203;
- h. Failing to pay Plaintiff and other aggrieved employees all wages earned at least twice during each calendar month in violation of Labor Code § 204; and
- i. Failing to maintain accurate records on behalf of Plaintiff and aggrieved employees in violation of Labor Code §§ 558 and 1174.

58. On March 1, 2023, Plaintiff notified Defendants, via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via e-mail of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified herein. Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

59. Based on the foregoing, Plaintiff seeks to represent herself and all other Aggrieved Employees, as defined by Labor Code § 2699(c), which includes all of Defendants’ current and former nonexempt employees who worked for Defendants in California at any time between March 1, 2022, and the present.

60. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which she is entitled to receive under California Labor Code § 2699.

PRAYER

WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
5. Upon the Second Cause of Action, for payment of minimum wages, liquidated damages, and penalties owed according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2 and 1197;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512 and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code § 226 *et. seq.*;
9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;
10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of California Business and Professions Code § 17200 *et seq.*;

1 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other
2 aggrieved employees, and the State of California according to proof pursuant to Labor
3 Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial
4 violation for each failure to pay each employee and \$200.00 for each subsequent violation or
5 willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each
6 employee; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant
7 to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and
8 \$250.00 for each subsequent employee pursuant to Labor Code § 1197.1 per employee per pay
9 period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant
10 to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation
11 and \$200.00 for each subsequent violation per employee per pay period for those violations of
12 the Labor Code for which no civil penalty is specifically provided, based on the violations of
13 Labor Code sections cited in Paragraph 57 (a)-(i) above;

14 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor
15 Code § 218.6 and Civil Code §§ 3287 and 3289;

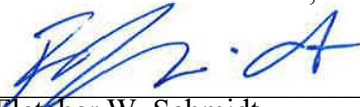
16 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code
17 §§ 218.5, 1194 *et seq.*, 226, 2698 *et seq.*, and Code of Civil Procedure § 1021.5; and

18 14. For such other and further relief the Court may deem just and proper.

19
20 Dated: May 8, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

21
22 By:


Fletcher W. Schmidt
Attorneys for Plaintiff

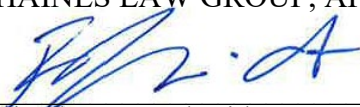
23
24 **DEMAND FOR JURY TRIAL**

25 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

26 Dated: May 8, 2023

HAINES LAW GROUP, APC

27
28 By:


Fletcher W. Schmidt
Attorneys for Plaintiff