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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

MAY 19 2023

BY Sylvia Guajardo
SYLVIA GUAJARDO, DEPUTY

Attorneys for Plaintiff MARIANA ZUAZO
on behalf of herself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

MARIANA ZUAZO, an individual, on
behalf of herself and others similarly situated,

Plaintiff,

vs.

ROMEO & LAYLA WAREHOUSING,
INC., a California corporation; FAIRWAY
STAFFING SERVICES, a California
corporation; ULTRA PERSONNEL, LLC, a
California limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: CIVSB2307282

CLASS ACTION

Assigned for All Purposes To:

Hon. Joseph T. Ortiz

Dept.: S-17

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code § 226(a)
6. Violation of Labor Code § 221;
7. Violation of Labor Code § 204;
8. Violation of Labor Code § 203;
9. Violation of Business & Professions Code § 17200 *et seq.*; and
10. Penalties under PAGA, Labor Code § 2698

DEMAND FOR JURY TRIAL

Original Complaint filed: May 5, 2023

Trial Date: None set.

BY FAX

1 Plaintiff MARIANA ZUAZO (hereinafter “Plaintiff”), on behalf of herself and all other
2 similarly situated non-exempt, hourly workers employed by Defendants in California
3 (collectively, “Employees”; individually, “Employee”) complains of Defendants, and each of
4 them, as follows:

5 **INTRODUCTION**

6 1. Plaintiff brings this action on behalf of herself and all other similarly situated
7 current and former Employees within the State of California who, at any time from four (4) years
8 prior to the filing of this lawsuit, are or were employed at warehouse and distribution center
9 facilities in California by Defendants ROMEO & LAYLA WAREHOUSING, INC., a California
10 corporation; FAIRWAY STAFFING SERVICES, a California corporation; ULTRA
11 PERSONNEL, LLC, a California limited liability company, and DOES 1 through 50, inclusive
12 (all defendants being collectively referred to as “Defendants”). Plaintiff alleges that Defendants,
13 and each of them, violated various provisions of the California Labor Code, relevant orders of the
14 Industrial Welfare Commission (“IWC”), and the California Business & Professions Code, and
15 seeks redress for these violations.

16 2. Plaintiff is a resident of California and San Bernardino County, and during the time
17 period relevant to this Complaint, was employed by Defendants as a non-exempt hourly employee
18 within the State of California placed at Defendant Romeo & Layla’s warehouse facilities in
19 Ontario, California and within the County of San Bernardino. Defendant ROMEO & LAYLA,
20 WAREHOUSING, INC. (“R&L”) operates distribution and warehouse facilities in California and
21 Defendants FAIRWAY STAFFING SERVICES (“Fairway”) and ULTRA PERSONNEL, LLC
22 (“Ultra”) are temporary staffing companies which jointly employ Employees they have placed at
23 the R&L facilities. Plaintiff and the other similarly situated Employees of Defendants worked in
24 Defendants’ facilities at Defendants’ behest and without being paid all wages due and without
25 being provided all their required meal periods and rest breaks. Upon information and belief,
26 Plaintiff was employed by Defendants and (1) shared similar job duties and responsibilities; (2)
27 was subjected to the same policies and practices; and (3) endured similar violations at the hands of
28 Defendants as the other Employee Class members who served in similar and related positions at

1 the R&L facilities, including both those Employees who were directly hired by R&L and those
2 hired through Fairway and Ultra and placed there.

3 3. Defendants required Plaintiff and the Employees in the Class to work off the clock
4 and failed to record accurate time worked by these Employees, including by requiring off the
5 clock work and unlawful time shaving and rounding, failed to pay them at the appropriate rates for
6 all hours worked, failed to pay all wages due and owing at termination or resignation, and
7 provided Plaintiff and the Class members with inaccurate wage statements that prevented them
8 from learning of these unlawful pay practices. Defendants also failed to provide Plaintiff and the
9 Class with lawful meal and rest periods, as Employees were required to remain under Defendants'
10 control and take shortened meal periods and were not provided with the opportunity to take full
11 uninterrupted and duty-free rest periods and meal breaks, as required by the Labor Code and the
12 applicable paragraphs of the IWC Wage Orders.

13 4. Defendant ROMEO & LAYLA WAREHOUSING, INC. ("R&L") is a California
14 corporation which lists with the California Secretary of State its principal executive offices in
15 California in Ontario and in San Bernardino County. It is a specialty warehousing entity which is
16 based out of New York State but maintains warehouse facilities in Ontario and in California at
17 which Plaintiff and the Class members were employed. Upon information and belief, product
18 inventory is transported to a R&L facility where goods are received, stored and shipped directly to
19 customers, retailers, or distribution centers. Plaintiff and the Class members were employed by
20 Defendants at these warehouse facilities operated by R&L in San Bernardino County and in
21 California. Defendant R&L, upon information and belief, employs Employee Class members at its
22 California facilities either directly or through temporary staffing agencies, such as named
23 Defendants Fairway and Ultra, and Fairway and Ultra, upon information and belief, employ and
24 placed and place certain Employees in the Class, such as Plaintiff, at the R&L facilities in
25 California. Upon information and belief, Fairway and Ultra were listed as the employer on the
26 wage statements issued to Plaintiff during her employment, but they also listed R&L as the
27 location of her placement.

1 5. Defendant FAIRWAY STAFFING SERVICES (“Fairway”) is a California
2 corporation which lists its principal office and California office in Cerritos California in Orange
3 County, and lists its type of business as “Staffing Company.” Upon information and belief,
4 Fairway also maintains office facilities in Ontario, California and a presence in the R&L
5 warehouse location where Plaintiff and the Class members were placed. Defendant Fairway was
6 listed as the employer on wage statements Plaintiff received during her employment, and R&L
7 was listed as her placement location.

8 6. Defendant ULTRA PERSONNEL, LLC (“Ultra”) is a California limited liability
9 company which lists its principal office and California office in Ontario, California, in San
10 Bernardino County, and lists its type of business as “Staffing Service.” Upon information and
11 belief, Ultra also maintains other offices in California, including in Ontario, California where
12 Plaintiff would have to visit in person to pick up her wage statements. Upon information and
13 belief, Defendant Ultra was listed as the employer on any wage statements that were issued to
14 Plaintiff for a portion of the time she was placed at the R&L facilities by Ultra.

15 7. Upon information and belief, Defendant R&L hires Employees either directly or
16 through staffing agencies such as Fairway and Ultra. Upon information and belief, R&L also
17 maintains control over key aspects of the employment of Plaintiff and the Class members,
18 including controlling their scheduled hours and working conditions, controlling when they receive
19 meal periods and rest breaks and when they are authorized to work overtime, and sets the policies
20 and practices which govern their employment. Although Plaintiff was paid by and received wage
21 statements from Fairway and Ultra, they were employers of Plaintiff with R&L, who jointly
22 controlled the hours worked by Plaintiff and the Class members, including by setting and
23 controlling their wage rates and their daily working conditions and the policies and practices that
24 governed their daily employment, just as R&L did for any Class members it hired directly to work
25 in its warehouse facilities and for Class members hired through other staffing agencies.

26 8. Additionally, under California Labor Code § 2810.3, R&L shares with Fairway and
27 Ultra, and any other staffing agency it uses, in civil legal responsibility for all workers supplied to
28 R&L for their collective failure to pay all earned wages. California Labor Code § 2810.3 requires

1 that “A client employer shall share with a labor contractor all civil legal responsibility and civil
2 liability for all workers supplied by that labor contractor for...the payment of wages.” A “labor
3 contractor” (here, e.g., Fairway and Ultra), is defined as “an individual or entity that supplies,
4 either with or without a contract, a client employer with workers to perform labor within the client
5 employer’s usual course of business.” “Client employer” (here R&L) is defined as “a business
6 entity, regardless of its form, that obtains or is provided workers to perform labor within its usual
7 course of business from a labor contractor.” Upon information and belief, Defendant R&L is and
8 has been a client employer within the definition of Labor Code § 2810.3 and shares with Fairway
9 and Ultra, the labor contractors, all civil legal responsibility and civil liability for failure to pay all
10 wages earned by Plaintiff and the Class Members.

11 9. This Court has jurisdiction over this Action pursuant to California Code of Civil
12 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
13 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
14 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
15 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
16 obligations and liabilities giving rise to this lawsuit occurred, at least in part in San Bernardino
17 County, as Defendant R&L operates the facility in Ontario, California in San Bernardino County
18 where Plaintiff and the Class members were placed and worked and Defendants Fairway and Ultra
19 also maintains offices in San Bernardino County and throughout California. Defendants therefore
20 employ Plaintiff and other Class members in San Bernardino County and at any other facilities
21 throughout California Defendants operate, and venue is proper in San Bernardino County.

22 10. The true names and capacities, whether individual, corporate, associate, or
23 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
24 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
25 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
26 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
27 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
28 this Complaint to reflect the true names and capacities of the Defendants designated herein as

Does 1 through 50 when their identities become known.

11. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all respects as the employers or joint employers of Employees. Defendants, and each of them, exercised control over the wages, hours or working conditions of Employees, created and implemented the policies and practices that governed the employment of Plaintiff and the Class members and dictated their job duties and responsibilities, or otherwise suffered or permitted Plaintiff and the other Employee Class members to work, or engaged, thereby creating a common law employment relationship, with the Employee Class members. Therefore, Defendants, and each of them, employed or jointly employed the Employee Class members.

FACTUAL BACKGROUND

12. The Employees who comprise the Class, including Plaintiff, are non-exempt employees of Defendants pursuant to the applicable Wage Order of the Industrial Welfare Commission ("IWC"). During the period of four years prior to the filing of this action through its resolution, Plaintiff and the Class members were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants failed to pay Plaintiff and the Class members all wages due and owing, including by unlawfully miscalculating overtime rates or under-recording of hours worked and by requiring off the clock work, failed to provide meal and rest breaks, and failed to furnish accurate wage statements and timely pay all wages owed, all in violation of various provisions of the California Labor Code and applicable paragraphs of the IWC Wage Orders.

13. During the course of Plaintiff and the Class members' employment with Defendants, they were not paid all wages they were owed, including for all work performed (resulting in "off the clock" work) and for all their overtime hours worked. This has resulted in systematic and ongoing violations of the California Labor Code and relevant IWC Wage Orders. Upon information and belief, Defendants employ other non-exempt, hourly Employees at their

1 facilities in California. Upon information and belief, Defendants' employment of Plaintiff and the
2 Class members is not governed under a collective bargaining agreement.

3 14. Defendants' facilities consisted of a large warehousing and distribution facilities
4 which all Employees walked through after clocking in. Employees were expected to be clocked in
5 at the start of their scheduled shift, and there were often lines at the time clocks to clock in. As a
6 result, Plaintiff had to arrive at the facility and time clock several minutes before her scheduled
7 shift start time to ensure she clocked in and walking to her work station at her scheduled shift
8 start time. Upon information and belief, Defendants failed to compensate Plaintiff and the Class
9 members for the time they were under control of Defendants before their scheduled shift start
10 time.

11 15. Plaintiff was generally scheduled to work a shift starting at 6:00 a.m. and ending at
12 2:30 p.m., including an unpaid 30 minute meal period Defendants presumed they provided. On
13 some occasions when there was light work, managers and team leaders would send Employees
14 home earlier than the scheduled end time. On other occasions, sometimes for relatively extended
15 periods, Plaintiff and the Class members were required to work 10-11 hour shifts extending to
16 4:30 or 5:30 p.m. Plaintiff and the Class members were also scheduled to work on some
17 Saturdays, and Defendants would limit the Saturday shifts to six hours in an effort to attempt to
18 ensure meal periods were not required and based on the presumption there were valid and
19 enforceable first meal waivers in place for everyone. Defendants allegedly scheduled rest breaks
20 and meal periods at ostensibly compliant times throughout regular shifts of 8.5 hours and those
21 going beyond ten hours, but these were not generally complied with by R&L managers and team
22 leaders. Instead they instructed Plaintiff and the Class members to disregard any alarms or bells
23 supposedly indicating it was time to go to or return from breaks and to leave only when they were
24 authorized to do so by the managers. As a result, schedules were more aspirational than actual,
25 and timekeeping records were often not indicative of actual hours worked. However, R&L
26 managers and team leaders were strict in requiring Employees to complete all work assignments
27 and to comply with required production quotas in order to be deemed suitable to leave for their
28 meal periods and other breaks.

1 16. Plaintiff did not receive any training or any orientation when she started working
2 at the R&L facilities, and was expected to hit the ground running as a warehouse employee.
3 Plaintiff was generally responsible for picking and packing, and she and her co-workers were
4 tasked with processing trucks with clothing items and repackaging them for shipment to
5 Defendants' customers (i.e. generally big store retailers). Plaintiff's work duties varied depending
6 on the assignment of the day, and her team leader generally told her what they were doing for the
7 day at the start of the shift.

8 17. Plaintiff would arrive at the main warehouse entrance sufficiently before her
9 scheduled shift start time, which was generally 6:00 a.m. She would then walk to the time clock
10 and place her finger in a scanner and input her department and a time clock in entry was recorded
11 for her. The staffing company Defendants maintained separate time clocks in most instances from
12 those for the R&L direct hires and other R&L employees. Plaintiff would then have to leave her
13 cellular phone on a supervisor's desk and walk to her work station, which usually took 2-3
14 minutes, and she would then begin her work or await other instructions. When it was time for a
15 meal period or break, a series of bells went off indicating when to go and return, but these were
16 usually not followed and Plaintiff and her similarly situated co-workers were allowed to leave for
17 a break only after their R&L manager or team leader told them they could go. Plaintiff was then
18 required to walk a couple minutes to the break room or else farther to clock out and exit the
19 facility if she wanted to leave the confines of the facility for her lunch break. Time was shaved
20 off the beginning and end of any meal periods when she did clock out and back in as a result, and
21 her meal periods were systematically shorted to less than the required duration.

22 18. However, despite having the ability to record meal period beginning and ending
23 time punches in real time, Defendants automatically deducted 30 minutes from each work shift
24 for an uncompensated meal period. At the end of the work shift, Plaintiff would generally be
25 instructed to leave her work station a few minutes before the scheduled shift end time so that she
26 could walk to the time clock and wait in line to clock out and do so by the end of her shift before
27 going past 8.5 hours. Defendants did this, upon information and belief, in connection with other
28 employees in a concerted effort to limit and restrict overtime incurred by Plaintiff and the other

1 Class members. However, given the off the clock work and time shaved off of break times,
2 Plaintiff was past eight hours but not being paid overtime for several minutes at the end of work
3 shifts. As a result of the above described rounding and time shaving and other off the clock work,
4 and failure to pay for overtime hours worked, Defendants also failed to pay that overtime at the
5 required rate. More specifically, Defendants paid Plaintiff and the similarly situated Class
6 members bonuses during their pay periods when appropriate based on various production goals
7 and considerations. However, if and when Defendants paid overtime premium wages, they did so
8 at a rate of 1.5 times Plaintiffs' regular rate of pay without including the bonuses paid in the
9 regular rate used to calculate and pay overtime. Upon information and belief, to the extent
10 Defendants paid any shift differentials or other forms of remuneration for hours worked in a pay
11 period, Defendants also failed to include that in the regular rate of pay used to calculate and pay
12 overtime wages. Similarly, to the extent Defendants failed to provide a meal period or rest break
13 and actually paid a premium under Labor Code § 226.7, Defendants also failed to include
14 bonuses and other forms of remuneration in the regular rate used to pay the premium.

15 19. Plaintiff was not paid for all her hours worked at the required minimum, overtime
16 and double time wage rates due to Defendants' policy and practice of requiring her to work off
17 the clock and without pay and failure to pay the required rate. Defendants also manipulated the
18 workday and work schedules in an attempt to minimize or eliminate altogether paying overtime
19 hours, but did so without accepting any failure to maintain production quotas and complete all
20 work requirements. With work shifts generally being scheduled for eight hours or more, this
21 unpaid off the clock work resulted in Plaintiff and the Class members working past eight hours on
22 a shift, which required that they be paid at the correct overtime rate of 1.5 times their regular rate.
23 Defendants thus systematically underpaid Plaintiff and the Class members by failing to pay them
24 at the required overtime rates for all hours over eight in a work shift or over forty in a work week,
25 and all hours over twelve in a day at the required double time rate. Upon information and belief,
26 the Class members were bound by similar scheduling and work policies which Defendants
27 required them to follow, and endured similar violations at Defendants' hands as Plaintiff.

1 20. Defendants have either failed to maintain timekeeping records for Plaintiff that
2 would permit Plaintiff to discover the nature and extent of the off the clock work Defendants'
3 required and the actual hours Plaintiff worked, or have otherwise declined to produce them to
4 Plaintiff in response to a timely and lawful request. By editing time records, or requiring Plaintiff
5 and the Class member to clock in and out for time periods showing less hours than were actually
6 worked or reflecting compliant meal periods that were not provided, and by failing to pay for all
7 hours worked, including at the correct rates of pay, Defendants have committed knowing and
8 intentional ongoing violations of the record keeping requirements under the Labor Code §§ 226
9 and 1174.

10 21. As a result of the above described unlawful requirements to work off the clock, the
11 failure to accurately record all hours worked and unlawful rounding, and the other wage
12 violations they endured at Defendants' hands, Plaintiff and the Class members were not properly
13 paid all wages earned and all wages owed to them by Defendants, including when working more
14 than eight hours in any given day and/or more than forty hours in any given week. As a result of
15 Defendants' unlawful policies and practices, Plaintiff and Class members incurred overtime hours
16 worked for which they were not adequately and completely compensated, in addition to the hours
17 they were required to work off the clock at their regular rates.

18 22. Therefore, from at least four years prior to the filing of this lawsuit and continuing
19 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
20 hours worked, and failing to pay minimum wages for all time worked, as required by California
21 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
22 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation
23 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a
24 week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of
25 Labor Code § 510 and the corresponding sections of IWC Wage Orders.

26 23. Defendants also failed to provide Plaintiff and the Class members with their
27 required first and second meal periods, and their first, second, and third required rest breaks. The
28 many and different work demands from managers and customers and production requirements

1 Defendants imposed did not permit those working to take their required breaks or complete all
2 required work within the scheduled times. Also, the distribution and warehouse centers are huge
3 facilities covering a large area, and Employees are stationed throughout the facilities such that it
4 usually takes at least a couple to several minutes to walk to the break room for a break or to get
5 to a time clock to clock out, and even more to get to the main facility entrance if they wanted to
6 leave the facilities during a break. The above described off the clock work and failure to pay for
7 all hours worked also contributed to Defendants' common policy of failing to provide lawful
8 meal periods to Plaintiff and the Class members, as required under the Labor Code and Paragraph
9 11 of the applicable IWC Wage Order(s). Defendants similarly systematically failed to authorize
10 and permit Plaintiff and the employee Class Members to take all required 10-minute rest breaks,
11 as required under the Labor Code and Paragraph 12 of the IWC Wage Order(s).

12 24. Plaintiff and the Class members generally worked shifts that entitled them to
13 receive at least one meal period and two to three rest breaks. Defendants also allegedly scheduled
14 meal periods and rest breaks and rang bells when they began and ended, but Defendants required
15 Employees to take breaks at different times and Plaintiff and the Class members often worked
16 past their alleged start times. As a result, Plaintiff and the Class members were subjected a series
17 of bells and alarms supposedly indicating when breaks should be taken and when to return.
18 However, Defendants made little effort to free Plaintiff and the Class members from work
19 demands to take their required duty free breaks as scheduled, and managers and team leaders for
20 R&L would tell them to disregard the bells and alarms and only leave their work stations for a
21 break when they were told to. For example, if there was a truck to unload, they could not take a
22 break until it was completed. Similarly, if production requirements or quotas were not being met,
23 managers would require them to continue working through the alleged scheduled start times. This
24 accordingly often resulted in late meal periods or those that were for less than 30 minutes and not
25 duty free.

26 25. Defendants thus consistently provided meal periods that were untimely and for
27 less than the required times or for less than the required number of times in a work shift.
28 Defendants also followed a policy of denying all required timely and duty-free meal periods for

1 30 minutes in duration by automatically deducting for meal periods which were presumed to have
2 been properly provided while also systematically shortening breaks by requiring Employees to
3 remain under Defendants' control. There was a bell system and alleged set schedule for when
4 Employees were supposed to take meal periods, but R&L managers and team leaders failed to
5 follow it and would only allow breaks when they authorized them.

6 26. Therefore, Plaintiff and the Class members were required to spend as much as five
7 or 10 minutes of any break dedicated to walking to and from the break room or walking to the
8 time clock and clocking out and then returning from break and clocking in then walking back to
9 their work areas. Defendants' policies and practices thus systematically deny and denied Plaintiff
10 and the Class members full, duty-free ten-minute rest periods and thirty-minute, duty-free meal
11 periods. Additionally, Defendants' enforced a uniform policy that effectively prevented Plaintiff
12 and the Class members from leaving the warehouse premises during their rest breaks. As for meal
13 periods, to the extent Employees were permitted to leave the premises, they were still
14 impermissibly shortened, as addressed above. To the extent Plaintiff and the Class members
15 worked shifts that were scheduled to extend past ten hours, Defendants would rely upon
16 presumptively valid alleged waivers to skip the requirement of providing a second meal periods
17 and would ensure shifts did not extend beyond 12 hours to ensure the alleged waiver would still
18 apply. For Saturday work shifts, when they were scheduled, Defendants limited them to six hours
19 to ensure that any alleged first meal period waivers would remain in place and hours worked did
20 not extend past six hours. To the extent the eventual time punch entries reflected more hours that
21 would require a meal period, upon information and belief Defendants edited or rounded them to
22 reflect a shift of less than six hours.

23 27. Defendants thus failed to provide all the legally required unpaid, off-duty meal
24 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
25 members, as required by the applicable Wage Orders and Labor Code. Defendants did not have a
26 policy or practice which provided or recorded all the legally required unpaid, off-duty meal
27 periods and all the legally required paid, off-duty rest periods to the Plaintiff and the other Class
28 members. Plaintiff and other Class members were required to perform work as ordered by

1 Defendants or otherwise remain under Defendants' control for more than five hours during a shift,
2 or ten hours in a shift, but were often required to do so without receiving a lawful, timely, and
3 duty-free 30-minute meal break. Additionally, as addressed above, Defendants followed a practice
4 of requiring off the clock work and unlawful rounding, in a manner that would impact when
5 Employees were to receive meal periods and rest breaks, thus leading to further violations.

6 28. As a result, Defendants' failure to provide Plaintiff and the Class members with all
7 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
8 periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants have
9 either failed to maintain required records of when meal periods were actually provided or failed to
10 produce them in response to Plaintiff's timely and lawful requests, or else maintained inaccurate
11 and incomplete records. Defendants also failed to pay Employees "premium pay," i.e. one hour of
12 wages at each Employee's effective hourly rate of pay, for each meal period or rest break that
13 Defendants failed to provide or deficiently provided. To the extent Defendants did pay any meal
14 period or rest break premium wages, Plaintiff further alleges Defendants failed to include all forms
15 of remuneration received in the regular rate used to pay the premium.

16 29. Therefore, for at least four years prior to the filing of this action and through to the
17 present, Plaintiff and the Class members were unable to take off-duty breaks or were otherwise not
18 provided with the opportunity to take required meal breaks due to Defendants' policies and
19 practices. On the occasions when Plaintiff and the Class members were provided with a meal
20 period, it was often untimely or interrupted, or was impermissibly shortened, and Employees were
21 not provided with one hour's wages in lieu thereof. Meal period violations thus occurred in one or
22 more of the following manners:

- 23 (a) Class members were not provided full thirty-minute duty free meal periods
24 for work days in excess of five hours and were not compensated one hour's
25 wages in lieu thereof, all in violation of, among others, Labor Code §§
26 226.7, 512, and the applicable Industrial Welfare Commission Wage
27 Order(s);
28

- (b) Class members were not provided second full thirty-minute duty free meal periods for work days in excess of ten hours;
- (c) Class members were required to work through at least part of their daily meal period(s);
- (d) Meal periods were provided after five hours of continuous work during a shift; and
- (e) Class members were restricted in their ability to take a full thirty-minute meal period.

30. Defendants also failed to authorize and permit Plaintiff and the Class members to take duty-free, net ten minute rest breaks for ever four hours of shift work, or major fraction thereof. There were similar issues with the required net-ten minute rest breaks Plaintiff and the Class members were unable to take as with meal periods. The demands for production and work requirements placed upon Plaintiff, including the long distances Plaintiff and the Class members were required to walk and the unlawful rounding of their hours worked, also manifested in Defendants' failure to authorize and permit duty-free, net ten minute rest periods. As with meal periods, any alleged rest breaks scheduled during a shift when a bell or alarm sounded was merely aspirational and managers rarely complied with it, and Plaintiff was so confused at determining which bells were for her that she just waited to be told to take a break by her managers and team leaders.

31. Plaintiff and the Class members were required to endure shortened rest periods if they wanted to leave the facility premises to go outside during a break because of the facility size. Also, due to the off the clock work addressed above, rest periods were often provided late and were untimely, or Plaintiff and the Class members were required to work through their breaks or remain under Defendants' control during them. Therefore, the job requirements and duties required of Plaintiff and the Class members, and the demands from management and policies requiring uncompensated security screenings and unlawful rounding, manifested in a failure to authorize and permit Class members to take all their required rest breaks. Plaintiff and the other similarly situated Class members were either not authorized permitted the opportunity to take a

1 rest break, or were required to remain under Defendants' control during them or otherwise had
2 them impermissibly shortened. Defendants also failed to authorize and permit employees to leave
3 the premises during rest breaks, or else effectively prevented them from doing so, thus further
4 evidencing Defendants' policy and practice of requiring Plaintiff and the Class members to
5 remain under their control during required off-duty rest breaks.

6 32. Defendants' policies and practices thus systematically deny and denied Plaintiff
7 and the Class members full, duty-free ten-minute rest periods and thirty-minute, duty-free meal
8 periods. Employers must permit and authorize employees to take off-duty rest periods. That is,
9 during rest periods employers must relieve employees of all duties and relinquish control over
10 how employees spend their time. Plaintiff and the Class members were and are under Defendants'
11 control when they are working through rest breaks or receiving them late or shortened. To the
12 extent Defendants ever paid a rest break premium for a violation, upon information and belief
13 they failed to include all forms of remuneration in the regular rate used to calculate the premium.

14 33. Plaintiff and the Defendants' Employees in the Class were therefore not authorized
15 and permitted to take lawful rest periods, were systematically required by Defendants to work
16 through or during breaks, and were not provided with one hour's wages in lieu thereof. They
17 were required to remain on-duty during breaks or portions of their breaks, thus making them
18 either untimely or shortened and on-duty, and they were also effectively prevented from leaving
19 the premises during rest breaks under Defendants' policies and practices. Rest period violations
20 therefore arose in one or more of the following manners:

- 21 (a) Class members were required to work without being provided a minimum
22 ten minute rest period for every four hours or major fraction thereof
23 worked and were not compensated one hour of pay at their regular rate of
24 compensation for each workday that a rest period was not provided;
- 25 (b) Class members were not authorized and permitted to take timely rest
26 periods for every four hours worked, or major fraction thereof; and
- 27 (c) Class members were required to remain on-duty during rest periods or
28 otherwise had their rest periods interrupted by work demands.

1 34. From at least four years prior to the filing of this lawsuit and continuing to the
2 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
3 deducting the Employees' earned wages, including by the above described off the clock work and
4 on-duty work while on unpaid meal breaks and by Defendants' policy and practice of editing
5 records or requiring Plaintiff and the Class members to create time punch records that did not
6 reflect their actual hours worked, and automatically deducting 30 minutes of work for unpaid meal
7 periods Defendants failed to provide. By not compensating Employees for all hours worked, and
8 the automatic deductions for unprovided meal periods and failure to pay for hours, Defendants
9 unlawfully deducted wages earned by and owed to Plaintiff and the Class members, in violation of
10 Labor Code § 221.

11 35. As a result of the above described illegal policies and practices, Defendants
12 engaged in and enforced the following additional unlawful practices and policies against Plaintiff
13 and the Class members she seeks to represent:

- 14 a. failing to pay all wages owed to Class members who either were discharged, laid
15 off, or resigned in accordance with the requirements of Labor Code §§ 201, 202,
16 203;
- 17 b. failing to pay all wages owed to the Class members twice monthly in accordance
18 with the requirements of Labor Code § 204;
- 19 c. failing to pay Class members all wages owed, including all meal and rest period
20 premium wages;
- 21 d. failing to maintain accurate records of Class members' earned wages and meal
22 periods in violation of Labor Code §§ 226 and 1174(d) and section 7 of the
23 applicable IWC Wage Orders; and
- 24 e. failing to produce timekeeping records in response to Plaintiff's timely and lawful
25 request to receive them under these authorities.

26 36. From at least four years prior to the filing of this lawsuit, and continuing to the
27 present, Defendants have also consistently failed to provide Employees with timely, accurate, and
28 itemized wage statements, in writing, as required by California wage-and-hour laws, including by

1 the above-described requirement of off the clock work, unlawful rounding, failure to pay all
2 overtime or pay it at the correct rate, and failure to pay premium wages for unprovided or
3 otherwise unlawful meal and rest breaks. Defendants have also made it difficult to account with
4 precision for the unlawfully withheld wages and meal and rest period compensation owed to
5 Plaintiff and the Class, during the liability period, because they did not implement and preserve a
6 record-keeping method as required for non-exempt employees by California Labor Code §§ 226,
7 1174(d), and paragraph 7 of the applicable California Wage Orders. Upon information and belief,
8 time clock punches were not maintained or were not accurately maintained for work shifts and
9 meal periods, which were automatically presumed by Defendants to have been lawfully provided
10 when they were not. Defendants also failed to accurately record and pay for all regular and
11 overtime hours worked by Plaintiff and the Class members. Additionally, Plaintiff was not issued
12 a wage statement by Fairway or Ultra on a weekly basis with her paycheck, which was directly
13 deposited. If she wanted to receive a wage statement from Ultra, she would have to drive to the
14 local office for the staffing company and request it, and she also had to ask her Fairway manager.
15 The staffing agencies thus failed to provide Plaintiff and upon information and belief the Class
16 members with accurate itemized wage statements with each pay check covering that pay period.
17 Plaintiff was not provided with the opportunity to review her timekeeping records for accuracy
18 and to ensure that she was being paid correctly.

19 37. Defendants have thus also failed to comply with Labor Code § 226(a) by failing to
20 issue any wage statements and by issuing wage statements that inaccurately reported total hours
21 worked and total wages earned by Plaintiff and the Class members, along with the appropriate
22 applicable rates, among other requirements. Plaintiff and Class members are therefore entitled to
23 penalties not to exceed \$4,000.00 for each employee pursuant to Labor Code § 226(b). Defendants
24 have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by
25 failing to maintain time records showing when the employee begins and ends each work period,
26 meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by
27 itemizing in wage statements all deductions from payment of wages and accurately reporting total
28 hours worked by the Class members. Upon information and belief, Defendants Fairway and Ultra

1 also failed to provide Employees such as Plaintiff with written notice complying with all the
2 requirements of Labor Code § 2810.5.

3 38. Defendants also required Plaintiff and the Class members to work hours off the
4 clock for which they were not compensated, including unlawfully rounded time and during
5 interrupted or otherwise on-duty meal and rest periods. Defendants also failed to pay all overtime
6 premium wages owed for work conducted on a work shift and a work day, as addressed above.
7 Therefore, from at least four years prior to filing this lawsuit and continuing to the present,
8 Defendants have also followed a uniform and consistent policy of failing to pay all wages owed to
9 Plaintiff and other similarly situated Employees at the time of their termination or within seventy-
10 two hours of their resignation, as required by California wage-and-hour laws. In view of the above
11 addressed violations, Defendants have also failed to pay all wages owed to Plaintiff and the Class
12 members twice monthly in accordance with the requirements of Labor Code § 204. Additionally,
13 upon information and belief, Defendant R&L is and has been a client employer within the
14 definition of Labor Code § 2810.3. Therefore, Fairway and Ultra, the labor contractors, must share
15 all civil legal responsibility and civil liability for the payment of all wages earned by Plaintiff and
16 the Class Members with R&L.

17 39. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
18 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.7, 510,
19 511, 512, 558, 1174, 1185, 1194, 1194.2, 1197, 1198, 1199, and 2698 *et seq.*, and California Code
20 of Regulations, Title 8, section 11000 *et seq.* and applicable provisions of the IWC Wage Orders.

21 40. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff
22 and the Class members seek injunctive relief, restitution, and disgorgement of all benefits
23 Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or
24 fraudulent practices alleged in this Complaint.

25 **CLASS ALLEGATIONS**

26 41. Plaintiff brings this class action on behalf of herself and all others similarly situated
27 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the Class” or
28 “Class members”) defined as follows: “All individuals employed by Defendants at any time

1 during the period of four years prior to the filing of this lawsuit and ending on a date as
2 determined by the Court (“the Class Period”), and who have been employed as non-exempt,
3 hourly employees at Defendant R&L’s warehouse and distribution center facilities within the State
4 of California.” Further, Plaintiff seeks to represent the Subclasses composed of and defined as:

5 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
6 compensated for all hours worked for Defendants at the applicable minimum wage.

7 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
8 compensated for all hours worked for Defendants at the required rates of pay, including for all
9 hours worked in excess of eight in a day and/or forty in a week.

10 c. Subclass 3. Meal Period Subclass. All Class members who were subject to
11 Defendants’ policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-
12 free meal periods or one hour of pay at the Employee’s regular rate of pay in lieu thereof.

13 d. Subclass 4. Rest Break Subclass. All Class members who were subject to
14 Defendants’ policy and/or practice of failing to authorize and permit Employees to take
15 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
16 thereof, and failing to pay one hour of pay at the Employee’s regular rate of pay in lieu thereof.

17 e. Subclass 5. Wage Statement Subclass. All Class members who, within the
18 applicable limitations period, were not provided with accurate itemized wage statements.

19 f. Subclass 6. Unauthorized Deductions from Wages Subclass. All Class members
20 who were subject to Defendants’ policy and/or practice of deducting wages earned from their pay,
21 including by requiring off the clock work.

22 g. Subclass 7. Failure to Timely Pay Wages Twice Monthly Subclass. All Class
23 members who were subject to Defendants’ policy and practice of not timely paying all wages
24 earned when they were due and payable at least twice monthly.

25 h. Subclass 8. Termination Pay Subclass. All Class members who, within the
26 applicable limitations period, either voluntarily or involuntarily separated from their employment
27 and were subject to Defendants’ policy and/or practice of failing to timely pay wages upon
28 termination.

1 i. Subclass 9. UCL Subclass. All Class members who are owed restitution as a result
2 of Defendants' business acts and practices, to the extent such acts and practices are found to be
3 unlawful, deceptive, and/or unfair.

4 42. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
5 modify the class description with greater particularity or to provide further division into subclasses
6 or limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class
7 against Defendants, the Class Period should be adjusted accordingly.

8 43. Defendants, as a matter of company policy, practice and procedure, and in violation
9 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements,
10 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged
11 in a practice whereby Defendants failed to correctly calculate and pay compensation for the time
12 worked by the Plaintiff and the other members of the Class, even though Defendants enjoyed the
13 benefit of this work, required Employees to perform this work and permitted or suffered to permit
14 this work. Defendants have uniformly denied these Class members wages to which these
15 employees are entitled, and failed to provide meal periods or authorize and permit rest periods, in
16 order to unfairly cheat the competition and unlawfully profit.

17 44. This action has been brought and may properly be maintained as a class action
18 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
19 of interest in this litigation and the proposed Class is easily ascertainable from the employment
20 records for Plaintiff and the Class members that Defendants are required to maintain under
21 California law.

22 **A. Numerosity**

23 45. The potential members of the Class as defined are so numerous that joinder of all
24 the Class members is impracticable. While the precise number of Class member has not been
25 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
26 time period relevant to this lawsuit employed, at least hundreds of Employees who satisfy the
27 Class definition within the State of California. Plaintiff alleges that Defendants' employment
28 records will provide information as to the number and location of all Class members.

B. Commonality

46. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class members. The common questions are numerous and substantial and flow from Defendants' uniform policies and/or practices of violating the California Labor Code addressed above. As such, these common questions predominate over individual questions concerning each individual Class Member's showing as to his or her eligibility for recovery or as to the amount of damages. These common questions of law and fact include:

- a. Whether Defendants failed to pay Employees minimum wages;
- b. Whether Defendants failed to pay Employees wages for all hours worked;
- c. Whether Defendants failed to pay Employees overtime as required under Labor Code § 510;
- d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Employees with requisite meal periods or premium pay in lieu thereof;
- e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders, by failing to authorize and permit Employees to take requisite rest breaks or provide premium pay in lieu thereof;
- f. Whether Defendants violated Labor Code § 226(a) by providing Employees with inaccurate wage statements;
- g. Whether Defendants violated Labor Code § 221;
- h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- i. Whether Defendants' conduct was willful;
- j. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage Orders by failing to maintain accurate records of earned wages and work periods;
- k. Whether Defendants violated Labor Code § 1194 by failing to compensate all Employees during the relevant time period for all hours worked;

- 1 l. Whether Defendants violated Labor Code § 204 by failing to pay Employees all
2 wages earned at least twice monthly;
- 3 m. Whether Defendants violated Business and Professions Code § 17200 *et seq.*;
- 4 n. Whether Employees are entitled to equitable relief pursuant to Business and
5 Professions Code § 17200 *et seq.*; and
- 6 o. Whether Fairway and Ultra should share with R&L responsibility for all workers
7 placed at R&L' California facilities under California Labor Code § 2810.3.

8 **C. Typicality**

9 47. The claims of the named plaintiff are typical of those of the other Employees. The
10 Employee Class members all sustained injuries and damages arising out of and caused by
11 Defendants' common course of conduct and uniformly applied policies in violation of statutes, as
12 well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for
13 the off the clock work and meal and rest violations she was required to endure are typical of those
14 of the other Class members.

15 **D. Adequacy of Representation**

16 48. Plaintiff will fairly and adequately represent and protect the interest of the
17 Employee Class members. Counsel who represents Plaintiff and the Employees in the Class are
18 experienced and competent in litigating employment class actions.

19 **E. Superiority of Class Action**

20 49. A class action is superior to other available means for the fair and efficient
21 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
22 questions of law and fact common to all Employees predominate over any questions affecting only
23 individual Employees. Each Employee in the Class has been damaged and is entitled to recovery
24 by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

25 50. As to the issues raised in this case, a class action is superior to all other methods for
26 the fair and efficient adjudication of this controversy, as joinder of all Class members is
27 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class
28 members. Further, as the economic or other loss suffered by vast numbers of Class members may

1 be relatively small, the expense and burden of individual actions makes it difficult for the Class
2 members to individually redress the wrongs they have suffered. Moreover, in the event
3 disgorgement is ordered, a class action is the only mechanism that will permit the employment of
4 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
5 managing this case as a class action, and proceeding on a class-wide basis will permit Employees
6 to vindicate their rights for violations they endured which they would otherwise be foreclosed
7 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

8 51. Class action treatment will allow those persons similarly situated to litigate their
9 claims in the manner that is most efficient and economical for the parties and the judicial system.
10 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
11 Plaintiff contemplates the eventual issuance of notice to the proposed Class members that would
12 set forth the subject and nature of the instant action. The Defendants' own business records can be
13 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent
14 that any further notice is required additional media and/or mailings can be used.

15 52. Defendants, as prospective and actual employers of the Employees in the Class,
16 had a special fiduciary duty to disclose to prospective Class members the true facts surrounding
17 Defendants' pay practices, policies and working conditions imposed upon the similarly situated
18 Employees as well as the effect of any alleged arbitration agreements that may have been forced
19 upon them. In addition, Defendants knew they possessed special knowledge about pay practices
20 and policies, most notably intentionally refusing to pay for all hours actually worked which should
21 have been recorded in Defendants' pay records and the consequence of the alleged arbitration
22 agreements and policies and practices on the Employees and Class as a whole.

23 53. Plaintiff and the Employees in the Class did not discover the fact that they were
24 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there
25 any discussion about Plaintiff's and the Class' waiver of their Constitutional rights of trial by jury,
26 to collectively organize and oppose unlawful pay practices under California law as well as obtain
27 injunctive relief preventing such practices from continuing. As a result, the applicable statutes of
28 limitation tolled until such time as Plaintiff and the Class members discovered their claims.

FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(Against All Defendants)

54. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

55. Defendants failed to pay Employees minimum wages they were owed, including by their consistent policy of failing to pay Employees for all hours worked. Employees would work hours and not receive wages, including as alleged above in connection with off the clock work, including all the time required to remain on duty and under Defendants' control and during breaks and due to the work demands placed upon them by Defendants' management, and due to the unlawful rounding, all addressed in detail above. Defendants, and each of them, have also intentionally and improperly rounded, changed, adjusted and/or modified Employee hours, or required Employees to do so, and imposed difficult to attain job and shift scheduling requirements on Plaintiff and the Class members, which resulted in off the clock work and underpayment of all wages owed to Employees over a period of time, while benefiting Defendants. Defendants' uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to the Class as a whole, as a result of implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the other members of the Class as to minimum wage pay.

56. In California, employees must be paid at least the then applicable state minimum wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H) of the applicable IWC Wage Orders defines "Hours Worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

1 57. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage”
2 states: “The minimum wage for employees fixed by the commission is the minimum wage to be
3 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

4 58. The applicable minimum wage rate fixed by the commission for work during the
5 relevant period is found in the Wage Orders.

6 59. The minimum wage provisions of California Labor Code are enforceable by private
7 civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to
8 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
9 overtime compensation applicable to the employee is entitled to recover in a civil action the
10 unpaid balance of the full amount of this minimum wage or overtime compensation, including
11 interest thereon, reasonable attorney’s fees and costs of suit.”

12 60. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
13 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
14 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
15 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
16 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
17 the absence of a contractually agreed upon one.

18 61. In committing these violations of the California Labor Code, Defendants
19 inaccurately recorded, or required Plaintiff and the Class members to input times that did not
20 reflect their actual hours worked, or calculated the correct time worked and consequently
21 underpaid the actual time worked by Plaintiff and other members of the Class, including by
22 requiring off the clock work, as addressed in detail above. Defendants acted in an illegal attempt to
23 avoid the payment of all earned wages, and other benefits in violation of the California Labor
24 Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.
25 As a result of these violations, Defendants also failed to timely pay all wages earned in accordance
26 with California Labor Code § 1194.

1 62. California Labor Code § 1194.2 also provides for the following remedies: “In any
2 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
3 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
4 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

5 63. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
6 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial
7 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
8 pay each employee minimum wages.

9 64. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are
10 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
11 interest thereon.

12 65. Also, California Labor Code §1198 instructs that: states, “the maximum hours of
13 work and the standard conditions of labor fixed by the commission shall be the maximum hours of
14 work and the standard conditions of labor for employees. The employment of any employee for
15 longer hours than those fixed by the order or under conditions of labor prohibited by the order is
16 unlawful.” Paragraph 4 of the applicable IWC Wage Orders require the payment of minimum
17 wages for all hours worked, and that all wages earned in a pay period be paid during that period.
18 Defendants’ policies and practices violated these IWC Wage Order requirements. Under Section
19 20(A) of the applicable IWC Wage Orders, Plaintiff and the Class members are entitled to recover
20 civil penalties, in addition to other penalties, for each underpaid Employee for violation of Section
21 4 of the IWC Wage Orders in the amount of \$50 for the initial violation and \$100 for subsequent
22 violations during each relevant pay period when Defendants failed wages for all hours worked.
23 These violations also give rise to violations of Labor Code §§ 203 and 226.

24 66. Defendants have the ability to pay minimum wages for all time worked and have
25 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
26 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

27 67. Additionally, under California Labor Code § 2810.3, R&L shares with Fairway
28 and Ultra, and any other staffing agency it uses, in civil legal responsibility for all workers

1 supplied to R&L for their collective failure to pay all earned wages. California Labor Code §
2 2810.3 requires that “A client employer shall share with a labor contractor all civil legal
3 responsibility and civil liability for all workers supplied by that labor contractor for...the
4 payment of wages.” A “labor contractor” (here, e.g., Fairway and Ultra) is defined as “an
5 individual or entity that supplies, either with or without a contract, a client employer with
6 workers to perform labor within the client employer's usual course of business.” “Client
7 employer” (here R&L) is defined as “a business entity, regardless of its form, that obtains or is
8 provided workers to perform labor within its usual course of business from a labor contractor.”
9 Upon information and belief, Defendant R&L is and has been a client employer within the
10 definition of Labor Code § 2810.3 and shares with Fairway and Ultra, the labor contractors, all
11 civil legal responsibility and civil liability for the payment of all wages earned by Plaintiffs and
12 the Class Members. R&L is a joint employer of Plaintiff and some of the Class Members with
13 Fairway and Ultra, including for the reasons set forth above. R&L also directly hires some Class
14 members, who are subject to similar policies and practices as those Employees placed with R&L
15 by Fairway and Ultra.

16 68. Wherefore, Plaintiff and the Employee Class members are entitled to recover the
17 unpaid minimum wages (including double minimum wages), liquidated damages in an amount
18 equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees
19 and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other members of
20 the Class further request recovery of all unpaid wages, according to proof, interest, statutory costs,
21 as well as the assessment of any statutory and/or civil penalties against Defendants, in a sum as
22 provided by the California Labor Code, including § 558, and/or other applicable statutes. To the
23 extent minimum wage compensation is determined to be owed to the Class members who have
24 terminated their employment, Defendants’ conduct also violates Labor Code §§ 201 and/or 202,
25 and therefore these individuals are also be entitled to waiting time penalties under California
26 Labor Code § 203, which penalties are sought herein on behalf of these Class members.
27 Defendants’ failure to timely pay all wages owed also violated Labor Code § 204 for failure to pay
28 all wages owed twice monthly, and resulted in violations of Labor Code § 226 because they

1 resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was
2 willful, intentional and not in good faith. Further, Plaintiff and other Class members are entitled to
3 seek and recover statutory costs.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

6 **(Against All Defendants)**

7 69. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
8 full herein.

9 70. California Labor Code § 1194 provides that "any employee receiving less than the
10 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
11 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
12 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action
13 may be maintained directly against the employer in an employee's name without first filing a
14 claim with the Division of Labor Standards and Enforcement.

15 71. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
16 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the
17 Industrial Welfare Commission) by failing to pay Employees for all their hours worked, including:
18 (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a
19 workday or in excess of forty hours in any workweek or for the first eight hours worked on the
20 seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked
21 in excess of twelve hours in any one day or for hours worked in excess of eight hours on any
22 seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees
23 wages for all hours worked, including by requiring off the clock work during security screenings
24 and unlawful rounding as addressed above and by under-reporting actual hours worked. With
25 work shifts generally being scheduled for eight hours or more, this unpaid off the clock work
26 resulted in Plaintiff and the Class members working past eight hours on a shift, which required
27 that they be paid at the correct overtime rate of 1.5 times their regular rate.

1 72. Defendants thus had a consistent policy of not paying Employees wages for all
2 hours worked, including hours at their required regular, overtime, and double-time rates.
3 Defendants, and each of them, have intentionally and improperly rounded, changed, adjusted
4 and/or modified certain employees' hours, including Plaintiff's, or required Plaintiff and the Class
5 members to do so, or otherwise caused them to work off the clock to avoid paying Plaintiff and the
6 Class members all earned and owed straight time and overtime wages and other benefits, in
7 violation of the California Labor Code, the California Code of Regulations and the IWC Wage
8 Orders and guidelines set forth by the Division of Labor Standards and Enforcement.

9 73. Defendants have also violated these provisions by requiring Plaintiff and other
10 similarly situated non-exempt employees to work through meal periods when they were required
11 to be clocked out or to otherwise work off the clock to complete their daily job duties or to attend
12 and participate in company required activities. Additionally, Defendants paid performance based,
13 non-discretionary bonuses and other forms of remuneration to Plaintiff and the Class members,
14 but failed to include this additional remuneration in the regular rate used to calculate and pay any
15 overtime Defendants did pay. Therefore, Employees were not properly compensated, nor were
16 they paid overtime rates or correct rates for hours worked in excess of eight hours in a given day,
17 and/or forty hours in a given week. Based on information and belief, Defendants did not make
18 available to Employees a reasonable protocol for correcting time records when Employees worked
19 overtime hours or to fix incorrect time entries or those that Defendants unlawfully under-recorded
20 to the Employee's detriment.

21 74. Defendants' failure to pay Plaintiff and the Class members the unpaid balance of
22 regular wages owed and overtime compensation for all hours worked, as required by California
23 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable
24 IWC Wage Order, and is therefore unlawful.

25 75. Additionally, Labor Code § 558(a) provides "any employer or other person acting
26 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
27 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
28 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each

1 pay period for which the employee was underpaid in addition to an amount sufficient to recover
2 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
3 underpaid employee for each pay period for which the employee was underpaid in addition to an
4 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
5 be paid to the affected employee.” Labor Code § 558(c) states, “the civil penalties provided for in
6 this section are in addition to any other civil or criminal penalty provided by law.” Defendants
7 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
8 Wage Orders. Accordingly, Plaintiff and the Class members seek the remedies set forth in Labor
9 Code § 558.

10 76. Defendants’ failure to pay compensation in a timely fashion also constituted a
11 violation of California Labor Code § 204, which requires that all wages shall be paid
12 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
13 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
14 and overtime compensation earned by Employees. Each such failure to make a timely payment of
15 compensation to Employees constitutes a separate violation of California Labor Code § 204.

16 77. Employees have been damaged by these violations of California Labor Code §§
17 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
18 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less
19 than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions
20 of labor prohibited by an order of the commission” or if the employer pays “a wage less than the
21 minimum fixed by an order of the commission” or “violates...any provision of this chapter or
22 any order or ruling of the commission.”

23 78. Additionally, under California Labor Code § 2810.3, R&L shares with Fairway
24 and Ultra, and any other staffing agency it uses, in civil legal responsibility for all workers
25 supplied to R&L for their collective failure to pay all earned wages. California Labor Code §
26 2810.3 requires that “A client employer shall share with a labor contractor all civil legal
27 responsibility and civil liability for all workers supplied by that labor contractor for...the
28 payment of wages.” A “labor contractor” (here, e.g., Fairway and Ultra) is defined as “an

1 individual or entity that supplies, either with or without a contract, a client employer with
2 workers to perform labor within the client employer's usual course of business.” “Client
3 employer” (here R&L) is defined as “a business entity, regardless of its form, that obtains or is
4 provided workers to perform labor within its usual course of business from a labor contractor.”
5 Upon information and belief, Defendant R&L is and has been a client employer within the
6 definition of Labor Code § 2810.3 and shares with Fairway and Ultra, the labor contractors, all
7 civil legal responsibility and civil liability for the payment of all wages earned by Plaintiffs and
8 the Class Members. R&L is a joint employer of Plaintiff and some of the other Class Members,
9 with Fairway and Ultra, including for the reasons set forth above.

10 79. Consequently, pursuant to the California Labor Code, including Labor Code §§
11 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders,
12 including paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full
13 amount of all their unpaid wages and overtime compensation for all their hours worked, with
14 interest, plus their reasonable attorneys’ fees and costs, as well as the assessment of any statutory
15 penalties against Defendants, and each of them, and any additional sums as provided by the
16 Labor Code and/or other statutes.

17 **THIRD CAUSE OF ACTION**

18 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

19 **(Against All Defendants)**

20 80. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
21 full herein.

22 81. Employees regularly worked shifts greater than five hours and in some instances,
23 greater than ten hours. Pursuant to Labor Code § 512, and paragraph 11 of the applicable IWC
24 Wage Order, an employer may not employ someone for a shift of more than five hours without
25 providing him or her with a meal period of not less than thirty minutes or for a shift of more than
26 ten hours without providing him or her with a second meal period of not less than thirty minutes.

27 82. Defendants failed to provide Employees with meal periods as required under the
28 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required

1 to work or to otherwise remain under Defendants' control during meal periods, or Defendants
2 provided them after Employees worked beyond the fifth hour of their shifts or Employees
3 otherwise had them shortened and interrupted by work demands and requirements to remain under
4 Defendants' control. Furthermore, upon information and belief, on the occasions when Employees
5 worked more than ten hours in a given shift, they did so without receiving a second uninterrupted
6 thirty minute meal period as required by law.

7 83. Defendants thus failed to provide Plaintiff and the Class members with meal
8 periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order,
9 including by not providing them with the opportunity to take meal breaks, by providing them late
10 or for less than thirty minutes, or by requiring them to perform work during breaks.

11 84. Moreover, Defendants failed to compensate Employees for each meal period not
12 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
13 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
14 employee a meal period in accordance with this section, the employer shall pay the employee one
15 hour of pay at the employee's regular rate of compensation for each workday that the meal period
16 is not provided. Defendants failed to compensate the Employees in the Class for each meal period
17 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11
18 and 20 of the applicable IWC Wage Orders. To the extent Defendants did pay any meal period
19 premium, upon information and belief they failed to include all forms of remuneration, including
20 bonuses, in the regular rate used to calculate and pay the premium.

21 85. Upon information and belief, Defendant R&L is and has been a client employer
22 within the definition of Labor Code § 2810.3. Therefore, Fairway and Ultra, the labor contractors,
23 must share all civil legal responsibility and civil liability for the payment of all wages earned by
24 Plaintiff and the Class Members, with R&L, including the premium penalty wages owed for
25 Defendants' failure to provide meal periods.

26 86. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the
27 applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal
28 to one hour of wages at their effective hourly rates of pay for each meal period not provided or

deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and other statutes and applicable IWC Wage Order paragraphs.

FOURTH CAUSE OF ACTION

REST-BREAK LIABILITY UNDER LABOR CODE § 226.7

(Against All Defendants)

87. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

88. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders provide that employers must authorize and permit all employees to take rest periods at the rate of ten minutes net rest time per four work hours.

89. Employees consistently worked consecutive four hour shifts and were generally scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten minutes for each consecutive four hour shift, and Defendants failed to provide Employees with timely rest breaks of not less than ten minutes for each consecutive four hour shift. Employees were often required to work or to otherwise remain under Defendants' control during rest periods, and had breaks provided untimely as a result of the above described off the clock work. Plaintiff and the Class members were also not permitted to leave their work premises during rest breaks.

90. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Orders provide that if an employer fails to provide an employee rest period in accordance with this section, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

91. Defendants, and each of them, have therefore intentionally and improperly denied rest periods to Plaintiff and the Class members in violation of Labor Code §§ 226.7 and 512 and paragraph 12 of the applicable IWC Wage Orders.

92. Defendants failed to authorize and permit Plaintiff and the Class members to take rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Orders. To the extent Defendants did pay any rest break premium, upon information and belief they failed to include all forms of remuneration, including bonuses, in the regular rate used to calculate and pay the premium.

93. Upon information and belief, Defendant R&L is and has been a client employer within the definition of Labor Code § 2810.3. Therefore, Fairway and Ultra, the labor contractors, must share all civil legal responsibility and civil liability for the payment of all wages earned by Plaintiff and the Class Members, with R&L, including the premium penalty wages owed for Defendants' failure to provide rest breaks.

94. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Orders, Employee Class members are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day worked without the required rest breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

FIFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)
(Against All Defendants)

95. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

96. California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized statement in writing showing the gross and net earnings, total hours worked, and the corresponding number of hours worked at each hourly rate; these statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these

1 statements may be given to the employee separately from the payment of wages; in either case the
2 employer must give the employee these statements twice a month or each time wages are paid. As
3 addressed above, Defendant Ultra failed to provide any such wage statements to Plaintiff and upon
4 information and belief the Class members, and instead required any Employees who wanted a
5 wage statement to come to a local office and request it.

6 97. Defendants also failed to provide Plaintiff and the similarly situated Employee
7 Class members with accurate itemized wage statements in writing, as required by the Labor Code
8 and paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements given to
9 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,
10 including by failing to pay for all hours worked and due to unlawful rounding, failure to pay for all
11 overtime hours worked at the correct rate of pay and for providing deficient meal periods and rest
12 breaks, all of which Defendants knew or reasonably should have known were owed to the
13 Employees, as alleged above.

14 98. Throughout the liability period, Defendants intentionally failed to furnish to
15 Plaintiff and the Class members, upon each payment of wages, itemized statements accurately
16 showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-
17 rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net
18 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
19 the employee and only the last four digits of his or her social security number or an employee
20 identification number other than a social security number, (8) the name and address of the legal
21 entity that is the employer and (9) all applicable hourly rates in effect during the pay period and
22 the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor
23 Code § 226 and paragraph 7 of the applicable IWC Wage Orders, amongst other statutory
24 requirements. Defendants knowingly and intentionally failed to provide Plaintiff and the Class
25 members with such timely and accurate wage and hour statements.

26 99. Plaintiff and the Class members suffered injury as a result of Defendants' knowing
27 and intentional failure to provide them with the wage and hour statements as required by law and
28 are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the

1 Defendants have failed to provide an accurate wage statement, failed to provide accurate and
2 complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9),
3 inclusive, and the Plaintiff and Class members cannot promptly and easily determine from the
4 wage statement alone one or more of the following: (i) The amount of the gross wages or net
5 wages paid to the employee during the pay period or any of the other information required to be
6 provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of
7 subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net
8 wages paid to the employee during the pay period, (iii) The name and address of the employer
9 and, (iv) The name of the employee and only the last four digits of his or her social security
10 number or an employee identification number other than a social security number. For purposes
11 of Labor Code § 226(e) “promptly and easily determine” means a reasonable person [i.e. an
12 objective standard] would be able to readily ascertain the information without reference to other
13 documents or information.

14 100. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
15 are required “to pay each employee, on the established payday for the period involved, not less
16 than the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor
17 Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order
18 or under conditions of labor prohibited by the order is unlawful.” Plaintiff and the Class members
19 may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph
20 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
21 IWC Wage Orders.

22 101. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
23 § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
24 Class suffered injuries, including among other things confusion over whether they received all
25 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
26 them to make mathematical computations to analyze whether the wages paid in fact compensated
27 them correctly for all hours worked.

28

1 102. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable
2 IWC Wage Order, Plaintiff and the Employee Class members are entitled to recover the greater of
3 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
4 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
5 aggregate penalty of four thousand dollars (\$4,000) under Section 226(e), and are entitled to
6 recover further penalties pursuant to paragraphs 4(B) and 20 of the applicable IWC Wage Orders.
7 They are also entitled to an award of costs and reasonable attorneys' fees.

8 **SIXTH CAUSE OF ACTION**
9 **VIOLATION OF LABOR CODE § 221**
10 **(Against All Defendants)**

11 103. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
12 full herein.

13 104. Labor Code § 221 provides, "It shall be unlawful for any employer to collect or
14 receive from an employee any part of wages theretofore paid by said employer to said employee."
15 Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and
16 public policy, an employer must timely pay its employees for all hours worked. Defendants failed
17 to do so.

18 105. Defendants unlawfully received and/or collected wages from the Employees in the
19 Class by implementing a policy understating the hours worked by Employees, by requiring off the
20 clock work and unlawful rounding and by failing to pay overtime and premiums at the required
21 and correctly calculated regular rate, and by automatically deducting time for meal periods when
22 they were not lawfully provided, as alleged above.

23 106. As a direct and proximate cause of the unauthorized deductions, Employees have
24 been damaged, in an amount to be determined at trial.

25 **SEVENTH CAUSE OF ACTION**
26 **VIOLATION OF LABOR CODE § 204**
27 **(Against All Defendants)**

28 107. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in

1 full herein.

2 108. Labor Code § 204 instructs that: “All wages, ...earned by any person in any
3 employment are due and payable twice during each calendar month, on days designated in
4 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
5 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
6 during which the labor was performed, and labor performed between the 16th and the last day,
7 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
8 month.” Additionally, the requirements of this section shall be deemed satisfied by the payment
9 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
10 calendar days following the close of the payroll period.” As detailed above, Defendants
11 maintained a consistently applied policy and practice of not paying all wages earned between the
12 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
13 between the 16th and the last day of the month between the 1st and 10th day of the following month.
14 This included failing to pay all wages due and owing to Plaintiff and the Class members for all
15 hours they worked and failing to pay all wages earned by not more than seven calendar days
16 following the close of the payroll period.

17 109. All wages due and owing to Plaintiff and the Class members, including as required
18 under Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages
19 required by Labor Code § 1194 and other sections became due and payable to each employee in
20 each pay period that he or she was not provided with a meal period or rest period or paid straight
21 or overtime wages to which he or she was entitled. Additionally, the wage statements issued by
22 Defendants Fairway and Ultra failed to list all hours worked at the applicable rates and under-
23 compensated Plaintiff and the Class, thus giving rise to further failure to timely pay wages.

24 110. Defendants violated Labor Code § 204 by systematically refusing to timely pay
25 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the
26 applicable IWC Wage Orders, employers are required “to pay each employee, on the established
27 payday for the period involved, not less than the applicable minimum wage for all hours worked in
28 the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer

1 hours than those fixed by the order or under conditions of labor prohibited by the order is
2 unlawful.” Plaintiff and the Class members may therefore pursue damages and penalties for
3 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including
4 penalties under paragraph 20 of the applicable IWC Wage Orders.

5 111. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to
6 represent have been deprived of wages in amounts to be determined at trial, and they are entitled
7 to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs,
8 pursuant to Labor Code § 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
9 applicable IWC Wage Orders.

10 **EIGHTH CAUSE OF ACTION**
11 **VIOLATION OF LABOR CODE § 203**
12 **(Against All Defendants)**

13 112. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
14 full herein.

15 113. Plaintiff and numerous Class members are no longer employed by Defendants; they
16 either quit Defendants’ employ or were fired therefrom.

17 114. Defendants failed to pay these Employees all wages due and certain at the time of
18 termination or within seventy-two hours of resignation, as addressed in detail above.

19 115. The wages withheld from these Employees by Defendants remained due and owing
20 for more than thirty days from the date of separation from employment.

21 116. Defendants failed to pay Plaintiff and the Class members without abatement, all
22 wages as defined by applicable California law. Among other things, these Employees were not
23 paid all regular and overtime wages, including by Defendants failing to pay for all hours worked
24 or requiring off the clock work or by unlawfully under-recording time entries to the detriment of
25 Employees and failing to pay Employees at the correctly calculate rate for overtime, and
26 Defendants failed to pay premium wages owed for unprovided meal periods and rest periods, as
27 further detailed in this Complaint. Defendants’ failure to pay said wages within the required time
28 was willful within the meaning of Labor Code § 203.

1 117. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
2 are required “to pay each employee, on the established payday for the period involved, not less
3 than the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor
4 Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order
5 or under conditions of labor prohibited by the order is unlawful.” Plaintiff and the Class members
6 may therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph
7 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
8 IWC Wage Orders. Also, under Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are
9 subject to a fine of not less than \$100 for causing Employees “to work for longer hours than those
10 fixed, or under conditions of labor prohibited by an order of the commission” or if the employer
11 pays “a wage less than the minimum fixed by an order of the commission” or “violates...any
12 provision of this chapter or any order or ruling of the commission.”

13 118. Upon information and belief, Defendant R&L is and has been a client employer
14 within the definition of Labor Code § 2810.3. Therefore, Fairway and Ultra, the labor contractors,
15 must share all civil legal responsibility and civil liability for the payment of all wages earned by
16 Plaintiff and the Class Members, with R&L, including the failure to pay all wages due and owing
17 upon termination or separation from Defendants’ employment.

18 119. Defendants’ failure to pay wages, as alleged, entitles Plaintiff and these former
19 Employee Class members to penalties under Labor Code § 203 and the applicable paragraphs of
20 the IWC Wage Orders as addressed above, including the requirement that an employee’s wages
21 shall continue until paid for up to thirty (30) days from the date they were due.

22 **NINTH CAUSE OF ACTION**

23 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

24 **(Against All Defendants)**

25 120. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
26 full herein.

27 121. Plaintiff, on behalf of herself, the Employees in the Class, and the general public,
28 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of

1 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
2 harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting
3 the public interest within the meaning of Code of Civil Procedure § 1021.5.

4 122. Plaintiff is a “person” within the meaning of Business & Professions Code
5 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
6 relief, restitution, and other appropriate equitable relief.

7 123. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
8 business practices. By the conduct alleged herein, Defendants’ practices were deceptive and
9 fraudulent in that Defendants’ policy and practice failed to provide the required amount of
10 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and
11 Class members for all hours worked, due to systematic business practices as alleged herein that
12 cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare
13 Commission requirements in violation of California Business and Professions Code §§ 17200, *et*
14 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California
15 Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

16 124. Wage-and-hour laws express fundamental public policies. Paying employees their
17 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental
18 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State
19 vigorously to enforce minimum labor standards, to ensure that employees are not required or
20 permitted to work under substandard and unlawful conditions, and to protect law-abiding
21 employers and their employees from competitors who lower costs to themselves by failing to
22 comply with minimum labor standards.

23 125. Defendants have violated statutes and public policies. Through the conduct alleged
24 in this Complaint Defendants have acted contrary to these public policies, have violated specific
25 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
26 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,
27 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
28 guaranteed to all employees under the law.

126. Defendants' conduct, as alleged above, constitutes unfair competition in violation of the Business & Professions Code § 17200 *et seq.*

127. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise of reasonable care should have known that their conduct was unlawful; therefore their conduct violates the Business & Professions Code § 17200 *et seq.*

128. By the conduct alleged herein, Defendants have engaged and continue to engage in a business practice which violates California and federal law, including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor Code including Sections 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 for which this Court should issue declaratory and other equitable relief pursuant to California Business & Professions Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

129. As a proximate result of the above-mentioned acts of Defendants, Employees have been damaged, in a sum to be proven at trial.

130. Unless restrained by this Court Defendants will continue to engage in such unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use by Defendants or their agents or employees of any unlawful or deceptive practice prohibited by the Business & Professions Code, including but not limited to the disgorgement of such profits as may be necessary to restore Employees to the money Defendants have unlawfully failed to pay.

TENTH CAUSE OF ACTION

PENALTIES PURSUANT TO LABOR CODE § 2698, *ET SEQ.*

(Against All Defendants)

131. Plaintiff realleges and incorporate all preceding paragraphs, as though set forth in full herein.

1 132. Plaintiff and the Employees in the Class are also aggrieved employees as defined
2 under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and
3 either were or are employed by Defendants (“Aggrieved Employees”) during the relevant time
4 period.

5 133. In failing to pay Aggrieved Employees minimum wages and overtime, not
6 providing proper meal and rest periods, failing to provide accurate itemized wage statements, and
7 failing to pay Employees wages upon termination or timely upon resignation, all discussed above,
8 Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required
9 under Labor Code § 204. Defendants also failed to maintain records showing accurate hours
10 worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and
11 paragraph 7 of the applicable IWC Wage Orders.

12 134. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699
13 for Defendants’ violation of Labor Code provisions included under Labor Code § 2699.5,
14 including the penalty provisions, without limitation, based, inter alia, on the following California
15 Labor Code sections: 201, 202, 203, 204, 206.5, 226, 226.2, 226.7, 432.5, 510, 512, 558, 1174,
16 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and 2698 *et seq.*

17 135. More specifically, after complying with the notice procedures of Labor Code §
18 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
19 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed
20 underlying claims and seeking penalties as specified by the applicable corresponding provisions,
21 including as follows:

22 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
23 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime
24 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
25 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
26 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
27 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys’ fees and costs pursuant
28 to Labor Code § 2699(g)(1);

1 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
2 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
3 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under
4 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC
5 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under
6 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,
7 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs
8 pursuant to Labor Code § 2699(g)(1);

9 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
10 Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to
11 maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,
12 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking
13 all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),
14 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,
15 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by
16 providing inaccurate wage statements and failing to maintain records as required under Labor
17 Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor
18 Code §226.3, which in addition to other penalties provided by law, subjects Defendants to "a
19 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
20 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
21 citation, ...";

22 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
23 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
24 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,
25 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
26 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code
27 § 2699(g)(1);
28

1 (e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For
2 Defendants' unlawful deductions from wages and for Defendants' failure to reimburse the
3 necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and
4 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties
5 available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and
6 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs
7 pursuant to Labor Code § 2699(g)(1);

8 (f) All Alleged Violations of the IWC Wage Orders and Other Labor Code Sections:
9 For any above addressed violation of the applicable provisions of the IWC Wage Orders, each of
10 which constitute separate violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking
11 penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the
12 applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code §
13 2699(g)(1).

14 136. As also addressed above, Plaintiff, on behalf of the Aggrieved Employees, also
15 seeks the penalties and remedies set forth in Labor Code § 558, which states:

16 (a) Any employer or other person acting on behalf of an employer who violates, or
17 causes to be violated, a section of this chapter or any provision regulating hours and days of work
18 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1)
19 For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for
20 which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
each pay period for which the employee was underpaid in addition to an amount sufficient to
recover underpaid wages...

21 (b) If upon inspection or investigation the Labor Commissioner determines that a
22 person had paid or caused to be paid a wage for overtime work in violation of any provision of this
23 chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare
Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting,
and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a
violation of this chapter shall be the same as those set out in Section 1197.1.

24 (c) The civil penalties provided for in this section are in addition to any other civil or
25 criminal penalty provided by law.

26 137. Plaintiff has exhausted her administrative remedies by submitting a certified letter
27 to the LWDA and Defendants on March 14, 2023 (LWDA Case No. LWDA-CM-941905-23)
28 addressing in detail the specific provisions of the Labor Code Defendants have violated and

1 addressing the facts and legal theories to support the alleged violations and requested penalties.
2 The LWDA has not provided notice of its intent to investigate the alleged violations within 65
3 calendar days of the postmark date of the letter, and Plaintiff adds this claim seeking penalties
4 under the PAGA for the violations addressed herein and in the PAGA Notice letter and the original
5 Complaint.

6 **RELIEF REQUESTED**

7 WHEREFORE, Plaintiff prays for the following relief:

- 8 1. For an order certifying this action as a class action;
- 9 2. For compensatory damages in the amount of the unpaid minimum wages for work
10 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
11 the filing of this action, as may be proven;
- 12 3. For liquidated damages in the amount equal to the unpaid minimum wage and
13 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 14 4. For compensatory damages in the amount of all unpaid wages, including overtime
15 and double-time pay, as may be proven;
- 16 5. For compensatory damages in the amount of the hourly wage made by Employees
17 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
18 years prior to the filing of this action, as may be proven;
- 19 6. For compensatory damages in the amount of the hourly wage made by Employees
20 for each day requisite rest breaks were not provided or were deficiently provided where no
21 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
22 be proven;
- 23 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
- 24 8. For restitution and/or damages and penalties for Defendants' failure to pay all
25 wages due twice monthly under Labor Code § 204, as may be proven;
- 26 9. For restitution and/or damages for all amounts unlawfully withheld from the wages
27 for all class members in violation of Labor Code § 221, as may be proven;
- 28

1 10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
2 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

3 11. For liquidated damages pursuant to California Labor Code 1194.2(a) for failure to
4 pay minimum wage;

5 12. For restitution for unfair competition pursuant to Business & Professions Code
6 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

7 13. For an order enjoining Defendants and their agents, servants, and employees, and
8 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
9 duties adumbrated in this Complaint;

10 14. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;

11 15. For penalties under Labor Code § 558, as may be proven;

12 16. For other wages and penalties under the Labor Code as may be proven;

13 17. For all general, special, and incidental damages as may be proven;

14 18. For an award of pre-judgment and post-judgment interest;

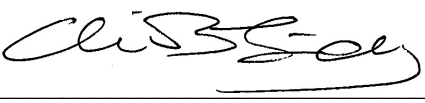
15 19. For an award providing for the payment of the costs of this suit;

16 20. For an award of attorneys' fees; and

17 21. For such other and further relief as this Court may deem proper and just.

18
19 DATED: May 19, 2023

DAVID YEREMIAN & ASSOCIATES, INC.

20
21 By 
22 David Yeremian
23 Alvin B. Lindsay
24 Attorneys for Plaintiff MARIANA ZUAZO
25 and all others similarly situated
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DATED: May 19, 2023

By

David Yeremian
Alvin B. Lindsay
Attorneys for Plaintiff MARIANA ZUAZO
and all others similarly situated

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 2540 Foothill Blvd., Suite 201, La Crescenta, CA 91214.

Romeo & Layla Warehousing, Inc.
Gene Sawaya, Agent for Service of Process
1151 S Mildred Ave.
Ontario, CA 91761

Ultra Personnel, LLC
Incorp Services, Inc., Agent for Service of Process
5716 Corsa Ave., Suite 110
Westlake Village, CA 91362

[X] (BY MAIL) I placed such envelope with postage thereon fully paid in the United States mail at La Crescenta, California. I am “readily familiar” with this firm’s practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

[X] (COURTESY COPY BY ELECTRONIC TRANSMISSION) by use of email by scanning the documents and any and all documents and emailing them to email addresses above.

[] (BY OVERNIGHT DELIVERY) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the address above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

[X] (STATE) I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 19, 2023, at La Crescenta, California.

Natalia Bermudes
Natalia Bermudes