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 JUANA GARCIA GONZALEZ,
 and all putative class members

FILED
 Superior Court of California
 County of Los Angeles

09/25/2023

David W. Slayton, Executive Officer / Clerk of Court

By: K. Martinez Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF LOS ANGELES**

JUANA GARCIA GONZALEZ, an individual,)
 on behalf of himself and all others similarly)
 situated,)

Plaintiff,)

vs.)

SANDER'S CANDY FACTORY, INC., a)
 California Corporation, and DOES 1-50,)
 inclusive,)

Defendants.)

Case No.: 23STCV08682

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

- 1. Failure to Pay all Hours Worked,
Including Overtime**
- 2. Failure to Pay All Wages Owed Twice
Per Month**
- 3. Failure to Pay Wages Due Upon
Termination**
- 4. Failure to Provide Rest Breaks**
- 5. Failure to Provide Meal Breaks**
- 6. Failure to Reimburse for Required
Business Expenses**
- 7. Failure to Provide One Day's Rest in
Seven**
- 8. Failure to Pay Accrued Vacation
Upon Separation**
- 9. Failure to Provide Accurate Itemized
Wage Statements**
- 10. Unlawful Business Practices
Bus & Prof. Code §17200**
- 11. Private Attorneys General Act
Penalties §2698 *et seq***

1 Plaintiff JUANA GARCIA GONZALEZ, individually, and on behalf of all others similarly
2 situated, all aggrieved employees, and as a Private Attorney General for the State of California
3 (collectively “Plaintiffs”), alleges as follows:

4 NATURE OF THE ACTION

5 1. This is an employment class and PAGA representative action on behalf of over 100
6 hourly, non-exempt employees against their employer for violations of numerous wage and hour
7 laws. Plaintiff brings this employment class and PAGA representative action complaint on behalf
8 of herself, and all others similarly situated against SANDER’S CANDY FACTORY, INC., and
9 the other Defendants DOES 1-50, inclusive, (hereafter collectively “Defendant” or “Defendants”).

10 2. Defendants SANDER’S CANDY FACTORY, INC. is a candy manufacturing company.
11 Plaintiff JUANA GARCIA GONZALEZ worked as an hourly, non-exempt employee until May
12 31, 2022. Plaintiff and the proposed class earn at or near minimum wage.

13 3. As described further below, Defendants have violated the California Labor Code by (1)
14 failing to pay for all hours worked, including overtime hours worked (§204, 206, 206.5, 210, 216,
15 218, 218.6, 221, 223, 351, 510, 558, 1194, 1197, 1197.1, 1198); (2) failing to pay all wages owed
16 twice per month (§204, 210); (3) failing to pay wages due upon termination (§201, 202, 203, 256);
17 (4) failing to provide rest breaks (§226, 226.7, 512, 558, 1198); (5) failing to provide uninterrupted
18 meal breaks (§226, 226.7, 512, 558, 1198); (6) failing to reimburse for required business expenses
19 (§1198, 2802); (7) failing to provide one days’ rest in seven (§551, 552, 558); (8) failing to properly
20 accrue and pay for unpaid vacation (§227.3); (9) failing to provide accurate itemized wage
21 statements (§226, 246, 248, 1174, 1174.5) and; (10) unlawful and unfair business practices (Bus.
22 & Prof. Code §17200, et. seq.). Plaintiff further alleges that Defendants are liable for civil penalties
23 under the Private Attorneys General Act (“PAGA”), Labor Code §2698 et seq.

24 4. The class claims in this action are brought pursuant to Code of Civil Procedure (“CCP”)
25 §382, seeking recovery for unpaid wages, including overtime wages, missed meal and rest period
26 penalty pay, statutory and waiting time penalties, injunctive and other equitable relief, interest, and
27 reasonable attorneys’ fees and costs. Pursuant to the class and representative action procedures
28 provided for under California law, Plaintiff, on behalf of herself and proposed Class Members

(also referred to as “Class”), and aggrieved employees, also seeks injunctive relief and restitution of all benefits Defendants have received from their unlawful actions as alleged herein. Plaintiff has also provided notice of these claims pursuant to §2698 et. seq., to the Labor and Workforce and Development Agency (“LWDA”) and now brings this First Amended Complaint, including claims for civil penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 et seq. Attorney General Act (“PAGA”), Labor Code §2698 et seq.

5. The “Class Period” is designated as the four-year period prior to the filing of this Complaint through the date of final disposition of this action. From the start of the Class Period through the present, Defendants have had a policy and/or practice of among other violations: late and/or interrupted meal breaks, untimely and/or interrupted rest breaks, not reimbursing required business expenses, issuing inaccurate wage statements, and ignoring and violating California wage and hour laws, in their business as more fully set forth below.

6. The “PAGA Period” is defined herein commences one year prior to the date of filing the PAGA Notice letter with the LWDA.

7. Defendants have treated all persons employed in California in such a way as to violate California’s laws governing conditions of employment and payment of wages owed. Plaintiff asserts that Defendants have knowingly and with conscious disregard of the law refused to pay the Class Members all wages owed, including overtime wages and meal and rest break penalty wages. Defendants have violated numerous Labor Code provisions, as set forth herein. Class Members are owed their back pay, plus interest and/or premiums and penalties under Business and Professions Code section 17203 to compensate Class Members and Class Members for the delay in receiving wages due.

8. Defendants, by and through their actions, have engaged in unfair competition, requiring restitution to persons affected and disgorgement of profits so obtained.

THE PARTIES

9. Plaintiff JUANA GARCIA GONZALEZ is an individual who resides in California and worked for Defendants as an hourly, non-exempt employee until May 31, 2022.

1 California and regularly conduct business in California. Further, there is no federal question at
2 issue as the claims herein are based solely on California law.

3 **CLASS AND REPRESENTATIVE ACTION ALLEGATIONS**

4 16. During the Class Period and PAGA Period, Defendants committed various violations
5 of the California Labor Code, the UCL and the applicable IWC Wage Order, as alleged below in
6 more detail. Defendants enforce multiple policies that violate state law which are intended to
7 increase its own profits to the detriment of its employees.

8 17. Plaintiff aggrieved employees, and the putative class are employees of Defendants
9 working in or for their candy manufacturing company.

10 18. Defendants failed to compensate employees for overtime hours worked. Employees
11 often had to wait in lines to clock in as numerous employees came on shift at the same time.
12 Employees also were required to work off the clock. Employees' meal breaks were often
13 interrupted with work duties resulting in underpaid hours worked. Employees were also required
14 to work while clocked out for lunch or after the shift ended. Plaintiff was frequently interrupted
15 when on her lunch break but was not permitted to report this time worked on her timecard.

16 19. Defendants rounds Plaintiff, class members, and aggrieved employee timecards to the
17 quarter hour in a manner that favors Defendants. Indeed, with Defendants' strict policies against
18 arriving to work late, employees clock in before their shift start time and this consistently benefited
19 Defendants. However, wage statements consistently show hours rounded to the nearest half-hour
20 or hour.

21 20. Defendants failed to maintain a policy and practice that provides their employees with
22 off-duty rest periods as required by California law. Plaintiff reports that she and her coworkers did
23 not receive their second paid rest periods each day. Instead, Defendants would send them home,
24 allowing them to clock out early in exchange for taking a break.

25 21. Defendants failed to maintain a policy and practice that provides its employees with
26 uninterrupted meal breaks as required by California law. Plaintiff, aggrieved employees, and class
27 members experienced frequent meal period violations.
28

1 22. Plaintiff, aggrieved employees, and class members were required to use personal cell
2 phones for work purposes to communicate via text and phone calls with supervisors. Defendant
3 failed to reimburse employees for required business expenses.

4 23. Defendants failed to maintain a policy and practice to pay accrued vacation to
5 employees upon separation as required by Cal. Lab. Code §227.3.

6 24. Defendants intentionally and willfully failed to pay Plaintiff who are no longer
7 employed by it all compensation due upon termination of employment as required by Cal. Lab.
8 Code §§201 and 202.

9 25. Defendants failed to provide employees with ‘one day’s rest in seven as required by
10 Cal. Lab. Code §§551 and 552.

11 26. Defendants further failed to provide timely, accurate, itemized wage statements to
12 employees, as well as maintain accurate records, in accordance with Labor Code §§ 226 and 1174.

13 27. Based upon the above allegations, Defendants engaged in unfair competition.

14 28. Plaintiff brings this action on behalf of herself, and all other persons similarly situated,
15 to recover from Defendants for failure to comply with California wage and hour laws, and for
16 claims under Business and Professions Code § 17200.

17 29. This action has been brought and may properly be maintained as a class action
18 pursuant to the provisions of Code of Civil Procedure § 382 and/or a representative action under
19 Business & Professions Code §§17200 et seq. and Labor Code §2699 because the proposed class
20 is ascertainable and there is a well-defined community of interest. Plaintiff is among in excess of
21 100 with like job titles, duties, and hourly wages, employees who have been similarly injured by
22 Defendants’ unlawful employment policies and practices.

23 30. The “Relevant Time Period” or proposed “Class Period” as defined herein commences
24 four years prior to the date of filing this Complaint.

25 31. Plaintiff brings this action on their behalf and as a class action under Cal. Code of
26 Civil Procedure §382 on behalf of the following defined groups:
27
28

1 32. Proposed Class: “All persons who are employed or have been employed by
2 Defendants in the State of California as hourly, non-exempt workers during the period of the
3 relevant statute of limitations.”

4 33. Proposed Sub-classes:

5 A. All persons who are employed or have been employed by Defendants in the
6 State of California as hourly, non-exempt workers during the period of the
7 relevant statute of limitations, who worked one or more shift in excess of five
8 (5) hours.

9 B. All persons who are employed or have been employed by Defendants in the
10 State of California as hourly, non-exempt workers during the period of the
11 relevant statute of limitations, who worked one or more shifts in excess of six
12 (6) hours.

13 C. All persons who are employed or have been employed by Defendants in the
14 State of California as hourly, non-exempt workers during the period of the
15 relevant statute of limitations, who worked one or more shifts in excess of eight
16 (8) hours.

17 D. All persons who are employed or have been employed by Defendants in the
18 State of California as hourly, non-exempt workers during the period of the
19 relevant statute of limitations, who worked one or more shifts in excess of three
20 and one-half hours (3 ½), but less than or equal to six (6) hours.

21 E. All persons who are employed or have been employed by Defendants in the
22 State of California as hourly, non-exempt workers during the period of the
23 relevant statute of limitations, who worked one or more shifts in excess of six
24 (6) hours, but less than or equal to ten (10) hours.

25 F. All persons who are employed or have been employed by Defendants in the
26 State of California as hourly, non-exempt workers during the period of the
27 relevant statute of limitations, who separated their employment from
28 Defendants.

1 G. All persons who are employed or have been employed by Defendants in the
2 State of California as hourly, non-exempt workers during the period of the
3 relevant statute of limitations, who received pay for one or more pay periods.

4 H. All persons who are employed or have been employed by Defendants in the
5 State of California as hourly, non-exempt workers during the period of the
6 relevant statute of limitations, who were not reimbursed for required business
7 expenses.

8 I. All persons who are employed or have been employed by Defendants in the
9 State of California as hourly, non-exempt workers during the period of the
10 relevant statute of limitations, who had accrued, unpaid vacation due at
11 separation that was not paid at the time of separation.

12 34. This action is brought, and may properly be maintained, as a class action under CCP
13 §382 because there is a well-defined community of interest in the litigation, and the proposed Class
14 and Subclasses (collectively “Class”) are easily ascertainable.

15 35. Numerosity: The Proposed Class is so numerous that joinder of all members is
16 impractical. Plaintiff is informed and believes, and on that basis alleges, that during the relevant
17 time period, Defendants employed over 50 putative Class Members who are geographically
18 dispersed and who satisfy the definition of the proposed Class. As such, a class action is the only
19 available method for the fair and efficient adjudication of this controversy. Membership in the
20 Proposed Class can be easily ascertained by an examination and analysis of employee and payroll
21 records, among other records within Defendants’ possession and control.

22 36. Typicality: Plaintiff’s claims are typical of the claims of the Class Members. Plaintiff,
23 like others similarly situated, was subjected to Defendants’ common, unlawful policies, practices,
24 and procedures described above. The Plaintiff’s positions at the company was typical of those of
25 other Class Members. Plaintiff’s claims are typical of the claims of each Class Member because
26 each have sustained damages arising out of and caused by Defendants’ common course of conduct,
27 as alleged herein. As such, Plaintiff has the same interests in this matter as all members of the
28 Class.

1 37. Adequacy: Plaintiff will fairly and adequately protect the interests of the members of
2 the Class. Plaintiff has retained counsel competent and experienced in complex class actions and
3 California labor and employment litigation.

4 38. Commonality: Common questions of law and fact exist, including but not limited to
5 the following:

- 6 i. Whether Defendant violated wage and hour laws by failing to pay for all hours
7 worked, including overtime hours worked
- 8 ii. Whether Defendant violated wage and hour laws by failing to pay all wages
9 owed twice per month
- 10 iii. Whether Defendant violated wage and hour laws by failing to pay wages due
11 upon termination;
- 12 iv. Whether Defendant violated wage and hour laws by failing to provide rest
13 breaks;
- 14 v. Whether Defendant's policy and practice concerning rest breaks was
15 unlawful;
- 16 vi. Whether Defendant violated wage and hour laws by failing to provide
17 uninterrupted meal breaks;
- 18 vii. Whether Defendant's policy and practice concerning meal breaks was
19 unlawful;
- 20 viii. Whether Defendant violated wage and hour laws by failing to provide
21 business expense reimbursement;
- 22 ix. Whether Defendant violated wage and hour laws by failing to provide one
23 day's rest in seven;
- 24 x. Whether Defendant violated wage and hour laws by failing to properly accrue
25 and pay for unpaid vacation;
- 26 xi. Whether Defendant unlawfully failed to keep and furnish Class Members
27 with accurate, itemized records of hours worked, in violation of Labor Code
28 §§ 226 and 1174;

- xii. The proper measure of damages sustained and the proper measure of restitution recoverable by Plaintiff, the Class Members, and Subclass Members;
- xiii. Whether the Class Members are entitled to injunctive relief to enjoin any further violations of wage and labor laws;
- xiv. Whether Defendant, and each of them, are/were participants in the alleged unlawful and/or tortious conduct;
- xv. Whether Defendant's conduct was willful and reckless;
- xvi. The effect upon and the extent of injuries suffered by Plaintiff and the Plaintiff Class and the appropriate amount of reimbursement, restitution, damages, or other compensation; and
- xvii. What is the extent of liability of each Defendant, including DOE defendants, to each Class and Subclass member?

39. Superiority: A class action is superior to other available methods of the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation where the damage suffered by individual plaintiffs, while not inconsequential, makes individual actions impracticable given the expenses and burdens associated with seeking individual relief. Prosecuting over 50 identical, individual lawsuits does not promote judicial efficiency or equity and consistency in judicial results. Moreover, the Class is a group of hourly, low-wage earning employees who rely on their wages and requiring that each individual take time away from work to prosecute individual actions would be inequitable and result in undue hardship for the individual Class members and their families. Public policy favors efficient resolution of their claims and uniform enforcement of California Labor laws against entities skirting their legal obligations at the expense of a vulnerable working population.

40. Manageability: Plaintiff is informed and believes that all allegations in this Complaint are capable of being determined on the same evidence and based primarily on review of corporate records and key testimony of Defendants' corporate representatives. To the extent statistical analysis and representative evidence is necessary, Plaintiff and proposed class counsel will employ

competent experts and consultants in the field to determine and review evidence for both issues of liability and damages in a scientifically reliable manner.

41. Plaintiff requests, pursuant to Rule 1857(a)(l) and Rule 3.766 of the California Rules of Court, that the absent Class and Subclass Members be notified by the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The names and address of the Class and Subclass Members are available from Defendants.

FIRST CAUSE OF ACTION

FAILURE TO PAY FOR ALL HOURS WORKED INCLUDING

OVERTIME HOURS WORKED

Cal. Labor Code §§204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 351,

510, 558, 1194, 1197, 1197.1, 1198, Wage Order

(All Plaintiffs Against All Defendants)

41. Plaintiff incorporates by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

42. Defendant's conduct described in this complaint violates the provisions of Labor Code §§204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 351, 510, 558, 1194, 1197, 1197.1, 1198 and the pertinent Wage Orders.

43. Off the Clock Hours Worked and Unpaid Overtime. The Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an including all the time the employee is suffered or permitted to work, whether or not required to do so."

44. Employees often had to wait in lines to clock in as numerous employees came on shift at the same time. Employees also were required to work off the clock. Defendants have been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period as described below.

45. Work Performed During Unpaid Meal Periods. Employees' meal breaks were often interrupted by work duties resulting in underpaid hours worked. Aggrieved employees were also required to work while clocked out for lunch or after the shift ended. Plaintiff was frequently

interrupted when on her lunch break but was not permitted to report this time worked on her time card. Defendants applied this same common policy and practice to class members.

46. Timecard Rounding. Defendants round Plaintiff and class members' timecards to the quarter hour in a manner that favors Defendants. Indeed, with Defendants' strict policies against arriving to work late, employees clock in before their shift start time to begin working and this consistently benefitted Defendants. However, wage statement consistently show hours rounded to the nearest half-hour or hour. Oftentimes the rounding would cause the Plaintiff and Class members to not be paid for all hours they worked. When it comes to time shaving and rounding, the California Supreme Court has rejected the *de minimis* argument frequently echoed by employers, confirming that employees are entitled to payment for all hours (and minutes) worked. Indeed, California law will permit a "rounding policy only 'if the rounding policy is fair and neutral on its face and 'it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.'" (*Troester v. Starbucks Corporation*, (2018) 5 Cal. 5th 829, 846, citing *See's Candy*, 210 Cal.App.4th at p. 907.)

47. The policy utilized by Defendants is neither fair nor neutral, as it consistently shaved time from Plaintiff and class members' hours worked, resulting in a failure to compensate Plaintiff and class members for all hours and overtime hours worked.

48. Failure to Pay Wages- Required Minimum Wage. Defendant failed to pay Plaintiff and class members for all hours worked as a result of Defendant's practice of rounding time-card entries. Based on Defendants' unlawful conduct described above, and because Plaintiff and the class members were paid at or near minimum wage, Defendants' failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 5-2001 4(B).

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1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY ALL WAGES OWED TWICE PER MONTH**

3 Cal. Lab. Code §§204, 210

4 **(Plaintiff Against All Defendants)**

5 49. Plaintiff incorporates by reference in this cause of action each allegation of the
6 preceding paragraphs as though fully set forth herein.

7 50. Defendants' conduct described in this complaint violates the provisions of Labor Code
8 §§ 204, 210.

9 51. Defendants were required to pay Plaintiff and class members all wages earned twice
10 during each calendar month pursuant to Labor Code §204(a).

11 52. Defendant failed to pay all wages earned to employees as a result of the unlawful
12 employment policies and practices discussed herein. As a result of these practices, Plaintiff and
13 class members were underpaid for hours worked, including overtime and penalty wages, and this
14 underpayment resulted in a failure to pay all wages owed twice per month.

15 **THIRD CAUSE OF ACTION**

16 **FAILURE TO PAY WAGES DUE UPON TERMINATION**

17 Cal. Lab. Code §§201, 202, 203, 256

18 **(Plaintiff Against All Defendants)**

19 53. Plaintiff incorporates by reference in this cause of action each allegation of the
20 preceding paragraphs as though fully set forth herein.

21 54. Defendants' conduct described in this complaint violates the provisions of Labor Code
22 §§ 201, 202, and 203.

23 55. An employee who is discharged must be paid all of his or her wages immediately at
24 the time of termination. (Labor Code Sections 201 and 227.3.) As set forth above, Defendants
25 knowingly and willfully failed to pay all compensation due and owing to Plaintiff at the time
26 employment terminated. Defendants willfully failed to pay employees who are no longer employed
27 by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201
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1 and 202. Plaintiff and similarly situated individuals are now entitled to recover up to thirty (30)
2 days pay as waiting time under the terms of §203.

3 **FOURTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE REST BREAKS**

5 Cal. Labor Code §§226, 226.7, 512, 558, 1198

6 (Plaintiffs Against All Defendants)

7 56. Plaintiff incorporates by reference in this cause of action each allegation of the
8 preceding paragraphs as though fully set forth herein.

9 57. Defendants' conduct described in this complaint violates the provisions of Labor Code
10 §§ 226, 226.7, 512, 558, 1198.

11 58. Defendants have failed to maintain a compliant rest period policy and practice that
12 provides its employees with off-duty rest periods as required by California law. Plaintiff reports
13 that she and her coworkers did not receive their second paid rest periods each day. Instead,
14 Defendants would send them home, allowing them to clock out early in exchange for taking a
15 break.

16 59. Rest periods were not provided or not scheduled before and after a meal period for
17 shifts greater than six hours, as prescribed by California law because Defendants: (1) did not
18 account for all hours worked that were unaccounted for on their timecard; (2) did not adequately
19 inform and train employees about their rights to rest breaks and premium payments for non-
20 compliant rest breaks; (3) did not adequately inform and train employees about when, where and
21 how to take timely and uninterrupted ten-minute rest breaks; (4) because Defendants did not staff
22 enough people to schedule all timely and uninterrupted ten-minute rest breaks; and/or (5) because
23 management at various levels, affecting all hourly, non-exempt employees, refused to offer,
24 permit, or enforce a lawfully compliant rest break policy.

25 60. Defendants did not authorize or permit all of its hourly employees to take at least a ten
26 minute rest period in which they were relieved of all duties, for every 4 hours of work, or major
27 fraction thereof, as required by Cal. Lab. Code §226.7, §512 and the Wage Order. When breaks
28

1 were missed Defendants failed to pay the 1-hour penalty, as required. Because Defendants violated
2 the Wage Order, Defendants are liable under Labor Code §1198.

3 **FIFTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE UNINTERRUPTED MEAL BREAKS**

5 Cal. Lab. Code §§226, 226.7, 512, 558, 1198

6 **(Plaintiff Against All Defendants)**

7 61. Plaintiff incorporates by reference in this cause of action each allegation of the
8 preceding paragraphs as though fully set forth herein.

9 62. Defendants' conduct described in this complaint violates the provisions of Labor Code
10 §§ 226, 226.7, 512, 558, 1198.

11 63. During Plaintiff's employment, Defendants failed to maintain a compliant meal period
12 policy and practice. Defendant failed to provide all of its hourly employees with their right to take
13 an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n employer may not
14 employ an employee for a work period of more than five hours per day without providing the
15 employee with a meal period of not less than 30 minutes..." Labor Code §226.7(a) provides, "[n]o
16 employer shall require an employee to work during any meal... period mandated by an applicable
17 order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage Orders provides, in
18 pertinent part, "[u]nless an employee is relieved of all duty during a 30-minute meal period, the
19 meal period shall be considered an 'on duty' meal period and counted as time worked." Labor
20 Code 1198 states that any violation of a wage order is a violation of the Labor Code.

21 64. Plaintiff and class members frequently worked straight through their shifts without a
22 compliant meal period.

23 65. Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because
24 Defendant: (1) did not account for all hours worked that were unaccounted for on their timecard;
25 (2) did not adequately inform and train employees about their rights to meal periods and premium
26 payments for non-compliant meal periods; (3) did not adequately inform and train employees about
27 when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because
28 Defendant did not staff enough people to schedule all timely and uninterrupted thirty-minute meal

1 periods; (5) because management at various levels, affecting all hourly, non-exempt employees,
2 refused to offer, permit, or enforce a lawfully compliant meal period policy, and/or (6) because
3 Defendant used invalid meal period waivers. Plaintiff and class members were not paid a premium
4 payment, paid as an hour's wage when meal periods were not given to them in compliance with
5 California law.

6 **SIXTH CAUSE OF ACTION**

7 **FAILURE TO REIMBURSE FOR REQUIRED BUSINESS EXPENSES**

8 Cal. Labor Code §§1198, 2802

9 (All Plaintiffs Against All Defendants)

10 66. Plaintiff incorporates by reference in this cause of action each allegation of the
11 preceding paragraphs as though fully set forth herein.

12 67. Defendants' conduct described in this complaint violates the provisions of Labor Code
13 §§ 1198, 2802.

14 68. Labor Code §2802 requires employers to indemnify employees for necessary
15 expenditures or losses incurred by employees in direct consequence of discharge of duties. Here,
16 Plaintiff used her personal cell phone for work purposes and was required to regularly use this
17 phone to communicate via text and phone calls with her supervisors. Defendants failed to pay any
18 amount for the required use of Plaintiff and class members' personal phones.

19 **SEVENTH CAUSE OF ACTION**

20 **DAY OF REST VIOLATIONS**

21 Cal. Labor Code §§551, 552, 558

22 **(All Plaintiff Against All Defendants)**

23 69. Plaintiff incorporates by reference in this cause of action each allegation of the
24 preceding paragraphs as though fully set forth herein.

25 70. Cal. Lab. Code §§551 and 552 require that employers provide employees with 'one
26 day's rest in seven.' The California Supreme Court recently confirmed that "[a] day of rest is
27 guaranteed for each workweek." (*Mendoza v. Nordstrom, Inc.* (2017) 2 Cal.5th 1074, 1078.)
28

1 71. Plaintiff and Class Members were frequently scheduled to work and did work seven
2 days in a workweek. For example, Plaintiff was frequently scheduled to work extended periods
3 without breaks. Plaintiff recalls working four months straight without a day off. This excessive
4 scheduling applied to all Class Members and is in clear violation of California's day of rest laws.
5 Plaintiff further observed her coworkers similarly being denied one day's rest in seven. As a result
6 of these violations, Defendants are liable for civil penalties pursuant to Cal. Labor Code §558.

7 **EIGHTH CAUSE OF ACTION**

8 **FAILURE TO PROPERLY ACCRUE AND PAY VACATION WAGES**

9 Cal. Labor Code §§ 227.3

10 **(All Plaintiffs Against All Defendants)**

11 72. Plaintiff incorporates by reference in this cause of action each allegation of the
12 preceding paragraphs as though fully set forth herein.

13 73. Defendants' conduct described in this complaint violates the provisions of Labor Code
14 §§ 227.3.

15 74. Cal. Lab. Code §227.3 provides that "whenever a contract of employment or employer
16 policy provides for paid vacations, and an employee is terminated without having taken off his
17 vested vacation time, all vested vacation shall be paid to him as wages at his final rate." In this
18 case, Defendants' policy is that Plaintiff and her coworkers accrue vacation wages every pay
19 period. However, Defendants failed to pay all vested vacation wages to Plaintiff and class members
20 at their final rates of pay upon termination of employment.

21 75. Plaintiff is informed and believes, and based thereon alleges, that this common practice
22 and policy of failing to accrue and pay vacation wages during employment is common to all class
23 members.

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FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS & VIOLATION OF RECORD KEEPING REQUIREMENTS

(All Plaintiffs Against All Defendants)

78. Defendants knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Plaintiff and the class members in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d). Wage statements issued to Plaintiff and class members do not state the full legal name and address of the employer.

80. Such failures caused injury to Plaintiff and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled, in addition to the true legal name and address of their employer. Defendant knowingly and intentionally failed to list all the items described above.

**UNFAIR BUSINESS PRACTICES IN VIOLATION OF
California Business and Professions Code section 17200, et seq.**

81. Plaintiff incorporates by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

1 82. Defendants knowingly committed, and upon information and belief continue to
2 commit, ongoing unlawful business practices within the meaning of the UCL, including, but not
3 limited to unlawful practices as described in the causes of action articulated above, and hereby
4 incorporated herein.

5 83. Plaintiff lost money and property as a result of Defendants' unlawful business practices
6 described above.

7 84. Pursuant to the UCL, Plaintiff and all Class Members are entitled to restitution of
8 money or property acquired by Defendant by means of such unlawful business practices, in
9 amounts not yet known, but to be ascertained at trial.

10 85. Pursuant to the UCL, Plaintiff and Class Members are entitled to injunctive relief
11 against Defendant's ongoing unlawful business practices. If an injunction does not issue enjoining
12 Defendant from engaging in the unlawful business practices described above, Plaintiff and the
13 general public will be irreparably injured.

14 86. Plaintiff has no plain, speedy, and adequate remedy at law. Defendant, if not enjoined
15 by this Court, will continue to engage in the unlawful business practices described above in
16 violation of the UCL, in derogation of the rights of Plaintiff and Class Members and of the general
17 public.

18 87. Plaintiff's success in this action will result in the enforcement of important rights
19 affecting the public interest by conferring a significant benefit upon the general public.

20 88. Defendants' numerous violations of local and California law, as well as the other
21 statutory and regulatory violations alleged herein, constitute unlawful business actions and
22 practices in violation of Business and Professions Code § 17200, et seq.

23 89. Pursuant to Business and Professions Code § 17200, et seq., Plaintiff and the Class
24 Members are entitled to restitution of unpaid wages and penalty pay, among other relief alleged
25 herein, that were withheld and retained by Defendants during a period that commences four years
26 prior to the filing of this action. Plaintiff is further entitled to a permanent injunction requiring
27 Defendants to comply with all provisions of California labor law, including properly paying the
28 lawful rate of pay for all hours worked, providing rest periods to all workers as defined herein,

1 timely paying due wages upon termination, maintaining accurate wages statements and payroll
2 records, in addition to an award of attorneys' fees and costs pursuant to Code of Civil Procedure
3 § 1021.5 and other applicable law, and costs.

4 **ELEVENTH CAUSE OF ACTION**
5 **STATUTORY PENALTIES PURSUANT TO PRIVATE ATTORNEYS GENERAL**
6 **ACT, LABOR CODE §2698 et seq.**
7 **(All Plaintiffs Against All Defendants)**

8 90. Plaintiff incorporates by reference in this cause of action each allegation of the
9 preceding paragraphs as though fully set forth herein.

10 91. Under the Private Attorneys General Act of 2006, Labor Code §§2698-2699.5, an
11 aggrieved employee, on behalf of herself and other current or former employees, may recover
12 penalties under any provision of the Labor Code that provides for civil penalties. These penalties
13 are in addition to any other relief available under the Labor Code. Plaintiff is an aggrieved
14 employee under PAGA.

15 92. As set forth above, Defendants have committed numerous violations for which the
16 Labor Code provides for penalties, including violations of all applicable Labor Code provisions
17 set forth in the foregoing causes of action. Labor Code §2699.5 identifies the aforementioned
18 Labor Code provisions as statutes to which §2699.3's procedural requirements must be met
19 before a penalty may be assessed under §2699(f). Plaintiff has complied with the procedural
20 requirements specified in §2699.3 by providing written notice to the Defendants and the Labor &
21 Workforce Development Agency ("LWDA"). No notice of intent to investigate the alleged
22 violations was provided within the statutory period. Consequently, Plaintiff has exhausted
23 administrative remedies, and on behalf of themselves and all other aggrieved current and former
24 employees of Defendants. Plaintiff, therefore, now pursues this cause of action as permitted by
25 §2698, et seq.

26 93. Enforcement of statutory provisions enacted to protect workers and to ensure proper
27 and prompt payment of wages due to employees is a fundamental public interest in California.
28 Consequently, Plaintiff's success in this action will result in the enforcement of important rights

1 affecting the public interest and will confer a significant benefit upon the general public. Private
2 enforcement of the rights enumerated herein is necessary, as no public agency has pursued
3 enforcement. Plaintiff is incurring a financial burden in pursuing this action and it would be
4 against the interests of justice to require payment of attorneys' fees and costs from any recover
5 that might be obtained herein, pursuant to, inter alia, Labor Code §§2698, *et seq.*, and Code of
6 Civil Procedure §1021.5

7 94. In addition, if Plaintiff succeeds in enforcing these rights affecting the public interest,
8 then attorneys' fees may be awarded to Plaintiff and against Defendants under Code of Civil
9 Procedure §1021.5 and other applicable law in part, because:

10 95. A successful outcome in this action will result in the enforcement of important rights
11 affecting the public interest by requiring Defendants to comply with the wage and hour laws and
12 California's unfair business practice law;

13 96. This action will result in a significant benefit to Plaintiff, the Class, and the general
14 public by bringing to a halt unlawful and/or unfair activity;

15 97. Unless this action is prosecuted, members of the Class and general public will not
16 recover those moneys, and many of Defendants' employees would not be aware that the acts and
17 practices they were subjected to by Defendants were wrongful;

18 98. Unless this action is prosecuted, Defendants will continue to mislead their employees
19 about the true nature of their rights and remedies under the wage and hour laws; and

20 An award of attorneys' fees and costs is necessary for the prosecution of this action and
21 will result in a benefit to Plaintiff, the Class, aggrieved employees, and to consumers in
22 general, by preventing Defendants from continuing to circumvent the wage and hour
23 statutes and frustrate the long-standing recognition by the California legislature and the
24 courts that such statutes, as pled herein, are not merely a matter of private concern between
25 employer and employee to be eviscerated by considerations of waiver, contributory
26 negligence, good or bad faith, and private agreements. Rather, the wage and hour statutes
27 have been described as a matter of public concern, were designed to provide minimum
28 substantive guarantees to individual workers and are essential to public welfare.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the Proposed Class, request judgment and the following specific relief against Defendants as follows:

- A. That the Court determines that this action may be maintained as a class action under Code of Civil Procedure § 382;
- B. That the Court determine that this action may be maintained as a PAGA representative action under Cal. Labor Code. §2698 et seq;
- C. Provision of class notice to all members of the Class;
- D. That Defendant is found to have violated the above-referenced provisions of the Labor Code, CCR and the IWC Wage Order as to Plaintiff, Class Members and relevant subclass Members;
- E. For compensatory damages, in an amount according to proof at trial, with interest thereon;
- F. For compensation for not being paid overtime;
- G. For compensation for not being paid wages owed twice per month;
- H. For compensation for not being provided wages due upon termination;
- I. For compensation for not being provided proper rest breaks;
- J. For compensation for not being provided proper meal breaks;
- K. For compensation for not being provided business expense reimbursement;
- L. For compensation for not being provided one day's rest in seven;
- M. For compensation for not being provided all unpaid vacation wages owed;
- N. For compensation for not being paid penalty wages as required herein;
- O. That Defendant's actions are found to be willful and/or in bad faith to the extent necessary under §§ 201, 202, 203, and 558 of the California Labor Code for willful failure to pay all compensation owed at the time of separation to Plaintiff, Class Members, and Aggrieved Employees no longer employed by Defendant;

- 1 P. That Plaintiff and Class Members receive penalties for Defendant's violation of
2 §226 and 1174 of the California Labor Code for willful failure to provide and
3 maintain the required accurate and itemized wage statements;
- 4 Q. That Plaintiff and Class Members receive an award in the amount of unpaid
5 wages owed, including interest thereon, and penalties as provided in the Labor
6 Code, CCR and Wage Order, including under Labor Code §§ 203, 510, and
7 558, subject to proof at trial;
- 8 R. That Plaintiff and Class Members receive damages pursuant to §§248.5 in
9 addition to reasonable attorneys' fees, and costs of suit pursuant to Labor Code
10 § 218.5 and CCP 1021.5;
- 11 S. That Defendants be ordered to pay restitution to Plaintiff and Class Members
12 for amounts acquired through Defendants' unlawful activities pursuant to
13 Business and Professions Code §§ 17200-05 and enjoined to cease and desist
14 from unlawful and unfair activities in violation of California Business and
15 Professions Code § 17200 et. seq.;
- 16 T. That Plaintiff and Class Members receive an award of reasonable attorneys'
17 fees and costs pursuant to Code of Civil Procedure §1021.5, Labor Code §226,
18 218.5, and 1194 and/or applicable laws;
- 19 U. That the Court award penalties pursuant to Labor Code §2698 et seq;

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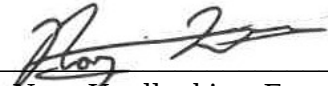
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1 V. That the Court issue declaratory relief that Defendant's challenged policies are
2 unlawful; and

3 W. That the Court order further relief, in law and equity, as it deems appropriate
4 and just.

5 DATED: September 25, 2023

KOUL LAW FIRM

6 
7 BY: Nazo Koulloukian, Esq.
8 Attorneys for Plaintiff JUANA GARCIA
9 GONZALEZ and putative class members
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PROOF OF SERVICE

Case No. 23STCV8682
Gonzalez v. Sander's Candy Factory, Inc.,

I, IVETTE HERNANDEZ declare that I am a resident of or employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the entitled case. The name and address of my residence or business is KOUL LAW FIRM, 3435 Wilshire Blvd. Ste. 1710, Los Angeles, California 90010.

On September 25, 2023, I served the foregoing document described as:

FIRST AMENDED CLASS AND PAGA REPRESENTATIVE ACTION COMPLAINT

_____ **BY U.S. MAIL:** I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

 X **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address from e-mail ivette@koullaw.com pursuant to California Rules of Court. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

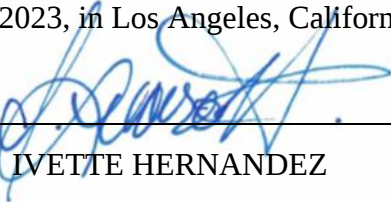
on the parties listed below by placing a true copy thereof enclosed in a sealed envelope for collection and mailing in the United States Postal Service following ordinary business practices at Los Angeles, California addressed as follows:

SEE ATTACHED SERVICE LIST

I am readily familiar with the ordinary practice of the business of collecting, processing and depositing correspondence in the United States Postal Service and that the correspondence will be deposited the same day with postage thereon fully prepaid.

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

Executed on this September 25, 2023, in Los Angeles, California.



IVETTE HERNANDEZ

PROOF OF SERVICE

Case No. 23STCV8682

Gonzalez v. Sander's Candy Factory, Inc.,

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**Attorneys for Defendant SANDER'S CANDY
FACTORY, INC.**