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12 the State and Other Current or Former Employees

13 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF EL DORADO**

15 FRANCISCO FREGOSO SEDANO, on behalf of
16 himself and all other similarly situated
17 individuals,

18 Plaintiff,

19 v.

20 KULDEEP SINGH MAND, an individual, and
21 DOES 1-50, inclusive,

22 Defendants.

ELECTRONICALLY FILED

Superior Court of California,
County of El Dorado

06/14/2023 at 12:22:23 PM

By: Wendy Warden, Deputy Clerk

Case No.: 23CV0691

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Wages, in Violation of Labor Code §§ 204, 210, 223, 1194, 1197.1, and Wage Orders;
2. Failure to Pay Overtime Wages, in violation of Labor Code § 204, 210, 223, 510, and Wage Orders;
3. Failure to Provide Meal Periods or Wages in Lieu Thereof, Violation of Wage Orders and Labor Code §§ 226.7, 512;
4. Failure to Provide Rest Breaks or Wages in Lieu Thereof, Violation of Wage Orders and Labor Code § 226.7;
5. Waiting Time Penalties, Labor Code § 203;
6. Failure to Provide Accurate Wage Statements, Violation of Wage Orders and Labor Code § 226;
7. Violation of the Unfair Competition Law, Bus. & Prof. Code §§ 17200, *et seq.*, and
8. Civil Penalties Pursuant to Private Attorneys General Act, Cal. Labor Code §§ 2699, *et seq.*

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I. INTRODUCTION

1. Plaintiff Francisco Fregoso Sedano (hereinafter “Plaintiff” or “Plaintiffs”) bring this action for wages, penalties, and declaratory and injunctive relief against Defendants Kuldeep Singh Mand (“KSM”), an individual, and Does 1 through 50 (collectively “Defendants”). The allegations in this complaint are based on Plaintiffs’s personal knowledge and on information and belief. The allegations made on information and belief are supported by evidence or are likely to be supported by evidence obtained through discovery.

2. Plaintiffs bring this action as a class action on behalf other similarly situated individuals, pursuant to California Code of Civil Procedure section 382. This action is also brought as a representative action under the Private Attorneys General Act (PAGA), California Labor Code section 2699, *et seq.* Plaintiff seeks to enforce the Labor Code and Wage Orders and collect civil penalties payable to the State of California and current or former employees pursuant to PAGA. Plaintiff has complied with the administrative requirements of Labor Code section 2699.3 by giving notice to the employer and the Labor & Workforce Development Agency (LWDA) of the alleged violations of the Labor Code and Wage Orders and facts and theories supporting them. The statutory period for the LWDA to investigate or respond has lapsed. By operation of law, Plaintiff is now deputized to act on behalf of the state to enforce the labor laws and collect civil penalties pursuant to PAGA.

3. At all times relevant to this action, Defendants have maintained policies and practices that violate the rights of Plaintiffs and class members. Defendants have failed to compensate workers for all hours worked, in violation of the state’s minimum wage and overtime laws; failed to provide proper meal periods, or otherwise pay premium wages in lieu thereof; failed to authorize and permit proper rest periods, or otherwise pay premium wages in lieu thereof; failed to pay all wages owed upon termination of the employment relationship; failed to furnish accurate itemized wage statements; and failed to comply with record keeping requirements of California law.

4. Defendants’ acts and omissions, which violate the Labor Code and applicable Wage Orders, constitute predicate unlawful and unfair business practices in violation of California’s Unfair Competition Law (“UCL”), Business & Professions Code sections 17200, *et seq.* Defendants’

1 violations of the California Labor Code are unlawful acts which have afforded Defendants an unfair
2 competitive advantage. Plaintiffs and the Class they seek to represent are therefore entitled to all
3 remedies provided under the UCL, including restitutionary, injunctive, declaratory and/or other
4 equitable relief.

5 5. Plaintiffs seek reasonable attorneys' fees and costs pursuant to, *inter alia*, Labor Code
6 sections 226(e) & (h), 1194(a), 2699, and Code of Civil Procedure section 1021.5.

7 **II. THE PARTIES**

8 6. Plaintiff Francisco Fregoso Sedano is a California resident who was employed by
9 Defendants within the class period, and the employment relationship between Plaintiffs and
10 Defendants ended within the class period. Plaintiff was employed as a non-exempt, hourly employee
11 at the Quality Inn South Lake Tahoe. He performed housekeeping, maintenance, laundry, room
12 service, and other hotel service work for Defendants. Defendants failed to pay Plaintiff for all hours
13 worked and for all overtime wages earned; failed to provide Plaintiff proper rest and meal periods or
14 pay premium wages in lieu of proper rest and meal periods; failed to issue accurate itemized wage
15 statements; and failed to pay all wages owed timely upon the termination of the employment
16 relationship, entitling Plaintiff to waiting tie penalties under Labor Code section 203. Defendants'
17 conduct violates numerous provisions of the Labor Code and applicable Wage Orders. Plaintiff is an
18 aggrieved employee within the meaning of Labor Code section 2699 who have suffered injury in fact
19 and lost money or property.

20 7. On information and belief, Kuldeep Singh Mand ("KSM") is an individual who resides
21 in California and operates hotels under various fictitious names in California, including, without
22 limitation, the following hotels in or around El Dorado County: the Econo Lodge Inn & Suites
23 Heavenly Village; the Pioneer Inn; the Quality Inn South Lake Tahoe; the Midway Inn; and the Tahoe
24 Country Inn. Kuldeep Singh Mand has employed Plaintiffs and members of the Class and is
25 individually liable as an employer and/or as a person who violated or caused the violations alleged
26 herein, pursuant to Labor Code section 558.1.

27 8. Pursuant to Labor Code section 558.1, any employer or other person (owner, officer,
28 director, or managing agent) acting on behalf of an employer who violates or causes a violation of

1 Labor Code sections 203, 226, 226.7, 1193.6, 1194, or 2802, or of any provision regulating minimum
2 wages or hours and days of work in any order of the Industrial Welfare Commission (IWC), may be
3 held liable as the employer. Defendants including Doe Defendants are liable under Labor Code section
4 558.1.

5 9. At all times relevant to this action, the offending conduct has been willful and in
6 reckless disregard of the rights of workers. Defendants knew or were on notice of the alleged
7 illegalities but deliberately chose to ignore them. The true names and capacities, whether individual,
8 corporate, associates, or otherwise of Defendants sued as Does 1-50, inclusive, are currently unknown
9 to Plaintiff, who therefore sue such Defendants by fictitious names as permitted by law. Plaintiff are
10 informed and believe that each Doe defendant is legally responsible in some manner for the unlawful
11 acts referred to herein as a joint venturer, alter ego, predecessor, successor, sister, parent, subsidiary, or
12 related or affiliated entity. Plaintiff will seek leave of court to amend this complaint to reflect the true
13 names and capacities of the Defendants designated as Does when such identities become known.

14 15 **III. JURISDICTION & VENUE**

16 10. This Court has jurisdiction over Plaintiff's claims under the California Labor Code and
17 the Unfair Competition Law, California Business & Professions Code sections 17200, *et seq.*

18 11. Venue is proper in the Superior Court of the County of El Dorado pursuant to
19 California Code of Civil Procedure sections 395 and 395.5, because Defendants or some of the
20 Defendants reside in El Dorado County, the hotels at issue are located in El Dorado County, El Dorado
21 County is a county where the obligation or liability arises, and Plaintiff and members of the Class have
22 been harmed by Defendants' conduct in El Dorado County.

23 **IV. FACTUAL ALLEGATIONS**

24 12. At all times relevant to this action, Defendants maintained unlawful employment, labor
25 and compensation policies and practices that affected Plaintiffs and, on information and belief, other
26 workers who are members of the putative Class and the PAGA Pool.

27 13. Defendants failed to pay Plaintiffs and, on information and belief, the Class for all hours
28 worked in violation of the minimum wage.

1 14. Defendants failed to pay Plaintiffs and, on information and belief, the Class for all
2 overtime wages earned.

3 15. As a result of Defendants' timekeeping and payroll practices, Plaintiffs and, on
4 information and belief, the Class were denied compensation for all hours worked and suffered
5 violations of the minimum wage and overtime laws.

6 16. Plaintiffs and, on information and belief, the Class were denied off-duty, timely and
7 complete meal periods of at least 30 minutes. Despite the failure to relieve Plaintiffs and Class
8 Members properly for meal periods, Defendants failed to pay an additional hour of wages at the
9 regular rate of pay. Plaintiffs allege that Defendants maintained a policy or practice of denying meal
10 premiums for unprovided, short, or untimely meal periods.

11 17. Plaintiffs and, on information and belief, the Class were denied rest breaks of at least
12 net 10 minutes off duty at the rate of one rest period for shifts greater than three and one-half (3½)
13 hours, two rest periods for shifts greater than six hours and up to 10 hours, three rest breaks for shifts
14 greater than 10 hours and up to 14 hours, and so on. Plaintiffs allege that Defendants maintained a
15 policy or practice of denying rest premiums for denied and non-compliant rest periods.

16 18. Plaintiffs and, on information and belief, the Class were not provided accurate, itemized
17 wage statements within the meaning of the Wage Orders and Labor Code section 226, in that they
18 failed to state the correct number of total hours worked, gross and net wages earned, and all applicable
19 hourly rates of pay and corresponding hours at each rate.

20 19. Plaintiffs are informed and believe that members of the Class whose employment with
21 Defendants has ended were not paid all wages owed timely upon separation from employment,
22 including minimum, overtime, and premium rest and meal period wages owed to them, in violation of
23 Labor Code sections 201 and 202. Plaintiffs and Class Members not paid timely upon separation from
24 employment, including through layoff, termination of seasonal work, resignation, and discharge, are
25 entitled to waiting time penalties pursuant to Labor Code section 203.

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V. CLASS ALLEGATIONS

20. Plaintiffs brings this action as a class action under Code of Civil Procedure section 382 on behalf of the following class:

All non-exempt, hourly employees who work or have worked for Defendants within the State of California during the period starting within four years from the filing of the original complaint, through final disposition of this action.

21. **Reservations of Rights:** Pursuant to California Rules of Court, rule 3.765(b), Plaintiffs reserve the right to amend or modify the class definitions with greater specificity, by further division into subclasses, and/or by limitation to particular issues.

22. **Numerosity:** The Proposed Class is so numerous that joinder of all members is impracticable. Plaintiffs are informed and believe, and on that basis alleges, that during the relevant time period, Defendants have employed dozens of workers in California who are potential Class Members. These workers have been employed at various hotels owned and/or operated by Defendants, and potential Class Members are believed to be geographically dispersed throughout the state. The Class Members are so numerous that joinder of all of them is impracticable. The individuals and the identity of such membership is readily ascertainable by inspection of Defendants' records.

23. **Typicality:** Plaintiffs' claims are typical of all other Class Members as demonstrated herein. Plaintiffs will fairly and adequately protect the interests of the other Class Members with whom Plaintiffs have a well-defined community of interest.

24. **Adequacy:** Plaintiffs will fairly and adequately protect the interests of each class member, with whom they have a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiffs have no interest that is antagonistic to the other Class Members. Plaintiffs' attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiffs have incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member. Plaintiffs have retained competent counsel experienced in wage and hour class action litigation.

1 25. **Predominant Common Questions:** Common questions of law and fact exist as to all
2 members of the Proposed Class and predominate over any questions solely affecting individual
3 members of the Proposed Class.

4 26. Common questions of fact and law predominate, including the following:

5 a. Whether Defendants failed to compensate Plaintiffs and the Class for all hours worked,
6 in violation of the Labor Code and the Wage Orders;

7 b. Whether Defendants violated the minimum wage by failing to compensate Plaintiffs
8 and Class Members for all hours worked, in violation of the Wage Orders and Labor Code
9 section 1194;

10 c. Whether Defendants violated the overtime laws by failing to compensate Plaintiffs and
11 the Class hours worked in excess of eight (8) hours in a workday and/or over forty (40) hours in
12 a workweek, in violation of the Labor Code and the Wage Orders;

13 d. Whether Defendants failed to relieve Plaintiffs and the Class of all duty for 30-minute
14 meal periods within the first five hours of work, and second meal periods for shifts in excess of
15 10 hours, in violation of the Labor Code and Wage Orders;

16 e. Whether Defendants failed to authorize and permit Plaintiffs and the Class to take net-
17 10 minute rest breaks for each work period of four hours, or major portion thereof, in violation
18 of the Labor Code and Wage Orders;

19 f. Whether Defendants failed to pay Plaintiffs and the Class premium wages for each non-
20 compliant meal period and rest break, in violation of the Labor Code and Wage Orders;

21 g. Whether Defendants knowingly and intentionally failed to provide Plaintiffs and the
22 Class wage statements that accurately reflect all gross and net wages earned, total hours
23 worked, applicable hourly rates and corresponding hours at each rate, in violation of the Labor
24 Code and Wage Orders;

25 h. Whether Defendants are liable for failing to pay all wages owed periodically under
26 Labor Code sections 204 and 204b;

27 i. Whether Defendants violated Labor Code section 223 by failing to pay the agreed upon
28 rates and all overtime wages for all hours worked;

1 j. Whether Plaintiffs and members of the class whose employment terminated are entitled
2 to waiting time penalties under Labor Code section 203 for Defendants' failure to pay all wages
3 owed timely upon the separation from employment;

4 k. Whether Defendants engaged in unlawful and/or unfair business practices in violation
5 of Business & Professions Code sections 17200 *et seq.* ("UCL"); and

6 l. Whether Defendants are liable to Plaintiffs and the Class pursuant to the UCL for
7 restitution of unpaid or underpaid statutory and/or agreed upon regular, minimum, overtime,
8 double-time, and premium rest and meal period wages.

9 27. **Superiority:** A class action is superior to other available methods for the fair and
10 efficient adjudication of the controversy, particularly in the context of wage and hour litigation where
11 an individual Plaintiff lacks the financial resources to vigorously prosecute separate lawsuits against
12 corporate defendants. A class action is superior to other available means for fair and efficient
13 adjudication of class members' claims and offers significant benefits to the parties and the court. A
14 class action will allow a number of similarly situated persons to simultaneously and efficiently
15 prosecute their common claims in a single forum without the unnecessary duplication of effort and
16 expense that numerous individual actions would entail. The individual monetary amounts due to many
17 class members may not be large enough on their own for individual class members to obtain legal
18 representation and relief. Moreover, a class action will serve important public interests by enabling the
19 non-waivable statutory rights of class members to be effectively asserted, and fundamental public
20 policies to be vindicated, in one proceeding. A class action will also provide a means for vindicating
21 the rights of workers who are less likely to come forward to assert their rights based on fears of
22 reprisal. Finally, a class action will prevent the potential for inconsistent or contradictory judgments
23 inherent in individual litigation and address the problems inherent in random and fragmentary
24 enforcement.

25 28. Plaintiffs intend to send notice to all members of the Class to the extent required by
26 Labor Code section 382. The names and addresses of the Class are available from Defendants.

1 **VI. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **Failure to Pay Minimum Wage**

4 (Violation of the Wage Orders and Labor Code sections 204, 223, 1194, 1194.2 and 1197)

5 Plaintiffs, on Behalf of Themselves and the Class, Against All Defendants

6 29. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

7 30. At all relevant times, Defendants have been subject to Labor Code and Wage Order provisions requiring compensation at no less than the legal minimum wage.

8 31. At all times relevant to this action, Plaintiffs and the Class were entitled to
9 compensation at rates that were not less than the legal minimum wage, pursuant to the Wage Orders,
10 Labor Code sections 1182.12, 1194 and 1197. Defendants violated the Wage Orders and Labor Code
11 sections 200, *et seq.*, 1194 and 1197 by failing to compensate Plaintiffs and, on information and belief,
12 members of the Class for all “hours worked,” which includes the time during which an employee is
13 subject to employer control, and all the time the employee is suffered or permitted to work, whether or
14 not required to do so. Defendants failed to compensate Plaintiffs and the Class for all hours worked, in
15 violation of the minimum wage and other provisions set forth herein.

16 32. Defendants violated Labor Code section 204 by failing to pay all wages owed biweekly,
17 or semi-monthly, entitling Plaintiffs and the Class to penalties and damages pursuant to Labor Code
18 section 210.

19 33. Defendants’ conduct similarly violates Labor Code section 223, by failing to pay not
20 less than the legal and agreed upon rates for all hours worked.

21 34. Due to Defendants’ violation of the minimum wage, Plaintiffs and the Class are entitled
22 to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon,
23 pursuant to Labor Code section 1194.2.

24 35. Violation of the Wage Orders and Labor Code sections described herein serve as
25 predicates for civil penalties under PAGA.

26 36. Wherefore, Plaintiffs seek unpaid wages, interest, costs and attorneys’ fees in amounts
27 to be proven at trial on behalf of themselves and the Class.
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SECOND CAUSE OF ACTION

Failure to Pay Overtime Wages

(Violation of Wage Orders and Labor Code sections 204, 223, 510, 1194, 1198)

Plaintiffs, on Behalf of Themselves and the Class, Against All Defendants

37. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

38. At all relevant times, Defendants have been subject to Labor Code and Wage Order provisions requiring overtime compensation, including the applicable Wage Orders and Labor Code sections 510, 1194, 1198. California law requires overtime compensation at the rate of one and one-half (1.5) times the regular rate of pay for hours in excess of eight (8) in a workday and 40 in a workweek. Similarly, these overtime provisions require overtime pay at the rate of twice the regular rate of pay for hours in excess of 12 in a workday and eight (8) on any seventh day of a workweek (i.e., double-time pay).

39. At all times relevant to this action, Plaintiffs and, on information and belief, the Class have worked in excess of eight (8) hours in a workday and 40 hours in a workweek without compensation for all hours worked at the required overtime rates.

40. Defendants violated these provisions by failing to compensate for all hours worked in excess of the overtime thresholds at the required premium wage rates. As a result, Defendants' conduct violates provisions of the Wage Orders and Labor Code.

41. Violation of the Wage Orders and Labor Code sections described herein serve as predicates for civil penalties under PAGA.

42. Wherefore, Plaintiffs seek unpaid wages, interest, costs and attorneys' fees pursuant to Labor Code section 1194 in amounts to be proven at trial on behalf of themselves and the Class.

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THIRD CAUSE OF ACTION

Failure to Provide Meal Periods, or Premium Wages in Lieu Thereof

(Violation of Wage Orders, and Labor Code sections 226.7 and 512)

Plaintiffs, on Behalf of Themselves and the Class, Against All Defendants

43. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

44. California Labor Code section 512 and the Wage Orders prohibit employers from employing workers for a work period of more than five hours per day without providing the employee with a meal period of at least thirty (30) minutes, or for a work period of more than ten (10) hours

1 without a second meal period of at least thirty (30) minutes. California law requires the meal periods
2 to be off duty, without interruption, and the first meal period of the day must occur within five (5)
3 hours from the start of the shift.

4 45. California Labor Code section 226.7 prohibits any employer from requiring any
5 employee to work during any meal period mandated by the applicable Wage Orders, and states that an
6 employer that fails to provide an employee with a required meal period in compliance with Section 512
7 and the Wage Orders shall pay that employee one additional hour of pay at the employee's regular rate
8 of compensation (*i.e.*, a meal period premium) for each work day that the employer does not provide a
9 compliant meal period.

10 46. The applicable Wage Orders echo the provisions of Sections 226.7 and 512 of the Labor
11 Code governing meal periods. For example, Wage Order 1(11), provides as follows:

12 (A) No employer shall employ any person for a work period of more than five
13 (5) hours without a meal period of not less than 30 minutes, except that when a
14 work period of not more than six (6) hours will complete the day's work the
15 meal period may be waived by mutual consent of the employer and employee.
16 In the case of employees covered by a valid collective bargaining agreement,
the parties to the collective bargaining agreement may agree to a meal period
that commences after no more than six (6) hours of work.

17 (B) An employer may not employ an employee for a work period of more than
18 ten (10) hours per day without providing the employee with a second meal
19 period of not less than 30 minutes, except that if the total hours worked is no
more than 12 hours, the second meal period may be waived by mutual consent
of the employer and the employee only if the first meal period was not waived.

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

25 (D) If an employer fails to provide an employee a meal period in accordance
26 with the applicable provisions of this order, the employer shall pay the
27 employee one (1) hour of pay at the employee's regular rate of compensation
for each workday that the meal period is not provided.

28 (E) In all places of employment where employees are required to eat on the

premises, a suitable place for that purpose shall be designated.

47. At all times relevant to this action, Defendants violated the provisions of the Labor Code and Wage Orders regulating meal periods by failing to comply with the requirement of providing to Plaintiff and, on information and belief, the Class with a timely thirty (30) minute meal period within the first five (5) hours of work that was completely off duty, or a second thirty (30) minute meal period when workers worked more than ten (10) hours per day.

48. Plaintiffs and, on information and belief, the Class did not waive meal periods, and Plaintiffs are informed and believe and thereon allege that valid meal period waivers were not in place or were not voluntarily consented to.

49. Defendants are therefore liable for meal period premium wages, pursuant to Labor Code section 226.7.

50. Violation of the Wage Orders and Labor Code sections described herein serve as predicates for civil penalties under PAGA.

51. Wherefore, Plaintiffs seek unpaid wages, interest, and costs in amounts to be proven at trial on behalf of themselves and the Class.

FOURTH CAUSE OF ACTION

Failure to Provide Rest Breaks, or Premium Wages in Lieu Thereof

(Violation of Wage Orders and Labor Code sections 226.7)

Plaintiffs, on Behalf of Themselves and the Class, Against All Defendants

52. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

53. California Labor Code section 226.7 prohibits any employer from requiring an employee to work during any rest period mandated by the applicable Wage Orders. For example, Wage Order 1(12) provides as follows:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with

1 the applicable provisions of this order, the employer shall pay the employee one
2 (1) hour of pay at the employee's regular rate of compensation for each workday
3 that the rest period is not provided.

4 54. At all times relevant to this action, Defendants failed to authorize and permit rest
5 periods to Plaintiffs and, on information and belief, the Class with of at least 10 minutes of time
6 completely off duty at a rate of one rest period for shifts greater than three and one-half (3½) hours up
7 to six (6) hours, two rest breaks for shifts greater than six (6) hours up to ten (10) hours, and three rest
8 breaks for shifts greater than ten (10) hours up to fourteen (14) hours, and so on.

9 55. Defendants are therefore liable for rest break premium wages, pursuant to Labor Code
10 section 226.7.

11 56. Violation of the Wage Orders and Labor Code sections described herein serve as
12 predicates for civil penalties under PAGA.

13 57. Wherefore, Plaintiffs seek unpaid wages, interest, and costs in amounts to be proven at
14 trial on behalf of themselves and the Class.

15 **FIFTH CAUSE OF ACTION**

16 **Willful Failure to Pay All Wages Owed Timely Upon Discharge or Resignation**

17 (Violation of Labor Code sections 201 and 202)

18 Plaintiffs, on Behalf of Themselves and the Class, Against All Defendants

19 58. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

20 59. California Labor Code sections 201 and 202 require immediate payment of all unpaid
21 wages at the time an employee is discharged or resigns from employment.

22 60. Defendants have willfully failed to pay all wages owed to Plaintiffs and, on information
23 and belief, members of the Class timely upon the termination of their employment relationship with
24 Defendants, including wages for all hours worked, minimum and overtime wages, and meal and rest
25 period premium wages. Due to Defendants' willful failure to pay all wages timely, wages continue as
26 a penalty from the due date for up to 30 days at each employee's daily rate, pursuant to Labor Code
27 section 203.

28 61. Violation of the Wage Orders and Labor Code sections described herein serve as
predicates for civil penalties under PAGA.

62. Wherefore, Plaintiffs seeks waiting time penalties and costs in amounts to be proven at

1 trial on behalf of themselves and the Class.

2 **SIXTH CAUSE OF ACTION**

3 **Failure to Provide Accurate Itemized Wage Statements**

4 (Violation of Labor Code section 226 and the Wage Orders)

5 Plaintiffs, on Behalf of Themselves and the Class, Against All Defendants

6 63. Plaintiffs re-allege and incorporates the above allegations above as if fully stated
7 herein.

8 64. California Labor Code section 226(a) provides, in relevant part, that every employer
9 must furnish each employee with an itemized wage statement that accurately shows the following:

10 (1) gross wages earned, (2) total hours worked by the employee, except as
11 provided in subdivision (j), (3) the number of piece-rate units earned and any
12 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
13 deductions, provided that all deductions made on written orders of the employee
14 may be aggregated and shown as one item, (5) net wages earned, (6) the
15 inclusive dates of the period for which the employee is paid, (7) the name of the
16 employee and only the last four digits of his or her social security number or an
17 employee identification number other than a social security number, (8) the
18 name and address of the legal entity that is the employer and, if the employer is
19 a farm labor contractor, as defined in subdivision (b) of Section 1682, the name
20 and address of the legal entity that secured the services of the employer, and (9)
21 all applicable hourly rates in effect during the pay period and the corresponding
22 number of hours worked at each hourly rate by the employee....

23 65. At all times relevant to this action, Defendants have failed to provide accurate itemized
24 wage statements, in violation of Labor Code section 226. Plaintiffs and, on information and belief,
25 other members of the class were given wage statements that failed to state accurately the gross and net
26 wages earned, total hours worked, all applicable rates of pay and corresponding number of hours at
27 each rate of pay.

28 66. Defendants' failure to comply with the requirements of Labor Code section 226 and
provide accurate wage statements was knowing and intentional within the meaning of Labor Code
section 226. Plaintiffs and members of the putative Class are deemed to have suffered injury pursuant
to Labor Code section 226(e).

67. Pursuant to Labor Code section 226(e), Plaintiffs and Class Members are entitled to
recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not to

1 exceed an aggregate penalty of four thousand dollars (\$4,000).

2 68. Violation of the Wage Orders and Labor Code sections described herein serve as
3 predicates for civil penalties under PAGA.

4 69. Wherefore, Plaintiffs seek damages, penalties, injunctive relief, attorney's fees and cost
5 of suit in amounts to be proven at trial on behalf of themselves and the Class.

6 **SEVENTH CAUSE OF ACTION**
7 **California Unfair Competition Law**

8 (Violation of Business & Professions Code sections 17200, *et seq.*)
9 Plaintiffs, on Behalf of Themselves and the Class, Against All Defendants

10 70. Plaintiffs re-allege and incorporate the above allegations above as if fully stated herein.

11 71. Business and Professions Code section 17200 defines "unfair competition" to include
12 any unlawful business practice.

13 72. California Business and Professions Code § 17203 allows a person who has lost money
14 or property as a result of unfair competition to bring an action to recover money or property that may
15 have been acquired from similarly situated persons by means of unfair competition.

16 73. Defendants unlawful and unfair business practices resulted in the following violations
17 of California Labor Code and Wage Order provisions:

- 18 a. Failure to compensate for all hours worked;
- 19 b. Failure to pay all wages owed;
- 20 c. Violation of the minimum wage;
- 21 d. Failure to pay overtime;
- 22 e. Failure to pay rest period premiums;
- 23 f. Failure to pay meal period premiums;

24 74. On information and belief, at all times relevant to this action, Plaintiffs and the Class
25 have lost, and Defendants have either acquired, or may have acquired, money or property in the form
26 of earned unpaid wages for all hours worked, unpaid overtime and double-time wages, unpaid meal
27 period and rest break premium wages, and reimbursement of expenses from Plaintiffs and the Class by
28 means of unfair competition as a result of Defendants' unlawful failure to pay those wages, and related

1 failures to maintain accurate records, in violation of the requirements of the Labor Code and the Wage
2 Orders.

3 75. Pursuant to Business and Professions Code section 17203, Plaintiffs seek restitution of
4 all these moneys and property, that Defendants either acquired, and/or may have acquired, from
5 Plaintiffs and the Class by means of unfair competition in amounts subject to proof at trial. Plaintiffs
6 also seeks to prevent Defendants from continuing to engage in the unlawful and/or unfair business
7 practices alleged herein.

8 76. Defendants, by the acts or omissions alleged of herein, have injured and are injuring the
9 interests of the general public in that other employers who exercise honest compliance with applicable
10 wage and hour laws, including the laws violated by Defendants, are at an unfair competitive
11 disadvantage as a result of Defendants' conduct.

12 77. Wherefore, Plaintiffs seek restitution of wages and the economic value of benefits
13 unlawfully denied to Plaintiffs and the Class by Defendants in amounts subject to proof.

14
15 **EIGHTH CAUSE OF ACTION**
16 **PRIVATE ATTORNEYS GENERAL ACT**
17 (Cal. Labor Code § 2698 *et seq.*)

18 Plaintiff Individually and on Behalf of the State of California and Other Current or Former Employees
19 Against all Defendants

20 78. Plaintiff realleges and incorporates herein by reference each and every allegation and
21 statement contained in the prior paragraphs, as though fully set forth herein.

22 79. PAGA provides that any provision of law under the Labor Code and applicable IWC
23 Wage Order that provides for a civil penalty to be assessed and collected by the Labor and Workforce
24 Development Agency for violations of the California Labor Code and applicable IWC Wage Order
25 may, as an alternative, be recovered by aggrieved employees in a civil action brought on behalf of
26 themselves and other current or former employees pursuant to procedures outlined in California Labor
27 Code section 2699.3. Plaintiff asserts this PAGA claim on behalf of a PAGA Pool comprised of non-
28 exempt workers employed by Defendants within the PAGA period in California, as well as the State of
California.

80. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any person

1 who was employed by the alleged violator and against whom one or more of the alleged violations was
2 committed.” Plaintiffs and other current and former employees of Defendants are “aggrieved
3 employees” as defined by Labor Code section 2699(c) in that Defendants’ committed one or more of
4 the alleged violations of employment law against them.

5 81. PAGA is an enforcement action that empowers aggrieved employees to seek penalties
6 on behalf of themselves, current and former employees, and the State, without the need to certify a
7 class.

8 82. Plaintiff is an aggrieved employee as defined in Labor Code § 2699(a) who has
9 complied with the administrative requirements of Labor Code section 2699.3 by giving written notice
10 by certified mail to the employer and to the LWDA of the Labor Code and IWC Wage Order
11 provisions alleged to have been violated, and the facts and theories supporting the alleged violations.
12 The LWDA declined to investigate these violations.

13 83. Pursuant to Labor Code section 2699(a), Plaintiff seeks civil penalties for all violations
14 alleged as provided under applicable Labor Code sections. To the extent that any violation alleged
15 herein does not carry a penalty, Plaintiffs seek civil penalties for violations described herein under
16 Labor Code section 2699(f).

17 84. Defendants are liable to Plaintiff, the state, and Aggrieved Employees for civil penalties
18 arising from the violations alleged in this Complaint pursuant to Labor Code sections 558 and
19 1197.1. Liability under these provisions attaches to the employer or any person acting on behalf of the
20 employer who violates or causes a violation of the provisions described herein. Defendants are sued
21 under these provisions as employers and, alternatively, persons who violated or caused the violations
22 of the pertinent Labor Code and Wage Order provisions.

23 85. Defendants violated the Wage Orders and Labor Code sections 204, 223, 1194, 1197,
24 and 1198 by failing to compensate Plaintiffs and members of the PAGA Pool for all hours worked and
25 for violating the minimum wage, including local minimum wage ordinances, as described in this
26 complaint. Consequently, Defendants are liable to Plaintiffs, the PAGA Pool, and the state for civil
27 penalties pursuant to Labor Code sections 210, 225.5, 1197.1 and 2699(f).

28 86. Defendants violated the Wage Orders and Labor Code sections 510 and 1198 by failing

1 to pay overtime to Plaintiff and members of the PAGA Pool. Consequently, Defendants are liable to
2 Plaintiff, the PAGA Pool, and the state for civil penalties pursuant to Labor Code sections 558 and
3 2699(f).

4 87. Defendants violated the Wage Orders and Labor Code sections 226.7 and 512 by
5 failing to comply with the state's rest and meal period requirements and failing to pay premiums for
6 non-compliance. Consequently, Defendants are liable to Plaintiffs, the PAGA Pool, and the state for
7 civil penalties pursuant to Labor Code sections 558 and 2699(f).

8 88. Defendants violated the Wage Orders and Labor Code section 226 by failing to provide
9 to Plaintiffs and members of the PAGA Pool with accurate wage statements. Consequently,
10 Defendants are liable to Plaintiffs, the PAGA Pool, and the state for civil penalties pursuant to Labor
11 Code section 226.3.

12 89. Defendants violated Labor Code sections 201, 202, and 203 by failing to pay Plaintiff
13 and members of the PAGA Pool all wages owed timely upon separation from employment.
14 Consequently, Defendants are liable to Plaintiff, the PAGA Pool, and the state for civil penalties
15 pursuant to Labor Code sections 256, 1197.1 and/or 2699(f).

16 90. Defendants violated the Wage Orders and Labor Code sections 1174 and 1198 by
17 failing to maintain accurate payroll records and failing to maintain accurate records of when
18 employees begin and end each work period and meal period. Consequently, Defendants are liable to
19 Plaintiffs, the PAGA Pool, and the state for civil penalties pursuant to Labor Code sections 1174.5 and
20 2699(f).

21 91. Plaintiff, on behalf of himself, Aggrieved Employees, and the state seek and award of
22 civil penalties, attorney's fees and cost of suit pursuant to PAGA.

23 24 **VII. PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs pray for relief as follows:

26 1. For an order awarding compensatory damages for all wages earned but not paid, and all
27 overtime wages earned and not paid, in the amount to be proven at trial, pursuant to Labor Code
28 sections 200, *et seq.*, 510, 1194, 1197, 1198;

2. For an order awarding pre-judgment interest of 10 percent on the unpaid wages and overtime compensation owed under Labor Code section 218.6;
3. For an order awarding unpaid overtime, minimum wage and a minimum wage liquidated damages under Labor Code sections 1194 and 1194.2;
4. For an order awarding attorney's fees pursuant to Labor Code section 1194;
5. For an order awarding meal period premium wages pursuant to Labor Code section 226.7;
6. For an order awarding rest break premium wages pursuant to Labor Code section 226.7;
7. For an order awarding "waiting time" penalties under California Labor Code section 203;
8. For an order awarding penalties, injunctive relief, attorney's fees and costs pursuant to Labor Code section 226;
9. For an order awarding earned but unpaid wages as equitable relief to Plaintiffs and the Class under the UCL for a period that extends the statute of limitations or recovery period for wages to four years;
10. For a declaratory judgment that the actions, conduct, and practices of Defendants complained of herein constitute unfair business practices under the UCL;
11. For an injunction and order permanently restraining and enjoining Defendants from engaging in and continuing the unlawful policies and practices complained of herein;
12. For an order certifying a class pursuant to Code of Civil Procedure section 382;
13. For an order appointing Plaintiffs as class representatives;
14. For an order appointing counsel for Plaintiffs as class counsel;
15. For civil penalties pursuant to PAGA under Labor Code section 2699(a), 2699(f), 201, 202, 203, 204, 210, 223, 225.5, 256, 226, 226.3, 226.7, 246, 246.5, 247, 247.5, 248.5, 510, 512, 558, 1194, 1197, 1198, 1174, 1174.5, 1197.1;
16. For an order awarding reasonable attorney's fees and costs, including expert witness fees, pursuant to Code of Civil Procedure section 1021.5 and other provisions of the Labor Code;
17. For an order awarding interest to the extent permitted by law;

1 18. For an order awarding costs and expenses of this action; and

2 19. For such other and further relief as the Court deems just and proper.

3 **VIII. DEMAND FOR JURY TRIAL**

4 Plaintiffs demand a trial by jury on claims so triable.

5
6 Dated: June 14, 2023

ADVOCATES FOR WORKER RIGHTS LLP

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9 _____
10 Marco A. Palau
11 Joseph D. Sutton
12 Eric S. Trabucco
13 Attorneys for Plaintiffs
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