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

AUG 29 2023

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

REINA DELGADO, an individual, on behalf of
herself, the State of California, as a private
attorney general, and all others similarly situated,

Plaintiff,

v.

QUETICO LLC, a California limited liability
company; and DOES 1 TO 50,

Defendants.

Case Number: CIVSB2314130

**First Amended Class and Representative
Action Complaint For:**

1. Failure to Pay All Minimum Wages,
2. Failure to Pay All Overtime Wages,
3. Failure to Provide Rest Periods and Pay Missed Rest Period Premiums,
4. Failure to Provide Meal Periods and Pay Missed Meal Period Premiums,
5. Failure to Maintain Accurate Employment Records,
6. Failure to Pay Wages Timely during Employment,
7. Failure to Pay All Wages Earned and Unpaid at Separation,
8. Failure to Furnish Accurate Itemized Wage Statements,
9. Violations of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210), and
10. Civil Penalties Under The Private Attorney General Act (Labor Code § 2699 Et Seq.).

Demand for Jury Trial

1 Plaintiff Reina Delgado (“Plaintiff”), on behalf of herself, the State of California, as a private
2 attorney general and all other similarly situated employees within the State of California, complains
3 and alleges of defendants Quetico LLC and Does 1 to 50 (collectively, “Defendants”), and each of
4 them, as follows:

5 **I. INTRODUCTION**

6 1. This is a class action complaint brought pursuant to California Code of Civil Procedure
7 section 382.

8 2. The “Class Period” as used herein, is defined as the period June 23, 2019 and continuing
9 into the present and ongoing. Defendants’ violations of California’s laws as described more fully below
10 have been ongoing throughout the Class Period and are still ongoing.

11 3. Plaintiff brings this class action on behalf of herself and the following class: *All*
12 *individuals who are or were employed by Defendants as non-exempt employees in California during*
13 *the Class Period* (the “Class Members”). (Code Civ. Proc., § 382.)

14 4. Plaintiff brings this action on behalf of herself and the Class Members, as a class action,
15 against Defendants for:

16 A. Failure to pay all minimum wages,

17 B. Failure to pay all overtime wages,

18 C. Failure to provide rest periods and pay missed rest period premiums,

19 D. Failure to provide meal periods and pay missed meal period premiums,

20 E. Failure to maintain accurate employment records,

21 F. Failure to pay wages timely during employment,

22 G. Failure to pay all wages earned and unpaid at separation,

23 H. Failure to furnish accurate itemized wage statements, and

24 I. Violations of California’s Unfair Competition Law (“UCL”) (Bus. & Prof.
25 Code, §§ 17200–17210).

26 5. This action is also a representative action brought pursuant to the California Labor Code
27 Private Attorneys General Act of 2004 (“PAGA”), codified at California Labor Code sections 2698
28 through 2699.6.

1 6. The “PAGA Period” as used herein, is defined as the period from June 23, 2022, and
2 continuing into the present and ongoing.

3 7. This PAGA action is brought on behalf of Plaintiff, the State of California as private
4 attorney general, and on behalf of the following aggrieved employees: *All who are or were employed*
5 *by Defendants as salespersons, and/or design consultants, or similar positions, in California during*
6 *the PAGA Period* (the “Aggrieved Employees”).

7 8. Plaintiff is informed and believes and thereon alleges that the California Industrial
8 Welfare Commission (“IWC”) Wage Order applicable to the facts of this case is IWC Wage Order 9-
9 2001 (the “Applicable Wage Order”) and possibly others that may be applicable. (Cal. Code of Regs.,
10 tit. 8, § 11090.) Plaintiff reserves the right to amend or modify the definition of “Applicable Wage
11 Order” with greater specificity or add additional IWC Wage Orders if additional applicable wage orders
12 are discovered in litigation.

13 **II. JURISDICTION & VENUE**

14 9. This Court has subject matter jurisdiction over all causes of action asserted herein
15 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure section
16 410.10 because this is a civil action in which the matter in controversy, exclusive of interest, exceeds
17 \$25,000, and because each cause of action asserted arises under the laws of the State of California or
18 is subject to adjudication in the courts of the State of California.

19 10. This Court has personal jurisdiction over Defendants because Defendants have caused
20 injuries in the County of San Bernardino and the State of California through their acts, and by their
21 violation of the California Labor Code and California state common law. Defendants transact millions
22 of dollars of business within the State of California. Defendants own, maintain offices, transact
23 business, have an agent or agents within the County of San Bernardino, and/or otherwise are found
24 within the County of San Bernardino, and Defendants are within the jurisdiction of this Court for
25 purposes of service of process.

26 11. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of the
27 Code of Civil Procedure. Defendants operate within California and do business within San Bernardino
28 County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all of

1 Defendants' employees identified above within San Bernardino County and surrounding counties
2 where Defendants may remotely operate.

3 12. This matter is not appropriate for removal under the Class Action Fairness Act (28
4 U.S.C. § 1332) as the amount in controversy for Plaintiff's and the Class Members' claims, in
5 aggregate, is less than \$5 million. Additionally, all the allegations herein occurred in the State of
6 California. As such, even if the amount in controversy did exceed \$5 million this matter would still not
7 be appropriate for removal under the "local controversy" exception to the Class Action Fairness Act.
8 (28 U.S.C. § 1332, subd. (d)(4)(A).)

9 **III. THE PARTIES**

10 **A. PLAINTIFF**

11 13. At all relevant times, Plaintiff, who is over the age of 18, was and currently is a citizen
12 of California residing in the State of California. Defendants employed Plaintiff as a non-exempt hourly
13 employee in the County of San Bernardino.

14 14. Plaintiff brings this action on behalf of herself and the following class pursuant to
15 section 382 of the Code of Civil Procedure as follows: *All individuals who are or were employed by*
16 *Defendants as non-exempt employees in California during the Class Period* (the "Class Members").

17 15. The Class Members, at all times pertinent hereto, are or were employees of Defendants
18 during the relevant statutory period.

19 **B. DEFENDANTS**

20 16. Plaintiff is informed and believes and thereon alleges that Defendants were authorized
21 to and doing business in San Bernardino County and is and/or was the legal employer of Plaintiff, the
22 Class Members, and the Aggrieved Employees during the applicable statutory periods. Plaintiff, the
23 Class Members, and the Aggrieved Employees were, and are, subject to Defendants' policies and/or
24 practices complained of herein and have been deprived of the rights guaranteed to them by: California
25 Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 1174, 1185, 1194,
26 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, and others that may be applicable; California Business and
27 Professions Code sections 17200 through 17210 ("UCL"); and the Applicable Wage Order (Cal. Code
28 of Regs., tit. 8, § 11090).

1 17. Plaintiff is informed and believes, and based thereon alleges, that during the Class
2 Period, Defendants did (and continue to do) business in the State of California, County of San
3 Bernardino. Defendant's operations are headquartered in San Bernardino County.

4 18. Plaintiff does not know the true names or capacities, whether individual, partner, or
5 corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said defendants
6 are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this
7 complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and
8 thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were
9 responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff,
10 the Class Members, and the Aggrieved Employees to be subject to the unlawful employment practices,
11 wrongs, injuries, and damages complained of herein.

12 19. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
13 herein, Defendants were and/or are the employers of Plaintiff, the Class Members, and the Aggrieved
14 Employees. At all times herein mentioned, each of said Defendants participated in the doing of the acts
15 hereinafter alleged to have been done by the named Defendants. Furthermore, the Defendants, and each
16 of them, were the agents, servants, and employees of each and every one of the other Defendants, as
17 well as the agents of all Defendants, and at all times herein mentioned were acting within the course
18 and scope of said agency and employment. Defendants, and each of them, approved of, condoned, or
19 otherwise ratified every one of the acts or omissions complained of herein.

20 20. At all relevant times, Defendants, and each of them, were members of and engaged in a
21 joint venture, partnership, and common enterprise, and acting within the course and scope of and in
22 pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff is informed, and
23 believes, and thereon alleges, that all Defendants were joint employers for all purposes of Plaintiff, the
24 Class Members, and the Aggrieved Employees.

25 **IV. COMMON FACTS & ALLEGATIONS**

26 21. Plaintiff, the Class Members, and the Aggrieved Employees (collectively, the "Class
27 Members") are, and were at all relevant times, employed by the Defendants within the State of
28 California.

1 22. Plaintiff, the Class Members, and the Aggrieved Employees are, and were, at all relevant
2 times, non-exempt employees for the purposes of minimum wages, overtime, rest breaks, meal periods,
3 and the other claims alleged in this complaint.

4 23. Specifically, Plaintiff was employed by Defendants within the statutory Class Period,
5 working as an hourly, non-exempt packager for Defendants.

6 **A. MINIMUM WAGE VIOLATIONS**

7 24. Labor Code section 1197 requires employees to be paid at least the minimum wage fixed
8 by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code
9 section 1194 entitles “any employee receiving less than the legal minimum wage . . . to recover in a
10 civil action the unpaid balance of the full amount of this minimum wage.” Likewise, the Applicable
11 Wage Order also obligates employers to pay each employee minimum wages for all hours worked.
12 (Cal. Code of Regs., tit. 8, § 11090.) Labor Code section 1198 makes unlawful the employment of an
13 employee under conditions that the IWC Wage Orders prohibit.

14 25. These minimum wage standards apply to each hour that employees work. Therefore, an
15 employer’s failure to pay for any particular time worked by an employee is unlawful, even if averaging
16 an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above
17 minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)

18 26. Here, Defendants failed to fully conform their pay practices to the requirements of the
19 law during the relevant statutory periods. Plaintiff, the Class Members, and the Aggrieved Employees
20 were not compensated for all hours worked including, but not limited to, all hours they were subject to
21 the control of Defendants and/or suffered or permitted to work under the California Labor Code and
22 the Applicable Wage Order. Among other violations, Plaintiff, the Class Members, and the Aggrieved
23 Employees were subject to the control of Defendants while off-the-clock and did not receive minimum
24 wage for each hour worked.

25 27. Additionally, Plaintiff, the Class Members, and the Aggrieved Employees were not paid
26 all wages for all hours worked due to Defendants’ uniform payroll policies and practices that unfairly
27 rounded employees’ wages to the detriment of the Plaintiff, the Class Members, and the Aggrieved
28 Employees. This rounding policy routinely failed to capture the entirety of the hours the Plaintiff, the

1 Class Members, and the Aggrieved Employees worked and was structured in a way that in favored
2 underpayment. (See *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 907.) As
3 a result, Plaintiff, the Class Members, and the Aggrieved Employees suffered periodic shortages in the
4 hours for which they were compensated. This uncompensated time violated California's requirement
5 that employees be compensated for all hours worked. As a result of this practice, Plaintiff, the Class
6 Members, and the Aggrieved Employees were not compensated their minimum wages for all hours
7 worked.

8 28. Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide that an
9 employer who has failed to pay its employees the legal minimum wage is liable to pay those employees
10 the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages
11 due and interest thereon.

12 29. When employees, such as Plaintiff, the Class Members, and the Aggrieved Employees,
13 are not paid for all hours worked under Labor Code section 1194, they are entitled to recover minimum
14 wages for the time which they received no compensation. (See *Sillah v. Command International*
15 *Security Services* (N.D. Cal. 2015) 154 F.Supp.3d 891 [employees suing for failure to pay overtime
16 could recover liquidated damages under Labor Code section 1194.2 if they also showed they were paid
17 less than minimum wage].)

18 30. Labor Code section 1197.1 authorizes employees who are paid less than the minimum
19 wage fixed by an applicable state or local law, or by an order of the IWC, a civil penalty, among other
20 damages, as follows:

21 (1) "For any initial violation that is intentionally committed, one
22 hundred dollars (\$100) for each underpaid employee for each pay period
23 for which the employee is underpaid."

24 (2) "For each subsequent violation for the same specific offense, two
25 hundred fifty dollars (\$250) for each underpaid employee for each pay
26 period for which the employee is underpaid regardless of whether the
27 initial violation is intentionally committed." (Lab. Code, § 1197.1, subd.
28 (a).)

1 31. As set forth above, Defendants failed to fully compensate Plaintiff, the Class Members,
2 and the Aggrieved Employees for all minimum wages. Accordingly, the Class Members are entitled to
3 recover liquidated damages for violations of Labor Code section 1197.1.

4 32. Based upon these same factual allegations, Plaintiff, the Class Members, and the
5 Aggrieved Employees are likewise entitled to penalties under Labor Code sections 1199.

6 **B. OVERTIME VIOLATIONS**

7 33. Labor Code section 510 requires employers to compensate employees who work more
8 than eight hours in one workday, forty hours in a workweek, and for the first eight hours worked on
9 the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee.
10 (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates employers to compensate
11 employees at no less than twice the regular rate of pay when an employee works more than twelve
12 hours in a day or more than eight hours on the seventh consecutive day of work. (Lab. Code, § 510,
13 subd. (a).) These rules are also reflected in the Applicable Wage Order.

14 34. In accordance with Labor Code section 1194 and the Applicable Wage Order, the Class
15 Members could not then agree and cannot now agree to work for a lesser wage than the amount
16 provided by Labor Code sections 510 or the Applicable Wage Order.

17 35. Here, Defendants violated their duty to accurately and completely compensate Plaintiff,
18 the Class Members, and the Aggrieved Employees for all overtime worked. Plaintiff, the Class
19 Members, and the Aggrieved Employees periodically worked hours that entitled them to overtime
20 compensation under the law but were not fully compensated for those hours.

21 36. These actions were and are in clear violation of California's overtime laws as set forth
22 in Labor Code sections 510, 1194, 1199, and the Applicable Wage Order. (Cal. Code of Regs., tit. 8, §
23 11090.) As a result of Defendants' faulty policies and practices, Plaintiff, the Class Members, and the
24 Aggrieved Employees were not compensated for all hours worked or paid accurate overtime
25 compensation.

26 **C. REST BREAK VIOLATIONS**

27 37. Pursuant to Labor Code section 226.7 and the Applicable Wage Order, Defendants were
28 and are required to provide the Class Members with compensated, duty-free rest periods of not less

1 than ten minutes for every major fraction of four hours worked. Under the Applicable Wage Order, an
2 employer must authorize and permit all employees to take ten minute duty free rest periods for every
3 major fraction of four hours worked. (Cal. Code of Regs., tit. 8, § 11090.)

4 38. Likewise, Labor Code section 226.7 provides that “[a]n employer shall not require an
5 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,
6 or applicable regulation, standard, or order of the Industrial Welfare Commission” (Lab. Code, §
7 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay their employees one
8 additional hour of pay at the employee’s regular rate for each workday that a “meal or rest or recovery
9 period is not provided.” (Lab. Code, § 226.7, subd. (c).) The “regular rate” for these purposes must
10 factor in all nondiscretionary payments for work performed by the employee, including non-
11 discretionary bonuses, commissions, and other forms of wage payments exceeding the employees’ base
12 hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878.) Thus, the Wage
13 Orders set when and for how long the rest period must take place and the Labor Code establishes that
14 violations of the IWC Wage Orders are unlawful and sets forth the premium pay employer must pay
15 their employees when employers fail to provide rest periods.

16 39. The California Supreme Court has held that, during required rest periods, “employers
17 must relieve their employees of all duties and relinquish any control over how employees spend their
18 break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.) Relinquishing
19 control over employees during rest periods requires that employees be “free to leave the employer’s
20 premises” and be “permitted to attend to personal business.” (*Id.* at p. 275.) The *Brinker* Court
21 explained in the context of rest breaks that employer liability attaches from adopting an unlawful
22 policy:

23 “An employer is required to authorize and permit the amount of rest break time
24 called for under the wage order for its industry. If it does not—if, for example,
25 it adopts a uniform policy authorizing and permitting only one rest break for
26 employees working a seven-hour shift when two are required—it has violated
27 the wage order and is liable.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53
28 Cal.4th 1004, 1033.)

1 40. Here, Defendants periodically did not permit Plaintiff, the Class Members, and the
2 Aggrieved Employees to take compliant duty-free rest breaks, free from Defendants' control as
3 required by Labor Code section 226.7, the Applicable Wage Order, and applicable precedent. (See
4 *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269 [concluding that "during rest periods
5 employers must relieve employees of all duties and relinquish control over how employees spend their
6 time."].) At all relevant times, Plaintiff, the Class Members, and the Aggrieved Employees were
7 periodically not provided with legally-compliant and timely rest periods of at least ten minutes for each
8 four hour work period, or major fraction thereof due to Defendants' unlawful rest period
9 policies/practices. Plaintiff, the Class Members, and the Aggrieved Employees were often expected
10 and required to continue working through rest periods to meet the expectations Defendants and finish
11 the workday. In some cases when Plaintiff, the Class Members, and the Aggrieved Employees worked
12 more than ten hours in a shift, Defendants failed to authorize and/or permit a third mandated rest period.
13 As a result, Plaintiff, the Class Members, and the Aggrieved Employees were periodically unable to
14 take compliant rest periods.

15 41. In such cases where Defendants did not offer Plaintiff, the Class Members, and the
16 Aggrieved Employees the opportunity to receive a compliant off-duty rest period, "the court may not
17 conclude employees voluntarily chose to skip those breaks." (*Alberts v. Aurora Behavioral Health*
18 *Care* (2015) 241 Cal.App.4th 388, 410 (2015) ["If an employer fails to provide legally compliant meal
19 or rest breaks, the court may not conclude employees voluntarily chose to skip those breaks."]; *Brinker*
20 *Rest. Corp. v. Superior Court, supra*, 53 Cal.4th at p. 1033 ["No issue of waiver ever arises for a rest
21 break that was required by law but never authorized; if a break is not authorized, an employee has no
22 opportunity to decline to take it."].)

23 42. In addition to failing to authorize and permit compliant rest periods, Plaintiff, the Class
24 Members, and the Aggrieved Employees were not compensated with one hour's worth of pay at their
25 regular rate of compensation when they were not provided with a compliant rest period in accordance
26 with Labor Code section 226.7, subdivision (c). Thus, Defendants have violated Labor Code section
27 226.7 and the Applicable Wage Order.

28 ///

1 43. Based on the foregoing, Plaintiff seeks to recover, on behalf of herself and other non-
2 exempt employees, rest period premiums and penalties.

3 **D. MEAL BREAK VIOLATIONS**

4 44. Labor Code section 512 and the Applicable Wage Order require employers to provide
5 employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of
6 work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for a work period of
7 more than five hours per day without providing the employee with a meal period of not less than 30
8 minutes”]; Cal. Code of Regs., tit. 8, § 11090 [“No employer shall employ any person for a work
9 period of more than five (5) hours without a meal period of not less than 30 minutes”].)
10 Additionally, an employee who works more than ten hours per day is entitled to receive a second thirty-
11 minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a) [“An employer shall not
12 employ an employee for a work period of more than 10 hours per day without providing the employee
13 with a second meal period of not less than 30 minutes”].)

14 45. “An on-duty meal period is permitted only when the nature of the work prevents an
15 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal
16 break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement must
17 include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the California
18 Department of Industrial Relations, Division of Labor Standards Enforcement (“DLSE”) and courts
19 have “found that the nature of the work exception applies: (1) where the work has some particular
20 external force that requires the employee to be on duty at all times, and (2) where the employee is the
21 sole employee of a particular employer.” (*Id.* at p. 945, internal quotation marks omitted; *Abdullah v.*
22 *U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is the employer’s obligation
23 to determine whether the nature of the work prevents an employee from being relieved before requiring
24 an employee to take an on-duty meal period.” (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at
25 p. 946.)

26 46. Here, Plaintiff, the Class Members, and the Aggrieved Employees were never asked to
27 sign any enforceable document agreeing to an on-duty meal period. Moreover, nothing in the nature of
28 their work involved the kind of “external force” that might justify on-duty meal breaks. (*Lubin v. The*

1 *Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 945.) Nevertheless, Defendants periodically did not
2 provide compliant off-duty meal periods within the first five hours of work for the Plaintiff, the Class
3 Members, and the Aggrieved Employees.

4 47. As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v.*
5 *Superior Court* (2012) 53 Cal.4th 1004, 1035 [“The IWC’s wage orders have long made a meal period’s
6 duty-free nature its defining characteristic.”].) Relinquishing control over employees during meal
7 periods requires that employees be “free to leave the employer’s premises” and be “permitted to attend
8 to personal business.” (*Augustus v. ABM Security Services, Inc.*, *supra*, 2 Cal.5th at p. 275.) Under
9 Labor Code section 512, if an employer maintains a uniform policy that does not authorize and permit
10 the amount of meal time called for under the law (as specified in the Labor Code and/or applicable
11 IWC Wage Order), “it has violated the wage order and is liable.” (*Brinker Restaurant Corp. v. Superior*
12 *Court*, *supra*, 53 Cal.4th at p. 1033.)

13 48. During the applicable statutory periods here, Plaintiff, the Class Members, and the
14 Aggrieved Employees were periodically denied legally-compliant and timely off-duty meal periods of
15 at least thirty minutes due to Defendants’ unlawful meal period policy and practices. As a result of
16 Defendants’ uniform meal period policies and practices, Plaintiff, the Class Members, and the
17 Aggrieved Employees were often not permitted to take compliant first meal periods before the end of
18 the fifth hour of work. Plaintiff, the Class Members, and the Aggrieved Employees were also
19 periodically not permitted to take second meal periods for shifts in excess of ten hours. Defendants thus
20 violated Labor Code section 512 and the Applicable Wage Order by failing to advise, authorize, or
21 permit Plaintiff, the Class Members, and the Aggrieved Employees to receive thirty-minute, off-duty
22 meal periods within the first five hours of their shifts.

23 49. Labor Code section 226.7 provides that “[a]n employer shall not require an employee
24 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
25 applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab. Code, § 226.7,
26 subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage Order further obligate
27 employers to pay employees one additional hour of pay at the employee’s regular rate of compensation
28 for each workday that the meal period is not provided. (Lab. Code, § 226.7, subd. (c); Cal. Code of

1 Regs., tit. 8, § 11090 [“If an employer fails to provide an employee a meal period in accordance with
2 the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
3 employee’s regular rate of compensation for each workday that the meal period is not provided.”].)
4 The “regular rate” for these purposes must factor in all nondiscretionary payments for work performed
5 by the employee, including non-discretionary bonuses, commissions, and other forms of wage
6 payments exceeding the employees’ base hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021)
7 11 Cal.5th 858, 878.)

8 50. Accordingly, for each day that Plaintiff, the Class Members, and the Aggrieved
9 Employees did not receive compliant meal periods, they were and are entitled to receive meal period
10 premiums pursuant to Labor Code section 226.7 and the Applicable Wage Order. Defendants, however,
11 failed to pay Plaintiff, the Class Members, and the Aggrieved Employees applicable meal period
12 premiums for many workdays that the employees did not receive a compliant meal period. Thus,
13 Defendants have violated Labor Code section 226.7 and the Applicable Wage Order.

14 51. Based on the foregoing, Plaintiff seeks to recover, on behalf of herself and other non-
15 exempt employees, meal period premiums and penalties.

16 **E. UNTIMELY WAGES DURING EMPLOYMENT**

17 52. Labor Code section 204 expressly requires employers who pay employees on a weekly,
18 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the
19 close of the payroll period.” Labor Code section 210, subdivision (a), makes employers who violate
20 Labor Code section 204 subject to a penalty of:

21 “(1) For any initial violation, one hundred dollars (\$100) for each
22 failure to pay each employee.

23 “(2) For each subsequent violation, or any willful or intentional
24 violation, two hundred dollars (\$200) for each failure to pay each
25 employee, plus 25 percent of the amount unlawfully withheld.” (Lab.
26 Code, § 210, subd. (a).)

27 53. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and
28 entirely independent and apart from, any other penalty provided in this article” (Lab. Code, § 210,

1 subd. (a).)

2 54. Due to Defendants' failure to pay Plaintiff, the Class Members, and the Aggrieved
3 Employees the wages described above, along with rest and meal break premiums, Defendants failed to
4 timely pay Plaintiff, the Class Members, and the Aggrieved Employees within seven calendar days
5 following the close of payroll in accordance with Labor Code section 204 on a regular and consistent
6 basis. (See *Parson v. Golden State FC, LLC* (N.D. Cal., May 2, 2016, No. 16-CV-00405-JST) 2016
7 WL 1734010, at p. *3–5, 2016 U.S. Dist. LEXIS 58299 [finding that a failure to pay rest period
8 premiums can support claims under Labor Code sections 203 and 204].)

9 **F. UNTIMELY WAGES AT SEPARATION**

10 55. Labor Code section 203 provides “if an employer willfully fails to pay . . . any wages
11 of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty”
12 for up to thirty days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) As a result
13 of Defendants' failure to pay Plaintiff, the Class Members, and the Aggrieved Employees for the wages
14 described above, along with rest and meal break premiums, Defendants violated and continue to violate
15 Labor Code section 203.

16 56. Due to Defendants' faulty pay policies, those Class Members whose employment with
17 Defendants concluded were not compensated for each and every hour worked at the appropriate rate.
18 Defendants have failed to pay formerly-employed Class Members whose sums were certain at the time
19 of termination within at least seventy-two hours of their resignation and have failed to pay those sums
20 for thirty days thereafter.

21 **G. WAGE STATEMENT VIOLATIONS**

22 57. Defendants also failed to provide accurate itemized wage statements in accordance with
23 Labor Code sections 226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226, subdivision
24 (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage
25 statement in writing showing:

26 (1) The gross wages earned;

27 (2) The total hours worked by the employee;

28 ///

- 1 (3) The number of piece-rate units earned and any applicable piece
2 rate if the employee is paid on a piece rate basis;
- 3 (4) All deductions, provided that all deductions made on written
4 orders of the employee may be aggregated and shown as one item;
- 5 (5) The net wages earned;
- 6 (6) The inclusive dates of the period for which the employee is paid;
- 7 (7) The name of the employee and only the last four digits of his or
8 her social security number or an employee identification number other
9 than a social security number;
- 10 (8) The name and address of the legal entity that is the employer; and
- 11 (9) All applicable hourly rates in effect during the pay period and the
12 corresponding number of hours worked at each hourly rate by the
13 employee.

14 58. Due to Defendants' failure to pay Plaintiff, the Class Members, and the Aggrieved
15 Employees properly as described above, the wage statements issued do not indicate the correct amount
16 of gross wages earned, total hours worked, or the net wages earned, or the applicable hourly rates in
17 effect during the pay period and the corresponding number of hours worked at each hourly rate. Thus,
18 Defendants have violated Labor Code section 226, subdivisions (a)(1), (2), (5), and (9).

19 59. In addition to Labor Code section 226, subdivision (a), Defendants also knowingly and
20 intentionally failed to provide Plaintiff, the Class Members, and the Aggrieved Employees with
21 accurate itemized wage statements in violation of Labor Code section 226, subdivision (e). Defendants
22 knew that they were not providing Plaintiff, the Class Members, and the Aggrieved Employees with
23 wage statements required by California law but nevertheless failed to correct their unlawful practices
24 and policies. (See *Garnett v. ADT LLC* (E.D. Cal. 2015) 139 F.Supp.3d 1121, 1134 [finding the
25 defendant knowingly and intentionally violated Labor Code section 226 because the "[d]efendant knew
26 that it was not providing total hours worked to plaintiff or other employees paid on commission" even
27 though it believed that employees paid solely on commission or commission and salary "are exempt
28 and therefore we do not record hours on a wage statement."].)

1 **H. RECORDKEEPING VIOLATIONS**

2 60. Labor Code section 226, subdivision (a), requires employers to keep an accurate record
3 of, among other things, all hours worked by employees. Labor Code section 226.3 provides, in pertinent
4 part, as follows:

5 “Any employer who violates subdivision (a) of Section 226 shall be subject to a
6 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per
7 violation in an initial citation and one thousand dollars (\$1,000) per employee
8 for each violation in a subsequent citation, for which the employer fails to
9 provide the employee a wage deduction statement or fails to keep the records
10 required in subdivision (a) of Section 226. The civil penalties provided for in
11 this section are in addition to any other penalty provided by law.” (Lab. Code, §
12 226.3, emphasis added.)

13 61. Likewise, Labor Code section 1174, subdivision (d), requires every employer, including
14 Defendants, to:

15 “Keep, at a central location in the state or at the plants or establishments at which
16 employees are employed, payroll records showing the hours worked daily by
17 and the wages paid to, and the number of piece-rate units earned by and any
18 applicable piece rate paid to, employees employed at the respective plants or
19 establishments. These records shall be kept in accordance with rules established
20 for this purpose by the commission, but in any case shall be kept on file for not
21 less than three years. An employer shall not prohibit an employee from
22 maintaining a personal record of hours worked, or, if paid on a piece-rate basis,
23 piece-rate units earned.” (Lab. Code, § 1174, subd. (d), emphasis added.)

24 62. As explained in detail above, Defendants failed to provide Plaintiff, the Class Members,
25 and the Aggrieved Employees with accurate itemized wage statements. Defendants did so, in part,
26 because they failed to accurately track hours worked by Plaintiff, the Class Members, and the
27 Aggrieved Employees. Defendants have thus failed to keep accurate records of the “total hours worked
28 by the employee[s]” in violation of Labor Code section 226, subdivision (a), and are therefore subject

1 to the penalties provided by Labor Code section 226.3. These penalties are “in addition to any other
2 penalty provided by law.” (Lab. Code, § 226.3.)

3 63. The failure to accurately track hours worked also resulted in a failure of Defendants to
4 keep a record of all “payroll records showing the hours worked daily by” Defendants’ employees,
5 including Plaintiff, the Class Members, and the Aggrieved Employees, in violation of Labor Code
6 section 1174, subdivision (d).

7 **V. CLASS ACTION ALLEGATIONS**

8 64. As mentioned above, Plaintiff brings this action on behalf of herself and the Class
9 Members pursuant to section 382 of the Code of Civil Procedure.

10 65. **Numerosity/Ascertainability:** The Class Members are so numerous that joinder of all
11 members would be unfeasible and not practicable. The membership of the class is unknown to Plaintiff
12 at this time; however, it is estimated that the number of Class Members is greater than 100 individuals.
13 The identity of such membership is readily ascertainable via inspection of Defendants’ employment
14 records.

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

19 A. Whether Defendants’ pay policies/practices resulted in a failure to pay the Class
20 Members for all hours worked, including all minimum wages;

21 B. Whether Defendants’ pay policies/practices resulted in a failure to pay the Class
22 Members for all required overtime wages at the Class Members’ regular rate of pay;

23 C. Whether Defendants’ rest period policies and practices afforded legally
24 compliant rest periods or compensation in lieu thereof;

25 D. Whether Defendants’ meal period policies and practices afforded legally
26 compliant meal periods or compensation in lieu thereof;

27 E. Whether Defendants maintained accurate employment records;

28 F. Whether Defendants timely paid all wages during employment;

1 G. Whether Defendants timely paid all wages earned and unpaid at separation;

2 H. Whether Defendants furnished legally-compliant wage statements to the Class
3 Members pursuant to Labor Code section 226; and

4 I. Whether Defendants' violations of the Labor Code and the Applicable Wage
5 Order amounted to a violation of California's UCL.

6 **67. Predominance of Common Questions:** Common questions of law and fact
7 predominate over questions that affect only individual Class Members. The common questions of law
8 set forth above are numerous and substantial and stem from Defendants' uniform policies and practices
9 applicable to each individual class member, such as Defendants' uniform policy and practice of failing
10 to pay for all hours worked, Defendants' uniform policies and practices which failed to provide
11 compliant rest periods, Defendants' uniform policies and practices which failed to provide compliant
12 meal periods, Defendants' failure to provide accurate itemized wage statements, and others. As such,
13 the common questions predominate over individual questions concerning each individual class
14 member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

15 **68. Typicality:** The claims of Plaintiff are typical of the claims of the Class Members
16 because Plaintiff was employed by Defendants as a non-exempt employee in California during the
17 statute(s) of limitation applicable to each cause of action pleaded in this complaint. As alleged herein,
18 Plaintiff, like the other Class Members, was deprived of minimum, regular, and overtime wages
19 because of Defendants' unlawful timekeeping policies and practices, was deprived of rest periods and
20 premium wages in lieu thereof, was deprived of meal periods and premium wages in lieu thereof, was
21 subject to Defendants' uniform rest period policies and practices, was subject to Defendants' uniform
22 meal period policies and practices, was not provided accurate itemized wage statements, was not paid
23 all wages in full and on time, , and was subject to other similar policies and practices to which the Class
24 Members were subject.

25 **69. Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
26 represent fairly and adequately the interests of the Class Members. Moreover, Plaintiff's attorneys are
27 ready, willing, and able to fully and adequately represent the Class Members and Plaintiff. Plaintiff's
28 attorneys have prosecuted numerous wage-and-hour class actions in state and federal court in the past

1 and are committed to vigorously prosecuting this action on behalf of the Class Members.

2 70. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
3 important public interest in establishing minimum working conditions and standards in California.
4 These laws and labor standards protect the average working employee from exploitation by employers
5 who have the responsibility to follow the laws and who may seek to take advantage of superior
6 economic and bargaining power in setting onerous terms and conditions of employment. The nature of
7 this action and the format of laws available to Plaintiff and the Class Members make the class action
8 format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each
9 employee were required to file an individual lawsuit, Defendants would necessarily gain an
10 unconscionable advantage since they would be able to exploit and overwhelm the limited resources of
11 each individual plaintiff with their vastly superior financial and legal resources.

12 71. Moreover, requiring each Class Member to pursue an individual remedy would also
13 discourage the assertion of lawful claims by employees who would be disinclined to file an action
14 against their former or current employer for real and justifiable fear of retaliation and permanent
15 damages to their careers at subsequent employment. Further, the prosecution of separate actions by the
16 individual Class Members, even if possible, would create a substantial risk of inconsistent or varying
17 verdicts or adjudications with respect to the individual Class Members against Defendants herein, and
18 which would establish potentially incompatible standards of conduct for Defendants or legal
19 determinations with respect to individual Class Members which would, as a practical matter, be
20 dispositive of the interest of the other Class Members not parties to adjudications or which would
21 substantially impair or impede the ability of the Class Members to protect their interests.

22 72. Further, the claims of the individual Class Members are not sufficiently large to warrant
23 vigorous individual prosecution considering the concomitant costs and expenses attending thereto. As
24 such, the Class Members identified above are maintainable as a class under section 382 of the Code of
25 Civil Procedure.

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1 **VI. CAUSES OF ACTION**

2 **First Cause of Action**

3 *Failure to Pay All Minimum Wages*

4 *(Against All Defendants)*

5 73. Plaintiff realleges and incorporates by reference all previous paragraphs.

6 74. Section 4 of the Applicable Wage Order and Labor Code section 1197 establish the right
7 of employees to be paid minimum wages for all hours worked, in amounts set by state law. (Lab. Code,
8 § 1197; Cal. Code of Regs., tit. 8, § 11090.) Labor Code sections 1194, subdivision (a), and 1194.2,
9 subdivision (a), provide that an employee who has not been paid the legal minimum wage as required
10 by Labor Code section 1197 may recover the unpaid balance, together with attorneys' fees and costs
11 of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued
12 thereon.

13 75. Here, Defendants failed to fully conform their pay practices to the requirements of the
14 law during the relevant statutory periods. Plaintiff and the other Class Members were not compensated
15 for all hours worked including, but not limited to, all hours they were subject to the control of
16 Defendants and/or suffered or permitted to work under the Labor Code and the Applicable Wage Order.

17 76. Labor Code section 1198 makes unlawful the employment of an employee under
18 conditions that the IWC Wage Orders prohibit. Labor Code sections 1194, subdivision (a), and 1194.2,
19 subdivision (a), provide that an employer who has failed to pay its employees the legal minimum wage
20 is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages
21 in an amount equal to the wages due and interest thereon.

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

27 78. Defendants' practices and policies regarding illegal employee compensation are
28 unlawful and create an entitlement to recovery by Plaintiff and the other Class Members in a civil

1 action for the unpaid amount of minimum wages, liquidated damages, including interest thereon,
2 statutory penalties, attorney' s fees, and costs of suit according to Labor Code sections 204, 218.5,
3 1194, 1194.2, 1197, and 1198, and Code of Civil Procedure section 1021.5.

4 **Second Cause of Action**

5 *Failure to Pay All Overtime Wages*

6 *(Against All Defendants)*

7 79. Plaintiff realleges and incorporates by reference all previous paragraphs.

8 80. This cause of action is brought pursuant to Labor Code sections 204, 510, 1194, and
9 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours
10 worked and provide a private right of action for the failure to pay all overtime compensation for
11 overtime work performed. At all times relevant herein, Defendants were required to properly pay
12 Plaintiff and the other Class Members for all overtime wages earned pursuant to Labor Code section
13 1194 and the Applicable Wage Order. Defendants caused Plaintiff and the other Class Members to
14 work overtime hours but did not compensate them at one and one-half times their regular rate of pay
15 for such hours in accordance with California law. Likewise, Defendants caused Plaintiff and the other
16 Class Members to work double-time hours but did not compensate them at twice their regular rate of
17 pay for such hours in accordance with California law.

18 81. Defendants failed to fully conform their pay practices to the requirements of California
19 law. This unlawful conduct includes but is not limited to Defendants' uniform and unlawful pay
20 policies and practices of failing to accurately record all the time that non-exempt employees were under
21 the supervision and control of Defendants. The foregoing policies and practices are unlawful and allow
22 Plaintiff and the other Class Members to recover in a civil action the unpaid amount of overtime
23 premiums owing, including interest thereon, statutory penalties, attorney's fees, and costs of suit
24 according to Labor Code section 204, 510, 1194, and 1198, the Applicable Wage Order, and Code of
25 Civil Procedure section 1021.5.

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88. As a result, Defendants are responsible for paying premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the Applicable Wage Order and Labor Code sections 226.7 and 512, and Civil Code sections 3287, subdivision (b), and 3289. (See Cal. Code of Regs., tit. 8, § 11090.)

Fifth Cause of Action

Failure to Maintain Accurate Employment Records

(Against All Defendants)

89. Plaintiff realleges and incorporates by reference all previous paragraphs.

90. Pursuant to California Labor Code section 1174, subdivision (d), an employer shall keep at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and wages paid to employees employed at the respective plants or establishments. These records must be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

91. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records.

92. Defendant has intentionally and willfully failed to keep accurate and complete records showing the hours worked daily and wages paid to Plaintiff and the other Class Members. Thus, Plaintiff and the other Class Members have been denied their legal right and protected interest in having available at a central location at the plant or establishment where they are employed, accurate and complete payroll records showing the hours worked daily by, and the wages paid to, employees at those respective locations pursuant to Labor Code 1174.

Sixth Cause of Action

Failure to Pay Wages Timely during Employment

(Against All Defendants)

93. Plaintiff realleges and incorporates by reference all previous paragraphs.

94. Labor Code section 200 provides that “wages” include all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, pieces, commission basis, or other method of calculation. Labor Code section 204 states that all

1 wages earned by any person in any employment are payable twice during the calendar month and must
2 be paid not more than seven days following the close of the period when the wages were earned. Labor
3 Code section 210, subdivision (a), makes employers who violate Labor Code section 204 subject to a
4 penalty of \$100 for any initial failure to timely pay each employee's full wages and \$200 for each
5 subsequent violation, plus 25% of the amount unlawfully withheld.

6 95. Labor Code section 216 establishes that it is a misdemeanor for any person, with regards
7 to wages due, to "falsely deny the amount or validity thereof, or that the same is due, with intent to
8 secure himself, his employer or other person, any discount upon such indebtedness, or with intent to
9 annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due."

10 96. Defendants as a matter of established company policy and procedure in the State of
11 California, scheduled, required, suffered, and/or permitted Plaintiff and the other Class Members, to
12 work without full compensation, to work without legally-compliant off-duty meal periods, to work
13 without legally-compliant off-duty rest periods, and thereby failed to fully pay Plaintiff and the other
14 Class Members within seven days of the close of payroll, as required by law.

15 97. Defendants, as a matter of established company policy and procedure in the State of
16 California, falsely deny they owe Plaintiff and the other Class Members these wages, with the intent of
17 securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress, hinder, delay,
18 and/or defraud Plaintiff and the other Class Members.

19 98. Defendants' pattern, practice, and uniform administration of its corporate policy of
20 illegally denying employees compensation, as described herein, is unlawful and entitles Plaintiff and
21 the other Class Members to recover, pursuant to Labor Code section 218, the unpaid balance of the
22 compensation owed to them in a civil action and any applicable penalties, attorney fees, and interest
23 owed to them pursuant to Labor Code sections 210 and 218.5.

24 **Seventh Cause of Action**

25 *Failure to Pay All Wages Earned and Unpaid at Separation*

26 *(Against All Defendants)*

27 99. Plaintiff realleges and incorporates by reference all previous paragraphs.

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1 100. The actionable period for this cause of action is three years prior to the filing of this
2 complaint through the present, and ongoing until the violations are corrected or the class is certified.
3 (*Pineda v. Bank of America, N.A.* (2010) 50 Cal.4th 1389, 1395; *Murphy v. Kenneth Cole Productions,*
4 *Inc.* (2007) 40 Cal.4th 1094, 1109; Code Civ. Proc., § 338, subd. (a).) Labor Code sections 201 and
5 202 of the California Labor Code require Defendants to pay all compensation due and owing to its
6 former employees (including the formerly-employed Class Members) during the actionable period for
7 this cause of action at or around the time that their employment is or was terminated, or ended.

8 101. Section 203 of the Labor Code provides that if an employer willfully fails to pay
9 compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then the
10 employer is liable for penalties in the form of continued compensation up to thirty workdays.

11 102. Due to Defendants' faulty pay policies, those Class Members whose employment with
12 Defendants has concluded were not compensated for each and every hour worked at the appropriate
13 rate. Defendants have willfully failed to pay those formerly-employed Class Members whose sums
14 were certain at the time of termination within seventy-two hours of their resignation and have failed to
15 pay those sums for thirty days thereafter as required by Labor Code sections 201 through 203.

16 103. As a result, Defendants are liable to the formerly-employed Class Members for waiting
17 time penalties amounting to thirty days wages for the formerly-employed Class Members pursuant to
18 Labor Code section 203. (See, e.g., DLSE Manual, § 4.3.4 [failure to pay any sort of wages due upon
19 termination entitles an employee to recover waiting time penalties].)

20 **Eighth Cause of Action**

21 *Failure to Furnish Accurate Itemized Wage Statements*

22 *(Against All Defendants)*

23 104. Plaintiff realleges and incorporates by reference all previous paragraphs.

24 105. Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the
25 time of each payment to furnish an itemized wage statement in writing showing:

- 26 (1) The gross wages earned;
27 (2) The total hours worked by the employee;

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- (3) The number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate basis;
- (4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) The net wages earned;
- (6) The inclusive dates of the period for which the employee is paid;
- (7) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) The name and address of the legal entity that is the employer; and
- (9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

106. As set forth above, Defendants issued and continues to issue wage statements to its non-exempt employees including Plaintiff and the other Class Members that are inadequate under Labor Code section 226, subdivision (a). By failing to pay Plaintiff and the other Class Members properly as described above, Defendants failed to include required information on their wage statements, including, but not limited to, the gross wages earned, the net wages earned in violation of Labor Code section 226, subdivision (a).

107. Defendants' failure to comply with Labor Code section 226, subdivision (a), of the Labor Code was knowing and intentional. (Lab. Code, § 226, subd. (e)).

108. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff and the other Class Members in violation of Labor Code section 226, subdivision (a), Plaintiff and the other Class Members are each entitled to recover an initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per each Class Member from Defendants pursuant to Labor Code section 226, subdivision (e), along with costs and reasonable attorneys' fees.

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1 **Ninth Cause of Action**

2 *Violations of California's Unfair Competition Law*

3 *(Against All Defendants)*

4 109. Plaintiff realleges and incorporates by reference all previous paragraphs.

5 110. Defendants have engaged and continue to engage in unfair and/or unlawful business
6 practices in California in violation of California Business and Professions Code section 17200 through
7 17210, by committing the unlawful acts described above. Defendants' utilization of these unfair and
8 unlawful business practices deprived and continue to deprive Plaintiff and the other Class Members of
9 compensation to which they are legally entitled. These practices constitute unfair and unlawful
10 competition and provide an unfair advantage over Defendants' competitors who have been and/or are
11 currently employing workers and attempting to do so in honest compliance with applicable wage and
12 hour laws.

13 111. Because Plaintiff is a victim of Defendants' unfair and unlawful conduct alleged herein,
14 Plaintiff for herself and on behalf of the Class Members, seeks full restitution of monies, as necessary
15 and according to proof, to restore any and all monies withheld, acquired and/or converted by
16 Defendants pursuant to Business and Professions Code sections 17203 and 17208.

17 112. The acts complained of herein occurred within the four years prior to the initiation of
18 this action and are continuing into the present and ongoing.

19 113. Plaintiff was compelled to retain the services of counsel to file this Court action to
20 protect her interests and those of the Class Members, to obtain restitution and injunctive relief on behalf
21 of Defendants' current non-exempt employees and to enforce important rights affecting the public
22 interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which Plaintiff
23 is entitled to recover under Code of Civil Procedure section 1021.5.

24 **Tenth Cause of Action**

25 *Penalties Pursuant to the California Private Attorneys General Act of 2004 ("PAGA") and Other*

26 *Provisions of the California Labor Code*

27 *(Plaintiff and the Aggrieved Employees Against All Defendants)*

28 114. Plaintiff realleges and incorporates by reference all previous paragraphs.

1 115. Based on the above allegations incorporated by reference, Defendants violated
2 California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 1174, 1185, 1194,
3 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, and others that may be applicable; California Business and
4 Professions Code sections 17200 through 17210 (“UCL”); and the Applicable Wage Orders (Cal. Code
5 of Regs., tit. 8, §§ 11090). As a result of the acts alleged above, Plaintiff seeks penalties under
6 California Labor Code §§ 2698–2699.6 because of Defendants’ violation of the California Labor Code
7 and applicable IWC Wage Orders.

8 116. Under California Labor Code §§ 2699(f)(2) and 2699.5, for each such violation,
9 Plaintiff and the Aggrieved Employees are entitled to penalties in an amount to be shown at the time
10 of trial subject to the following formula:

- 11 A. \$100 for the initial violation per employee per pay period; and
12 B. \$200 for each subsequent violation per employee per pay period.

13 117. These penalties shall be allocated seventy-five percent (75%) to the Labor and
14 Workforce Development Agency (LWDA) and twenty-five percent (25%) to the affected employees.
15 These penalties may be stacked separately for each of Defendants violations of the California Labor
16 Code. *See e.g. Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx) 2012 U.S.Dist. LEXIS
17 86975, at *59, fn. 77 (C.D.Cal. June 22, 2012) (holding that although the plaintiff did not seek stacked
18 PAGA penalties, that “PAGA penalties can be ‘stacked,’ *i.e.*, multiple PAGA penalties can be assessed
19 for the same pay period for different Labor Code violations.”); *See Lopez v. Friant & Assocs., LLC*,
20 No. A148849, 2017 Cal. App. LEXIS 839, at *1 (Ct. App. Sep. 26, 2017) (“hold[ing] a plaintiff seeking
21 civil penalties under PAGA for a violation of Labor Code section 226(a) does not have to satisfy the
22 ‘injury’ and ‘knowing and intentional’ requirements of section 226(e)(1) and acknowledging that a
23 Plaintiff could recover separately under PAGA for violations of Labor Code §§ 226(a) and 226(e)).

24 118. In addition, to the extent permitted by law, Defendants failed to provide Plaintiff and all
25 aggrieved employees with accurate itemized wage statements in compliance with Labor Code § 226(a).
26 Plaintiff seeks separate PAGA penalties for Defendants’ violations of Labor Code §§ 226(a) and
27 226(e).

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1 119. For violations of Labor Code § 226(a), Plaintiff seeks the default penalty provided by
2 Labor Code § 226.3. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a)
3 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
4 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each
5 violation in a subsequent citation, for which the employer fails to provide the employee a wage
6 deduction statement or fails to keep the required in subdivision (a) of Section 226.” Accordingly,
7 through PAGA and to the extent permitted by law Plaintiff and the Aggrieved Employees are entitled
8 to recover penalties for violations of Labor Code § 226.3 and seeks default PAGA penalties for each
9 of Defendants’ numerous violations of Labor Code § 226(e).

10 120. Further, Plaintiff, as an Aggrieved Employee, need not demonstrate or prove that
11 Defendants’ conduct in refusing to provide accurate and itemized wage statements was knowing,
12 intentional, or willful.

13 121. Labor Code § 210 provides that “in addition to, and entirely independent and apart from,
14 any other penalty provided in this article, every person who fails to pay the wages of each employee as
15 provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation,
16 one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation,
17 or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each
18 employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty compensation
19 policies and practices described in detail above, Plaintiff and the other Aggrieved Employees are
20 entitled to recover penalties under Labor Code § 210 through PAGA.

21 122. Plaintiff has complied with the procedures for bringing suit specified in California Labor
22 Code § 2699.3. and will have fully exhausted her administrative remedies under PAGA prior to
23 proceeding with the PAGA claim. On or about June 23, 2023, Plaintiff filed her PAGA Notice online
24 with the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified mail to
25 Defendant setting forth the facts and theories of the violations alleged against Defendant, as prescribed
26 by Labor Code § 2698 *et seq.* As required by PAGA, Plaintiff submitted the \$75.00 filing fee with the
27 LWDA by regular mail. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was and/or will have
28 been received by Plaintiff from the LWDA evidencing its intention to investigate within sixty-five (65)

1 calendar days of the postmark date of the PAGA notice. Plaintiff is therefore entitled to commence and
2 proceed with a civil action pursuant to Labor Code § 2699.

3 **VII. DEMAND FOR JURY TRIAL**

4 123. Plaintiff hereby demands trial by jury of Plaintiff's and the Class Members' claims
5 against Defendants.

6 **VIII. PRAYER FOR RELIEF**

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

- 9 1. For an order certifying the proposed class;
- 10 2. For an order appointing Plaintiff as representative of the class;
- 11 3. For an order appointing Plaintiff's counsel as counsel for the class;
- 12 4. For the failure to pay all minimum wages, compensatory, consequential, general, and
13 special damages according to proof pursuant to Labor Code sections 1194, 1194.2,
14 1197, and others as may be applicable;
- 15 5. For the failure to pay all overtime wages, compensatory, consequential, general, and
16 special damages according to proof pursuant to Labor Code sections 204, 510, 1194,
17 1198, and others as may be applicable;
- 18 6. For the failure to provide rest periods and pay missed rest period premiums,
19 compensatory, consequential, general, and special damages according to proof pursuant
20 to Labor Code section 226.7;
- 21 7. For the failure to provide meal periods and pay missed meal period premiums,
22 compensatory, consequential, general, and special damages according to proof pursuant
23 to Labor Code sections 226.7 and 512;
- 24 8. For the failure to maintain accurate employment records, penalties pursuant to Labor
25 Code sections 226.3, 1174.5, and others that may be applicable;
- 26 9. For the failure to pay wages timely during employment, the unpaid balance of the
27 compensation owed to Plaintiff and the other Class Members and any applicable
28 penalties owed to them pursuant to Labor Code section 210;

- 1 **10.** For the failure to pay all wages earned and unpaid at separation, statutory waiting time
2 penalties pursuant to Labor Code sections 201 through 203, for the Class Members who
3 quit or were fired in an amount equal to their daily wage multiplied by thirty days, as
4 may be proven;
- 5 **11.** For the violations of California’s Unfair Competition Law, restitution to Plaintiff and
6 the other Class Members of all money and/or property unlawfully acquired by
7 Defendants by means of any acts or practices declared by this Court to be in violation
8 of Business and Professions Code sections 17200 through 17210;
- 9 **12.** For the claim of penalties pursuant to PAGA and other provisions of the California
10 Labor Code, a civil penalty in the amount of \$100 for the initial violation and \$200 for
11 each subsequent violation as specified in Labor Code section 2699, subdivision (f)(2),
12 in the representative action brought on behalf of Plaintiff and the Aggrieved Employees
13 pursuant the Labor Code Private Attorneys General Act of 2004, and for civil penalties
14 available under Labor Code section 210;
- 15 **13.** Prejudgment interest on all due and unpaid wages pursuant to Labor Code section 218.6
16 and Civil Code sections 3287 and 3289;
- 17 **14.** On all causes of action for which attorneys’ fees may be available, for attorneys’ fees
18 and costs as provided by Labor Code sections 218.5, 226, Code of Civil Procedure
19 section 1021.5, and others as may be applicable;
- 20 **15.** For an order enjoining Defendants, and each of them, and their agents, servants, and
21 employees, and all persons acting under, in concert with, or for them, from acting in
22 derogation of any rights or duties adumbrated in this complaint; and
- 23 **16.** For such other and further relief, this Court may deem just and proper.

24 Dated: August 29, 2023

MELMED LAW GROUP P.C.



JONATHAN MELMED

Attorney for Plaintiff, the Putative Class, and the
Aggrieved Employees