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 GUADALUPE BALBUENA

FILED
 Superior Court of California
 County of Los Angeles
09/27/2023

David W. Slayton, Executive Officer / Clerk of Court

By: K. Martinez Deputy

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

GUADALUPE BALBUENA, individually, and
 on behalf of other members of the general public
 similarly situated,

Plaintiffs,

vs.

REAL TIME STAFFING SERVICES, LLC dba
 SELECT STAFFING, a California limited
 liability company; RANDALL FOODS
 INTERNATIONAL, INC., a California
 corporation; HIGHVIEW CAPITAL, LLC, a
 Delaware limited liability company; and DOES 2
 through 25, inclusive,

Defendants.

Case No. 23STCV17199

*Assigned for all purposes to Hon. William F.
 Highberger, Dept. SS10*

FIRST AMENDED COMPLAINT:

- 1. Violation of Cal. Labor Code §§ 1194, 1197 and 1197.1 (Unpaid Minimum Wages)**
- 2. Violation of Cal. Labor Code §§ 510 and 1198 (Unpaid Overtime)**
- 3. Violation of Cal. Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums)**
- 4. Violation of Cal. Labor Code § 226.7 (Unpaid Rest Period Premiums)**
- 5. Violation of Cal. Labor Code §§ 204 and 210 (Wages Not Timely Paid During Employment)**
- 6. Violation of Cal. Labor Code § 226(a) (Failure to Provide Accurate Wage Statements)**
- 7. Violation of Cal. Labor Code §§ 201, 202 and 203 (Untimely Final Wages)**

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8. Violation of Cal. Labor Code §§ 2800 and 2802 (Failure to Reimburse Necessary Business Expenses)
9. Violation of Cal. Business & Professions Code § 17200, *et seq.*; and
10. Violation of Cal. Labor Code §§ 2698 *et. seq.* (“Private Attorneys General Act”)

DEMAND FOR JURY TRIAL

1 Plaintiff GUADALUPE BALBUENA (“Plaintiff”), individually and on behalf of all members
2 of the general public similarly situated and other aggrieved employees pursuant to the California Labor
3 Code Private Attorneys General Act, brings this First Amended Complaint against Defendants REAL
4 TIME STAFFING SERVICES, LLC dba SELECT STAFFING; RANDALL FOODS
5 INTERNATIONAL, INC.; HIGHVIEW CAPITAL, LLC; and DOES 2- 25 (“Defendants”) and
6 alleges as follow:

7 **INTRODUCTION**

8 1. This action seeks relief against Defendants for their knowingly wrongful conduct with
9 respect to current and former employees. Plaintiff alleges causes of action against Defendants for: (1)
10 failure to pay certain wages at the statutorily required rate(s), including but not limited to overtime
11 wages, minimum wages, meal break premium wages, and rest break period premium wages; (2) failure
12 to provide meal breaks and missed meal break premiums to their current and former employees; (3)
13 failure to provide rest breaks and missed rest break premiums to their current and former employees;
14 (4) failure to provide complete and accurate wage statements to their current and former employees;
15 (5) failure to provide timely wages during employment and after termination; (6) failure to reimburse
16 current and former employees for necessary business related expenses; (7) unfair business practices
17 based on the foregoing; and (8) civil penalties under The Private Attorney General Act of 2004
18 (“PAGA”) and derivative or related claims for violations of the Labor Code and the Industrial Welfare
19 Commission Wage Orders.

20 2. Additionally, this is an enforcement action under the California Labor Code Private
21 Attorneys General Act of 2004, California Labor Code sections 2698, et seq. (“PAGA”) to recover
22 civil penalties on behalf of Plaintiff, the State of California, and all individuals who worked for
23 Defendants in the State of California as hourly-paid and/or non-exempt employees at any time during
24 the period from July 20, 2022 to final judgment (“Aggrieved Employees”). As a result, Defendants
25 violated among other things, California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510,
26 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare
27 Commission (“IWC”) Wage Order. Through this action, Plaintiff seeks to recover all available
28 remedies under PAGA, including, but not limited to, civil penalties and attorney’s fees and costs.

3. The systematic policies, practices, and customs of Defendants violated and continue to violate California law, and have injured Plaintiff and other similarly aggrieved employees and putative class members.

JURISDICTION AND VENUE

4. This action is brought pursuant to California Code of Civil Procedure section 382 and California Labor Code sections 2698, *et seq.*

5. The monetary damages, restitution, statutory penalties, and other applicable legal and equitable relief sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

6. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

7. This Court has jurisdiction over all Defendants because, upon information and belief, Defendants are either citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice. Further, no federal question is at issue because the claims asserted herein are based solely on California law.

8. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, employ individuals, and/or transact business in the State of California, County of Los Angeles. The majority of the acts, events, and violations alleged herein relating to Plaintiff occurred throughout the state of California, including in the County of Los Angeles.

THE PARTIES

9. At all times herein mentioned, Plaintiff GUADALUPE BALBUENA was and is a resident of LOS ANGELES County in the State of California.

10. At all times herein mentioned, Defendant REAL TIME STAFFING SERVICES, LLC dba SELECT STAFFING, was and is, upon information and belief, a California limited liability

1 company, and at all times hereinafter mentioned, an employer whose employees are engaged
2 throughout Los Angeles County and the State of California, including at 2905 E. 50 St. Vernon, CA
3 90058.

4 11. At all times herein mentioned, Defendant RANDALL FOODS INTERNATIONAL,
5 INC., was and is, upon information and belief, a California corporation, and at all times hereinafter
6 mentioned, an employer whose employees are engaged throughout Los Angeles County and the State
7 of California, including at 2905 E. 50 St. Vernon, CA 90058.

8 12. At all times herein mentioned, Defendant HIGHVIEW CAPITAL, LLC, was and is,
9 upon information and belief, a Delaware limited liability company, and at all times hereinafter
10 mentioned, an employer whose employees are engaged throughout Los Angeles County and the State
11 of California, including at 2905 E. 50 St. Vernon, CA 90058.

12 13. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under
13 the fictitious names DOES 2 through 25 but will seek leave of this Court to amend the complaint and
14 serve such fictitiously named Defendants once their names and capacities become known.

15 14. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and
16 omissions alleged herein were performed by, or are attributable to Defendants and/or DOES 2 through
17 25, each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with,
18 each of the other co-Defendants and within the course and scope of such agency, employment, joint
19 venture, or concerted activity with legal authority to act on the others' behalf. The acts of any and all
20 Defendants represent and were in accordance with Defendants' official policies.

21 15. At all relevant times, Defendants were the employers of Plaintiff within the meaning
22 of all applicable state laws and statutes. Defendants directly or indirectly controlled or affected the
23 working conditions, wages, working hours, and conditions of employment of Plaintiff so as to make
24 each of said Defendants employers and employers liable under the statutory provisions set forth herein.

25 16. Defendants had the authority to hire and terminate Plaintiff, the other class members
26 and aggrieved employees to set work rules and conditions governing their employment, and to
27 supervise their daily employment activities.

28 17. Defendants exercised sufficient authority over the terms and conditions of Plaintiff,

1 the other class members and aggrieved employees' employment for them to be their joint employers.

2 18. Defendants directly hired and paid wages and benefits to Plaintiff, the other class
3 members and aggrieved employees.

4 19. Defendants continue to employ hourly paid and/or non-exempt employees within the
5 State of California.

6 20. At all relevant times, Defendants, and each of them, ratified each and every act or
7 omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted
8 the acts and omissions of each and all the other Defendants in proximately causing the damages herein
9 alleged.

10 21. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is
11 in some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
12 occurrences, and transactions alleged herein.

13 **GENERAL ALLEGATIONS**

14 22. Defendants, jointly and severally, employed Plaintiff GUADALUPE BALBUENA
15 from approximately November 2016 to October 2022 as a non-exempt, hourly-paid employee. During
16 her employment with Defendants, Plaintiff was employed as a Meat Cutter at 2905 E. 50 St. Vernon,
17 CA 90058.

18 23. Plaintiff is informed and believes, and thereon alleges that Defendants engaged in a
19 pattern and practice of wage abuse against their hourly-paid and/or non-exempt employees. As set
20 forth in more detail below, this pattern and practice of wage abuse involved, *inter alia*, requiring
21 Plaintiff, the other class members and aggrieved employees to work off-the-clock without
22 compensation, failing to properly pay overtime wages and minimum wages for all hours worked,
23 failing to provide all meal and rest breaks to which they were entitled and failing to pay meal and rest
24 break premiums when due, failing to timely pay wages during employment and upon termination of
25 employment, failing to provide accurate wage statements, failing to reimburse necessary business-
26 related expenses and failing to adhere to other related protections afforded by the California Labor
27 Code and the applicable Industrial Welfare Commission Wage Order.

28 24. Defendants knew or should have known that they had a duty to compensate Plaintiff,

1 the other class members and aggrieved employees pursuant to California law, and had the financial
2 ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so to increase
3 Defendants' profits.

4 CLASS ACTION ALLEGATIONS

5 25. Plaintiff brings this lawsuit as a class action on behalf of herself and all others similarly
6 situated, as members of a proposed class pursuant to California Code of Civil Procedure section 382.
7 The class satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority
8 requirements under California Code of Civil Procedure section 382.

9 26. The proposed class is defined as follows:

10 **All current and former hourly-paid and/or non-exempt employees**
11 **who worked for Defendants in the State of California at any time**
12 **during the period from July 20, 2019 until final judgment.**

13 27. Plaintiff reserves the right to establish additional subclasses as appropriate.

14 28. There is a well-defined community of interest in the litigation and the Class is easily
15 ascertainable.

16 29. The Class is so numerous that the individual joinder of all its members is impracticable.
17 While the exact number and identities of class members are unknown to Plaintiff at this time, the exact
18 numbers of class members and their identities can be ascertained through appropriate discovery from
19 records maintained by Defendants and their agents.

20 30. Common questions of fact and law exist as to all class members, which predominate
21 over any questions affecting only individual members of the Class. The common legal and factual
22 questions which do not vary from class member to class member and which may be determined
23 without reference to the individual circumstances of any class member include, but are not limited to,
24 the following:

- 25 i. Whether Defendants had a policy and practice of failing to pay minimum wages to
26 Plaintiff and the other class members for all hours worked;
- 27 ii. Whether Defendants had a policy and practice of failing to pay overtime wages to
28 Plaintiff and the other class members for all overtime hours worked;

- 1 iii. Whether Defendants had a policy and practice of failing to provide meal periods to
2 Plaintiff and the other class members;
- 3 iv. Whether Defendants had a policy and practice of failing to provide rest periods to
4 Plaintiff and the other class members;
- 5 v. Whether Defendants failed to pay their hourly-paid and/or non-exempt employees in
6 the State of California for all hours worked, and for all missed, short, late, and/or
7 interrupted meal periods and rest breaks;
- 8 vi. Whether Defendants failed to timely pay all wages due to Plaintiff and the other class
9 members during their employment;
- 10 vii. Whether Defendants' failure to pay wages, without abatement or reduction, in
11 accordance with the California Labor Code, was willful;
- 12 viii. Whether Defendants failed to pay all wages due to Plaintiff and the other class members
13 within the required time upon their discharge or resignation;
- 14 ix. Whether Defendants failed to comply with wage reporting as required by the California
15 Labor Code; including, *inter alia*, section 226;
- 16 x. Whether Defendants failed to reimburse Plaintiff and the other class members for
17 necessary business-related expenses and costs;
- 18 xi. Whether Defendants' conduct was willful or reckless;
- 19 xii. Whether Defendants engaged in unfair business practices in violation of California
20 Business & Professions Code section 17200, *et seq.*;
- 21 xiii. The appropriate amount of damages, restitution, and/or monetary penalties resulting
22 from Defendants' violation of California law; and
- 23 xiv. Whether Plaintiff and the other class members are entitled to compensatory damages
24 pursuant to the California Labor Code.

25 31. Plaintiff's claims are typical of the claims of the Class, and Plaintiff's interests are
26 coincident with and not antagonistic to those of the other class members they seek to
27 represent. Plaintiff will fairly and adequately protect the interests of the members of
28 the Class. Plaintiff has retained attorneys experienced in the prosecution of class actions and Plaintiff

intends to prosecute this action vigorously.

32. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since individual litigation of the claims of all class members is impracticable. Even if every class member could afford individual litigation, the court system could not. It would be unduly burdensome on the courts in which individual litigation of numerous cases would proceed. Individualized litigation would also present the potential for varying, inconsistent or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action, with respect to some or all of the issues presented in this Complaint, presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each class member.

33. Certification of this lawsuit as a class action will advance public policy objectives. Employers of this great state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the class members who are not named in the complaint anonymity that allows for the vindication of their rights.

PAGA ALLEGATIONS

34. At all times set forth herein, PAGA applied to Plaintiff's employment by Defendants.

35. PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty, including unpaid wages and premium wages, to be assessed and collected by the California Labor & Workforce Development Agency (“LWDA”) for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

36. Pursuant to PAGA, a civil action may be brought by an “aggrieved employee,” who is any person employed by the alleged violator and against whom one or more of the alleged violations was committed.

37. Plaintiff and the other employees are “Aggrieved Employees” as defined by California

1 Labor Code section 2699(c) because they are current or former employees of Defendants against
2 whom one of more of the alleged violations were committed.

3 38. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee,
4 including Plaintiff, may pursue a civil action arising under PAGA after the following requirements
5 have been met:

6 (a) The Aggrieved Employee shall give written notice by certified mail (hereinafter
7 “Employee’s Notice”) to the LWDA and the employer of the specific provisions of the
8 Labor Code alleged to have been violated, including the facts and theories to support the
9 alleged violations.

10 (b) The LWDA shall provide notice (hereinafter “LWDA Response”) to the employer and the
11 aggrieved employee by certified mail that it does not intend to investigate the alleged
12 violation within sixty (60) calendar days of the postmark date of the Employee’s Notice.
13 Upon receipt of the LWDA Response, or if the LWDA Response is not provided within
14 sixty five (65) calendar days of the postmark date of the Employee’s Notice, the aggrieved
15 employee may commence a civil action pursuant to California Labor Code section 2699
16 to recover civil penalties in addition to any other penalties to which the employee may be
17 entitled.

18 39. On July 20, 2023, Plaintiff provided notice by electronic submission to the LWDA and
19 by certified mail to Defendants regarding the specific provisions of the Labor Code alleged to have
20 been violated, including the facts and theories to support the alleged violations, pursuant to Labor
21 Code section 2699.3. **A true and correct copy of the Employee’s Notice is attached hereto as**
22 **Exhibit A.**

23 40. Plaintiff did not receive a LWDA Response within sixty-five calendar days of
24 providing the Employee’s Notice.

25 41. Therefore, the administrative prerequisites under California Labor Code section
26 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies for violations of
27 California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197,
28 1197.1, 1198, 2800 and 2802 have been satisfied.

1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE SECTIONS 1194, 1197, AND 1197.1**

3 **Failure to Pay Minimum Wage**

4 **(Against All Defendants and DOES 2 – 25)**

5 42. Plaintiff incorporates herein by specific reference, as though fully set forth, the
6 allegations in all preceding paragraphs.

7 43. California Labor Code sections 1194, 1197 and 1197.1 provide that the minimum wage
8 for employees fixed by the Industrial Welfare Commission is the minimum wage to be paid to
9 employees, and the payment of a wage less than the minimum so fixed is unlawful. Plaintiff and the
10 other class members were frequently suffered or permitted to work “off-the-clock”, such that they
11 were not paid minimum wage for all hours worked.

12 44. Such “off-the-clock” work that Plaintiff and class members were suffered and/or
13 permitted to work, and for which Plaintiff and class members did not receive minimum wage include
14 *inter alia*, requiring Plaintiff and the other class members to process, cut and package meat.

15 45. Moreover, Defendants had a policy, practice and procedure of rounding employee time
16 such that Plaintiff and some or all class members were systematically unpaid and/or underpaid for
17 time worked over the course of their employment.

18 46. Accordingly, Defendants regularly failed to pay at least minimum wages to Plaintiff
19 and the other class members for all hours they worked in violation of California Labor Code sections
20 1194, 1197, and 1197.1.

21 47. Defendants knew or should have known that Plaintiff and class members were
22 performing such work “off-the-clock” because, among other things, Defendants’ management
23 witnessed, authorized, was made aware of, and/or required Plaintiff and class members to perform
24 such work.

25 48. Defendants’ failure to pay Plaintiff and the other class members the minimum wage as
26 required violates California Labor Code sections 1194, 1197 and 1197.1. Pursuant to those sections,
27 Plaintiff and the other class members are entitled to recover the unpaid balance of their minimum wage
28 compensation, as well as interest, costs, and attorney’s fees.

49. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

SECOND CAUSE OF ACTION

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

Unpaid Overtime

(Against All Defendants and DOES 2 – 25)

50. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

51. California Labor Code section 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily and/or weekly basis.

52. Specifically, the applicable IWC Wage Order provides that Defendants were required to pay Plaintiff and the other class members at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day, in excess of forty (40) hours in a workweek and/or the first eight (8) hours worked on the seventh consecutive day in a workweek.

53. The applicable IWC Wage Order further provides that Defendants were required to pay Plaintiff and the other class members overtime compensation at a rate of two (2) times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day and/or for all hours worked in excess of eight (8) hours on the seventh consecutive day in a workweek.

54. California Labor Code section 510 codifies the right to overtime compensation at one-and-one half times the regular hourly rate for hours worked in excess of eight (8) hours in a day, forty (40) hours in a week, or for the first eight (8) hours worked on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

55. Plaintiff and the other class members regularly worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, in excess of forty (40) hours in a week and/or seven (7)

1 consecutive days in a workweek. However, Defendants did not record Plaintiff and the other class
2 members' actual hours worked and intentionally and willfully failed to pay all overtime wages owed
3 to Plaintiff and the other class members. Defendants' failure to pay correct overtime wages included,
4 *inter alia*: (a) when the combined total of the off-the-clock work discussed *supra* and the on-the-clock
5 work exceed the number of hours that trigger the payment of overtime wages under Labor Code
6 sections 510 and 1198 and/or the applicable Wage Order; (b) when Defendants intentionally, willfully
7 and/or negligently mischaracterized overtime as straight time; (c) when Defendants assigned more
8 work than could reasonably be completed in a workday or workweek to Plaintiff and class members,
9 but refused to authorize the overtime necessary for them to complete the assigned work; and (d) when
10 Defendants failed to include all required wages and remuneration when calculating setting the
11 overtime rate.

12 56. Defendants' failure to pay Plaintiff and the other class members as outlined above
13 violates California Labor Code sections 510 and 1198 and the applicable Wage Order and is therefore
14 unlawful.

15 57. Pursuant to California Labor Code section 1194, Plaintiff and the other class members
16 are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys'
17 fees.

18 **THIRD CAUSE OF ACTION**

19 **VIOLATION OF LABOR CODE SECTIONS 226.7 AND 512**

20 **Meal Break Violations**

21 **(Against All Defendants and DOES 2 – 25)**

22 58. Plaintiff incorporates herein by specific reference, as though fully set forth, the
23 allegations in all preceding paragraphs.

24 59. California Labor Code sections 226.7 and 512(a) and the applicable Wage Order
25 govern Plaintiff and the other class members' employment by Defendants.

26 60. California Labor Code section 226.7 provides that no employer shall require an
27 employee to work during any meal period mandated by an applicable IWC Order.

28 61. The applicable IWC Wage Order and California Labor Code section 512(a) provide

1 that an employer may not require, cause, or permit an employee to work for a period of more than five
2 (5) hours per day without providing the employee with a meal period of not less than thirty (30)
3 minutes, except that if the total work period per day of the employee is not more than six (6) hours,
4 the meal period may be waived by mutual consent of both the employer and the employee.

5 62. The applicable IWC Wage Order and California Labor Code section 512(a) further
6 provides that an employer may not require, cause, or permit an employee to work a work period of
7 more than ten (10) hours per day without providing the employee with a second uninterrupted meal
8 period of not less than thirty (30) minutes, except if the total hours worked is no more than twelve (12)
9 hours, the second meal period may be waived by mutual consent of the employer and the employee
10 only if the first meal period was not waived.

11 63. Plaintiff and the other class members who were scheduled to work for shifts no longer
12 than six (6) hours, and who did not waive their legally mandated meal periods by mutual consent, were
13 required to work for periods longer than five (5) hours without an uninterrupted meal period of not
14 less than thirty (30) minutes.

15 64. Plaintiff and the other class members who were scheduled to work for shifts in excess
16 of ten (10) hours but no longer than twelve (12) hours, and who did not waive their legally-mandated
17 meal periods by mutual consent, were required to work for periods longer than ten (10) hours without
18 an uninterrupted meal period of not less than thirty (30) minutes.

19 65. Defendants intentionally and willfully required Plaintiff and the other class members
20 to work during meal periods and failed to compensate Plaintiff and the other class members for work
21 performed during meal periods. This includes, among other things, requiring Plaintiff and class
22 members to work through their lunch breaks, permitting and/or requiring Plaintiff and class members
23 to take late lunch breaks, permitting and/or requiring Plaintiff and class members to take short lunch
24 breaks, interrupting and/or allowing others to interrupt Plaintiff and class members during their lunch
25 breaks, failing to relieve Plaintiff and class members of all duties during their lunch breaks, and
26 restricting Plaintiff and class members from leaving the premises during their lunch breaks.

27 66. Further, because of Defendants' rounding policy, meal breaks were at times incorrectly
28 recorded as compliant, when in reality they were untimely and/or cut short.

67. During the relevant time period, Defendants failed to pay Plaintiff and the other class members all meal period premiums due pursuant to California Labor Code section 226.7 and 512 and the applicable Wage Order.

68. Defendants' conduct therefore violates the applicable IWC Wage Order, and California Labor Code sections 226.7 and 512(a).

69. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one additional hour of pay at their regular rate of compensation for each workday that a compliant meal period was not provided.

FOURTH CAUSE OF ACTION

VIOLATION OF LABOR CODE SECTION 226.7

Rest Break Violations

(Against All Defendants and DOES 2 – 25)

70. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

71. California Labor Code section 226.7 and the applicable IWC Wage Order govern Plaintiff and the other class members' employment by Defendants.

72. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

73. The applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “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” unless the total daily work time is less than three and one-half (3½) hours.”

74. Defendants routinely required Plaintiff and the other class members to work three and one-half (3 ½) or more hours without authorizing or permitting a compliant ten (10) minute rest period per each four (4) hour period, or major fraction thereof, worked.

75. Moreover, Defendants willfully required, suffered and permitted Plaintiff and the other

1 class members to work during what should have been their rest periods. Defendants also failed to
2 relieve Plaintiff and the other class members of all duties for ten (10) minutes as required for compliant
3 rest breaks.

4 76. As a result, Plaintiff worked through rest periods, took late rest periods, took
5 interrupted rest periods, and/or took short rest periods, if at all.

6 77. Pursuant to the applicable IWC Wage Order and California Labor Code section
7 226.7(b), Plaintiff and the other class members were entitled to recover from Defendants one (1)
8 additional hour of pay at their regular hourly rate of compensation for each workday that compliant
9 rest period(s) were not provided.

10 78. Defendants had no policy and/or practice to pay a premium when rest periods were
11 missed, short, late, and/or interrupted, or otherwise failed to comply with California law, and thus
12 Defendants failed to pay Plaintiff and the other class members the full rest period premium due to
13 them in violation of California Labor Code section 226.7 and the applicable IWC Wage Orders.

14 79. Pursuant to the applicable IWC Wage Orders and California Labor Code section
15 226.7(c), Plaintiff and the other class members are entitled to recover from Defendants one additional
16 hour of pay at their regular rate of compensation for each workday complaint rest period(s) were not
17 provided.

18 **FIFTH CAUSE OF ACTION**

19 **VIOLATION OF CALIFORNIA LABOR CODE §§ 204 AND 210**

20 **Failure to Timely Pay Wages During Employment**

21 **(Against All Defendants and DOES 2 – 25)**

22 80. Plaintiff incorporates herein by specific reference, as though fully set forth, the
23 allegations in all preceding paragraphs.

24 81. California Labor Code section 204 provides that all wages earned by any person in any
25 employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages
26 due upon termination of an employee, are due and payable between the 16th and 26th day of the month
27 during which the labor was performed.

28 82. California Labor Code section 204 provides that all wages earned by any person in any

1 employment between the 16th and the last day, inclusive, of any calendar month, other than those
2 wages due upon termination of an employee, are due and payable between the 1st and the 10th day of
3 the following month.

4 83. California Labor Code section 204 provides that all wages earned for labor in excess
5 of the normal work period shall be paid no later than the payday for the next regular payroll period.

6 84. As a result of the violations set forth in detail above (failure to pay overtime, failure to
7 pay minimum wages, meal break violations and rest break violations), Defendants intentionally and
8 willfully failed to timely pay Plaintiff and other class members all wages due to them, within the period
9 permissible under California Labor Code section 204.

10 85. Plaintiff and other class members are entitled to recover all available remedies for
11 Defendant's violations of California Labor Code section 204, including statutory penalties pursuant to
12 Labor Code section 210(b).

13 **SIXTH CAUSE OF ACTION**

14 **VIOLATION OF LABOR CODE SECTION 226(a)**

15 **Failure to Provide Accurate Wage Statements**

16 **(Against All Defendants and DOES 2 – 25)**

17 86. Plaintiff incorporates herein by specific reference, as though fully set forth, the
18 allegations in all preceding paragraphs.

19 87. At all material times set forth herein, California Labor Code section 226(a) provides
20 that every employer shall furnish each of its employees an accurate itemized wage statement in writing,
21 including, but not limited to, the name and address of the legal entity that is the employer, total hours
22 worked, and all applicable hourly rates.

23 88. As a result of the violations set forth in detail above (failure to pay overtime, failure to
24 pay minimum wages, meal break violations and rest break violations), Defendants intentionally and
25 willfully failed to provide Plaintiff and the other class members with complete and accurate wage
26 statements. The deficiencies include, among other things, the failure to state all hours worked, the
27 failure to state the actual gross wages earned, the failure to include meal and rest break premiums, and
28 the failure to include correct rates of pay. Accordingly, Defendants violated California Labor Code

1 226(a).

2 89. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff
3 and the other class members have suffered injury and damage to their statutorily protected rights.

4 90. Specifically, Plaintiff and the other class members have been injured by Defendants'
5 intentional violation of California Labor Code section 226(a) because they were denied both their legal
6 right to receive, and their protected interest in receiving, accurate, itemized wage statements under
7 California Labor Code section 226(a). In addition, because Defendants failed to provide the accurate
8 number of total hours worked on wage statements, Plaintiff and the other class members have been
9 prevented by Defendants from determining if all hours worked were paid and the extent of the
10 underpayment. Plaintiff had to file this lawsuit, and will further have to conduct discovery, reconstruct
11 time records, and perform computations in order to analyze whether in fact Plaintiff and the other class
12 members were paid correctly and the extent of the underpayment, thereby causing Plaintiff to incur
13 expenses and lost time. Plaintiff would not have had to engage in these efforts and incur these costs
14 had Defendants provided the accurate number of total hours worked. This has also delayed Plaintiff's
15 ability to demand and recover the underpayment of wages from Defendants.

16 91. Plaintiff and the other class members are entitled to recover from Defendants the
17 greater of their actual damages caused by Defendants' failure to comply with California Labor Code
18 section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000).

19 **SEVENTH CAUSE OF ACTION**

20 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

21 **Final Wages Not Timely Paid**

22 **(Against All Defendants and DOES 2 – 25)**

23 92. Plaintiff incorporates herein by specific reference, as though fully set forth, the
24 allegations in all preceding paragraphs.

25 93. Pursuant to California Labor Code sections 201, 202, and 203, Defendants are required
26 to timely pay all earned and unpaid wages to an employee who is discharged. California Labor Code
27 section 201 mandates that if an employer discharges an employee, the employee's wages accrued and
28 unpaid at the time of discharge are due and payable immediately. California Labor Code section 202

1 mandates that if an employee quits, his or her wages shall become due and payable not later than
2 seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of
3 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
4 quitting.

5 94. California Labor Code section 203 provides that if an employer willfully fails to pay,
6 in accordance with California Labor Code sections 201 and 202, any wages of an employee who is
7 discharged or who quits, the wages of the employee shall continue as a penalty from the due date
8 thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not
9 continue for more than thirty (30) days.

10 95. As a result of the violations set forth in detail above (failure to pay overtime, failure to
11 pay minimum wages, meal break violations and rest break violations), at the time that Plaintiff and the
12 other class members' employment with Defendants ended, Defendants knowingly and willfully failed
13 to pay Plaintiff and the other class members all wages owed to them pursuant to California Labor Code
14 sections 201 and 202, including, without limitation, overtime wages, minimum wages, meal period
15 premium wages, and rest period premium wages, and all wages due to Plaintiff and class members as
16 they became due, as required per California Labor Code sections 204.

17 96. As a result, Plaintiff and the other class members are entitled to all available
18 statutory penalties, including the waiting time penalties provided in California Labor Code section
19 203, together with interest thereon, as well as other available remedies.

20 **EIGHTH CAUSE OF ACTION**

21 **VIOLATION OF LABOR CODE SECTIONS 2800 AND 2802**

22 **Failure to Reimburse Necessary Business Expenses**

23 **(Against All Defendants and DOES 2 – 25)**

24 97. Plaintiff incorporates herein by specific reference, as though fully set forth, the
25 allegations in all preceding paragraphs.

26 98. Pursuant to California Labor Code sections 2800 and 2802, an employer must
27 reimburse its employees for all necessary expenditures incurred by the employee in direct consequence
28 of the discharge of his or her job duties or in direct consequence of his or her job duties or in direct

1 consequence of his or her obedience to the directions of the employer.

2 99. Plaintiff and the other class members incurred necessary business-related expenses and
3 costs that were not fully reimbursed by Defendants, including, but not limited to the purchase of cold-
4 resistant clothing, rubber boots, and butchery tools for work-related purposes.

5 100. Defendants intentionally and willfully failed to reimburse Plaintiff and the other class
6 members for all necessary business-related expenses and costs. Plaintiff and the other class members
7 are entitled to recover from Defendants their business-related expenses and costs incurred during the
8 course and scope of employment, plus interest accrued from the date on which Plaintiff and the other
9 class members incurred the necessary expenditures at the same rate as judgments in civil actions in
10 the State of California.

11 **NINTH CAUSE OF ACTION**

12 **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200 *ET. SEQ.***

13 **Unfair and Unlawful Business Practices**

14 **(Against All Defendants and DOES 2 – 25)**

15 101. Plaintiff incorporates herein by specific reference, as though fully set forth, the
16 allegations in all preceding paragraphs.

17 102. Each and every one of Defendants' acts and omissions in violation of the California
18 Labor Code and/or the applicable IWC Wage Order as alleged herein, including but not limited to
19 Defendant's failure and refusal to pay overtime compensation, Defendant's failure and refusal to pay
20 minimum wages, Defendants' failure and refusal to provide required meal periods and/or pay meal
21 period premiums, Defendants' failure and refusal to provide required rest periods and/or pay the
22 required rest break premiums, Defendants' failure to timely pay wages at the correct rate during
23 employment, Defendants' failure and refusal to furnish accurate itemized wage statements,
24 Defendants' failure and refusal to reimburse business-related expenses, and Defendants' failure to
25 timely pay wages upon termination constitutes an unfair and unlawful business practice under
26 California Business and Professions Code § 17200 *et seq.*

27 103. Defendants' violations of California wage and hour laws constitute an unfair and
28 unlawful business practice because Defendants' aforementioned acts and omissions were done

1 repeatedly over a significant period of time, and in a systematic manner, to the detriment of Plaintiff
2 and the other class members.

3 104. Defendants have avoided payment of overtime wages, minimum wages, meal period
4 premiums, rest period premiums, timely wages at the correct rate of pay, and other benefits as required
5 by the California Labor Code, the California Code of Regulations, and the applicable IWC Wage
6 Order. Further, Defendants have failed to record, report, and pay the correct sums of assessment to
7 the state authorities under the California Labor Code and other applicable regulations.

8 105. As a result of Defendants' unfair and unlawful business practices, Defendants have
9 reaped unfair and illegal profits during Plaintiff and the other class members' tenure at the expense of
10 Plaintiff, the other class members, and members of the public. Defendants should be made to disgorge
11 their ill-gotten gains and to restore them to Plaintiff and the other class members.

12 106. Defendants' unfair and unlawful business practices entitle Plaintiff and the other class
13 members to seek preliminary and permanent injunctive relief, including but not limited to orders that
14 Defendants account for, disgorge, and restore to Plaintiff and the other class members the wages and
15 other compensation unlawfully withheld from them. Plaintiff and the other class members are entitled
16 to restitution of all monies to be disgorged from Defendants in an amount according to proof at the
17 time of trial.

18 **TENTH CAUSE OF ACTION**

19 **VIOLATION OF CALIFORNIA LABOR CODE §§ 2699, *ET SEQ.***

20 **Private Attorney General Act**

21 **(Against All Defendants and DOES 1-25)**

22 107. Plaintiff incorporates herein by specific reference, as though fully set forth, the
23 allegations and applicable law in all preceding paragraphs.

24 108. Plaintiff brings this action on an individual basis and on a representative basis on behalf
25 of other Aggrieved Employees and the State of California, in Plaintiff's capacity as a private attorney
26 general pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.*

27 109. PAGA expressly provides for a private right of action to recover civil penalties for
28 violations of the Labor Code as follows: "Notwithstanding any other provision of law, any provision

1 of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce
2 Development Agency or any of its departments, divisions, commissions, boards, agencies, or
3 employees, for a violation of this code, may, as an alternative, be recovered through a civil action
4 brought by an aggrieved employee on behalf of himself or herself and other current or former
5 employees pursuant to the procedures specified in Section 2699.3.” Cal. Lab. Code § 2699(a).

6 110. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
7 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to
8 exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

9 111. Plaintiff and the other hourly-paid, non-exempt employees are “Aggrieved Employees”
10 as defined by California Labor Code section 2699(c) in that they are all current or former employees
11 of Defendants, and one or more of the alleged violations were committed against them.

12 112. Defendants’ conduct, as alleged herein, violates numerous sections of the California
13 Labor Code, including, but not limited to, the following:

- 14 (a) Violation of California Labor Code sections 510 and 1198 for failure to pay
15 overtime wages, as set forth more fully below;
- 16 (b) Violation of California Labor Code sections 1194, 1197, and 1197.1 for failure to
17 pay minimum wages, as set forth more fully below;
- 18 (c) Violation of California Labor Code sections 226.7 and 512(a) for failure to provide
19 legally required meal periods, as set forth more fully below;
- 20 (d) Violation of California Labor Code sections 226.7 and 512(a) for failure to pay
21 required meal period premiums, as set forth more fully below;
- 22 (e) Violation of California Labor Code section 226.7 for failure to provide legally
23 required rest periods, as set forth more fully below;
- 24 (f) Violation of California Labor Code section 226.7 for failure to pay required rest
25 period premiums, as set forth more fully below;
- 26 (g) Violation of California Labor Code section 204 for failure to timely pay wages to
27 Plaintiff and Aggrieved Employees during employment, as set forth more fully
28 before;

- 1 (h) Violation of California Labor Code sections 201, 202, and 203 for failure to pay all
2 wages at time of discharge from employment, as set forth more fully below;
- 3 (i) Violation of California Labor Code section 226(a) for failure to provide accurate
4 wage statements to Plaintiff and Aggrieved Employees, as set forth more fully
5 below;
- 6 (j) Violation of California Labor Code section 1174(d) for failure to keep complete
7 and accurate payroll records relating to Plaintiff and Aggrieved Employees, as set
8 forth more fully below; and
- 9 (k) Violation of California Labor Code sections 2800 and 2802 for failure to reimburse
10 Plaintiff and Aggrieved Employees for necessary business-related expenses, as set
11 forth more fully below.

12 113. Pursuant to PAGA, and in particular Labor Code sections 2699(a), 2699.3, and 2699.5,
13 Plaintiff, acting in the public interest as a private attorney general, seek assessment and collection of
14 civil penalties for Plaintiff, all Aggrieved Employees, and the State of California against Defendants
15 for violations of Labor Code sections set forth herein, including penalties under California Labor Code
16 sections 2699, 558, 210, 1197.1, 226, 226.3, 1174.5, and 1197.1, penalties under the applicable IWC
17 Wage Order, and any and all additional penalties and remedies as provided by the California Labor
18 Code and/or other statutes.

19 114. Pursuant to California Labor Code section 2699(i), civil penalties recovered by
20 Aggrieved Employees shall be distributed as follows: seventy-five percent (75%) to the LWDA for
21 the enforcement of labor laws and education of employers and employees about their rights and
22 responsibilities and twenty-five (25%) to the Aggrieved Employees.

23 115. Plaintiff retained counsel to file this court action, and to assess and collect the civil
24 penalties owed by Defendants. Plaintiff therefore seeks an award of reasonable attorney's fees and
25 costs pursuant to Labor Code §§ 210, 218.5, 2699(g)(1), and any other applicable statute.

26 **DEMAND FOR JURY TRIAL**

27 Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

28 ///

1 **PRAYER FOR RELIEF**

2 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment against
3 Defendants, jointly and severally, as follows:

4 **Class Certification**

- 5 1. That this action be certified as a class action;
6 2. That Plaintiff be appointed as the representative of the Class;
7 3. That counsel for Plaintiff be appointed as Class Counsel; and
8 4. That Defendants provide to Class Counsel immediately the names and most current/last
9 known contact information (address, e-mail and telephone numbers) of all class members.

10 **As to the First Cause of Action**

- 11 5. That the Court declare, adjudge and decree that Defendants violated California Labor
12 Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the
13 other class members;
14 6. For general unpaid wages and such general and special damages as may be appropriate;
15 7. For statutory wage penalties pursuant to California Labor Code section 1197.1 for
16 Plaintiff and the other class members in the amount as may be established according to proof at trial;
17 8. For pre-judgment interest on any unpaid compensation from the date such amounts
18 were due;
19 9. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
20 Labor Code section 1194(a);
21 10. For liquidated damages pursuant to California Labor Code section 1194.2;
22 11. For such other and further relief as the Court may deem just and proper.

23 **As to the Second Cause of Action**

- 24 12. That the Court declare, adjudge and decree that Defendants violated California Labor
25 Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime
26 wages due to Plaintiff and the other class members;
27 13. For general unpaid wages at overtime wage rates and such general and special
28 damages as may be appropriate;

1 14. For pre-judgment interest on any unpaid overtime compensation commencing from
2 the date such amounts were due;

3 15. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
4 Labor Code section 1194;

5 16. For such other and further relief as the Court may deem just and proper.

6 **As to the Third Cause of Action**

7 17. That the Court declare, adjudge and decree that Defendants violated California Labor
8 Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal
9 periods, (including second meal periods) to Plaintiff and the other class members;

10 18. That the Court make an award to Plaintiff and the other class members of one (1) hour
11 of pay at each employee's regular rate of compensation for each workday that a meal period was not
12 provided;

13 19. For all actual, consequential, and incidental losses and damages, according to proof;

14 20. For premium wages pursuant to California Labor Code section 226.7(c);

15 21. For pre-judgment interest on any unpaid wages from the date such amounts were due;

16 22. For reasonable attorneys' fees and costs of suit incurred herein;

17 23. For such other and further relief as the Court may deem just and proper.

18 **As to the Fourth Cause of Action**

19 24. That the Court declare, adjudge and decree that Defendants violated California Labor
20 Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to
21 Plaintiff and the other class members;

22 25. That the Court make an award to Plaintiff and the other class members of one (1) hour
23 of pay at each employee's regular rate of compensation for each workday that a rest period was not
24 provided;

25 26. For all actual, consequential, and incidental losses and damages, according to proof;

26 27. For premium wages pursuant to California Labor Code section 226.7(c);

27 28. For pre-judgment interest on any unpaid wages from the date such amounts were due;

28 29. For such other and further relief as the Court may deem just and proper.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to pay all compensation owed at the time required by California Labor Code section 204 to Plaintiff and the Class;

31. For statutory penalties pursuant to California Labor Code section 210;

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

As to the Sixth Cause of Action

33. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and the other class members, and willfully failed to provide accurate itemized wage statements thereto;

34. For actual, consequential and incidental losses and damages, according to proof;

35. For statutory penalties pursuant to California Labor Code section 226(e);

36. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(g);

37. For such other and further relief as the Court may deem just and proper.

As to the Seventh Cause of Action

38. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and the other class members no longer employed by Defendants;

39. For all actual, consequential, and incidental losses and damages, according to proof;

40. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff and the other class members who have left Defendants' employ;

41. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

42. For such other and further relief as the Court may deem just and proper.

As to the Eight Cause of Action

43. That the Court declare, adjudge, and decree that Defendants violated California Labor

Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other class members for all necessary business-related expenses as required by California Labor Code sections 2800 and 2802;

44. For actual, consequential and incidental losses and damages, according to proof;

45. For the imposition of civil penalties and/or statutory penalties;

46. For punitive damages and/or exemplary damages according to proof at trial;

47. For reasonable attorneys' fees and costs of suit incurred herein; and

48. For such other and further relief as the Court may deem just and proper.

As to the Ninth Cause of Action

49. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code sections as to Plaintiff and the other class members: 510 and 1198 (by failing to pay overtime wages); 1194, 1197, and 1197.1 (by failing to pay minimum wages); 226.7 and 512(a) (by failing to provide meal and rest periods or compensation in lieu thereof); 204 (by failing to timely pay wages during employment); 226(a) (by failing to provide accurate wage statements); and 201, 202, and 203 (by failing to pay all wages owed upon termination); and 2800 and 2802 (by failing to reimburse business-related expenses);

50. For restitution of unpaid wages to Plaintiff and all the other class members and all pre-judgment interest from the day such amounts were due and payable;

51. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violation of California Business and Professions Code sections 17200, *et seq.*;

52. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5; and

53. For injunctive relief to ensure compliance with this section, pursuant to California Business and Professions Code sections 17200, *et seq.*

As to the Tenth Cause of Action

54. For the imposition of civil penalties pursuant to California Labor Code §§ 2699, 210, 558, 226, 226.3, 1174.5, 1197.1 and all other penalties allowed by the California Labor Code and/or

1 other applicable statutes;

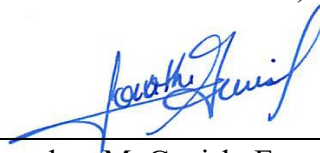
2 55. For statutory attorneys' fees and costs pursuant to sections 210, 218.5 and 2699(g)(1)
3 of California Labor Code; and

4 56. For such other and further relief as the Court may deem proper.
5

6 DATED: September 27, 2023

BLACKSTONE LAW, APC

7
8 By:



9 Jonathan M. Genish, Esq.

10 Attorneys for Plaintiff

11 GUADALUPE BALBUENA individually,
12 and on behalf of all similarly aggrieved
13 employees and the putative class
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Exhibit A

July 20, 2023

PAGA Claim Notice Via Online Electronic Submission

California Labor & Workforce Development Agency

800 Capitol Mall, Suite 5000 (MIC-55)

Sacramento, CA 95814

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

RE: *Guadalupe Balbuena v. Real Time Staffing Services, LLC dba Select Staffing and Randall Foods International, Inc.*

Dear Representative:

This office represents Guadalupe Balbuena (“Claimant”) with respect to her claims under the California Labor Code against Real Time Staffing Services, LLC dba Select Staffing and Randall Foods International, Inc. (including any and all affiliates, subsidiaries, parents, directors, and officers thereof) (collectively referred to herein as “Employers”). This letter is being sent simultaneously to Employers by certified mail.

Employers employed Claimant from approximately November 2016 to October 2022 as a non-exempt, hourly-paid employee. During her employment with Employers, Claimant was employed as a Meat Cutter at 2905 E. 50 St., Vernon, CA 90058.

Claimant intends to bring a representative action seeking penalties for violations of the California Labor Code which are recoverable under the Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”). Claimant is seeking penalties on behalf of himself and in a representative capacity on behalf of the State of California and all current and former hourly-paid and/or non-exempt employees who worked for Employers in the State of California during the relevant statutory period (“Aggrieved Employees”). This letter is being sent in compliance with California Labor Code section 2699.3 and shall serve as Claimant’s notice of the provisions of the California Labor Code alleged to have been violated, including the facts and theories in support thereof.

As detailed below, Employers violated several of California’s wage and hour laws during Claimant’s employment, including but not limited to California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and the Industrial Welfare Commission Wage Orders (“IWC Wage Order”) including, *inter alia*, IWC Wage Order No. 8-2001. The claims made on behalf of Claimant and Aggrieved Employees are based upon the

following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION

Employers have engaged in numerous unlawful practices which resulted in the failure to pay Claimant and other Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

California Labor Code sections 1194, 1197, and 1197.1 and IWC Wage Order No. 8-2001 require employers to pay at least the legal minimum wage to their employees. California Labor Code sections 510 and 1198 and IWC Wage Order No. 8-2001 further require employers to pay no less than one and one-half times the regular rate of pay of the employee for hours worked in excess of eight (8) hours in one workday, for hours worked in excess of forty (40) hours in one workweek, and for the first eight (8) hours worked on the seventh day of work in any one workweek, and to pay no less than twice the regular rate of pay of the employee for hours worked in excess of twelve (12) hours in one workday and for any work in excess of eight (8) hours on any seventh day of a workweek.

Throughout the relevant time period, Employers regularly required Claimant and other Aggrieved Employees to perform work off-the-clock. This off-the-clock work included, amongst other things, requiring Claimant and other Aggrieved Employees to process, cut and package meat during purported meal periods. Employers failed to compensate Claimant and other Aggrieved Employees for any of this off-the-clock work, in violation of California law.

In addition, Employers utilized time rounding practices that resulted in the systematic underpayment of wages (including minimum wages, straight time wages and overtime wages) to Claimant and Aggrieved Employees.

Employers also failed to accurately record the actual time worked by Claimant and Aggrieved Employees. Moreover, the uncompensated work described herein was often performed when Claimant and other Aggrieved Employees had already worked eight (8) hours in a day and/or forty (40) hours in week resulting in a failure to pay overtime compensation. Finally, Employers failed to pay overtime to Claimant and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration, including non-discretionary commissions, non-discretionary bonuses, and non-discretionary performance pay.

As a result of the foregoing practices, Employers have failed to pay Claimant and other Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employers violated IWC Wage Order No. 8-2001 and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to

California Labor Code section 2699; penalties pursuant to paragraph 20(A) of IWC Wage Order No. 8-2001; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and attorneys' fees and costs.

2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS

California law requires employers to provide employees with an opportunity to take an uninterrupted meal period of no less than thirty (30) minutes before the end of the fifth hour of work when an employee works more than five (5) hours in a day. Cal. Lab. Code §§ 226.7, 512(a). A second meal period of no less than thirty (30) minutes must be provided before the end of the tenth hour of work when an employee works more than ten (10) hours in a day. Cal. Lab. Code §§ 226.7, 512(a). When an employer fails to provide a meal or rest period, an hour of pay at the employee's regular rate of compensation is owed to the employee. Cal. Lab. Code § 226.7(c).

During the relevant time period, Employers failed to provide Claimant and other Aggrieved Employees with legally-compliant 30-minute meal periods. Claimant and other Aggrieved Employees were required by Employers to work more than five (5) hours per day, but were not provided with uninterrupted 30-minute meal periods. Further, Claimant and other Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employers regularly required Claimant and other Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. Meal periods, when provided, were oftentimes interrupted or cut short.

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employers' management at various levels failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employers failed to adequately inform and train Claimant and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employers failed to adequately inform and train Claimant and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employers failed to ensure that there was adequate staffing to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employers required Claimant and other Aggrieved Employees to respond to work-related requests at all times, including during meal periods; and (7) Employers' policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on maximizing profits over employees' right to receive timely, uninterrupted, and duty-free meal periods.

Claimant and other Aggrieved Employees did not receive an extra hour of wages at their

regular rate of pay for the meal periods which were not provided to them in compliance with California law.

Accordingly, Employers violated IWC Wage Order No. 8-2001 and California Labor Code sections 226.7, 512(a) and 1198.

Claimants and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph 20(A) of IWC Wage Order No. 8-2001; penalties pursuant to California Labor Code sections 558 and 1199; and attorneys' fees and costs.

3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS

California law requires employers to authorize and permit employees to take an uninterrupted rest period of no less than ten (10) minutes must for every four (4) hours, or major fraction thereof, worked. Cal. Lab. Code § 226.7. When an employer fails to authorize and permit a rest period, an hour of pay at the employee's regular rate of compensation is owed to the employee. Cal. Lab. Code § 226.7(c).

Employers failed to authorize and permit Claimant and other Aggrieved Employees to take legally-compliant 10-minute rest periods. Employers required Claimant and other Aggrieved Employees to work through rest periods. Claimant and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Claimant and other Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Claimant and other Aggrieved Employees were not completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employers' management at various levels failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employers failed to adequately inform and train Claimant and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employers failed to adequately inform and train Claimant and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employers failed to ensure that there was adequate staffing to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employers

required Claimant and other Aggrieved Employees to respond to work-related requests at all times, including during rest periods; and (7) Employers' policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees' right to receive rest periods.

Claimant and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods which were not provided to them in compliance with California law.

Accordingly, Employers violated IWC Wage Order No. 8-2001 and California Labor Code sections 226.7, and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph 20(A) of IWC Wage Order No. 8-2001; California Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Employers have failed to timely pay all wages earned because Claimant and other Aggrieved Employees were not paid all the wages they were owed including, *inter alia*, overtime compensation, straight time wages, minimum wages, and meal and rest period premiums. Accordingly, Employers violated California Labor Code section 204(a).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

California Labor Code section 226(a) requires an employer semimonthly or at the time of each payment of wages to furnish wage statements to its employees setting forth, *inter alia*, (1) gross wages earned, (2) total hours worked by the employee, (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) 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, and (8) the name and address of the legal entity that is the employer.

As a result of the practices described herein, the wage statements provided to Claimant and other Aggrieved Employees failed to include the actual hours worked (including time spent working off-the-clock), the actual gross wages earned (including wages owed for time spent working off the clock and meal and rest period premiums), and the correct rates of pay. The wage statements provided to Claimant and other Aggrieved Employees also failed to include the name of the legal entity that employed Claimant and the Aggrieved Employees. Accordingly, Employers violated California Labor Code section 226(a).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

6. FAILURE TO MAINTAIN ACCURATE RECORDS

California Labor Code section 1174(d) requires an employer to 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 the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, Employers have failed to maintain accurate records relating to Claimant and other Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employers violated IWC Wage Order No. 8-2001 and California Labor Code sections 1198.5 and 1174(d).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph 20(A)**Error! Reference source not found.** of IWC Wage Order No. 8-2001; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

7. FAILURE TO REIMBURSE NECESSARY EXPENDITURES

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. IWC Wage Order No. 8-2001 requires employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Claimant and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employers. These costs include but are not limited to the purchase of

cold-resistant clothing, rubber boots, and butchery tools for work-related purposes.

Accordingly, Employers violated IWC Order No. 8-2001 **Error! Reference source not found.**and California Labor Code sections 2800 and 2802. Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph 20(A) of IWC Wage Order No. 8-2001; and attorneys' fees and costs.

8. FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION OF EMPLOYMENT

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

During the relevant time period, upon the termination of employment (including but not limited to when they were temporarily laid off, laid off, discharged, and/or resigned), Aggrieved Employees were not paid all wages due to them within twenty-four (24) hours or even within seventy-two (72) hours for those who resigned. Specifically, as a result of Employers' practices of requiring Aggrieved Employees to work off-the-clock without compensation, failing to pay proper overtime compensation, unlawful rounding practices, failure to properly calculate regular rates, and failure to accurately record all hours actually worked, Employers failed to pay Aggrieved Employees for all straight time wage, minimum wages and overtime compensation owed to them upon termination of their employment. Employers also failed to pay Aggrieved Employees for meal period premiums and rest period premiums they were owed, amongst other wages. Accordingly, Employers violated California Labor Code sections 201 and 202.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to California Labor Code sections 203 and 1199; and attorneys' fees and costs.

Employers are in direct violation of numerous California wage and hour laws including but not limited to said sections stated above. We hereby provide notice under the California Labor Code Private Attorneys General Act of 2004, California Labor Code Sections 2698, et seq., and specifically ask for an investigation, or if the agency does not intend to investigate the alleged violations, a letter confirming the same so that we may allege a cause of action under PAGA against Employers for the violations discussed in this letter.

This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3. By law, an employee alleging a violation of one of the above referenced sections must notify his or her employer and the Labor and Workforce Development Agency (LWDA) before

he or she can invoke the provisions of Sections 2699, et seq., by seeking redress in court. Cal. Lab. Code § 2699.3(a)(1). The LWDA must then notify the employer and the employee within 60 calendar days regarding whether it intends to investigate the alleged violation. Cal. Lab. Code § 2699.3(a)(2)(B). If the LWDA advises it will not investigate, or if no notice is provided within 65 calendar days, the employee may file a lawsuit invoking the provisions under Labor Code § 2699. Cal. Lab. Code § 2699.3(a)(2)(A). It is Claimant's intention to file a civil complaint and to bring the appropriate claims under California Labor Code § 2699 on behalf of themselves, the State of California and all Aggrieved Employees should your office not address Employers' alleged violations within this time.

If you have any questions or require additional information, please do not hesitate to contact my office. Thank you for your attention to this matter.

BLACKSTONE LAW

Miriam Schimmel

Miriam Schimmel, Esq.

cc: By U.S. Certified Mail, Return Receipt Requested

Real Time Staffing Services, LLC dba Select Staffing
1507 Lyndon B Johnson Freeway, Suite 400
Farmers Branch, TX 75234

Real Time Staffing Services, LLC dba Select Staffing
ATTN: 1505 Corporation Corporation Service Company Which Will Do Business In California As
Csc - Lawyers Incorporating Service, Agent for Service of Process
2710 Gateway Oaks Drive
Sacramento, CA 95833

Randall Foods International Inc.
PO Box 2669
Huntington Park, CA 90255

Randall Foods International Inc.
ATTN: Diane Olmedo, Agent for Service of Process
1961 Calle Bugota
Rowland Hts, CA 91748

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, Stephany Sinaguinan, certify and declare as follows:

I am over eighteen years of age and not a party to the within action; my business address is 8383 Wilshire Blvd, Suite 745, Beverly Hills, California 90211. On September 27, 2023, I served a copy of the following document(s):

FIRST AMENDED COMPLAINT

on the interested parties as follows:

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Marianne C. Koepf

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Attorneys for Defendant

REAL TIME STAFFING SERVICES, LLC

dba SELECT STAFFING

☒ **BY ELECTRONIC MAIL (E-MAIL):** I caused said document(s) to be delivered electronically to be delivered to the addressee(s) listed above via email from email address ssina@blackstonepc.com pursuant to California Code of Civil Procedure section 1010.6(e)(1). I did not receive any electronic message or other indication that the transmission was unsuccessful.

Diane Olmedo

1961 Calle Bugota

Rowland Heights, CA 91748

Registered Agent for Service of Process for
Defendant Randall Foods International Inc.

CSC – Lawyers Incorporating Service

2710 Gateway Oaks Drive, Suite 150N

Sacramento, CA 95833

Registered Agent for Service of Process for
Defendant Highview Capital, LLC

☒ **BY MAIL:** I enclosed the above documents in a sealed envelope with postage thereon fully prepaid and placed for collection and mailing on the above date in accordance with ordinary business practices. I am readily familiar with this firm's practice of collection and processing of correspondence for mailing with the United States Postal Service, and that the correspondence shall be deposited with the United States Postal Service the same day in the ordinary course of business pursuant to Cal. Code Civ. Proc. § 1013(a).

☒ **STATE** – I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

///

Executed on September 27, 2023 at Beverly Hills, California.



Stephany Sinaguinan