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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

JOSEFINA DIAZ FLORES, on behalf of
themselves, all others similarly situated, and the
State of California

Plaintiffs,

vs.

WINESHIPPING.COM, LLC, a California
Limited Liability Company, DTC LOGISTICS,
INC., a California Corporation, and DOES 1
through 50,

Defendants.

Case No. 23CVP-0321

**CLASS ACTION AND PAGA
COMPLAINT**

1. Failure to Pay Contractual Wages;
(LC §§ 204, 218.5, 223, 1194)
2. Failure to Pay Minimum Wage; (LC
§§ 1194, 1194.2, 1197)
3. Failure to Pay Overtime; (LC §§
200, *et seq.*, 510, 1194)
4. Meal Period Violations (LC §§ 510,
226.7);
5. Rest Period Violations (LC §§
226.7)
6. Wage Statement and Record
Keeping Violations (LC §§ 226,
1174 *et al*);
7. Failure to Pay All Wages Owed
Upon Termination (LC § 203);
8. Violation of Unfair Competition
Law (Cal. Bus. & Prof. Code
§§ 17200 *et seq.*)
10. PAGA - Labor Code § 2699 *et seq.*

DEMAND FOR JURY TRIAL

1 **I. INTRODUCTION**

2 1. JOSEFINA DIAZ FLORES (“PLAINTIFF”) brings this action against
3 WINESHIPPING.COM LLC (“WINESHIPPING”), DTC LOGISTICS, LLC (“DTC”) and DOES
4 1 through 50 (collectively, “DEFENDANTS”) for failure to pay wages owed, failure to pay
5 minimum wages, failure to pay overtime, failure to provide accurate wage statements, failure to
6 provide proper rest and meal periods, failure to pay all wages owed upon termination, and violation
7 of unfair competition law.

8 2. The allegations in this complaint are made on the basis of PLAINTIFF’S personal
9 knowledge, and on information and belief based on a reasonable investigation under the
10 circumstances.

11 3. As a result of the violations described herein, PLAINTIFF brings this class action on
12 behalf of a Class of non-exempt workers employed by DEFENDANTS in California.
13 PLAINTIFF’S California Private Attorney General Act, Labor Code §§ 2698 et seq. (“PAGA”)
14 claim is brought as an enforcement action on behalf of the state for penalties and other remedies on
15 behalf of the State of California and current and former employees as expressly permitted by that
16 statute. All PAGA administrative requirements will have been met for this purpose prior to service
17 of the instant amended complaint.

18 **II. JURISDICTION AND VENUE**

19 4. This case is subject to the jurisdiction of this court pursuant to the California Labor
20 Code, California Business and Professions Code, and California Code of Civil Procedure.
21 DEFENDANTS are entities, partnerships, businesses and persons who reside and/or conduct
22 business in the County of San Luis Obispo. Particularly, DEFENDANTS operate a warehouse and
23 bottling facility at 11680 Chimney Rock Road, Paso Robles, CA where some or all of
24 DEFENDANTS’ wrongful conduct took place.

25 5. This Court has jurisdiction under California Code of Civil Procedure Section 410.10,
26 in that this is a civil action where the matter in controversy, exclusive of interest and costs, exceeds
27 \$25,000.

6. Venue is proper in this judicial district because DEFENDANTS conduct business in San Luis Obispo County, and many or all of the alleged violations arose in San Luis Obispo County.

III. PARTIES

PLAINTIFF

7. JOSEFINA DIAZ FLORES (“MS. FLORES”) is an individual residing in California who was directly or jointly employed by DEFENDANTS as a warehouse associate in Paso Robles, California. MS. FLORES was employed by DEFENDANTS within the relevant time period and was denied wages owed, minimum wages, overtime premium wages, proper rest and meal breaks. MS. FLORES is aggrieved and has suffered injury in fact and loss of property as a result of DEFENDANTS’ conduct described in this Complaint.

DEFENDANTS

8. WINESHIPPING is a California limited liability company located in the City of Napa, California, but with operations in Paso Robles and Santa Maria, California, where shipping warehouses are located. WINESHIPPING operates and maintains warehouses in California to ship wine. During all relevant times alleged herein, WINESHIPPING directly or jointly employed PLAINTIFF and similarly situated persons as non-exempt employees and committed in California and in this District the acts and/or caused the violations complained of herein.

9. DTC is a California Corporation located in the City of Fontana, California, and is the parent company of WINESHIPPING. During all relevant times alleged herein, DTC directly or jointly employed PLAINTIFF and similarly situated persons as non-exempt employees and committed in California and in this District the acts and/or caused the violations complained of herein.

10. PLAINTIFF is ignorant of the true names or capacities of the DEFENDANTS sued herein under the fictitious names Does 1 through 50. PLAINTIFF will amend this complaint to allege the true names or capacities of these Doe Defendants once they have been ascertained their role and liability in this case.

11. The acts and failures to act alleged herein were duly performed by and attributable to all DEFENDANTS, each acting as a successor, agent, alter ego, employee, indirect employer, joint

1 employer, and/or integrated enterprise, as the direction and control of the others, except as
2 specifically alleged otherwise. Said acts and failures to act were within the scope of such agency
3 and/or employment, and each defendant participated in, approved of and/or ratified the unlawful acts
4 and omissions by the other DEFENDANTS complained of herein.

5 12. On information and belief, PLAINTIFF further asserts that the damages herein
6 alleged were actually and proximately caused by each DEFENDANT'S conduct.

7 **IV. FACTUAL ALLEGATIONS**

8 13. The claims of this lawsuit spring from a pattern of employer misconduct and
9 wrongdoing that has systematically deprived employees of lawfully earned wages. DEFENDANTS
10 engaged in the unlawful practices and policies alleged in this complaint. The following paragraphs
11 detail specific violations of law comprising the wage-related claims applicable to employees that
12 PLAINTIFF seeks to represent on a class basis and whose rights PLAINTIFF seeks to enforce on
13 behalf of the State of California in their PAGA action.

14 14. For significantly longer than four years prior to the filing of this action and through
15 to the present, Defendants and their subsidiaries, parents, or affiliate companies have maintained and
16 enforced unlawful labor policies against employees that revolve around Defendants' rest and meal
17 break practices, their practices around indemnification of expenditure by employees, and their
18 record-keeping procedures.

19 15. DEFENDANTS failed to compensate for all "hours worked" (within the meaning of
20 the applicable Wage Orders) and failed to pay overtime premium wages for work performed. This
21 includes, but is not limited to, regular hours worked that were not compensated at minimum or
22 agreed upon rates, overtime hours worked that were either not compensated, or compensated at rates
23 lower than the applicable overtime premium wage rate and/or without properly calculating the
24 regular rate of pay for purposes of paying overtime, and uncompensated or undercompensated time
25 spent on statutory rest breaks, work meetings, and other activities.

26 16. DEFENDANTS suffered or permitted employees to work "off-the-clock" including
27 before clocking in at the beginning of their shifts, during unpaid meal periods, and after clocking out
28 at the end of their shifts.

1 17. Under the meal period policies, DEFENDANTS failed to provide employees: (a) at
2 least one (1) meal period prior to the fifth hour and/or two (2) meal periods for shifts greater than
3 ten hours, net thirty-minute meal periods, and/or timely meal periods. Further, DEFENDANTS'
4 policy is to not pay the premium wages owed to workers for missed, incomplete and/or untimely
5 meal periods.

6 18. Under the rest break policies, DEFENDANTS failed to provide employees: (a) at
7 least two (2) rest breaks for shifts greater than six hours, and/or three (3) rest breaks for shifts greater
8 than ten hours, and (b) net ten-minute rest breaks. Further, DEFENDANTS' policy is to not pay the
9 premium wages owed to workers for missed, incomplete, and/or untimely rest breaks.

10 19. Under the record-keeping policies, DEFENDANTS willfully provide inaccurate
11 itemized wage statements that do not reflect all "hours worked" and wages earned.

12 20. DEFENDANTS' failure to pay all wages earned, to authorize and permit requisite
13 meal periods, failure to pay premium meal and rest period wages, failure to pay all wages due at
14 termination, in addition to the other violations alleged above, during all relevant times herein were
15 intentional, willful, and deliberate.

16 21. On information and belief, DEFENDANTS were on notice of the improprieties
17 alleged herein by their employees, and intentionally refused to rectify their unlawful policies.

18 22. PLAINTIFF, on behalf of herself and all other non-exempt employees employed by,
19 or formerly employed by DEFENDANTS, brings this action pursuant to California Labor Code
20 §§ 201, 202, 203, 204, 210, 214, 216, 218, 218.5, 218.6, 221, 226, 226.3, 226.7, 512, 558.1, 1174,
21 1194, 1194.2, 1197, 1197.1, 1199, 2802, and Business & Professions Code §§ 17200 et seq. seeking
22 unpaid, underpaid and premium wages, statutory penalties, liquidated damages, declaratory,
23 injunctive and other equitable relief, reasonable attorneys' fees and costs of suit, interest, injunctive
24 relief, declaratory relief, restitution, and disgorgement of all profits or benefits retained by
25 DEFENDANTS as a result of their failure to comply with the above laws.

26 23. DEFENDANTS have made it difficult to account with precision for the unlawfully
27 withheld wages due to DEFENDANTS' non-exempt employees, including PLAINTIFF, during all
28 relevant times herein, because they have not implemented an adequate record-keeping method to

1 record all wages earned by their employees as required for non-exempt employees by California
2 Labor Code §§ 226 and 1174(d).

3 **V. CLASS ALLEGATIONS**

4 24. PLAINTIFF bring this action on behalf of themselves and all others pursuant to
5 Section 382 of the California Code of Civil Procedure, on the basis that there is a well-defined
6 community of interest in the litigation and the proposed class is easily ascertainable. PLAINTIFF
7 seeks to represent the following Class:

8 All non-exempt workers employed by Defendants at any time within four (4)
9 years of the filing of this Complaint through the final disposition of this
action.

10 25. On information and belief, the injury and loss of money to Class Members is
11 substantial and exceeds the minimum jurisdiction of this Court. PLAINTIFF and the Class were
12 regularly subjected to the policy violations described in this Complaint.

13 26. On information and belief, the legal and factual issues are common to the Class and
14 affect all Class Members.

15 27. PLAINTIFF reserves the right to amend or modify the class description with greater
16 specificity or further division into subclasses, as well as to limit the class or subclasses to particular
17 issues, as warranted.

18 **A. NUMEROSITY**

19 28. The potential members of the Class as defined are so numerous that joinder of all of
20 them is impracticable. While the precise number of Class Members has not been determined at this
21 time, PLAINTIFF is informed and believe that the Class is comprised of more than one hundred
22 individuals.

23 29. On information and belief, PLAINTIFF alleges that DEFENDANTS' employment
24 records will provide information as to the number and location of all Class Members.

25 **B. COMMONALITY & PREDOMINANCE**

26 30. There are questions of law and fact that are common to the Class and predominate
27 over individualized questions. These common questions of law and fact include, without limitation:
28

- 1 a. Whether DEFENDANTS violated the rights of Class Members to receive
2 proper overtime wages for all hours worked;
- 3 b. Whether DEFENDANTS violated the Labor Code and Wage Orders by
4 enforcing a policy or practice of not maintaining accurate records of overtime
5 pay;
- 6 c. Whether DEFENDANTS violated the Labor Code and Wage Orders by
7 enforcing a policy or practice of denying compensation for all hours worked
8 at agreed-upon rates;
- 9 d. Whether DEFENDANTS violated the minimum wage by enforcing a policy
10 or practice of denying compensation for all hours worked;
- 11 e. Whether DEFENDANTS violated Labor Code section 226 and the Wage
12 Orders by maintaining a policy or practice of failing to state accurately the
13 gross pay and net pay earned in employee wage statements;
- 14 f. Whether DEFENDANTS violated the Labor Code by failing to provide
15 timely and proper meal periods;
- 16 g. Whether DEFENDANTS violated the Labor Code by failing to pay all wages
17 owed at termination;
- 18 h. Whether DEFENDANTS violated the Labor Code by enforcing a policy or
19 practice of refusing to indemnify non-exempt employees for necessary
20 business expenses;
- 21 i. Whether DEFENDANTS violated Sections 17200, et seq. of the Business
22 and Professions Code by the actions alleged in this complaint;
- 23 j. Whether PLAINTIFF and other Class Members are entitled to damages,
24 restitution, statutory penalties, premium wages, declaratory, injunctive and
25 declaratory relief, attorneys' fees, interest, and costs, and other relief pursuant
26 to California Labor Code and Wage Orders, and Business and Professions
27 Code §§ 17200, et seq.
- 28

31. There are no individualized factual or legal issues for the court to resolve other than the application of a formula to calculate each Class Members' damages.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

**FAILURE TO PAY FOR ALL HOURS WORKED AT CONTRACTUAL OR
STATUTORY RATES**

**(Cal. Lab. Code §§ 204, 218.5, 223, 1194 & Wage Orders)
PLAINTIFF AGAINST ALL DEFENDANTS**

32. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

33. Labor Code section 223 requires an employer to pay an employee the wage designated by statute or contract, and California law requires payment of all wages due for "all hours worked."

34. Pursuant to Labor Code section 223, it is unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.

35. PLAINTIFF and, on information and belief, members of the class they seek to represent are entitled to wages at rates designated by contract and statute that exceed the California minimum wage.

36. DEFENDANTS have breached their agreement and refused to compensate PLAINTIFF and, on information and belief, members of the class they seek to represent at the required wage rates, in violation of the Labor Code and Wage Orders, including section 223 of the Labor Code. By failing to pay wages at the required rate on at least a weekly basis, DEFENDANTS have also violated Labor Code section 204 by failing to pay all earned wages in a timely manner.

37. PLAINTIFF bring this cause of action under Labor Code section 218.5, authorizing a private right of action for the nonpayment of wages.

38. DEFENDANTS have the ability to pay wages at the required rates for all "hours worked," but have willfully refused to pay such wages with the intent to secure a discount upon their indebtedness to PLAINTIFF and the class, as well as to annoy, harass, oppress, hinder, delay or defraud PLAINTIFF and the Class. DEFENDANTS have secretly paid PLAINTIFF and the Class a lower wage while purporting to pay the wage designated by statute, in violation of Labor Code §

223. DEFENDANTS are therefore guilty of a misdemeanor, pursuant to Labor Code § 225, and are liable for penalties pursuant to Labor Code § 225.5.

39. WHEREFORE, PLAINTIFF and the Class are entitled to recover the unpaid wages, liquidated damages in an amount equal to the wages unlawfully unpaid, interest thereon, reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a).

SECOND CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGE
(Cal. Lab. Code §§ 1194, 1194.2, 1197 & Wage Orders)
PLAINTIFF AGAINST ALL DEFENDANTS

40. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

41. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:

The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

42. The applicable minimum wages fixed by the commission for work is \$9.00 effective July 1, 2014, \$10.00 effective January 1, 2016, \$10.50 effective January 1, 2017, \$11.00 effective January 1, 2018, \$12.00 effective January 1, 2019, and \$13.00 effective January 1, 2020.

43. The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to California Labor Code § 1194(a) which states:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees and costs of suit.

44. As described in California Labor Code §§ 1185 and 1194.2, any action for wages incorporates the applicable Wage Orders of the California Industrial Welfare Commission.

45. California Labor Code § 1194.2 also provides for the following remedies:

In any action under Section 1194 ... to recover wages because of the payment of a wage less than the minimum wages fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

46. DEFENDANTS failed to pay PLAINTIFF and the Class for all "hours worked" at the minimum or written agreed upon wage rate. For example, DEFENDANTS maintained a pay

1 policy whereby PLAINTIFF and the Class were required or knowingly permitted to perform
2 numerous work activities that were uncompensated.

3 47. At all relevant times, PLAINTIFF and the Class were subject to DEFENDANTS'
4 control during time that was uncompensated. In particular, time records were either not recorded
5 correctly or altered to eliminate worked time from timekeeping so as to avoid paying for all hours
6 worked.

7 48. Wherefore, PLAINTIFF and the Class are entitled to recover the unpaid minimum
8 wages, liquated damages in an amount equal to the minimum wages unlawfully unpaid, interest
9 thereon, reasonable attorney's fees and costs of suit pursuant to California Labor Code §§ 218.5 and
10 1194(a).

11 **THIRD CAUSE OF ACTION**
12 **FAILURE TO PAY OVERTIME PREMIUM WAGES**
(Cal. Lab. Code §§ 200, et seq., 510, 1194 & Wage Order(s))
13 **PLAINTIFF AGAINST ALL DEFENDANTS**

14 49. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

15 50. Labor Code § 510(a) establishes the eight (8) hour workday and 40-hour workweek,
16 and provides that work in excess of eight (8) hours in one day or 40 hours in one week is to be
17 compensated at one and one-half (1 Y2) the regular rate of pay ("overtime rate"). The wage orders,
18 which are authorized under California Labor Code§ 1185 and apply in this case, further provide that
19 work in excess of 12 hours in a workday or eight hours on the seventh consecutive workday is to be
20 compensated at the rate of twice the regular rate of pay ("doubletime rate").

21 51. DEFENDANTS violated California Labor Code § 510 and the applicable wage
22 orders (or caused the violations) by subjecting employees to employer control, or knowingly
23 suffering or permitting them to work, in excess of the statutory overtime thresholds, without paying
24 the applicable premium rate.

25 52. PLAINTIFF may enforce these provisions pursuant to Labor Code § 1194(a) and
26 Business and Professions Code §§ 17200 et seq.

27 53. California Labor Code§ 1194(a) states:
28 Notwithstanding any agreement to work for a lesser wage, any
employee receiving less than the legal minimum wage or the legal
overtime compensation applicable to the employee is entitled to
recover in a civil action the unpaid balance of the full amount of this

1 minimum wage or overtime compensation, including interest
2 thereon, reasonable attorney's fees and costs of suit.

3 54. DEFENDANTS failed to follow California's formula for computing the regular rate
4 of pay for purposes of calculating overtime and double time. DEFENDANTS also refused to pay for
5 all hours worked and failed to compensate at the agreed upon and statutory rates, rendering
6 DEFENDANTS' overtime computations unlawful.

7 55. PLAINTIFF and, on information and belief, other current or former employees are
8 entitled to wages at the applicable premium rate as a result of DEFENDANTS' practice of not
9 compensating them at the required premium rate, as well as for failing to compensate them for all
10 "hours worked."

11 56. PLAINTIFF and, on information and belief, other current or former employees are
12 owed wages for the violations above. DEFENDANTS failed to pay said wages when due, as required
13 by Labor Code § 204, and have not been paid them to date. The violation of California's premium
14 wage laws is substantial and occurred regularly, and DEFENDANTS' failure to maintain accurate
15 time records will shift the burden of proof.

16 57. PLAINTIFF is entitled to payment of wages owed under California Labor Code §§
17 510, 1197, 1194(a) and the applicable wage orders.

18 58. Wherefore, PLAINTIFF request relief against DEFENDANTS as described herein
19 and below, including unpaid wages, interest, attorney's fees and cost of suit.

20 **FOURTH CAUSE OF ACTION**
21 **MEAL PERIOD VIOLATIONS**
(Cal. Lab. Code §§ 226.7, 512)
PLAINTIFF AGAINST ALL DEFENDANTS

22 59. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth herein.

23 60. PLAINTIFF alleges that DEFENDANTS failed to provide meal periods.

24 61. California Labor Code §226.7 states:

25 (a) No employer shall require any employee to work during any meal
26 or rest period mandated by an applicable order of the Industrial
27 Welfare Commission.

28 (b) If an employer fails to provide an employee a meal period or rest
period in accordance with an applicable order of the Industrial
Welfare Commission, the employer shall pay the employee one

1 additional hour of pay at the employee's regular rate of compensation
2 for each work day that the meal or rest period is not provided.

3 62. The applicable IWC Wage Orders contain similar language.

4 63. PLAINTIFF and, on information and belief, other current or former employees and
5 Class Members, worked more than five hours from the start of the shift without a duty-free meal
6 period of no less than 30 minutes.

7 64. DEFENDANTS do not provide PLAINTIFF and, on information and belief, other
8 current or former employees or Class Members, with a second meal period for shifts greater than 10
9 or 12 hours.

10 65. Meal periods were not voluntarily waived. Any express or implied waivers obtained
11 from PLAINTIFF and, on information and belief, current and former employees and Class Members,
12 were not willfully obtained, were not voluntarily agreed to, were a condition of employment, or were
13 part of an unlawful contract of adhesion.

14 66. DEFENDANTS failed to pay additional wages for meal periods that were not
15 provided. PLAINTIFF and the Class are entitled to premium meal period wages pursuant to Labor
16 Code § 226.7.

17 67. Wherefore, PLAINTIFF and the Class are entitled to recover the full amount of their
18 unpaid meal period wages and all related penalties and remedies.

19 **FIFTH CAUSE OF ACTION**
20 **REST PERIOD VIOLATIONS**
(Cal. Lab. Code § 226.7)
21 **PLAINTIFF AGAINST ALL DEFENDANTS**

22 68. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

23 69. PLAINTIFF alleges that DEFENDANTS failed to provide proper rest periods.

24 70. DEFENDANTS failed to authorize and permit rest periods by failing to provide the
25 requisite number of breaks per shift and/or to allow net 10 minutes of rest, in violation of the
26 applicable Wage Orders and Labor Code § 226.7.

27 71. Rest periods were not voluntarily waived. Any express or implied waivers obtained
28 from PLAINTIFF and, on information and belief, current and former employees and members of

1 the Class they seek to represent, were not willfully obtained, were not voluntarily agreed to, were a
2 condition of employment, or were part of an unlawful contract of adhesion.

3 72. DEFENDANTS failed to pay additional wages for rest periods that were not
4 provided. PLAINTIFF and the Class they seek to represent are entitled to premium rest period wages
5 pursuant to Labor Code § 226.7.

6 73. WHEREFORE, PLAINTIFF and the Class they seek to represent are entitled to
7 recover the full amount of their unpaid rest period wages and all related penalties and remedies.

8 **SIXTH CAUSE OF ACTION**
9 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED WAGE**
10 **STATEMENT PROVISIONS**
(Cal. Lab. Code § 226)
11 **PLAINTIFF AGAINST ALL DEFENDANTS**

12 74. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

13 75. California Labor Code § 226(a) requires that employees be provided accurate
14 itemized wage statements containing gross and net wages earned, total hours worked and applicable
15 wage rates, among other statutory requirements.

16 76. PLAINTIFF and, on information and belief, other current or former employees were
17 not provided "accurate itemized statements" within the meaning of California Labor Code § 226,
18 because of the violations described in this complaint. For example, the wage statements provided
19 by DEFENDANTS falsely understated the wages earned due to the failure to pay meal period
20 premiums, overtime premiums, and minimum wages.

21 77. California Labor Code § 226(e) and (g) provide that employees may recover fifty
22 dollars (\$50) for an initial violation and one hundred dollars (\$100) thereafter up to four thousand
23 dollars (\$4,000), costs and reasonable attorney's fees for violating the obligation to provide a proper,
24 itemized wage statement. Additionally, an employee may seek injunctive relief to ensure
25 compliance with this requirement under the UCL.

26 78. DEFENDANTS failed to comply with Labor Code § 226 as a result of the wage
27 violations and timekeeping violations described above. These violations apply to PLAINTIFF and,
28 on information and belief, other current or former employees.

1 79. By failing to comply with Labor Code § 226, DEFENDANTS have injured
2 PLAINTIFF within the meaning of the statute, entitling PLAINTIFF to relief. DEFENDANTS also
3 failed to maintain records, in particular, maintain records of correct wages earned.

4 80. WHEREFORE, PLAINTIFF seeks relief against DEFENDANTS as described herein
5 and below, including penalties in an amount to be determined at trial, injunctive relief, cost of suit
6 and attorney's fees.

7 **SEVENTH CAUSE OF ACTION**
8 FAILURE TO PAY ALL WAGES OWED UPON TERMINATION OR RESIGNATION
 (Cal. Lab. Code §§ 201, 202 & 203)
9 **PLAINTIFF AGAINST ALL DEFENDANTS**

10 81. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

11 82. California Labor Code §§ 201 and 202 provide for immediate payment of all wages
12 owed at termination of employment.

13 83. DEFENDANTS required PLAINTIFF and the Class to work without compensating
14 them for all wages as described in this complaint and failed to pay these wages at the termination of
15 these employees. Consequently, DEFENDANTS have violated California Labor Code §§ 201
16 and/or 202.

17 84. California Labor Code § 203 states:

18 If an employer willfully fails to pay, without abatement or reduction,
19 in accordance with Sections 201, 201.5, 202, and 205.5, any wages
20 of an employee who is discharged or who quits, the wages of the
21 employee shall continue as a penalty from the due date thereof at the
22 same rate until paid or until an action therefor is commenced; but the
23 wages shall not continue for more than 30 days. An employee who
24 secretes or absents himself or herself to avoid payment to him or her,
25 or who refuses to receive the payment when fully tendered to him or
26 her, including any penalty then accrued under this section, is not
27 entitled to any benefit under this section for the time during which he
28 or she so avoids payment. Suit may be filed for these penalties at any
 time before the expiration of the statute of limitations on an action
 for the wages from which the penalties arise.

29 85. DEFENDANTS willfully failed to pay all wages due as the failure to pay was not
30 inadvertent or accidental.

31 86. As a result, PLAINTIFF and the Class are entitled to 30 days' wages. "30 days
32 wages" is calculated pursuant to California case law as 30 working days and not merely a month's
33 wages.

87. In calculating 30 days wages pursuant to California Labor Code § 203, PLAINTIFF and the Class are entitled to compensation for all forms of wages earned (even if not properly paid), including, but not limited to, compensation for unprovided rest periods and unprovided meal periods, compensation for work done at hourly rates below the minimum and overtime wages, and other compensation due but not received.

88. On information and belief, more than 30 working days have passed since several members of the Class have left DEFENDANTS' employ, and despite this, they have not received payment pursuant to Labor Code § 203.

89. As a consequence of DEFENDANTS' willful conduct in not paying all earned wages, the Class is entitled to 30 days' wages as a penalty under Labor Code § 203 for failure to pay legal wages.

90. Wherefore, PLAINTIFF and the Class seek the relief as described herein and below.

EIGHTH CAUSE OF ACTION
UNFAIR AND UNLAWFUL ACTS IN VIOLATION OF UNFAIR COMPETITION LAW
(Cal. Bus. & Prof. Code §§ 17200 et seq.)
PLAINTIFF AGAINST ALL DEFENDANTS

91. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

92. On information and belief, and at all relevant times, PLAINTIFF alleges that DEFENDANTS, by and through policies and practices, engaged in unlawful activity prohibited by Business and Professions Code §§ 17200, et seq., including the following:

a. Failing to compensate PLAINTIFF for all hours worked by, for example, improperly recording or failing to record hours worked, paying according to schedule instead of actual hours worked, refusing to pay for certain work, refusing to pay at the applicable rates of pay, and not properly compensating at the applicable overtime rate, in violation of the state's minimum and overtime wage laws;

b. Failing to pay at the agreed upon rates and secretly paying below contractual or statutory rates, in violation of Labor Code § 223;

- c. Failing to indemnify employees for necessary business expenses in violation of Labor Code § 2802;
- d. Failing to provide proper rest periods and meal periods or compensation in lieu thereof, in violation of state law;
- e. Failing to pay all wages due at the appropriate periodic intervals as required by Labor Code § 204;
- f. Failing to pay all wages owed timely upon termination of the employment relationship, in violation of state law; and
- g. Failing to provide accurate itemized wage statements stating all hours worked, all applicable pay rates, or all gross and net wages earned, in violation of state law

93. DEFENDANTS' actions as alleged herein constitute false, fraudulent, unlawful, unfair, and deceptive business practices, within the meaning of Business and Professions Code §§ 17200 et seq. PLAINTIFF have suffered injury in fact and have lost money or property as a result of such unfair competition.

94. DEFENDANTS' actions as alleged herein constitute false, fraudulent, unlawful, unfair, and deceptive business practices, within the meaning of Business and Professions Code §§ 17200 et seq. PLAINTIFF have suffered injury in fact and have lost money or property as a result of such unfair competition.

95. PLAINTIFF is entitled to an injunction and other equitable relief against DEFENDANTS for such unlawful practices to prevent future damage for which there is no adequate remedy at law, and to avoid a multiplicity of lawsuits.

96. As a result of DEFENDANTS' unlawful acts described herein, DEFENDANTS have reaped and continue to reap unfair benefits and unlawful profits at the expense of PLAINTIFF and the class they seek to represent. DEFENDANTS should be enjoined from this activity and made to disgorge the ill-gotten gains and restore to PLAINTIFF and the Class the wrongfully withheld wages, pursuant to Business and Professions Code § 17203, as well as to enforce penalty provisions pursuant to § 17202.

1 97. PLAINTIFF is informed and believe, and thereon allege, that DEFENDANTS have
2 been and continue to be unjustly enriched through false, fraudulent, unlawful, unfair, and deceptive
3 business practices as alleged throughout this Complaint. PLAINTIFF is and has been prejudiced by
4 DEFENDANTS' unfair trade practices.

5 98. As a direct and proximate result of DEFENDANTS' unfair business practices,
6 PLAINTIFF and the class are entitled to equitable and injunctive relief from DEFENDANTS,
7 including full restitution and/or disgorgement of all wages which have been unlawfully withheld
8 from them, and enjoinder of DEFENDANTS to cease and desist from engaging in the practices
9 described herein.

10 99. As a direct and proximate result of DEFENDANTS' unfair business practices,
11 PLAINTIFF is entitled, in accordance with Business and Professions Code § 17202, to enforcement
12 of penalties resulting from the business acts and practices described herein and entitled to enjoinder
13 of DEFENDANTS to cease and desist from engaging in the practices described herein.

14 100. On information and belief, the unlawful conduct alleged herein is continuing, and
15 there is no indication that DEFENDANTS will cease such activity. PLAINTIFF alleges that if
16 DEFENDANTS are not enjoined from the conduct set forth in this Complaint, DEFENDANTS will
17 continue the practice of failing to properly compensate employees for all wages owed; provide
18 accurate wage statements; maintain required records; or pay all wages owed upon discharge.

19 101. Wherefore, PLAINTIFF request relief against DEFENDANTS as described herein
20 and below and as deemed just and proper by this Court.

21 **NINTH CLAIM FOR RELIEF**
22 LABOR CODE PRIVATE ATTORNEYS GENERAL ACT
23 (Cal. Lab. Code §§ 2698 ET SEQ., § 558)
 (PLAINTIFF AGAINST ALL DEFENDANTS)

24 102. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

25 103. PLAINTIFF bring this claim for themselves and other current and former employees,
26 as expressly authorized by the California Private Attorneys General Act of 2004, Labor Code
27 §§ 2699 et seq. ("PAGA"). PAGA is an enforcement action that empowers an aggrieved employee
28 to seek penalties on behalf of himself, current and former employees and the State, without the need

1 to certify a class. For purposes of this claim only, therefore, PLAINTIFF bring this claim to enforce
2 the rights of themselves and other current and former employees and need not comply with Class
3 Action Certification.

4 104. PLAINTIFF is aggrieved employees as defined in Labor Code §2699(a). They bring
5 this cause on behalf of themselves and other current or former aggrieved employees affected by the
6 labor law violations alleged in this Complaint.

7 105. The pre-lawsuit notice requirements set forth in Labor Code § 2699.3 have been
8 initiated by written notice by certified mail to all Defendants and to the Labor and Workforce
9 Development Agency, detailing the Labor Code and IWC Wage Order violations averred herein.
10 The waiting requirements have been completed prior to service of this complaint.

11 106. PLAINTIFF seeks civil penalties as provided under applicable Labor Code sections
12 for violations of the Labor Code alleged herein pursuant to Labor Code § 2699(a). To the extent that
13 any violation alleged herein does not carry a penalty, PLAINTIFF seeks civil penalties pursuant to
14 Labor Code § 2699(f) for PLAINTIFFS, other current or former employees, and the State for each
15 pay period in which they were aggrieved, in the amounts established by Labor Code § 2699.

16 107. Labor Code § 2699(f) provides:

17 For all provisions of this code except those for which a civil penalty
18 is specifically provided, there is established a civil penalty for a
19 violation of these provisions, as follows: . . . (2) If, at the time of the
20 alleged violation, the person employs one or more employees, the
civil penalty is one hundred dollars (\$100) for each aggrieved
employee per pay period for the initial violation and two hundred
dollars (\$200) for each aggrieved employee per pay period for each
subsequent violation.

21 108. PLAINTIFF seeks civil penalties due from all DEFENDANTS on behalf of
22 themselves, other aggrieved employees and the State, as provided by Labor Code § 2699(i),
23 including but not limited to, penalties and unpaid wages due pursuant to Labor Code § 558 and
24 § 1197.1 as a result of DEFENDANTS' violation of the provisions of the Labor Code and Wage
25 Orders 8.

26 109. DEFENDANTS are liable as employers or persons acting on behalf of the
27 employer(s) pursuant to Labor Code § 558. DEFENDANTS created, authorized, implemented
28

1 and/or enforced the practices that violate the law and/or caused the violations complained of herein.
2 DEFENDANTS are therefore liable for penalties and wages pursuant to Labor Code § 558.

3 110. All DEFENDANTS are liable to PLAINTIFF and “other current or former employees
4 and the state” for the civil penalties arising from the violations alleged in this Complaint.
5 PLAINTIFF is also entitled to an award of attorneys’ fees and costs as set forth below.

6 111. Most of the predicate act violations which serve as the basis for this PAGA claim
7 (minimum wage and overtime violations, rest and meal period violations, and failure to compensate
8 for all “hours worked”) relate to the non-payment of wages or violations of the IWC Wage Orders
9 that were posted at the worksite.

10 112. PLAINTIFF is aggrieved by DEFENDANTS’ labor and payroll practices as
11 described above, including but not limited to Defendants’:

- 12 a. Failure to compensate for all “hours worked”;
- 13 b. Failure to compensate minimum and premium wages;
- 14 c. Inaccurate record keeping of actual hours worked and wages earned;
- 15 d. Failure to provide timely and/or complete meal breaks, or premium wages
16 in lieu thereof;

17 WHEREFORE, PLAINTIFF and the Class they seek to represent request relief as
18 described herein and below.

19 **VII. PRAYER**

20 Wherefore, PLAINTIFF pray for judgment as follows:

- 21 1. For all remedies as provided by the above statutes and related provisions;
 - 22 2. For all wages due including statutory minimum, overtime, premium or agreed upon
23 wages and interest thereon, as well as attorney's fees and cost of suit, Cal. Labor Code §§ 200, et
24 seq., 1194, 1194.2, 1197.1; wage orders; and pursuant to Local wage ordinances and third-party
25 contractual agreements against DEFENDANTS;
 - 26 3. For attorneys’ fees, costs and interest and any other remedies provided by third party
27 contracts and/or local wage ordinances against DEFENDANTS.
- 28

1 4. For an award of a preliminary and permanent injunction ordering DEFENDANTS to
2 cease the unlawful and unfair business practices as herein alleged;

3 5. For restitution to PLAINTIFF and the Class in amounts to be proven at trial against
4 DEFENDANTS, for the violation of Business and Professions Code section 17200, et. seq.;

5 6. For liquidated damages for failure to pay minimum wages;

6 7. For attorney's fees and costs pursuant to Labor Code (including but not limited to §
7 218.5, 2802, 1194 and others) against DEFENDANTS;

8 8. For attorneys' fees, costs and interest on wages, pursuant to CCP §1021.5 against
9 DEFENDANTS;

10 9. For an award of injunctive relief ordering DEFENDANTS to comply with Labor
11 Code § 226(e), plus attorney's fees and costs.

12 10. For penalties and attorneys' fees and costs, pursuant to Labor Code §§ 226(e), 226(f),
13 226(h) against DEFENDANTS;

14 11. For an award of post-judgment interest as authorized under the law against ALL
15 DEFENDANTS;

16 12. For penalties and all available relief pursuant to all predicate provisions of the Labor
17 Code as described above, including but not limited to labor code § 226, 226.3, 226.7, 210, 203, and
18 all remedy provisions associated with the claims described above;

19 13. For such other relief as this Court deems just and proper.

20 14. For wages, penalties, damages, interest, fees and costs pursuant to the California
21 Labor Code;

22 15. For penalties and interest as provided by the California Labor Code §218.6 and Civil
23 Code §3287.

24 16. For attorneys' fees, interest and costs of suit pursuant to PAGA, Labor Code §§ 2699
25 et seq.

26 17. For such other and further relief as the Court deems just and proper pursuant to the
27 procedures detailed in Labor Code §§ 2698 et seq.

18. For all provisions of the Labor code violated as described above except those for which a civil penalty is specifically provided, a civil penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

19. Pursuant to PAGA, for all provisions of the Labor code violated as described above for which a civil penalty is specifically provided, civil penalties for each aggrieved employee as specifically provided by statute including but no limited to those predicate provisions described in Labor Code §2699.5.

20. For all other relief available under PAGA

DEMAND FOR JURY TRIAL

PLAINTIFF hereby demands trial of their claims by jury to the extent authorized by law.

Dated: September 29, 2023

MALLISON & MARTINEZ

/s/

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