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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

CARLOS A. VAZQUEZ FIERROS, an
individual, on behalf of himself, the State of
California, as a private attorney general, and
on behalf of all others similarly situated,

Plaintiffs,

v.

RGH ENTERPRISES, LLC, an Ohio Limited
Liability Corporation doing business as HHI
Enterprises, LLC; and DOES 1 TO 50,

Defendants.

CASE NUMBER: CIVSB2320906

**THIRD AMENDED CONSOLIDATED
CLASS AND PAGA REPRESENTATIVE
ACTION COMPLAINT FOR:**

1. Failure to Pay All Minimum Wages,
2. Failure to Pay All Overtime Wages,
3. Failure to Pay All Sick Pay Wages,
4. Failure to Provide Rest Periods and Pay Missed Rest Period Premiums,
5. Failure to Provide Meal Periods and Pay Missed Meal Period Premiums,
6. Failure to Maintain Accurate Employment Records,
7. Failure to Pay Wages Timely during Employment,
8. Failure to Pay All Wages Earned and Unpaid at Separation,
9. Failure to Reimburse Business Expenses,
10. Failure to Furnish Accurate Itemized Wage Statements,
11. Unfair Competition Law, and
12. PAGA Penalties

DEMAND FOR JURY TRIAL

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9 Attorneys for Plaintiffs IMELDA PARRA CORONA and the Putative Class
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1 Plaintiffs CARLOS A. VAZQUEZ FIERROS and IMELDA PARRA CORONA
2 (collectively, “Plaintiffs”), on behalf of themselves, the State of California, as a private attorney
3 general, and all other similarly situated employees within the State of California, complains and
4 alleges of defendants RGH ENTERPRISES, LLC, doing business as HHI Enterprises, LLC.; and
5 Does 1 to 50 (collectively, “Defendants”), and each of them, as follows:

6 **I. INTRODUCTION**

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

9 2. The “Class Period,” as used herein, is defined as the four-year period from filing
10 this action and continuing into the present and ongoing. Defendants’ violations of California’s
11 laws, as described more fully below, have been ongoing throughout the Class Period and are still
12 ongoing.

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

16 4. Plaintiffs bring this action on behalf of themselves and the Class Members, as a
17 class action, against Defendants for:

- 18 A. Failure to pay all minimum wages,
- 19 B. Failure to pay all overtime wages,
- 20 C. Failure to pay all sick pay wages,
- 21 D. Failure to provide meal periods and pay missed meal period premiums
- 22 E. Failure to provide rest periods and pay missed rest period premiums,
- 23 F. Failure to maintain accurate employment records,
- 24 G. Failure to pay wages timely during employment,
- 25 H. Failure to pay all wages earned and unpaid at separation,
- 26 I. Failure to indemnify all necessary business expenditures,
- 27 J. Failure to furnish accurate itemized wage statements, and
- 28

1 K. Violations of California’s Unfair Competition Law (“UCL”) (Bus. & Prof.
2 Code, §§ 17200–17210).

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

6 6. The “PAGA Period” as used herein, is defined as the one-year period from the filing
7 of this action and continuing into the present and ongoing.

8 7. This PAGA action is brought on behalf of the Plaintiffs, the State of California as
9 private attorney general, and on behalf of the following aggrieved employees: *All individuals who*
10 *are or were employed by Defendants as non-exempt employees in California during the PAGA*
11 *Period* (the “Aggrieved Employees”).

12 8. Plaintiffs are informed and believes and thereon alleges that the California
13 Industrial Welfare Commission (“IWC”) Wage Orders applicable to the facts of this case are IWC
14 Wage Orders (the “Applicable Wage Orders”) and possibly others that may be applicable. (Cal.
15 Code of Regs., tit. 8, §§ 11130, 11140.) Plaintiffs reserve the right to amend or modify the
16 definition of “Applicable Wage Orders” with greater specificity or add additional IWC Wage
17 Orders if additional applicable wage orders are discovered in litigation.

18 **II. JURISDICTION & VENUE**

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

24 10. This Court has personal jurisdiction over Defendants because Defendants have
25 caused injuries in the County of San Bernardino and the State of California through their acts and
26 by their violation of the California Labor Code and California state common law. Defendants
27 transact millions of dollars of business within the State of California. Defendants own, maintain
28 offices, transact business, have an agent or agents within the County of San Bernardino, and/or

1 otherwise are found within the County of San Bernardino, and Defendants are within the
2 jurisdiction of this Court for purposes of service of process.

3 11. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of
4 the Code of Civil Procedure. Defendants operate within California and do business within San
5 Bernardino County, California. The unlawful acts alleged herein directly affect Plaintiffs and all
6 Defendants' employees identified above within San Bernardino County and surrounding counties
7 where Defendants may remotely operate.

8 **III. THE PARTIES**

9 **A. PLAINTIFFS**

10 12. At all relevant times, Plaintiffs, who are over 18, were and currently are citizens of
11 California residing in the State of California. Defendants employed Plaintiffs as non-exempt
12 hourly employees.

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

17 14. Plaintiffs also bring this action on behalf of themselves and the State of California,
18 as a private attorney general, and on behalf of the following group of aggrieved employees: *All*
19 *individuals who are or were employed by Defendants as non-exempt employees in California*
20 *during the PAGA Period* (the "Aggrieved Employees").

21 15. At all times pertinent hereto, The Class Members and the Aggrieved Employees are
22 or were employees of Defendants during the relevant statutory period.

23 **B. DEFENDANTS**

24 16. Plaintiffs are informed and believes and thereon allege that Defendants were
25 authorized to and doing business in San Bernardino County and is and/or was the legal employer
26 of Plaintiffs, the other Aggrieved Employees, and the other Class Members during the applicable
27 statutory periods. Plaintiffs, the other Aggrieved Employees, and the other Class Members were,
28 and are, subject to Defendants' policies and/or practices complained of herein and have been

1 deprived of the rights guaranteed to them by: California Labor Code sections 201, 202, 203, 204,
2 210, 226, 226.3, 226.7, 246 *et seq.*, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198,
3 1198.5, 1199, 2802, and others that may be applicable; California Business and Professions Code
4 sections 17200 through 17210 (“UCL”); and the Applicable Wage Orders (Cal. Code of Regs., tit.
5 8, §§ 11130, 11140).

6 17. Plaintiffs are informed and believe, and based thereon allege, that during the Class
7 Period and PAGA Period, Defendants did (and continue to do) business in the State of California,
8 County of San Bernardino.

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

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

27 20. At all relevant times, Defendants, and each of them, were members of and engaged
28 in a joint venture, partnership, and common enterprise, and acting within the course and scope of

1 and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiffs are
2 informed, and believes, and thereon alleges, that all Defendants were joint employers for all
3 purposes of Plaintiffs, the other Aggrieved Employees, and the other Class Members.

4 **IV. COMMON FACTS & ALLEGATIONS**

5 21. Plaintiffs and the other Class Members (collectively, the “Class Members”) are,
6 and were at all relevant times, employed by the Defendants within the State of California.

7 22. Likewise, Plaintiffs and the other Aggrieved Employees (collectively, the
8 “Aggrieved Employees”) are, and were at all relevant times, employed by the Defendants within
9 the State of California.

10 23. The Class Members and the Aggrieved Employees are, and were, at all relevant
11 times, non-exempt employees for the purposes of minimum wages, overtime, rest breaks, meal
12 periods, and the other claims alleged in this complaint.

13 24. Specifically, Defendants employed Plaintiffs within the statutory Class Period and
14 PAGA Period, working as an hourly, non-exempt general worker/picker responsible for picking
15 and sorting orders, operating carts, etc. as required by Defendants.

16 **A. MINIMUM WAGE VIOLATIONS**

17 25. Labor Code section 1197 requires employees to be paid at least the minimum wage
18 fixed by the IWC; any payment of less than the minimum wage is unlawful. Similarly, Labor
19 Code section 1194 entitles “any employee receiving less than the legal minimum wage . . . to
20 recover in a civil action the unpaid balance of the full amount of this minimum wage.” Likewise,
21 the Applicable Wage Orders obligate employers to pay each employee minimum wages for all
22 hours worked. (Cal. Code of Regs., tit. 8, §§ 11130, 11140.) Labor Code section 1198 makes the
23 employment of an employee unlawful under conditions that the IWC Wage Orders prohibit.

24 26. These minimum wage standards apply to each hour that employees work.
25 Therefore, an employer’s failure to pay for any particular time an employee works is unlawful,
26 even if averaging an employee’s total pay and overall hours worked, paid or not, results in an
27 average hourly wage above minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th
28 314, 324.)

1 27. Here, Defendants failed to fully conform their pay practices to the requirements of
2 the law during the relevant statutory periods. The Class Members and the Aggrieved Employees
3 were not compensated for all hours worked, including, but not limited to, all hours they were
4 subject to the control of Defendants and/or suffered or permitted to work under the California
5 Labor Code and the Applicable Wage Orders. Among other violations, the Class Members and
6 the Aggrieved Employees were subject to the control of Defendants while off-the-clock and did
7 not receive minimum wage for each hour worked. Specifically, Defendants on multiple occasions
8 have had a pattern and practice of not compensating Plaintiffs and other similarly situated
9 employees' wages for all time worked, including overtime wages, as a result of requiring Plaintiff
10 and other California non-exempt employees to wait in line for COVID-19 temperature checks
11 before the start of their shifts and not compensating them for this time. That is, Plaintiff and other
12 non-exempt employees were required to wait in line and undergo temperature checks for COVID-
13 19 before the start of their shifts. Plaintiffs and non-exempt employees could not use this time for
14 their own purposes. As such, HHI exercised sufficient control over Plaintiffs and other non-exempt
15 employees during these required temperature checks and owed them wages for this time.

16 28. Additionally, the Class Members and the Aggrieved Employees were not paid all
17 wages for all hours worked due to Defendants' uniform payroll policies and practices that unfairly
18 rounded employees' wages to the detriment of the Class Members and the Aggrieved Employees.
19 This rounding policy routinely failed to capture the entirety of the hours the Class Members and
20 the Aggrieved Employees worked and was structured in a way that in favored underpayment. (See
21 *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 907.) As a result, the
22 Class Members and the Aggrieved Employees suffered periodic shortages in the hours for which
23 they were compensated. This uncompensated time violated California's requirement that
24 employees be compensated for all hours worked. As a result of this practice, the Class Members
25 and the Aggrieved Employees were not compensated their minimum wages for all hours worked.

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

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

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

12 (1) “For any initial violation that is intentionally committed, one
13 hundred dollars (\$100) for each underpaid employee for each pay
14 period for which the employee is underpaid.”

15 (2) “For each subsequent violation for the same specific offense,
16 two hundred fifty dollars (\$250) for each underpaid employee for
17 each pay period for which the employee is underpaid regardless of
18 whether the initial violation is intentionally committed.” (Lab.
19 Code, § 1197.1, subd. (a).)

20 32. As set forth above, Defendants failed to fully compensate the Class Members and
21 the Aggrieved Employees for all minimum wages. Accordingly, the Class Members are entitled
22 to recover liquidated damages for violations of Labor Code section 1197.1.

23 33. Based on these same factual allegations, the Class Members are entitled to penalties
24 under Labor Code sections 1199.

25 **B. OVERTIME VIOLATIONS**

26 34. Labor Code section 510 requires employers to compensate employees who work
27 more than eight hours in one workday, forty hours in a workweek, and for the first eight hours
28 worked on the seventh consecutive day no less than one and one-half times the regular rate of pay

1 for an employee. (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates
2 employers to compensate employees at no less than twice the regular rate of pay when an employee
3 works more than twelve hours in a day or more than eight hours on the seventh consecutive day
4 of work. (Lab. Code, § 510, subd. (a).) These rules are also reflected in the Applicable Wage
5 Orders.

6 35. In accordance with Labor Code section 1194 and the Applicable Wage Orders, the
7 Class Members could not then agree and cannot now agree to work for a lesser wage than the
8 amount provided by Labor Code section 510 or the Applicable Wage Orders.

9 36. Here, Defendants violated their duty to accurately and completely compensate the
10 Class Members for all overtime worked. The Class Members periodically worked hours that
11 entitled them to overtime compensation under the law but were not fully compensated for those
12 hours.

13 37. Moreover, during the relevant statutory periods, Defendants had a policy and
14 practice of failing to pay overtime wages at the proper rate when they actually paid overtime.
15 Specifically, when Defendants paid overtime wages to the Class Members, Defendants failed to
16 include all compensation when calculating the regular rate of pay used in overtime calculations
17 and when paying overtime.

18 38. For instance, the Class Members would often receive, along with their hourly rates
19 of pay for their working hours, additional remuneration and/or non-discretionary bonus pay.
20 Defendants, however, calculated the regular rate of pay for the Class Members without factoring
21 into the regular rate of pay and all other non-hourly pay earnings received during the pay period.
22 As a result, the Class Members were underpaid overtime wages when they worked in excess of
23 eight hours in any workday and/or forty hours in a workweek when such additional forms of
24 remuneration were earned. By its practice of periodically requiring the Class Members to work in
25 excess of eight hours in a workday and/or forty hours in a workweek without compensating them
26 at the rate of one and one-half (1½) their regular rate of pay, Defendants willfully violated the
27 provisions of Labor Code sections 510, 1194, and 1199.
28

1 39. These actions were and are in clear violation of California’s overtime laws as set
2 forth in Labor Code sections 510, 1194, 1199, and the Applicable Wage Orders. (Cal. Code of
3 Regs., tit. 8, §§ 11050, 11070.) As a result of Defendants’ faulty policies and practices, the Class
4 Members were not compensated for all hours worked or paid accurate overtime compensation.

5 **C. SICK PAY VIOLATIONS**

6 40. At all relevant times, Defendants failed to comply with their obligations under
7 Labor Code §§ 246(a) and (b) to provide Plaintiff and other non-exempt employees in California
8 with paid sick leave accruing at the statutory rate of no less than one hour per every 30 hours
9 worked. Plaintiffs and similarly situated employees worked more than 30 days in California for
10 Defendants but were not provided with the legally required amount of paid sick leave.

11 41. In addition, Defendants failed to pay accrued sick leave at the correct rate, in
12 violation of Labor Code §§ 246(l)(1)-(2). Specifically, when Plaintiffs and Class Members used
13 paid sick leave, Defendants compensated that time at a rate below their “regular rate of pay,” as
14 defined by Labor Code § 246(l)(1), which requires payment based on all forms of non-overtime
15 compensation earned in the workweek in which sick leave is taken, including hourly wages,
16 nondiscretionary bonuses, shift differentials, and other incentive pay. Alternatively, where the
17 employer elected to use the 90-day lookback method under § 246(l)(2), Defendants failed to
18 accurately calculate the rate by dividing the employee’s total wages (excluding overtime premium
19 pay) by the total hours worked in full pay periods of the prior 90 days.

20 42. Moreover, Defendants failed to comply with Labor Code § 246(i), which requires
21 employers to provide written notice of the amount of paid sick leave available for use, either on
22 the employee’s itemized wage statement pursuant to Labor Code § 226 or in a separate writing
23 issued on the pay date. Plaintiffs and other non-exempt employees did not receive such written
24 notice, and Defendants’ wage statements did not accurately reflect accrued sick leave balances or
25 available paid time off in lieu of sick leave.

26 43. As a result of the foregoing violations, Plaintiffs and Class Members have suffered
27 economic harm and are entitled to all applicable statutory remedies, including but not limited to
28

1 payment of underpaid sick leave wages, wage statement penalties under Labor Code § 226(e), and
2 civil penalties under the Private Attorneys General Act (“PAGA”), Labor Code §§ 2698 *et seq.*

3 **D. REST BREAK VIOLATIONS**

4 44. Pursuant to Labor Code section 226.7 and the Applicable Wage Orders, Defendants
5 were and are required to provide the Class Members and the Aggrieved Employees with
6 compensated, duty-free rest periods of not less than ten minutes for every major fraction of four
7 hours worked. Under the Applicable Wage Orders, an employer must authorize and permit all
8 employees to take ten-minute duty-free rest periods for every major fraction of four hours worked.
9 (Cal. Code of Regs., tit. 8, §§ 11130, 11140.)

10 45. Likewise, Labor Code section 226.7 provides that “[a]n employer shall not require
11 an employee to work during a meal or rest or recovery period mandated pursuant to an applicable
12 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission”
13 (Lab. Code, § 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay
14 their employees one additional hour of pay at the employee’s regular rate for each workday that a
15 “meal or rest or recovery period is not provided.” (Lab. Code, § 226.7, subd. (c).) Thus, the Wage
16 Orders set when and for how long the rest period must take place. The Labor Code establishes that
17 violations of the IWC Wage Orders are unlawful and sets forth the premium pay employer must
18 pay their employees when they fail to provide rest periods.

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

26 “An employer is required to authorize and permit the amount of rest break
27 time called for under the wage order for its industry. If it does not—if, for
28 example, it adopts a uniform policy authorizing and permitting only one rest

1 break for employees working a seven-hour shift when two are required—it
2 has violated the wage order and is liable.” (*Brinker Rest. Corp. v. Superior*
3 *Court* (2012) 53 Cal.4th 1004, 1033.)

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

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

26 49. In addition to failing to authorize and permit compliant rest periods, the Class
27 Members and the Aggrieved Employees were not compensated with one hour’s worth of pay at
28 their regular rate of compensation when they were not provided with a compliant rest period in

1 accordance with Labor Code section 226.7, subdivision (c). Thus, Defendants have violated Labor
2 Code section 226.7 and the Applicable Wage Orders.

3 50. Based on the foregoing, Plaintiffs seek to recover, on behalf of themselves and other
4 non-exempt employees, rest period premiums and penalties.

5 **E. MEAL BREAK VIOLATIONS**

6 51. Labor Code section 512 and the Applicable Wage Orders require employers to
7 provide employees with a thirty-minute uninterrupted and duty-free meal period within the first
8 five hours of work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for
9 a work period of more than five hours per day without providing the employee with a meal period
10 of not less than 30 minutes”]; Cal. Code of Regs., tit. 8, §§ 11130, 11140 [“No employer shall
11 employ any person for a work period of more than five (5) hours without a meal period of not less
12 than 30 minutes”].) Additionally, an employee who works more than ten hours per day is
13 entitled to receive a second thirty-minute uninterrupted and duty-free meal period. (Lab. Code, §
14 512, subd. (a) [“An employer shall not employ an employee for a work period of more than 10
15 hours per day without providing the employee with a second meal period of not less than 30
16 minutes”].)

17 52. “An on-duty meal period is permitted only when the nature of the work prevents an
18 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal
19 break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement
20 must include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the
21 California Department of Industrial Relations, Division of Labor Standards Enforcement
22 (“DLSE”), and courts have “found that the nature of the work exception applies: (1) where the
23 work has some particular external force that requires the employee to be on duty at all times, and
24 (2) where the employee is the sole employee of a particular employer.” (*Id.* at p. 945, internal
25 quotation marks omitted; *Abdullah v. U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952,
26 958–959.) “[I]t is the employer’s obligation to determine whether the nature of the work prevents
27 an employee from being relieved before requiring an employee to take an on-duty meal period.”
28 (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 946.)

1 53. Here, the Class Members and the Aggrieved Employees were never asked to sign
2 any enforceable document agreeing to an on-duty meal period. Moreover, nothing in the nature
3 of their work involved the kind of “external force” that might justify on-duty meal breaks. (*Lubin*
4 *v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 945.) Nevertheless, Defendants periodically
5 did not provide compliant off-duty meal periods within the first five hours of work for the Class
6 Members and the Aggrieved Employees.

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

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

26 56. Labor Code section 226.7 provides that “[a]n employer shall not require an
27 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
28 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab.

1 Code, § 226.7, subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage
2 Orders further obligate employers to pay employees one additional hour of pay at the employee's
3 regular rate of compensation for each workday that the meal period is not provided. (Lab. Code,
4 § 226.7, subd. (c); Cal. Code of Regs., tit. 8, §§ 11130, 11140 ["If an employer fails to provide an
5 employee a meal period in accordance with the applicable provisions of this order, the employer
6 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each
7 workday that the meal period is not provided."].)

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

14 58. Based on the foregoing, Plaintiffs seek to recover, on behalf of themselves and other
15 non-exempt employees, meal period premiums and penalties.

16 **F. FAILURE TO REIMBURSE BUSINESS EXPENSES**

17 59. At all relevant times herein, Defendants were subject to Labor Code section 2802,
18 which states that "an employer shall indemnify his or her employees for all necessary expenditures
19 or losses incurred by the employee in direct consequence of the discharge of his or her duties, or
20 of his or her obedience to the directions of the employer." The purpose of this section is to "prevent
21 employers from passing along their operating expenses onto their employees." (*Gattuso v. Harte-*
22 *Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 562.)

23 60. At all relevant times herein, Defendants were subject to Labor Code section 2804,
24 which states that "any contract or agreement, express or implied, made by any employee to waive
25 the benefits of this article or any part thereof, is null and void, and this article shall not deprive any
26 employee or her personal representative of any right or remedy to which he is entitled under the
27 laws of this State."
28

1 61. Thus, the Class Members were and are entitled to reimbursement for the expenses
2 they incurred during the course of their duties. The duty to reimburse even extends to the use of
3 equipment the employee may already own and would be required to pay for anyway. (*Cochran v.*
4 *Schwan's Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144 ["The threshold question in this
5 case is this: Does an employer always have to reimburse an employee for the reasonable expense
6 of the mandatory use of a personal cell phone, or is the reimbursement obligation limited to the
7 situation in which the employee incurred an extra expense that he or she would not have otherwise
8 incurred absent the job? The answer is that reimbursement is always required. Otherwise, the
9 employer would receive a windfall because it would be passing its operating expenses on to the
10 employee."].)

11 62. Here, the Defendants failed to fully reimburse the Class Members for necessary
12 expenditures incurred as a direct consequence and requirement of performing their job duties,
13 including the costs associated with the personal cell phones they required to perform their work.
14 Consequently, Defendants failed to comply with Labor Code section 2802

15 **G. UNTIMELY WAGES DURING EMPLOYMENT**

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

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

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

25 (Lab. Code, § 210, subd. (a).)

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

1 65. Due to Defendants’ failure to pay the Class Members and the Aggrieved Employees
2 the wages described above, along with rest and meal break premiums, Defendants failed to timely
3 pay the Class Members and the Aggrieved Employees within seven calendar days following the
4 close of payroll in accordance with Labor Code section 204 on a regular and consistent basis.

5 **H. UNTIMELY WAGES AT SEPARATION**

6 66. Labor Code section 203 provides “if an employer willfully fails to pay . . . any
7 wages of an employee who is discharged or who quits, the wages of the employee shall continue
8 as a penalty” for up to thirty days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th
9 487, 492.) As a result of Defendants’ failure to pay the Class Members and the Aggrieved
10 Employees for the wages described above, along with rest and meal break premiums, Defendants
11 violated and continue to violate Labor Code section 203.

12 67. Due to Defendants’ faulty pay policies, those former Class Members whose
13 employment with Defendants concluded were not compensated for each and every hour worked
14 at the appropriate rate. Defendants have failed to pay former Class Members whose sums were
15 certain at the time of termination within seventy-two hours of their resignation and have failed to
16 pay those sums for thirty days thereafter.

17 **I. WAGE STATEMENT VIOLATIONS**

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

- 22 (1) The gross wages earned;
23 (2) The total hours worked by the employee;
24 (3) The number of piece-rate units earned and any applicable
25 piece rate if the employee is paid on a piece rate basis;
26 (4) All deductions, provided that all deductions made on written
27 orders of the employee may be aggregated and shown as one item;
28 (5) The net wages earned;

1 (6) The inclusive dates of the period for which the employee is
2 paid;

3 (7) The name of the employee and only the last four digits of his
4 or her social security number or an employee identification number
5 other than a social security number;

6 (8) The name and address of the legal entity that is the employer;
7 and

8 (9) All applicable hourly rates in effect during the pay period
9 and the corresponding number of hours worked at each hourly rate
10 by the employee.

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

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

1 **J. RECORDKEEPING VIOLATIONS**

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

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

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

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

25 73. As explained in detail above, Defendants failed to provide the Class Members and
26 the Aggrieved Employees with accurate itemized wage statements. Defendants did so, in part,
27 because they failed to accurately track hours worked by the Class Members and the Aggrieved
28 Employees. Defendants have thus failed to keep accurate records of the “total hours worked by

1 the employee[s]” in violation of Labor Code section 226, subdivision (a), and are therefore subject
2 to the penalties provided by Labor Code section 226.3. These penalties are “in addition to any
3 other penalty provided by law.” (Lab. Code, § 226.3.)

4 74. The failure to accurately track hours worked also resulted in a failure of Defendants
5 to keep a record of all “payroll records showing the hours worked daily by” Defendants’
6 employees, including Plaintiffs and the other Class Members, in violation of Labor Code section
7 1174, subdivision (d).

8 **V. CLASS ACTION ALLEGATIONS**

9 75. As mentioned above, Plaintiffs bring this action on behalf of themselves and the
10 Class Members pursuant to section 382 of the Code of Civil Procedure.

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

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

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

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

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

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

28 E. Whether Defendants maintained accurate employment records;

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

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

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

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

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

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

27 80. **Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary
28 steps to represent the interests of the Class Members fairly and adequately. Moreover, Plaintiffs'

1 attorneys are ready, willing, and able to fully and adequately represent the Class Members and
2 Plaintiffs. Plaintiffs's attorneys have prosecuted numerous wage-and-hour class actions in state
3 and federal court in the past and are committed to vigorously prosecuting this action on behalf of
4 the Class Members.

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

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

27 83. Further, the claims of the individual Class Members are not sufficiently large to
28 warrant vigorous individual prosecution considering the concomitant costs and expenses attending

1 thereto. As such, the Class Members identified above are maintainable as a class under section
2 382 of the Code of Civil Procedure.

3 **VI. EXHAUSTION OF REMEDIES**

4 84. Plaintiffs have fully and completely exhausted administrative remedies under
5 PAGA before proceeding with the PAGA claims stated in this complaint. Plaintiffs filed a PAGA
6 notice online with the Labor Workforce Development Agency (“LWDA”) and sent a letter by
7 certified mail to Defendants setting forth the facts and theories of the violations alleged against
8 Defendants, as prescribed by PAGA. (Lab. Code, §§ 2698–2699.6.)

9 85. As required by PAGA, the Plaintiffs submitted the \$75.00 filing fee with the
10 LWDA by regular mail. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), no notice
11 was received by the Plaintiffs from the LWDA evidencing its intention to investigate within sixty-
12 five calendar days of the postmark date of the PAGA notice. Plaintiffs are, therefore, entitled to
13 commence and proceed with a civil action pursuant to Labor Code section 2699.

14 **VII. CAUSES OF ACTION**

15 **First Cause of Action**

16 *Failure to Pay All Minimum Wages*

17 *(Against All Defendants)*

18 86. Plaintiffs realleges and incorporates by reference all previous paragraphs.

19 87. Section 4 of the Applicable Wage Orders and Labor Code section 1197 establishes
20 employees' right to be paid minimum wages for all hours worked, in amounts set by state law.
21 (Lab. Code, § 1197; Cal. Code of Regs., tit. 8, §§ 11130, 11140.) Labor Code sections 1194,
22 subdivision (a), and 1194.2, subdivision (a), provide that an employee who has not been paid the
23 legal minimum wage as required by Labor Code section 1197 may recover the unpaid balance,
24 together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal
25 to the unpaid wages and interest accrued thereon.

26 88. Here, Defendants failed to fully conform their pay practices to the requirements of
27 the law during the relevant statutory periods. Plaintiffs and the other Class Members were not
28 compensated for all hours worked, including all hours they were subject to the control of

1 Defendants and/or suffered or permitted to work under the Labor Code and the Applicable Wage
2 Orders.

3 89. Labor Code section 1198 makes unlawful the employment of an employee under
4 conditions that the IWC Wage Orders prohibit. Labor Code sections 1194, subdivision (a), and
5 1194.2, subdivision (a), provide that an employer who has failed to pay its employees the legal
6 minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well
7 as liquidated damages in an amount equal to the wages due and interest thereon.

8 90. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
9 Plaintiffs and the other Class Members have sustained economic damages, including but not
10 limited to unpaid wages and lost interest, in an amount to be established at trial, and they are
11 entitled to recover economic and statutory damages and penalties and other appropriate relief
12 because of Defendants' violations of the Labor Code and Applicable Wage Orders.

13 91. Defendants' practices and policies regarding illegal employee compensation are
14 unlawful and create an entitlement to recovery by Plaintiffs and the other Class Members in a civil
15 action for the unpaid amount of minimum wages, liquidated damages, including interest thereon,
16 statutory penalties, attorney's fees, and costs of suit according to Labor Code sections 204, 218.5,
17 1194, 1194.2, 1197, and 1198, and Code of Civil Procedure section 1021.5.

18 **Second Cause of Action**

19 *Failure to Pay All Overtime Wages*

20 *(Against All Defendants)*

21 92. Plaintiffs realleges and incorporates by reference all previous paragraphs.

22 93. This cause of action is brought pursuant to Labor Code sections 204, 510, 1194,
23 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
24 overtime hours worked and provide a private right of action for the failure to pay all overtime
25 compensation for overtime work performed. At all times relevant herein, Defendants were
26 required to properly pay Plaintiffs and the other Class Members for all overtime wages earned
27 pursuant to Labor Code section 1194 and the Applicable Wage Orders. Defendants caused
28 Plaintiffs and the other Class Members to work overtime hours but did not compensate them at

1 one and one-half times their regular rate of pay for such hours in accordance with California law.
2 Likewise, Defendants caused Plaintiffs and the other Class Members to work double-time hours
3 but did not compensate them at twice their regular rate of pay for such hours in accordance with
4 California law.

5 94. Defendants failed to fully conform their pay practices to the requirements of
6 California law. This unlawful conduct includes but is not limited to Defendants' uniform and
7 unlawful pay policies and practices of failing to accurately record all the time that non-exempt
8 employees were under the supervision and control of Defendants. The foregoing policies and
9 practices are unlawful and allow Plaintiffs and the other Class Members to recover in a civil action
10 the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties,
11 attorney's fees, and costs of suit according to Labor Code section 204, 510, 1194, and 1198, the
12 Applicable Wage Orders, and Code of Civil Procedure section 1021.5.

13 **Third Cause of Action**

14 **Failure to Pay all Sick Wages**

15 **(Against all Defendants)**

16 95. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

17 96. This cause of action is brought pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1,
18 1198, and 1199 which provide that non-exempt employees are entitled to have their sick time paid
19 at the "regular rate of pay," including all forms of compensation/remuneration.

20 97. At all times relevant herein, Defendants were required to properly pay Plaintiff and
21 members of the Class for all accrued sick leave taken, pursuant to California Labor Code § 246.

22 98. Defendants failed to conform their pay practices to the requirements of the law.
23 This unlawful conduct includes but is not limited to Defendants' uniform and unlawful
24 policy/practice of failing to include all forms of compensation, including but not limited to shift
25 differentials, non-discretionary bonuses, and other forms of remuneration into the calculation of
26 the "regular rate of pay," which resulted in Plaintiff and the Classes not being paid all sick time
27 wages owed.
28

99. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the members of the Classes in a civil action for the unpaid amount of sick time wages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code §§ 246, 558, 1194.2, 1197.1, 1198, the applicable Wage Orders, and Code of Civil Procedure § 1021.5.

Fourth Cause of Action

Failure to Provide Rest Periods and Pay Missed Rest Period Premiums

(Against All Defendants)

100. Plaintiffs reallege and incorporate by reference all previous paragraphs.

101. Section 12 of the Applicable Wage Orders and Labor Code section 226.7 establish the right of employees to be provided with a rest period of at least ten minutes for each four-hour period worked or a major fraction thereof. (See Cal. Code of Regs., tit. 8, §§ 11130, 11140.)

102. Due to Defendants' unlawful rest period policies and practices described above, Defendants did not authorize and permit Plaintiffs and the other Class Members to take all rest periods to which they were legally entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay to Plaintiffs and the other Class Members at their respective regular rates of pay for each violation, in accordance with California Labor Code section 226.7.

103. The foregoing violations create an entitlement to recovery by Plaintiffs and the other Class Members in a civil action for the unpaid amount of rest period premiums owed, including interest thereon, statutory penalties, and costs of suit, pursuant to the Applicable Wage Orders and California Labor Code Section 226.7.

Fourth Cause of Action

Failure to Provide Meal Periods and Pay Missed Meal Period Premiums

(Against All Defendants)

104. Plaintiffs reallege and incorporate by reference all previous paragraphs.

105. Plaintiffs are informed and believe and thereon allege that Defendants failed in their affirmative obligation to provide their hourly non-exempt employees, including Plaintiffs and the other Class Members, with all required meal periods in accordance with the mandates of the Labor

1 Code and the Applicable Wage Orders, for the reasons set forth hereinabove. Despite Defendants'
2 violations, Defendants have not paid an additional hour of pay to Plaintiffs and the other Class
3 Members at their respective regular rates of pay for each violation, in accordance with California
4 Labor Code section 226.7.

5 106. As a result, Defendants are responsible for paying premium compensation for meal
6 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the
7 Applicable Wage Orders and Labor Code sections 226.7 and 512, and Civil Code sections 3287,
8 subdivision (b), and 3289. (See Cal. Code of Regs., tit. 8, §§ 11130, 11140.)

9 **Fifth Cause of Action**

10 *Failure to Maintain Accurate Employment Records*

11 *(Against All Defendants)*

12 107. Plaintiffs reallege and incorporate by reference all previous paragraphs.

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

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

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

Sixth Cause of Action

Failure to Pay Wages Timely during Employment

(Against All Defendants)

111. Plaintiffs reallege and incorporate by reference all previous paragraphs.

112. Labor Code section 200 provides that “wages” include all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, pieces, commission basis, or other calculation method. Labor Code section 204 states that all wages earned by any person in any employment are payable twice during the calendar month and must be paid not more than seven days following the close of the period when the wages were earned. Labor Code section 210, subdivision (a), makes employers who violate Labor Code section 204 subject to a penalty of \$100 for any initial failure to timely pay each employee’s full wages and \$200 for each subsequent violation, plus 25% of the amount unlawfully withheld.

113. Labor Code section 216 establishes that it is a misdemeanor for any person, with regards to wages due, to “falsely deny the amount or validity thereof, or that the same is due, with intent to secure themselves, her employer or other person, any discount upon such indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due.”

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

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

1 116. Defendants' pattern, practice, and uniform administration of its corporate policy of
2 illegally denying employees compensation, as described herein, is unlawful and entitles Plaintiffs
3 and the other Class Members to recover, pursuant to Labor Code section 218, the unpaid balance
4 of the compensation owed to them in a civil action and any applicable penalties, attorney fees, and
5 interest owed to them pursuant to Labor Code sections 210 and 218.5.

6 **Seventh Cause of Action**

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

8 *(Against All Defendants)*

9 117. Plaintiffs reallege and incorporate by reference all previous paragraphs.

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

18 119. Section 203 of the Labor Code provides that if an employer willfully fails to pay
19 compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then
20 the employer is liable for penalties for continued compensation up to thirty workdays.

21 120. Due to Defendants' faulty pay policies, those Class Members whose employment
22 with Defendants has concluded were not compensated for each and every hour worked at the
23 appropriate rate. Defendants have willfully failed to pay those formerly employed Class Members
24 whose sums were certain at the time of termination within seventy-two hours of their resignation
25 and have failed to pay those sums for thirty days thereafter as required by Labor Code sections
26 201 through 203.

27 121. As a result, Defendants are liable to the formerly employed Class Members for
28 waiting time penalties amounting to thirty days wages for the formerly-employed Class Members

pursuant to Labor Code section 203. (See, e.g., DLSE Manual, § 4.3.4 [failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties].)

Eighth Cause of Action

Failure to Indemnify All Necessary Business Expenditures

(Against All Defendants)

122. Plaintiffs reallege and incorporate by reference all previous paragraphs.

123. California Labor Code Section 2802 states that employers must “indemnify” an employee for “all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” Likewise, Labor Code section 2804 states that “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or her personal representative of any right or remedy to which he is entitled under the laws of this State.”

124. Here, the Plaintiffs and the other Class Members paid out of pocket for necessary business expenditures incurred as a direct consequence and requirement of performing their job duties, including the costs associated with their personal cell phones they required to perform their work. Despite knowing that Plaintiffs and the other Class Members incurred these necessary business expenses and requiring Plaintiffs and the other Class Members to use such items, Defendants did not reimburse them.

125. Thus, Plaintiffs and the other Class Members are entitled to recover the cost of such necessary business expenses, plus interest from the date each incurred such business expenses, plus fees and costs. (Lab. Code, § 2802, subds. (b), (c).)

Ninth Cause of Action

Failure to Furnish Accurate Itemized Wage Statements

(Against All Defendants)

126. Plaintiffs realleges and incorporates by reference all previous paragraphs.

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

- (1) The gross wages earned;
- (2) The 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) The net wages earned;
- (6) The inclusive dates of the period for which the employee is paid;
- (7) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) The name and address of the legal entity that is the employer; and
- (9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

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

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

130. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiffs and the other Class Members in violation of Labor Code section 226, subdivision (a), Plaintiffs and the other Class Members are each entitled to recover an initial penalty of \$50, and

1 subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per
2 Plaintiffs and per each Class Member from Defendants pursuant to Labor Code section 226,
3 subdivision (e), along with costs and reasonable attorneys' fees.

4 **Tenth Cause of Action**

5 *Violations of California's Unfair Competition Law*

6 *(Against All Defendants)*

7 131. Plaintiffs realleges and incorporates by reference all previous paragraphs.

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

16 133. Because Plaintiffs are a victim of Defendants' unfair and unlawful conduct alleged
17 herein, Plaintiffs for themselves and on behalf of the Class Members, seek full restitution of
18 monies, as necessary and according to proof, to restore any and all monies withheld, acquired,
19 and/or converted by Defendants pursuant to Business and Professions Code sections 17203 and
20 17208.

21 134. The acts complained about herein occurred within the four years before initiating
22 this action and are continuing into the present and ongoing.

23 135. Plaintiffs were compelled to retain the services of counsel to file this Court action
24 to protect her interests and those of the Class Members, to obtain restitution and injunctive relief
25 on behalf of Defendants' current non-exempt employees and to enforce important rights affecting
26 the public interest. Plaintiffs have thereby incurred the financial burden of attorneys' fees and
27 costs, which Plaintiffs are entitled to recover under Code of Civil Procedure section 1021.5.
28

Eleventh Cause of Action

*Penalties Pursuant to PAGA for Violations of California Labor Code Sections
201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2,
1197, 1197.1, 1198, 1198.5, 1199, and Other Provisions of the Labor Code
(Against All Defendants)*

136. Plaintiffs realleges and incorporates by reference all previous paragraphs.

137. Based on the above allegations incorporated by reference, Defendants violated Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246 *et seq.*, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, and others that may be applicable; and the Applicable Wage Orders (Cal. Code of Regs., tit. 8, §§ 11130, 11140), and others that may be applicable.

138. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code sections 2698 through 2699.6 because of Defendants' violation of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, and others that may be applicable; and the Applicable Wage Orders (Cal. Code of Regs., tit. 8, §§ 11130, 11140), and others that may be applicable.

139. Under Labor Code section 2699, subdivision (f)(2), and 2699.5, for each such violation, Plaintiffs and the Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

A. \$100 for the initial violation per employee per pay period; and

B. \$200 for each subsequent violation per employee per pay period.

140. These penalties must be allocated seventy-five percent to the Labor and Workforce Development Agency ("LWDA") and twenty-five percent to the affected employees. These penalties may be stacked separately for each of Defendants violations of the California Labor Code. (*Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 780–781 [citing with approval *Stoddart v. Express Services, Inc.* (E.D. Cal., Sept. 16, 2015, No. 2:12-CV-01054-KJM) 2015 WL 5522142, at *9, for the proposition that Plaintiffs could pursue separate claims for penalties under Labor Code section 226, subdivision (e), and penalties for Labor Code section 226,

1 subdivision (a), violations]; see also *Hernandez v. Towne Park, Ltd.* (C.D. Cal., June 22, 2012,
2 No. CV 12-02972 MMM JCGX) 2012 WL 2373372, at *17 fn. 70 [noting that federal courts
3 applying California law have found that “PAGA penalties can be stacked, i.e., multiple PAGA
4 penalties can be assessed for the same pay period for different Labor Code violations.”], internal
5 quotation marks omitted).

6 141. In addition, to the extent permitted by law, Defendants failed to provide Plaintiffs
7 and all Aggrieved Employees with accurate itemized wage statements in compliance with Labor
8 Code section 226, subdivision (a). Plaintiffs seek separate PAGA penalties for Defendants’
9 violations of Labor Code section 226, subdivisions (a) and (e). (*Lopez v. Friant & Associates,*
10 *LLC, supra*, 15 Cal.App.5th at pp. 780, 788.)

11 142. For violations of Labor Code section 226, subdivision (a), the Plaintiffs seek the
12 default penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that
13 “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in
14 the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation
15 and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for
16 which the employer fails to provide the employee a wage deduction statement or fails to keep the
17 required in subdivision (a) of Section 226.” Accordingly, through PAGA and to the extent
18 permitted by law, Plaintiffs and the Aggrieved Employees are entitled to recover penalties for
19 violations of Labor Code section 226.3 and seek default PAGA penalties for each of Defendants’
20 numerous violations of Labor Code section 226, subdivision (e).

21 143. Labor Code section 210 provides that “in addition to, an entirely independent and
22 apart from, any other penalty provided in this article, every person who fails to pay the wages of
23 each employee as provided in Sections . . . 204 . . . shall be subject to a civil penalty as follows:
24 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2)
25 For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
26 for each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result
27 of the faulty compensation policies and practices, Plaintiffs and the Aggrieved Employees are also
28 entitled to recover penalties under Labor Code section 210 through PAGA.

1 144. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
2 liquidated damages, in the amount of: (1) one hundred dollars (\$100) for any initial violation that
3 is intentionally committed for each underpaid employee for each pay period for which the
4 employee is underpaid, and (2) two hundred fifty dollars (\$250) for each subsequent violation for
5 the same specific offense for each underpaid employee for each pay period for which the employee
6 is underpaid regardless of whether the initial violation is intentionally committed. Accordingly,
7 through PAGA and to the extent permitted by law, the Plaintiffs and the Aggrieved Employees are
8 entitled to recover pursuant to Labor Code section 1197.1.

9 145. Plaintiffs were compelled to retain the services of counsel to file this action to
10 protect her interests and those of the Aggrieved Employees and to assess and collect the wages
11 and penalties owed by Defendants. Plaintiffs have thereby incurred attorneys' fees and costs,
12 which Plaintiffs are also entitled to recover under Labor Code section 2699, subdivision (g)(1).

13 **VIII. DEMAND FOR JURY TRIAL**

14 146. Plaintiffs hereby demand trial by jury of the Plaintiffs' and the Class Members'
15 claims against Defendants.

16 **IX. PRAYER FOR RELIEF**

17 Plaintiffs pray for judgment for themselves and for all others on whose behalf this suit is
18 brought against Defendants, as follows:

- 19 1. For an order certifying the proposed class,
- 20 2. For an order appointing Plaintiffs as representatives of the class;
- 21 3. For an order appointing Plaintiffs' counsel as counsel for the class;
- 22 4. For the failure to pay all minimum wages, compensatory, consequential, general,
23 and special damages according to proof pursuant to Labor Code sections 1194, 1194.2, 1197, and
24 others as may be applicable;
- 25 5. For the failure to pay all overtime wages, compensatory, consequential, general,
26 and special damages according to proof pursuant to Labor Code sections 204, 510, 1194, 1198,
27 and others as may be applicable;
- 28 6. For the failure to pay all sick pay wages, payment of all unpaid sick pay wages and

1 penalties according to proof pursuant to Labor Code § 246 *et seq.*, and for reasonable attorneys’
2 fees and costs;

3 **7.** For the failure to provide rest periods and pay missed rest period premiums,
4 compensatory, consequential, general, and special damages according to proof pursuant to Labor
5 Code section 226.7;

6 **8.** For the failure to provide meal periods and pay missed meal period premiums,
7 compensatory, consequential, general, and special damages according to proof pursuant to Labor
8 Code sections 226.7 and 512;

9 **9.** For the failure to maintain accurate employment records, penalties pursuant to
10 Labor Code sections 226.3, 1174.5, and others that may be applicable;

11 **10.** For the failure to pay wages timely during employment, the unpaid balance of the
12 compensation owed to Plaintiffs and the other Class Members and any applicable penalties owed
13 to them pursuant to Labor Code section 210;

14 **11.** For the failure to pay all wages earned and unpaid at separation, statutory waiting
15 time penalties pursuant to Labor Code sections 201 through 203, for the Class Members who quit
16 or were fired in an amount equal to their daily wage multiplied by thirty days, as may be proven;

17 **12.** For the failure to indemnify all necessary business expenditures, all unreimbursed
18 business expenses, and interest thereon, that are owed, pursuant to Labor Code section 2802, and
19 attorney fees, pursuant to Labor Code section 2802, subdivision (c);

20 **13.** For the violations of California’s Unfair Competition Law, restitution to Plaintiffs
21 and the other Class Members of all money and/or property unlawfully acquired by Defendants by
22 means of any acts or practices declared by this Court to be in violation of Business and Professions
23 Code sections 17200 through 17210;

24 **14.** For the claim of penalties pursuant to PAGA and other provisions of the California
25 Labor Code, a civil penalty in the amount of \$100 for the initial violation and \$200 for each
26 subsequent violation as specified in Labor Code section 2699, subdivision (f)(2), in the
27 representative action brought on behalf of Plaintiffs and the Aggrieved Employees pursuant the
28 Labor Code Private Attorneys General Act of 2004, and for civil penalties available under Labor

1 Code section 210;

2 **15.** Prejudgment interest on all due and unpaid wages pursuant to Labor Code section
3 218.6 and Civil Code sections 3287 and 3289;

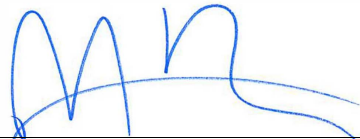
4 **16.** On all causes of action for which attorneys' fees may be available, for attorneys'
5 fees and costs as provided by Labor Code sections 218.5, 226, Code of Civil Procedure section
6 1021.5, and others as may be applicable;

7 **17.** For an order enjoining Defendants, and each of them, and their agents, servants,
8 and employees, and all persons acting under, in concert with, or for them, from acting in derogation
9 of any rights or duties adumbrated in this complaint; and

10 **18.** For such other and further relief, this Court may deem just and proper.

11
12 Dated: May 13, 2025

THE NOURMAND LAW FIRM, APC
BOKHOUR LAW GROUP, P.C.
ESHAGHIAN LAW, PC

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16 **MICHAEL NOURMAND, ESQ.**
17 **JAMES A. DE SARIO, ESQ.**
18 **MEHRDAD BOKHOUR, ESQ.**
19 **MICHELE ESHAGHIAN, ESQ.**

20 Attorneys for Plaintiffs, the Putative Class, and
21 the Aggrieved Employees
22
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1901 Avenue of the Stars, Suite 920, Los Angeles, California 90067.

On May 13, 2025, I served the following document(s) described as **THIRD AMENDED CONSOLIDATED CLASS AND PAGA REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action:

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BY ELECTRONIC SERVICE: I transmitted the above-referenced document(s) via electronic service provider First Legal to the person(s) identified above at the email address(es) indicated and did not, within a reasonable time after transmission, receive any message or communication indicating that delivery failed or that any other error had occurred which would delay or caused failure in transmission and delivery of the document and/or any attachments thereto.

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

Executed on May 13, 2025, in Los Angeles, California.

/s/ Carlos Garcia
Carlos Garcia