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of themselves and others similarly situated

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNADINO**

MARISELA MARTINEZ DE ORNELAS
and MARGARITA URRUTIA, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

MAGNOLIA FOODS, LLC, a California
limited liability company; and DOES 1 to 10,
inclusive,

Defendant.

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
~~11/7/2024 10:06 AM~~
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CASE NO. CIVSB2308953

[Consolidated with CASE NO. CIVSB2324321]

Assigned to Hon. Christian Towns, Dept. S-26

**CONSOLIDATED CLASS ACTION AND PAGA
COMPLAINT FOR:**

- 1. Failure to Pay Overtime Wages in Violation of Labor Code §§ 510 and 1198;**
- 2. Failure to pay all Wages and Minimum Wages in Violation of Labor Code §§ 221, 223, 1182, 1194, 1197, and 1198;**
- 3. Failure to Provide Compliant Meal Periods in Violation of Labor Code §§ 226.7, 512, 516 and 1198;**
- 4. Failure to Provide Compliant Rest Periods in Violation of Labor Code §§ 226.7, 516, and 1198;**
- 5. Failure to Furnish Accurate, Itemized Wage Statements in Violation of Labor Code § 226(a) and Failure to Maintain Accurate Records;**
- 6. Failure to Provide Suitable Seating in Violation of Labor Code § 1198;**
- 7. Failure to Provide Sick Pay at the Regular Rate in Violation of Labor Code § 246;**
- 8. Failure to Reimburse for All Necessary Business Expenditures in Violation of Labor**

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- Code §§ 2802, 2804;
- 9. Failure to Timely Pay Wages During Employment in Violation of Labor Code § 204;**
- 10. Waiting Time Penalties in Violation of Labor Code §§ 201-203;**
- 11. Violations of Business & Professions Code section 17200 et seq.**
- 12. Civil Penalties Pursuant to PAGA Labor Code §§ 2698, et seq.**

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Attorneys for Plaintiffs MARISELA MARTINEZ
DE ORNELAS and MARGARITA URRUTIA,
on behalf of themselves and others similarly situated

Plaintiffs, MARISELA MARTINEZ DE ORNELAS and MARGARITA URRUTIA (hereinafter “Plaintiffs”) on behalf of themselves, the State of California, and as “aggrieved employees” acting as private attorneys general, hereby bring this Second Amended class and representative action against Defendant MAGNOLIA FOODS, LLC, a California limited liability company; and DOES 1 to 10 (hereinafter referred to as “Defendant”) on behalf of themselves and the class of all other similarly situated current and former employees of Defendant. Plaintiffs bring this action upon information and belief, except as to their own actions, the investigation of their counsel, and the facts that are a matter of public record, as follows:

NATURE OF THE CASE

1. This is a class action and Private Attorneys' General Act (PAGA) representative action arising out of Defendant's failure to provide their non-exempt employees with all wages and meal and rest periods in compliance with the applicable wage order and/or the California Labor Code, by failing to provide suitable seating by failing to comply with the applicable wage order and/or the Labor Code regarding the payment of wages.

2. Magnolia Foods, LLC, is a manufacturer of corn and flour tortillas, wraps, sopes, chips, sheet cakes and other baked goods. Magnolia Foods is headquartered in Mira Loma, California. At all relevant times, Defendant issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Plaintiffs and other aggrieved employees, regardless of their location or position.

3. Defendant has maintained practices across its locations which have failed and continue to fail to pay Plaintiffs and other aggrieved employees all wages. Specifically, Defendant has a company-wide policy of subjecting Plaintiffs and other aggrieved employees to work off-the-clock during meal breaks and after clocking out at the end of a shift. This has resulted in Defendant's failure to pay all wages including overtime wages to Plaintiffs and other aggrieved employees. Moreover, Defendant fails to provide any seating for Plaintiffs and other aggrieved employees, and employees are required to stand for the duration of their shifts.

4. Defendant also failed to provide Plaintiffs and aggrieved employees with compliant

1 meal breaks because meal breaks were short, late, or missed entirely. Moreover, as an example,
2 Plaintiff De Ornelas was required to clock-out before her fifth hour work, yet was required to
3 continue working. As a result, Defendant failed to maintain accurate time records. Further, rest
4 breaks were frequently missed.

5 5. Defendant also failed to pay meal premiums, overtime, and sick pay wages at the
6 regular rate of pay. Rather, Defendant paid these wages at Plaintiffs' base rate of pay.

7 6. In light of the foregoing, Defendant failed to provide Plaintiffs and other aggrieved
8 employees with compliant wage statements and failed to timely pay final wages upon termination
9 or separation from employment.

10 7. Plaintiffs bring Causes of Action One through Eleven (the "class claims") as a class
11 action on behalf of themselves and other similarly situated individuals who have worked for
12 Defendant in California, at any time from four-years prior to the filing of this complaint, through
13 the resolution of this action. Plaintiffs, on their own behalf and on behalf of all Class Members,
14 brings the class claims pursuant to Labor Code sections 200-203, 221, 223, 226, 226.7, 246, 500,
15 510, 512, 1174, 1194, 1194.2, 1197, 1198, 2802, 2804 the applicable wage order and under
16 Business & Professions Code sections 17200-17208, for unfair competition due to Defendant's
17 unlawful, unfair and fraudulent business acts and practices.

18 8. Plaintiffs bring Cause of Action Twelve as proxies of the State of California on
19 behalf of other aggrieved employees for penalties under the Private Attorneys General Act
20 (PAGA). PAGA provides that any civil penalty assessed and collected by the Labor and Workforce
21 Development Agency (LWDA) for violations of applicable provisions of the California Labor
22 Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee
23 on behalf of themselves and other current or former employees pursuant to procedures outlined in
24 California Labor Code § 2699.3. PAGA also provides that an aggrieved employee can bring a civil
25 action on behalf of aggrieved employees for violation of any other Labor Code provision that does
26 not itself contain a civil penalty, in which case the civil penalties are assessed at \$100 for each
27 aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee
28 per pay period for each subsequent violation.

9. On March 28, 2023, Plaintiff Marisela Martinez De Ornelas provided written notice to the LWDA and by certified mail to Defendant of the specific provisions of the California Labor Code the Defendant has violated, including the facts and theories to support the alleged violations, and of Plaintiff's intent to bring a claim for civil penalties under PAGA. More than 65 calendar days have passed since the date notice was provided to the LWDA and Defendant. Accordingly, Plaintiff have satisfied the administrative prerequisites under California Labor Code Section 2699.3(a) to recover civil penalties against Defendant for violations of California Labor Code identified in this Second Amended Consolidated Complaint.

10. On September 27, 2023, Plaintiff Margarita Urrutia provided written notice to the LWDA and by certified mail to Defendant of the specific provisions of the California Labor Code the Defendant has violated, including the facts and theories to support the alleged violations, and of Plaintiff's intent to bring a claim for civil penalties under PAGA. More than 65 calendar days have passed since the date notice was provided to the LWDA and Defendant. Accordingly, Plaintiff has satisfied the administrative prerequisites under California Labor Code Section 2699.3(a) to recover civil penalties against Defendant for violations of California Labor Code identified in this Second Amended Consolidated Complaint.

11. Plaintiffs are informed and believe, and based thereon allege, that Defendant has engaged in, among other things a system of willful violations of the Labor Code and the applicable IWC wage orders by creating and maintaining policies, practices and customs that knowingly deny employees the above stated rights and benefits.

PARTIES

12. Plaintiff, Marisela Martinez De Ornelas is an individual over the age of eighteen (18) and is now, and/or at all relevant times mentioned in this Second Amended Consolidated Complaint was, a resident and domiciliary of the State of California. During the relevant time period, Plaintiff De Ornelas worked for Defendant in Rialto, California from approximately September 2021 through approximately May 4, 2022. Plaintiff worked as a machine operator and earned approximately \$18 per hour.

13. Plaintiff, Margarita Urrutia is an individual over the age of eighteen (18) and is now,

1 and/or at all relevant times mentioned in this Second Amended Consolidated Complaint was, a
2 resident and domiciliary of the State of California. During the relevant time period, Plaintiff
3 Urrutia worked for Defendant in Mira Loma, California and in Rialto, California. Plaintiff Urrutia
4 was hired to work for Defendant as a “packer” in approximately 2014 and her employment with
5 Defendant ended on October 14, 2022.

6 14. Plaintiffs are informed and believe, and based thereon allege, that Defendant
7 Magnolia Foods, LLC, is a California limited liability company. Plaintiffs are further informed and
8 believe that at all times relevant hereto, Defendant has transacted, and continues to transact,
9 business throughout the State of California.

10 15. Plaintiffs are informed and believe, and based upon such information and belief
11 allege, that Defendant is, now and/or at all times mentioned in this Complaint was in some manner
12 legally responsible for the events, happenings and circumstances alleged in this Complaint.

13 16. Plaintiffs are further informed and believe, and based upon such information and
14 belief allege, that at all times herein mentioned, Defendant proximately caused Plaintiffs, all others
15 similarly situated, and the general public to be subjected to the unlawful practices, wrongs,
16 complaints, injuries and/or damages alleged in this Complaint.

17 17. Plaintiffs are informed and believe and based thereon allege that at all times herein
18 mentioned Defendant and DOES 1 through 10, are and were corporations, business entities,
19 individuals, and partnerships, licensed to do business and actually doing business in the State of
20 California.

21 18. Plaintiffs do not know the true names or capacities, whether individual, partner or
22 corporate, of the Defendants sued herein as DOES 1 through 10, inclusive, and for that reason, said
23 Defendants are sued under such fictitious names, and Plaintiffs pray for leave to amend this
24 complaint when the true names and capacities are known. Plaintiffs are informed and believe and
25 based thereon allege that each of said fictitious Defendants were responsible in some way for the
26 matters alleged herein and proximately caused Plaintiffs, aggrieved employees and members of the
27 general public and class to be subject to the illegal employment practices, wrongs and injuries
28 complained of herein.

19. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendant; and furthermore, the Defendants, and each of them, were the agents, servants and employees of each of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting within the course and scope of said agency and employment.

20. Plaintiffs are informed and believe and based thereon allege that at all times material hereto, each of the Defendants named herein were the agent, employee, alter ego and/or joint venturer of, or working in concert with each of the other co-Defendants and were acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

21. At all times herein mentioned, Defendants, and each of them, were members of, and engaged in, a joint venture, partnership and common enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

22. At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged. At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged.

23. The members of the Classes (as defined below), including the representative Plaintiffs named herein, have been employed during the Relevant period in California. The practices and policies which are complained of by way of this Complaint are enforced throughout the State of California.

JURISDICTION AND VENUE

24. The Court has jurisdiction over Plaintiffs' and the other non-exempt employees'

1 claims for penalties pursuant to article 6, section 10 of the California Constitution and Code of
2 Civil Procedure section 410.10.

3 25. The Court also has jurisdiction over Plaintiffs' and Aggrieved Employees' claims
4 for penalties pursuant to the Private Attorneys General Act of 2004, *Labor Code* sections 2698 *et*
5 *seq.*

6 26. Additionally, this Court has jurisdiction over Plaintiffs' and the Classes' claims for
7 injunctive relief, including restitution of earned wages, arising from Defendant's unfair
8 competition under Business & Professions Code section 17203 and 17204. The Court also has
9 jurisdiction over Plaintiffs' and the Classes' claims pursuant to the applicable provisions.

10 27. The Court has jurisdiction over Defendant because they are authorized to do
11 business in the State of California and are registered with the California Secretary of State.
12 Defendant does sufficient business with sufficient minimum contacts in California, and/or
13 otherwise intentionally avails itself of the California market through the advertising, marketing and
14 sale of goods and services, to render the exercise of jurisdiction over Defendant by the California
15 court consistent with traditional notions of fair play and substantial justice.

16 28. Venue is proper in San Bernardino County because the acts which give rise to this
17 litigation occurred in this county and because Defendant has employed class members in this
18 county and transacts business in this county.

19 **FACTUAL ALLEGATIONS**

20 29. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

21 30. Defendant has engaged in, and continues to engage in, unfair business practices in
22 California by practicing, employing and utilizing the employment practices and policies outlined
23 above.

24 31. Defendant required Plaintiffs and other non-exempt employees to don protective
25 gear, such as aprons, hair nets, and earplugs, and wash their hands prior to clocking in for their
26 shift, such that Plaintiffs and other non-exempt employees were not paid for the time spent donning
27 mandatory protective gear and washing their hands prior to entering the "production/processing"
28 floor. Similarly, Plaintiffs and other non-exempt employees had to doff their protective gear after

1 clocking out at the end of their shift without being compensated for this additional time. As a
2 result, Defendant required Plaintiffs and other non-exempt employees to perform work while off-
3 the-clock, and Defendant failed to compensate Plaintiffs and other non-exempt employees for all
4 minimum and overtime wages owed.

5 32. As a direct result of the wage and hour violations herein alleged, Plaintiffs and
6 members of the Classes have suffered, and continue to suffer substantial losses related to the use
7 and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in seeking
8 to compel Defendant to fully perform its obligations under state law, all to Plaintiffs' respective
9 damage in amounts according to proof at the time of trial.

10 ***Defendant's Failure to Pay Overtime Wages***

11 33. During the Relevant period, upon information and belief, Defendant had, and
12 continues to have, a company-wide policy of discouraging and impeding Plaintiffs and members of
13 the Classes from recording hours worked that were outside of their scheduled shifts in order to
14 limit the amount of overtime employees could accrue. On information and belief, this policy of
15 limiting overtime, led Plaintiffs and members of the Classes to work off-the-clock after their
16 scheduled shift times and during their meal breaks. For example, Plaintiff De Ornelas was required
17 to clock out for her meal break before her fifth hour worked, yet was required to continue working.
18 Moreover, Plaintiff would be required to clock out at the end of her shift and continue to work.
19 This time is unpaid and off-the-clock.

20 34. Because Plaintiffs and members of the Classes worked shifts of eight (8) hours a
21 day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for
22 overtime premium pay. Moreover, when overtime pay was paid to Plaintiff De Ornelas, Defendant
23 paid overtime at the base rate of pay rather than at the regular rate.

24 35. Therefore, Plaintiffs and members of the Classes were not paid overtime wages for
25 all of the overtime hours they actually worked.

26 ***Defendant's Failure to Pay all Wages and Minimum Wages***

27 36. As stated above, during the relevant time period, as a result of Defendant's policy of
28 limiting the amount of overtime employees could accrue, coupled with being under Defendant's

1 control after their scheduled shift times, and during meal breaks, Plaintiffs and members of the
2 Classes were forced to work off-the-clock.

3 37. Thus, Defendant did not pay at least minimum wages for all hours worked by
4 Plaintiffs and members of the Classes. To the extent that these off-the-clock hours did not qualify
5 for overtime premium payment, Defendant did not pay at least minimum wages for those hours
6 worked off-the-clock.

7 ***Failure to Provide Compliant Meal Periods***

8 38. Plaintiffs allege that meal breaks were short as a result of clocking out and being
9 required to continue working. Meals were also frequently interrupted, and missed entirely.
10 Defendant required Plaintiffs and other non-exempt employees to doff their protective gear after
11 they clock out for lunch and put back on their protective gear prior to clocking back in for the
12 remainder of their shifts, resulting in short (less than 30 minutes of net rest) meal periods. As a
13 result, Plaintiffs and members of the Classes were forced to work in excess of five (5) hours before
14 taking a meal period. Further, when meal periods are not provided, Defendant does not pay
15 Plaintiffs and members of the Classes meal premiums at the regular rate of pay. Rather, meal
16 premiums are paid at the base rate of pay.

17 ***Failure to Provide Compliant Rest Breaks***

18 39. Defendants also failed to provide Plaintiff and other non-exempt employees with 30
19 minutes of net rest in an area away from the work station that is appropriate for rest, which
20 employers are required by the Wage Order to maintain for their employees during meal and rest
21 periods. Specifically, Plaintiffs allege that rest breaks are rarely provided.

22 ***Defendant's Failure to Provide Compliant Wage Statements***

23 40. During the relevant time period, Defendant has knowingly and intentionally
24 provided Plaintiffs and members of the Classes with uniform, incomplete, and inaccurate wage
25 statements. For example, Defendant issued uniform wage statements to Plaintiffs and members of
26 the Classes that fail to correctly list: gross wages earned; total hours worked; net wages earned; and
27 all applicable hourly rates in effect during the pay period, including rates of pay for overtime
28 wages and/or meal and rest period premiums, and the corresponding number of hours worked at

1 each hourly rate.

2 41. Because Defendant did not record the time Plaintiffs and members of the Classes
3 spent working off-the-clock and deducted time from their meal periods that were missed and/or
4 interrupted (and therefore time for which they should have been paid), Defendant did not list the
5 correct amount of gross wages and net wages earned by Plaintiffs and members of the Classes in
6 compliance with Labor Code sections 226(a)(1) and 226(a)(5), respectively.

7 42. For the same reason, Defendant failed to accurately list the total number of hours
8 worked by Plaintiffs and members of the Classes, and failed to list the applicable hourly rates of
9 pay in effect during the pay period and the corresponding accurate number of hours worked at each
10 hourly rate.

11 43. Because Defendant failed to provide the correct net and gross wages earned,
12 applicable rates of pay, and number of total hours worked on wage statements, Plaintiffs and
13 members of the Classes have been prevented from verifying, solely from information on the wage
14 statements themselves, that they were paid correctly and in full. Instead, Plaintiffs and members of
15 the Classes have had to look to sources outside of the wage statements themselves and reconstruct
16 time records to determine whether in fact they were paid correctly and the extent of underpayment,
17 thereby causing them injury.

18 ***Defendant's Failure to Provide Suitable Seating***

19 44. Defendant's location has space in the to allow for the presence and use of a seat or
20 stool by Plaintiffs and class members (with reasonable or no modification to these work areas)
21 during the performance of their work duties. Defendants could provide Plaintiffs and class
22 members with a seat or stool, but instead denies them seating and forces aggrieved employees to
23 stand throughout the day. Plaintiffs and other class members spent a substantial portion of their day
24 standing, regardless of their actual job title or description. The nature of the work of an employee
25 performing their job duties can reasonably be accomplished from a seated position. However,
26 Defendant systematically, and on a company-wide basis, did not provide seats or stools forcing
27 Plaintiffs and other class members to stand throughout their work shifts.

28 45. Defendant did not provide Plaintiffs and other class members with seats or stools in

1 reasonable proximity to their work areas to allow them to use seats when it would not interfere
2 with the performance of their duties for times when they were not engaged in active duties that
3 require standing. In other words, to the extent Plaintiffs and class members engaged in duties in
4 which the nature of the work required standing, Defendant denied them the use of seats nearby
5 during lulls in their work duties. Moreover, Defendant did not inform Plaintiffs and other class
6 members of their rights to a seat or stool under California law.

7 ***Defendant's Failure to Reimburse all Necessary Business Expenditures***

8 46. Defendant also failed to reimburse Plaintiffs and other non-exempt employees for
9 use of their personal cellular phones for work activities.

10 47. Upon information and belief, Defendant required Plaintiffs and other non-exempt
11 employees to communicate with coworkers and their supervisors through their personal cellular
12 phones; however, Defendant failed to reimburse Plaintiffs and other non-exempt employees for the
13 use of their personal cellular phones for business purposes.

14 ***Defendant's Failure to Provide Sick Pay***

15 48. Defendant failed to properly incorporate the value of earned Incentive Pay into the
16 regular rate of pay when calculating employees' sick time pay. Instead, Defendant paid Plaintiffs
17 and other non-exempt employees at their base rates of pay for sick time pay earned, in violation of
18 California law.

19 ***Defendant's Failure to Timely Pay all Wages During Employment***

20 49. Labor Code section 204 requires that all wages earned by any person in any
21 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those
22 wages due upon termination of an employee, are due and payable between the 16th and the 26th
23 day of the month during which the labor was performed, and that all wages earned by any person in
24 any employment between the 16th and the last day, inclusive, of any calendar month, other than
25 those wages due upon termination of an employee, are due and payable between the 1st and the
26 10th day of the following month.

27 50. Labor Code section 204 also requires that all wages earned for labor in excess of the
28 normal work period shall be paid no later than the payday for the next regular payroll period.

1 Alternatively, Labor Code section 204 provides that the requirements of this section are deemed
2 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
3 paid not more than seven (7) calendar days following the close of the payroll period.

4 51. Plaintiffs may enforce violations of Labor Code section 204 via PAGA penalties
5 and Labor Code § 210.

6 52. During the relevant period, Defendant willfully failed to pay Plaintiffs and members
7 of the Classes all wages due including, but not limited to, minimum wages, and meal and rest
8 period premiums, within the time periods specified by Labor Code section 204.

9 ***Defendant's Failure to Timely Pay Final Wage Upon Termination***

10 53. Defendant willfully failed to pay Plaintiffs and members of the Classes who are no
11 longer employed by Defendant the earned and unpaid wages set forth above, including but not
12 limited to, overtime wages, minimum wages, and meal period premiums, either at the time of
13 discharge, or within seventy-two (72) hours of their leaving Defendant's employ.

14 ***Facts Regarding Willfulness***

15 54. Plaintiffs are informed and believe, and based thereon allege, that Defendant is and
16 was advised by skilled lawyers, other professionals, employees with human resources background
17 and advisors with knowledge of the requirements of California wage and hour laws and that at all
18 relevant times, Defendant knew or should have known, that the Plaintiff Class Members, including
19 Plaintiffs, were entitled to receive one hour of pay at the employee's regular rate of compensation
20 for each day that a meal and rest period was not provided and were and are entitled to receive pay
21 for all hours worked, accurate itemized wage statements, and final pay in a timely manner.

22 ***Unfair Business Practices***

23 55. Defendant has further engaged in, and continues to engage in, unfair business
24 practices in California by practicing, employing and utilizing the unlawful employment practices
25 and policies outlined above.

26 56. As a direct result of the wage and hour violations herein alleged, Plaintiffs and
27 members of the Plaintiff Class have suffered, and continue to suffer substantial losses related to the
28 use and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in

1 seeking to compel Defendant to perform their obligations under state law, all to Plaintiffs' and the
2 Plaintiff Class members' respective damage in amounts according to proof at the time of trial.

3 ***Plaintiffs' Exhaustion of Administrative Remedies***

4 57. Plaintiffs have complied with the procedures for bringing suit specified in Labor
5 Code section 2699.3.

6 58. By letter dated March 28, 2023, required notice was provided by Plaintiff Marisela
7 Martinez De Ornelas to the Labor and Workforce Development Agency ("LWDA") and
8 Defendant, of the specific provisions of the Labor Code alleged to have been violated, including
9 the facts and theories to support the alleged violations.

10 59. By letter dated September 27, 2023, required notice was provided by Plaintiff
11 Margarita Urrutia to the Labor and Workforce Development Agency ("LWDA") and Defendant, of
12 the specific provisions of the Labor Code alleged to have been violated, including the facts and
13 theories to support the alleged violations.

14 60. More than sixty-five (65) days have passed since the dates both notices were mailed
15 to Defendant and the LWDA, and Plaintiffs have received no response from the LWDA indicating
16 that it plans to investigate either notice.

17 61. Accordingly, Plaintiffs have satisfied the administrative prerequisites under
18 California Labor Code Section 2699.3(a) to recover civil penalties against Defendant for violations
19 of California Labor Code identified in this First Amended Complaint.

20 **CLASS ACTION ALLEGATIONS**

21 62. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

22 63. Pursuant to Code of Civil Procedure section 382, this action is brought and may be
23 properly maintained as a class action. This action satisfies the ascertainability, numerosity,
24 commonality, typicality, adequacy, predominance, and superiority requirements of those
25 provisions.

26 64. Plaintiffs bring this suit as a class action on behalf of two classes of individuals
27 defined as follows (collectively the "Classes"):

28 a. Plaintiff Class: All persons who have been, or currently are, employed by Defendant

1 and who held, or hold, job positions which Defendant has classified as “non-
2 exempt” employees in the State of California, at any time since four years prior to
3 filing this action, through the date judgment is rendered in this action.

- 4 b. Terminated Sub Class: All members of the Plaintiff Class whose employment ended
5 during the Class Period.

6 65. Numerosity: Plaintiffs are informed and believe, and on that basis allege, that during
7 the class period hundreds of class members have been employed by Defendant as non-exempt
8 employees in the State of California. Because so many persons have been employed by Defendant
9 in this capacity, the members of the Plaintiff Class are so numerous that joinder of all members is
10 impossible and/or impracticable.

11 66. Common Questions of Law and/or Fact: Common questions of law and fact exist as
12 to all members of the Plaintiff Class and predominate over any questions affecting solely individual
13 members of the Plaintiff Class. Among the questions of law and fact, that are relevant to the
14 adjudication of Class Members’ claims are as follows:

- 15 a. Whether Plaintiffs and Class Members are subject to and entitled to the benefits of
16 California wage and hour statutes;
17 b. Whether Defendant failed to pay Plaintiffs and Class Members for all hours worked;
18 c. Whether Defendant failed to pay Plaintiffs and Class Members all overtime;
19 d. Whether Defendant had a standard policy of not providing compliant meal breaks
20 and premiums to Plaintiffs and members of the Plaintiff Class;
21 e. Whether Defendant unlawfully and/or willfully failed to provide Plaintiffs and
22 members of the Plaintiff Class with true and proper wage statements upon payment
23 of wages, in violation of Labor Code section 226;
24 f. Whether Defendant failed to reimburse Plaintiff and members of the Plaintiff Class
25 for necessary work expenses;
26 g. Whether Defendant failed to timely pay wages to Plaintiffs and members of the
27 Plaintiff Class during their employment
28 h. Whether Defendant unlawfully and/or willingly failed to timely pay Plaintiffs and

the Terminated Sub Class upon termination;

- i. Whether Defendant unlawfully and/or willingly failed to provide Plaintiffs and members of the Classes with suitable seating;
- j. Whether Plaintiffs and members of the Plaintiff Class sustained damages, and if so, the proper measure of such damages, as well as interest, penalties, costs, attorneys' fees, and equitable relief;
- k. Whether Defendant unlawfully and/or willingly failed to provide sick wages at the regular rate;
- l. Whether Defendant's conduct as alleged herein violates the Unfair Business Practices Act of California (Bus. & Prof. Code, § 17200 et seq.).

67. Typicality: The claims of the named Plaintiffs are typical of the claims of the members of the Plaintiff Class. Defendant's common course of conduct in failing to provide their non-exempt employees with meal and rest periods and all wages in compliance with the applicable wage order, or premium compensation at the regular rate in lieu thereof, failing to provide them with proper wages and overtime, failing to provide suitable seating, and failing to provide them with compliant wage statements has caused Plaintiffs and the proposed Class to sustain the same or similar injuries and damages. Plaintiffs' claims are thereby representative of and co-extensive with the claims of the proposed Class. Plaintiffs and the proposed Class sustained the same or similar injuries and damages arising from Defendant's common policies, practices, procedures, protocols, routines, and rules which were applied to other Class Members as well as Plaintiffs. Plaintiffs seek recovery for the same type of losses, injuries, and damages as were suffered by other members of the proposed class.

68. Adequacy of Representation: Plaintiffs are adequate representatives of the proposed classes because they are members of the class, and their interests do not conflict with the interests of the members they seek to represent. Plaintiffs have retained competent counsel, experienced in the prosecution of complex class actions, and together Plaintiffs and their counsel intend to prosecute this action vigorously for the benefit of the classes. The interests of the Class Members will fairly and adequately be protected by Plaintiffs and their attorneys.

69. Superiority of Class Action: A class action is superior to other available methods for the fair and efficient adjudication of this litigation since individual litigation of the claims of all Class Members is impracticable. It would be unduly burdensome to the courts if these matters were to proceed on an individual basis, because this would potentially result in hundreds of individual, repetitive lawsuits. Further, individual litigation presents the potential for inconsistent or contradictory judgments, and the prospect of a “race to the courthouse,” and an inequitable allocation of recovery among those with equally meritorious claims. By contrast, the class action device presents far fewer management difficulties, and provides the benefit of a single adjudication, economics of scale, and comprehensive supervision by a single court.

70. The various claims asserted in this action are additionally or alternatively certifiable under the provisions of the Code of Civil Procedure section 382 because:

- a. The prosecution of separate actions by hundreds of individual class members would create a risk of varying adjudications with respect to individual class members, thus establishing incompatible standards of conduct for Defendant, and,
- b. The prosecution of separate actions by individual class members would also create the risk of adjudications with respect to them that, as a practical matter, would be dispositive of the interest of the other class members who are not a party to such adjudications and would substantially impair or impede the ability of such non-party class members to protect their interests.

FIRST CAUSE OF ACTION

Failure to Pay All Overtime Wages

California Labor Code §§ 510, 1198, and Applicable IWC Wage Orders

(By Plaintiffs and Members of the Putative Class Against Defendant)

71. Plaintiffs incorporate herein by reference the allegations set forth above.

72. At all times relevant herein, which comprise of the time period not less than four (4) years preceding the filing of this action, Defendant was required to compensate their hourly employees for all overtime hours worked.

73. California Labor Code sections 510 and 1198 and the applicable Industrial Welfare

Commission (“IWC”) wage order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of one-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC wage order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses, incentive pay and shift differentials.

74. Defendant willfully failed to pay all overtime wages owed to Plaintiffs and members of the Classes. During the relevant time period, Plaintiffs and members of the Classes were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded. Plaintiffs and members of the Classes to work off-the-clock after their scheduled shift times and during their meal breaks. For example, Plaintiff De Ornelas was required to clock out for her meal break before her fifth hour worked yet was required to continue working. Moreover, Plaintiff would be required to clock out at the end of her shift and continue to work. This time is unpaid and off-the-clock.

75. Defendant knew or should have known that as a result of company-wide practices and/or policies, that prevents Plaintiffs and members of the Classes from earning overtime, Plaintiffs and members of the Classes were performing assigned duties off-the-clock during their meal breaks and after their shifts, and were suffered or permitted to perform work for which they were not paid. Because Plaintiffs and members of the Classes worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiffs and members of the Classes were not paid overtime wages for all of the overtime hours they actually worked. Moreover, when Defendant paid Plaintiffs overtime wages it was paid at the base rate of pay rather than at the regular rate.

76. Defendant’s failure to pay Plaintiffs and members of the Classes the balance of overtime compensation, as required by California law, violates the provisions of Labor Code

sections 510 and 1198. Plaintiffs and members of the Classes are entitled to recover civil penalties, attorney's fees, costs, and interest thereon.

SECOND CAUSE OF ACTION

Failure to Pay All Wages and Minimum Wages

Labor Code §§ 221, 223, 1182, 1194, 1197, and 1198, and Applicable IWC Wage Orders

(By Plaintiffs and Members of the Putative Class Against Defendant)

77. Plaintiffs incorporate herein by reference the allegations set forth above.

78. At all times relevant herein, which comprise the time period not less than four (4) years preceding the filing of this action, Defendant was required to compensate their hourly employees for all hours worked.

79. For at least the four (4) years preceding the filing of this action, Defendant failed to compensate employees for all hours worked. Defendant implemented policies that actively prevented employees from being compensated for all time worked by subjecting Plaintiffs and members of the Classes to work off-the-clock as mentioned above.

80. Under the applicable wage order and state regulations, Plaintiffs and the Plaintiff Class are entitled to recover compensation for all hours worked, but not paid, for the four (4) years preceding the filing of this action, in addition to reasonable attorney's fees and costs of suit in accordance with Labor Code section 218.5, and penalties pursuant to Labor Code sections 203 and 206.

81. The applicable IWC wage order section 2(G) defines "hours worked" to mean "the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

82. Defendant suffered or permitted Plaintiffs and members of the Classes to work portions of the day for which Defendant failed to compensate them. This includes time spent under Defendant's control during meal breaks and after clocking out. Plaintiffs and members of the Classes to work off-the-clock after their scheduled shift times and during their meal breaks. For example, Plaintiff De Ornelas was required to clock out for her meal break before her fifth hour worked yet was required to continue working. Moreover, Plaintiff De Ornelas would be required to

1 clock out at the end of her shift and continue to work. This time is unpaid and off-the-clock.

2 83. Labor Code section 1194(a) provides in relevant part: “Notwithstanding any
3 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage ...
4 is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage
5 ... including interest thereon, reasonable attorney’s fees, and costs of suit.”

6 84. Labor Code section 1194.2(a) provides in relevant part: “In any action under section
7 1193.6 or section 1194 to recover wages because of the payment of a wage less than the minimum
8 wage fixed by an order of the commission, an employee shall be entitled to recover liquidated
9 damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

10 85. Labor Code section 1197 provides: “The minimum wage for employees fixed by the
11 commission is the minimum wage to be paid to employees, and the payment of a less wage than
12 the minimum so fixed is unlawful.”

13 86. Plaintiffs are informed and believe, and therefore allege, that Defendant’s
14 compensation schemes do not fairly compensate Plaintiffs and other Class Members for all hours
15 spent performing their job duties.

16 87. The failure to pay at least minimum wages to Plaintiffs and members of the Plaintiff
17 Class for each and every hour worked violates Labor Code sections 1182.11-1182.12, 1194,
18 1194.2, and 1197; the applicable IWC wage order section 4; and Business & Professions Code.

19 88. The failure to pay designated wages to Plaintiffs and members of the Plaintiff Class
20 for each and every hour worked violates Labor Code section 221 and 223; the applicable IWC
21 wage order section 3; and Business & Professions Code.

22 89. During the applicable time period, Defendant has and continues to have a pattern
23 and practice of not providing its employees all wages, by failing to include all compensable time,
24 including time worked off-the-clock.

25 90. As a proximate result of the above-mentioned violations. Plaintiffs and the Plaintiff
26 Class have been damaged in an amount according to proof at time of trial.

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1 **THIRD CAUSE OF ACTION**

2 **Non-Compliant Meal Breaks**

3 **Labor Codes §§ 226.7, 512, 516, 1198 and Applicable IWC Wage Orders**

4 **(By Plaintiffs and Members of the Putative Class Against Defendant)**

5 91. Plaintiffs hereby incorporate by reference each and every one of the allegations
6 contained in the preceding paragraphs as if the same were fully set forth herein.

7 92. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and the Class
8 Members regularly worked more than five (5) hours per shift and were entitled to a meal period of
9 not less than thirty (30) minutes without duty.

10 93. Nevertheless, Plaintiffs are informed and believe, and thereon allege, that Defendant
11 routinely failed to provide Plaintiffs and the members of the Classes with such meal periods
12 without duty, notwithstanding the fact that Plaintiffs and the members of the Classes had not
13 waived their right to the same. Thus, Defendant failed to provide Plaintiffs and the members of the
14 Classes with meal periods required by Labor Code sections 226.7, 512, 516 and the applicable
15 IWC wage order section 10, and categorically failed to pay any and all meal period wages due.

16 94. Plaintiffs and Class Members seek damages pursuant to Labor Code section
17 226.7(b) and the applicable IWC wage order section 10(F), in the amount of one additional hour of
18 pay at the regular rate for each work day that the meal period is/was not provided to Plaintiffs and
19 any member of the Classes, the cumulative sum of which is to be determined at trial.

20 95. Under the foregoing, California employers must provide meal periods and authorize
21 and permit rest periods to all employees during their shifts. In *Augustus et al. v. ABM Security*
22 *Services, Inc.* (2016) 2 Cal.5th 257, the California Supreme Court reaffirmed that the required meal
23 and rest periods must be “off-duty,” which means that employees must be relieved of “all work-
24 related duties,” including the duty to remain “on call,” and they must be “free from employer
25 control” over how they “spend their time.” *Id.* at 264, 269. Employees must have the freedom to
26 use meal and rest periods for their own purposes. *Id.* at 270; *Brinker Rest. Corp. v. Superior Court*
27 (2012) 53 Cal.4th 1004, 1038-39.

28 96. When employees must either “remain at the ready and capable of being summoned

1 to action,” “respond when the employer seeks contact with [them],” “perform other work if the
2 employer so requests,” and/or remain “on call” during their meal and rest periods, the employees
3 have not been “relieve[d] ... of all work-related duties and employer control.” *Augustus, supra*, 2
4 Cal.5th at 270. Such a meal or rest period is not “off duty” and therefore is “impermissible.” *Ibid*.

5 97. The Supreme Court’s decision in *Augustus* is just the latest in a series of meal and
6 rest break cases that have affirmed California’s broad, protective standard for employees.¹

7 98. Moreover, as the mere existence of a facially lawful meal and rest break policy is
8 unavailing if there are practical constraints and pressures on employees to perform their duties in
9 ways that omit breaks. See *Brinker, supra*, 53 Cal.4th at 1040.

10 99. Yet Defendant did and does not provide Plaintiffs and members of the Classes with
11 meal periods during which they are completely relieved of duty for at least thirty (30) minutes by
12 the fifth hour of work and again by the tenth hour of work.

13 100. Plaintiffs allege that meal breaks were short as a result of clocking out and being
14 required to continue working. Meals were also frequently interrupted and missed entirely. As a
15 result, Plaintiffs and members of the Classes were forced to work in excess of five (5) hours before
16 taking a meal period. Further, when meal periods are not provided, Defendant does not pay
17 Plaintiffs and members of the Classes meal premiums at the regular rate of pay. Rather, meal
18 premiums are paid at the base rate of pay.

19 101. Thus, Defendant has failed to perform its obligations to provide Plaintiffs and the
20 members of the Plaintiff Class with off-duty meal periods by the end of the fifth hour of work and
21 a second meal period by the end of the tenth hour of work. Defendant has also failed to pay
22 Plaintiffs and the members of the Plaintiff Class one (1) hour of pay at the regular rate for each off-
23 duty meal period that they have been denied.

24 102. On July 15, 2021, the California Supreme Court issued a decision in *Ferra v. Loews*
25

26 ¹ See, e.g., *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004; *Lubin v. Wackenhut Corp.*
27 (2016) 5 Cal.App.5th 926 , *rehg. denied* (Dec. 14, 2016); *Faulkinbury v. Boyd & Assocs., Inc.* (2013) 216
28 Cal.App.4th 220; *Berlanga v. Equilon Enterprises LLC* (N.D.Cal., Aug. 31, 2017, No. 17-CV-00282-MMC)
2017 WL 3782245 at *3 (a policy requiring employees to “remain in contact with supervisors and other
employees working in their units throughout their shifts... would appear to be unlawful under [*Augustus*.]”)

1 *Hollywood Hotel, LLC* (2021) 11 Cal.5th 858 where the court unanimously held that employers
2 must pay premium payments to employees for missed meal, rest, and recovery breaks at the
3 employee's "regular rate of pay" instead of their base hourly rate.

4 103. Defendant knew or should have known that as a result of its policies and/or
5 practices, that Plaintiffs and members of the Classes were not actually relieved of all duties to take
6 timely, uninterrupted meal periods. Defendant further knew or should have known that it did not
7 pay Plaintiffs and members of the Classes all meal period premiums when meal periods were
8 missed, late, short, and/or interrupted. Furthermore, Defendant has engaged in a company-wide
9 practice and/or policy of not paying meal period premiums owed when compliant meal periods are
10 not provided. Because of this practice and/or policy, Plaintiffs and members of the Classes have
11 not received all premium pay for missed, interrupted, or late meal periods. Accordingly, Defendant
12 failed to provide all meal periods in violation of Labor Code sections 226.7, 512(a), 516, and 1198.

13 104. Plaintiffs and members of the Classes are entitled to civil penalties, attorney's fees,
14 costs, and interest thereon.

15 **FOURTH CAUSE OF ACTION**

16 **Non-Compliant Rest Breaks**

17 **Labor Code §§ 226.7, 516, 1198 and Applicable IWC Wage Orders**

18 **(By Plaintiffs and Members of the Putative Class Against Defendant)**

19 105. Plaintiffs hereby incorporate by reference each and every one of the allegations
20 contained in the preceding paragraphs as if the same were fully set forth herein.

21 106. Labor Code sections 226.7, 516, and 1198, and the applicable IWC wage order
22 require employers to provide rest periods and to pay an employee one (1) additional hour of pay at
23 the employee's regular rate for each work day that a meal or rest period is not provided. Labor
24 Code section 226.7 provides that no employer shall require an employee to work during any rest
25 period mandated by an applicable order of the IWC. The applicable IWC wage order provides that
26 "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as
27 practicable shall be in the middle of each work period" and that the "rest period time shall be based
28 on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or

major fraction thereof” unless the total daily work time is less than three and one-half (3 ½) hours.

107. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and Class Members were entitled to a paid rest period of not less than ten (10) minutes without duty for each and every four (4) hours or major fraction thereof worked during the workday.

108. Specifically, Defendant fails to provide compliant rest breaks. Rather, Plaintiffs allege that rest breaks were frequently missed and were short.

109. Thus, Defendant failed to provide Plaintiffs and Class Members with rest periods required by Labor Code sections 226.7, 512, and 516, IWC wage order section 11 and categorically failed to pay any and all rest period wages due.

110. Plaintiffs and Class Members seek damages pursuant to Labor section 226.7(b) and the applicable IWC wage order section 11(D), in the amount of one additional hour of pay at the regular rate for each work day that the rest period is/was not provided or provided late to Plaintiffs and any member of the Classes, the cumulative sum of which is to be determined at trial.

111. Therefore, Plaintiffs and members of the Plaintiff Class are entitled to compensation for Defendant’s failure to provide rest periods, plus interest, attorneys’ fees, expenses, and costs of suit pursuant to Labor Code section 226.7(b) and the applicable wage order.

FIFTH CAUSE OF ACTION

Failure to Furnish Accurate Itemized Wage Statements and Maintain Accurate Records

Labor Code §§ 226, 1174.5 and Applicable IWC Wage Orders

(By Plaintiffs and Members of the Putative Class Against Defendant)

112. Plaintiffs hereby incorporate by reference each and every one of the allegations contained in the preceding paragraphs as if the same were fully set forth herein.

113. Labor Code section 226(a) and the applicable IWC wage order section 6(B) requires employers to furnish each employee with a statement itemizing, among other things, the total hours worked by the employee, on a semi-monthly basis or at the time of each payment of wages.

114. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in section 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period

1 in which a violation occurs and \$100 per employee for each violation in a subsequent pay period,
2 not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates
3 section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation
4 in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which
5 the employer fails to provide the employee a wage statement or fails to keep the required records
6 pursuant to section 226(a).

7 115. Defendant knowingly and intentionally failed to furnish Plaintiffs and the members
8 of the Classes with timely, itemized statements in compliance with Labor Code section 226(a) and
9 the applicable IWC Wage order section 6(B).

10 116. Plaintiffs are informed and believe, and thereon allege, that Defendant knowingly
11 and intentionally failed to furnish Plaintiffs and members of the Classes with timely, itemized
12 statements showing (a) total hours, (b) gross wages earned, (c) all deductions, and/or (d) all
13 applicable hourly rates in effect during each respective pay period and the corresponding number
14 of hours worked at each hourly rate by each respective individual.

15 117. Plaintiffs are informed and believe, and thereon allege, that Defendant did not
16 maintain accurate business records pertaining to the total hours worked for Defendant by Plaintiffs
17 and the members of the Classes as required under Labor Code section 1174.5. This is a result of
18 missing hours worked, and missed meal-break premiums, as illustrated above.

19 118. As a result of not having kept accurate records, Plaintiffs and the Class Members
20 suffered injuries in the form of confusion over whether they received all wages owed to them, and
21 difficulty and expense in reconstructing pay records in addition to other injuries which may come
22 to light during the discovery process.

23 119. Labor Code section 1198 provides that the maximum hours of work and the
24 standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the
25 applicable IWC wage order. Section 1198 further provides that “[t]he employment of any
26 employees for longer hours than those fixed by the order or under conditions of labor prohibited by
27 the order is unlawful.” Pursuant to the applicable IWC Wage order, employers are required to keep
28 accurate time records showing when the employee begins and ends each work period and meal

1 period.

2 120. Plaintiffs and the members of the Classes herein seek damages and penalties
3 pursuant to Labor Code section 226(e) for Defendant's violations of Labor Code section 226(a).

4 121. Plaintiffs and Class Members also seek preliminary and permanent injunctive relief
5 and an award of reasonable attorneys' fees and costs pursuant to Labor Code section 226(h).

6 **SIXTH CAUSE OF ACTION**

7 **Failure to Provide Suitable Seating**

8 **Labor Code § 1198 and Applicable IWC Wage Orders**

9 **(By Plaintiffs and Members of the Putative Class Against Defendant)**

10 122. Plaintiffs re-allege and incorporate all preceding paragraphs as though fully set forth
11 herein.

12 123. Labor Code section 1198 makes it illegal to employ an employee under conditions
13 of labor that are prohibited by the applicable wage order. Labor Code section 1198 requires that
14 "the standard conditions of labor fixed by the commission shall be the ... standard conditions of
15 labor for employees. The employment of any employee ... under conditions of labor prohibited by
16 the order is unlawful." Code of Regulations, title 8, section 11070(14)(A) provides that "[a]ll
17 working employees shall be provided with suitable seats when the nature of the work reasonably
18 permits the use of seats."

19 124. "The 'nature of the work' refers to an employee's tasks performed at a given
20 location for which a right to a suitable seat is claimed, rather than a 'holistic' consideration of the
21 entire range of an employee's duties anywhere on the jobsite during a complete shift. If the tasks
22 being performed at a given location reasonably permit sitting, and provision of a seat would not
23 interfere with performance of any other tasks that may require standing, a seat is called for." *Kilby*
24 *v. CVS Pharmacy, Inc.* (2016) 63 Cal.4th 1, 8. "Whether the nature of the work reasonably permits
25 sitting is a question to be determined objectively based on the totality of the circumstances. An
26 employer's business judgment and the physical layout of the workplace are relevant but not
27 dispositive factors. The inquiry focuses on the nature of the work, not an individual employee's
28 characteristics." *Ibid.* The burden of proof to show suitable seating is not available is on the

1 employer. *Id.* at 24. In other words, the employer must show that compliance is “infeasible because
2 no suitable seating exists.” See *ibid.*

3 125. Defendant violated Labor Code section 1198 and Code of Regulations, title 8,
4 section 11070(14)(A) because Plaintiffs and members of the Classes were not allowed to sit, even
5 when it would not have interfered with the performance of their duties, nor were they provided
6 with suitable seats. Defendant’s management did not inform Plaintiffs and members of the Classes
7 that they were allowed to sit down, provide any means for them to sit down, or mention any policy
8 regarding sitting.

9 126. As a result of Defendant’s company-wide policy and/or practice of prohibiting
10 employees from sitting during their shifts and company-wide failure to provide suitable seating,
11 Plaintiffs and members of the Classes were forced to stand during shifts and denied seats when
12 working. Defendant’s failure to provide suitable seating to Plaintiffs and members of the Classes
13 violates Labor Code section 1198 and the applicable IWC wage order section 14(A).

14 127. Labor Code section 1198 makes it illegal to employ an employee under conditions
15 of labor that are prohibited by the applicable wage order. Labor Code section 1198 requires that
16 “the standard conditions of labor fixed by the commission shall be the ... standard conditions of
17 labor for employees. The employment of any employee ... under conditions of labor prohibited by
18 the order is unlawful.” Code of Regulations, title 8, section 11070(14)(B) provides that “[w]hen
19 employees are not engaged in the active duties of their employment and the nature of the work
20 requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to
21 the work area and employees shall be permitted to use such seats when it does not interfere with
22 the performance of their duties.”

23 128. The IWC states that section 14(B) applies during “lulls in operation” when an
24 employee, while still on the job, is not then actively engaged in any duties. *Kilby* citing IWC, 1976
25 Wage orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to
26 a seat under section 14(A) if his or her actual tasks at a discrete location make seated work feasible,
27 while working there. *Ibid.* However, if other job duties take the employee to a different location
28 where he or she must perform tasks requiring standing, the employee would be entitled to a seat

1 under section 14(B) during “lulls in operation.” *Ibid.*

2 129. Defendant did not provide Plaintiffs and members of the Classes with seats or stools
3 in reasonable proximity to their work areas to allow them to use seats when it would not interfere
4 with the performance of their duties for times when they were not engaged in active duties that
5 require standing.

6 130. As a result of Defendant’s company-wide policy and/or practice of prohibiting
7 employees from sitting at any time, even when they were not engaged in active duties requiring
8 standing, and company-wide failure to provide seats in reasonable proximity to their work areas,
9 Plaintiffs and members of the Classes were forced to stand during shifts and denied seats.
10 Defendants’ failure to provide suitable seating to Plaintiffs and members of the Classes violates
11 Labor Code section 1198 and the applicable IWC Wage order section 14(B).

12 131. Plaintiffs and members of the Classes are therefore entitled to recover civil
13 penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring Defendants
14 into compliance with California’s seating requirements, pursuant to Labor Code section 1194.5.

15 **SEVENTH CAUSE OF ACTION**

16 **Failure to Provide Sick Pay Wages**

17 **Labor Code § 246 and Applicable IWC Wage Orders**

18 **(By Plaintiffs and Members of the Terminated Sub Class Against Defendant)**

19 132. Plaintiffs re-allege and incorporate all preceding paragraphs as though fully set forth
20 herein.

21 133. Sick pay must be compensated at the employee’s regular rate of pay, for the
22 workweek in which the paid leave was taken, or at a rate determined by averaging over 90-days.
23 (Lab. Code § 246(1).)

24 134. Defendants failed to pay Plaintiffs and members of the Class sick pay at the correct
25 rate. Plaintiffs received compensation in addition to hourly wages, but those additional amounts
26 were not included when calculating sick pay wages. Plaintiffs received compensation, including
27 shift differentials in addition to her hourly wages while employed by Defendants, which was not
28 factored into her sick pay wages. By failing to pay Plaintiffs and Class Members for sick pay at the

1 correct rate, Defendants willfully violated Labor Code section 246.

2 135. Defendants' unlawful acts deprived Plaintiffs and the Class of all wages. Plaintiffs
3 seek to represent of sick pay in amounts to be determined at trial, and they are entitled to recover
4 these amounts with interest, attorneys' fees, and costs

5 **EIGHTH CAUSE OF ACTION**

6 **Failure to Reimburse for All Necessary Business Expenditures**

7 **Labor Code §§ 2802, 2804 and Applicable IWC Wage Orders**

8 **(By Plaintiffs and Members of the Putative Class Against Defendant)**

9 136. Plaintiffs re-allege and incorporate all preceding paragraphs as though fully set forth
10 herein.

11 137. At all relevant times herein, Defendant was subject to Labor Code § 2802, which
12 states that "an employer shall indemnify his or her employees for all necessary expenditures or
13 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
14 his or her obedience to the directions of the employer."

15 138. At all relevant times herein, Defendant was subject to Labor Code § 2804, which
16 states that "any contract or agreement, express or implied, made by any employee to waive the
17 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
18 employee or his personal representative of any right or remedy to which he is entitled under the
19 laws of this State."

20 139. Due to Defendant's unlawful policy and practice of requiring Plaintiffs and the
21 members of the Plaintiff Class to use their personal cellular phones for work purposes and failing
22 to compensate Plaintiffs and the members of the Plaintiff Class for the use of their personal cellular
23 phones, Defendant has violated Labor Code § 2802.

24 140. As a proximate result of Defendant's policies and/or practices in violation of Labor
25 Code §§ 2802 and 2804, Plaintiffs and members of the Plaintiff Class have suffered damages in
26 sums, which will be shown according to proof.

27 141. Plaintiffs and members of the Plaintiff Class are entitled to attorneys' fees and costs
28 of suit pursuant to Labor Code § 2802(c) for bringing this action.

1 142. Pursuant to Labor Code §2802(b), any action brought for the reimbursement of
2 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
3 Plaintiffs and members of the Plaintiff Class are entitled to interest, which shall accrue from the
4 date on which they incurred the initial necessary expenditure.

5 **NINTH CAUSE OF ACTION**

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

7 **Labor Code § 204 and Applicable IWC Wage Orders**

8 **(By Plaintiffs and Members of the Putative Class Against Defendant)**

9 143. Plaintiffs hereby incorporate by reference each and every one of the allegations
10 contained in the preceding paragraphs as if the same were fully set forth herein.

11 144. Labor Code section 204 requires that all wages earned by any person in any
12 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those
13 wages due upon termination of an employee, are due and payable between the 16th and the 26th
14 day of the month during which the labor was performed, and that all wages earned by any person in
15 any employment between the 16th and the last day, inclusive, of any calendar month, other than
16 those wages due upon termination of an employee, are due and payable between the 1st and the
17 10th day of the following month.

18 145. Labor Code section 204 also requires that all wages earned for labor in excess of the
19 normal work period shall be paid no later than the payday for the next regular payroll period.
20 Alternatively, Labor Code section 204 provides that the requirements of this section are deemed
21 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
22 paid not more than seven (7) calendar days following the close of the payroll period.

23 146. During the relevant period, Defendant willfully failed to pay Plaintiffs and members
24 of the Classes all wages due including, but not limited to, all wages and/or meal period premiums,
25 within the time periods specified by Labor Code section 204.

26 147. As a proximate result of the above-mentioned violations. Plaintiffs and the Plaintiff
27 Class have been damaged in an amount according to proof at time of trial.

28 ///

1 **TENTH CAUSE OF ACTION**

2 **Waiting Time Penalties**

3 **Labor Code §§ 201-203 and Applicable IWC Wage Orders**

4 **(By Plaintiffs and Members of the Terminated Sub Class Against Defendant)**

5 148. Plaintiffs re-allege and incorporate all preceding paragraphs as though fully set forth
6 herein.

7 149. At all times, relevant herein, Defendant was required to pay their employees all
8 wages owed in a timely fashion during and at the end of their employment, pursuant to Labor Code
9 section 201-203.

10 150. As a pattern and practice, Defendant regularly failed to pay Plaintiffs and the
11 members of the Terminated Sub Class their final wages pursuant to Labor Code sections 201-203,
12 and accordingly owe waiting time penalties pursuant to Labor Code section 203.

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

19 152. On information and belief, Defendant has a company-wide practice or policy of
20 paying departing employees their final wages late, instead of adhering to the time requirements set
21 forth in Labor Code sections 201 and 202.

22 153. Specifically, Defendant willfully failed to pay Plaintiffs and members of the
23 Terminated Sub Class the earned and unpaid wages set forth above, including but not limited to,
24 overtime wages, minimum wages, and/or meal period premiums, either at the time of discharge, or
25 within seventy-two (72) hours of their leaving Defendant's employ. Further, as an example,
26 Plaintiff De Ornelas was not paid her vacation wages until more than a week after her last day
27 worked.

28 154. Plaintiffs and members of the Terminated Sub Class are entitled to recover civil

1 penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 256.

2 **ELEVENTH CAUSE OF ACTION**

3 **Violations of Business and Professions Code Section 17200 et seq.**

4 **(By Plaintiffs and the Members of the Plaintiff Class Against Defendant)**

5 155. Plaintiffs re-allege and incorporate all preceding paragraphs as though fully set forth
6 herein.

7 156. Business and Professions Code section 17200 defines unfair competition to include,
8 "unlawful, unfair or fraudulent business practices."

9 157. Plaintiffs and all proposed Class Members are "persons within the meaning of
10 Business and Professions Code section 17204, who have suffered injury in fact and have lost
11 money or property as a result of Defendant's unfair competition.

12 158. Defendant has been committing, and continues to commit, acts of unfair
13 competition by engaging in the unlawful, unfair and fraudulent business practices and acts
14 described in this Complaint, including, but not limited to:

- 15 a. violations of Lab. Code, §§ 510, 1198;
16 b. violations of Lab. Code, §§ 221, 223, 1182.11-1182.12, 1194, 1194.2, 1197, 1198;
17 c. violations of Lab. Code, §§ 226.7, 512, 516 and 1198;
18 d. violations of Lab. Code, §§ 226, 1174;
19 e. violations of Lab. Code §§ 201 and 202;
20 f. violations of Lab. Code §§ 2802 and 2804;
21 g. violations of Lab. Code § 204;
22 h. violations of Lab. Code § 1198; and,
23 i. violations of Lab. Code § 246;

24 159. As a result of its unlawful, unfair, and/or fraudulent business acts and practices,
25 Defendant has reaped and continues to reap unfair benefits and illegal profits at the expense of
26 Plaintiffs and proposed Class Members. Defendant's unlawful, unfair, and/or fraudulent conduct
27 has also enabled Defendant to gain an unfair competitive advantage over law-abiding employers
28 and competitors.

160. Business and Professions Code section 17203 provides that the Court may restore to an aggrieved party any money or property acquired by means of the unlawful, unfair, and/or fraudulent business acts or practices.

161. Plaintiffs seek a court order enjoining Defendant from the unlawful, unfair, and/or fraudulent activity alleged herein.

162. Pursuant to Civil Code section 3287(a), Plaintiffs and other members of the Plaintiff Class are entitled to recover pre-judgment interest on wages earned, but not paid.

163. Plaintiffs further seek an order requiring an audit and accounting of the payroll records to determine the amount of restitution of all unpaid wages owed to themselves and members of the proposed Plaintiff Class, according to proof, as well as a determination of the amount of funds to be paid to current and former employees that can be identified and located pursuant to a court order and supervision.

164. Plaintiffs seek restitution for themselves and all others similarly situated of these amounts, including all earned and unpaid wages and attorneys' fees and costs pursuant to Code of Civil Procedure section 1021.5.

TWELFTH CAUSE OF ACTION

Civil Penalties Pursuant to PAGA (*Labor Code §§ 2698, et seq.*)

(On Behalf of All Aggrieved Employees Against Defendant)

165. Plaintiffs re-allege and incorporate all preceding paragraphs as though fully set forth herein.

166. At all times set forth herein, the Private Attorneys General Act of 2004 (PAGA, California Labor Code §§ 2698-99) applied to Defendant's employment of Plaintiffs and the proposed aggrieved employees.

167. At all times set forth herein, California Labor Code § 2699(a) has provided that any provision of law under the California Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (LWDA) for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of themselves and other current or former employees pursuant to

1 procedures outlined in California Labor Code § 2699.3.

2 168. At all times set forth herein, the PAGA has also provided that for the violation of
3 any Labor Code provision that does not itself contain a civil penalty, there are established civil
4 penalties of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for
5 each aggrieved employee per pay period for each subsequent violation. Cal. Lab. C. § 2699(f).

6 169. A civil action under PAGA may be brought by an “aggrieved employee,” any
7 person that was employed by the alleged violator and against whom one or more of the alleged
8 violations was committed.

9 170. Defendant has been committing, and continues to commit, violations of the
10 California Labor Code, including, but not limited to:

- 11 a. violations of Labor Code sections 510, 1198;
- 12 b. violations of Labor Code sections 221, 223, 1182.11-1182.12, 1194, 1194.2, 1197,
13 1198;
- 14 c. violations of Labor Code sections 226.7, 512, 516, and 1198;
- 15 d. violations of Labor Code sections 226, 1174;
- 16 e. violations of Labor Code sections 201 and 202;
- 17 f. violations of Lab. Code sections 2802 and 2804;
- 18 g. violations of Labor Code section 204;
- 19 h. violations of Labor Code section 1198; and,
- 20 i. violations of Labor Code section 246.

21 171. By letter dated March 28, 2023, Plaintiff Marisela Martinez De Ornelas provided
22 written notice to the LWDA and by certified mail to Defendant, of the specific provisions of the
23 Labor Code alleged to have been violated, including the facts and theories to support the alleged
24 violations.

25 172. By letter dated September 27, 2023, Plaintiff Margarita Urrutia provided written
26 notice to the LWDA and by certified mail to Defendant, of the specific provisions of the Labor
27 Code alleged to have been violated, including the facts and theories to support the alleged
28 violations.

173. More than sixty-five (65) days have passed since the dates both notices were mailed to Defendant and the LWDA, and Plaintiffs have received no response from the LWDA indicating that it plans to investigate either notice.

174. Accordingly, Plaintiffs have satisfied the administrative prerequisites under California Labor Code Section 2699.3(a) to recover civil penalties against Defendant for violations of California Labor Code identified in this First Amended Complaint.

175. Accordingly, Plaintiffs and the other aggrieved employees are entitled to and seek to recover civil penalties for Defendant's violations of the Labor Code during the applicable limitations period.

176. Pursuant to California Labor Code Section 2699(g), Plaintiffs, on behalf of themselves and the other aggrieved employees, are entitled to an award of reasonable attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, and the Class Members pray for judgment as follows:

1. For an order certifying the proposed Plaintiffs and Terminated Sub-Class;
2. For an order that counsel for Plaintiffs be appointed class counsel
3. Certification of this class action on behalf of the proposed Plaintiffs and Terminated Sub-Class;
4. Designation of Plaintiffs as the class representatives of the Plaintiff and Terminated Sub Class;
5. For restitution of all monies due to Plaintiffs and the members of the Plaintiff Class and disgorgement of all profits from the unlawful business practices of Defendant;
6. Prejudgment and post judgment interest on all sums awarded;
7. For compensatory damages;
8. For statutory and civil penalties pursuant to Labor Code sections 200, 226, 226.7, 226.3, 2699(a) and 2699(f);
9. For interest accrued to date;
10. For costs of suit and expenses incurred herein pursuant to Labor Code sections 226

and 1194;

11. For reasonable attorneys' fees pursuant to Labor Code section 226, 2699(g)(1) and Code of Civil Procedure section 1021.5, and/or other applicable law; and

12. A declaratory judgment that Defendant has knowingly and intentionally violated the following provisions of law:

- a. Labor Code sections 510, 1198 for failing to pay overtime;
- b. Labor Code sections 1182.11-1182.12, 1194, 1194.2, 1197, 1198, 221, 223, for failing to pay all wages;
- c. Labor Code sections 226.7, 512, 516, and 1198 for failing to provide compliant meal and rest breaks;
- d. Labor Code sections 226, 1174 for failing to provide compliant wage statements;
- e. Labor Code section 246 for failing to pay sick pay wages at the regular rate;
- f. Labor Code sections 2802 and 2804 for failing to reimburse all necessary work expenses incurred;
- g. Labor Code sections 204 for failing to pay wages timely during employment;
- h. Labor Code sections 201 and 202 for failing to pay wages at termination;
- i. Labor Code section 1198 for failing to provide suitable seating;
- j. Business & Professions Code sections 17200-08 for violating the provisions set forth herein above.

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13. For all such other and further relief that the Court may deem just and proper.

DATED: November 7, 2024

BRADLEY/GROMBACHER, LLP
HAINES LAW GROUP, APC

By:  _____

Marcus J. Bradley, Esq.
Kiley L. Grombacher, Esq.
Corey S. Smith, Esq.
Paul K. Haines, Esq.
Sean M. Blakely, Esq.
Aden M. Khachadoorian, Esq.
Attorneys for Plaintiffs and others similarly
situated

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I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action; my business address 31365 Oak Crest Drive, Suite 240, Westlake Village, CA 91361.

[] **(VIA US MAIL)** I caused such envelope(s) to be deposited in the mail at Westlake Village, California with postage thereon fully prepaid.
I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day

[X] **(BY ELECTRONIC MAIL)** On the above date, I served the aforementioned document(s) by electronic mail to the parties' email addresses as they are known to me on the attached Service List. My email address is sboucher@bradleygrombacher.com. I did not receive, under a reasonable period of time, any indication that the email did not go through.

[X] **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Suzette Decker

Suzette Boucher

Marisela Martinez De Ornelas v. Magnolia Foods, LLC
San Bernardino County Superior Court Case No. CIV SB 2308953

Service List

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