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Case #23CV423652
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Attorneys for Plaintiff MARIA DEL CARMEN GARCIA,
individually and on behalf of others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

MARIA DEL CARMEN GARCIA,
individually and on behalf of all others
similarly situated,

PLAINTIFF,

v.

SOURCEONE BUILDING
MAINTENANCE, INC., a California
corporation; and DOES 1 through 50,
inclusive,

DEFENDANTS.

CASE NO.: 23CV423652

*Assigned for all purposes to the Honorable
Theodore C. Zayner; Dept. 19*

**FIRST AMENDED CLASS ACTION AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

- 1) FAILURE TO REIMBURSE NECESSARY
BUSINESS EXPENSES (LABOR CODE §
2802)
- 2) FAILURE TO AUTHORIZE AND PERMIT
REST BREAKS AND/OR PAY REST
BREAK PREMIUMS (LABOR CODE §
226.7)
- 3) FAILURE TO PROVIDE MEAL PERIODS
AND/OR PAY MEAL PERIOD PREMIUMS
(LABOR CODE § 226.7, 512)
- 4) FAILURE TO TIMELY PAY FINAL
WAGES (LABOR CODE §§ 201-203)
- 5) FAILURE TO PROVIDE COMPLETE AND
ACCURATE WAGE STATEMENTS
(LABOR CODE § 226)
- 6) UCL VIOLATIONS (BUS. & PROF. CODE
§§ 17200-17204)
- 7) PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(LABOR CODE §§ 2698 – 2699.5)

DEMAND FOR JURY TRIAL

1 Plaintiff MARIA DEL CARMEN GARCIA (“Plaintiff”), individually, and on behalf of others
2 similarly situated (hereinafter “Class Members”), and as a private attorney general, based upon facts
3 that either have evidentiary support or are likely to have evidentiary support after a reasonable
4 opportunity for further investigation and discovery, complains and hereby alleges as follows:

5 **JURISDICTION AND VENUE**

6 1. Plaintiff brings this action against Defendant SOURCEONE BUILDING
7 MAINTENANCE, INC., a California corporation, and DOES 1 through 50, inclusive (hereinafter
8 collectively referred to as “Defendants”) for California Labor Code violations, unfair business
9 practices, and monetary penalties stemming from Defendants’ failure to reimburse necessary business-
10 related expenses, failure to provide compliant meal periods, failure to authorize and permit compliant
11 rest periods, failure to pay premium wages for noncompliant meal periods and rest periods, failure to
12 timely pay final wages, and failure to provide accurate and complete itemized wage statements.

13 2. Plaintiff’s First through Sixth Causes of Action are brought as a class action on behalf
14 of herself and similarly situated current and former employees of Defendants (hereinafter collectively
15 referred to as the “Class” or “Class Members,” as defined more fully in paragraph 16, below) pursuant
16 to California Code of Civil Procedure section 382. The monetary damages and restitution sought by
17 Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according
18 to proof at trial.

19 3. Plaintiff’s Seventh Cause of Action is brought as a representative action on behalf of
20 herself and other current and former non-exempt employees of Defendants in the State of California at
21 any time within the period beginning one (1) year prior to the date of Plaintiff’s PAGA letter to the
22 LWDA and ending at the time this action settles or proceeds to final judgment (hereinafter collectively
23 referred to as “Aggrieved Employees”) pursuant to California Labor Code sections 2698, *et seq.*
24 Plaintiff is an aggrieved employee against whom one or more of the alleged violations occurred. The
25 civil penalties sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will
26 be established according to proof at trial.

27 4. The Court has jurisdiction over this action pursuant to the California Constitution,
28 Article VI, section 10, which grants the superior court “original jurisdiction in all other causes” except

1 those given by statute to other courts. The statutes under which this action is brought do not specify
2 any other basis for jurisdiction.

3 5. This Court has jurisdiction over Defendants because, upon information and belief,
4 Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise
5 intentionally avail themselves of the California market so as to render the exercise of jurisdiction over
6 them by the California courts consistent with traditional notions of fair play and substantial justice.

7 6. Venue is proper in this Court because, upon information and belief, Defendants maintain
8 offices, have agents, and/or transact business in the State of California, County of Santa Clara.

9 **PARTIES**

10 7. Plaintiff is a resident of the State of California. At all times relevant to this action,
11 Plaintiff was employed by Defendants in the County of Santa Clara, State of California as an hourly,
12 non-exempt employee. During her employment, Plaintiff was a non-exempt janitorial worker.

13 8. Defendant SOURCEONE BUILDING MAINTENANCE, INC., is and at all times
14 herein mentioned was, a corporation organized and existing under the laws of the State of California,
15 and registered to do business in the State of California. Plaintiff is informed and believes that
16 SOURCEONE BUILDING MAINTENANCE, INC. is provides commercial janitorial services.

17 9. Plaintiff is ignorant of the identities of defendants Does 1 through 50, inclusive, and
18 therefore sues these defendants by such fictitious names. The Doe defendants may be individuals,
19 partnerships, or corporations. Plaintiff is informed and believes, and thereon alleges, that, at all times
20 mentioned herein, each of the Doe defendants was the parent, subsidiary, agent, servant, employee, co-
21 venturer, and/or co-conspirator of each of the other defendants, and was at all times mentioned acting
22 within the scope, purpose, consent, knowledge, ratification and authorization of such agency,
23 employment, joint venture and conspiracy. Plaintiff will amend this Complaint to allege their true
24 names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each
25 of the fictitiously named Doe defendants is responsible in some manner for the occurrences herein
26 alleged, and that Plaintiff's damages as herein alleged were proximately caused by its conduct.
27 Defendants SOURCEONE BUILDING MAINTENANCE, INC.; and DOES 1 thorough 50 are
28 collectively referred to herein as "Defendants."

10. Defendants are and at all times herein mentioned were, (a) conducting business in the County of Santa Clara, State of California, and (b) the employer of Plaintiff consistent with the California Labor Code and Industrial Welfare Commission Wage Orders (“Wage Orders”).

11. Plaintiff further alleges that Defendants, directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of Plaintiff, the Class, and the Aggrieved Employees so as to make each of said Defendants employers and employers jointly liable under the statutory provisions set forth herein.

12. Plaintiff is informed and believes, and thereon alleges, that at all times relevant to this action, Defendants were the alter egos, predecessors, divisions, affiliates, integrated enterprises, joint employers, subsidiaries, parents, principals, related entities, co-conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible, of each other. Each defendant was dominated by his, her, or its codefendants, and each was the alter ego of the other.

13. Plaintiff is informed and believes, and based thereon alleges, that in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to, and in furtherance of, their policies and practices of not paying Plaintiff, the Class, and the Aggrieved Employees all wages earned and due, through methods and schemes which include, but are not limited to: failing to provide meal periods and rest breaks; failing to properly maintain records; failing to provide accurate itemized statements for each pay period; failing to timely pay final wages, in violation of the California Labor Code (“Labor Code”) and applicable Industrial Welfare Commission (“IWC”) Wage Order(s).

14. Plaintiff is informed and believes, and based thereon alleges, that in accordance with Labor Code section 558.1, Defendants and any person acting on behalf of Defendants are liable for violating, or causing to violate, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or Labor Code sections 203, 226, 226.7, or 2802.

CLASS ACTION ALLEGATIONS

15. Plaintiff brings the First through Sixth Causes of Action as a class action on her own behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class certification under Code of Civil Procedure section 382.

16. The proposed class is defined as follows: All current and former non-exempt employees

1 of any of the Defendants within the State of California at any time commencing four (4) years preceding
2 the filing of Plaintiff's original complaint up until the time that notice of the certified class action is
3 provided to the class (hereinafter referred to as the "Class" or "Class Members").

4 17. Plaintiff reserves the right to establish other subclasses as appropriate.

5 18. The Class is ascertainable and there is a well-defined community of interest in the
6 litigation:

7 a. Numerosity: The Class Members are so numerous that joinder of all Class Members
8 is impracticable. The membership of the entire Class is unknown to Plaintiff at this
9 time; however, the Class is estimated to be over fifty (50) individuals and the identity
10 of such membership is readily ascertainable by inspection of Defendants' employment
11 records.

12 b. Typicality: Plaintiff's claims are typical of all other Class Members demonstrated
13 herein. Plaintiff and the Class members worked as hourly, non-exempt employees for
14 Defendants in California, including as janitorial workers, at Defendants' worksite
15 locations. Plaintiff will fairly and adequately protect the interests of the other Class
16 Members with whom she has a well-defined community of interest. Plaintiff and the
17 other similarly situated Class Members were employed by Defendants and shared
18 similar job duties and responsibilities, were subjected to the same policies and practices,
19 and endured similar violations at the hands of Defendants.

20 c. Adequacy: Plaintiff will fairly and adequately protect the interests of each Class
21 Member, with whom she has a well-defined community of interest and typicality of
22 claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to the other
23 Class Members. Plaintiff's attorneys, the proposed class counsel, are versed in the rules
24 governing class action discovery, certification, and settlement. Plaintiff has incurred,
25 and during the pendency of this action will continue to incur, costs and attorneys' fees,
26 that have been, are, and will be necessarily expended for the prosecution of this action
27 for the substantial benefit of each Class Member.

28 d. Superiority: A class action is superior to other available methods for the fair and

efficient adjudication of this litigation because individual joinder of all Class Members is impractical.

- e. Public Policy Considerations: Certification of this lawsuit as a class action will advance public policy objectives. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the Class Members who are not named in the complaint anonymity that allows for the vindication of their rights.

19. There are common questions of law and fact as to the Class that predominate over questions affecting only individual members. The following common questions of law or fact, among others, exist as to the members of the Class:

- a. Whether Defendants failed to reimburse Plaintiff and the other Class Members for all necessary business-related expenses and costs in violation of California Labor Code section 2802;
- b. Whether Defendants deprived Plaintiff and the other Class Members of meal and/or rest periods or required Plaintiff and the other Class Members to work during meal and/or rest periods without compensation;
- c. Whether Defendants failed to pay meal period premium wages to Class Members when they were not provided legally compliant meal periods;
- d. Whether Defendants failed to pay rest period premium wages to Class Members when they were not authorized and permitted to take legally compliant rest periods;
- e. Whether Defendants had a corporate policy and practice of failing to pay Plaintiff and the other Class Members for all hours worked, and for missed, short, late or interrupted meal periods and rest breaks in violation of California law;
- f. Whether Defendants failed to pay all wages due to Plaintiff and the other Class Members within the time required upon their discharge or resignation from employment;
- g. Whether Defendants failed to pay all wages due to Plaintiff and the other Class Members within the time required during their employment;
- h. Whether Defendants' failure to pay wages, without abatement, or reduction, in

accordance with the California Labor Code was willful;

- i. Whether Defendants complied with wage statement reporting as required by the California Labor Code, including section 226;
- j. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200, *et seq.* based on their improper withholding of compensation and deduction of wages;
- k. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and
- l. Whether Plaintiff and the other Class Members are entitled to compensatory damages pursuant to the California Labor Code.

GENERAL ALLEGATIONS

20. Plaintiff is informed and believes that Defendants are commercial janitorial service providers. Defendants employed Plaintiff to work as a full-time, hourly-paid janitorial employee from approximately May 2019 to September 2023.

21. At all relevant times set forth herein, Defendants employed Plaintiff, the Class, and the Aggrieved Employees as hourly-paid or non-exempt employees.

22. Throughout the time period involved in this case, Defendants had the authority to hire and terminate Plaintiff, the Class, and the Aggrieved Employees; to directly or indirectly control work rules, working conditions, wages, working hours; and to directly or indirectly control the terms of employment of Plaintiff, the Class, and the Aggrieved Employees.

23. At all times herein mentioned, Defendants were subject to the Labor Code of the State of California and the applicable Industrial Welfare Commission Orders.

24. Plaintiff is informed and believes, and thereon alleges, that Defendants engaged in an ongoing and systematic scheme of wage and hour violations against their hourly-paid or non-exempt employees. As set forth in more detail below, Defendants routinely failed to permit Plaintiff, the Class, and the Aggrieved Employees to take timely and duty-free meal periods and rest periods in violation of California law, and failed to pay associated meal and rest period premium wages. Defendants also failed to reimburse Plaintiff, the Class, and the Aggrieved Employees for all necessary business-related

1 expenses, failed to provide accurate itemized wage statements for each pay period, and failed to timely
2 pay all wages owed during and upon separation of employment.

3 25. On information and belief, throughout the time period involved in this case, Defendants
4 failed to reimburse Plaintiff, the Class, and the Aggrieved Employees for all necessary business-related
5 expenses, including but not limited to personal cellular phone usage. Defendants required Plaintiff and
6 other Class Members to use their personal cellular phones in the course of performing their required
7 job duties without reimbursement. Among other things, Defendants required Plaintiff and other Class
8 Members to use their personal cellular phones to download and use a mobile application, Paychex
9 Flex, for timekeeping, including to “clock-in” and “clock-out.” Defendants also required Plaintiff and
10 other Class Members to use their personal cellular phones to respond to and communicate with
11 Defendants’ managers and supervisors regarding work matters, including work assignments.
12 Defendants knew or should have known that Defendants were required to reimburse Plaintiff, the Class,
13 and the Aggrieved Employees for all necessary business-related expenses and costs, but failed to do so
14 in violation of California law.

15 26. On information and belief, throughout the time period involved in this case, Defendants
16 have implemented policies and practices which prohibited Plaintiff, the Class, and the Aggrieved
17 Employees from taking timely and duty-free rest periods. Defendants regularly failed to provide,
18 authorize, and permit Plaintiff, the Class, and the Aggrieved Employees to take full, uninterrupted, off-
19 duty rest periods for every shift lasting three and one-half (3.5) to six (6) hours and/or two full,
20 uninterrupted, off-duty rest periods for every shift lasting six (6) to ten (10) hours, and failed to make
21 a good faith effort to authorize, permit, and provide such rest breaks in the middle of each work period.

22 27. On information and belief, throughout the time period involved in this case, Defendants
23 did not adequately inform Plaintiff, the Class, and the Aggrieved Employees of their right to take rest
24 periods under California law. Moreover, Defendants systematically disregarded their own written
25 policies regarding the provision and timing of rest periods for Plaintiff, the Class, and the Aggrieved
26 Employees. Instead, Defendants’ actual policy and practice was to schedule Plaintiff, the Class, and the
27 Aggrieved Employees in a way that regularly prohibited them from taking timely and duty-free rest
28 periods, and to regularly require Plaintiff, the Class, and the Aggrieved Employees to work through

1 their rest periods.

2 28. On information and belief, throughout the time period involved in this case, Defendants
3 failed to pay Plaintiff, the Class, and the Aggrieved Employees premium wages for rest periods that
4 were missed, late, interrupted, or shortened in violation of California law. Defendants knew or should
5 have known that Plaintiff, the Class, and the Aggrieved Employees were entitled to receive all rest
6 periods or payment of one additional hour of pay at their regular rate of pay when a rest period was
7 missed, short, late, and/or interrupted. Notwithstanding this knowledge, Defendants routinely failed to
8 authorize and permit Plaintiff, the Class, and the Aggrieved Employees to take duty-free rest periods,
9 and failed to pay one additional hour of pay to Plaintiff, the Class, and the Aggrieved Employees at
10 their regular rate of pay when a rest period was missed, short, late and/or interrupted.

11 29. On information and belief, throughout the time period involved in this case, Defendants
12 implemented policies and practices which failed to provide Plaintiff, the Class, and the Aggrieved
13 Employees with all timely and duty-free meal periods. Defendants routinely failed to relieve Plaintiff,
14 the Class, and the Aggrieved Employees of all duties during their meal periods, regularly failed to
15 relinquish control over Plaintiff, the Class, and the Aggrieved Employees during their meal periods,
16 regularly failed to permit Plaintiff, the Class, and the Aggrieved Employees a reasonable opportunity
17 to take their meal periods, and regularly impeded or discouraged Plaintiff, the Class, and the Aggrieved
18 Employees from taking thirty (30) minute uninterrupted meal breaks no later than the end of their fifth
19 hour of work and/or from taking a second thirty (30) minute uninterrupted meal break no later than
20 their tenth hour of work for shifts lasting more than ten (10) hours.

21 30. On information and belief, throughout the time period involved in this case, Defendants
22 did not adequately inform Plaintiff, the Class, and the Aggrieved Employees of their right to take meal
23 periods under California law. Moreover, Defendants systematically disregarded their own written
24 policies regarding the provision and timing of meal periods for Plaintiff, the Class, and the Aggrieved
25 Employees.

26 31. On information and belief, throughout the time period involved in this case, Defendants
27 failed to pay Plaintiff, the Class, and the Aggrieved Employees premium wages for meal periods that
28 were missed, late, interrupted, or shortened in violation of California law. Defendants knew or should

1 have known that Plaintiff, the Class, and the Aggrieved Employees were entitled to receive all meal
2 periods or payment of one additional hour of pay at their regular rate of pay when a meal period was
3 missed, short, late, and/or interrupted. Notwithstanding this knowledge, Defendants routinely failed to
4 provide legally compliant meal periods to Plaintiff, the Class, and the Aggrieved Employees, and
5 routinely failed to pay one additional hour of pay to Plaintiff, the Class, and the Aggrieved Employees
6 at their regular rate of pay when a meal period was missed, short, late, and/or interrupted.

7 32. On information and belief, throughout the time period involved in this case, Defendants
8 regularly failed to pay Plaintiff, the Class, and the Aggrieved Employees all wages owed to them upon
9 discharge or resignation. Defendants knew or should have known that Plaintiff, the Class, and the
10 Aggrieved Employees were entitled to receive all wages owed to them upon termination within the
11 time permissible under California Labor Code section 202. Plaintiff, the Class, and the Aggrieved
12 Employees did not receive payment of all final wages owed to them upon discharge or resignation,
13 including premium wages within any time permissible under California Labor Code section 202.

14 33. On information and belief, throughout the time period involved in this case, Defendants
15 regularly failed to pay Plaintiff, the Class, and the Aggrieved Employees all wages within any time
16 permissible under California law, including, *inter alia*, California Labor Code section 204. Defendants
17 knew or should have known that Plaintiff, the Class, and the Aggrieved Employees were entitled to
18 receive all wages owed to them during their employment. Plaintiff, the Class, and the Aggrieved
19 Employees did not receive payment of all wages, including meal and rest period premiums.

20 34. On information and belief, throughout the time period involved in this case, Defendants
21 regularly failed to provide complete or accurate wage statements to Plaintiff, the Class, and the
22 Aggrieved Employees. Defendants knew or should have known that Plaintiff, the Class, and the
23 Aggrieved Employees were entitled to receive complete and accurate wage statements in accordance
24 with California law, but, in fact, they did not receive complete and accurate wage statements from
25 Defendants. The deficiencies included, *inter alia*, the failure to include the total number of hours
26 worked, the actual gross wages earned, and the correct rates of pay. Further, on information and
27 believe, throughout the time period involved in this case, Defendants' wage statements furnished to
28 Plaintiff, the Class, and the Aggrieved Employees failed to correctly identify the name and address of

1 the legal entity that is the employer.

2 35. Throughout the time period involved in this case, Defendants knew or should have
3 known that they had a duty to compensate Plaintiff, the Class, and the Aggrieved Employees pursuant
4 to California law. Defendants had the financial ability to pay such compensation, but willfully,
5 knowingly, and intentionally failed to do so, and falsely represented to Plaintiff, the Class, and the
6 Aggrieved Employees that they paid all wages owed to them, all in order to increase Defendants'
7 profits.

8 36. California Labor Code section 218 states that nothing in Article 1 of the Labor Code
9 shall limit the right of any wage claimant to "sue directly ... for any wages or penalty due to him [or
10 her] under this article."

11 **FIRST CAUSE OF ACTION**

12 **(Violation of California Labor Code §§ 2800 and 2802)**

13 **(Against All Defendants)**

14 37. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every
15 allegation set forth above.

16 38. Pursuant to California Labor Code sections 2800 and 2802, an employer must reimburse
17 its employee for all necessary expenditures incurred by the employee in direct consequence of the
18 discharge of his or her job duties or in direct consequence of his or her job duties or in direct
19 consequence of his or her obedience to the directions of the employer.

20 39. Plaintiff and the Class incurred necessary business-related expenses and costs that were
21 not fully reimbursed by Defendants. Defendants' failure to reimburse for all necessary business-related
22 expenses and costs included their failure to reimburse Plaintiff and the Class for costs incurred as a
23 result of, including but not limited to, simple negligence.

24 40. Defendants have intentionally and willfully failed to reimburse Plaintiff and the Class
25 for all necessary business-related expenses and costs. Plaintiff and the Class are entitled to recover from
26 Defendants their business-related expenses and costs incurred during the course and scope of their
27 employment, plus interest accrued from the date on which the employee incurred the necessary
28 expenditures at the same rate as judgments in civil actions in the State of California.

1 **SECOND CAUSE OF ACTION**

2 **(Violation of California Labor Code § 226.7)**

3 **(Against All Defendants)**

4 41. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every
5 allegation set forth above.

6 42. At all times herein set forth, the applicable IWC Wage Order and California Labor Code
7 section 226.7 were applicable to Plaintiff and the other Class Members' employment by Defendants.

8 43. At all relevant times, California Labor Code section 226.7 provides that no employer
9 shall require an employee to work during any rest period mandated by an applicable order of the
10 California IWC.

11 44. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer
12 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in
13 the middle of each work period" and that the "rest period time shall be based on the total hours worked
14 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof unless the
15 total daily work time is less than three and one-half (3.5) hours."

16 45. During the relevant time period, Defendants required Plaintiff and other Class Members
17 to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each
18 four (4) hour period worked.

19 46. During the relevant time period, Defendants willfully required Plaintiff and the other
20 Class Members to work during rest periods, failed to allow Plaintiff and the other Class Member to
21 take any rest period and/or failed to authorize and permit Plaintiff and the other Class Members to take
22 uninterrupted, duty-free rest breaks.

23 47. During the relevant time period, Defendants failed to pay Plaintiff and the other Class
24 Members the full rest period premium due pursuant to California Labor Code section 226.7 for work
25 performed during rest periods, and/or for failure to authorize and permit Plaintiff and other Class
26 Members from taking uninterrupted rest periods.

27 48. Defendants' conduct violates applicable IWC Wage Orders and California Labor Code
28 section 226.7.

49. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(b), Plaintiff and the other Class Members are entitled to recover from Defendants one additional hour of pay at the employees' regular hourly rate of compensation for each work day that the rest period was not provided.

THIRD CAUSE OF ACTION

(Violation of California Labor Code §§ 512, 226.7)

(Against All Defendants)

50. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

51. At all relevant times, the relevant IWC Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiff and the other Class Members' employment by Defendants.

52. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the California IWC.

53. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) provide that an employer may not require, cause or permit an employee to work for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is no more than six (6) hours, the meal period may be waived by mutual consent of both the employer and employee.

54. At all relevant times, California Labor Code section 512(a) further provides that an employer may not require, cause or permit an employee to work for a work period of more than ten (10) hours per day without providing the employee with a second uninterrupted meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

55. During the relevant time period, Plaintiff and the other Class Members who were scheduled to work for a period of time longer than six (6) hours, and who did not waive their legally-

1 mandated meal periods by mutual consent, were required to work for periods longer than five (5) hours
2 without an uninterrupted meal period of not less than thirty (30) minutes.

3 56. During the relevant time period, Defendants failed to pay Plaintiff and the other Class
4 Members the full meal period premiums due pursuant to California Labor Code section 226.7.

5 57. Defendants' conduct violates the applicable IWC Wage Order and California Labor
6 Code sections 226.7 and 512(a).

7 58. Pursuant to the applicable IWC Wage Order and California Labor Code section
8 226.7(b), Plaintiff and the other Class Members are entitled to recover from Defendants one additional
9 hour of pay at the employee's regular rate of compensation for each work day that the meal period was
10 not provided.

11 **FOURTH CAUSE OF ACTION**

12 **(Violation of California Labor Code §§ 201, 202, 203)**

13 **(Against All Defendants)**

14 59. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every
15 allegation set forth above.

16 60. At all relevant times herein set forth, California Labor Code sections 201 and 202
17 provide that if an employer discharges an employee, the wages earned and unpaid at the time of
18 discharge are due and payable immediately, and if an employee quits his or her employment, his or her
19 wages shall become due and payable not later seventy-two (72) hours thereafter, unless the employee
20 has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is
21 entitled to his or her wages at the time of quitting.

22 61. During the relevant time period, the employment of Plaintiff and many other Class
23 Members with Defendants ended, *i.e.* was terminated by quitting or discharge. Defendants intentionally
24 and willfully failed to pay Plaintiff and other Class Members who are no longer employed by
25 Defendants all of their wages, earned and unpaid, including but not limited to premium wages, within
26 seventy-two (72) hours of their leaving Defendants' employ.

27 62. Defendants' failure to pay Plaintiff and other Class Members who are no longer
28 employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving

1 Defendants' employ, is in violation of California Labor Code sections 201 and 202.

2 63. California Labor Code section 203 provides that if an employer willfully fails to pay
3 wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue
4 as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but
5 the wages shall not continue for more than thirty (30) days.

6 64. Plaintiff and other Class Members who are no longer employed by Defendants are
7 entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to
8 a thirty (30) day maximum pursuant to California Labor Code section 203.

9 **FIFTH CAUSE OF ACTION**

10 **(Violation of California Labor Code § 226(a))**

11 **(Against All Defendants)**

12 65. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every
13 allegation set forth above.

14 66. At all material times set forth herein, California Labor Code section 226(a) provides that
15 every employer shall furnish each of its employees an accurate itemized statement in writing showing
16 (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units
17 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
18 provided that all deductions made on written orders of the employee may be aggregated and shown as
19 one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7)
20 the name of the employee and his or her social security number, (8) the name and address of the legal
21 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the
22 corresponding number of hours worked at each hourly rate by the employee. The deductions made from
23 payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month,
24 day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the
25 employer for at least three years at the place of employment or at a central location within the State of
26 California.

27 67. Defendants have intentionally and willfully failed to provide Plaintiff and the Class with
28 complete and accurate wage statements. The deficiencies include, but are not limited to the failure list

1 the total number of hours worked, premium wages, and the correct rates of pay.

2 68. Because of Defendants' violation of California Labor Code section 226(a), Plaintiff and
3 the Class have suffered injury and damage to their statutorily-protected rights.

4 69. More specifically, Plaintiff and the Class have been injured by Defendants' intentional
5 and willful violation of California Labor Code section 226(a) because they were denied both their legal
6 right to receive, and their protected interest in receiving, accurate and itemized wage statements
7 pursuant to California Labor Code section 226(a).

8 70. Plaintiff and the Class are entitled to recover from Defendants the greater of their actual
9 damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an
10 aggregate penalty not exceeding four thousand dollars per employee.

11 71. Plaintiff and the Class are also entitled to injunctive relief to ensure compliance with
12 this section, pursuant to California Labor Code section 226(g).

13 **SIXTH CAUSE OF ACTION**

14 **(Violation of Cal. Business & Professions Code §§ 17200, et seq.)**

15 **(Against All Defendants)**

16 72. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every
17 allegation set forth above.

18 73. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful
19 and harmful to Plaintiff and the Class, to the general public, and Defendants' competitors. Accordingly,
20 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of
21 Civil Procedure section 1021.5.

22 74. Defendants' activities as alleged herein are violations of California law, and constitute
23 unlawful business acts and practices in violation of California Business & Professions Code section
24 17200, *et seq.*

25 75. Plaintiff is a "person" within the meaning of Business & Professions Code section
26 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive relief,
27 restitution, and other appropriate equitable relief.

28 76. A violation of California Business & Professions Code section 17200, *et seq.* may be

1 predicated on the violation of any state or federal law. In this instant case, Defendants' policies and
2 practices of requiring employees, including Plaintiff and the Class, work without legally compliant
3 meal periods and rest breaks and without premium compensation in lieu thereof, violate California
4 Labor Code sections 226.7 and 512(a). Moreover, Defendants' policies and practices of failing to timely
5 pay wages to Plaintiff and the Class violate California Labor Code sections 201, 202, and 203.

6 77. Defendants also violated California Labor Code sections 204, 226(a), 2800, and 2802.

7 78. Wage-and-hour laws express fundamental public policies. Paying employees their
8 wages at the correct rate of pay, providing them with meal periods and rest breaks, etc., are fundamental
9 public policies of California. Labor Code section 90.5(a) sets forth the public policies of this State
10 vigorously to enforce minimum labor standards, to ensure that employees are not required or permitted
11 to work under unlawful conditions, and to protect law-abiding employers and their employees from
12 competitors who lower costs to themselves by failing to comply with fair labor standards. Through the
13 conduct alleged in this Complaint Defendants have acted contrary to these public policies, have violated
14 specific provisions of the Labor Code, and have engaged in other unlawful and unfair business practices
15 in violation of Business & Professions Code § 17200 et seq.

16 79. As a result of the herein described violations of California law, Defendants unlawfully
17 gained an unfair advantage over other businesses.

18 80. Plaintiff and the Class have been personally injured by Defendants' unlawful business
19 acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or
20 property.

21 81. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff
22 and the Class are entitled to restitution of the wages withheld and retained by Defendants during a
23 period that commences four years prior to the filing of this Complaint; an award of attorneys' fees
24 pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award
25 of costs.

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1 **SEVENTH CAUSE OF ACTION**

2 **(Violation of California Labor Code § 2699, et seq.)**

3 **(Against All Defendants)**

4 82. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every
5 allegation set forth above.

6 83. Plaintiff brings her Seventh Cause of Action as a representative action on behalf of
7 herself and all other Aggrieved Employees in the capacity as a private attorney general pursuant to the
8 Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”).

9 84. PAGA specifically provides for a private right of action to recover civil penalties for
10 violations of the Labor Code as follows: “Notwithstanding any other provision of law, any provision
11 of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce
12 Development Agency or any of its departments, divisions, commissions, boards, agencies, or
13 employees, for a violation of this code, may, as an alternative, be recovered through a civil action
14 brought by an aggrieved employee on behalf of herself or herself and other current or former employees
15 pursuant to the procedures specified in section 2699.3.” Labor Code § 2699(a).

16 85. Plaintiff was employed by Defendants and the Labor Code violations alleged above were
17 committed against her during her time of employment. Plaintiff is therefore, an “aggrieved employee”
18 under PAGA.

19 86. As set forth in detail above, during all times relevant to this Action, Defendants have
20 routinely subjected Plaintiff and the Aggrieved Employees to violations of California Labor Codes by:

- 21 a. Failing to reimburse Plaintiff and the Aggrieved Employees for necessary business-
22 related expenses in violation of Labor Code §§ 2800 and 2802.
- 23 b. Failing to provide authorize and permit Plaintiff and the Aggrieved Employees to take
24 duty-free rest periods, and failing to pay Plaintiff and the Aggrieved Employees an
25 additional hour of premium pay for rest period violations in violation of Labor Code §
26 226.7.
- 27 c. Failing to provide legally compliant meal periods to Plaintiff and the Aggrieved
28 Employees, and failing to pay Plaintiff and the Aggrieved Employees an additional hour

1 of premium pay for meal period violations in violation of Labor Code §§ 226.7 and 512.

2 d. Failing to timely pay Plaintiff and the Aggrieved Employees all wages at the end of their
3 employment in violation of Labor Code § 203.

4 e. Failing to timely pay Plaintiff and the Aggrieved Employees all wages owed during
5 employment in violation of Labor Code § 204.

6 f. Failing to furnish Plaintiff and the Aggrieved Employees with complete, accurate,
7 itemized wage statements in violation of Labor Code § 226.

8 87. California Labor Code sections 2699 and 2699.5, Plaintiff, individually and on behalf of
9 herself and the Aggrieved Employees and the State of California, requests and is entitled to recover
10 penalties against Defendants for the Labor Code violations described above, including but not limited
11 to penalties under California Code of Regulations Title 8 section 11050, penalties under California
12 Labor Code sections 2699, 558, 210, 226, 226.3 and any and all additional penalties and sums as
13 provided by the California Labor Code and/or other statutes. The exact amount of the applicable
14 penalties, in all, is in an amount to be shown according to proof at trial.

15 88. Pursuant to Labor Code § 2699.3, on September 25, 2023, Plaintiff, through her counsel
16 of record, gave written notice by online filing with the Labor and Workforce Development Agency
17 (“LWDA”) and by certified mail to the Defendants, of the specific provisions of the Labor Code and
18 IWC Wage Orders that Defendants have violated, including the facts and theories to support the
19 violations, and of Plaintiff’s intent to bring a claim for civil penalties under PAGA. Plaintiff also paid
20 the filing fee required under Labor Code § 2699.3. To date, the LWDA has not indicated that it intends
21 to investigate the violations discussed in the PAGA notice. Accordingly, Plaintiff has or soon will have
22 fulfilled all administrative prerequisites to the pursuit of her PAGA claim on behalf herself and other
23 Aggrieved Employees pursuant to Labor Code § 2699.3.

24 89. Plaintiff was compelled to retain the services of counsel to file this court action to protect
25 her interests and the Aggrieved Employees, and to assess and collect the civil penalties owed by
26 Defendants. Plaintiff therefore seeks an award of reasonable attorneys’ fees and costs pursuant to Labor
27 Code § 2699(g)(1), and any other applicable statute.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, individually and on behalf of all other members of the general public
3 similarly situated, and as a private attorney general, prays for relief and judgment against Defendants,
4 jointly and severally, as follows:

5 **Class Certification**

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

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

- 12 5. That the Court declare, adjudge and decree that Defendants violated California Labor
13 Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the Class for all necessary
14 business-related expenses as required by California Labor Code sections 2800 and 2802;
15 6. For actual, consequential and incidental losses and damages, according to proof;
16 7. For the imposition of civil penalties and/or statutory penalties;
17 8. For reasonable attorneys' fees and costs of suit incurred herein; and
18 9. For such other and further relief as the Court may deem just and proper.

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

- 20 10. That the Court declare, adjudge and decree that Defendants violated California Labor
21 Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to
22 Plaintiff and the Class;
23 11. That the Court make an award to Plaintiff and the Class of one (1) hour of pay at each
24 employee's regular rate of compensation for each workday that a rest period was not provided;
25 12. For all actual, consequential, and incidental losses and damages, according to proof;
26 13. For premium wages pursuant to California Labor Code section 226.7;
27 14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

28 and

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

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

3 16. That the Court declare, adjudge and decree that Defendants violated California Labor
4 Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal
5 periods (including second meal periods) to Plaintiff and the Class;

6 17. That the Court make an award to Plaintiff and the Class of one (1) hour of pay at each
7 employee's regular rate of compensation for each workday that a meal period was not provided;

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

9 19. For premium wages pursuant to California Labor Code section 226.7;

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

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

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

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

14 23. That the Court declare, adjudge and decree that Defendants violated California Labor
15 Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of
16 termination of the employment of Plaintiff and other Class Members no longer employed by
17 Defendants;

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

19 25. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff
20 and other Class Members who have left Defendants' employ;

21 26. For pre-judgment interest on any unpaid compensation from the date such amounts were
22 due; and

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

24 **As to the Fifth Cause of Action**

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

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

- 1 30. For statutory penalties pursuant to California Labor Code section 226(e); and
2 31. For such other and further relief as the Court may deem just and proper.

3 **As to the Sixth Cause of Action**

4 32. That the Court declare, adjudge and decree that Defendants violated California Business
5 and Professions Code sections 17200, *et seq.* by failing to provide all meal and rest periods to Plaintiff
6 and the Class, or premium compensation in lieu thereof, failing to pay Plaintiff's and other Class
7 Members' wages timely as required by California Labor Code section 201, 202 and 204 and by
8 violating California Labor Code sections 226(a), 2800, and 2802;

9 33. For restitution of unpaid wages to Plaintiff and the Class and all pre-judgment interest
10 from the day such amounts were due and payable;

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

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

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

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

19 **As to the Seventh Cause of Action**

20 38. For statutory attorneys' fees and costs pursuant to 2699(g)(1) of California Labor Code;

21 39. For the imposition of civil penalties pursuant to California Labor Code §§ 2699, 210,
22 558, 226, 226.3, 1174.5, 1197.1, and all other penalties allowed by the California Labor Code and/or
23 other applicable statutes; and

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

DATED: October 30, 2023

Respectfully submitted,

NORTH LAW, P.C.



Hengameh S. Safaei
Attorneys for Plaintiff MARIA DEL
CARMEN GARCIA, individually and on
behalf of others similarly situated

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DATED: October 30, 2023

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Rafael

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