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Assigned for All Purposes
Judge Melissa R. McCormick
Dept. CX104

Attorneys for Plaintiff,
MARGARITA SOTELO, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
(UNLIMITED JURISDICTION)

MARGARITA SOTELO, as an “aggrieved
employee” on behalf of herself and other
similarly situated “aggrieved employees”
under the Labor Code Private Attorneys
General Act of 2004,

Plaintiff,

vs.

LA REINA MARKETS, LLC; and DOES 1 to
25, inclusive,

Defendants.

Case No. 30-2024-01373350-CU-OE-CXC

**COMPLAINT FOR VIOLATIONS
OF THE LABOR CODE AND CIVIL
PENALTIES UNDER THE LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR
CODE §§ 2698, ET SEQ.**

JURY TRIAL DEMANDED

1 Plaintiff, Margarita Sotelo (hereafter “Plaintiff” or “Sotelo”), on behalf of herself, the
2 State of California, and the other Aggrieved Employees, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this representative action under the Labor Code Private Attorneys
5 General Act of 2004, § 2698, *et seq.* (“PAGA”) based on alleged violations of the California
6 Labor Code and Industrial Welfare Commission Order No. 7-2001 (hereafter “the Wage Order”),
7 against Defendants LA REINA MARKETS, LLC, and DOES 1 to 25, inclusive (collectively “LA
8 REINA” or “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 her, the State of California, and the Aggrieved Employees (defined below), for civil penalties and
11 other related relief. These claims are based on Defendants’ failures to: 1) pay all wages, including
12 minimum, regular, overtime, and doubletime wages earned for all hours worked at the correct
13 rates of pay; 2) provide meal periods or pay correctly-calculated premium wages in lieu thereof;
14 3) authorize and permit rest periods or pay correctly-calculated premium wages in lieu thereof;
15 4) indemnify for business expenses; 5) issue only accurate and complete itemized wage
16 statements; 6) timely pay wages during employment; 7) timely pay wages upon separation from
17 employment; 8) provide paid sick leave/statements of sick leave available and 9) maintain
18 accurate employment records. Accordingly, Plaintiff now seeks to recover civil penalties and
19 related relief through this representative action.

20 **JURISDICTION AND VENUE**

21 3. Jurisdiction and Venue are proper in this Court and this action is properly filed in
22 the County of Orange in this judicial district because Defendants LA REINA MARKETS, LLC,
23 and DOES 1 to 25, inclusive do business in the County of Orange and because Defendants’
24 obligations and liabilities arise therein, and because the work that was performed by Plaintiff and
25 the Aggrieved Employees in the County of Orange is the subject of this action. Moreover, the
26 aggregate claims of Plaintiff and the Aggrieved Employees, inclusive of all relief, place more
27 than \$25,000 in controversy.

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THE PARTIES

4. Plaintiff Margarita Sotelo is resident of the city of Fullerton, California.

5. Defendant LA REINA MARKETS, LLC is a limited liability company organized and existing under the laws of California and as such, a citizen of California based on Plaintiff's information and belief.

6. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein of the Defendants sued as DOES 1-25, inclusive, but is informed and believes and thereon alleges that said Defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

7. The "Aggrieved Employees" are all individuals the Defendants have employed or otherwise contracted with in California as hourly, non-exempt employers, during the period beginning one year before the Plaintiff's notice of October 14, 2023 to the California Labor and Workforce Development Agency ("LWDA") and ending on the date judgment is entered.

8. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other Defendants.

9. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not paying Plaintiff and the other Aggrieved Employees in accordance with applicable California labor laws as alleged herein.

10. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other defendants, and that said acts and failures to act were within the course and scope of said agency,

1 employment, and/or direction and control.

2 **FACTUAL ALLEGATIONS**

3 11. The Wage Order applies to "any industry, business or establishment operated for
4 the purpose of purchasing, selling or distributing goods or commodities at wholesale or retail, or
5 for the purpose of renting goods or commodities." Wage Order No. 7-2001, §2 (H). At all relevant
6 times during the applicable limitations period, LA REINA operated a grocery store. Accordingly,
7 Plaintiff and the Aggrieved Employees are entitled to the protections provided under the Wage
8 Order.

9 12. LA REINA first began to employ Plaintiff in or around April of 2022 to work in
10 the Bakery department of its grocery store located at 508 N. East St. in Anaheim, California. LA
11 REINA continuously employed her in that capacity until on or about February 1, 2023 when it
12 terminated her employment.

13 13. At all relevant times, LA REINA issued wages to Plaintiff and all of the other
14 Aggrieved Employees on a weekly basis and paid them by the hour. At all relevant times, LA
15 REINA classified Plaintiff and all of the other Aggrieved Employees as non-exempt employees
16 entitled to the protections of the Labor Code and the Wage Order. During her employment tenure,
17 Plaintiff generally worked four days per week from around 2:30 p.m. to 9:00 p.m. Plaintiff's latest
18 rate of pay was approximately \$16.00 per hour.

19 14. LA REINA failed to pay Plaintiff and the other Aggrieved Employees for all time
20 worked or subject to its control. Plaintiff and the other Aggrieved Employees were not paid for
21 all hours worked and consistently worked "off the clock" in that the company had a policy and
22 practice of rounding down work hours and "time shaving" which led to Plaintiff and others not
23 being paid for all hours worked, which would include the minimum wage. Moreover, to the extent
24 employees such as Plaintiff and others worked through their meal periods and those meal periods
25 were interrupted, they were not compensated for that time, which would be akin to a minimum
26 wage violation.

27 15. Due to the above "off the clock" violations, LA REINA failed to pay Plaintiff and
28 the Aggrieved Employees properly-calculated overtime wages. The Aggrieved Employees' actual

1 work hours, which included the “off the clock” work as described above, entitled them to
2 overtime, however, it was not company policy to keep accurate track of all hours worked and to
3 pay employees the accurate amount of overtime, especially since the “off the clock” work was
4 not factored into the equation. Furthermore, any incentive payments and/or bonus payments were
5 not factored into employees’ regular rate of pay for purposes of deciphering the correct overtime
6 rate of pay. In addition, any bonus and/or incentive payments were not factored into the correct
7 meal and rest break premium pay per *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th
8 858, 863.

9 16. LA REINA failed to provide all compliant meal periods and authorize and permit
10 all compliant rest periods to which Plaintiff and the other Aggrieved Employees were entitled.
11 Plaintiff and the other Aggrieved Employees were entitled to take off-duty, uninterrupted 30-
12 minute meal periods before the fifth and tenth hours of work and to take uninterrupted 10-minute
13 rest periods for every four hours or major fraction thereof worked. The Aggrieved Employees
14 would not be able to take timely, uninterrupted meal periods before the 5th or 10th hour worked.
15 There are instances wherein LA REINA management instructed Plaintiff to clock out for her meal
16 period and continue working. Similarly, the Aggrieved Employees were not always able to take
17 their 10 minute rest breaks due to the work load and press of business. Even when Plaintiff and
18 the other Aggrieved Employees would be clocked out for a meal period or would be on their rest
19 breaks, LA REINA management/staff would interrupt them with questions about work related
20 matters. On information and belief, LA REINA did not provide premium wages for these meal
21 and rest break violations; if LA REINA did provide premium wages, they were not paid at the
22 correct rate, as explained above.

23 17. LA REINA failed to reimburse Plaintiff and the other Aggrieved Employees for
24 business expenses they incurred in direct consequence of the discharge of their duties. LA REINA
25 required Plaintiff and the Aggrieved Employees to purchase uniform shirts and use their own
26 personal cell phones to communicate with management concerning work matters. LA REINA
27 management texted/called Plaintiff and the others on a regular basis regarding their work
28 schedules. However, LA REINA did not provide Plaintiff and the others with mobile phones and

1 did not reimburse Plaintiff and the other Aggrieved Employees for their mobile phone expenses.
2 Accordingly, LA REINA was in violation of California Labor Code sections 2800 and 2802.

3 18. LA REINA failed to pay its employees all wages due to them within any time
4 period specified by California Labor Code section 204, including the minimum wages and
5 overtime as described above as well as meal/rest break premiums.

6 19. LA REINA did not provide Plaintiff and the other Aggrieved Employees accurate,
7 itemized wage statements. Wage statements must include, among other things, total hours worked
8 by the employee. Labor Code § 226(a)(2). LA REINA issued wage statements that inaccurately
9 reflected total hours worked, gross and net wages earned, and the number of hours worked at each
10 hourly rate because of LA REINA's failure to properly pay wages as explained herein. Labor
11 Code §§ 226(a)(1), (2), (5), (9). LA REINA's failure to maintain accurate records as to the hours
12 worked daily by employees also constitutes a violation of Labor Code section 1174(d).

13 20. Moreover, LA REINA failed to provide Plaintiff and all of the other Aggrieved
14 Employees with an itemized wage statement or separate writing that set forth the amount of paid
15 sick leave available in violation of Labor Code section 246.

16 21. Finally, because LA REINA did not properly pay all wages earned as explained
17 herein, LA REINA also failed to pay final wages owed to Plaintiff and the other Aggrieved
18 Employees in violation of Labor Code section 203. These earned but unpaid wages include
19 minimum wages and compensation for all hours worked, overtime compensation, and premium
20 pay for missed meal and rest breaks, among others.

21 22. LA REINA has also violated Labor Code section 558 and engaged in business
22 practices which violate Business and Professions Code Section 17200.

23 23. Accordingly, Plaintiff now seeks civil penalties on behalf of herself and the
24 Aggrieved Employees based on Defendants' alleged violations of the California Labor Code and
25 the Wage Order.

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1 at least the minimum wage set forth therein for all hours worked, which consists of all hours that
2 an employer has actual or constructive knowledge that employees are working.

3 29. Labor Code section 510 states:

4 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
5 in one workday and any work in excess of 40 hours in any one workweek and the
6 first eight hours worked on the seventh day of work in any one workweek shall be
7 compensated at the rate of no less than one and one-half times the regular rate of
8 pay for an employee. Any work in excess of 12 hours in one day shall be
9 compensated at the rate of no less than twice the regular rate of pay for an
10 employee. In addition, any work in excess of eight hours on any seventh day of a
11 workweek shall be compensated at the rate of no less than twice the regular rate of
12 pay of an employee. Nothing in this section requires an employer to combine more
13 than one rate of overtime compensation in order to calculate the amount to be paid
14 to an employee for any hour of overtime work.

15 30. Labor Code section 1194 invalidates any agreement between an employer and an
16 employee to work for less than the minimum wage required under the applicable Wage Order.

17 31. Labor Code section 1197 makes it unlawful for an employer to pay an employee
18 less than the minimum wage required under the applicable Wage Order for all hours worked
19 during a payroll period.

20 32. Labor Code section 1198 makes it unlawful for an employer to employ an
21 employee under conditions that violate the Wage Order.

22 33. In conjunction, these provisions of the Labor Code require employers to pay non-
23 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
24 worked, including unrecorded hours when the employer knew or reasonably should have known
25 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
26 Cal.4th 575, 585.)

27 34. At all relevant times during the applicable limitations period, Defendants failed to
28 compensate Plaintiff and the Aggrieved Employees for all hours worked, including, but not
limited to overtime wages for all overtime hours they worked at the correct rates of pay.

35. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
failure to compensate Plaintiff and the other Aggrieved Employees for all hours worked as
required by California law.

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1 **B. FAILURE TO PROVIDE MEAL PERIODS**

2 36. In relevant part, California Labor Code § 1198 states:

3 The maximum hours of work and the standard conditions of labor fixed by the
4 commission shall be the maximum hours of work and the standard conditions of
5 labor for employees. The employment of any employee for longer hours than those
6 fixed by the order or under conditions of labor prohibited by the order is unlawful.

7 37. In relevant part, In relevant part, California Labor Code § 512 states:

8 An employer shall not employ an employee for a work period of
9 more than five hours per day without providing the employee with
10 a meal period of not less than 30 minutes, except that if the total
11 work period per day of the employee is no more than six hours, the
12 meal period may be waived by mutual consent of both the
13 employer and employee.

14 An employer shall not employ an employee for a work period of
15 more than 10 hours per day without providing the employee with
16 a second meal period of not less than 30 minutes, except that if the
17 total hours worked is no more than 12 hours, the second meal
18 period may be waived by mutual consent of the employer and the
19 employee only if the first meal period was not waived.

20 38. In relevant part, Section 11 of the Wage Order states:

21 Meal Periods:

22 (A) No employer shall employ any person for a work period of
23 more than five (5) hours without a meal period of not less than
24 30 minutes, except that when a work period of not more than
25 six (6) hours will complete the day's work the meal period may
26 be waived by mutual consent of the employer and employee.
27 Unless the employee is relieved of all duty during a 30 minute
28 meal period, the meal period shall be considered an "on duty"
meal period and counted as time worked. An "on duty" meal
period shall be permitted only when the nature of the work
prevents an employee from being relieved of all duty and when
by written agreement between the parties an on-the-job paid
meal period is agreed to. The written agreement shall state that
the employee may, in writing, revoke the agreement at any
time.

(B) If an employer fails to provide an employee a meal period in
accordance with the applicable provisions of this Order, the
employer shall pay the employee one (1) hour of pay at the
employee's regular rate of compensation for each work day that

the meal period is not provided.

39. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

40. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Aggrieved Employees were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

41. Defendants intentionally failed to provide Plaintiff and the Aggrieved Employees with all required timely 30-minute meal periods free from any work duties in accordance with the Wage Order.

42. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved Employees with all timely and uninterrupted meal periods. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the other Aggrieved Employees with timely meal periods.

43. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the and the Aggrieved Employees with all off-duty meal periods required by California law.

C. FAILURE TO AUTHORIZE AND PERMIT REST BREAKS

44. In relevant part, California Labor Code § 1198 states:

1 The maximum hours of work and the standard conditions of labor
2 fixed by the commission shall be the maximum hours of work and
3 the standard conditions of labor for employees. The employment
4 of any employee for longer hours than those fixed by the order or
5 under conditions of labor prohibited by the order is unlawful.

6 45. In relevant part, Section 12 of the Wage Order states:

7 Rest Periods:

8 (A) Every employer shall authorize and permit all employees to take
9 rest periods, which insofar as practicable shall be in the middle of
10 each work period. The authorized rest period time shall be based
11 on the total hours worked daily at the rate of ten (10) minutes net
12 rest time per four (4) hours or major fraction thereof. However, a
13 rest period need not be authorized for employees whose total daily
14 work time is less than three and one-half (3 ½) hours. Authorized
15 rest period time shall be counted as hours worked for which there
16 shall be no deduction from wages.

17 (B) If an employer fails to provide an employee a rest period in
18 accordance with the applicable provisions of this order, the
19 employer shall pay the employee one (1) hour of pay at the
20 employee's regular rate of compensation for each workday
21 that the rest period is not provided.

22 46. In relevant part, California Labor Code § 226.7 states:

23 (b) An employer shall not require an employee to work during
24 a meal or rest period mandated pursuant to an applicable
25 statute, or applicable regulation, standard, or order of the
26 Industrial Welfare Commission, the Occupational Safety
27 and Health Standards Board, or the Division of
28 Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period
or rest period in accordance with a state law, including, but
not limited to, an applicable statute or applicable
regulation, standard, or order of the Industrial Welfare
Commission, the Occupational Safety and Health
Standards Board, or the Division of Occupational Safety
and Health, the employer shall pay the employee one
additional hour of pay at the employee's regular rate of
compensation for each work day that the meal or rest
period is not provided.

47. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled

1 to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour
2 period of work, or major fraction thereof.

3 48. Defendants intentionally failed to authorize and permit Plaintiff and the Aggrieved
4 Employees to take all 10-minute rest periods free from any work duties in accordance with the
5 Wage Order.

6 49. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
7 Aggrieved Employees to take all timely rest periods. Furthermore, Defendants failed to pay
8 premium wages to Plaintiff and the Aggrieved Employees for days on which they failed to
9 authorize and permit Plaintiff and the other Aggrieved Employees to take timely rest periods.

10 50. At all relevant times, due to high workload, Defendants failed to authorize and
11 permit Plaintiff and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every
12 four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest
13 period protections of the Wage Order from the California Division of Labor Standards
14 Enforcement. Moreover, Defendants failed to pay Plaintiff and the Aggrieved Employees
15 premium wages on workdays they failed to authorize and permit them to take 10-minute rest
16 periods every four hours worked or major fraction thereof.

17 51. Plaintiff is informed and believes and thereon alleges that, at all relevant times
18 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
19 which resulted in Defendants not authorizing and permitting Plaintiff and the Aggrieved
20 Employees to take all rest breaks required by California law.

21 **D. FAILURE TO INDEMNIFY**

22 52. In pertinent part, California Labor Code section 2802(a) states, “An employer shall
23 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct
24 consequence of the discharge of his or her duties.”

25 53. Labor Code section 1198 prohibits employers from employing their employees
26 under conditions prohibited by the Wage Order.

27 54. At all relevant times during the applicable limitations period, as a condition for
28 employment, Defendants required Plaintiff and the Aggrieved Employees to incur certain
business expenses. These costs include, but are not limited to, uniforms, and use of personal cell
phones to communicate with office staff concerning work matters. However, LA REINA did not
reimburse Plaintiff and the others for these business expenses.

1 55. Therefore, Defendants failed to indemnify Plaintiff and the Aggrieved Employees
2 for expenditures incurred as a direct consequence of discharging their duties in violation of
3 California Labor Code sections 2800 and 2802.

4 56. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
5 Defendants maintained a policy and/practice, or lack thereof, which resulted in Defendants'
6 failure to indemnify Plaintiff and the Aggrieved Employees for the reasonable expenses they
7 incurred during the course of performing their duties.

8 **E. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
9 **STATEMENTS**

10 57. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved
11 Employees were entitled to receive, bi-weekly or at the time of each payment of wages, an
12 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
13 hourly rates in effect during the pay period; and d) the corresponding number of hours worked at
14 each hourly rate by the employee.

15 58. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
16 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
17 the employer fails to provide accurate and complete information as required by California Labor
18 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
19 alone one or more of the following:

20 A. The amount of the gross wages or net wages paid to the employee during
21 the pay period or any of the other information required to be provided on the itemized wage
22 statement pursuant to California Labor Code § 226(a);

23 B. Which deductions the employer made from gross wages to determine the
24 net wages paid to the employee during the pay period;

25 C. The name and address of the employer and, if the employer is a farm labor
26 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
27 and address of the legal entity that secured the services of the employer during the pay period;

28 D. The name of the employee and only the last four digits of his or his social
security number or an employee identification number other than a social security number; and

 E. The number of piece-rate units earned and the piece rate.

59. “Promptly and easily determine,” as stated in California Labor Code § 226(e),

means a reasonable person would be able to readily ascertain the information without reference to other documents or information.

60. As alleged herein, at all relevant times during the applicable limitations period, Defendants violated California Labor Code section 226 because they did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code section 226. Defendants failed to state in the wage statements they issued to Plaintiff and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock (as described above).

61. Defendants' failure to provide Plaintiff and the other Aggrieved Employees with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the other Aggrieved Employees with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.

62. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff and the other Aggrieved Employees have suffered injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical computations to determine the amounts of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records and/or has led to the submission of inaccurate information about wages to state and federal government agencies. Further, Plaintiff and the other Aggrieved Employees were not able to ascertain from the wage statements whether Defendants complied with their obligations under California Labor Code section 226(a).

F. UNTIMELY WAGES DURING EMPLOYMENT

63. Labor Code § 204 states:

- (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar

month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

64. Defendants failed to compensate Plaintiff and the Aggrieved Employees for all hours worked at the correct rates of pay, including overtime. Defendants failed to provide Plaintiff and the Aggrieved Employees with all meal and rest periods in compliance with California laws. Defendants also failed to provide Plaintiff and the Aggrieved Employees with all premium wages on workdays they failed to provide them with one or more meal or rest periods in compliance with California laws. As a result, Defendants failed to timely pay all earned minimum, overtime, and premium wages due during employment within the time periods set by California Labor Code section 204.

1 **G. UNTIMELY FINAL WAGES**

2 65. Labor Code § 201 provides that all earned and unpaid wages of an employee who
3 is discharged are due and payable immediately at the time of discharge.

4 66. Labor Code § 202 provides that all earned and unpaid wages of an employee who
5 quits after providing at least 72-hours notice before quitting are due and payable at the time of
6 quitting and that all earned and unpaid wages of an employee who quits without providing at least
7 72-hours notice before quitting are due and payable within 72 hours.

8 67. By failing to pay earned minimum and premium wages to Plaintiff and the
9 Aggrieved Employees, Defendants failed to timely pay them all earned and unpaid wages in
10 violation of Labor Code § 201 or § 202.

11 68. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
12 and the Aggrieved Employees all of their earned and unpaid wages (described above) have been
13 willful in that, at all relevant times, Defendants have deliberately maintained policies and
14 practices that violate the requirements of the Labor Code and the Wage Order, even though at all
15 relevant times, they have had the ability to comply with those legal requirements.

16 **H. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

17 69. Labor Code § 1174 states:

18 Every person employing labor in this state shall:

19 ...

20 (c) Keep a record showing the names and addresses of all employees
employed and the ages of all minors.

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

28 70. Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

71. Section 7 of the Wage Order states:

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

72. Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

73. On information and belief, Defendants have willfully failed to maintain the records required by § 1174 and Wage Order, including, but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Plaintiff and the Aggrieved Employees.

74. Accordingly, Plaintiff seeks an award of civil penalties against the Defendants on behalf of herself and all of the other Aggrieved Employees as follows: (1) \$500 for each aggrieved

employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and (2) \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

I. FAILURE TO PROVIDE SICK LEAVE

75. Labor Code § 233 states,

Any employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement, for the reasons specified in subdivision (a) of Section 246.5.

76. Labor Code § 246(a)(1) states,

An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.

77. Labor Code § 246.5 states,

(a) Upon the oral or written request of an employee, an employer shall provide paid sick days for the following purposes:

(1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member.

...

(c) (1) An employer shall not deny an employee the right to use accrued sick days ...

78. Defendants failed to provide Plaintiff and all of the other Aggrieved Employees with paid sick leave in violation of Labor Code sections 233 and 246. Accordingly, Plaintiff now seeks civil penalties for these Labor Code violations that Defendants have committed against her and all of the other Aggrieved Employees.

J. FAILURE TO PROVIDE NOTICE OF AVAILABLE SICK LEAVE

79. Labor Code § 246 states,

An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides

1 in lieu of sick leave, for use on either the employee's itemized wage statement
2 described in Section 226 or in a separate writing provided on the designated pay
date with the employee's payment of wages.

3 80. Defendants failed to provide Plaintiff and all of the other Aggrieved Employees
4 with an itemized wage statement or separate writing that set forth the amount of paid sick leave
5 available. Accordingly, Plaintiff seeks civil penalties on behalf of herself and all of the other
6 Aggrieved Employees as follows: For violations of Labor Code § 246, \$100 per Aggrieved
7 Employee for each of the pay periods in which initial violations of § 246 occurred, and \$200 per
8 Aggrieved Employee per pay period in which subsequent violations of § 246 occurred (penalties
9 set by Labor Code § 2699(f)(2)).

10 **K. CIVIL PENALTIES SOUGHT**

11 81. During the applicable time period, Defendants violated California Labor Code
12 §§ 201, 202, 203, 204, 226, 226.7, 233, 246, 246.5, 510, 512, 558, 1174, 1194, 1197, 1198, 2802,
13 and related Labor Code statutes.

14 82. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
15 behalf of themselves and other current or former employees, to bring a civil action to recover civil
16 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

17 83. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved
18 Employees are entitled to recover civil penalties for each of the Defendants' violations of
19 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 233, 246, 246.5, 510, 512, 558, 1174,
20 1194, 1197, 1198 and 2802 during the applicable limitations period in the following amounts:

21 A. For violations of California Labor Code § 204, one hundred dollars
22 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
23 (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation
24 (penalty amounts established by California Labor Code § 210).

25 B. For violations of California Labor Code § 226, two hundred fifty dollars
26 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee
27 for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

28 C. For violations of California Labor Code §§ 510 and 512, fifty dollars

1 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
2 employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for
3 each pay period for which the employee was underpaid (penalty amounts established by
4 California Labor Code § 558).

5 D. For violations of California Labor Code § 1174, five hundred dollars
6 (\$500.00) for each Aggrieved Employee for each initial violation (penalty amounts established
7 by Labor Code § 1174.5).

8 E. For violations of California Labor Code § 1197, one hundred dollars
9 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
10 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
11 (regardless of whether the initial violations were intentionally committed) (penalty amounts
12 established by California Labor Code § 1197.1).

13 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 233, 246,
14 246.5, 1194, 1198, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay
15 period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee
16 per pay period for each subsequent violation (penalty amounts established by California Labor
17 Code § 2699(f)(2)).

18 **L. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS**

19 84. Plaintiff has complied with the procedures for bringing suit specified in California
20 Labor Code § 2699.3. By letter dated October 14, 2023, Plaintiff gave written notice by certified
21 mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific
22 provisions of the California Labor Code alleged to have been violated, including the facts and
23 theories to support the alleged violations. The LWDA has failed to take action in response within
24 65 days of Plaintiff’s notice.

25 85. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
26 Employees are entitled to an award of civil penalties, reasonable attorneys’ fees, and costs in
27 connection with their claims for civil penalties.

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PRAYER FOR RELIEF

86. WHEREFORE, Plaintiff, on behalf of herself and the Aggrieved Employees, prays for relief and judgment against Defendants as follows:

- A. Civil penalties;
- B. Costs of suit;
- C. Reasonable attorneys’ fees; and
- D. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all other Aggrieved Employees, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

MM LAW, APC

Dated: January 16, 2024

By: Maralle Messrelan
Maralle Messrelan, Esq.
Attorney for Plaintiff,
MARGARITA SOTELO, and all
others similarly situated