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Superior Court of California
County of Fresno
By: I. Herrera, Deputy

7 Attorneys for Plaintiff LAURA CARRANZA

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF FRESNO

10 UNLIMITED JURISDICTION

11 LAURA CARRANZA, on behalf of herself
and all others similarly situated, and the
12 general public,

13 *Plaintiff,*

14 v.

15 FAMILY TREE FARMS, INC., a stock
corporation; and DOES 1 through 50,
16 inclusive,

17 *Defendants.*

Case No. 23CECG04234

Amended As a Matter of Right Pursuant to
Labor Code Section 2699.3(a)(2)(C)

CLASS AND REPRESENTATIVE ACTION

FIRST AMENDED COMPLAINT

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
3. Failure to Pay Hourly Wages (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
4. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
5. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);
7. Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff LAURA CARRANZA (“Plaintiff”), on behalf of herself and all others similarly
2 situated, and the general public, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this representative action against defendants , a FAMILY TREE
5 FARMS, INC.; and DOES 1 through 50, inclusive, (collectively referred to as “Defendants”) for
6 alleged violations of the Labor Code. As set forth below, Plaintiff alleges that Defendants have

- 7 (1) failed to provide Plaintiff and all other similarly situated individuals with meal
8 periods;
9 (2) failed to provide them with rest periods;
10 (3) failed to pay them premium wages for missed meal and/or rest periods;
11 (4) failed to pay them premium wages for missed meal and/or rest periods at the regular
12 rate of pay;
13 (5) failed to pay them at least minimum wage for all hours worked;
14 (6) failed to pay them overtime wages at the correct rate;
15 (7) failed to pay them double time wages at the correct rate;
16 (8) failed to pay them overtime and/or double time wages by failing to include all
17 applicable remuneration in calculating the regular rate of pay;
18 (9) failed to provide them with accurate written wage statements; and
19 (10) failed to pay them all of their final wages following separation of employment.

20 Based on these alleged violations, Plaintiff now brings this representative action to recover unpaid
21 wages, restitution, civil and statutory penalties, and related relief on behalf of herself and all others
22 similarly situated, all other aggrieved employees, and the State of California.

23 **JURISDICTION AND VENUE**

24 2. This Court has subject matter jurisdiction to hear this case because the unpaid wages,
25 actual damages, liquidated damages, restitution, and penalties sought by Plaintiff from Defendants
26 exceeds the minimal jurisdictional limits of the Superior Court of the State of California.

27 3. Venue is proper in FRESNO pursuant to Code of Civil Procedure §§ 393(a), 395(a)
28 and 395.5 in that liability arose there, because at least some of the transactions that are the subject

1 matter of this Complaint occurred therein and/or each defendant is found, maintains offices,
2 transacts business, and/or has an agent therein.

3 4. Venue is proper in FRESNO because Defendants' principal place of business is in
4 CALIFORNIA, is incorporated under the laws of CALIFORNIA, does business in FRESNO. As
5 such, venue is proper in FRESNO county in California.

6 **PARTIES**

7 5. Plaintiff is and was, and at all relevant times mentioned herein, an individual
8 residing in the State of California.

9 6. Plaintiff is informed and believes, and thereupon alleges, that Defendant is, and at
10 all relevant times mentioned herein, a stock corporation doing business in the State of California.

11 7. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
12 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names.
13 Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants
14 when ascertained. Plaintiff is informed and believes, and thereupon alleges, that each of the
15 fictitiously named defendants are responsible in some manner for the occurrences, acts and
16 omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these
17 defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and
18 capacities of the DOE defendants when ascertained.

19 8. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
20 mentioned herein, some or all of the defendants were the representatives, agents, employees,
21 partners, directors, associates, joint venturers, joint employers, principals, or co-participants of some
22 or all of the other defendants, and, in doing the things alleged herein, were acting within the course
23 and scope of such relationship and with the full knowledge, consent, and ratification by such other
24 defendants.

25 **CLASS ALLEGATIONS**

26 9. This action has been brought and may be maintained as a class action pursuant to
27 Code of Civil Procedure § 382, because there is a well-defined community of interest among the
28 persons who comprise the readily ascertainable classes defined below and because Plaintiff is

unaware of any difficulties likely to be encountered in managing this case as a class action.

10. **Relevant Time Period:** The relevant time period is defined as the time period beginning four years prior to the filing of this action until judgment is entered.

Hourly Employee Class: All persons employed by Defendants and/or any staffing agencies and/or any other third parties in hourly or non-exempt positions in California during the **Relevant Time Period**.

Meal Period Sub-Class: All **Hourly Employee Class** members who worked in a shift in excess of five hours during the **Relevant Time Period**.

Rest Period Sub-Class: All **Hourly Employee Class** members who worked a shift of at least three and one-half (3.5) hours during the **Relevant Time Period**.

Wage Statement Penalties Sub-Class: All **Hourly Employee Class** members employed by Defendants in California during the period beginning one year before the filing of this action and ending when final judgment is entered.

Waiting Time Penalties Sub-Class: All **Hourly Employee Class** members who separated from their employment with Defendants during the period beginning three years before the filing of this action and ending when final judgment is entered.

UCL Class: All **Hourly Employee Class** members employed by Defendants in California during the **Relevant Time Period**.

11. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definitions with greater specificity by further division into sub-classes and/or by limitation to particular issues.

12. **Numerosity:** The class members are so numerous that the individual joinder of each individual class member is impractical. While Plaintiff does not currently know the exact number of class members, Plaintiff is informed and believes, and thereupon alleges, that the actual number exceeds the minimum required for numerosity under California law.

13. **Commonality and Predominance:** Common questions of law and fact exist as to all class members and predominate over any questions that affect only individual class members. These common questions include, but are not limited to:

- i. Whether Defendants maintained a policy or practice of failing to provide employees with their meal periods;

- 1 ii. Whether Defendants maintained a policy or practice of failing to provide employees
2 with their rest periods;
- 3 iii. Whether Defendants failed to pay premium wages to class members when they have
4 not been provided with required meal and/or rest periods;
- 5 iv. Whether Defendants failed to pay minimum and/or overtime wages to class members
6 as a result of policies that fail to provide meal periods in accordance with California
7 law;
- 8 v. Whether Defendants failed to pay minimum and/or overtime wages to class members
9 for all time worked;
- 10 vi. Whether Defendants failed to provide class members with accurate written wage
11 statements as a result of providing them with written wage statements with
12 inaccurate entries for, among other things, amounts of gross and net wages, and total
13 hours worked;
- 14 vii. Whether Defendants failed to pay class members all wages without discount;
- 15 viii. Whether Defendants applied policies or practices that result in late and/or incomplete
16 final wage payments;
- 17 ix. Whether Defendants are liable to class members for waiting time penalties under
18 Labor Code section 203;
- 19 x. Whether class members are entitled to restitution of money or property that
20 Defendants may have acquired from them through unfair competition;

21 14. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff
22 is informed and believes, and thereupon alleges, that Defendants have a policy or practice of failing
23 to comply with the Labor Code and Business and Professions Code as alleged in this Complaint.

24 15. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in
25 that she has no interests that are adverse to or otherwise conflict with the interests of absent class
26 members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly
27 and adequately represent and protect the interests of the other class members.

28 16. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that

1 they have no known conflicts of interest with Plaintiff or absent class members, are experienced in
2 wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on
3 behalf of Plaintiff and absent class members.

4 17. **Superiority:** A class action is vastly superior to other available means for fair and
5 efficient adjudication of the class members' claims and would be beneficial to the parties and the
6 Court. Class action treatment will allow a number of similarly situated persons to prosecute their
7 common claims simultaneously and efficiently in a single forum without the unnecessary
8 duplication of effort and expense that numerous individual actions would entail. In addition, the
9 monetary amounts due to many individual class members are likely to be relatively small and would
10 thus make it difficult, if not impossible, for individual class members to both seek and obtain relief.
11 Moreover, a class action will serve an important public interest by permitting class members to
12 effectively pursue the recovery of monies owed to them. Further, a class action will prevent the
13 potential for inconsistent or contradictory judgments inherent in individual litigation.

14 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

15 18. Plaintiff worked for Defendants as an hourly, non-exempt employee from
16 approximately June 3, 2019, through September 1, 2021.

17 **Off-the-Clock**

18 19. Plaintiff and the putative class were required to utilize a general entrance to prior to
19 entering and leaving the premises on which they worked. Between May 2020 and September 2021,
20 Plaintiff and the putative class went through a temperature check before allowed entrance onto the
21 premises. Employees could only clock in after entering the premises.

22 20. Plaintiff and the putative class were required to spend at least five to fifteen minutes
23 each time they went through the temperature check—time that was not paid by Defendants.

24 21. Based on the above, Defendants' security check practices have resulted in
25 substantial amounts of time not recorded as hours worked therefore resulting in substantial
26 amounts of wages not paid to Plaintiff and the putative class.

27 **Clock In Process**

28 22. Plaintiff and the putative class were trained to clock in for each work shift using a

1 punch card machine. Prior to clocking in, Plaintiff and the punitive class were required to put on
2 work equipment including an apron, hair net, and gloves.

3 23. Although Defendants provided the required work equipment including apron, hair
4 net, and gloves, the Defendants would ask a number of employees to help distribute these materials
5 before they had clocked in. If selected by one of the Defendant's supervisors, Plaintiff and the
6 punitive class were required to help distribute materials constituting off the clock work.

7 24. After Plaintiff and the putative adorned the required equipment and attire, they had
8 to wait in line to clock in. Defendants had six total punch in machines, however the machines were
9 assigned to specific employees. Plaintiff and the putative class were allowed to clock in on only two
10 of the six available clock in machines. Approximately 100 employees starting a shift at the same
11 time, had to clock in on either of their two assigned clock in machines. Plaintiff and the putative
12 class waited approximately 10 minutes waiting in line for the approximately 100 employees to
13 punch their timecards one by one per two available punch in machines.

14 25. Further, the punch in and punch out machines failed to properly record the time of
15 the punch. When there was such a punch in machine malfunction, the supervisor would edit the
16 timecard and input an estimation of when the punch would have occurred. As a result, the timecard
17 punches were not always accurate and did not reflect all work done resulting in off the clock work
18 not being accounted for on their timecard.

19 26. Accordingly, by the time Plaintiff and the putative class punched in, a total of fifteen
20 to thirty minutes or more may have already passed – This time was not properly recorded as time
21 worked and resulted in Plaintiff and the putative class not being paid for all hours worked by
22 Defendants.

23 **Missed Meal Periods**

24 27. Plaintiff and the putative class members were not provided with meal periods of at
25 least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not
26 scheduling each meal period as part of each work shift; and (2) no formal written meal and rest
27 period policy that encouraged employees to take their meal and rest periods.

28 28. Defendants did not schedule meal breaks. All employees were required to take their

1 meal breaks once the supervisor declared it was time for all employees to take their meal breaks.

2 29. After the supervisor decided when the Plaintiff and the putative class must take their
3 lunch, Plaintiff and the putative class would then form a line to use the same two assigned punch
4 out machines before commencing their lunch creating a further untimely delay.

5 30. Since meal breaks were not scheduled, Plaintiff and the putative class would not
6 always take their lunch before the fifth hour of work. As a result, Plaintiff and the putative class
7 were not provided timely provided their meal breaks.

8 **Shortened Meal Periods**

9 31. Plaintiff alleges that, at all relevant times during the applicable limitations period,
10 Defendants maintained a policy or practice of requiring Plaintiff and the putative class to wait in a
11 long line to clock in and out for their meal periods as they were required to use a limited amount of
12 punch stations for hundreds of employees before returning to the premises where they worked.
13 Plaintiff and the putative class would typically have to wait in line before they could clock in and
14 out for their meal periods.

15 32. Accordingly, Plaintiff and the putative class, after clocking out for lunch, were
16 required to walk to the designated work rest area. Employees were required to walk 2-5 minutes to
17 access the work rest area. The time Plaintiff and the putative class spent walking to the rest area
18 was not accounted for, thus resulting in a shortened meal period.

19 33. Accordingly, Plaintiff and the putative class were not allowed to leave the
20 designated meal area which did not offer protection from direct sunlight. While the employees
21 were in the designated meal area, Defendants would order Plaintiff and the putative class to do
22 work related tasks. Specifically, Plaintiff and the putative class were ordered to help pick or
23 distribute work materials, such as aprons, hair nets, and gloves. Plaintiff and the putative class
24 were also ordered to gather up all the employees and prepare them in single file lines in preparation
25 for their clock in procedure. These orders resulted in a shortened meal period.

26 34. Further, Plaintiff and the Putative class were paid via checks however Defendants
27 did not distribute the checks. Plaintiff and the Putative class were required to either pick up their
28 check before they started working or during lunch. This process further shortened Plaintiff and the

1 putative class's meal period.

2 35. Plaintiff alleges that, at relevant times during the applicable limitations period,
3 Defendants maintained a policy or practice of disciplining Plaintiff and members of the putative
4 class, up to and including termination, if they did not clock back in from their meal periods on
5 time. Plaintiff and the putative class would receive a write up if they took a meal period longer
6 than 30 minutes which included the time it took to line up to clock in and pick up their paychecks
7 on pay day.

8 36. Plaintiff alleges that, at relevant times during the applicable limitations period, due
9 to Defendants' above-mentioned policy or practice, Plaintiff and the putative class did not receive
10 their full thirty (30) minute uninterrupted meal periods that they were entitled to under California
11 law due to complying with Defendants' requirements that required Plaintiff and the putative class
12 to utilize a portion of their meal periods to comply with Defendants' check in requirements.

13 **Missed and Shortened Rest Periods**

14 37. Plaintiff and the putative class were not provided with rest periods of at least ten
15 (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants'
16 policy of not scheduling each rest period as part of each work shift; and (2) no formal written meal
17 and rest period policy that encouraged employees to take their meal and rest periods.

18 38. Plaintiff and the putative class worked shifts of over 12 hours. During their shifts,
19 they would only receive two 10-minute rest periods. Defendants would direct when Plaintiff and
20 the putative class could take their 10 minute rest break, when given, and when they had to return to
21 work.

22 39. Further, Plaintiff and the putative class would need to walk 3-5 minutes from their
23 work area to the designated work rest area which constructively resulted in a shorted rest period.
24 Plaintiff and the putative class were not given additional time to take their rest to make up for the
25 lost time walking to the rest area. Plaintiff and the putative class could not sit until they reached the
26 designated rest area.

27 40. As a result of Defendants' policy, Plaintiff and the putative class were regularly not
28 provided with uninterrupted rest periods of at least ten (10) minutes for each four (4) hours worked

1 due to complying with Defendants’ productivity requirements that required Plaintiff and the
2 putative class to work through their rest periods in order to complete their assignments on time.

3 **Regular Rate of Pay**

4 41. The regular rate of pay under California law includes all remuneration for
5 employment paid, on behalf of the employer, to the employee. This requirement includes but is not
6 limited to, commissions, mandatory service charges, non-discretionary bonuses and shift
7 differential pay.

8 42. During the applicable limitations period, Defendants violated the rights of Plaintiff
9 and the putative class under the above-referenced Labor Code sections by failing to pay them
10 overtime wage premiums, meal period premiums, rest period premiums, and sick pay for all
11 overtime hours worked in violation of Labor Code §§ 226.7, 246, 510, 1194, and 1198 as a result
12 of not correctly calculating their regular rate of pay to include all applicable remuneration,
13 including, but not limited to, commissions, mandatory service charges, non-discretionary bonuses
14 and shift differential pay.

15 43. Under Labor Code § 511 order 14, nonexempt employees are owed one and one-
16 half times the employee’s regular rate of pay for all hours worked over 10 in a workday and for the
17 first eight hours worked on the seventh (7th) consecutive day of work in a workweek, and two
18 times the employee's regular rate of pay for all hours worked over eight on the seventh (7th)
19 consecutive day of work in a workweek.

20 44. Plaintiff and the putative class had a typical work schedule spanning from Monday
21 through Saturday. Occasional, Plaintiff and the putative class would be called in to work on
22 Sunday. Plaintiff and the putative class were not paid twice their rate of pay commencing after the
23 eighth hour of the seventh consecutive day of work in violation of Labor Code § 511 order 14.

24 **Wage Statements**

25 45. Plaintiff and the putative class were not provided with accurate wage statements as
26 mandated by law pursuant to Labor Code § 226.

27 46. Defendants failed to comply with Labor Code 0167 226(a)(1) as “gross wages
28 earned” were not accurately reflected in that all hours worked, including overtime and “off-the-

1 clock” work were not included.

2 47. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours
3 worked by the employee” were not accurately reflected in that all hours worked, including overtime
4 and “off-the-clock” work were not included.

5 48. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages
6 earned” were not accurately reflected in that all hours worked, including overtime and “off-the-
7 clock” work were not included.

8 49. Defendants failed to comply with Labor Code section 226(a)(6) as “the inclusive
9 dates of the period for which the employee is paid” were not included.

10 50. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable
11 hourly rates in effect during the pay period and the corresponding number of hours worked at each
12 hourly rate by the employee” were not accurately reflected in that all hours worked, including
13 overtime and “off-the-clock” work were not included.

14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO PROVIDE MEAL PERIODS**

16 **(Lab. Code §§ 204, 223, 226.7, 512 and 1198)**

17 **(Plaintiff and Meal Period Sub-Class)**

18 51. Plaintiff incorporates by reference the preceding paragraphs as if fully alleged
19 herein.

20 52. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been
21 non-exempt employees of Defendants entitled to the full meal period protections of both the Labor
22 Code and the applicable Industrial Welfare Commission Wage Order (“Wage Order”).

23 53. Labor Code § 512 and § 11 of the applicable Wage Order impose an affirmative
24 obligation on employers to provide non-exempt employees with uninterrupted, duty-free meal
25 periods of at least thirty minutes for each work period of five hours, and to provide them with two
26 uninterrupted, duty-free meal periods of at least thirty minutes for each work period of ten hours.

27 54. Labor Code § 226.7 and § 11 of the applicable Wage Order both prohibit employers
28 from requiring employees to work during required meal periods and require employers to pay non-

1 exempt employees an hour of premium wages on each workday that the employee is not provided
2 with the required meal period.

3 55. Compensation for missed meal periods constitutes wages within the meaning of
4 Labor Code § 200.

5 56. Labor Code § 1198 makes it unlawful to employ a person under conditions that
6 violate the applicable Wage Order.

7 57. Section 11 of the applicable Wage Order states:

8 “No employer shall employ any person for a work period of more than five (5)
9 hours without a meal period of not less than 30 minutes, except that when a
10 work period of not more than six (6) hours will complete the day’s work the
11 meal period may be waived by mutual consent of the employer and employee.
12 Unless the employee is relieved of all duty during a 30 minute meal period, the
13 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.”

14 58. At all relevant times, Plaintiff was not subject to a valid on-duty meal period
15 agreement. Plaintiff is informed and believes that, at all relevant times, **Meal Period Sub-Class**
16 members were not subject to valid on-duty meal period agreements with Defendants.

17 59. Plaintiff alleges that, at all relevant times during the applicable limitations period,
18 Defendants maintained a policy or practice of failing to pay premium wages to **Meal Period Sub-**
19 **Class** members when they worked five (5) hours without clocking out for any meal period.

20 60. Moreover, Defendants’ written policies do not provide that employees must take
21 their first meal period before the end of the fifth hour of work, that employees are entitled to a
22 second meal period if they work a shift of over ten hours, or that the second meal period must
23 commence before the end of the tenth hour of work, unless waived.

24 61. At all relevant times, Defendants failed to pay Plaintiff and the **Meal Period Sub-**
25 **Class** members additional premium wages, and/or were not paid premium wages at the employees’
26 regular rates of pay when required meal periods were not provided.

27 62. Pursuant to Labor Code §§ 204, 218.6 and 226.7, Plaintiff, on behalf of herself and
28 the **Meal Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon, and

1 costs of suit.

2 63. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial
3 benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and the **Meal**
4 **Period Sub-Class** members, seeks to recover reasonable attorneys' fees.

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PROVIDE REST PERIODS**

7 **(Lab. Code §§ 204, 223, 226.7 and 1198)**

8 **(Plaintiff and Rest Period Sub-Class)**

9 64. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

10 65. At all relevant times, Plaintiff and the **Rest Period Sub-Class** members have been
11 non-exempt employees of Defendants entitled to the full rest period protections of both the Labor
12 Code and the applicable Wage Order.

13 66. Section 12 of the applicable Wage Order imposes an affirmative obligation on
14 employers to permit and authorize employees to take required rest periods at a rate of no less than
15 ten minutes of net rest time for each four-hour work period, or major fraction thereof, that must be
16 in the middle of each work period insofar as practicable.

17 67. Labor Code § 226.7 and § 12 of the applicable Wage Order both prohibit employers
18 from requiring employees to work during required rest periods and require employers to pay non-
19 exempt employees an hour of premium wages at the employees' regular rates of pay, on each
20 workday that the employee is not provided with the required rest period(s).

21 68. Compensation for missed rest periods constitutes wages within the meaning of Labor
22 Code § 200.

23 69. Labor Code § 1198 makes it unlawful to employ a person under conditions that
24 violate the Wage Order.

25 70. Plaintiff alleges that, at all relevant times during the applicable limitations period,
26 Defendants maintained a policy or practice of not providing members of the **Rest Period Sub-Class**
27 with net rest period of at least ten minutes for each four-hour work period, or major fraction thereof,
28 as required by the applicable Wage Order.

71. At all relevant times, Defendants failed to pay Plaintiff and the **Rest Period Sub-Class** members additional premium wages when required rest periods were not provided.

72. Specifically, Defendants written policies do not provide that employees may take a rest period for each four hours worked, or major fraction thereof, nor that rest periods should be taken in the middle of each work period insofar as practicable.

73. Pursuant to Labor Code §§ 204, 218.6 and 226.7, Plaintiff, on behalf of herself and **Rest Period Sub-Class** members, seeks to recover unpaid premium wages, interest thereon, and costs of suit.

74. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and **Rest Period Sub-Class** members, seeks to recover reasonable attorneys' fees.

THIRD CAUSE OF ACTION

FAILURE TO PAY HOURLY AND OVERTIME WAGES

(Lab. Code §§ 223, 510, 1194, 1197 and 1198)

(Plaintiff and Hourly Employee Class)

75. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

76. At all relevant times, Plaintiff and **Hourly Employee Class** members are or have been non-exempt employees of Defendants entitled to the full protections of the Labor Code and the applicable Wage Order.

77. Section 2 of the applicable Wage Order defines "hours worked" as "the time during which an employee is subject to the control of the employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

78. Section 4 of the applicable Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that an employer has actual or constructive knowledge that employees are working.

79. Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum or overtime wage required under the applicable Wage Order.

1 80. Labor Code § 1194.2 entitles non-exempt employees to recover liquidated damages
2 in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition to the
3 underlying unpaid minimum wages and interest thereon.

4 81. Labor Code § 1197 makes it unlawful for an employer to pay an employee less than
5 the minimum wage required under the applicable Wage Order for all hours worked during a payroll
6 period.

7 82. Labor Code § 1197.1 provides that it is unlawful for any employer or any other
8 person acting either individually or as an officer, agent, or employee of another person to pay an
9 employee, or cause an employee to be paid, less than the applicable minimum wage.

10 83. Labor Code § 1198 makes it unlawful for employers to employ employees under
11 conditions that violate the applicable Wage Order.

12 84. Labor Code § 204 requires employers to pay non-exempt employees their earned
13 wages for the normal work period at least twice during each calendar month on days the employer
14 designates in advance and to pay non-exempt employees their earned wages for labor performed in
15 excess of the normal work period by no later than the next regular payday.

16 85. Labor Code § 223 makes it unlawful for employers to pay their employees lower
17 wages than required by contract or statute while purporting to pay them legal wages.

18 86. Labor Code § 510 and § 3 of the applicable Wage Order require employers to pay
19 non-exempt employees overtime wages of no less than one and one-half times the employees'
20 respective regular rates of pay for all hours worked in excess of eight hours in one workday, all
21 hours worked in excess of forty hours in one workweek, and for the first eight hours worked on the
22 seventh consecutive day of one workweek.

23 87. Labor Code § 510 and § 3 of the applicable Wage Order also require employers to
24 pay non-exempt employees overtime wages of no less than two times the employees' respective
25 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours
26 worked in excess of eight hours on a seventh consecutive workday during the workweek.

27 88. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
28 centrally devised policies and practices to her and **Hourly Employee Class** members with respect

1 to working conditions and compensation arrangements.

2 89. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**
3 **Employee Class** members for all time worked, including but not limited to, overtime hours at
4 statutory and/or agreed rates.

5 90. At all relevant times, Defendants failed to pay hourly wages to Plaintiff for all time
6 worked, including but not limited to, overtime wages at statutory and/or agreed rates by suffering or
7 permitting her to work off-the-clock while putting on and taking off protective and/or sanitary gear
8 over her clothing.

9 91. Plaintiff is informed and believes that, at all relevant times during the applicable
10 limitations period, Defendants maintained a policy or practice of not paying hourly wages to
11 **Hourly Employee Class** members for all time worked, including but not limited to overtime wages,
12 at statutory and/or agreed rates by suffering or permitting them to work off-the-clock while putting
13 on and taking off protective and/or sanitary gear over their clothing.

14 92. During the relevant time period, Defendants failed to pay Plaintiff and **Hourly**
15 **Employee Class** members all earned wages every pay period at the correct rates, including
16 overtime rates, because Defendants directed, permitted, or otherwise encouraged Plaintiff and
17 **Hourly Employee Class** members to perform off-the-clock work.

18 93. As a result of Defendants' unlawful conduct, Plaintiff and **Hourly Employee Class**
19 members have suffered damages in an amount subject to proof, to the extent they were not paid the
20 full amount of wages earned during each pay period during the applicable limitations period,
21 including overtime wages.

22 94. Pursuant to Labor Code §§ 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiff, on
23 behalf of herself and **Hourly Employee Class** members, seeks to recover unpaid straight time and
24 overtime wages, interest thereon, and costs of suit.

25 95. The regular rate of pay under California law includes all remuneration for
26 employment paid, on behalf of the employer, to the employee. This requirement includes but is not
27 limited to, commissions, mandatory service charges, non-discretionary bonuses and shift differential
28 pay.

1 96. During the applicable limitations period, Defendants violated the rights of Plaintiff
2 and **Hourly Employee Class** members under the above-referenced Labor Code sections by failing
3 to pay them overtime wage premiums, meal period premiums, rest period premiums, and sick pay
4 for all overtime hours worked in violation of Labor Code §§ 226.7, 246, 510, 1194, and 1198 as a
5 result of not correctly calculating their regular rate of pay to include all applicable remuneration,
6 including, but not limited to, commissions, mandatory service charges, non-discretionary bonuses
7 and shift differential pay.

8 97. California law uses the terms “compensation” and “pay” interchangeably and
9 requires that all applicable remuneration, including but not limited to, overtime premiums, meal
10 period premiums, rest period premiums, sick pay, commissions, non-discretionary bonuses, tips
11 and/or shift-differential pay, etc., be included when calculating an employee’s regular rate of pay.

12 98. At all relevant times, Defendants paid Plaintiff premium wages based on a rate of
13 compensation that did not reflect, among other things, commissions, non-discretionary bonuses,
14 shift differential pay, etc. as required by Labor Code § 226.7(b) and §§ 11 and 12 of the applicable
15 Wage Order on the occasions when Defendants paid her premium wages in lieu of meal and/or rest
16 periods.

17 99. Plaintiff is informed and believes, and thereupon alleges, that, at all relevant times
18 during the applicable limitations period, Defendants maintained a policy or practice of paying
19 **Hourly Employee Class** members premium wages based on rates of compensation that have not
20 reflected commissions, non-discretionary bonuses, shift differential pay, etc. as required by Labor
21 Code § 226.7(b) and §§ 11 and 12 of the applicable Wage Order on the occasions when Defendants
22 paid them premium wages in lieu of meal and/or rest periods.

23 100. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial
24 benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and **Hourly**
25 **Employee Class** members, seeks to recover reasonable attorneys’ fees.

26 **FOURTH CAUSE OF ACTION**

27 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

28 **(Lab. Code § 226)**

(Plaintiff and Wage Statement Penalties Sub-Class)

101. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

102. Labor Code § 226(a) states:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, 'copy' includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

103. The Division of Labor Standards Enforcement ("DLSE") has sought to harmonize the "detachable part of the check" provision and the "accurate itemized statement in writing" provision of Labor Code section 226(a) by allowing for electronic wage statements so long as each employee retains the right to elect to receive a written paper stub or record and that those who are provided with electronic wage statements retain the ability to easily access the information and convert the electronic statements into hard copies at no expense to the employee. (DLSE Opinion Letter July 6, 2006.)

104. Plaintiff is informed and believes that, at all relevant times during the applicable limitations period, Defendants have failed to provide **Wage Statement Penalties Sub-Class** members with written wage statements as described above.

105. Plaintiff is informed and believes that Defendants' failure to provide her and **Wage Statement Penalties Sub-Class** members with accurate written wage statements were intentional in

1 that Defendants had the ability to provide them with accurate wage statements but had intentionally
2 provided them with written wage statements that Defendants knew do not comply with Labor Code
3 § 226(a).

4 106. Plaintiff and **Wage Statement Penalties Sub-Class** members have suffered injuries,
5 in that Defendants have violated Plaintiff's and **Wage Statement Penalties Sub-Class** members'
6 legal rights to receive accurate wage statements and have misled them about their actual rates of pay
7 and wages earned. In addition, inaccurate information on their wage statements have prevented
8 immediate challenges to Defendants' unlawful pay practices, has required discovery and
9 mathematical computations to determine the amount of wages owed, has caused difficulty and
10 expense in attempting to reconstruct time and pay records, and/or has led to the submission of
11 inaccurate information about wages and deductions to federal and state government agencies.

12 107. Pursuant to Labor Code § 226(e), Plaintiff, on behalf of herself and **Wage Statement**
13 **Penalties Sub-Class** members, seeks the greater of actual damages or fifty dollars (\$50.00) for the
14 initial pay period in which a violation of Labor Code section 226(a) occurred and one hundred
15 dollars (\$100.00) for each subsequent pay period in which a violation of Labor Code § 226(a)
16 occurred, not to exceed an aggregate penalty of four thousand dollars (\$4,000.00) per class member.

17 108. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or
18 the common fund doctrine, Plaintiff, on behalf of herself and **Wage Statement Penalties Sub-**
19 **Class** members, seek awards of reasonable attorneys' fees and costs.

20 **FIFTH CAUSE OF ACTION**

21 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

22 **(Lab. Code §§ 201–203)**

23 **(Plaintiff and Waiting Time Penalties Sub-Class)**

24 109. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

25 110. At all relevant times, Plaintiff and **Waiting Time Penalties Sub-Class** members
26 have been entitled, upon the end of their employment with Defendants, to timely payment of all
27 wages earned and unpaid before termination or resignation.

28 111. At all relevant times, pursuant to Labor Code § 201, employees who have been

1 discharged have been entitled to payment of all final wages immediately upon termination.

2 112. At all relevant times, pursuant to Labor Code § 202, employees who have resigned
3 after giving at least seventy-two (72) hours' notice of resignation have been entitled to payment of
4 all final wages at the time of resignation.

5 113. At all relevant times, pursuant to Labor Code § 202, employees who have resigned
6 after giving less than seventy-two (72) hours' notice of resignation have been entitled to payment of
7 all final wages within seventy-two (72) hours' of giving notice of resignation.

8 114. During the applicable limitations period, Defendants failed to pay Plaintiff all of her
9 final wages in accordance with the Labor Code by failing to timely pay her all her final wages.

10 115. Plaintiff is informed and believes that, at all relevant times during the applicable
11 limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class**
12 members all of their final wages in accordance with the Labor Code.

13 116. Plaintiff is informed and believes that, at all relevant times during the applicable
14 limitations period, Defendants have maintained a policy or practice of paying **Waiting Time**
15 **Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code
16 §§ 201 or 202 by failing to timely pay them all final wages.

17 117. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to
18 timely pay all final wages to her and **Waiting Time Penalties Sub-Class** members have been
19 willful in that Defendants have the ability to pay final wages in accordance with Labor Code §§ 201
20 and/or 202 but have intentionally adopted policies or practices that are incompatible with those
21 requirements.

22 118. Pursuant to Labor Code §§ 203 and 218.6, Plaintiff, on behalf of herself and **Waiting**
23 **Time Penalties Sub-Class** members, seeks waiting time penalties from the respective dates that
24 their final wages had first become due until paid, up to a maximum of thirty days, and interest
25 thereon.

26 119. Pursuant to Labor Code § 226, Code of Civil Procedure § 1021.5, the substantial
27 benefit doctrine and/or the common fund doctrine, Plaintiff, on behalf of herself and **Waiting Time**
28 **Penalties Sub-Class** members, seek awards of reasonable attorneys' fees and costs.

1 **SIXTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(Bus. & Prof. Code §§ 17200 *et seq.*)**

4 **(Plaintiff and UCL Class)**

5 120. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

6 121. Business and Professions Code § 17200 defines “unfair competition” to include any
7 unlawful business practice.

8 122. Business and Professions Code §§ 17203–17204 allow a person who has lost money
9 or property as a result of unfair competition to bring a class action in accordance with Code of Civil
10 Procedure § 382 to recover money or property that may have been acquired from similarly situated
11 persons by means of unfair competition.

12 123. California law requires employers to pay hourly, non-exempt employees for all hours
13 they are permitted or suffered to work, including hours that the employer knows or reasonably
14 should know that employees have worked.

15 124. Plaintiff, on behalf of herself and the **UCL Class** members, re-alleges and
16 incorporates the FIRST, SECOND, and THIRD causes of action herein.

17 125. Plaintiff lost money and/or property as a result of the aforementioned unfair
18 competition.

19 126. Defendants have or may have acquired money by means of unfair competition.

20 127. Plaintiff is informed and believes and thereupon alleges that, by committing the
21 Labor Code violations described in this Complaint, Defendants violated Labor Code §§ 226.6, 354,
22 553, 1175, 1199 and 2802. Defendants thus committed misdemeanors by violating the Labor Code
23 as alleged herein.

24 128. Defendants have committed criminal conduct through their policies and practices of,
25 *inter alia*, failing to comport with their affirmative obligations as an employer to provide non-
26 exempt employees with uninterrupted, duty-free meal periods of at least thirty minutes for each
27 work period of five or more hours, by failing to pay non-exempt employees for all hours worked,
28 and failing to provide non-exempt employees 10 minute rest periods for every 4 hours worked.

1 129. At all relevant times, Plaintiff and **UCL Class** members have been non-exempt
2 employees and entitled to the full protections of both the Labor Code and the applicable Wage
3 Order.

4 130. Defendants' unlawful conduct as alleged in this Complaint amounts to and
5 constitutes unfair competition within the meaning of Business and Professions Code section 17200
6 *et sequitur*. Business and Professions Code §§ 17200 *et sequitur* protect against unfair competition
7 and allow a person who has suffered an injury-in-fact and has lost money or property as a result of
8 an unfair, unlawful, or fraudulent business practice to seek restitution on behalf of herself and on
9 behalf of similarly situated persons in a class-action proceeding.

10 131. As a result of Defendants' violations of the Labor Code during the applicable
11 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
12 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants'
13 conduct.

14 132. Plaintiff is informed and believes that other similarly situated persons have been
15 subject to the same unlawful policies or practices of Defendants.

16 133. Due to the unfair and unlawful business practices in violation of the Labor Code,
17 Defendants have gained a competitive advantage over other comparable companies doing business
18 in the State of California that comply with their legal obligations.

19 134. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive
20 relief for "any unlawful, unfair or fraudulent business act or practice," including a practice or act
21 that violates, or is considered unlawful under, any other state or federal law.

22 135. Accordingly, pursuant to Business & Professions Code §§ 17200 and 17203,
23 Plaintiff requests the issuance of temporary, preliminary, and permanent injunctive relief enjoining
24 Defendants, and each of them, and their agents and employees, from further violations of the Labor
25 Code and applicable Industrial Welfare Commission Wage Orders, and upon a final hearing, an
26 order permanently enjoining Defendants, and each of them, and their respective agents and
27 employees, from further violations of the Labor Code and applicable Industrial Welfare
28 Commission Wage Orders.

1 136. Pursuant to Business and Professions Code § 17203, Plaintiff, on behalf of herself
2 and **UCL Class** members, seeks declaratory relief and restitution of all monies rightfully belonging
3 to them that Defendants did not pay them or otherwise retained by means of its unlawful and unfair
4 business practices.

5 137. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or
6 the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover reasonable
7 attorneys' fees in connection with their unfair competition claims.

8 **SEVENTH CAUSE OF ACTION**

9 **CIVIL PENALTIES**

10 **(Lab. Code §§ 2698 *et seq.*)**

11 138. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

12 139. During the applicable limitations period, Defendants have violated Labor Code §§
13 201, 202, 203, 204, 223, 226(a), 226.7, 227.3, 510, 512, 1194, 1197, 1198, and 2802.

14 140. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of
15 herself and other current and former employees, to bring a representative civil action to recover
16 civil penalties pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not,
17 be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

18 141. Plaintiff, a former employee against whom Defendants committed one or more of the
19 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
20 within the meaning of Labor Code § 2699(c).

21 142. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
22 § 2699.3. Notice was provided to the California Labor & Workforce Development Agency
23 ("LWDA") and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an
24 intent to investigate.

25 143. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
26 penalties for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7,
27 227.3, 510, 512, 1194, 1197, 1198 and 2802:

28 i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 227.3, 1194, 1198

1 and 2802, one hundred dollars (\$100) for each employee per pay period for
2 each initial violation and two hundred dollars (\$200) for each employee per
3 pay period for each subsequent violation (penalties set by Labor Code §
4 2699(f)(2));

5 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding
6 thirty (30) days' pay as waiting time (penalties set by Labor Code § 256);

7 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each
8 employee for each initial violation that was neither willful nor intentional,
9 two hundred dollars (\$200) for each employee, plus 25% of the amount
10 unlawfully withheld from each employee, for each initial violation that was
11 either willful or intentional, and two hundred dollars (\$200) for each
12 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
13 from each employee, for each subsequent violation, regardless of whether the
14 subsequent violation was either willful or intentional (penalties set by Labor
15 Code § 210);

16 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
17 employee for each initial violation that was neither willful nor intentional,
18 two hundred dollars (\$200) for each employee, plus twenty-five percent
19 (25%) of the amount unlawfully withheld from each employee, for each
20 initial violation that was either willful or intentional, and two hundred dollars
21 (\$200) for each employee, plus twenty-five percent (25%) of the amount
22 unlawfully withheld from each employee, for each subsequent violation,
23 regardless of whether the subsequent violation was either willful or
24 intentional (penalties set by Labor Code § 225.5);

25 v. For violations of Labor Code § 226(a), if this action is deemed to be an initial
26 citation, two hundred and fifty dollars (\$250) for each employee for each
27 violation. Alternatively, if an initial citation or its equivalent occurred before
28 the filing of this action, one thousand dollars (\$1,000) for each employee for

each violation (penalties set by Labor Code § 226.3);

- vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each employee for each initial pay period for which the employee was underpaid, and one hundred dollars (\$100) for each employee for each subsequent pay period for which the employee was underpaid (penalties set by Labor Code § 558);
- vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each aggrieved employee for each initial violation of Labor Code § 1197 that was intentional and two hundred and fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation of Labor Code § 1197, regardless of whether the initial violation was intentional (penalties set by Labor Code § 1197.1);
- viii. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable attorneys' fees and costs in connection with Plaintiff's claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself, all others similarly situated, and the general public, prays for relief and judgment against Defendants as follows:

- (1) An order that the action be certified as a class action;
- (2) An order that Plaintiff be appointed class representative;
- (3) An order that counsel for Plaintiff be appointed class counsel;
- (4) Unpaid wages;
- (5) Actual damages;
- (6) Liquidated damages;
- (7) Restitution;
- (8) Declaratory relief;
- (9) Pre-judgment interest;
- (10) Statutory penalties;

- (11) Civil penalties;
- (12) Costs of suit;
- (13) Reasonable attorneys' fees; and
- (14) Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself, all other similarly situated, and the general public, hereby demands a jury trial on all issues so triable.

Dated: January 5, 2024

SETAREH LAW GROUP

/s/ Thomas Segal

SHAUN SETAREH
THOMAS SEGAL
FARRAH GRANT
Attorneys for Plaintiff
LAURA CARRANZA

I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 9665 Wilshire Blvd., Suite 430 Beverly Hills, CA 90212.

FIRST AMENDED COMPLAINT

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Executed on January 5, 2024, at Beverly Hills, California.


Diana Maytorena