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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

CELIA SANTACRUZ SOSA, as an
individual, EFREN SANTACRUZ, as an
individual, and on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

DTF PREP, LLC, a California limited liability
company; and DOES 1 through 100, inclusive,

Defendants.

FILED
Superior Court of California
County of Los Angeles

12/08/2023

David W. Slayton, Executive Officer / Clerk of Court

By: R. Lozano Deputy

Case No. 23STCV23736

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

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

- (1) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);**
- (2) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194, AND
1198);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7 AND 512);**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516);**
- (5) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (6) **WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, *et seq.*);**
- (7) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200, *et seq.*);**
- (8) **FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENSES (LABOR CODE § 2802);
AND**

(9) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiffs Celia Santacruz Sosa and Efren Santacruz (hereinafter “Plaintiffs”), on behalf
2 of themselves and all others similarly situated, hereby bring this First Amended Class and
3 Representative Action Complaint against DTF Prep, LLC; and DOES 1 to 100, inclusive
4 (collectively “Defendants”), and on information and belief allege as follows:

5 **JURISDICTION**

6 1. Plaintiffs hereby bring this First Amended Class and Representative Action
7 Complaint for recovery of unpaid wages and penalties under California Business and Professions
8 Code § 17200 *et seq.*, Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 516, 558, 1182.12, 1194,
9 1194.2, 1197, 1198, 2802, 2698 *et seq.*, and Industrial Welfare Commission Wage Order 1
10 (“Wage Order 1”), in addition to seeking declaratory relief and restitution. This Complaint is
11 brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over
12 Defendants’ violations of the California Labor Code because the amount in controversy exceeds
13 this Court's jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to California Code of Civil
16 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
17 occurred in the County of Los Angeles. Defendants own, maintain offices, transact business, have
18 an agent or agents within the County of Los Angeles, and/or otherwise are found within the
19 County of Los Angeles, and Defendants are within the jurisdiction of this Court for purposes of
20 service of process.

21 **PARTIES**

22 3. Plaintiffs are each individuals over the age of eighteen (18). At all relevant times
23 herein, Plaintiffs were and currently are California residents. During the four years immediately
24 preceding the filing of the Complaint in this action and within the statute of limitations periods
25 applicable to each cause of action pled herein, Plaintiffs were employed by Defendants as non-
26 exempt employees. Plaintiffs were and are victims of Defendants’ policies and/or practices
27 complained of herein, lost money and/or property, and have been deprived of the rights
28 guaranteed by Labor Code 201-204, 226 *et seq.*, 226.7, 510, 516, 558, 1182.12, 1194, 1194.2,

1 1197, 1198, 2802, 2698 *et seq.*, California Business and Professions Code § 17200 *et seq.* (“Unfair
2 Competition Law”), and Wage Order 1, which sets employment standards for occupations in
3 construction.

4 4. Plaintiffs are informed and believe, and based thereon allege, that during the four
5 years preceding the filing of the Complaint and continuing to the present, Defendants did (and
6 continue to do) business by providing food manufacturing/preparation services in California and
7 the United States, employed Plaintiffs within Los Angeles County and the state of California and,
8 therefore, were (and are) doing business in Los Angeles County and the State of California.

9 5. Plaintiffs do not know the true names or capacities, whether individual, partner, or
10 corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
11 defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to
12 amend this Complaint when such true names and capacities are discovered. Plaintiffs are
13 informed, and believe, and based thereon allege, that each of said fictitious defendants, whether
14 individual, partners, or corporate, were responsible in some manner for the acts and omissions
15 alleged herein, and proximately caused Plaintiffs and the Classes (as defined herein) to be
16 subjected to the unlawful employment practices, wrongs, injuries and damages complained of
17 herein.

18 6. Plaintiffs are informed, and believe, and thereon allege, that at all times mentioned
19 herein, Defendants were and are the employers of Plaintiffs and all members of the Classes.

20 7. At all times herein mentioned, each of said Defendants participated in the doing
21 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
22 Defendants, and each of them, were the agents, servants, and employees of each and every one of
23 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
24 were acting within the course and scope of said agency and employment. Defendants, and each
25 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
26 omissions complained of herein.

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

1 and scope of, and in pursuance of said joint venture, partnership, and common enterprise. Further,
2 Plaintiffs allege that all Defendants were joint employers for all purposes towards Plaintiffs and
3 all members of the Classes.

4 **GENERAL FACTUAL ALLEGATIONS**

5 9. Plaintiff Celia Santacruz worked for Defendants as a food preparer and packager
6 between approximately May 2018 and approximately February 5, 2022 when she went on
7 temporary disability. Defendants are in the business of food manufacture/preparation of
8 dumplings, noodles and raw dumpling fillings in particular. Plaintiff Celia Santacruz's job
9 responsibilities included slicing beef and vegetables, packaging them and freezing them. Plaintiff
10 Celia Santacruz was generally scheduled to work five days per week, most recently from Tuesday
11 to Saturday from approximately 5:00 a.m. until approximately 12:30 p.m. or 1:30 p.m. Between
12 approximately 2018 and 2020, Plaintiff Celia Santacruz was generally scheduled to work five
13 days per week, Wednesday through Saturday and on Mondays, from approximately 8:00 a.m. to
14 approximately 5:00 p.m.

15 10. Plaintiff Efren Santacruz worked for Defendants as a dishwasher between
16 approximately 2018 and approximately July 2023 when he took disability leave due to a work
17 injury. Plaintiff Efren Santacruz was a dishwasher. Prior to his work injury, Plaintiff Efren
18 Santacruz was generally scheduled to work five days per week, Tuesday to Saturday, from
19 approximately 6:00 a.m. to 2:00 p.m. Between approximately 2018 and 2020, Plaintiff Efren
20 Santacruz was generally scheduled to work six days per week, Friday to Wednesday, 6:00 a.m.
21 to 3:00 p.m. and beyond, from approximately eight (8) to approximately twelve (12) hours per
22 day.

23 11. Plaintiffs and other non-exempt employees were not paid for all hours worked,
24 including overtime hours worked.

25 12. Plaintiffs and other non-exempt employees had to perform work for approximately
26 ten (10) to fifteen (15) minutes prior to clocking in on each work day. During this time, prior to
27 clocking in, Plaintiffs and other non-exempt employees had to put on their work coats, their work
28 hats, their work boots, work gloves, pass through an air curtain, wash their hands and wait in line

1 to clock in. Defendants instructed Plaintiffs and other non-exempt employees not to clock in
2 before their scheduled start times. Plaintiffs and other non-exempt employees had to wait until
3 after clocking out for their meal periods to remove their work hats, work boots work gloves and
4 work coats. Plaintiffs and other non-exempt employees also spent approximately 2 to 5 minutes
5 cleaning their work boots every day after the work day and after clocking out.

6 13. Furthermore, Plaintiffs and other non-exempt employees were not authorized to
7 take their full legally required 10-minute rest periods. During the-10 minute rest periods,
8 Plaintiffs and other non-exempt employees were expected to take off their work boots, work hats,
9 work gloves and work coats and to put them back on and wash their hands before the 10 minutes
10 were over. Between 2021 and 2022, Plaintiff Celia Santacruz and other non-exempt employees
11 did not receive a second 10-minute rest period. Defendants never provided Plaintiffs and other
12 non-exempt employees with an hour of pay at their regular rate for each rest period violation as
13 required by Labor Code § 226.7. Upon information and belief, during at least a portion of the
14 class period, Defendants maintained no payroll code or another mechanism for the payment of
15 rest period premiums in the event Plaintiffs and other non-exempt employees were not authorized
16 to take lawful rest periods.

17 14. Defendants also did not provide Plaintiffs and other non-exempt employees with
18 a legally compliant first meal period when they worked shifts in excess of 5.0 hours or a legally
19 compliant second meal period when they worked shifts longer than 10 hours. For example, during
20 the 30-minute meal period, after clocking out, Plaintiffs and other non-exempt employees were
21 expected to wait in line, take off their work boots, work hats, work gloves and work coats, and to
22 put them back on, wash their hands and wait in line prior to clocking in. Plaintiffs were almost
23 never permitted to exercise their right to second meal periods on days when they worked longer
24 than ten (10) hours. Defendants did not provide Plaintiffs and other non-exempt employees with
25 an hour of pay at their regular rate for each meal period violation as required by Labor Code §
26 226.7. Upon information and belief, during at least a portion of the class period, Defendants
27 maintained no payroll code or another mechanism for the payment of meal period premiums in
28

1 the event Plaintiffs and other non-exempt employees were not authorized to take lawful meal
2 periods.

3 15. Plaintiff Celia Santacruz's last day worked was on or about February 5, 2022, prior
4 to taking disability leave. Plaintiff Efren Santacruz's last day worked was in or around July 2023,
5 prior to taking disability leave. Plaintiffs have not received their final paychecks.

6 16. Furthermore, Defendants failed to adequately reimburse Plaintiffs and other non-
7 exempt employees for all reasonable and necessary work expenditures, including but not limited
8 to, requiring Plaintiffs and other non-exempt employees to purchase additional work hats beyond
9 the initial work-issued hat.

10 17. Defendants failed to issue to Plaintiffs and other non-exempt employees accurate
11 itemized statements in writing showing (1) gross wages earned, (2) total hours worked by the
12 employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee
13 is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written
14 orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
15 inclusive dates of the period for which the employee is paid, (7) the name of the employee and
16 only the last four digits of his or her social security number or an employee identification number
17 other than a social security number, (8) the name and address of the legal entity that is the
18 employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding
19 number of hours worked at each hourly rate by the employee.

20 18. Defendants have maintained inaccurate payroll records, failed to timely pay all
21 wages owed to employees, and failed to timely pay separating employees at the time of their
22 separation, and issued inaccurate wage statements. This is in part a result of Defendants' failure
23 to accurately compensate Plaintiffs and other non-exempt employees for all minimum and
24 overtime wages, and failure to pay premium pay for failing to provide all required meal periods
25 and authorize all required rest periods.

26 19. Finally, Defendants failed to conform to the requirements of Labor Code § 2810.5
27 by failing to provide Plaintiffs and other aggrieved employees written notices, in the language
28

1 normally used to communicate employment related information to the employees, containing
2 information regarding their: i) rate(s) of pay and the basis thereof; ii) allowances claimed as part
3 of the minimum wage; iii) regular payday designated by the employer; iv) the legal name of the
4 employer; v) the address of the legal entity that is the employer; vi) the telephone number of the
5 employer; vii) identifying information for the employer's workers' compensation insurance
6 carrier; and viii) information informing the employee of their right to accrue and use paid sick
7 leave. Despite maintaining an obligation to provide these disclosures to Plaintiffs and other
8 aggrieved employees, Defendants failed to do so, in violation of Labor Code § 2810.5.

9
10 **CLASS ACTION ALLEGATIONS**

11 20. **Class Definitions:** Plaintiffs bring this action on behalf of themselves and the
12 following Classes pursuant to § 382 of the Code of Civil Procedure:

- 13 a. The Minimum Wage Class consists of all current and former non-exempt
14 employees of Defendants in California who were subject to Defendants'
15 timekeeping systems and/or practices, during the four years immediately
16 preceding the filing of this lawsuit through the present.
- 17 b. The Overtime Wage Class consists of all current and former non-exempt
18 employees of Defendants in California who worked overtime hours and were
19 subject to Defendants' timekeeping systems and/or practices, during the four years
20 immediately preceding the filing of this lawsuit through the present
- 21 c. The Rest Period Class consists of all current and former non-exempt employees of
22 Defendants in California who worked at least one shift in excess of 3.5 hours
23 during the four years immediately preceding the filing of this lawsuit through the
24 present.
- 25 d. The Meal Period Class consists of all current and former non-exempt employees
26 of Defendants who performed work in California and: (i) worked at least one shift
27 in excess of 5.0 hours without a meal period of at least 30 minutes in duration
28 commencing prior to the conclusion of the fifth hour of work, and who do not have

a corresponding meal period premium payment made for such shifts and/or (ii) worked at least one shift in excess of 10.0 hours while performing work for Defendants in California without a second meal period of at least 30 minutes in duration commencing prior to the conclusion of the tenth hour of work, and who do not have a corresponding meal period premium payment made for such shifts during the four years preceding the filing of this lawsuit through the present.

e. The Wage Statement Class consists of all members of all current and former non-exempt employees of Defendants in California who received a wage statement from Defendants during the one year immediately preceding the filing of this lawsuit through the present.

f. The Waiting Time Class consists of all of Defendants' formerly employed non-exempt employees in California who were subject to Defendants' timekeeping systems and/or practices, during the three years immediately preceding the filing of this lawsuit through the present.

g. The Employee Expense Class consists of all current and former non-exempt employees of Defendants who performed work in California who were not reimbursed for expenses in the performance of their job duties, including but not limited to work shoes, pants, shirts, hammers, measuring tape, pliers and mileage, during the four years immediately preceding the filing of this lawsuit to the present.

21. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiffs at this time; however, it is estimated that the members of the Classes number greater than two hundred (200) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

22. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiffs and all other similarly

1 situated employees, which predominate over questions affecting only individual members. Those
2 common questions include, without limitation:

- 3 i. Whether Defendants paid all minimum wages owed for all hours worked to
4 members of the Minimum Wage Class pursuant to Labor Code §§ 118.2, 1194,
5 1194.2, and 1197;
- 6 ii. Whether Defendants violated the applicable Labor Code provisions, including, but
7 not limited to, §§ 510 and 1194 and Wage Order 1 by requiring members of the
8 Overtime Wage Class to perform overtime work and not paying for said work in
9 accordance with the overtime laws of the State of California;
- 10 iii. Whether Defendants' timekeeping policies/practices resulted in the failure to
11 properly compensate members of the Minimum Wage Class;
- 12 iv. Whether Defendants provided all legally compliant meal periods to members of
13 the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- 14 v. Whether Defendants provided all legally compliant rest periods to members of the
15 Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- 16 vi. Whether Defendants provided accurate, itemized wage statements to members of
17 the Classes; and
- 18 vii. Whether Defendants' policies and/or practices for the timing and amount of
19 payment of final wages to members of the Waiting Time Class at the time of
20 separation from employment were lawful.
- 21 viii. Whether Defendants failed to reimburse members of the Employee Expense Class
22 for business expenditures necessarily incurred in the performance of their duties;
- 23

24 **23. Predominance of Common Questions:** Common questions of law and fact
25 predominate over questions that affect only individual members of the Classes. The common
26 questions of law set forth above are numerous and substantial and stem from Defendants' policies
27 and/or practices applicable to each individual class member, such as Defendants' uniform
28 timekeeping policies and practices, meal and rest period policies and practices, wage statement

1 policies and practices, and the policies and practices regarding the timely payment of final wages.
2 As such, the common questions predominate over individual questions concerning each
3 individual class member's showing as to his or her eligibility for recovery or as to the amount of
4 his or her damages.

5 24. **Typicality:** The claims of Plaintiffs are typical of the claims of the Classes because
6 Plaintiffs were employed by Defendants as non-exempt employees in California during the
7 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged
8 herein, Plaintiffs, like the members of the Classes, were subject to Defendants' meal/rest period
9 and timekeeping policies and practices, were provided inaccurate wage statements, and were not
10 paid all wages earned at the time of his separation of employment.

11 25. **Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary
12 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,
13 Plaintiffs' attorneys are ready, willing and able to fully and adequately represent the members of
14 the Classes and Plaintiffs. Plaintiffs' attorneys have prosecuted and defended numerous wage-
15 and-hour class actions in state and federal courts in the past and are committed to vigorously
16 prosecuting this action on behalf of the members of the Classes.

17 26. **Superiority:** The California Labor Code is broadly remedial in nature and serves
18 an important public interest in establishing minimum working conditions and standards in
19 California. These laws and labor standards protect the average working employee from
20 exploitation by employers who have the responsibility to follow the laws and who may seek to
21 take advantage of superior economic and bargaining power in setting onerous terms and
22 conditions of employment. The nature of this action and the format of laws available to Plaintiffs
23 and members of the Classes make the class action format a particularly efficient and appropriate
24 procedure to redress the violations alleged herein. If each employee were required to file an
25 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
26 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
27 their vastly superior financial and legal resources. Moreover, requiring each member of the
28

Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes (as defined herein) are maintainable as a Class under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

27. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

28. Wage Order 1, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiffs and the Minimum Wage Class for all hours actually worked including, but not limited to, all hours he was subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code

1 and Wage Order 1.

2 29. California Labor Code § 1198 makes unlawful the employment of an employee
3 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
4 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
5 those employees the balance of the unpaid wages as well as liquidated damages in an amount
6 equal to the wages due and interest thereon.

7 30. As a direct and proximate result of Defendants' unlawful conduct as alleged
8 herein, Plaintiffs and the Minimum Wage Class have sustained economic damages, including but
9 not limited to, unpaid wages and lost interest in an amount to be established at trial, and are
10 entitled to recover economic and statutory damages and penalties and other appropriate relief as
11 a result of Defendants' violations of the California Labor Code and Wage Order 1.

12 31. Defendants' practice and uniform administration of corporate policy regarding
13 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiffs
14 and the Minimum Wage Class in a civil action for the unpaid amount of minimum wages,
15 liquidated damages, including interest thereon, statutory penalties, and attorneys' fees and costs
16 of suit according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198 and Code of
17 Civil Procedure § 1021.5.

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO PAY ALL OVERTIME WAGES**

20 **(AGAINST ALL DEFENDANTS)**

21 32. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

22 33. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
23 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
24 overtime hours worked, and provide a private right of action for the failure to pay all overtime
25 compensation for overtime work performed.

26 34. At all times relevant herein, Defendants were required to properly compensate
27 Plaintiffs and members of the Overtime Class for all overtime hours worked pursuant to California
28 Labor Code § 1194 and Wage Order 1. Wage Order 1, § 3 requires an employer to pay overtime

1 wages when an employee's hours worked cross certain thresholds or meet certain criteria set forth
2 in the Wage Order.

3 35. The foregoing policies and practices are unlawful and create entitlement to
4 recovery by Plaintiffs and the Overtime Class in a civil action for the unpaid amount of overtime
5 premiums owing, including interest thereon, statutory penalties, and attorneys' fees and costs of
6 suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order 1, and
7 Code of Civil Procedure § 1021.5.

8 **THIRD CAUSE OF ACTION**

9 **MEAL PERIOD VIOLATIONS**

10 **(AGAINST ALL DEFENDANTS)**

11 36. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

12 37. Plaintiffs are informed and believe, and based thereon allege, that Defendants
13 failed in their affirmative obligation to provide all of their non-exempt employees in California,
14 including Plaintiffs and members of the Meal Period Class with all legally compliant meal periods
15 in accordance with the mandates of the California Labor Code and Wage Order 1, § 11. Despite
16 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiffs and the
17 Meal Period Class at their respective regular rate of pay, in accordance with California Labor
18 Code §§ 204, 210, 226.7, and 512.

19 38. As a result, Defendants are responsible for paying premium compensation for meal
20 period violations including interest thereon, as well as statutory penalties, civil penalties, and
21 costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 1, and Civil Code §§
22 3287(b) and 3289.

23 **FOURTH CAUSE OF ACTION**

24 **REST PERIOD VIOLATIONS**

25 **(AGAINST ALL DEFENDANTS)**

26 39. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

27 40. Wage Order 1, § 11 and California Labor Code §§ 226.2, 226.7 and 516 establish
28 the right of employees to be authorized and permitted to take a paid rest period of at least ten (10)

1 minutes net rest time for each four (4) hour period worked, or major fraction thereof.

2 41. As alleged herein, Defendants failed to authorize and permit Plaintiffs and
3 members of the Rest Period Class to take all legally compliant rest periods.

4 42. The foregoing violations create an entitlement to recovery by Plaintiffs and
5 members of the Rest Period Class in a civil action for the unpaid rest period wages and the amount
6 of rest period premiums owing, including interest thereon, as well as statutory penalties, civil
7 penalties, and costs of suit according to California Labor Code §§ 226.7, 516, and Civil Code §§
8 3287(b) and 3289.

9 **FIFTH CAUSE OF ACTION**

10 **WAITING TIME PENALTIES**

11 **(AGAINST ALL DEFENDANTS)**

12 43. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

13 44. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
14 an employer to pay all wages immediately at the time of termination of employment in the event
15 the employer discharges the employee or the employee provides at least 72 hours of notice of
16 his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her
17 intent to quit, said employee's wages become due and payable not later than 72 hours upon said
18 employee's last date of employment.

19 45. Defendants failed to timely pay Plaintiffs and members of the Waiting Time Class
20 all final wages due to them at the time of their separation including, among other things, unpaid
21 and/or underpaid overtime and minimum wages owed, and meal and rest period premium wages.
22 Further, Plaintiffs are informed and believe, and based thereon allege, that as a matter of uniform
23 policy and practice, Defendants continue to fail to pay members of the Waiting Time Class all
24 earned wages at the end of employment in a timely manner pursuant to the requirements of Labor
25 Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of
26 Labor Code § 203.

27 46. Defendants' willful failure to timely pay Plaintiffs and the Waiting Time Class
28 their earned wages upon separation from employment results in a continued payment of wages

up to thirty (30) days from the time the wages were due. Therefore, Plaintiffs and the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

SIXTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

47. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

48. Plaintiffs are informed and believe, and based thereon allege, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiffs and the Wage Statement Class with complete and accurate wage statements reflecting the meal & rest period premiums in violation of Labor Code § 226 et seq.

49. Defendants' failures in furnishing Plaintiffs and the Wage Statement Class with complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all minimum and overtime wages, meal and rest period premium wages, and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

50. Defendants' failures create an entitlement to recovery by Plaintiffs and the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226 et seq., including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit according to California Labor Code § 226 et seq.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

51. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

52. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 et seq., by failing to pay Plaintiffs and the Classes all minimum and overtime wages, failing to provide all required meal and rest periods, or pay premium payments in lieu thereof, failing to

1 furnish accurate, itemized wage statements, and willfully failing to timely pay Plaintiffs and
2 members of the Waiting Time class all final wages due upon separation of employment.

3 53. Defendants' utilization of these unfair and/or unlawful business practices deprived
4 Plaintiffs and continues to deprive members of the Classes of compensation to which they are
5 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
6 over Defendants' competitors who have been and/or are currently employing workers and
7 attempting to do so in honest compliance with applicable wage and hour laws.

8 54. Because Plaintiffs are victims of Defendants' unfair and/or unlawful conduct
9 alleged herein, Plaintiffs for themselves and on behalf of the members of the Classes, seek full
10 restitution of monies, as necessary and according to proof, to restore any and all monies withheld,
11 acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203
12 and 17208.

13 55. The acts complained of herein occurred within the last four years immediately
14 preceding the filing of the Complaint in this action.

15 56. Plaintiffs are compelled to retain the services of counsel to file this court action to
16 protect their interests and those of the Classes, to obtain restitution and injunctive relief on behalf
17 of Defendants' current non-exempt employees, and to enforce important rights affecting the
18 public interest. Plaintiffs have thereby incurred the financial burden of attorneys' fees and costs,
19 which they are entitled to recover under Code of Civil Procedure § 1021.5.

20 **EIGHTH CAUSE OF ACTION**

21 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

22 **(AGAINST ALL DEFENDANTS)**

23 57. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

24 58. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
25 states that "an employer shall indemnify his or her employees for all necessary expenditures or
26 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
27 his or her obedience to the directions of the employer..."

28 59. Due to Defendants' unlawful policy and practice of requiring employees to

1 purchase work hats in the performance of their job duties, Defendants have violated Labor Code
2 § 2802.

3 60. Plaintiffs and the members of the Employee Expense Class are entitled to
4 attorneys' fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

5 61. Pursuant to Labor Code §2802(b), any action brought for the reimbursement of
6 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
7 Plaintiffs and members of the Employee Expense Class are entitled to interest, which shall accrue
8 from the date on which they incurred the initial necessary expenditure.

9 **NINTH CAUSE OF ACTION**

10 **PRIVATE ATTORNEYS GENERAL ACT**

11 **(AGAINST ALL DEFENDANTS)**

12 62. Plaintiffs re-allege and incorporate by reference all prior paragraphs as though
13 fully set forth herein.

14 63. Defendants have committed several Labor Code violations against Plaintiffs,
15 members of the Classes, and other aggrieved employees. Plaintiffs, "aggrieved employees" within
16 the meaning of Labor Code § 2698 *et seq.*, acting on behalf of themselves and other aggrieved
17 employees, bring this representative action against Defendants to recover the civil penalties due
18 to Plaintiffs, the members of the Classes, other aggrieved employees, and the State of California
19 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
20 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
21 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
22 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
23 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
24 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
25 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
26 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
27 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each
28

1 subsequent violation per employee per pay period for those violations of the Labor Code for which
2 no civil penalty is specifically provided, based on the following Labor Code violations:

- 3 a. Failing to pay minimum wages for all hours worked to Plaintiffs, the Minimum
4 Wage Class, and other aggrieved employees in violation of Labor Code §§ 551-
5 552, 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- 6 b. Failing to pay Plaintiffs, the Overtime Class, and other aggrieved employees all
7 earned overtime compensation in violation of Labor Code §§ 204, 510, 558,
8 1194, and 1198;
- 9 c. Failing to provide all legally required meal periods, and failure to pay meal
10 period premium wages, to Plaintiffs, the Meal Period Class, and other aggrieved
11 employees at the regular rate of compensation in violation of Labor Code §§
12 226.7, 512, 558, and 1198;
- 13 d. Failing to authorize and permit all legally required rest periods, and failure to
14 pay rest period premium wages, to Plaintiffs, the Rest Period Class, and other
15 aggrieved employees at the regular rate of compensation in violation of Labor
16 Code §§ 226.7, 516, 558, and 1198;
- 17 e. Failing to reimburse Plaintiffs, the Employee Expense Class, and other
18 aggrieved employees for necessary business expenditures incurred by Plaintiff,
19 the Employee Expense Class, and other aggrieved employees in violation of
20 Labor Code §§ 2800, 2802 and 2804;
- 21 f. Failing to furnish Plaintiffs, the Wage Statement Class, and other aggrieved
22 employees with complete, accurate, itemized wage statements in violation of
23 Labor Code § 226;
- 24 g. Failing to timely pay all final wages and compensation earned by Plaintiffs, the
25 Waiting Time Class, and other aggrieved employees at the time of separation
26 in violation of Labor Code §§ 201, 202, and 203;
- 27 h. Failing to pay Plaintiffs and other aggrieved employees all earned wages at
28 least twice during each calendar month in violation of Labor Code § 204;

- i. Failing to pay Plaintiffs and other aggrieved employees all wages earned up to and including the fourth day before the scheduled payday in violation of Labor Code § 205;
- j. Failing to permit and authorize Plaintiffs and other non-exempt to exercise the use of their accrued paid sick leave days in violation of Labor Code § 245.5;
- k. Failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Plaintiffs and other aggrieved employees in violation of Labor Code § 2810.5; and
- l. Failing to maintain accurate records on behalf of Plaintiffs and other aggrieved employees in violation of Labor Code §§ 1174 and 1198.

64. On October 2, 2023, Plaintiffs notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiffs’ intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified in Paragraph 63 (a)-(l). Now that sixty-five days have passed from Plaintiffs’ notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiffs have exhausted their administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

65. Plaintiffs were compelled to retain the services of counsel to file this court action to protect their interests and the interests of other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiffs have thereby incurred attorneys’ fees and costs, which she is entitled to receive under California Labor Code § 2699(g).

PRAYER

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

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiffs as representatives of the Classes;

3. For an order appointing Counsel for Plaintiffs as Counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, 1198 and Wage Order 1 § 4(A);
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, 1198 and Wage Order 1 § 3(A);
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
8. Upon the Fifth Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;
9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code § 226;
10. Upon the Seventh Cause of Action, for restitution to Plaintiffs of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;
11. Upon the Eighth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code § 2802;
12. Upon the Ninth Cause of Action, for (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for

1 each initial violation and \$200 for each subsequent violation per employee per pay period for the
2 violations of the Labor Code Sections cited in Labor Code § 2699.5;

3 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor
4 Code § 218.6 and Civil Code §§ 3287 and 3289;

5 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code
6 §226, and Code of Civil Procedure § 1021.5; and

7 15. For such other and further relief the Court may deem just and proper.
8
9

10 Dated: December 8, 2023
11 Respectfully submitted,
12 STANSBURY BROWN LAW, PC

13 By: Jess Flores
14 Daniel J. Brown
15 Jessica Flores
16 Attorneys for Plaintiffs

17 **DEMAND FOR JURY TRIAL**

18 Plaintiffs hereby demand a jury trial with respect to all issues triable by jury.

19 Dated: December 8, 2023
20 Respectfully submitted,
21 STANSBURY BROWN LAW, PC

22 By: Jess Flores
23 Daniel J. Brown
24 Jessica Flores
25 Attorneys for Plaintiffs
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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 2610 ½ Abbot Kinney Blvd. Venice, CA 90212

On December 8, 2023 I served the document listed below on the parties in this action as follows:

- **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**

- ☐ (BY MAIL) I placed such envelope on the above date, with postage fully prepaid, for deposit in the U.S. Postal Service at my place of business at Venice, California, following the ordinary business practices of my place of business. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mail with the U.S. Postal Service. Under that practice, such correspondence is deposited with the U.S. Postal Service the same day it is collected and processed in the ordinary course of business.
- ☐ (BY HAND DELIVERY) I delivered to an authorized courier or driver authorized by _____ to receive documents to be delivered on the same date.
- ☐ (BY FEDERAL EXPRESS) I am readily familiar with the practice of collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.
- X (BY EMAIL) I transmitted said document(s) by electronic mail to the e-mail addresses indicated below pursuant to SB 1146 effective 9/18/20, which codifies parts of Emergency Rules 11 and 12, as amended, and CRC 2.251.
- X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 8, 2023 at Frazier Park, California.

Isabella C. Aguinaga

Isabella C. Aguinaga

SERVICE LIST

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