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Superior Court of California
County of Alameda
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Chad Finke, Executive Officer / Clerk of the Court
By: D. Drew, Deputy

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

ROSEMARIE DIAZ, an individual, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

LONGCHAMP USA, INC., a Delaware
corporation; and DOES 1 TO 50,

Defendants.

Case Number: 23CV057143

**First Amended Class and PAGA
Representative Action Complaint For:**

1. Failure to Pay All Minimum Wages,
2. Failure to Pay All Overtime Wages,
3. Failure to Provide Rest Periods and Pay Missed Rest Period Premiums,
4. Failure to Provide Meal Periods and Pay Missed Meal Period Premiums,
5. Failure to Maintain Accurate Employment Records,
6. Failure to Pay Wages Timely during Employment,
7. Failure to Pay All Wages Earned and Unpaid at Separation,

8. Failure to Indemnify All Necessary Business Expenditures,
9. Failure to Furnish Accurate Itemized Wage Statements,
10. Failure to Pay Sick Leave,
11. Violations of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210), and
12. Penalties Pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”)

Demand for Jury Trial

1 Plaintiff Rosemarie Diaz (“Plaintiff”), on behalf of herself, the State of California as a private
2 attorney general, and all other similarly situated employees within the State of California, complains
3 and alleges of defendants Longchamp USA, Inc. and Does 1 to 50 (collectively, “Defendants”), and
4 each of them, as follows:

5 **I. INTRODUCTION**

6 1. This is a class action complaint brought pursuant to California Code of Civil Procedure
7 section 382.

8 2. The “Class Period” as used herein, is defined as the period from November 22, 2019
9 and continuing into the present and ongoing. Defendants’ violations of California’s laws as described
10 more fully below have been ongoing throughout the Class Period and are still ongoing.

11 3. Plaintiff brings this class action on behalf of herself and the following class: *All*
12 *individuals who are or were employed by Defendants as non-exempt employees in California during*
13 *the Class Period* (the “Class Members”). (Code Civ. Proc., § 382.)

14 4. Plaintiff brings this action on behalf of herself and the Class Members, as a class action,
15 against Defendants for:

- 16 A. Failure to pay all minimum wages,
- 17 B. Failure to pay all overtime wages,
- 18 C. Failure to provide rest periods and pay missed rest period premiums,
- 19 D. Failure to provide meal periods and pay missed meal period premiums,
- 20 E. Failure to maintain accurate employment records,
- 21 F. Failure to pay wages timely during employment,
- 22 G. Failure to pay all wages earned and unpaid at separation,
- 23 H. Failure to indemnify all necessary business expenditures,
- 24 I. Failure to furnish accurate itemized wage statements,
- 25 J. Failure to fully pay all sick leave wages, and
- 26 K. Violations of California’s Unfair Competition Law (“UCL”) (Bus. & Prof.
27 Code, §§ 17200–17210).
- 28

1 5. This action is also a representative action brought pursuant to the California Labor Code
2 Private Attorneys General Act of 2004 (“PAGA”), codified at California Labor Code sections 2698
3 through 2699.6.

4 6. The “PAGA Period” as used herein, is defined as the period from November 22, 2022,
5 and continuing into the present and ongoing.

6 7. This PAGA action is brought on behalf of Plaintiff, the State of California as private
7 attorney general, and on behalf of the following aggrieved employees: *All individuals who are or were*
8 *employed by Defendants as non-exempt employees in California during the PAGA Period* (the
9 “Aggrieved Employees”).

10 8. Plaintiff is informed and believes and thereon alleges that the California Industrial
11 Welfare Commission (“IWC”) Wage Order applicable to the facts of this case is IWC Wage Order 7-
12 2001 (the “Applicable Wage Order”) and possibly others that may be applicable. (Cal. Code of Regs.,
13 tit. 8, § 11070.) Plaintiff reserves the right to amend or modify the definition of “Applicable Wage
14 Order” with greater specificity or add additional IWC Wage Orders if additional applicable wage orders
15 are discovered in litigation.

16 **II. JURISDICTION & VENUE**

17 9. This Court has subject matter jurisdiction over all causes of action asserted herein
18 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure section
19 410.10 because this is a civil action in which the matter in controversy, exclusive of interest, exceeds
20 \$25,000, and because each cause of action asserted arises under the laws of the State of California or
21 is subject to adjudication in the courts of the State of California.

22 10. This Court has personal jurisdiction over Defendants because Defendants have caused
23 injuries in the County of Alameda and the State of California through their acts, and by their violation
24 of the California Labor Code and California state common law. Defendants transact millions of dollars
25 of business within the State of California. Defendants own, maintain offices, transact business, have an
26 agent or agents within the County of Alameda, and/or otherwise are found within the County of
27 Alameda, and Defendants are within the jurisdiction of this Court for purposes of service of process.
28

1 11. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of the
2 Code of Civil Procedure. Defendants operate within California and do business within Alameda
3 County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all of
4 Defendants' employees identified above within Alameda County and surrounding counties where
5 Defendants may remotely operate.

6 12. This matter is not appropriate for removal under the Class Action Fairness Act (28
7 U.S.C. § 1332) as the amount in controversy for Plaintiff's and the Class Members' claims, in
8 aggregate, is less than \$5 million. Additionally, all the allegations herein occurred in the State of
9 California. As such, even if the amount in controversy did exceed \$5 million this matter would still not
10 be appropriate for removal under the "local controversy" exception to the Class Action Fairness Act.
11 (28 U.S.C. § 1332, subd. (d)(4)(A).)

12 **III. THE PARTIES**

13 **A. PLAINTIFF**

14 13. At all relevant times, Plaintiff, who is over the age of 18, was and currently is a citizen
15 of California residing in the State of California. Defendants employed Plaintiff as a non-exempt hourly
16 employee in the County of Alameda.

17 14. Plaintiff brings this action on behalf of herself and the following class pursuant to
18 section 382 of the Code of Civil Procedure as follows: *All individuals who are or were employed by*
19 *Defendants as non-exempt employees in California during the Class Period* (the "Class Members").

20 15. The Class Members, at all times pertinent hereto, are or were employees of Defendants
21 during the relevant statutory period.

22 **B. DEFENDANTS**

23 16. Plaintiff is informed and believes and thereon alleges that Defendants were authorized
24 to and doing business in Alameda County and is and/or was the legal employer of Plaintiff and the
25 other Class Members during the applicable statutory periods. Plaintiff, the Class Members, and the
26 Aggrieved Employees were, and are, subject to Defendants' policies and/or practices complained of
27 herein and have been deprived of the rights guaranteed to them by: California Labor Code sections
28 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 256, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1,

1 1198, 1198.5, 1199, 2802, 2804, and others that may be applicable; California Business and Professions
2 Code sections 17200 through 17210 (“UCL”); and the Applicable Wage Order (Cal. Code of Regs., tit.
3 8, § 11070).

4 17. Plaintiff is informed and believes, and based thereon alleges, that during the Class
5 Period, Defendants did (and continue to do) business in the State of California, County of Alameda.

6 18. Plaintiff does not know the true names or capacities, whether individual, partner, or
7 corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said defendants
8 are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this
9 complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and
10 thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were
11 responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff,
12 the Class Members, and the Aggrieved Employees to be subject to the unlawful employment practices,
13 wrongs, injuries, and damages complained of herein.

14 19. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
15 herein, Defendants were and/or are the employers of Plaintiff, the Class Members, and the Aggrieved
16 Employees. At all times herein mentioned, each of said Defendants participated in the doing of the acts
17 hereinafter alleged to have been done by the named Defendants. Furthermore, the Defendants, and each
18 of them, were the agents, servants, and employees of each and every one of the other Defendants, as
19 well as the agents of all Defendants, and at all times herein mentioned were acting within the course
20 and scope of said agency and employment. Defendants, and each of them, approved of, condoned, or
21 otherwise ratified every one of the acts or omissions complained of herein.

22 20. At all relevant times, Defendants, and each of them, were members of and engaged in a
23 joint venture, partnership, and common enterprise, and acting within the course and scope of and in
24 pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff is informed, and
25 believes, and thereon alleges, that all Defendants were joint employers for all purposes of Plaintiff, the
26 Class Members, and the Aggrieved Employees.

1 **IV. COMMON FACTS & ALLEGATIONS**

2 21. Plaintiff, the Class Members, and the Aggrieved Employees are, and were at all relevant
3 times, employed by the Defendants within the State of California.

4 22. The Class Members are, and were, at all relevant times, non-exempt employees for the
5 purposes of minimum wages, overtime, rest breaks, meal periods, and the other claims alleged in this
6 complaint.

7 23. Specifically, Plaintiff was employed by Defendants within the statutory Class Period,
8 working as an hourly, non-exempt sales representative for Defendants.

9 **A. MINIMUM WAGE VIOLATIONS**

10 24. Labor Code section 1197 requires employees to be paid at least the minimum wage fixed
11 by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code
12 section 1194 entitles “any employee receiving less than the legal minimum wage . . . to recover in a
13 civil action the unpaid balance of the full amount of this minimum wage.” Likewise, the Applicable
14 Wage Order also obligates employers to pay each employee minimum wages for all hours worked.
15 (Cal. Code of Regs., tit. 8, § 11070.) Labor Code section 1198 makes unlawful the employment of an
16 employee under conditions that the IWC Wage Orders prohibit.

17 25. These minimum wage standards apply to each hour that employees work. Therefore, an
18 employer’s failure to pay for any particular time worked by an employee is unlawful, even if averaging
19 an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above
20 minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)

21 26. Here, Defendants failed to fully conform their pay practices to the requirements of the
22 law during the relevant statutory periods. The Class Members were not compensated for all hours
23 worked including, but not limited to, all hours they were subject to the control of Defendants and/or
24 suffered or permitted to work under the California Labor Code and the Applicable Wage Order.

25 27. Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide that an
26 employer who has failed to pay its employees the legal minimum wage is liable to pay those employees
27 the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages
28 due and interest thereon.

1 28. When employees, such as the Class Members, are not paid for all hours worked under
2 Labor Code section 1194, they are entitled to recover minimum wages for the time which they received
3 no compensation. (See *Sillah v. Command International Security Services* (N.D. Cal. 2015) 154
4 F.Supp.3d 891 [employees suing for failure to pay overtime could recover liquidated damages under
5 Labor Code section 1194.2 if they also showed they were paid less than minimum wage].)

6 29. Labor Code section 1197.1 authorizes employees who are paid less than the minimum
7 wage fixed by an applicable state or local law, or by an order of the IWC, a civil penalty, among other
8 damages, as follows:

9 (1) “For any initial violation that is intentionally committed, one hundred
10 dollars (\$100) for each underpaid employee for each pay period for
11 which the employee is underpaid.”

12 (2) “For each subsequent violation for the same specific offense, two
13 hundred fifty dollars (\$250) for each underpaid employee for each pay
14 period for which the employee is underpaid regardless of whether the
15 initial violation is intentionally committed.” (Lab. Code, § 1197.1, subd.

16 (a).)

17 30. As set forth above, Defendants failed to fully compensate Plaintiff, the Class Members,
18 and the Aggrieved Employees for all minimum wages. Accordingly, Plaintiff, the Class Members, and
19 the Aggrieved Employees are entitled to recover liquidated damages for violations of Labor Code
20 section 1197.1.

21 31. Based upon these same factual allegations, Plaintiff, the Class Members, and the
22 Aggrieved Employees are likewise entitled to penalties under Labor Code sections 1199.

23 **B. OVERTIME VIOLATIONS**

24 32. Labor Code section 510 requires employers to compensate employees who work more
25 than eight hours in one workday, forty hours in a workweek, and for the first eight hours worked on
26 the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee.
27 (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates employers to compensate
28 employees at no less than twice the regular rate of pay when an employee works more than twelve

1 hours in a day or more than eight hours on the seventh consecutive day of work. (Lab. Code, § 510,
2 subd. (a).) These rules are also reflected in the Applicable Wage Order.

3 33. In accordance with Labor Code section 1194 and the Applicable Wage Order, the Class
4 Members could not then agree and cannot now agree to work for a lesser wage than the amount
5 provided by Labor Code sections 510 or the Applicable Wage Order.

6 34. Here, Defendants violated their duty to accurately and completely compensate Plaintiff,
7 the Class Members, and the Aggrieved Employees for all overtime worked. Plaintiff, the Class
8 Members, and the Aggrieved Employees periodically worked hours that entitled them to overtime
9 compensation under the law but were not fully compensated for those hours.

10 35. Moreover, during the relevant statutory periods, Defendants had a policy and practice
11 of failing to pay overtime wages at the proper rate when it actually paid overtime. Specifically, when
12 Defendants paid overtime wages to Plaintiff, the Class Members, and the Aggrieved Employees,
13 Defendants failed to include all compensation when calculating the regular rate of pay used in overtime
14 calculations and when paying overtime.

15 36. For instance, Plaintiff, the Class Members, and the Aggrieved Employees would often
16 receive, along with their hourly rates of pay for their working hours, additional remuneration and/or
17 non-discretionary bonus pay. Defendants, however, calculated the regular rate of pay for Plaintiff, the
18 Class Members, and the Aggrieved Employees without factoring into the regular rate of pay all other
19 non-hourly pay earnings received during the pay period. As a result, Plaintiff, the Class Members, and
20 the Aggrieved Employees were underpaid overtime wages when they worked in excess of eight hours
21 in any workday and/or forty hours in a workweek when such additional forms of remuneration were
22 earned. By its practice of periodically requiring Plaintiff, the Class Members, and the Aggrieved
23 Employees to work in excess of eight hours in a workday and/or forty hours in a workweek without
24 compensating them at the rate of one and one-half (1½) their regular rate of pay, Defendants willfully
25 violated the provisions of Labor Code sections 510, 1194, and 1199.

26 37. These actions were and are in clear violation of California's overtime laws as set forth
27 in Labor Code sections 510, 1194, 1199, and the Applicable Wage Order. (Cal. Code of Regs., tit. 8, §
28 11070.) As a result of Defendants' faulty policies and practices, Plaintiff, the Class Members, and the

1 Aggrieved Employees were not compensated for all hours worked or paid accurate overtime
2 compensation.

3 **C. REST BREAK VIOLATIONS**

4 38. Pursuant to Labor Code section 226.7 and the Applicable Wage Order, Defendants were
5 and are required to provide Plaintiff, the Class Members, and the Aggrieved Employees with
6 compensated, duty-free rest periods of not less than ten minutes for every major fraction of four hours
7 worked. Under the Applicable Wage Order, an employer must authorize and permit all employees to
8 take ten minute duty free rest periods for every major fraction of four hours worked. (Cal. Code of
9 Regs., tit. 8, § 11070.)

10 39. Likewise, Labor Code section 226.7 provides that “[a]n employer shall not require an
11 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,
12 or applicable regulation, standard, or order of the Industrial Welfare Commission” (Lab. Code, §
13 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay their employees one
14 additional hour of pay at the employee’s regular rate for each workday that a “meal or rest or recovery
15 period is not provided.” (Lab. Code, § 226.7, subd. (c).) The “regular rate” for these purposes must
16 factor in all nondiscretionary payments for work performed by the employee, including non-
17 discretionary bonuses, commissions, and other forms of wage payments exceeding the employees’ base
18 hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878.) Thus, the Wage
19 Orders set when and for how long the rest period must take place and the Labor Code establishes that
20 violations of the IWC Wage Orders are unlawful and sets forth the premium pay employer must pay
21 their employees when employers fail to provide rest periods.

22 40. The California Supreme Court has held that, during required rest periods, “employers
23 must relieve their employees of all duties and relinquish any control over how employees spend their
24 break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.) Relinquishing
25 control over employees during rest periods requires that employees be “free to leave the employer’s
26 premises” and be “permitted to attend to personal business.” (*Id.* at p. 275.) The *Brinker* Court
27 explained in the context of rest breaks that employer liability attaches from adopting an unlawful
28 policy:

1 “An employer is required to authorize and permit the amount of rest break time
2 called for under the wage order for its industry. If it does not—if, for example,
3 it adopts a uniform policy authorizing and permitting only one rest break for
4 employees working a seven-hour shift when two are required—it has violated
5 the wage order and is liable.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53
6 Cal.4th 1004, 1033.)

7 41. Here, Defendants periodically did not permit Plaintiff, the Class Members, and the
8 Aggrieved Employees to take compliant duty-free rest breaks, free from Defendants’ control as
9 required by Labor Code section 226.7, the Applicable Wage Order, and applicable precedent. (See
10 *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269 [concluding that “during rest periods
11 employers must relieve employees of all duties and relinquish control over how employees spend their
12 time.”].) At all relevant times, Plaintiff, the Class Members, and the Aggrieved Employees were
13 periodically not provided with legally-compliant and timely rest periods of at least ten minutes for each
14 four hour work period, or major fraction thereof due to Defendants’ unlawful rest period
15 policies/practices. Plaintiff, the Class Members, and the Aggrieved Employees were often expected
16 and required to continue working through rest periods to meet the expectations Defendants and finish
17 the workday. In some cases when Plaintiff, the Class Members, and the Aggrieved Employees worked
18 more than ten hours in a shift, Defendants failed to authorize and/or permit a third mandated rest period.
19 As a result, Plaintiff, the Class Members, and the Aggrieved Employees were periodically unable to
20 take compliant rest periods.

21 42. In such cases where Defendants did not offer Plaintiff, the Class Members, and the
22 Aggrieved Employees the opportunity to receive a compliant off-duty rest period, “the court may not
23 conclude employees voluntarily chose to skip those breaks.” (*Alberts v. Aurora Behavioral Health*
24 *Care* (2015) 241 Cal.App.4th 388, 410 (2015) [“If an employer fails to provide legally compliant meal
25 or rest breaks, the court may not conclude employees voluntarily chose to skip those breaks.”]; *Brinker*
26 *Rest. Corp. v. Superior Court, supra*, 53 Cal.4th at p. 1033 [“No issue of waiver ever arises for a rest
27 break that was required by law but never authorized; if a break is not authorized, an employee has no
28 opportunity to decline to take it.”].)

1 43. In addition to failing to authorize and permit compliant rest periods, Plaintiff, the Class
2 Members, and the Aggrieved Employees were not compensated with one hour's worth of pay at their
3 regular rate of compensation when they were not provided with a compliant rest period in accordance
4 with Labor Code section 226.7, subdivision (c). Thus, Defendants have violated Labor Code section
5 226.7 and the Applicable Wage Order.

6 44. Based on the foregoing, Plaintiff seeks to recover, on behalf of herself and other non-
7 exempt employees, rest period premiums and penalties.

8 **D. MEAL BREAK VIOLATIONS**

9 45. Labor Code section 512 and the Applicable Wage Order require employers to provide
10 employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of
11 work. (Lab. Code, § 512, subd. (a) ["An employer shall not employ an employee for a work period of
12 more than five hours per day without providing the employee with a meal period of not less than 30
13 minutes"]; Cal. Code of Regs., tit. 8, § 11070 ["No employer shall employ any person for a work
14 period of more than five (5) hours without a meal period of not less than 30 minutes"].)
15 Additionally, an employee who works more than ten hours per day is entitled to receive a second thirty-
16 minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a) ["An employer shall not
17 employ an employee for a work period of more than 10 hours per day without providing the employee
18 with a second meal period of not less than 30 minutes"].)

19 46. "An on-duty meal period is permitted only when the nature of the work prevents an
20 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal
21 break." (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement must
22 include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the California
23 Department of Industrial Relations, Division of Labor Standards Enforcement ("DLSE") and courts
24 have "found that the nature of the work exception applies: (1) where the work has some particular
25 external force that requires the employee to be on duty at all times, and (2) where the employee is the
26 sole employee of a particular employer." (*Id.* at p. 945, internal quotation marks omitted; *Abdullah v.*
27 *U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) "[I]t is the employer's obligation
28 to determine whether the nature of the work prevents an employee from being relieved before requiring

1 an employee to take an on-duty meal period.” (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at
2 p. 946.)

3 47. Here, Plaintiff, the Class Members, and the Aggrieved Employees were never asked to
4 sign any enforceable document agreeing to an on-duty meal period. Moreover, nothing in the nature of
5 their work involved the kind of “external force” that might justify on-duty meal breaks. (*Lubin v. The*
6 *Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 945.) Nevertheless, Defendants periodically did not
7 provide compliant off-duty meal periods within the first five hours of work for Plaintiff, the Class
8 Members, and the Aggrieved Employees.

9 48. As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v.*
10 *Superior Court* (2012) 53 Cal.4th 1004, 1035 [“The IWC’s wage orders have long made a meal period’s
11 duty-free nature its defining characteristic.”].) Relinquishing control over employees during meal
12 periods requires that employees be “free to leave the employer’s premises” and be “permitted to attend
13 to personal business.” (*Augustus v. ABM Security Services, Inc.*, *supra*, 2 Cal.5th at p. 275.) Under
14 Labor Code section 512, if an employer maintains a uniform policy that does not authorize and permit
15 the amount of meal time called for under the law (as specified in the Labor Code and/or applicable
16 IWC Wage Order), “it has violated the wage order and is liable.” (*Brinker Restaurant Corp. v. Superior*
17 *Court*, *supra*, 53 Cal.4th at p. 1033.)

18 49. During the applicable statutory periods here, Plaintiff, the Class Members, and the
19 Aggrieved Employees were periodically denied legally-compliant and timely off-duty meal periods of
20 at least thirty minutes due to Defendants’ unlawful meal period policy and practices. As a result of
21 Defendants’ uniform meal period policies and practices, Plaintiff, the Class Members, and the
22 Aggrieved Employees were often not permitted to take compliant first meal periods before the end of
23 the fifth hour of work. Plaintiff, the Class Members, and the Aggrieved Employees were also
24 periodically not permitted to take second meal periods for shifts in excess of ten hours. Defendants thus
25 violated Labor Code section 512 and the Applicable Wage Order by failing to advise, authorize, or
26 permit Plaintiff, the Class Members, and the Aggrieved Employees to receive thirty-minute, off-duty
27 meal periods within the first five hours of their shifts.
28

1 50. Labor Code section 226.7 provides that “[a]n employer shall not require an employee
2 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
3 applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab. Code, § 226.7,
4 subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage Order further obligate
5 employers to pay employees one additional hour of pay at the employee’s regular rate of compensation
6 for each workday that the meal period is not provided. (Lab. Code, § 226.7, subd. (c); Cal. Code of
7 Regs., tit. 8, § 11070 [“If an employer fails to provide an employee a meal period in accordance with
8 the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
9 employee’s regular rate of compensation for each workday that the meal period is not provided.”].)
10 The “regular rate” for these purposes must factor in all nondiscretionary payments for work performed
11 by the employee, including non-discretionary bonuses, commissions, and other forms of wage
12 payments exceeding the employees’ base hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021)
13 11 Cal.5th 858, 878.)

14 51. Accordingly, for each day that Plaintiff, the Class Members, and the Aggrieved
15 Employees did not receive compliant meal periods, they were and are entitled to receive meal period
16 premiums pursuant to Labor Code section 226.7 and the Applicable Wage Order. Defendants, however,
17 failed to pay Plaintiff, the Class Members, and the Aggrieved Employees applicable meal period
18 premiums for many workdays that the employees did not receive a compliant meal period. Thus,
19 Defendants have violated Labor Code section 226.7 and the Applicable Wage Order.

20 52. Based on the foregoing, Plaintiff seeks to recover, on behalf of herself and other non-
21 exempt employees, meal period premiums and penalties.

22 **E. UNTIMELY WAGES DURING EMPLOYMENT**

23 53. Labor Code section 204 expressly requires employers who pay employees on a weekly,
24 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the
25 close of the payroll period.” Labor Code section 210, subdivision (a), makes employers who violate
26 Labor Code section 204 subject to a penalty of:

27 “(1) For any initial violation, one hundred dollars (\$100) for each failure to
28 pay each employee.

1 “(2) For each subsequent violation, or any willful or intentional violation, two
2 hundred dollars (\$200) for each failure to pay each employee, plus 25
3 percent of the amount unlawfully withheld.” (Lab. Code, § 210, subd.
4 (a).)

5 54. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and
6 entirely independent and apart from, any other penalty provided in this article” (Lab. Code, § 210,
7 subd. (a).)

8 55. Due to Defendants’ failure to pay Plaintiff, the Class Members, and the Aggrieved
9 Employees the wages described above, along with rest and meal break premiums, Defendants failed to
10 timely pay Plaintiff, the Class Members, and the Aggrieved Employees within seven calendar days
11 following the close of payroll in accordance with Labor Code section 204 on a regular and consistent
12 basis. (See *Parson v. Golden State FC, LLC* (N.D. Cal., May 2, 2016, No. 16-CV-00405-JST) 2016
13 WL 1734010, at p. *3–5, 2016 U.S. Dist. LEXIS 58299 [finding that a failure to pay rest period
14 premiums can support claims under Labor Code sections 203 and 204].)

15 **F. UNTIMELY WAGES AT SEPARATION**

16 56. Labor Code section 203 provides “if an employer willfully fails to pay . . . any wages
17 of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty”
18 for up to thirty days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) As a result
19 of Defendants’ failure to pay the Class Members for the wages described above, along with rest and
20 meal break premiums, Defendants violated and continue to violate Labor Code section 203.

21 57. Due to Defendants’ faulty pay policies, those Class Members whose employment with
22 Defendants concluded were not compensated for each and every hour worked at the appropriate rate.
23 Defendants have failed to pay formerly-employed Class Members whose sums were certain at the time
24 of termination within at least seventy-two hours of their resignation and have failed to pay those sums
25 for thirty days thereafter.

26 **G. FAILURE TO REIMBURSE BUSINESS EXPENSES**

27 58. At all relevant times herein, Defendants were subject to Labor Code section 2802, which
28 states that “an employer shall indemnify his or her employees for all necessary expenditures or losses

1 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her
2 obedience to the directions of the employer.” The purpose of this section is to “prevent employers from
3 passing along their operating expenses onto their employees.” (*Gattuso v. Harte-Hanks Shoppers, Inc.*
4 (2007) 42 Cal.4th 554, 562.)

5 59. At all relevant times herein, Defendants were subject to Labor Code section 2804, which
6 states that “any contract or agreement, express or implied, made by any employee to waive the benefits
7 of this article or any part thereof, is null and void, and this article shall not deprive any employee or his
8 personal representative of any right or remedy to which he is entitled under the laws of this State.”

9 60. Thus, Plaintiff, the Class Members, and the Aggrieved Employees were and are entitled
10 to reimbursement for the expenses they incurred during the course of their duties. The duty to reimburse
11 even extends to the use of equipment the employee may already own and would be required to pay for
12 anyway. (*Cochran v. Schwan’s Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144 [“The threshold
13 question in this case is this: Does an employer always have to reimburse an employee for the reasonable
14 expense of the mandatory use of a personal cell phone, or is the reimbursement obligation limited to
15 the situation in which the employee incurred an extra expense that he or she would not have otherwise
16 incurred absent the job? The answer is that reimbursement is always required. Otherwise, the employer
17 would receive a windfall because it would be passing its operating expenses on to the employee.”].)

18 61. Here, Defendants failed to fully reimburse Plaintiff, the Class Members, and the
19 Aggrieved Employees for necessary expenditures incurred as a direct consequence and requirement of
20 performing their job duties, including the costs associated with their personal cell phone they required
21 to perform their work. Consequently, Defendants failed to comply with Labor Code section 2802.

22 H. WAGE STATEMENT VIOLATIONS

23 62. Defendants also failed to provide accurate itemized wage statements in accordance with
24 Labor Code sections 226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226, subdivision
25 (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage
26 statement in writing showing:

- 27 (1) The gross wages earned;
- 28 (2) The total hours worked by the employee;

- (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) The 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
- (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.

63. Due to Defendants' failure to pay Plaintiff, the Class Members, and the Aggrieved Employees properly as described above, the wage statements issued do not indicate the correct amount of gross wages earned, total hours worked, or the net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Thus, Defendants have violated Labor Code section 226, subdivisions (a)(1), (2), (5), and (9).

64. Defendants also failed to include the accrued sick hours on the wage statements provided to Plaintiff, the Class Members, and the Aggrieved Employees as required by Labor Code section 246, subdivision (i).

65. In addition to Labor Code section 226, subdivision (a), Defendants also knowingly and intentionally failed to provide Plaintiff, the Class Members, and the Aggrieved Employees with accurate itemized wage statements in violation of Labor Code section 226, subdivision (e). Defendants knew that they were not providing the Class Members with wage statements required by California law but nevertheless failed to correct their unlawful practices and policies. (See *Garnett v. ADT LLC* (E.D. Cal. 2015) 139 F.Supp.3d 1121, 1134 [finding the defendant knowingly and intentionally violated Labor Code section 226 because the "[d]efendant knew that it was not providing total hours worked to

1 plaintiff or other employees paid on commission” even though it believed that employees paid solely
2 on commission or commission and salary “are exempt and therefore we do not record hours on a wage
3 statement.”].)

4 **I. RECORDKEEPING VIOLATIONS**

5 66. Labor Code section 226, subdivision (a), requires employers to keep an accurate record
6 of, among other things, all hours worked by employees. Labor Code section 226.3 provides, in pertinent
7 part, as follows:

8 “Any employer who violates subdivision (a) of Section 226 shall be subject to a
9 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per
10 violation in an initial citation and one thousand dollars (\$1,000) per employee
11 for each violation in a subsequent citation, for which the employer fails to
12 provide the employee a wage deduction statement or fails to keep the records
13 required in subdivision (a) of Section 226. The civil penalties provided for in
14 this section are in addition to any other penalty provided by law.” (Lab. Code, §
15 226.3, emphasis added.)

16 67. Likewise, Labor Code section 1174, subdivision (d), requires every employer, including
17 Defendants, to:

18 “Keep, at a central location in the state or at the plants or establishments at which
19 employees are employed, payroll records showing the hours worked daily by
20 and the wages paid to, and the number of piece-rate units earned by and any
21 applicable piece rate paid to, employees employed at the respective plants or
22 establishments. These records shall be kept in accordance with rules established
23 for this purpose by the commission, but in any case shall be kept on file for not
24 less than three years. An employer shall not prohibit an employee from
25 maintaining a personal record of hours worked, or, if paid on a piece-rate basis,
26 piece-rate units earned.” (Lab. Code, § 1174, subd. (d), emphasis added.)

27 68. As explained in detail above, Defendants failed to provide Plaintiff, the Class Members,
28 and the Aggrieved Employees with accurate itemized wage statements. Defendants did so, in part,

1 because they failed to accurately track hours worked by Plaintiff, the Class Members, and the
2 Aggrieved Employees. Defendants have thus failed to keep accurate records of the “total hours worked
3 by the employee[s]” in violation of Labor Code section 226, subdivision (a), and are therefore subject
4 to the penalties provided by Labor Code section 226.3. These penalties are “in addition to any other
5 penalty provided by law.” (Lab. Code, § 226.3.)

6 69. The failure to accurately track hours worked also resulted in a failure of Defendants to
7 keep a record of all “payroll records showing the hours worked daily by” Defendants’ employees,
8 including Plaintiff, the Class Members, and the Aggrieved Employees, in violation of Labor Code
9 section 1174, subdivision (d).

10 **J. SICK PAY VIOLATIONS**

11 70. Labor Code section 246 provides that every employee who works in California for the
12 same employer for 30 or more days within a year from the commencement of employment is entitled
13 to paid sick days. (Lab. Code, § 246, subd. (a).) These paid sick days generally accrue at a rate of not
14 less than one hour per every 30 hours worked, and must be paid out using the employees’ regular rate
15 of pay. (Lab. Code, § 246, subds. (b), (l).) The “regular rate of pay” for these purposes must factor in
16 all nondiscretionary payments for work performed by the employee, including non-discretionary
17 bonuses, commissions, and other forms of wage payments exceeding the employees’ base hourly rate.
18 (Lab. Code, § 246, subds. (l)(1), (2); see, e.g., *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th
19 858, 878.)

20 71. Here, Defendants employed Plaintiff, the Class Members, and the Aggrieved
21 Employees for 30 or more days within a year from the commencement of employment. Defendants
22 nevertheless failed to fully pay Plaintiff, the Class Members, and the Aggrieved Employees for all sick
23 pay that was lawfully earned and accrued.

24 72. By failing to fully pay accrued sick time, Defendants have underpaid Plaintiff, the Class
25 Members, and the Aggrieved Employees and have violated California Labor Code provisions
26 including, but not limited to, section 246.
27
28

1 **V. CLASS ACTION ALLEGATIONS**

2 73. As mentioned above, Plaintiff brings this action on behalf of herself and the Class
3 Members pursuant to section 382 of the Code of Civil Procedure.

4 74. **Numerosity/Ascertainability:** The Class Members are so numerous that joinder of all
5 members would be unfeasible and not practicable. The membership of the class is unknown to Plaintiff
6 at this time; however, it is estimated that the number of Class Members is greater than 100 individuals.
7 The identity of such membership is readily ascertainable via inspection of Defendants' employment
8 records.

9 75. **Common Questions of Law and Fact Predominate/Well Defined Community of**
10 **Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated
11 non-exempt employees, which predominate over questions affecting only individual members
12 including, without limitation to:

13 A. Whether Defendants' pay policies/practices resulted in a failure to pay the Class
14 Members for all hours worked, including all minimum wages;

15 B. Whether Defendants' pay policies/practices resulted in a failure to pay the Class
16 Members for all required overtime wages at the Class Members' regular rate of pay;

17 C. Whether Defendants' rest period policies and practices afforded legally
18 compliant rest periods or compensation in lieu thereof;

19 D. Whether Defendants' meal period policies and practices afforded legally
20 compliant meal periods or compensation in lieu thereof;

21 E. Whether Defendants maintained accurate employment records;

22 F. Whether Defendants timely paid all wages during employment;

23 G. Whether Defendants timely paid all wages earned and unpaid at separation;

24 H. Whether Defendants indemnified their employees for all necessary business
25 expenditures;

26 I. Whether Defendants furnished legally-compliant wage statements to the Class
27 Members pursuant to Labor Code section 226;
28

1 J. Whether Defendants fully paid all sick pay wages as required by Labor Code
2 section 246; and

3 K. Whether Defendants' violations of the Labor Code and the Applicable Wage
4 Order amounted to a violation of California's UCL.

5 76. **Predominance of Common Questions:** Common questions of law and fact
6 predominate over questions that affect only individual Class Members. The common questions of law
7 set forth above are numerous and substantial and stem from Defendants' uniform policies and practices
8 applicable to each individual class member, such as Defendants' uniform policy and practice of failing
9 to pay for all hours worked, Defendants' uniform policies and practices which failed to provide
10 compliant rest periods, Defendants' uniform policies and practices which failed to provide compliant
11 meal periods, Defendants' failure to provide accurate itemized wage statements, Defendants' uniform
12 policies and practices which failed to provide complete and accurate sick pay, and others. As such, the
13 common questions predominate over individual questions concerning each individual class member's
14 showing as to his or her eligibility for recovery or as to the amount of his or her damages.

15 77. **Typicality:** The claims of Plaintiff are typical of the claims of the Class Members
16 because Plaintiff was employed by Defendants as a non-exempt employee in California during the
17 statute(s) of limitation applicable to each cause of action pleaded in this complaint. As alleged herein,
18 Plaintiff, like the other Class Members, was deprived of minimum, regular, and overtime wages
19 because of Defendants' unlawful timekeeping policies and practices, was deprived of rest periods and
20 premium wages in lieu thereof, was deprived of meal periods and premium wages in lieu thereof, was
21 subject to Defendants' uniform rest period policies and practices, was subject to Defendants' uniform
22 meal period policies and practices, was not provided accurate itemized wage statements, was not paid
23 all wages in full and on time, was not paid all sick pay wages as required by law, and was subject to
24 other similar policies and practices to which the Class Members were subject.

25 78. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
26 represent fairly and adequately the interests of the Class Members. Moreover, Plaintiff's attorneys are
27 ready, willing, and able to fully and adequately represent the Class Members and Plaintiff. Plaintiff's
28 attorneys have prosecuted numerous wage-and-hour class actions in state and federal court in the past

1 and are committed to vigorously prosecuting this action on behalf of the Class Members.

2 79. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
3 important public interest in establishing minimum working conditions and standards in California.
4 These laws and labor standards protect the average working employee from exploitation by employers
5 who have the responsibility to follow the laws and who may seek to take advantage of superior
6 economic and bargaining power in setting onerous terms and conditions of employment. The nature of
7 this action and the format of laws available to Plaintiff and the Class Members make the class action
8 format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each
9 employee were required to file an individual lawsuit, Defendants would necessarily gain an
10 unconscionable advantage since they would be able to exploit and overwhelm the limited resources of
11 each individual plaintiff with their vastly superior financial and legal resources.

12 80. Moreover, requiring each Class Member to pursue an individual remedy would also
13 discourage the assertion of lawful claims by employees who would be disinclined to file an action
14 against their former or current employer for real and justifiable fear of retaliation and permanent
15 damages to their careers at subsequent employment. Further, the prosecution of separate actions by the
16 individual Class Members, even if possible, would create a substantial risk of inconsistent or varying
17 verdicts or adjudications with respect to the individual Class Members against Defendants herein, and
18 which would establish potentially incompatible standards of conduct for Defendants or legal
19 determinations with respect to individual Class Members which would, as a practical matter, be
20 dispositive of the interest of the other Class Members not parties to adjudications or which would
21 substantially impair or impede the ability of the Class Members to protect their interests.

22 81. Further, the claims of the individual Class Members are not sufficiently large to warrant
23 vigorous individual prosecution considering the concomitant costs and expenses attending thereto. As
24 such, the Class Members identified above are maintainable as a class under section 382 of the Code of
25 Civil Procedure.

26 **VI. EXHAUSTION OF REMEDIES**

27 82. Plaintiff has fully and completely exhausted administrative remedies under PAGA prior
28 to proceeding with the PAGA claims stated in this complaint. Plaintiff filed a PAGA notice online with

1 the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified mail to Defendants
2 setting forth the facts and theories of the violations alleged against Defendants, as prescribed by PAGA.
3 (Lab. Code, §§ 2698–2699.6.)

4 83. As required by PAGA, Plaintiff submitted the \$75.00 filing fee with the LWDA by
5 regular mail. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), no notice was received by
6 Plaintiff from the LWDA evidencing its intention to investigate within sixty-five calendar days of the
7 postmark date of the PAGA notice. Plaintiff is therefore entitled to commence and proceed with a civil
8 action pursuant to Labor Code section 2699.

9 **VII. CAUSES OF ACTION**

10 **First Cause of Action**

11 *Failure to Pay All Minimum Wages*

12 *(Against All Defendants)*

13 84. Plaintiff realleges and incorporates by reference all previous paragraphs.

14 85. Section 4 of the Applicable Wage Order and Labor Code section 1197 establish the right
15 of employees to be paid minimum wages for all hours worked, in amounts set by state law. (Lab. Code,
16 § 1197; Cal. Code of Regs., tit. 8, § 11070.) Labor Code sections 1194, subdivision (a), and 1194.2,
17 subdivision (a), provide that an employee who has not been paid the legal minimum wage as required
18 by Labor Code section 1197 may recover the unpaid balance, together with attorneys’ fees and costs
19 of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued
20 thereon.

21 86. Here, Defendants failed to fully conform their pay practices to the requirements of the
22 law during the relevant statutory periods. Plaintiff and the other Class Members were not compensated
23 for all hours worked including, but not limited to, all hours they were subject to the control of
24 Defendants and/or suffered or permitted to work under the Labor Code and the Applicable Wage Order.

25 87. Labor Code section 1198 makes unlawful the employment of an employee under
26 conditions that the IWC Wage Orders prohibit. Labor Code sections 1194, subdivision (a), and 1194.2,
27 subdivision (a), provide that an employer who has failed to pay its employees the legal minimum wage
28 is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages

1 in an amount equal to the wages due and interest thereon.

2 88. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
3 Plaintiff and the other Class Members have sustained economic damages, including but not limited to
4 unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to recover
5 economic and statutory damages and penalties and other appropriate relief because of Defendants'
6 violations of the Labor Code and Applicable Wage Order.

7 89. Defendants' practices and policies regarding illegal employee compensation are
8 unlawful and create an entitlement to recovery by Plaintiff and the other Class Members in a civil
9 action for the unpaid amount of minimum wages, liquidated damages, including interest thereon,
10 statutory penalties, attorneys' fees, and costs of suit according to Labor Code sections 204, 218.5, 1194,
11 1194.2, 1197, and 1198, and Code of Civil Procedure section 1021.5.

12 **Second Cause of Action**

13 *Failure to Pay All Overtime Wages*

14 *(Against All Defendants)*

15 90. Plaintiff realleges and incorporates by reference all previous paragraphs.

16 91. This cause of action is brought pursuant to Labor Code sections 204, 510, 1194, and
17 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours
18 worked and provide a private right of action for the failure to pay all overtime compensation for
19 overtime work performed. At all times relevant herein, Defendants were required to properly pay
20 Plaintiff and the other Class Members for all overtime wages earned pursuant to Labor Code section
21 1194 and the Applicable Wage Order. Defendants caused Plaintiff and the other Class Members to
22 work overtime hours but did not compensate them at one and one-half times their regular rate of pay
23 for such hours in accordance with California law. Likewise, Defendants caused Plaintiff and the other
24 Class Members to work double-time hours but did not compensate them at twice their regular rate of
25 pay for such hours in accordance with California law.

26 92. Defendants failed to fully conform their pay practices to the requirements of California
27 law. This unlawful conduct includes but is not limited to Defendants' uniform and unlawful pay
28 policies and practices of failing to accurately record all the time that non-exempt employees were under

1 the supervision and control of Defendants. The foregoing policies and practices are unlawful and allow
2 Plaintiff and the other Class Members to recover in a civil action the unpaid amount of overtime
3 premiums owing, including interest thereon, statutory penalties, attorneys' fees, and costs of suit
4 according to Labor Code section 204, 510, 1194, and 1198, the Applicable Wage Order, and Code of
5 Civil Procedure section 1021.5.

6 **Third Cause of Action**

7 *Failure to Provide Rest Periods and Pay Missed Rest Period Premiums*

8 *(Against All Defendants)*

9 93. Plaintiff realleges and incorporates by reference all previous paragraphs.

10 94. Section 12 of the Applicable Wage Order, and Labor Code section 226.7 establish the
11 right of employees to be provided with a rest period of at least ten minutes for each four hour period
12 worked, or major fraction thereof. (See Cal. Code of Regs., tit. 8, § 11070.)

13 95. Due to Defendants' unlawful rest period policies and practices described in detail above,
14 Defendants did not authorize and permit Plaintiff and the other Class Members to take all rest periods
15 to which they were legally entitled. Despite Defendants' violations, Defendants have not paid an
16 additional hour of pay to Plaintiff and the other Class Members at their respective regular rates of pay
17 for each violation, in accordance with California Labor Code section 226.7.

18 96. The foregoing violations create an entitlement to recovery by Plaintiff and the other
19 Class Members in a civil action for the unpaid amount of rest period premiums owing, including interest
20 thereon, statutory penalties, and costs of suit pursuant to the Applicable Wage Order, and California
21 Labor Code section 226.7.

22 **Fourth Cause of Action**

23 *Failure to Provide Meal Periods and Pay Missed Meal Period Premiums*

24 *(Against All Defendants)*

25 97. Plaintiff realleges and incorporates by reference all previous paragraphs.

26 98. Plaintiff is informed and believes and thereon alleges, that Defendants failed in their
27 affirmative obligation to provide their hourly non-exempt employees, including Plaintiff and the other
28 Class Members, with all required meal periods in accordance with the mandates of the Labor Code and

1 the Applicable Wage Order, for the reasons set forth herein above. Despite Defendants' violations,
2 Defendants have not paid an additional hour of pay to Plaintiff and the other Class Members at their
3 respective regular rates of pay for each violation, in accordance with California Labor Code section
4 226.7.

5 99. As a result, Defendants are responsible for paying premium compensation for meal
6 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the
7 Applicable Wage Order and Labor Code sections 226.7 and 512, and Civil Code sections 3287,
8 subdivision (b), and 3289. (See Cal. Code of Regs., tit. 8, § 11070.)

9 **Fifth Cause of Action**

10 *Failure to Maintain Accurate Employment Records*

11 *(Against All Defendants)*

12 100. Plaintiff realleges and incorporates by reference all previous paragraphs.

13 101. Pursuant to California Labor Code section 1174, subdivision (d), an employer shall keep
14 at a central location in the state or at the plants or establishments at which employees are employed,
15 payroll records showing the hours worked daily by and wages paid to employees employed at the
16 respective plants or establishments. These records must be kept in accordance with rules established
17 for this purpose by the commission, but in any case shall be kept on file for not less than two years.

18 102. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to
19 maintain accurate and complete records.

20 103. Defendant has intentionally and willfully failed to keep accurate and complete records
21 showing the hours worked daily and wages paid to Plaintiff and the other Class Members. Thus,
22 Plaintiff and the other Class Members have been denied their legal right and protected interest in having
23 available at a central location at the plant or establishment where they are employed, accurate and
24 complete payroll records showing the hours worked daily by, and the wages paid to, employees at those
25 respective locations pursuant to Labor Code 1174.

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1 compensation owed to them in a civil action and any applicable penalties, attorney fees, and interest
2 owed to them pursuant to Labor Code sections 210 and 218.5.

3 **Seventh Cause of Action**

4 *Failure to Pay All Wages Earned and Unpaid at Separation*

5 *(Against All Defendants)*

6 110. Plaintiff realleges and incorporates by reference all previous paragraphs.

7 111. The actionable period for this cause of action is three years prior to the filing of this
8 complaint through the present, and ongoing until the violations are corrected or the class is certified.
9 (*Pineda v. Bank of America, N.A.* (2010) 50 Cal.4th 1389, 1395; *Murphy v. Kenneth Cole Productions,*
10 *Inc.* (2007) 40 Cal.4th 1094, 1109; Code Civ. Proc., § 338, subd. (a).) Labor Code sections 201 and
11 202 of the California Labor Code require Defendants to pay all compensation due and owing to its
12 former employees (including the formerly-employed Class Members) during the actionable period for
13 this cause of action at or around the time that their employment is or was terminated, or ended.

14 112. Section 203 of the Labor Code provides that if an employer willfully fails to pay
15 compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then the
16 employer is liable for penalties in the form of continued compensation up to thirty workdays.

17 113. Due to Defendants' faulty pay policies, those Class Members whose employment with
18 Defendants has concluded were not compensated for each and every hour worked at the appropriate
19 rate. Defendants have willfully failed to pay those formerly-employed Class Members whose sums
20 were certain at the time of termination within seventy-two hours of their resignation and have failed to
21 pay those sums for thirty days thereafter as required by Labor Code sections 201 through 203.

22 114. As a result, Defendants are liable to the formerly-employed Class Members for waiting
23 time penalties amounting to thirty days wages for the formerly-employed Class Members pursuant to
24 Labor Code section 203. (See, e.g., DLSE Manual, § 4.3.4 [failure to pay any sort of wages due upon
25 termination entitles an employee to recover waiting time penalties].)

1 **Eighth Cause of Action**

2 *Failure to Indemnify All Necessary Business Expenditures*

3 *(Against All Defendants)*

4 115. Plaintiff realleges and incorporates by reference all previous paragraphs.

5 116. California Labor Code Section 2802 states that employers must “indemnify” an
6 employee for “all necessary expenditures or losses incurred by the employee in direct consequence of
7 the discharge of his or her duties, or of his or her obedience to the directions of the employer.” Likewise,
8 Labor Code section 2804 states that “any contract or agreement, express or implied, made by any
9 employee to waive the benefits of this article or any part thereof, is null and void, and this article shall
10 not deprive any employee or his personal representative of any right or remedy to which he is entitled
11 under the laws of this State.”

12 117. Here, Plaintiff and the other Class Members paid out of pocket for necessary business
13 expenditures incurred as a direct consequence and requirement of performing their job duties, including
14 the costs associated with their personal cell phone they required to perform their work. Despite knowing
15 that Plaintiff and the other Class Members incurred these necessary business expenses, and requiring
16 Plaintiff and the other Class Members to use such items, Defendants did not reimburse them.

17 118. Thus, Plaintiff and the other Class Members are entitled to recover the cost of such
18 necessary business expenses, plus interest from the date each incurred such business expenses, plus
19 fees and costs. (Lab. Code, § 2802, subds. (b), (c).)

20 **Ninth Cause of Action**

21 *Failure to Furnish Accurate Itemized Wage Statements*

22 *(Against All Defendants)*

23 119. Plaintiff realleges and incorporates by reference all previous paragraphs.

24 120. Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at the
25 time of each payment to furnish an itemized wage statement in writing showing:

- 26 (1) The gross wages earned;
27 (2) The total hours worked by the employee;
28

- (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) The 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
- (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.

121. As set forth above, Defendants issued and continues to issue wage statements to its non-exempt employees including Plaintiff and the other Class Members that are inadequate under Labor Code section 226, subdivision (a). By failing to pay Plaintiff and the other Class Members properly as described above, Defendants failed to include required information on their wage statements, including, but not limited to, the gross wages earned, the net wages earned in violation of Labor Code section 226, subdivision (a).

122. Defendants also failed to include the accrued sick hours on the wage statements provided to Plaintiff and the other Class Members as required by Labor Code section 246, subdivision (i).

123. Defendants' failure to comply with Labor Code section 226, subdivision (a), of the Labor Code was knowing and intentional. (Lab. Code, § 226, subd. (e)).

124. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiff and the other Class Members in violation of Labor Code section 226, subdivision (a), Plaintiff and the other Class Members are each entitled to recover an initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per Plaintiff and per each Class

1 Member from Defendants pursuant to Labor Code section 226, subdivision (e), along with costs and
2 reasonable attorneys' fees.

3 **Tenth Cause of Action**

4 *Failure to Pay Sick Leave*

5 *(Against All Defendants)*

6 125. Plaintiff realleges and incorporates by reference all previous paragraphs.

7 126. Labor Code section 246 provides that an employee who works for the same employer
8 for 30 or more days within a year from the commencement of employment is entitled to paid sick days.
9 (Lab. Code, § 246, subd. (a).) These paid sick days generally accrue at a rate of not less than one hour
10 per every 30 hours worked. (Lab. Code, § 246, subd. (b).)

11 127. The employer must calculate paid sick leave by using one of two calculations: **(1)** "Paid
12 sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay
13 for the workweek in which the employee uses paid sick time, whether or not the employee actually
14 works overtime in that workweek," or **(2)** "Paid sick time for nonexempt employees shall be calculated
15 by dividing the employee's total wages, not including overtime premium pay, by the employee's total
16 hours worked in the full pay periods of the prior 90 days of employment." (Lab. Code, § 246, subds.
17 (1)(1), (2).)

18 128. Here, Defendants employed Plaintiff and the other Class Members for 30 or more days
19 within a year from the commencement of employment. Defendants nevertheless failed to fully pay
20 Plaintiff and the other Class Members for all sick pay that was lawfully earned and accrued. This
21 resulted in Plaintiff and the other Class Members being underpaid for their lawfully-accrued sick leave,
22 and resulted in derivative violations including, among others, of Labor Code section 201, 202, and 203,
23 because Defendants did not pay, or timely pay, Plaintiff and the other Class Members all owing and
24 unpaid wages for work performed by them during their employment and at the end of their employment.

25 129. As a consequence for violating Labor Code section 246, Plaintiff and the other Class
26 Members are have sustained damages in an amount to be established at trial, are entitled to attorneys'
27 fees and costs of suit, and Defendants are subject to all applicable penalties.
28

1 **Eleventh Cause of Action**

2 *Violations of California's Unfair Competition Law*

3 *(Against All Defendants)*

4 130. Plaintiff realleges and incorporates by reference all previous paragraphs.

5 131. Defendants have engaged and continue to engage in unfair and/or unlawful business
6 practices in California in violation of California Business and Professions Code section 17200 through
7 17210, by committing the unlawful acts described above. Defendants' utilization of these unfair and
8 unlawful business practices deprived and continue to deprive Plaintiff and the other Class Members of
9 compensation to which they are legally entitled. These practices constitute unfair and unlawful
10 competition and provide an unfair advantage over Defendants' competitors who have been and/or are
11 currently employing workers and attempting to do so in honest compliance with applicable wage and
12 hour laws.

13 132. Because Plaintiff is a victim of Defendants' unfair and unlawful conduct alleged herein,
14 Plaintiff for herself and on behalf of the Class Members, seeks full restitution of monies, as necessary
15 and according to proof, to restore any and all monies withheld, acquired and/or converted by
16 Defendants pursuant to Business and Professions Code sections 17203 and 17208.

17 133. The acts complained of herein occurred within the four years prior to the initiation of
18 this action and are continuing into the present and ongoing.

19 134. Plaintiff was compelled to retain the services of counsel to file this Court action to
20 protect her interests and those of the Class Members, to obtain restitution and injunctive relief on behalf
21 of Defendants' current non-exempt employees and to enforce important rights affecting the public
22 interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which Plaintiff
23 is entitled to recover under Code of Civil Procedure section 1021.5.

Eleventh Cause of Action

Penalties Pursuant to PAGA for Violations of California Labor Code Sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 256, 510, 512, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and Other Provisions of the Labor Code
(Against All Defendants)

135. Plaintiff realleges and incorporates by reference all previous paragraphs.

136. Based on the above allegations incorporated by reference, Defendants violated Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 256, 510, 512, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and others that may be applicable; and the Applicable Wage Orders (Cal. Code of Regs., tit. 8, §§ 11070), and others that may be applicable.

137. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code sections 2698 through 2699.6 because of Defendants' violation of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 256, 510, 512, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and others that may be applicable; and the Applicable Wage Orders (Cal. Code of Regs., tit. 8, §§ 11070), and others that may be applicable.

138. Under Labor Code section 2699, subdivision (f)(2), and 2699.5, for each such violation, Plaintiff and the Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

A. \$100 for the initial violation per employee per pay period; and

B. \$200 for each subsequent violation per employee per pay period.

139. Moreover, under Labor Code section 256, the Aggrieved Employees are entitled to penalties "in an amount not exceeding 30 days pay as waiting time under the terms of Section 203" through PAGA. (Lab. Code, §§ 256, 2699.)

140. These penalties must be allocated seventy-five percent to the Labor and Workforce Development Agency ("LWDA") and twenty-five percent to the affected employees. These penalties may be stacked separately for each of Defendants violations of the California Labor Code. (*Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 780–781 [citing with approval *Stoddart v.*

1 *Express Services, Inc.* (E.D. Cal., Sept. 16, 2015, No. 2:12-CV-01054-KJM) 2015 WL 5522142, at *9,
2 for the proposition that plaintiff could pursue separate claims for penalties under Labor Code section
3 226, subdivision (e), and penalties for Labor Code section 226, subdivision (a), violations]; see also
4 *Hernandez v. Towne Park, Ltd.* (C.D. Cal., June 22, 2012, No. CV 12-02972 MMM JCGX) 2012 WL
5 2373372, at *17 fn. 70 [noting that federal courts applying California law have found that “PAGA
6 penalties can be stacked, i.e., multiple PAGA penalties can be assessed for the same pay period for
7 different Labor Code violations.”], internal quotation marks omitted).

8 141. In addition, to the extent permitted by law, Defendants failed to provide Plaintiff and all
9 Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code section
10 226, subdivision (a). Plaintiff seeks separate PAGA penalties for Defendants’ violations of Labor Code
11 section 226, subdivisions (a) and (e). (*Lopez v. Friant & Associates, LLC, supra*, 15 Cal.App.5th at pp.
12 780, 788.)

13 142. For violations of Labor Code section 226, subdivision (a), Plaintiff seeks the default
14 penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that “[a]ny
15 employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount
16 of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand
17 dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails
18 to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of
19 Section 226.” Accordingly, through PAGA and to the extent permitted by law Plaintiff and the
20 Aggrieved Employees are entitled to recover penalties for violations of Labor Code section 226.3 and
21 seeks default PAGA penalties for each of Defendants’ numerous violations of Labor Code section 226,
22 subdivision (e).

23 143. Labor Code section 210 provides that “in addition to, an entirely independent and apart
24 from, any other penalty provided in this article, every person who fails to pay the wages of each
25 employee as provided in Sections . . . 204 . . . shall be subject to a civil penalty as follows: (1) For any
26 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
27 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure
28 to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty

1 compensation policies and practices, Plaintiff and the Aggrieved Employees are also entitled to recover
2 penalties under Labor Code section 210 through PAGA.

3 144. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
4 liquidated damages, in the amount of: (1) one hundred dollars (\$100) for any initial violation that is
5 intentionally committed for each underpaid employee for each pay period for which the employee is
6 underpaid, and (2) two hundred fifty dollars (\$250) for each subsequent violation for the same specific
7 offense for each underpaid employee for each pay period for which the employee is underpaid
8 regardless of whether the initial violation is intentionally committed. Accordingly, through PAGA and
9 to the extent permitted by law, Plaintiff and the Aggrieved Employees are entitled to recover pursuant
10 to Labor Code section 1197.1.

11 145. Plaintiff was compelled to retain the services of counsel to file this action to protect his
12 interests and those of the Aggrieved Employees, and to assess and collect the wages and penalties owed
13 by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which Plaintiff is also entitled
14 to recover under Labor Code section 2699, subdivision (g)(1).

15 **VIII. DEMAND FOR JURY TRIAL**

16 146. Plaintiff hereby demands trial by jury of Plaintiff's and the Class Members' claims
17 against Defendants.

18 **IX. PRAYER FOR RELIEF**

19 Plaintiff prays for judgment for herself and for all others on whose behalf this suit is brought
20 against Defendants, as follows:

- 21 1. For an order certifying the proposed class;
- 22 2. For an order appointing Plaintiff as representative of the class;
- 23 3. For an order appointing Plaintiff's counsel as counsel for the class;
- 24 4. For the failure to pay all minimum wages, compensatory, consequential, general, and
25 special damages according to proof pursuant to Labor Code sections 1194, 1194.2,
26 1197, and others as may be applicable;
- 27 5. For the failure to pay all overtime wages, compensatory, consequential, general, and
28 special damages according to proof pursuant to Labor Code sections 204, 510, 1194,

1198, and others as may be applicable;

6. For the failure to provide rest periods and pay missed rest period premiums, compensatory, consequential, general, and special damages according to proof pursuant to Labor Code section 226.7;
7. For the failure to provide meal periods and pay missed meal period premiums, compensatory, consequential, general, and special damages according to proof pursuant to Labor Code sections 226.7 and 512;
8. For the failure to maintain accurate employment records, penalties pursuant to Labor Code sections 226.3, 1174.5, and others that may be applicable;
9. For the failure to pay wages timely during employment, the unpaid balance of the compensation owed to Plaintiff and the other Class Members and any applicable penalties owed to them pursuant to Labor Code section 210;
10. For the failure to pay all wages earned and unpaid at separation, statutory waiting time penalties pursuant to Labor Code sections 201 through 203, for the Class Members who quit or were fired in an amount equal to their daily wage multiplied by thirty days, as may be proven;
11. For the failure to indemnify all necessary business expenditures, all unreimbursed business expenses, and interest thereon, that are owed, pursuant to Labor Code section 2802, and attorney fees, pursuant to Labor Code section 2802, subdivision (c);
12. For the failure to pay all sick time wages due and owed, compensatory, consequential, general, and special damages according to proof pursuant to Labor Code section 246, and others as may be applicable;
13. For the violations of California's Unfair Competition Law, restitution to Plaintiff and the other Class Members 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 sections 17200 through 17210;
14. For the claim of penalties pursuant to PAGA and other provisions of the California Labor Code, a civil penalty in the amount of \$100 for the initial violation and \$200 for

1 each subsequent violation as specified in Labor Code section 2699, subdivision (f)(2),
2 in the representative action brought on behalf of Plaintiff and the Aggrieved Employees
3 pursuant the Labor Code Private Attorneys General Act of 2004, and for civil penalties
4 available under Labor Code section 210 and Labor Code section 256;

5 **15.** Prejudgment interest on all due and unpaid wages pursuant to Labor Code section 218.6
6 and Civil Code sections 3287 and 3289;

7 **16.** On all causes of action for which attorneys' fees may be available, for attorneys' fees
8 and costs as provided by Labor Code sections 218.5, 226, Code of Civil Procedure
9 section 1021.5, and others as may be applicable;

10 **17.** For an order enjoining Defendants, and each of them, and their agents, servants, and
11 employees, and all persons acting under, in concert with, or for them, from acting in
12 derogation of any rights or duties adumbrated in this complaint; and

13 **18.** For such other and further relief, this Court may deem just and proper.

14 Dated: October 11, 2024

MELMED LAW GROUP P.C.

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JONATHAN MELMED

17 Attorneys for Plaintiff, the Putative Class, and the
18 Aggrieved Employees
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PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I am over the age of 18 years and am employed in the county of Los Angeles, State of California. I am not a party to the action. My business address is 1801 Century Park East, Suite 850, Los Angeles, CA 90067.

I declare that on the date hereof, October 11, 2024, I served the foregoing document(s) described as:

- First Amended Class and PAGA Representative Action Complaint

By causing a true copy thereof to be sent to the following individuals and/or parties:

Peter Horton
phorton@lfecr.com
**LAWYERS FOR EMPLOYEE AND
CONSUMER RIGHTS**
3500 West Olive Avenue, Third Floor
Burbank, CA 91505

Attorney for Plaintiff

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**GORDON REES SCULLY
MANSUKHANI**
633 West Fifth Street, 52nd Floor
Los Angeles, CA 90071

Attorney for Defendant

[XX] BY ELECTRONIC TRANSMISSION. Pursuant to CCP section 1010.6(e), I caused such document to be served on this date by electronic transmission in accordance with standard procedures and to the email address listed. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of California that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on October 11, 2024, in San Diego, California.


Rachel Bray