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Superior Court of California
County of Los Angeles
02/23/2024
David W. Slayton, Executive Officer / Clerk of Court
By: R. Lozano Deputy

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

IRMA HUERTA, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

CAPTEK SOFTGEL INTERNATIONAL, INC.,
a California Corporation; and DOES 1 through
100,

Defendants.

Case No.: 23STCV31004

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

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

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

DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE

Plaintiff Irma Huerta (“Plaintiff”) on behalf of herself and all others similarly situated, hereby brings this First Amended Class and Representative Action Complaint against Defendant Captek Softgel International, Inc., a California Corporation, and DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief alleges as follows:

JURISDICTION

1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this action for recovery of unpaid wages and penalties under California Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and 2698 *et seq.*, California Business and Professions Code § 17200 *et seq.*, and Industrial Welfare Commission Wage Order 1 (“Wage Order 1”), in addition to seeking declaratory relief and restitution. This action is brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations of the California Labor Code because the amount in controversy exceeds this Court’s jurisdictional minimum.

VENUE

2. Venue is proper in this judicial district pursuant to California Code of Civil Procedure sections 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the County of Los Angeles. Defendants transact business within the County of Los Angeles and/or otherwise are found within the County of Los Angeles, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was and currently is, a California resident living within Los Angeles County. During the four years immediately preceding the filing of this action and within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as

1 a non-exempt employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices
2 complained of herein, lost money and/or property, and has been deprived of the rights guaranteed
3 by Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197,
4 1198, and 2698 *et seq.*, California Business and Professions Code § 17200 *et seq.* ("Unfair
5 Competition Law"), and Wage Order 1, which sets the employment standards for the
6 manufacturing industry.

7 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
8 years preceding the filing of this action and continuing to the present, Defendants did (and
9 continue to do) business within the County of Los Angeles and the State of California by operating
10 a company specializing in manufacturing vitamins, minerals, and supplements and therefore,
11 were (and are) doing business in the County of Los Angeles and the State of California.

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

20 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
21 mentioned herein, Defendants were and are the employers of Plaintiff and all members of the
22 Classes.

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

omissions complained of herein.

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of the Classes.

GENERAL FACTUAL ALLEGATIONS

9. Defendants operate a manufacturing facility for vitamins, minerals, and supplements in Cerritos, California. Plaintiff was employed by Defendants as a non-exempt “General Worker” in their Inspection Department, from approximately 2007 until approximately June 2023. Plaintiff’s primary job duties included monitoring pill capsules as they were filled into bottles and then packaged for shipping.

10. During Plaintiff’s employment with Defendants, Defendants failed to compensate Plaintiff and other non-exempt employees for all hours actually worked, resulting in unpaid minimum wages and additional unpaid overtime wages. Specifically, Defendants’ supervisors frequently interrupted Plaintiff and other non-exempt employees during their meal periods with various work-related demands. In instances where their meal periods were interrupted for work purposes, Plaintiff and other non-exempt employees were not able to clock in before being required to complete these work demands. As a result, Defendants have failed to provide all duty-free meal periods, resulting in Plaintiff and other non-exempt employees performing off-the-clock work during their purported meal periods. *See Kaanaana v. Barrett Business Services, Inc.* (2018) 29 Cal.App.5th 778, 808 (holding that requiring employees to work through any portion of meal period entitles them to payment for actual time worked as well as an additional hour of pay for the meal period premium).

11. Moreover, Defendants paid Plaintiff and other non-exempt employees non-discretionary incentive pay and/or other forms of pay that are not excludable from an employee’s “regular rate” of compensation including, but not limited to, bonuses and payments denoted as

1 “Bonus” and “Gift” (hereinafter referred to collectively as “Incentive Pay”). However, despite
2 paying Plaintiff and other non-exempt employees Incentive Pay, Defendants failed to properly
3 incorporate the value of earned Incentive Pay when calculating the employees’ respective regular
4 rates of pay for overtime purposes, resulting in unpaid overtime wages.

5 12. Defendants failed to provide Plaintiff and other non-exempt employees with all
6 legally-compliant meal periods due to Defendants’ unlawful meal period policies/practices that
7 failed to provide timely, uninterrupted, duty-free 30-minute meal periods before the fifth hour of
8 work and **any** second duty-free, 30-minute meal periods when they worked shifts in excess of ten
9 hours. Specifically, Plaintiff was frequently unable to take her meal period before the end of her
10 fifth hour of work. Defendants required Plaintiff and other non-exempt employees to finish their
11 job duties before they started their scheduled first meal periods, resulting in Plaintiff and other
12 non-exempt employees frequently working approximately 30 minutes to one hour into their
13 scheduled meal periods before they were provided a meal period. Moreover, Defendants’
14 supervisors frequently interrupted Plaintiff and other non-exempt employees with work-related
15 tasks during meal periods. Even when Plaintiff was permitted to take a meal period, such meal
16 periods were often shorter than a “net” of 30-minutes as required by law for the same reasons
17 discussed below pertaining to rest periods. Further, Defendants failed to schedule and provide
18 any second meal periods, even though Plaintiff and other non-exempt employees worked shifts
19 over ten hours on a daily basis. Moreover, when Defendants paid meal period premium payments
20 (denoted on paystubs as “Missed Penalty”), they paid meal periods premiums at the employees’
21 base hourly rate of pay, rather than at their respective regular rates of pay after incorporating the
22 value of earned Incentive Pay. As a result, Plaintiff and other non-exempt employees did not
23 receive an additional hour of premium pay at their respective regular rates of pay for each
24 workday in which a meal period violation occurred, as required by Labor Code § 226.7.

25 13. Defendants regularly failed to authorize and permit Plaintiff and other non-exempt
26 employees to take **any** duty-free 10-minute rest periods for every four hours worked, or major
27 fraction thereof, due to Defendants’ unlawful rest period policies/practices. Moreover,
28 Defendants failed to even **schedule** any rest periods for shifts over ten hours. As with meal

1 periods, Defendants required Plaintiff and other non-exempt employees to finish their job duties
2 before taking any breaks, thereby leaving Plaintiff and other non-exempt employees frequently
3 unable to take rest periods. In the event Plaintiff and other non-exempt employees were able to
4 take their rest periods, Defendants failed to authorize and permit rest periods for a “net” of 10
5 minutes. Under California law, Defendants are required to authorize and permit a “net” rest period
6 of 10-minutes that begins when the employee reaches a rest area away from his or her workstation
7 and must be uninterrupted during the duration of the rest period. *See e.g.*, Division of Labor
8 Standards Enforcement Manual (“DLSE Manual”) §45.3.3; *Vaquero v. Stoneledge Furniture*
9 *LLC*, (2017) 9 Cal.App.5th 98, 111-112 (citing DLSE Manual § 45.3.3 for the proposition that
10 “the rest period begins when the employee reaches an area away from the workstation that is
11 appropriate for rest”); *Augustus v. ABM Security Services, Inc.*, (2016) 2 Cal.5th 257, 260
12 (“[D]uring required rest periods, employers must relieve their employees of all duties and
13 relinquish any control over how employees spend their break time”). Specifically, Defendants’
14 supervisors timed Plaintiff and other non-exempt employees’ rest periods to begin the moment
15 they left their workstation, and Plaintiff and other non-exempt employees were required to return
16 to their workstations by the completion of their 10-minute rest period. However, after leaving
17 their workstations, Plaintiff and other non-exempt employees were required to walk
18 approximately 2 minutes to the locker room to doff their protective gear, which included a gown,
19 gloves and hat, and then walk an additional distance from the locker room to the breakroom.
20 Plaintiff and other non-exempt employees were then required to walk back to the locker room to
21 don their protective gear, then walk the approximately 2 minutes back to their workstations before
22 the end of their rest period, thereby shortening their purported rest periods to less than 10 minutes
23 in the designated rest area away from the employee’s workstation. Further, on occasions when
24 Plaintiff and other non-exempt employees were not authorized and permitted to take all lawful
25 rest periods to which they were entitled, Defendants failed to pay Plaintiff and other non-exempt
26 employees an additional hour of premium pay at their respective regular rates of pay for each
27 workday in which a rest period violation occurred, as required by Labor Code section 226.7. Upon
28 information and belief, Defendants failed to maintain pay codes for the payment of rest period

premium payments as required by Labor Code section 226.7.

14. Defendants also failed to pay Plaintiff and other non-exempt employees all sick pay wages owed to them. Defendants' policies and practices dictated that sick pay payments be made at an employee's base rate of pay, as opposed to their regular rate of pay, as required by California law. Because Plaintiff and other non-exempt employees received Incentive Pay that was required to be included in their regular rate of pay, but was not, Plaintiff and other non-exempt employees have not been paid all sick pay wages owed to them.

15. As a result of Defendants' failure to pay all overtime wages, minimum wages, meal and rest period premium wages owed, and sick pay wages, Defendants also maintained inaccurate payroll records, issued inaccurate wage statements to Plaintiff and other non-exempt employees, and failed to pay all final wages owed to Plaintiff and other non-exempt employees upon their respective separations from employment.

CLASS ACTION ALLEGATIONS

16. **Class Definitions:** Plaintiff brings this action on behalf of herself and the following Classes pursuant to section 382 of the Code of Civil Procedure:

- a. The Overtime Class consists of consists of all Defendants' current and former non-exempt employees in California who worked more than 8.0 hours per day and/or 40.0 hours per workweek and: (i) received Incentive Pay during a corresponding time period; and/or (ii) were subject to Defendants' timekeeping policies and/or practices for non-exempt employees, during the four years immediately preceding the filing of this action through the present.
- b. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who were subject to Defendants' timekeeping policies and/or practices for non-exempt employees, during the four years immediately preceding the filing of this action through the present.
- c. The Meal Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours during the four years immediately preceding the filing of this action through the present.

d. The Rest Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 3.5 hours, during the four years immediately preceding the filing of this action through the present.

e. The Wage Statement Class consists of all members of the Overtime Class, Minimum Wage Class, Meal Period Class, and/or Rest Period Class who received a wage statement from Defendants, during the one year immediately preceding the filing of this action through the present.

f. The Waiting Time Class consists of all members of the Overtime Class, Minimum Wage Class, Meal Period Class, Rest Period Class, and/or any individual who was not paid all his or her sick pay wages who separated their employment with Defendants during the three years immediately preceding the filing of this action through the present.

17. **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 Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

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

i. Whether Defendants lawfully paid all premium wages for all overtime hours worked to members of the Overtime Class pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198;

ii. Whether Defendants paid all minimum wages owed for all hours worked to members of the Minimum Wage Class pursuant to Labor Code sections 1182.12, 1194, 1194.2 and 1197;

- 1 iii. Whether Defendants provided all legally compliant meal periods to members of
- 2 the Meal Period Class pursuant to Labor Code sections 226.7 and 512;
- 3 iv. Whether Defendants authorized and permitted all lawful rest periods to members
- 4 of the Rest Period Class pursuant to Labor Code sections 226.7 and 516;
- 5 v. Whether Defendants correctly paid meal and/or rest period premium payments for
- 6 non-compliant meal and/or rest periods pursuant to Labor Code section 226.7;
- 7 vi. Whether Defendants furnished legally compliant wage statements to members of
- 8 the Wage Statement Class pursuant to Labor Code section 226; and
- 9 vii. Whether Defendants paid all wages/compensation due upon separation to
- 10 members of the Waiting Time Class pursuant to Labor Code §§ 201-203.

11 19. **Predominance of Common Questions:** Common questions of law and fact
12 predominate over questions that affect only individual members of the Classes. The common
13 questions of law set forth above are numerous and substantial and stem from Defendants' policies
14 and/or practices applicable to each individual class member, such as Defendants' uniform
15 overtime and minimum wage, sick pay, and meal and rest period policies/practices. As such,
16 common questions predominate over individual questions concerning each individual class
17 member's showing as to their eligibility for recovery or as to the amount of their damages.

18 20. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because
19 Plaintiff was employed by Defendants as a non-exempt employee in California during the
20 statute(s) of limitations period applicable to each cause of action pled in the action. As alleged
21 herein, Plaintiff, like the members of the Classes, was deprived of all overtime and minimum
22 wages owed, was not provided all required meal periods, was not authorized and permitted to take
23 all required rest periods, did not receive meal and rest period premium wages at her regular rate
24 of pay for missed or non-compliant meal and rest periods, was not paid all sick pay wages owed,
25 and did not receive accurate wage statements or all final wages owed at the time of her separation
26 from employment.

27 21. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
28 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,

1 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
2 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
3 and-hour class actions in state and federal courts in the past and are committed to vigorously
4 prosecuting this action on behalf of the members of the Classes.

5 22. **Superiority:** The California Labor Code is broadly remedial in nature and serves
6 an important public interest in establishing minimum working conditions and standards in
7 California. These laws and labor standards protect the average working employee from
8 exploitation by employers who have the responsibility to follow the laws and who may seek to
9 take advantage of superior economic and bargaining power in setting onerous terms and
10 conditions of employment. The nature of this action and the format of laws available to Plaintiff
11 and members of the Classes make the class action format a particularly efficient and appropriate
12 procedure to redress the violations alleged herein. If each employee were required to file an
13 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
14 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
15 their vastly superior financial and legal resources. Moreover, requiring each member of the
16 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
17 employees who would be disinclined to file an action against their former and/or current employer
18 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
19 employment. Further, the prosecution of separate actions by the individual class members, even
20 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
21 with respect to the individual class members against Defendants herein; and which would
22 establish potentially incompatible standards of conduct for Defendants; and/or legal
23 determinations with respect to individual class members which would, as a practical matter, be
24 dispositive of the interest of the other class members not parties to adjudications or which would
25 substantially impair or impede the ability of the class members to protect their interests. Further,
26 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
27 individual prosecution considering all of the concomitant costs and expenses attending thereto.

As such, the Classes identified herein are maintainable as a Class under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION
FAILURE TO PAY ALL OVERTIME WAGES
(AGAINST ALL DEFENDANTS)

23. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

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

25. At all times relevant herein, Defendants were required to properly pay Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 1. Wage Order 1, § 3 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours” per work day and/or in excess of 40 hours of work in the workweek. Wage Order 1, § 3 also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of 12 hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiff to work overtime hours, but did not compensate Plaintiff or members of the Overtime Class at one and one-half (1½) times their regular rate of pay for such hours.

26. At all times relevant herein, Defendants caused Plaintiff and members of the Overtime Class to work overtime hours but did not compensate Plaintiff or members of the Overtime Class at one and one-half times their regular rate of pay for such hours.

27. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory and civil penalties, attorney’s fees, and costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order 1, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION
MINIMUM WAGE VIOLATIONS
(AGAINST ALL DEFENDANTS)

28. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

29. 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.

30. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes but is not limited to all hours they were subject to Defendants' control. Accordingly, Plaintiff and members of the Minimum Wage Class were not compensated for all hours actually worked as required by the California Labor Code and Wage Order 1.

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

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

33. Defendants' timekeeping policies/practices are unlawful and create an entitlement to recovery by Plaintiff and members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties,

civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 558, 1194, 1194.2, and 1198, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

34. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

35. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 1, § 11, for the reasons set forth in the factual allegations and class definitions sections of this Complaint. Despite Defendants' violations, Defendants did not pay an additional hour of premium pay to Plaintiff and members of the Meal Period Class at their respective regular rates of pay, in accordance with California Labor Code §§ 226.7 and 512.

36. As a result, Defendants are responsible for paying premium compensation for meal period violations, including interest thereon, statutory penalties, civil penalties, and costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 1, and Code of Civil Procedure § 1021.5.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

37. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

38. Wage Order 1, § 12 and Labor Code §§ 226.7 and 516 establish the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof.

39. As alleged herein, and due to Defendants' unlawful rest period policies and/or practices, Defendants failed to authorize and permit Plaintiff and members of the Rest Period Class to take all paid rest periods to which they were legally entitled. Despite Defendants'

1 violations, Defendants failed to pay an additional hour of premium pay to Plaintiff and members
2 of the Rest Period Class at their respective regular rates of pay for each violation, as required by
3 California Labor Code § 226.7.

4 40. The foregoing violations create an entitlement to recovery by Plaintiff and
5 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
6 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according
7 to Labor Code §§ 226.7, 516, and 558, Wage Order 1, and Code of Civil Procedure § 1021.5.

8 **FIFTH CAUSE OF ACTION**

9 **WAGE STATEMENT VIOLATIONS**

10 **(AGAINST ALL DEFENDANTS)**

11 41. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

12 42. Plaintiff is informed and believes, and based thereon alleges, that Defendants
13 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
14 and the Wage Statement Class with wage statements that complied with the requirements of Labor
15 Code § 226(a).

16 43. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
17 with compliant wage statements resulted in actual injury, as said failures rendered Plaintiffs
18 unable to unable to readily ascertain the information on their wage statements.

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

23 **SIXTH CAUSE OF ACTION**

24 **WAITING TIME PENALTIES**

25 **(AGAINST ALL DEFENDANTS)**

26 45. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

27 46. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
28 an employer to pay all wages earned immediately at the time of separation from employment in

1 the event the employer discharges the employee, or if the employee provides at least 72 hours of
2 notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of
3 his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon
4 said employee's last date of employment.

5 47. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
7 at the time of their separation including, among other things, underpaid overtime and minimum
8 wages owed, meal and rest period premium wages, and sick pay wages. Further, Plaintiff is
9 informed and believes, and based thereon alleges, that as a matter of uniform policy and practice,
10 Defendants continue to fail to pay members of the Waiting Time Class all earned wages at the
11 end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203.
12 Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

13 48. Defendants' willful failure to timely pay Plaintiff and members of the Waiting
14 Time Class all earned wages upon separation from employment results in a continued payment
15 of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and
16 members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203,
17 plus reasonable attorneys' fees and costs of suit.

18 **SEVENTH CAUSE OF ACTION**

19 **UNFAIR COMPETITION**

20 **(AGAINST ALL DEFENDANTS)**

21 49. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

22 50. Defendants have engaged and continue to engage in unfair and/or unlawful
23 business practices in California in violation of California Business and Professions Code § 17200
24 *et seq.* by, amongst other things, failing to pay Plaintiff and the Classes all required all overtime
25 and minimum wages owed; meal and rest period premium wages owed; knowingly failing to
26 furnish complete and accurate, itemized wage statements; and failing to pay all final wages at the
27 time of separation from employment.

28 51. Defendants' utilization of these unfair and/or unlawful business practices deprived

1 Plaintiff, and continues to deprive members of the Classes, of compensation to which they are
2 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
3 over Defendants' competitors who have been and/or are currently employing workers and
4 attempting to do so in honest compliance with applicable wage and hour laws.

5 52. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
6 herein, Plaintiff, for herself and on behalf of the members of the Classes, seeks full restitution of
7 monies as necessary and according to proof to restore any and all monies withheld, acquired
8 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

9 53. The acts complained of herein occurred within the last four years immediately
10 preceding the filing this action.

11 54. Plaintiff was compelled to retain the services of counsel to file this court action to
12 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf
13 of Defendants' current non-exempt employees, and to enforce important rights affecting the
14 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
15 which he is entitled to recover under Code of Civil Procedure § 1021.5.

16 **EIGHTH CAUSE OF ACTION**

17 **PRIVATE ATTORNEYS GENERAL ACT**

18 **(AGAINST ALL DEFENDANTS)**

19 55. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

20 56. Defendants have committed several Labor Code violations against Plaintiff,
21 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
22 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved
23 employees, brings this representative action against Defendants to recover the civil penalties due
24 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
25 according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited
26 to: (1) \$100.00 for each initial violation and \$200 for each subsequent violation or willful or
27 intentional violation for each failure to pay each employee pursuant to Labor Code § 210 for each
28 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each

1 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
2 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
3 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
4 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
5 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each
6 subsequent violation per employee per pay period for those violations of the Labor Code for which
7 no civil penalty is specifically provided, based on the following Labor Code violations:

- 8 a. Failing to pay Plaintiff and other aggrieved employees all overtime
9 compensation earned in violation of Labor Code §§ 204, 510, 558, 1194 and
10 1198;
- 11 b. Failing to pay Plaintiff and other aggrieved employees the statutory minimum
12 wage for all hours worked in violation of Labor Code §§ 1182.12, 1194,
13 1194.2, and 1197;
- 14 c. Failing to provide meal periods as required by law and failing to pay meal
15 period premiums to Plaintiff and other aggrieved employees at these
16 employees' respective regular rates of compensation for meal period violations
17 in violation of Labor Code §§ 226.7, 512, and 558;
- 18 d. Failing to authorize and permit Plaintiff and other aggrieved employees to take
19 all lawful rest periods to which they are entitled, and failing to pay rest period
20 premiums to Plaintiff and other aggrieved employees at these employees'
21 respective regular rates of compensation for rest period violations in violation
22 of Labor Code §§ 226.7, 516, and 558;
- 23 e. Failing to furnish Plaintiff and other aggrieved employees with accurate and
24 compliant itemized wage statements in violation of Labor Code § 226;
- 25 f. Failing to pay Plaintiff and other aggrieved employees sick time pay at their
26 regular rate of compensation in violation of Labor Code § 246;
- 27 g. Failing to timely pay all final wages due to Plaintiff and other aggrieved
28

employees in violation of Labor Code §§ 201-203;

h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 558 and 1174; and

i. Failing to pay Plaintiff and other aggrieved employees all wages earned at least twice during each calendar month in violation of Labor Code § 204.

57. On December 19, 2023, Plaintiff notified Defendants, via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via e-mail of Defendants’ violations of the California Labor Code and Plaintiff’s 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 herein. Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

58. Based on the foregoing, Plaintiff seeks to represent herself and all other Aggrieved Employees, as defined by Labor Code § 2699(c), which includes all of Defendants’ employees who worked for Defendants in California at any time between December 19, 2022, and the present.

59. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which she is entitled to receive under California Labor Code § 2699.

PRAYER

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

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general and

special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;

5. Upon the Second Cause of Action, for payment of minimum wages, liquidated damages, and penalties owed according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2 and 1197;

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 penalties pursuant to Labor Code § 226 *et. seq.*;

9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;

10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the Classes 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 California Business and Professions Code § 17200 *et seq.*;

11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 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 \$100.00 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 employee 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 each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is

specifically provided, based on the violations of Labor Code sections cited in Paragraph 56 (a)-(i) above;

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

13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 218.5, 1194 *et seq.*, 226, and 2698 *et seq.*, and Code of Civil Procedure § 1021.5; and

14. For such other and further relief the Court may deem just and proper.

Dated: February 23, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Fletcher W. Schmidt
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: February 23, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Fletcher W. Schmidt
Attorneys for Plaintiff