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

DELMA ABARCA, Individually, and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

BURLINGTON CONVALESCENT
HOSPITAL, LLC. a California Limited
Liability Corporation; and DOES 1 through
100, Inclusive,

Defendants.

Case No. 24STCV18378

CLASS ACTION

1. Failure to Pay For All Hours Worked [Lab. Code §§ 1194, 1197, 1198, And 1199];
2. Failure To Pay Overtime Compensation [Lab. Code § 510];
3. Failure To Provide Meal Periods [Lab. Code §§ 226.7 and 512];
4. Failure To Authorize and Permit Rest Periods [Lab. Code § 226.7];
5. Failure To Furnish Complete and Accurate Wage Statements [Lab. Code § 226(a)];
6. Unfair Business Practices [Bus. & Prof. Code §§ 17200, *Et Seq.*]; and
7. Violation of PAGA [Lab. Code §§ 2698, *Et Seq.*].

DEMAND FOR JURY TRIAL

1 Plaintiff DELMA ABARCA (“Plaintiff”), an individual, on behalf of herself and all others
2 similarly situated, and aggrieved employees, hereby alleges the following facts and claims against
3 BURLINGTON CONVALESCENT HOSPITAL, LLC, and DOES 1 through 100, inclusive
4 (“Defendants”), and respectfully requests a trial by jury of all issues and causes of action so
5 triable:

6 **I. INTRODUCTION**

7 1. This class action and representative action complaint challenges Defendants’ past
8 and ongoing unlawful employment practices and policies on behalf of Plaintiff, aggrieved
9 employees, and similarly situated current and former non-exempt employees of Defendants in
10 California, whose rights Defendants violated and continue to violate under California laws.

11 2. On March 12, 2024, Plaintiff submitted notice to the California Labor and
12 Workforce Development Agency (“LWDA”), identifying Defendants’ alleged violations of
13 California’s Labor Code together with facts and theories supporting the alleged violation, pursuant
14 to Labor Code 2699.3. The LWDA did not respond with advisement of its intent to investigate the
15 alleged violations within the requisite time, thus, Plaintiff may and now does file this Complaint to
16 allege a representative action claim pursuant to the California Private Attorneys General Act of
17 2004 (Lab. Code § 2698 *et seq.*) on behalf of the LWDA for Defendants’ aggrieved employees.

18 3. Specifically, with regard to Plaintiff and similarly situated current and former non-
19 exempt employees, Defendants have uniformly and systematically:

- 20 a. Failed to pay all wages owed in violation of Labor Code sections 1194 and
21 1197 and Section 4 of the IWC Wage Order(s);
22 b. Failed and continue to fail to pay all overtime compensation owed for time
23 worked in excess of either eight hours in one work day or forty hours in one
24 work week in violation of Labor Code section 510 and Section 3 of the
25 applicable IWC Wage Order(s);
26 c. Failed and continue to fail to provide meal periods in violation of Labor Code
27 sections 226.7 and 512 and Section 11 of the IWC Wage Order(s);
28 d. Failed and continue to fail to authorize and permit all paid rest periods in

violation of Labor Code section 226.7 and Section 12 of the IWC Wage Order(s);

- e. Failed and continue to fail to furnish complete and accurate itemized wage statements in violation of Labor Code section 226, subdivision (a);
- f. Committed and continue to commit unfair business practices in violation of California Business & Professions Code section 17200, *et seq.*; and
- g. Incurred penalties by having violated and by continuing to violate of the Private Attorneys General Act of 2004 (“PAGA”), Labor Code section 2698, *et seq.*

4. The acts complained of herein occurred, occur and will occur, at least in part, within the time period from four (4) years preceding the filing of the original Complaint herein, up to and through the time of trial for this matter, although this should not automatically be considered the statute of limitations for any cause of action herein.

5. As a result of the foregoing, Plaintiff seeks monetary damages, civil penalties, injunctive relief, restitution, reasonable attorneys’ fees, costs, and interest.

6. Plaintiff also brings this representative action against Defendants for civil penalties pursuant to PAGA, Labor Code section 2698, *et seq.*, resulting from Defendants’ wage and hour violations under the California Labor Code and the IWC Wage Orders. PAGA permits an aggrieved employee to bring a lawsuit on behalf of herself and other current and former non-exempt employees (“aggrieved employees”) to recover civil penalties for an employer’s violation of the California Labor Code.

II. PARTIES

7. Plaintiff DELMA ABARCA is an individual over the age of eighteen (18), and is now and/or at all times mentioned in this Complaint a California citizen residing in Los Angeles County, California. Plaintiff has been employed by Defendants as a non-exempt dishwasher from approximately December, 2023 to the present. At all times herein, Plaintiff was and is an “employee” as that term is used in the Labor Code and IWC Wage Orders regulating wages, hours, and working conditions.

8. Plaintiff seeks the recovery alleged herein from Defendants because, at all times

1 while working for Defendants in her capacity as a non-exempt employee, Defendants:

- 2 a. Failed to pay all wages owed in violation of Labor Code sections 1194 and
- 3 1197 and Section 4 of the IWC Wage Order(s);
- 4 b. Failed to fail to pay all overtime compensation owed for time worked in excess
- 5 of either eight hours in one work day or forty hours in one work week in
- 6 violation of Labor Code section 510 and Section 3 of the IWC Wage Order(s);
- 7 c. Failed to provide meal periods in violation of Labor Code sections 226.7 and
- 8 512 and Section 11 of the IWC Wage Order(s);
- 9 d. Failed to authorize and permit all paid rest periods in violation of Labor Code
- 10 sections 226.7 and Section 12 of the IWC Wage Order(s);
- 11 e. Failed to furnish complete and accurate itemized wage statements in violation
- 12 of Labor Code section 226, subdivision (a), and Section 7 of the IWC Wage
- 13 Order(s);
- 14 f. Conducted unfair business practices in violation of Business & Professions
- 15 Code section 17200, *et seq.*;
- 16 g. Incurred penalties by having violated and by continuing to violate PAGA,
- 17 Labor Code section 2698, *et seq.*

18 9. Defendant BURLINGTON CONVALESCENT HOSPITAL, LLC
19 (“BURLINGTON”) is a 124 bed Skilled Nursing Facility located 845 S. Burlington Ave. Los
20 Angeles, CA 90057 and at all relevant times herein has conducted business within California, and
21 is the owner and operator of an industry, business and/or facility licensed to do business and
22 actually doing business in the State of California. Defendant BURLINGTON is an “employer” as
23 the term is used in the Labor Code and IWC Wage Orders.

24 10. The Defendants sued by the fictitious names DOES 1 through 100, inclusive, are on
25 information and belief now, and/or at all times mentioned in this Complaint were licensed to do
26 business and/or actually doing business in California, including Los Angeles County, and each of
27 the fictitiously named Defendants is responsible for the conduct alleged in this Complaint.
28 Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of

DOES 1 through 100, inclusive and for that reason, DOES 1 through 100 are sued under such fictitious names pursuant to Code of Civil Procedure section 474. Plaintiff will seek leave of court to amend this Complaint to allege such names and capacities as soon as they are ascertained.

11. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were in some manner legally responsible for the events, happenings and circumstances alleged in this Complaint.

12. Defendants, and each of them, proximately subjected Plaintiff to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

13. Defendants, and each of them, are now and/or at all times mentioned herein were the agents, servants and/or employees of some or all other Defendants, or vice-versa, and in doing the things alleged in this Complaint, Defendants are now and/or at all times mentioned in this Complaint were acting within the course and scope of that agency, servitude and/or employment.

14. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuance of said joint venture, partnership and common enterprise.

15. Defendants, and each of them, at all times mentioned in this Complaint concurred and contributed to the various acts and omissions of each and every one of the other Defendants in proximately causing the complaints, injuries and/or damages alleged in this Complaint.

16. Defendants, and each of them, at all times mentioned in this Complaint approved of, condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in this Complaint.

17. Defendants, and each of them, at all times mentioned in this Complaint aided and abetted the acts and omissions of each and every one of the other Defendants thereby proximately causing the damages alleged in this Complaint.

III. JURISDICTION AND VENUE

18. The California Superior Court has jurisdiction in this matter pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all

1 causes except those given by statute to other trial courts.” The statutes under which this action is
2 brought do not specify any other specific basis for jurisdiction.

3 19. The California Superior Court also has jurisdiction in this matter because both the
4 individual and aggregate monetary damages and restitution sought herein exceed the minimal
5 jurisdictional limits of the Superior Court and will be established at trial, according to proof.

6 20. The California Superior Court also has jurisdiction over Defendants because they are
7 corporations and/or entities and/or persons with sufficient minimum contacts in California, are
8 citizens of California, or otherwise intentionally availed themselves of the California market so as to
9 render the exercise of jurisdiction over them by the California courts consistent with traditional
10 notions of fair play and substantial justice.

11 21. Venue is proper in the Superior Court of California, County of Los Angeles pursuant
12 to Code of Civil Procedure section 395(a) and Code of Civil Procedure section 395.5 in that
13 liability arose there because at least some of the acts and omissions that are the subject matter of this
14 Complaint occurred therein and/or each Defendant either is found, maintains offices, transacts
15 business, exists, and/or has an agent therein.

16 **IV. GENERAL ALLEGATIONS**

17 22. Plaintiff, the class members, and aggrieved employees are current and former non-
18 exempt, hourly paid employees of Defendants and thus have performed work for Defendants,
19 and/or on Defendants’ behalf, in the State of California.

20 23. Plaintiff alleges that Defendants adopted and maintained uniform policies, practices
21 and procedures governing the working conditions of, and payment of wages to Plaintiff, the class
22 members, and aggrieved employees. As alleged below, Defendants’ uniform policies, practices
23 and procedures violated California’s labor laws and constituted unfair, fraudulent or illegal
24 business practices under Business & Professions Code section 17200 *et seq.*

25 24. During the relevant statutory period, Defendants failed to pay Plaintiff, the class
26 members, and aggrieved employees all wages including all overtime compensation owed for time
27 worked in excess of either eight hours in one work day or forty hours in one work week due to
28 their policy and practice of requiring Plaintiff, the class members, and aggrieved employees to

1 skip their rest periods and work through their meal periods. Moreover, when Plaintiff, the class
2 members, and aggrieved employees were able to take their breaks, they were not compensated for
3 time walking to and from the break room. These policies resulted in Plaintiff, the class members,
4 and aggrieved employees, being subjected to the control of Defendants without compensation.

5 25. During the relevant statutory period, Defendants failed to provide Plaintiff, the
6 class members, and aggrieved employees with a meal period within five (5) hours of commencing
7 work and a second meal period within ten (10) hours of commencing work, as required by
8 California law and failed to pay meal period premiums for the incompassant meal periods. For
9 example, Plaintiff was forced to clock out for meal periods and keep working. Moreover, if
10 Plaintiff was able to take a meal period, she had to spend her meal time walking to and from the
11 break room.

12 26. During the relevant statutory period, Defendants failed to relinquish control over
13 Plaintiff, the class members, and aggrieved employees to provide them with legally-compliant ten
14 (10) minute off-duty rest periods for every four (4) hours of work or major fraction thereof, as
15 required by California law and failed to pay meal period premiums for the incompassant meal
16 periods. Plaintiff, the class members, and aggrieved employees typically worked and work eight
17 hours per day, and Defendants' policies and practices routinely prevented and prevent them from
18 taking the off-duty ten minute rest periods they are entitled to by making them either miss their
19 rest periods altogether, work through their rest periods, take untimely rest periods, or take
20 shortened rest periods.

21 27. During the relevant statutory period, Defendants furnished Plaintiff, the class
22 members, and aggrieved employees with inaccurate itemized wage statements. Moreover, as a
23 result of the alleged violations discussed above, Defendants furnished wage statements to Plaintiff
24 that failed to correctly show, among other items: (1) gross wages earned, (2) all deductions, and
25 (3) net wages earned.

26 28. During the relevant statutory period, Defendants failed to pay its former non-
27 exempt hourly employees all wages owed at the time of separation of employment.

28 29. Plaintiff is informed and believes, and based thereon alleges, that each and every

1 one of the acts and omissions alleged herein was performed by, and/or attributable to, Defendants
2 BURLINGTON and/or DOES 1-100 acting as agents and/or employees, and/or under the direction
3 and control of Defendants, and that said acts and failure to act were within the course and scope of
4 said agency, employment, and/or direction and control, and were committed willfully.

5 30. As a direct and proximate result of Defendants' unlawful actions, Plaintiff, the
6 class members, and aggrieved employees have suffered and continue to suffer from loss of
7 earnings and penalties in amounts as yet to be ascertained, but subject to proof at trial in amounts
8 in excess of the minimum jurisdiction of this Court.

9 **V. CLASS ACTION ALLEGATIONS**

10 31. Plaintiff brings this class action complaint against Defendants, individually, and on
11 behalf of all others similarly situated pursuant to Code of Civil Procedure section 382. This action
12 may be brought and properly maintained as a class action because as set forth herein Plaintiff
13 satisfies the numerosity, adequacy, typicality, and commonality pre-requisites for suing as
14 representative parties pursuant to Code of Civil Procedure section 382.

15 32. Description of the Classes: The classes Plaintiff will seek to certify are currently
16 composed of and defined as follows:

- 17 a. All persons employed by Defendants as hourly non-exempt employees in the
18 state of California who, at any time from July 26, 2020 through the conclusion
19 of this action, were subject to Defendants' policies and practices regarding meal
20 periods (hereinafter, the "Meal Period Class");
- 21 b. All persons employed by Defendants as hourly non-exempt employees in the
22 state of California who, at any time from July 26, 2020 through the conclusion
23 of this action, were subject to Defendants' policies and practices regarding rest
24 periods (hereinafter, the "Rest Period Class");
- 25 c. All persons employed by Defendants as hourly non-exempt employees in the
26 state of California, who at any time from July 26, 2020 through the conclusion
27 of this action, were subject to Defendants' policies and practices regarding
28 wage statements (hereinafter, the "Wage Statement Class").

1 33. Each of the aforementioned classes are referred to collectively herein as “the
2 Classes.”

3 34. As a consequence of obtaining information and documents through discovery in
4 this litigation, Plaintiff may find it appropriate and/or necessary to amend the definition of the
5 Class(es) and/or add additional classes and/or subclasses. Plaintiff will formally define and
6 designate a class definition(s) at such time when Plaintiff seeks to certify the Classes alleged
7 herein.

8 35. Numerosity: The potential number of members of each Class alleged herein is so
9 numerous that joinder of all members is unfeasible and impractical. The exact quantity of
10 members in each Class and the identity of all members is readily ascertainable via inspection of
11 Defendant’s records.

12 36. Well-defined Community of Interest: Plaintiff also meets the established standards
13 for class certification, as follows:

- 14 a. Typicality: The claims of Plaintiff are typical of the claims of all members of
15 each Class she seeks to represent because all members of each Class sustained
16 injuries and damages arising out of Defendant’s common course of conduct in
17 violation of law and the injuries and damages of all members of each Class were
18 caused by Defendants’ wrongful conduct in violation of law, as alleged herein.
- 19 b. Adequacy: Plaintiff is an adequate representative of each Class she seeks to
20 represent and will fairly protect the interests of the members of each Class.
21 Plaintiff has no interest antagonistic to each Class and will vigorously pursue
22 favorable resolution of this suit on behalf of herself and members of each Class
23 via attorneys who are competent, skilled and experienced in litigating class
24 actions.
- 25 c. Predominant Common Questions of Law and/or Fact: There are common
26 questions of law and/or fact as to each Class that predominate over questions
27 affecting only individual members of each Class, including, without limitation:
28 i) Whether Defendants failed and continue to fail to pay all overtime

1 compensation in violation of Labor Code section 510 and the IWC
2 Wage Order(s);

3 ii) Whether Defendants failed and continue to fail to provide all meal
4 periods in violation of Labor Code sections 226.7 and 512 and the
5 IWC Wage Order(s);

6 iii) Whether Defendants failed and continue to fail to authorize and
7 permit all paid rest periods in violation of Labor Code sections
8 226.7 and the IWC Wage Order(s);

9 iv) Whether Defendants failed and continue to fail to provide
10 complete and accurate itemized wage statements in violation of
11 Labor Code section 226, subdivision (a);

12 v) Whether Defendants' conduct constitutes unfair competition
13 within the meaning of Business & Professions Code section
14 17200, *et seq.*;

15 vi) Whether members of the Classes are entitled to compensatory
16 damages, and if so, the means of measuring such damages;

17 vii) Whether members of the Classes are entitled to injunctive relief;

18 viii) Whether members of the Classes are entitled to restitution; and

19 ix) Whether Defendants are liable for attorneys' fees and costs.

20 37. Superiority: The nature of this action and the nature of the laws available to
21 Plaintiff and members of the Classes is such that a class action is not only superior to other
22 methods, but also particularly efficient and appropriate to afford relief to Plaintiff and members of
23 the Classes for the wrongs alleged herein, as follows:

- 24 a. By allowing a method whereby claims of many individuals can be resolved at
25 the same time, the class action device eliminates the possibility of repetitious
26 litigation, inconsistent rulings, and provides small claimants with the
27 opportunity to redress for claims which would otherwise be too small to justify
28 the filing of individual actions;

- 1 b. This case involves a large corporate Defendant and a large number of
2 individuals with many relatively small claims and common issues of law and
3 fact;
4 c. If each individual member of the Classes was required to file an individual
5 lawsuit, the large corporate Defendant would necessarily gain an
6 unconscionable advantage because Defendant would be able to exploit and
7 overwhelm the limited resources of each individual member of the Classes with
8 Defendant's vastly superior financial and legal resources;
9 d. Requiring each individual member of the Classes to pursue an individual
10 remedy would also discourage the assertion of lawful claims by individual
11 members of the Classes who would be disinclined to pursue an action against
12 Defendant because of an appreciable and justifiable fear of retaliation and
13 permanent damage to their lives, careers and wellbeing;
14 e. Proof of a common business practice or factual pattern, of which members of
15 the Classes experienced, is representative of the Classes herein and will
16 establish the right of each member of the Classes to recover on the causes of
17 action alleged herein.

18 **VI. CAUSES OF ACTION**

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO PAY ALL WAGES**

21 **(By Plaintiff, individually, and on behalf of the Meal Period Class and Rest Period Class
22 against Defendant BURLINGTON and DOES 1 to 100, inclusive)**

23 38. Plaintiff incorporates by reference and realleges each and every one of the
24 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
25 forth herein.

26 39. Labor Code section 1194, subdivision (a), states: "Notwithstanding any agreement
27 to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
28 overtime compensation applicable to the employee is entitled to recover in a civil action the

1 unpaid balance of the full amount of this minimum wage or overtime compensation, including
2 interest thereon, reasonable attorney's fees, and costs of suit."

3 40. Further, pursuant to Labor Code section 1197, payment of less than the minimum
4 wage fixed by the Labor Commission is unlawful.

5 41. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer
6 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the
7 IWC Wage Order(s).

8 42. Pursuant to the IWC Wage Order(s), Defendants are required to pay Plaintiff and
9 members of the Meal Period Class and Rest Period Class for all hours worked, meaning the time
10 during which an employee is subject to the control of an employer, including all the time the
11 employee is suffered or permitted to work, whether or not required to do so.

12 43. Defendants, as a matter of established company policy and procedure, consistently
13 administered a uniform company policy and practice of requiring Plaintiff and members of the
14 Meal Period Class and Rest Period Class to skip their rest periods and work through their meal
15 periods. Moreover, when they were able to take their breaks, they were not compensated for time
16 walking to and from the break room These policies resulted in Plaintiff and members of the Meal
17 Period Class and Rest Period Class being subjected to the control of Defendants without
18 compensation.

19 44. Because Defendants required Plaintiff and members of the Meal Period Class and
20 Rest Period Class to remain under Defendants' control without paying therefore, this resulted in
21 Plaintiff and members of the Meal Period Class and Rest Period Class earning less than the legal
22 minimum wage in the State of California.

23 45. Defendants' pattern, practice and uniform administration of corporate policy
24 regarding illegal employee compensation as described herein is unlawful and creates an
25 entitlement, pursuant to Labor Code section 218, to recovery by Plaintiff and members of the Meal
26 Period Class and Rest Period Class in a civil action, of the unpaid balance of the full amount of
27 wages owing, calculated at the appropriate rate.

28 46. Further, Defendants' pattern and practice in uniform administration of corporate

1 policy regarding Defendants' failure to pay the legal minimum wage to Plaintiff and members of
2 the Meal Period Class and Rest Period Class as described herein is unlawful and creates
3 entitlement, pursuant to Labor Code section 1194(a), to recovery by Plaintiff and members of the
4 Meal Period Class and Rest Period Class in a civil action, for the unpaid balance of the full
5 amount of the unpaid minimum wages owed calculated as the difference between the straight time
6 compensation paid and the applicable minimum wage (and/or the full amount of unpaid overtime
7 compensation, which includes any unpaid straight time and unpaid overtime premium for overtime
8 hours worked), including interest thereon.

9 47. Pursuant to Labor Code section 1194.2, subdivision (a), which provides that in any
10 action under Labor Code section 1194, an employee shall be entitled to recover liquidated
11 damages, Plaintiff, individually, and on behalf of members of the Meal Period Class and Rest
12 Period Class, seeks recovery of liquidated damages on the straight-time portion of uncompensated
13 hours of work (not including the overtime portion thereof) in an amount equal to the wages
14 unlawfully unpaid and interest thereon.

15 48. Pursuant to Labor Code section 218.6, Labor Code section 1194, subdivision (a),
16 and Civil Code section 3287, Plaintiff, individually, and on behalf of members of the Meal Period
17 Class and Rest Period Class seeks recovery of pre-judgment interest on all amounts recovered
18 herein.

19 49. Pursuant to Labor Code section 218.5 and/or Labor Code section 1194, Plaintiff,
20 individually, and on behalf of members of the Meal Period Class and Rest Period Class requests
21 that the Court award reasonable attorneys' fees and costs incurred in this action.

22 **SECOND CAUSE OF ACTION**

23 **FAILURE TO PAY ALL OVERTIME COMPENSATION**

24 **(By Plaintiff, individually, and on behalf of the Meal Period Class and Rest Period Class**
25 **against Defendant BURLINGTON and DOES 1 to 100, inclusive)**

26 50. Plaintiff incorporates by reference and realleges each and every one of the
27 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
28 forth herein.

1 51. Labor Code section 1194, subdivision (a), states: “Notwithstanding any agreement
2 to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
3 overtime compensation applicable to the employee is entitled to recover in a civil action the
4 unpaid balance of the full amount of this minimum wage or overtime compensation, including
5 interest thereon, reasonable attorney’s fees, and costs of suit.”

6 52. Further, pursuant to Labor Code section 1197, payment of less than the minimum
7 wage fixed by the Labor Commission is unlawful.

8 53. California Labor Code section 510 provides non-exempt employees, including
9 Plaintiff and members of the Meal Period Class and Rest Period Class the right to overtime
10 compensation at one-and-one-half times the regular hourly rate for hours worked in excess of 8
11 hours in a day or 40 hours in a week or for the first 8 hours worked on the seventh day of work,
12 and to overtime compensation at twice the regular hourly rate for hours worked in excess of 12
13 hours in a day or in excess of 8 hours in a day on the seventh day of work.

14 54. California Labor Code section 1198 and the applicable Industrial Welfare
15 Commission (“IWC”) Wage Order provide that it is unlawful to employ persons, such as Plaintiff
16 and members of the Meal Period Class and Rest Period Class, without compensating them at a rate
17 of pay either one-and-one-half times or twice that person’s regular rate of pay, depending on the
18 number of hours worked by the person on a daily or weekly basis.

19 55. As a matter of policy and practice across Defendants’ locations in California,
20 Defendants consistently administered a uniform company policy and practice of requiring Plaintiff
21 and members of the Meal Period Class and Rest Period Class to skip their rest periods and work
22 through their meal periods. Moreover, when they were able to take their breaks, they were not
23 compensated for time walking to and from the break room. These policies resulted in Plaintiff and
24 members of the Meal Period Class and Rest Period Class to work in excess of 8 hours per day or
25 40 hours per week without overtime compensation.

26 56. Because Defendants required Plaintiff and members of the Meal Period Class and
27 Rest Period Class to remain under Defendants’ control without paying therefore, this resulted in
28 Plaintiff and members of the Meal Period Class and Rest Period Class earning less than the legal

1 minimum wage in the State of California.

2 57. As a result of Defendants' conduct alleged herein, Plaintiff and members of the
3 Meal Period Class and Rest Period Class have suffered damages and are entitled to recover the full
4 amount of unpaid wages in an amount to be proven at trial and interest thereon, applicable
5 penalties, liquidated damages, and costs of suit including attorney's fees.

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO PROVIDE MEAL PERIODS**

8 **(By Plaintiff, individually, and on behalf of the Meal Period Class against Defendant**
9 **BURLINGTON and DOES 1 to 100, inclusive)**

10 58. Plaintiff incorporates by reference and realleges each and every one of the
11 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
12 forth herein.

13 59. Labor Code section 226.7, subdivision (b), provides that "An employer shall not
14 require an employee to work during a meal or rest or recovery period mandated pursuant to an
15 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
16 Commission, the Occupational Safety and Health Standards Board, or the Division of
17 Occupational Safety and Health."

18 60. Labor Code section 512 provides that "An employer may not employ an employee
19 for a work period of more than five hours per day without providing the employee with a meal
20 period of not less than 30 minutes, except that if the total work period per day of the employee is
21 no more than six hours, the meal period may be waived by mutual consent of both the employer
22 and employee. An employer may not employ an employee for a work period of more than 10
23 hours per day without providing the employee with a second meal period of not less than 30
24 minutes, except that if the total hours worked is no more than 12 hours, the second meal period
25 may be waived by mutual consent of the employer and the employee only if the first meal period
26 was not waived."

27 61. Labor Code section 516 provides that the Industrial Welfare Commission "may
28 adopt or amend working condition orders with respect to break periods, meal periods, and days of

1 rest for any workers in California consistent with the health and welfare of those workers.”

2 62. Section 11(A) of the IWC Wage Order(s) provides that “Unless the employee is
3 relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on
4 duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only
5 when the nature of the work prevents an employee from being relieved of all duty and when by
6 written agreement between the parties an on-the-job paid meal period is agreed to. The written
7 agreement shall state that the employee may, in writing, revoke the agreement at any time.”

8 63. Section 11(B) of the IWC Wage Order(s) provides that “If an employer fails to
9 provide an employee a meal period in accordance with the applicable provisions of this order, the
10 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
11 compensation for each workday that the meal period is not provided.”

12 64. On one or more occasions, Plaintiff and members of the Meal Period Class worked
13 over five (5) hours per shift and therefore were entitled to a meal period of not less than thirty (30)
14 minutes prior to exceeding five (5) hours of employment.

15 65. On one or more occasions, Plaintiff and members of the Meal Period Class worked
16 over ten (10) hours per shift and therefore were entitled to a second meal period of not less than
17 thirty (30) minutes prior to exceeding ten (10) hours of employment.

18 66. On information and belief, Plaintiff and members of the Meal Period Class did not
19 validly or legally waive their meal periods, by mutual consent with Defendants or otherwise.

20 67. On information and belief, Plaintiff and members of the Meal Period Class did not
21 enter into any written agreement with Defendants agreeing to an on-the-job paid meal period.

22 68. As a matter of Defendants’ established company policy implemented, Defendants
23 failed to comply with the meal period requirements established by Labor Code sections 226.7,
24 512, and 516, and Section 11 of the IWC Wage(s) by failing to provide Plaintiff and members of
25 the Meal Period Class with a first and a second legally compliant meal period.

26 69. Section 11(B) of the IWC Wage Order(s) and Labor Code section 226.7,
27 subdivision (c), provides that “If an employer fails to provide an employee a meal or rest or
28 recovery period in accordance with a state law, including, but not limited to, an applicable statute

1 or applicable regulation, standard, or order of the Industrial Welfare Commission, the
2 Occupational Safety and Health Standards Board, or the Division of Occupational Safety and
3 Health, the employer shall pay the employee one additional hour of pay at the employee's regular
4 rate of compensation for each workday that the meal or rest or recovery period is not provided."

5 70. As a matter of Defendants' established company policy, Defendants failed to
6 comply with the requirements of Section 11(B) of the IWC Wage Order(s) and Labor Code
7 section 226.7, subdivision (c), by failing to pay Plaintiff and members of the Meal Period Class
8 one additional hour of pay at each employee's regular rate of compensation for each workday that
9 a compliant meal period was not provided.

10 71. Therefore, Plaintiff and members of the Meal Period Class are entitled to damages
11 in an amount equal to one (1) additional hour of pay at each employee's regular rate of
12 compensation for each work day that a compliant meal period was not provided, in a sum to be
13 proven at trial.

14 72. Pursuant to Labor Code section 218.6 and Civil Code section 3287, Plaintiff,
15 individually, and on behalf of members of the Meal Period Class, seeks recovery of pre-judgment
16 interest on all amounts recovered herein.

17 73. Pursuant to Labor Code section 218.5, Plaintiff, individually, and on behalf of
18 members of the Meal Period Class, requests that the Court award reasonable attorneys' fees and
19 costs incurred in this action.

20 **FOURTH CAUSE OF ACTION**

21 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

22 **(By Plaintiff, individually, and on behalf of the Rest Period Class against Defendant**
23 **BURLINGTON and DOES 1 to 100, inclusive)**

24 74. Plaintiff incorporates by reference and realleges each and every one of the
25 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
26 forth herein.

27 75. Labor Code section 226.7, subdivision (b), provides that "An employer shall not
28 require an employee to work during a meal or rest or recovery period mandated pursuant to an

1 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
2 Commission, the Occupational Safety and Health Standards Board, or the Division of
3 Occupational Safety and Health.”

4 76. Labor Code section 516 provides that the Industrial Welfare Commission “may
5 adopt or amend working condition orders with respect to break periods, meal periods, and days of
6 rest for any workers in California consistent with the health and welfare of those workers.”

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

14 78. Section 12(B) of the IWC Wage Order(s) provides that “If an employer fails to
15 provide an employee a rest period in accordance with the applicable provisions of this order, the
16 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
17 compensation for each workday that the rest period is not provided.”

18 79. Plaintiff and members of the Rest Period Class often worked over three and one-
19 half (3 1/2) hours per shift and therefore were entitled to a rest period of not less than ten (10)
20 minutes prior to exceeding four (4) hours of employment, and additional rest periods of not less
21 than ten (10) minutes per four (4) hours worked or major fraction thereof. Upon information and
22 belief, Defendants’ policies and practices failed and fail to provide Plaintiff and class members
23 with off-duty net rest periods of at least ten minutes for each four hours worked, or major fraction
24 thereof, and failed and fail to pay them a premium wage at their regular rates of pay on workdays
25 Defendants failed to provide them with an opportunity to take rest periods.

26 80. As a matter of Defendants’ established company policy, Defendants failed to
27 authorize and permit required off-duty rest periods established by Labor Code sections 226.7 and
28 516 and Section 12 of the IWC Wage Order(s). Pursuant to *Augustus v. ABM Security Services*,

1 *Inc.*, (2017) 2 Cal.5th 257, 260, “[d]uring required rest periods, employers must relieve their
2 employees of all duties and relinquish any control over how employees spend their break time.”

3 81. Section 12 of the IWC Wage Order(s) and Labor Code section 226.7, subdivision
4 (b), provides that “If an employer fails to provide an employee a meal or rest or recovery period in
5 accordance with a state law, including, but not limited to, an applicable statute or applicable
6 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
7 Health Standards Board, or the Division of Occupational Safety and Health, the employer shall
8 pay the employee one additional hour of pay at the employee’s regular rate of compensation for
9 each workday that the meal or rest or recovery period is not provided.”

10 82. As a matter of Defendants’ policies and procedures, Defendants failed to comply
11 with the requirements of Section 12(B) of the IWC Wage Order(s) and Labor Code section 226.7,
12 subdivision (c), by failing to pay Plaintiff and members of the Rest Period Class one additional
13 hour of pay at each employee’s regular rate of compensation for each workday that an off-duty
14 rest period was not provided.

15 83. Therefore, pursuant to Section 12 of the IWC Wage Order(s) and Labor Code
16 section 226.7, Plaintiff and members of the Rest Period Class are entitled to damages in an amount
17 equal to one (1) additional hour of pay at each employee’s regular rate of compensation for each
18 work day that a legally compliant rest period was not so provided.

19 84. Pursuant to Labor Code section 218.6 and Civil Code section 3287, Plaintiff,
20 individually, and on behalf of the Rest Period Class, seeks recovery of pre-judgment interest on all
21 amounts recovered herein.

22 85. Pursuant to Labor Code section 218.5, Plaintiff, individually, and on behalf of the
23 Rest Period Class, requests that the Court award reasonable attorneys’ fees and costs incurred in
24 this action.

25 **FIFTH CAUSE OF ACTION**

26 **FAILURE TO TIMELY FURNISH COMPLETE AND ACCURATE**
27 **ITEMIZED WAGE STATEMENTS**

28 **(By Plaintiff, individually, and on behalf of the Wage Statement Class against Defendant
BURLINGTON and DOES 1 to 100, inclusive)**

1 86. Plaintiff incorporates by reference and realleges each and every one of the
2 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
3 forth herein.

4 87. Labor Code section 226(a) states in pertinent part: “Every employer shall,
5 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either
6 as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately
7 when wages are paid by personal check or cash, an accurate itemized statement in writing showing
8 (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions... (5) net
9 wages earned, (6) the inclusive dates of the period for which the employee is paid... (8) the name
10 and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect
11 during each the pay period and the corresponding number of hours worked at each hourly rate by
12 the employee....”

13 88. As a pattern and practice, in violation of Labor Code section 226(a), Defendants
14 did not and still do not furnish each of the members of the Wage Statement Class with an accurate
15 itemized statement in writing correctly showing: (1) gross wages earned, (2) total hours worked by
16 the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and
17 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided
18 that all deductions made on written orders of the employee may be aggregated and shown as one
19 item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7)
20 the name of the employee and only the last four digits of his or her social security number or an
21 employee identification number other than a social security number, (8) the name and address of
22 the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in
23 subdivision (b) of Section 1682, the name and address of the legal entity that secured the services
24 of the employer, and (9) all applicable hourly rates in effect during the pay period and the
25 corresponding number of hours worked at each hourly rate by the employee.

26 89. As a pattern and practice, in violation of Labor Code section 226(a) and Section 7,
27 subdivision (A), of the IWC Wage Order(s), Defendants did not and do not maintain accurate
28 records pertaining to the total hours worked for Defendants by Plaintiff and members of the Wage

1 Statement Class, including but not limited to, gross wages earned, total hours worked by the
2 employee, all deductions, net wages earned.

3 90. As of January 1, 2013, SB 1255 amended Labor Code section 226 to clarify that an
4 employee suffers injury if the employer fails to provide accurate and complete information as
5 required by any one or more items listed in Labor Code section 226(a)(1)-(9) and the employee
6 cannot promptly and easily ascertain requisite information without reference to other documents or
7 information.

8 91. Here, Plaintiff and members of the Wage Statement Class suffered injury because
9 Defendants failed to provide accurate and complete information as required by one or more items
10 listed in Labor Code section 226(a)(1)-(9) as set forth herein and Plaintiff and members of the
11 Wage Statement Class could not and cannot promptly and easily ascertain requisite information
12 without reference to other documents or information.

13 92. In addition, Plaintiff and members of the Wage Statement Class have suffered
14 injury as a result of Defendants' failure to maintain accurate records in that Plaintiff and members
15 of the Wage Statement Class were not provided written accurate itemized statements showing all
16 requisite information as set forth herein in violation of Labor Code section 226 and Section 7,
17 subdivision (A), of the IWC Wage Order(s), such that Plaintiff and members of the Wage
18 Statement Class were misled by Defendants as to the correct information regarding the various
19 items, including but not limited to, the total hours worked by the employee, gross wages earned,
20 net wages earned, all deductions, all applicable hourly rates in effect during the pay period and the
21 corresponding number of hours worked at each hourly rate.

22 93. The actual injuries suffered by Plaintiff and members of the Wage Statement Class
23 as a result of Defendants' knowing and intentional failure to maintain accurate records include but
24 are not limited to:

- 25 a. Confusion over whether they received all wages owed them by Defendants;
- 26 b. The difficulty and expense of attempting to reconstruct time and pay records;
- 27 c. Being forced to engage in mathematical computations to analyze whether
- 28 Defendants' wages in fact compensated for all hours worked;

- d. The inability to accurately calculate wage rates complicated by the fact that wage statement information required by Labor Code section 226 is missing;
- e. That such practice prevents Plaintiff and members of the Classes from being able to effectively challenge information on their wage statements; and/or
- f. The difficulty and expense of filing and maintaining this lawsuit, and the discovery required to collect and analyze the very information that California law requires.

94. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and members of the Wage Statement Class are entitled to fifty dollars (\$50.00) per individual employee for the initial pay period in which a violation hereunder occurred and one hundred dollars (\$100.00) per individual employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000.00) per individual employee.

95. Pursuant to Labor Code section 226, subdivision (g), currently-employed members of the Wage Statement Class are entitled to injunctive relief to ensure Defendants' compliance with Labor Code section 226.

96. Pursuant to Labor Code section 226, subdivisions (e) and/or (g), Plaintiff and members of the Wage Statement Class are also entitled to an award of costs and reasonable attorneys' fees.

SIXTH CAUSE OF ACTION

UNFAIR BUSINESS PRACTICES

(By Plaintiff, individually, and on behalf of the Classes against Defendant BURLINGTON and DOES 1 to 100, inclusive)

97. Plaintiff incorporates by reference and realleges each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

98. Business & Professions Code section 17200 provides in pertinent part "unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice."

99. Defendants are a "person" as defined under Business & Professions Code section

1 17201.

2 100. Business & Professions Code section 17204 provides that an action for any relief
3 from unfair competition may be prosecuted by any person who has suffered injury in fact and has
4 lost money or property as a result of such unfair competition.

5 101. Business & Professions Code section 17205 provides that unless otherwise
6 expressly provided, the remedies or penalties provided for unfair competition “are cumulative to
7 each other and to the remedies or penalties available under all other laws of this state.”

8 102. Defendants have engaged in unlawful, unfair and fraudulent business acts or
9 practices prohibited by Business & Professions Code section 17200, including those set forth in
10 the preceding and foregoing paragraphs of the complaint, thereby depriving Plaintiff and members
11 of the Classes of the minimum working standards and conditions due to them under the Labor
12 Code and/or the IWC_Wage Orders, as specifically described herein.

13 103. Defendants have engaged in unfair business practices in California by practicing,
14 employing and utilizing the employment practices outlined in the preceding paragraphs,
15 specifically, by requiring employees to perform the labor services complained of herein without
16 the requisite compensation.

17 104. Defendants’ use of such practices constitutes an unfair business practice, unfair
18 competition and provides an unfair advantage over Defendants’ competitors.

19 105. Plaintiff and members of the Classes have suffered injury in fact and have lost
20 money or property as a result of such unfair competition.

21 106. Plaintiff, individually, and on behalf of members of the Classes, seeks full
22 restitution from Defendants, as necessary and according to proof, to restore any and all monies
23 withheld, acquired and/or converted by Defendants by means of the unfair practices complained of
24 herein.

25 107. Further, if Defendants are not enjoined from the conduct set forth above,
26 Defendants will continue to practice, employ and utilize the employment practices outlined in the
27 preceding paragraphs.

28 108. Therefore, Plaintiff requests that the Court issue a preliminary and permanent

1 injunction prohibiting Defendants from engaging in the foregoing conduct.

2 109. Plaintiff seeks the appointment of a receiver, as necessary, to establish the total
3 monetary relief sought from Defendant.

4 **SEVENTH CAUSE OF ACTION**

5 **VIOLATIONS OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (“PAGA”)**

6 **(By Plaintiff, as an aggrieved employee Defendants BURLINGTON and DOES 1 to 100,**
7 **inclusive, on behalf of the LWDA for all aggrieved employees against Defendants)**

8 110. Plaintiff incorporates by reference and realleges each and every one of the
9 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
10 forth herein.

11 111. Pursuant to Labor Code section 2698, *et seq.*, Plaintiff seeks to recover all
12 applicable civil penalties and reasonable attorneys’ fees and costs, permitted under PAGA through
13 a representative action on behalf of all aggrieved employees that work or worked for Defendants
14 during the relevant time period.

15 112. In accordance with *Arias v. Superior Court* (2009) 46 Cal.4th 969, a representative
16 action is not subject to the formalities required of a class action and class certification of PAGA
17 claims is not required.

18 113. Plaintiff is an “aggrieved employee” within the meaning of Labor Code section
19 2699(c) because she was employed by Defendants during the applicable statutory period and
20 suffered one or more of the Labor Code violations, as alleged herein. Thus, Plaintiff is well suited
21 to represent the interests of all other aggrieved employees in in this PAGA representative action.

22 114. Pursuant to Labor Code section 2699(i), seventy-five percent (75%) of civil
23 penalties recovered by aggrieved employees shall be distributed to the Labor and Workforce
24 Development Agency (hereinafter “LWDA”) for enforcement of labor laws and education of
25 employers and employees about their rights and responsibilities under this code, and twenty-five
26 percent (25%) shall be distributed to the aggrieved employees.

27 115. Plaintiff’s representative action alleges violations of certain Labor Code sections
28 that are listed within Labor Code section 2699.5. Accordingly, Labor Code section 2699.3(a)

1 applies to this action, and Labor Code section 2699.3(b)-(c) do not apply.

2 116. On March 12, 2024, Plaintiff complied with Labor Code section 2699.3(a) by
3 electronically filing written notice with the LWDA upon the LWDA regarding the specific
4 provisions of the Labor Code alleged to have been violated by Defendants and Plaintiff's intent to
5 pursue civil penalties against Defendants on behalf of aggrieved employees pursuant to PAGA.
6 Attached hereto as **Exhibit 1** is a true and correct copy of Plaintiff's notice letter.

7 117. Labor Code section 2699.3(a) provides in pertinent part that: "The agency shall
8 notify the employer and the aggrieved employee or representative by certified mail that it does not
9 intend to investigate the alleged violation within 60 calendar days of the postmark date of the
10 notice received... [u]pon receipt of that notice or if no notice is provided within 65 calendar days
11 of the postmark date of the notice given... the aggrieved employee may commence a civil action
12 pursuant to Section 2699." More than sixty-five calendar days have passed since Plaintiff served
13 notice upon the LWDA and Defendants, and the LWDA did not provide notice of its intent to
14 investigate Plaintiff's claims. Accordingly, Plaintiff exhausted her obligation to provide
15 administrative notice and is authorized to commence this representative action seeking civil
16 penalties on behalf of himself and all other aggrieved employees of Defendants.

17 118. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that
18 provides for a civil penalty to be assessed and collected by the LWDA or any of its departments,
19 divisions, commissions, boards, agencies or employees for violation of the code may, as an
20 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
21 himself and other current or former employees pursuant to the procedures specified in Labor Code
22 section 2699.3.

23 119. Pursuant to Labor Code section 2699(f)(2), for all provisions of the Labor Code for
24 which a civil penalty is not specifically provided, there is established a civil penalty that imposes a
25 penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
26 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
27 subsequent violation.

28 120. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff, on behalf of herself and

1 aggrieved employees, seeks applicable civil penalties for violations of Labor Code sections 201,
2 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 1199 during the statutory period as set
3 forth below:

4 121. For violations of Labor Code section 201, 202, 203, 226.7, 510, 512, 1194, 1197
5 1198, and 1199 Labor Code section 2699(f)(2) imposes a civil penalty of one hundred dollars
6 (\$100) for each aggrieved employee per pay period for each initial violation and two hundred
7 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

8 122. For violations of Labor Code section 204, Labor Code section 210 imposes a civil
9 penalty of one hundred dollars (\$100) for each aggrieved employee for each initial violation that
10 was neither willful nor intentional, and two hundred dollars (\$200) for each aggrieved employee,
11 for each subsequent violation, regardless of whether the subsequent violation was willful or
12 intentional;

13 123. For violations of Labor Code section 226(a), Labor Code section 226.3 imposes a
14 civil penalty, in addition to any other penalty provided by law, of two hundred fifty dollars (\$250)
15 per aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved
16 employee for each subsequent violation.

17 124. Defendants violated Labor Code sections 204, 510, 1194, 1197, and 1198 by not
18 paying Plaintiff and aggrieved employees all wages owed for all hours worked for each pay period
19 as a result of Defendants' policy and practice of forcing aggrieved employees to skip their rest
20 periods and work through their meal periods. Moreover, when employees were able to take their
21 breaks, they were not compensated for time walking to and from the break room These policies
22 resulted in the aggrieved employees being subjected to Defendants' control without
23 compensation. Thus, pursuant to Labor Code section 2699(f)(2), Defendants are subject to a civil
24 penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
25 violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each
26 subsequent violation.

27 125. Defendants violated Labor Code sections 226.7 and 512 by denying Plaintiff and
28 all other aggrieved employees an opportunity to take timely off-duty and uninterrupted thirty

1 minute meal periods for every five hours worked, including timely off-duty and uninterrupted
2 thirty minute long meal periods before the end of the fifth hour of work, and by failing to pay a
3 premium wage equivalent to an additional hour of pay at the regular rate of pay for each day a
4 compliant meal period was not provided. Thus, pursuant to Labor Code section 2699(f)(2),
5 Defendants are subject to a civil penalty of one hundred dollars (\$100) for each aggrieved
6 employee per pay period for the initial violation, and two hundred dollars (\$200) for each
7 aggrieved employee per pay period for each subsequent violation.

8 126. Defendants violated Labor Code sections 226.7 and 512 by denying Plaintiff and
9 other aggrieved employees an opportunity to take second timely off-duty and uninterrupted thirty
10 minute long meal periods before the end of the tenth hour of work, and by failing to pay a
11 premium wage equivalent to an additional hour of pay at the regular rate of pay for each day a
12 compliant second meal period was not provided. Thus, pursuant to Labor Code section
13 2699(f)(2), Defendants are subject to a civil penalty of one hundred dollars (\$100) for each
14 aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for
15 each aggrieved employee per pay period for each subsequent violation.

16 127. Defendants violated Labor Code section 226.7 by denying Plaintiff and all other
17 aggrieved employees of Defendants a ten minute off-duty rest period for every four hours worked,
18 or major fraction thereof, and by failing to provide a premium wage equivalent to an additional
19 hour of pay at the regular rate of pay for each workday that a compliant rest period was not
20 provided. Thus, pursuant to Labor Code section 2699(f)(2), Defendants are subject to a civil
21 penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
22 violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each
23 subsequent violation.

24 128. Defendants violated Labor Code section 226(a) by failing to provide Plaintiff and
25 aggrieved employees with accurate itemized wage statements correctly identifying, among other
26 things, the total hours worked, wages earned, the correct amount of net wages earned, and the
27 correct amount of deductions that were paid or should have been paid. Thus, pursuant to Labor
28 Code sections 226.3 and 2699(a), Defendants, in addition to, and entirely independent and apart

1 from any other penalty, are subject to a civil penalty for violation Labor Code section 226(a) in the
2 amount of two hundred and fifty dollars (\$250) per aggrieved employee per violation in an initial
3 citation and one thousand dollars (\$1,000) per aggrieved employee for each violation in a
4 subsequent citation.

5 129. Defendants violated Labor Code sections 201, 202, and 203 by willfully failing to
6 timely pay aggrieved employees all wages owed upon separation of employment by failing to pay
7 all minimum wages and overtime compensation, and Defendants' failure to pay meal and rest
8 period premium wages owed. Thus, pursuant to Labor Code section 2699(f)(2), Defendants are
9 subject to a civil penalty of one hundred dollars (\$100) for each aggrieved employee per pay
10 period for the initial violation of these sections, and two hundred dollars (\$200) for each aggrieved
11 employee per pay period for each subsequent violation.

12 130. At all material times, Defendants were Plaintiff and all other aggrieved employees'
13 employers, or persons acting on their behalf, within the meaning of Labor Code section 558, who
14 violated or caused to be violated, a section of Part 2, Chapter 1 of the Labor Code or any provision
15 regulating hours and days of work in the applicable IWC Wage Order and, as such, are subject to
16 civil penalties for each underpaid employee as set forth in Labor Code section 558. The civil
17 penalties provided for under Labor Code section 558 are in addition to any other civil penalty
18 provided by law.

19 131. Pursuant to Labor Code sections 558 and 2699(a), Defendants are subject to a civil
20 penalty of fifty dollars (\$50) for each initial violation and one hundred dollars (\$100) for each
21 subsequent violation of Labor Code sections 510 and 1194 for each pay period for which Plaintiff
22 and all other aggrieved employees of Defendants were not paid all wages owed as a result of
23 Defendants' failure to pay wages owed for all overtime, as alleged herein.

24 132. Pursuant to Labor Code sections 558 and 2699(a), Defendants are subject to a civil
25 penalty of fifty dollars (\$50) for each initial violation and one hundred dollars (\$100) for each
26 subsequent violation of Labor Code section 226.7 for each pay period for which Plaintiff and all
27 other aggrieved employees of Defendants were not provided with a compliant timely off-duty and
28 uninterrupted thirty minute meal period and/or ten minute long rest periods for every four hours

1 worked, or major fraction thereof, as alleged herein.

2 133. Defendants violated Labor Code section 1198 by failing to comply with the
3 maximum hours of work and the standards conditions of labor fixed by the IWC under the “Hours
4 and Days of Work”, the “Meal Period”, the “Rest Period” and “Record” sections of the applicable
5 IWC Wage Order, by failing to provide compliant meal periods, failing to pay meal periods
6 premium wages, failing to provide compliant rest periods, failing to pay rest period premium
7 wages, failing to keep and provide accurate records, and failing to timely pay owed wages upon
8 separation of employment, as alleged herein. Thus pursuant to Labor Code section 2699(f)(2),
9 Defendants are subject to a civil penalty in the amount of one hundred dollars (\$100) for each
10 aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for
11 each aggrieved employee per pay period for each subsequent violation.

12 **VII. PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays:

14 That the Court issue an Order certifying the Classes herein, appointing Plaintiff as
15 representative of all others similarly situated, and appointing the law firm representing Plaintiff as
16 counsel for the members of the Classes;

17 As to the First Cause of Action for Failure to Pay All Wages:

18 a. For recovery of the unpaid balance of the full amount of the straight time
19 compensation due and owing, according to proof;

20 b. For liquidated damages on the straight-time portion of uncompensated hours of
21 work (not including the overtime portion thereof), as authorized by Labor Code section 1194.2,
22 subdivision (a);

23 c. For recovery of the unpaid balance of the full amount of the earned overtime
24 compensation due and owing, calculated at the appropriate rate and according to proof;

25 d. For pre-judgment interest as allowed by Labor Code section 218.6, Labor Code
26 section 1194, subdivision (a), and Civil Code section 3287;

27 e. For an award of reasonable attorneys’ fees and costs pursuant to Labor Code
28 section 218.5 and/or Labor Code section 1194, subdivision (a);

1 As to the Second Cause of Action for Failure to Pay Overtime:

2 f. For recovery of the full amount of unpaid wages in an amount to be proven at trial
3 and interest thereon, applicable penalties, liquidated damages, and costs of suit including
4 attorney's fees;

5 As to the Third Cause of Action for Failure to Provide Meal Periods:

6 g. For one (1) hour of pay at the regular rate of compensation for each member of the
7 Meal Period Class for each workday that a full meal period was not provided;

8 h. For pre-judgment interest as authorized by Labor Code section 218.6 and Civil
9 Code section 3287;

10 i. For an award of reasonable attorneys' fees and costs pursuant to Labor Code
11 section 218.5;

12 As to the Fourth Cause of Action for Failure to Provide Rest Periods:

13 j. For one (1) hour of pay at the regular rate of compensation for each member of the
14 Rest Period Class for each workday that a full rest period was not provided;

15 k. For pre-judgment interest as authorized by Labor Code section 218.6 and Civil
16 Code section 3287;

17 l. For an award of reasonable attorneys' fees and costs pursuant to Labor Code
18 section 218.5;

19 As to the Fifth Cause of Action for Failure to Provide Complete and Accurate Itemized Wage
20 Statements:

21 m. For recovery as authorized by Labor Code section 226(e);

22 n. For an award of costs and reasonable attorneys' fees pursuant to Labor Code
23 section 226, subdivision (e) and/or subdivision (g);

24 As to the Sixth Cause of Action for Unfair Business Practices:

25 o. For an accounting, under administration of Plaintiff and/or the receiver and subject
26 to Court review, to determine the amount to be returned by Defendants, and the amounts to be
27 refunded to members of the Classes who are owed monies by Defendants;

28 p. For an Order requiring Defendants to identify each of the members Classes by

1 name, home address, and home telephone number;

2 q. For an Order requiring Defendants to make full restitution and payment pursuant to
3 California law;

4 r. For the creation of an administrative process wherein each injured member of the
5 Classes may submit a claim in order to receive his/her money;

6 s. For all other appropriate injunctive, declaratory and equitable relief;

7 t. For interest to the extent permitted by law;

8 u. For an award of attorneys' fees and costs incurred in the investigation, filing and
9 prosecution of this action pursuant to Code of Civil Procedure section 1021.5, Business &
10 Professions Code section 17200, *et seq.*, Labor Code section 1194 and/or any other applicable
11 provision of law;

12 As to the Seventh Cause of Action for Violation of PAGA:

13 v. For all civil penalties authorized by Labor Code section 2698, *et seq.*;

14 w. For civil penalties under Labor Code section 226.3 in the amount two hundred fifty
15 dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000)
16 per aggrieved employee for each subsequent violation;

17 x. For civil penalties under Labor Code section 210 in the amount of one hundred
18 dollars (\$100.00) for each aggrieved employee for each initial violation that was neither willful
19 nor intentional, and two hundred dollars (\$200.00) for each aggrieved employee, plus twenty-five
20 percent (25%) of the amount unlawfully withheld from each aggrieved employee, for each
21 subsequent violation, regardless of whether the subsequent violation was willful or intentional;

22 y. For civil penalties under Labor Code section 2699(f), for Labor Code violations
23 without a specific civil penalty, in the amount of one hundred dollars (\$100.00) for each aggrieved
24 employee per pay period for each initial violation and two hundred dollars (\$200.00) for each
25 aggrieved employee per pay period for each subsequent violation;

26 z. For civil penalties under Labor Code section 558, as follows: (1) for an initial
27 violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the
28 employee was underpaid; and (2) for each subsequent violation, one hundred dollars (\$100) for

1 each underpaid employee for each pay period for which the employee was underpaid;

2 aa. For an award of reasonable attorneys' fees and costs pursuant to Labor Code
3 section 2699(g)(1), or other applicable laws, and pre-judgment and post-judgment interest as
4 provided by law;

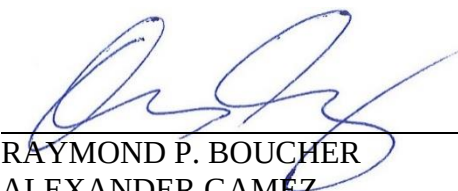
5 As to All Causes of Action:

6 bb. For such relief as this Court may deem just and proper, including reasonable
7 attorneys' fees and costs incurred.

8
9 DATED: July 26, 2024

BOUCHER LLP

10
11 By:


12 RAYMOND P. BOUCHER
13 ALEXANDER GAMEZ

14 *Attorneys for Plaintiff Delma Abarca*
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all claims alleged in Plaintiff's Complaint to the fullest extent authorized by law.

DATED: July 26, 2024

BOUCHER LLP

By:


RAYMOND P. BOUCHER
ALEXANDER GAMEZ

Attorneys for Plaintiff Delma Abarca