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 County of Los Angeles
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 David W. Slayton,
 Executive Officer/Clerk of Court,
 By D. Jackson Aubry, Deputy Clerk

Attorneys for Plaintiff, ELIDA SANCHEZ,
 and the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
[UNLIMITED CIVIL]

ELIDA SANCHEZ, individually and on
 behalf of all others similarly situated,

Plaintiff,

vs.

PUENTE AVE PRESCHOOL ICC LLC, a
 limited liability company; KIMBERLY
 NGUYEN, an individual; and DOES 1 through
 10, inclusive,

Defendants.

Case No.: **24STCV15774**

CLASS ACTION COMPLAINT FOR:

- 1. Failure to Provide Rest Periods or Compensation in Lieu Thereof in Violation of Labor Code § 226.7**
- 2. Failure to Reimburse and Indemnify for Expenditures**
- 3. Labor Code § 203 Waiting Time Penalty**
- 4. Violation of Unfair Competition Law**
- 5. Private Attorneys General Act**

DEMAND FOR JURY TRIAL

Plaintiff, ELIDA SANCHEZ, alleges as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action on her own behalf and on behalf of all persons similarly situated. The Class that Plaintiff represents is composed of all current and former non-exempt and non-management employees of Defendants, who worked in California, and were deprived uninterrupted rest breaks, payment of work-related expenses, and waiting time penalties.

JURISDICTION AND VENUE

2. This Court has jurisdiction to hear the subject matter of this complaint. This Court also

1 has jurisdiction over each defendant, as the unlawful business acts alleged herein occurred in California.
2 Plaintiff's claims arise out of and are related to all Defendant's contacts with California.

3 3. Venue is proper in any county in which an aggrieved employee worked and Labor Code
4 violations allegedly occurred. Venue is proper in this Court because all or some of the violations of law
5 and unlawful practices alleged herein occurred and are occurring in the County of Los Angeles.

6 **PARTIES**

7 4. Plaintiff is an individual who, at all relevant times, has resided in the State of California.

8 5. Defendant PUENTE AVE PRESCHOOL ICC LLC ("PUENTE AVE"), is a limited
9 liability company that conducted, and is conducting, business in the State of California. PUENTE
10 registered the address 14032 Dillerdale St., La Puente, CA 91746. with the California Secretary of State
11 as its principal place of business in California.

12 6. KIMBERLY NGUYEN is an individual who at all relevant times was domiciled in
13 California. KIMBERLY NGUYEN was the owner, director, officer, or managing agent who at all
14 relevant times and was involved in the management of operations and wage and hour practices alleged
15 herein.

16 7. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
17 DOES 1-10, inclusive, and therefore sues these defendants by such fictitious names and capacities.
18 Plaintiff will seek leave to amend this Complaint to allege their true names and capacities when
19 ascertained. Plaintiff is informed and believes and on that basis alleges that each fictitiously named
20 Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff's
21 injuries were proximately caused by the conduct of such defendant.

22 8. All of the Defendants, including DOES 1-10, are alleged to be co-conspirators with each
23 other, in that each agreed to participate, and participated in, the furtherance of the objective of civil
24 wrongs as alleged in this Complaint.

25 9. Plaintiff is informed and believes and thereupon alleges that at all times material herein,
26 each defendant was completely dominated and controlled by its, his or her co-Defendants, each was the
27 agent, representative, and alter ego of the others, and all aided and abetted the wrongful acts of the
28 others.

10. Plaintiff is informed and believes and thereupon alleges that at all times material herein, each of the Defendants was the agent, employee and/or joint venturer of, or working in concert with, co-Defendants and was acting within the course and scope of such agency, employment, and/or joint venture or concerted activity. To the extent that said conduct and omissions were perpetrated by certain Defendants, Plaintiff is informed and believes and thereupon alleges that the remaining Defendant and/or Defendants confirmed and ratified said conduct and omissions.

11. Plaintiff is informed and believes and on that basis alleges that at all times relevant herein, the corporate Defendants, and each of them, had the right to control, and controlled, Plaintiff's wages, hours and working conditions, and has the right to control the manner in which Plaintiff performed work duties, including but not limited to supervision of work, engaged Plaintiff, suffered and permitted Plaintiff to work, and they were employers, joint employers, or co-employers of Plaintiff at all relevant times alleged herein.

12. Plaintiff is informed and believes and on that basis alleges that at all times relevant herein, the Defendant, and each of them, were an integrated enterprise in that they had an interrelation of operations, centralized control of labor relations, common management, and common ownership or financial control.

CLASS ACTION ALLEGATIONS

13. Plaintiff brings this class action on behalf of herself and all other similarly situated persons as a class action pursuant to California Code of Civil Procedure § 382. The proposed class is both ascertainable and shares a well-defined community of interest in common questions of law and fact. Furthermore, this action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements.

14. **Class Definition:** Plaintiff seeks certification of a class defined as follows:

All current and former non-exempt and non-management employees of Defendants, who worked in California, anytime within the period of June 24, 2020, to the present and continuing to the date determined by the Court ("Class" or "Class Members").

- Subclass 1: active employees not entitled to Labor Code section 203 waiting time penalties.

- Subclass 2: terminated employees entitled to Labor Code section 203 waiting time penalties.

15. Excluded from the class are Defendants, including their managing agents, officers, and directors and their relatives; managers responsible for complying with the statutes involved in this lawsuit; any entity in which any defendant has a controlling interest; any affiliate, legal representative, heir or assign of defendants. Also, excluded from the class are any federal, state, or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

16. Plaintiff reserves the right under California Rules of Court, Rule 3.765(b), to amend or modify the Class description with greater specificity or further division into subclasses or limitation to particular issues.

17. **Numerosity:** Plaintiff does not know the exact number of Class members because such information is in the exclusive control of the Defendants. However, Plaintiff believes that Class members are sufficiently numerous, most likely at least 50, that individual joinder of all of them as plaintiffs is impracticable. The information as to the identity of the Class members can be substantially determined from records maintained by Defendants and their agents.

18. **Commonality:** There are questions of common or general interest, of many persons, and it is impracticable to bring them all before the court. These common questions include, but are not limited, to the following:

- a. Whether Plaintiff and the Class were provided uninterrupted rest breaks;
- b. Whether Plaintiff and the Class were paid all owed final wages at termination;
- c. Whether Plaintiff and the Class are entitled to compensatory damages, and the amount of such damages;
- d. Whether Plaintiff and the Class are entitled to restitution, and the amount of such restitution;
- e. Whether Plaintiff and the Class are entitled to statutory penalties, and the amount of such penalties; and
- f. Whether Plaintiff and the Class are entitled to injunctive relief.

20. **Adequacy of Representation:** Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Plaintiff is aggrieved in a similar manner as the proposed Class, with the only variation being the amount of loss and damage suffered by individual employees as a result of Defendants' common conduct. Plaintiff has retained attorneys experienced in litigating large class and representative actions and complex actions, and Plaintiff will prosecute this action vigorously.

21. **Superiority of Class Action:** A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over questions affecting only individual Class Members. Each Class Member has been damaged and is entitled to recovery by reason of Defendants' conduct. A class action will allow those similarly situated to litigate their claims in the most efficient and economical manner for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

18 GENERAL ALLEGATIONS

22. PUENTE AVE runs three business locations as a for profit school. PUENTE AVE employed Plaintiff, as an hourly non-exempt worker, from at least around May 12, 2023 to November 20, 2023. As a company-wide practice, Defendants regularly required Plaintiff and other non-exempt employees to work more than 3.5 hours without being provided with an uninterrupted 10-minute rest break. Defendants regularly required or expected Plaintiff and other non-exempt employees to use their personal cell phones for work purposes but did not reimburse them for such personal cell phone expenses.

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FIRST CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF IN

VIOLATION OF LABOR CODE § 226.7

(AGAINST ALL DEFENDANTS AND DOES 1-5)

23. Plaintiff incorporates each relevant allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

24. California Labor Code section 226.7 provides that “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.” Cal. Lab. Code § 226.7(b).

25. “If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.” Cal. Lab. Code § 226.7(c).

26. Relevant Wage Orders of the Industrial Welfare Commission (“IWC”), applicable to Defendant, such as Wage Order No. 4-2001 section 12, provide that “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

27. Defendants regularly denied Plaintiff and the Class with uninterrupted meal breaks. Defendants regularly denied Plaintiff and the Class with uninterrupted rest breaks on shifts over 3.5 hours. Defendants did not compensate Plaintiff or the Class in lieu of providing them with meal and rest breaks.

28. Pursuant to Labor Code section 226.7, Plaintiff and the Class are entitled to compensation of one additional hour of pay at their regular rate of compensation for each workday that

the rest period was not provided pursuant to *United Parcel Serv., Inc. v. Superior Court*, 196 Cal. App. 4th 57, 70 (2011).

29. “Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” Cal. Lab. Code § 558.1(a).

SECOND CAUSE OF ACTION

FAILURE TO REIMBURSE AND INDEMNIFY FOR EXPENDITURES (AGAINST ALL DEFENDANTS AND DOES 2-5)

30. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

31. California Labor Code § 2802(a) provides that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties”

32. California Labor Code “Section 2802 is designed to prevent employers from passing their operating expenses on to their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554, 562 (2007).

33. Defendant violated Labor Code Section 2802 by passing on their operating expenses to Plaintiff, in violation of Labor Code § 2802(a).

34. Plaintiff and the Class have been damaged by Defendants’ failure to pay or reimburse work expenses in an amount according to proof at trial.

35. Pursuant to California Labor Code § 2802, and other applicable statutes, Plaintiff and the Class are entitled to payment or reimbursement of expenditures, in an amount according to proof at trial, interest thereon, and an award of attorneys’ fees, and costs.

36. “Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” Cal. Lab. Code § 558.1(a).

THIRD CAUSE OF ACTION

LABOR CODE § 203 WAITING TIME PENALTY

(AGAINST ALL DEFENDANTS AND DOES 1-5)

37. Plaintiff incorporates each relevant allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

38. Defendants willfully failed to timely pay Plaintiff and the former employees of the Class all of their owed wages from rest break premiums on their last date of work, in violation of Cal. Labor Code § 201, and failed to pay them the additional continuing wages as a penalty from the original due date, in violation of California Labor Code § 203.

39. Plaintiff and the Class have been harmed by Defendants' conduct and are entitled to a statutory waiting time penalty, in an amount according to proof at trial, interest thereon, and costs.

FOURTH CAUSE OF ACTION

VIOLATION OF UNFAIR COMPETITION LAW

(AGAINST PUENTE AVE AND DOES 1-5)

40. Plaintiff incorporates each relevant allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

41. Defendant's conduct, as alleged in this Complaint, has been and continues to be unfair, unlawful, and harmful to Plaintiff and Defendant's competitors. Defendant's activities as alleged herein are violations of California law and constitute unlawful business acts and practices in violation of California's Unfair Competition Law ("UCL") Business and Professions Code Section 17200 et seq.

42. A violation of Business and Professions Code Section 17200 et seq. may be predicated on the violation of any state or federal law including violations of the Labor Code. *Cortez v. Purolator Air Filtration Prods. Co.*, 23 Cal. 4th 163, 178 (2000). Business and Professions Code Section 17200 et seq. defines unfair competition to include any unlawful, unfair or fraudulent business act or practice.

43. California Labor Code section 226.7 provides that "An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health." Cal. Lab. Code §

226.7(b).

44. “If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.” Cal. Lab. Code § 226.7(c).

45. Relevant Wage Orders of the Industrial Welfare Commission (“IWC”), applicable to Defendant, such as Wage Order No. 4-2001 section 12, provide that “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

46. As alleged above, Defendant violated Labor Code sections 226.7.

47. As a result of the herein described violations of law, Defendant unlawfully gained an unfair advantage over other businesses. As a result of the herein described violations of law, Defendant has unjustly enriched itself at the expense of Plaintiff, the Class, and the general public. Such conduct by Defendant constitutes unfair competition and unfair business practices, as such terms are described in Business and Professions Code section 17200, et seq.

48. Plaintiff is informed, believe and thereon allege that Defendant has continued and still threaten to, unless restrained and ordered to disgorge all profits derived from said unfair business practices as restitution to Plaintiff and the Class, violate the Unfair Competition Law by engaging in business practices violative of California law as detailed hereinabove.

49. Plaintiff and the Class have been personally injured and continue to be injured by Defendant’s unlawful business acts and practices as alleged herein, including, but not limited to, the loss of money and/or property at a sum according to proof at trial.

50. Pursuant to Business and Professions Code § 17203, the court is authorized to make such orders or judgments as may be necessary to prevent the use or employment by any such person or entity of any such practice which constitutes unfair competition or as may be necessary to restore to any

1 person in interest any money or property which may have been acquired by means of such unfair
2 competition.

3 51. Pursuant to Business and Professions Code Section 17200 et seq., Plaintiff and the Class
4 are entitled to restitution of the wages and other monies wrongfully withheld and retained by Defendant,
5 for the period commencing from four years preceding the filing of the Complaint.

6 52. “Unless otherwise expressly provided, the remedies or penalties provided by [Business
7 and Professions Code Section 17200 et seq.] are cumulative to each other and to the remedies or
8 penalties available under all other laws of [California].”

9 **FIFTH CAUSE OF ACTION**
10 **PRIVATE ATTORNEYS GENERAL ACT**
11 **(AGAINST ALL DEFENDANTS AND DOES 1-5)**

12 53. Plaintiff incorporates each relevant allegation set forth in all of the preceding paragraphs
13 as though set forth herein in full again.

14 54. Pursuant to the California Labor Code Private Attorneys General Act (“PAGA”),
15 “Notwithstanding any other provision of law, any provision of [the California Labor Code] that provides
16 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any
17 of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code,
18 may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
19 himself or herself and other current or former employees pursuant to the procedures specified in Section
20 2699.3.” Cal. Lab. Code § 2699(a). “For all provisions of [the California Labor Code] except those for
21 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
22 provisions.” Cal. Lab. Code § 2699(f).

23 55. This PAGA suit “is fundamentally a law enforcement action.” *Arias v. Super. Ct.*, 46
24 Cal. 4th 969, 986 (2009); *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 386-387
25 (2014) (“[E]very PAGA action, whether seeking penalties for Labor Code violations as to only one
26 aggrieved employee—the plaintiff bringing the action—or as to other employees as well, is a
27 representative action on behalf of the state.”); *Williams v. Super. Ct.*, 3 Cal. 5th 531, 538 (2017) (“a
28 PAGA suit, essentially a qui tam action filed on behalf of the state to assist it with labor law

enforcement”). An employee who brings such an action is acting as an agent of state enforcement agencies. *Kim v. Reins Intl. Cal., Inc.*, 9 Cal.5th 73, 81 (2020).

56. A PAGA “violation” includes, and is used in these allegations to mean, a failure to comply with any requirement of the Labor Code. Cal. Lab. Code § 22. Under the PAGA, an “aggrieved employee” means any person who was employed by the alleged violator and against whom only one of the alleged violations was committed. Cal. Lab. Code § 2699(c). Plaintiff is an “aggrieved employee.”

57. This PAGA action is intended to “remediate present violations and deter future ones.” *Williams*, 3 Cal. 5th at 546. The relevant period for the following PAGA allegations in this cause of action is from April 20, 2023, to present and ongoing.

Labor Code Violations §§ 226.7, 226, 1198, 2802, 226.3, 201, 202, 203

§ 226.7

58. “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.” Lab. Code § 226.7(b). “If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.” Lab. Code § 226.7(c).

59. Relevant Wage Orders of the Industrial Welfare Commission, applicable to Defendants, such as Wage Order No. 4-2001 section 12 for example, provide that “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

60. As a company-wide practice, Defendant regularly required Plaintiff and its other non-exempt employees to work without being provided the opportunity to have an uninterrupted rest break.

As a company-wide practice, Defendant did not allow them the opportunity to be relieved of all duties to take a rest break. As a company-wide practice, Defendant did not compensate them in lieu of providing rest breaks. As such, Defendant violated California Labor Code section 226.7(b) and 226(c).

61. California Labor Code section 226.7 does not provide for its own self-contained “civil penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation. The relevant period of the foregoing allegations for this notice is from one year preceding this letter, to present and ongoing.

§ 226

62. “An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . , and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.” Lab. Code § 226(a).

63. Due to Defendant’s failure to account for owed break premiums, Plaintiff and other aggrieved employees’ itemized wage records did not show: (1) the accurate total hours worked; (2) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; (3) the accurate gross wages earned; and (4) the accurate net wages earned. As such, Defendants violated Labor Code Section 226(a)(1)(2)(5)(9). Defendant also failed to keep itemized wage statement records of the foregoing.

64. Labor Code Section 226 does not provide for its own self-contained “civil” penalty

1 within the statute. Thus, Labor Code Section 2699(f)(2) applies to provide a civil penalty of \$100 for
2 each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee
3 per pay period for each subsequent violation. The relevant period of the foregoing allegations for this
4 notice is from one year preceding this letter, to present and ongoing.

5 **§ 1198**

6 65. California Labor Code section 1198 provides that the maximum hours of work and the
7 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
8 standard conditions of labor for employees. California Labor Code section 1173 defines commission as
9 the IWC. Further, the “employment of any employee for longer hours than those fixed by the order or
10 under conditions of labor prohibited by the order is unlawful.” Lab. Code § 1198.

11 66. Sections 3(A)(1) of IWC Order Nos. 1-2001, 2-2001, 3-2001, 4-2001, 5-2001, 6-2001, 7-
12 2001, 8-2001, 9-2001, 10-2001, 11-2001, 12-2001, 13-2001, 16-200, Section 3(C) of IWC Order No.
13 15-2001, and Section 4 of IWC Order No. 17-2001, provide that “employees shall not be employed
14 more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives
15 one and one half (1 1/2) times such employee’s regular rate of pay for all hours worked over 40 hours in
16 the workweek.” Section 7(A) requires every employer to keep accurate time records showing when the
17 employee begins and ends each work period and the total hours worked in the payroll period. As set
18 forth above, Plaintiff and her co-workers occasionally worked more than eight hours per workday. They
19 were not compensated with the earned premium overtime pay for those overtime hours worked more
20 than eight per day. Relevant Wage Orders of the IWC, applicable to Defendants, such as Wage Order
21 No. 4- 2001 section 12, provide that “Every employer shall authorize and permit all employees to take
22 rest periods, which in so far as practicable shall be in the middle of each work period. The authorized
23 rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest
24 time per four (4) hours or major fraction thereof.”

25 67. As set forth above, on numerous occasions, Defendants did not permit Plaintiff and other
26 aggrieved employees to have uninterrupted rest breaks with the opportunity to be relieved of all duties
27 for rest breaks.

28 68. Based on the foregoing, Defendants violated California Labor Code section 1198 by

violating the above-referenced sections of relevant Wage Orders of the IWC.

69. California Labor Code section 1198 does not provide for its own self-contained “civil penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

70. Based on the foregoing, Defendants violated California Labor Code section 1198 by violating the above-referenced sections of relevant Wage Orders of the IWC.

71. California Labor Code section 1198 does not provide for its own self-contained “civil penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation. The relevant period of the foregoing allegations for this notice is from one year preceding this letter, to present and ongoing.

Labor Code § 2802

72. “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” Lab. Code § 2802(a). In *Cochran v. Schwan’s*, the court held:

If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802. It does not matter whether the phone bill is paid for by a third person, or at all. In other words, it is no concern to the employer that the employee may pass on the expense to a family member or friend, or to a carrier that has to then write off a loss. It is irrelevant whether the employee changed plans to accommodate work-related cell phone usage. Also, the details of the employee’s cell phone plan do not factor into the liability analysis. Not only does our interpretation prevent employers from passing on operating expenses, it also prevents them from digging into the private lives of their employees to unearth how they handle their finances vis-à-vis family, friends and creditors. To show liability under section 2802, an employee need only show that he or she was required to use a personal cell phone to make work-related calls, and he or she was not reimbursed.

Cochran v. Schwan’s Home Serv., Inc., 228 Cal. App. 4th 1137, 1144–45 (2014), review denied (Nov. 25, 2014).

73. Here, like in *Cochran*, if an employee is required to do work-related activities on a personal cell phone, then he is incurring an expense for purposes of section 2802. Here, as in *Cochran*, to show liability under section 2802, an employee need only show that he was required or directed to use a personal cell phone to do work-related activities and was not reimbursed.

74. Defendants did not reimburse or pay Plaintiff or the other aggrieved employees for any portion of their cell phone expenses, in violation of Labor Code § 2802(a).

75. Labor Code § 2802 does not have a civil penalty specifically provided. Thus, Labor Code § 2699(f) is applicable to impose civil penalties of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. The relevant period of the foregoing allegations for this notice is from one year preceding this letter, to present and ongoing.

§ 226.3

76. “Any employer who violates subdivision (a) of section 226 shall be subject to a civil penalty in the amount” set forth in Labor Code section 226.3 for failing to provide the employee a wage deduction statement or failing “to keep the records required in subdivision (a) of Section 226.” Lab. Code § 226.3. This section “sets out a civil penalty for all violations of section 226.” *Raines v. Coastal Pacific Food Distribs., Inc.*, 23 Cal. App. 5th 667, 675 (2018). “[A] representative PAGA claim for civil penalties for a violation of section 226(a) **does not require proof of injury or a knowing and intentional violation**. This is true even though these two elements are required to be proven when bringing an individual claim for damages or statutory penalties under section 226(e).” *Raines*, at 670 (emphasis added). Because Defendant violated California Labor Code section 226(a), Defendant is subject to civil penalties under section 226.3 applicable to Plaintiff and other current and former aggrieved employees. The relevant period of the foregoing allegations for this notice is from one year preceding this letter, to present and ongoing.

§ 201-203

77. Due to the overtime and break violations, Plaintiff did not timely receive all of his final pay within the required timeframe from his discharge date. Defendant also failed to provide Plaintiff his final pay on the date of discharge. Thus, Defendant violated Labor Code sections 201-203. Defendant

also did this to other aggrieved employees. Labor Code Sections 201-203 do not provide for their own self-contained civil penalty within the statute. Thus, Labor Code Section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation. The relevant period of the foregoing allegations for this notice is from one year preceding this letter, to present and ongoing.

Exhaustion of Administrative Remedies

78. On March 11, 2024, Plaintiff provided notice to the California Labor and Workforce Development Agency (“LWDA”), pursuant to Labor Code § 2699.3, detailing the specific provisions of the foregoing Labor Code sections that have been violated, including the facts and theories to support the violations. The LWDA file number is LWDA-CM-1016016-24. The notice was sent by certified mail on or about March 11, 2024, to Defendants (9214 8902 3589 0900 0025 8776 28). Plaintiff submitted a fee waiver to the LWDA.

79. The LWDA has not, within 65 days of Plaintiff’s Notice of violations of the Labor Code, sent Plaintiff notice that it intends to investigate the violations. Thus, Plaintiff has exhausted Plaintiff’s administrative remedies, pursuant to Labor Code section 2699.3(a), as a prerequisite to assert a civil action, for civil penalties pursuant to Labor Code section 2699. Defendant has not sent any notice to the LWDA attempting to cure the alleged violations of Labor Code statutes not enumerated in Labor Code section 2699.5. Thus, Plaintiff has exhausted Plaintiff’s administrative remedies, pursuant to Labor Code section 2699.3(c), as a prerequisite to assert a civil action, for civil penalties pursuant to Labor Code section 2699.

PRAYER

WHEREFORE, Plaintiff prays:

1. For compensatory special damages, in an amount according to proof at the time of trial.
2. For reimbursement and indemnification for all work-related expenditures, in an amount according to proof at the time of trial.
3. For statutory penalties pursuant to the California Labor Code.
4. For civil penalties pursuant to the California Labor Code §§ 2698 *et seq.*
5. For an order of injunctive relief.

- ## DEMAND FOR JURY TRIAL

Dated: June 24, 2024

By:

Matthew Gutierrez

Attorneys for Plaintiff, ELIDA SANCHEZ, and
the Proposed Class