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

ASHA MARTIN, individually, and on behalf
of all others similarly situated,

Plaintiffs,

v.

HALLCON CORPORATION, a Delaware
Corporation; RENZENBERGER, INC., a
Kansas Corporation; and DOES 1 through 10,
inclusive,

Defendants.

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County of Los Angeles
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Executive Officer/Clerk of Court,
By C. Vega, Deputy Clerk

Case No.: **24STCV28057**

CLASS ACTION

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Asha Martin (“Plaintiff”), on information and belief, alleges as follows:

I. INTRODUCTION & PRELIMINARY STATEMENT

1. Plaintiff sues Defendants Hallcon Corporation (“Hallcon”), Renzenberger, Inc. (“Renzenberger”), and DOES 1 through 10 (collectively, “Defendants”) for California Labor Code violations and unfair business practices. The claims stem from Defendants’ failure to pay for all hours worked (minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to furnish accurate wage statements, and failure to indemnify employees for expenditures.

2. Plaintiff brings the First through Seventh Causes of Action individually and as a class action on behalf of Plaintiff and certain current and former employees of Defendants (collectively, the “Class” or “Class Members,” and defined more fully below). The Class consists of Plaintiff and all other persons who have been employed by any Defendant in California as an hourly-paid or non-exempt employee during the statute of limitations period applicable to the claims pleaded here.

3. Plaintiff brings the Eighth Cause of Action as a representative action under the California Private Attorneys General Act of 2004 (“PAGA”), California Labor Code sections 2698, *et seq.* to recover civil penalties that are owed to Plaintiff, the State of California, and past and present employees of Defendants who worked in California (hereinafter referred to as the “Aggrieved Employees”).

4. Defendants own and operate an industry, business, and establishment within the State of California, including Los Angeles County. As such and based on all the facts and circumstances incident to Defendants’ business in California, Defendants are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission (IWC), and the California Business and Professions Code.

5. Despite these requirements, throughout the statutory period, Defendants have, at times:

(a) Failed to pay some, but not necessarily all employees for all hours worked, including all minimum, straight time, and overtime wages in compliance with the California Labor

Code and IWC Wage Orders;

(b) Failed to provide some, but not necessarily all employees with timely and duty-free meal periods in compliance with the California Labor Code and IWC Wage Orders, failed to maintain accurate records of all meal periods taken or missed, and failed to pay an extra hour's pay for each workday a meal period violation occurred;

(c) Failed to authorize and permit some, but not necessarily all employees to take timely and duty-free rest periods in compliance with the California Labor Code and IWC Wage Orders, and failed to pay an extra hour's pay for each workday a rest period violation occurred;

(d) Failed to provide some, but not necessarily all employees with accurate, itemized wage statements containing all the information required by the California Labor Code and IWC Wage Orders;

(e) Failed to indemnify some, but not necessarily all employees for expenditures incurred in direct discharge of duties of employment; and

6. On information and belief, Defendants were on actual and constructive notice of the improprieties alleged above and intentionally refused to rectify their unlawful conduct. Defendants' violations, as alleged above, during all relevant times were willful and deliberate.

7. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, acts and omissions as described in the foregoing paragraphs as the employers of Plaintiff and the Class. Further, Defendants are responsible for each of the unlawful acts or omissions complained of under the doctrine of "respondeat superior."

II. THE PARTIES

A. Plaintiff

8. Plaintiff, a resident of Barstow, California, has worked for Defendants in Los Angeles County, California as an hourly-paid, non-exempt employee since August 16, 2023.

9. Plaintiff reserves the right to seek leave to amend this complaint to add new plaintiffs, if necessary, to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

10. Plaintiff is informed and believes, and based on that information and belief alleges, that Hallcon and Renzenberger are, and at all times mentioned here, were:

(a) Business entities conducting business in numerous counties throughout the State of California, including Los Angeles County; and,

(b) The current employers of Plaintiff, and the current and/or former employers of the putative Class because Hallcon and Renzenberger suffered and permitted Plaintiff and the Class to work; and/or exercised control over their wages, hours, or working conditions; and/or engaged Plaintiff and the Class, thereby creating a common law employment relationship.

11. Plaintiff does not know the true names or capacities of the persons or entities sued herein as DOES 1 through 10, inclusive, and therefore sues said Defendants by such fictitious names. Each of the DOE Defendants was in some way legally responsible for the damages suffered by Plaintiff and the Class as alleged. Plaintiff will amend this complaint to set forth the true names and capacities of these Defendants when they have been ascertained, together with appropriate charging allegations, as may be necessary.

12. At all times mentioned here, Defendants named as DOES 1 through 10, inclusive, and each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured Plaintiff and a significant number of the Class in the State of California.

13. Plaintiff is informed and believes and thereon alleges that at all relevant times each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the other employees described in the class definitions below, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiff is informed and believes and thereon alleges that each Defendant acted

pursuant to and within the scope of the relationships alleged above, that each Defendant knew or should have known about, and authorized, ratified, adopted, approved, controlled, aided, and abetted the conduct of all other Defendants.

III. JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction over this action pursuant to California Code of Civil Procedure section 410.10.

15. The Court has personal jurisdiction over Defendants because Plaintiff's and Class Members' claims arise out of Defendants' business activities conducted in the State of California.

16. At all times mentioned herein, Defendants, inclusive, and each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured Plaintiff and the Class in the State of California.

17. Venue is appropriate in Los Angeles, California because many of the acts and omissions that give rise to the claims for relief alleged took place in Los Angeles County.

IV. ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

18. Plaintiff has worked for Defendants in Los Angeles County, California as an hourly-paid, non-exempt employee since August 18, 2023. During Plaintiff's employment for Defendants, Defendants paid Plaintiff an hourly wage and classified Plaintiff as non-exempt from overtime. Defendants repeatedly and often scheduled Plaintiff to work at least five days in a workweek and at least eight hours per day, but Plaintiff also worked more than eight hours in a workday and more than 40 hours in a workweek.

19. Throughout Plaintiff's employment, Defendants, at times, failed to pay Plaintiff for all hours worked (including minimum, straight time, and overtime wages), failed to provide Plaintiff with legally compliant meal periods, failed to authorize and permit Plaintiff to take rest periods, failed to furnish accurate wage statements to Plaintiff, and failed to indemnify Plaintiff for expenditures.

20. Throughout the statutory period, Defendants, at times, failed to pay Plaintiff and the Class for all hours worked, including minimum, straight time, and overtime wages. Defendants would, at times, manufacture time keeping records to falsely show that Plaintiff and the Class took

1 meal periods when in fact they worked “off-the-clock,” uncompensated. The effect is that Plaintiff
2 and the Class worked through meal periods “off-the-clock,” and continued to work after they had
3 clocked out for the workday. Defendants paid Plaintiff and the Class less than all their work time.
4 Some of this unpaid work should have been paid at the overtime rate. In failing to pay for all hours
5 worked, Defendants also failed to maintain accurate records of the hours Plaintiff and the Class
6 worked.

7 21. Throughout the statutory period, Defendants wrongfully failed to provide Plaintiff
8 and the Class with legally compliant meal periods. Defendants required Plaintiff and the Class to
9 work in excess of five consecutive hours a day without providing a 30-minute, uninterrupted, and
10 duty-free meal period for every five hours of work, or without compensating Plaintiff and the Class
11 for all missed meal periods that were not provided by the end of the fifth hour of work or tenth
12 hour of work. Instead, Defendants continued to assert control over Plaintiff and the Class by
13 requiring, pressuring, or encouraging them to perform work tasks which could not be completed
14 without working in lieu of taking mandatory meal periods, or by denying Plaintiff and the Class
15 permission to take a meal period. Defendants also failed, at times, to permit Plaintiff and the Class
16 to take a second meal period when they worked at least 10 hours of work in a workday. As
17 described above, Defendants would manufacture time keeping records to falsely show that Plaintiff
18 and the Class took meal periods by the fifth hour of work or took meal periods when in fact they
19 worked “off-the-clock,” uncompensated. Accordingly, Defendants failed to provide meal periods
20 to Plaintiff and the Class in compliance with California law.

21 22. Throughout the statutory period, Defendants have, at times, wrongfully failed to
22 authorize and permit Plaintiff and the Class to take legally compliant rest periods. Defendants
23 required Plaintiff and the Class to work in excess of four consecutive hours a day without
24 Defendants authorizing and permitting them to take a 10-minute, uninterrupted, duty-free rest
25 period for every four hours of work (or major fraction of four hours), or without compensating
26 Plaintiff and the Class for rest periods that were not authorized or permitted. Instead, Defendants
27 continued to assert control over Plaintiff and the Class by requiring, pressuring, or encouraging
28 them to perform work tasks which could not be completed without working in lieu of taking

1 mandatory rest periods, or by denying Plaintiff and the Class permission to take a rest period.
2 Accordingly, Defendants failed to authorize and permit Plaintiff and the Class to take rest periods
3 in compliance with California law.

4 23. Throughout the statutory period, Defendants failed, at times, to furnish Plaintiff and
5 the Class with accurate, itemized wage statements showing all applicable hourly rates, and all gross
6 and net wages earned (including correct hours worked, correct wages for meal periods that were
7 not provided in accordance with California law, and correct wages for rest periods that were not
8 authorized and permitted to take in accordance with California law). As a result of these violations
9 of California Labor Code section 226, subdivision (a), the Plaintiff and the Class suffered injury
10 because, among other things:

11 (a) the violations led them to believe that they were not entitled to be paid
12 minimum wage, straight time wages, overtime wages, meal period premium wages, and rest period
13 premium wages, even though some, but not necessarily all, of them were entitled;

14 (b) the violations led them to believe that they had been paid the minimum wage,
15 straight time wages, overtime wages, meal period premium wages, and rest period premium wages,
16 even though some, but not necessarily all of them had not been;

17 (c) the violations led them to believe they were not entitled to be paid minimum
18 wage, straight time wages, overtime wages, meal period premium wages, and rest period premium
19 wages at the correct California rate even though some, but not necessarily all of them were entitled;

20 (d) the violations led them to believe they had been paid minimum wage,
21 straight time wages, overtime wages, meal period premium wages, and rest period premium wages
22 at the correct California rate even though some, but not necessarily all of them had not been;

23 (e) the violations hindered them from determining the amounts of minimum
24 wage, straight time wages, overtime wages, meal period premium wages, and rest period premium
25 wages owed to some, but not necessarily all of them;

26 (f) in connection with their employment before and during this action, and in
27 connection with prosecuting this action, the violations caused them to have to perform
28 mathematical computations to determine the amounts of wages owed to some, but not necessarily

1 all of them, computations they would not have to make if the wage statements contained the
2 required accurate information;

3 (g) by understating the wages truly due to some, but not necessarily all of them,
4 the violations caused some, but not necessarily all of them to lose entitlement and/or accrual of the
5 full amount of Social Security, disability, unemployment, and other governmental benefits;

6 (h) the wage statements inaccurately understated the wages, hours, and wage
7 rates to which Plaintiff and some, but not necessarily all of the Class were entitled, and Plaintiff
8 and some, but not necessarily all of the Class were paid less than the wages and wage rates to
9 which some, but not necessarily all of them were entitled.

10 Thus, Plaintiff and some, but not necessarily all of the Class are owed the amounts provided
11 for in California Labor Code section 226, subdivision (e).

12 24. Throughout the statutory period, Defendants have wrongfully required Plaintiff and
13 the Class to pay expenses that they incurred in direct discharge of their duties for Defendants.
14 Plaintiff and the Class paid out-of-pocket for necessary employment-related expenses.

15 25. Throughout the statutory period, Defendants have wrongfully required Plaintiff and
16 the Class to pay expenses that they incurred in direct discharge of their duties for Defendants.
17 Plaintiff and the Class paid out-of-pocket for necessary employment-related expenses.

18 26. Plaintiff and the Class incurred substantial expenses as a direct result of performing
19 their job duties for Defendants, but Defendants failed to indemnify Plaintiff and the Class for these
20 employment-related expenses.

21 **V. CLASS ACTION ALLEGATIONS**

22 27. Plaintiff brings certain claims individually, as well as on behalf of each and all other
23 persons similarly situated, and thus, seek class certification under California Code of Civil
24 Procedure section 382.

25 28. All claims alleged arise under California law for which Plaintiff seeks relief
26 authorized by California law.
27
28

29. The proposed Class consists of and is defined as:

All persons who worked for any Defendant in California as an hourly-paid or non-exempt employee at any time during the period beginning four years before the filing of the initial complaint in this action and ending when notice to the Class is sent.

30. At all material times, Plaintiff was a member of the Class.

31. Plaintiff undertakes this concerted activity to improve the wages and working conditions of all Class Members.

32. There is a well-defined community of interest in the litigation and the Class is readily ascertainable:

(a) Numerosity: The members of the Class (and each subclass, if any) are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire Class is unknown to Plaintiff at this time; however, the Class is estimated to be greater than 40 individuals and the identity of such membership is readily ascertainable by inspection of Defendants' records.

(b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class Member with whom there is a shared, well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all Class Members' claims.

(c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class Member with whom there is a shared, well-defined community of interest and typicality of claims. Plaintiff has no conflicts with or interests antagonistic to any Class Member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: A class action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- (1) The interests of the members of the Class in individually controlling the prosecution or defense of separate actions;
- (2) The extent and nature of any litigation concerning the controversy already commenced by or against members of the Class;
- (3) The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and,
- (4) The difficulties likely to be encountered in the management of a class action.

(e) Public Policy Considerations: The public policy of the State of California is to resolve the California Labor Code claims of many employees through a class action. Indeed, current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are also fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights at the same time as their privacy is protected.

33. There are common questions of law and fact as to the Class (and each subclass, if any) that predominate over questions affecting only individual members, including without limitation, whether, as alleged, Defendants have:

- (a) Failed to pay Class Members for all hours worked, including minimum, straight time, and overtime wages;
- (b) Failed to provide meal periods and pay meal period premium wages to Class Members;
- (c) Failed to authorize and permit rest periods and pay rest period premium wages to Class Members;
- (d) Failed to provide Class Members with timely final wages;
- (e) Failed to provide Class Members with accurate wage statements;
- (f) Failed to indemnify Class Members for expenditures;
- (g) Failed to produce requested employment records; and

1 (h) Violated California Business and Professions Code sections 17200, *et seq.*
2 as a result of their illegal conduct as described above.

3 34. This Court should permit this action to be maintained as a class action under
4 California Code of Civil Procedure section 382 because:

5 (a) The questions of law and fact common to the Class predominate over any
6 question affecting only individual Class Members;

7 (b) A class action is superior to any other available method for the fair and
8 efficient adjudication of the claims of the Class Members;

9 (c) The members of the Class are so numerous that it is impractical to bring all
10 members of the class before the Court;

11 (d) Plaintiff, and the other members of the Class, will not be able to obtain
12 effective and economic legal redress unless the action is maintained as a class action;

13 (e) There is a community of interest in obtaining appropriate legal and equitable
14 relief for the statutory violations, and in obtaining adequate compensation for the damages and
15 injuries for which Defendants are responsible in an amount sufficient to adequately compensate
16 the members of the Class for the injuries sustained;

17 (f) Without class certification, the prosecution of separate actions by individual
18 members of the Class would create a risk of:

19 (1) Inconsistent or varying adjudications with respect to individual
20 members of the Class which would establish incompatible standards
21 of conduct for Defendants; and/or,

22 (2) Adjudications with respect to the individual members which would,
23 as a practical matter, be dispositive of the interests of other members
24 not parties to the adjudications, or would substantially impair or
25 impede their ability to protect their interests, including but not
26 limited to the potential for exhausting the funds available from those
27 parties who are, or may be, responsible Defendants; and,
28

(g) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the class as a whole.

35. Plaintiff contemplates the eventual issuance of notice to the proposed members of the Class that would set forth the subject and nature of this action. Defendants' own business records may be used for assistance in the preparation and issuance of the contemplated notices. If any further notices may be required, Plaintiff contemplates the use of additional techniques and forms common in class actions, such as published notice, email notice, website notice, first-class mail, or combinations thereof, or by other methods suitable to the Class and deemed necessary and/or appropriate by the Court.

VI. CAUSES OF ACTION¹

FIRST CAUSE OF ACTION

(Failure to Pay Minimum and Straight Time Wages for All Hours Worked)

36. Plaintiff incorporates by reference and re-allege as if fully stated here paragraphs 1 through 35 in this Complaint.

37. "Hours worked" is the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

38. At all relevant times mentioned, Defendants, at times, knowingly failed to pay to Plaintiff and the Class compensation for all hours they worked. By their failure to pay compensation for each hour worked as alleged above, Defendants willfully violated the provisions of California Labor Code section 1194, and any additional applicable Wage Orders, which require such compensation to non-exempt employees.

39. Accordingly, Plaintiff and the Class are entitled to recover minimum and straight time wages for all non-overtime hours worked for Defendants.

40. By and through the conduct described above, Plaintiff and the Class have been deprived of their rights to be paid wages earned through their employment with Defendants.

¹ Unless otherwise stated, Plaintiff asserts all causes of actions against all Defendants.

41. By virtue of the Defendants' unlawful failure to pay additional compensation to Plaintiff and the Class for their non-overtime hours worked without pay, Plaintiff and the Class suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff and the Class, and which will be ascertained according to proof at trial.

42. By failing to keep adequate time records required by California Labor Code section 1174, subdivision (d), Defendants have made it difficult to calculate the full extent of minimum wage compensation due Plaintiff and some of, but not necessarily all of, the Class.

43. Pursuant to California Labor Code section 1194.2, Plaintiff and the Class are entitled to recover liquidated damages (double damages) for Defendants' failure to pay minimum wages.

44. California Labor Code section 204 requires employers to provide employees with all wages due and payable twice a month. Throughout the statute of limitations period applicable to this cause of action, Plaintiff and the Class were entitled to be paid twice a month at rates required by law, including minimum and straight time wages. However, Defendants failed and refused to pay Plaintiff and the Class all such wages due and failed to pay those wages twice a month.

45. Plaintiff and the Class are also entitled to seek recovery of all unpaid minimum and straight time wages, interest, and reasonable attorneys' fees and costs under California Labor Code sections 218.5, 218.6, and 1194(a).

SECOND CAUSE OF ACTION

(Failure to Pay Overtime Wages)

46. Plaintiff incorporates by reference and re-allege as if fully stated here paragraphs 1 through 45 in this Complaint.

47. California Labor Code section 510 provides that employees in California shall not be employed more than eight hours in any workday or 40 hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

48. California Labor Code sections 1194 and 1198 provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional

1 compensation beyond their regular wages in amounts specified by law. Additionally, California
2 Labor Code section 1198 states that the employment of an employee for longer hours than those
3 fixed by the IWC is unlawful.

4 49. At all times relevant hereto, Plaintiff and some of, but not necessarily all of, the
5 Class have, at times, worked more than eight hours in a workday and/or more than 40 hours in a
6 workweek, as employees of Defendants.

7 50. At all times relevant hereto, Defendants failed to pay Plaintiff and the Class
8 overtime compensation for the hours they have worked in excess of the maximum hours
9 permissible by law as required by California Labor Code sections 510 and 1198.

10 51. By virtue of Defendants' unlawful failure to pay additional premium rate
11 compensation to the Plaintiff and some of, but necessarily all of, the Class for their overtime hours
12 worked, Plaintiff and the Class have suffered, and will continue to suffer, damages in amounts
13 which are presently unknown to them, but which exceed the jurisdictional minimum of this Court
14 and which will be ascertained according to proof at trial.

15 52. By failing to keep adequate time records required by California Labor Code section
16 1174 subdivision (d), Defendants have made it difficult to calculate the full extent of overtime
17 compensation due to Plaintiff and the Class.

18 53. Plaintiff and the Class also request recovery of overtime compensation according to
19 proof, interest, attorneys' fees and costs under California Labor Code section 1194, subdivision
20 (a), as well as the assessment of any statutory penalties against Defendants, in a sum as provided
21 by the California Labor Code and/or other statutes.

22 54. California Labor Code section 204 requires employers to provide employees with
23 all wages due and payable twice a month. The Wage Orders also provide that every employer shall
24 pay to each employee, on the established payday for the period involved, overtime wages for all
25 overtime hours worked in the payroll period. Defendants failed to provide Plaintiff and the Class
26 with all compensation due, in violation of California Labor Code section 204.

THIRD CAUSE OF ACTION
(Failure to Provide Meal Periods)

55. Plaintiff incorporates by reference and re-allege as if fully stated here paragraphs 1 through 54 in this Complaint.

56. Under California law, Defendants have an affirmative obligation to relieve Plaintiff and the Class of all duty in order to take their first daily meal periods no later than at the end of Plaintiff and the Class's fifth hour of work in a workday, and to take their second meal periods no later than at the end of the tenth hour of work in the workday. California Labor Code section 512, and Section 11 of the applicable Wage Orders require that an employer provide unpaid meal periods of at least thirty minutes for each five-hour period worked. It violates California Labor Code section 226.7 for an employer to require any employee to work during any meal period mandated under any Wage Order.

57. Despite these legal requirements, Defendants, at times, failed to provide Plaintiff and some, but not necessarily all of the Class with both meal periods as required by California law. By their failure to permit and authorize Plaintiff and the Class to take all meal periods as alleged above (or because Defendants, at times, made it impossible or impracticable to take these uninterrupted meal periods), Defendants willfully violated the provisions of California Labor Code section 226.7 and the applicable Wage Orders.

58. Under California law, Plaintiff and the Class are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s), plus interest.

FOURTH CAUSE OF ACTION
(Failure to Authorize and Permit Rest Periods)

59. Plaintiff incorporates by reference and re-allege as if fully stated here paragraphs 1 through 58 in this Complaint.

60. Defendants are required by California law to authorize and permit breaks of ten uninterrupted minutes for each four hours of work or major fraction of four hours (i.e., more than two hours). California Labor Code section 512, the applicable Wage Orders require that the

1 employer permit and authorize all employees to take paid rest periods of ten minutes each for each
2 4-hour period worked. Thus, for example, if an employee's work time is six hours and ten minutes,
3 the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is
4 itself a violation of California's rest break laws. It violates California Labor Code section 226.7
5 for an employer to require any employee to work during any rest period mandated under any Wage
6 Order.

7 61. Despite these legal requirements, Defendants at times failed to authorize Plaintiff
8 and the Class to take rest breaks, regardless of whether employees worked more than four hours in
9 a workday. By their failure to permit and authorize Plaintiff and the Class to take rest periods as
10 alleged above (or because Defendants, at times, made it impossible or impracticable to take these
11 uninterrupted rest periods), Defendants willfully violated the provisions of California Labor Code
12 section 226.7 and the applicable Wage Orders.

13 62. Under California law, Plaintiff and the Class are entitled to be paid one hour of
14 premium wages rate for each workday they were not provided with all required rest break(s), plus
15 interest.

16 **FIFTH CAUSE OF ACTION**

17 **(Failure to Provide and Maintain Accurate and Compliant Wage Records)**

18 63. Plaintiff incorporates by reference and re-allege as if fully stated here paragraphs 1
19 through 62 in this Complaint.

20 64. At all material times set forth, California Labor Code section 226, subdivision (a)
21 provides that every employer shall furnish each of his or her employees an accurate itemized wage
22 statement in writing showing nine pieces of information, including: (1) gross wages earned, (2)
23 total hours worked by the employee, (3) the number of piece-rate units earned and any applicable
24 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
25 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
26 net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
27 of the employee and the last four digits of his or her social security number or an employee
28 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.

65. Defendants have, at times, intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify the gross wages earned by Plaintiff and some of the Class, the failure to list the true “total hours worked by the employee,” and the failure to list the true net wages earned. Plaintiff does not allege that all of the Class Members were so harmed.

66. As a result of Defendants’ violation of California Labor Code section 226, subdivision (a), Plaintiff and the Class have suffered injury and damage to their statutorily protected rights.

67. Plaintiff and some of, but not necessarily all of, the Class have been injured by Defendants’ intentional violation of California Labor Code section 226, subdivision (a) because Plaintiff and the Class were denied both their legal right to receive, and their protected interest in receiving, accurate, itemized wage statements under section 226, subdivision (a).

68. Calculation of the true wage entitlement for Plaintiff and the Class is difficult and time consuming. Because of this unlawful burden, Plaintiff and the Class were also injured as a result of having to bring this action to try to obtain correct wage information following Defendants’ refusal to comply with many of the mandates of California’s Labor Code and related laws and regulations.

69. Plaintiff and the Class are entitled to recover from Defendants the greater of their actual damages caused by Defendants’ failure to comply with California Labor Code section 226, subdivision(a), or an aggregate penalty not exceeding four thousand U.S. dollars (\$4,000) per employee.

70. Plaintiff and the Class are also entitled to injunctive relief, as well as an award of attorney’s fees and costs to ensure compliance with this section, under California Labor Code section 226, subdivision (h).

SIXTH CAUSE OF ACTION

(Failure to Indemnify Employees for Expenditures)

71. Plaintiff incorporates by reference and re-allege as if fully stated here paragraphs 1 through 70 in this Complaint.

72. As explained above, Plaintiff and the Class were required to incur substantial necessary expenditures and losses as a result of the discharge of their duties or of their obedience to directions of Defendants.

73. Defendants violated California Labor Code section 2802, by failing to pay and indemnify Plaintiff and the Class for necessary expenditures and losses incurred as a result of the discharge of their duties or of their obedience to directions of Defendants.

74. As a result, Plaintiff and the Class were damaged at least in the amounts of the expenses they paid, or which were deducted by Defendants from their wages.

75. Plaintiff and the Class are entitled to reasonable attorney's fees, expenses, and costs of suit under California Labor Code section 2802, subdivision(c) and interest under California Labor Code section 2802, subdivision (b).

SEVENTH CAUSE OF ACTION

(Violation of California Business & Professions Code §§ 17200, *et seq.*)

76. Plaintiff incorporates by reference and re-allege as if fully stated here paragraphs 1 through 75 in this Complaint.

77. Defendants, and each of them, are "persons" as defined under California Business and Professions Code section 17201.

78. Defendants' conduct, as alleged, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff, other Class members, and to the public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

79. Defendants' activities, as alleged, are violations of California law, and constitute unlawful business acts and practices in violation of California Business and Professions Code sections 17200, *et seq.*

1 80. A violation of California Business and Professions Code sections 17200, *et seq.* may
2 be predicated on the violation of any state or federal law. All the acts described herein as violations
3 of, among other things, the California Labor Code, are unlawful and in violation of public policy;
4 and in addition are immoral, unethical, oppressive, fraudulent and unscrupulous, and thereby
5 constitute unfair, unlawful and/or fraudulent business practices in violation of California Business
6 and Professions Code sections 17200, *et seq.*

7 **Failure to Pay Minimum and Straight Time Wages**

8 81. Defendants' failure to pay minimum and straight time wages, and other benefits in
9 violation of the California Labor Code constitutes unlawful and/or unfair activity prohibited by
10 California Business and Professions Code sections 17200, *et seq.*

11 **Failure to Pay Overtime Wages**

12 82. Defendants' failure to pay overtime compensation and other benefits in violation of
13 California Labor Code sections 510, 1194, and 1198 constitutes unlawful and/or unfair activity
14 prohibited by California Business and Professions Code sections 17200, *et seq.*

15 **Failure to Provide Meal Periods**

16 83. Defendants' failure to provide meal periods in accordance with California Labor
17 Code sections 226.7 and 512, and the IWC Wage Orders, as alleged above, constitutes unlawful
18 and/or unfair activity prohibited by California Business and Professions Code sections 17200, *et*
19 *seq.*

20 **Failure to Authorize and Permit Rest Periods**

21 84. Defendants' failure to authorize and permit rest periods in accordance with
22 California Labor Code section 226.7 and the IWC Wage Orders, as alleged above, constitutes
23 unlawful and/or unfair activity prohibited by Business and Professions Code sections 17200,
24 *et seq.*

25 **Failure to Indemnify Business Expenses**

26 85. Defendants' failure to reimburse expenses incurred in accordance with California
27 Labor Code section 2802, as alleged above, constitutes unlawful and/or unfair activity prohibited
28 by California Business and Professions Code sections 17200, *et seq.*

1 86. By and through their unfair, unlawful and/or fraudulent business practices described
2 above, Defendants, have obtained valuable property, money and services from Plaintiff, and all
3 persons similarly situated, and have deprived Plaintiff, and all persons similarly situated, of
4 valuable rights and benefits guaranteed by law, all to their detriment.

5 87. Plaintiff and Class Members suffered monetary injury as a direct result of
6 Defendants' wrongful conduct.

7 88. Plaintiff, individually, and on behalf of members of the putative Class, are entitled
8 to, and do, seek such relief as may be necessary to disgorge money and/or property which the
9 Defendants have wrongfully acquired, or of which Plaintiff and the Class have been deprived,
10 through the above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and
11 the Class do not have to establish individual knowledge of the wrongful practices of Defendants
12 to recover restitution.

13 89. Plaintiff, individually, and on behalf of members of the putative class, are further
14 entitled to, and do, seek a declaration that the above-described business practices are unfair,
15 unlawful and/or fraudulent, and injunctive relief restraining the Defendants, and each of them,
16 from engaging in any of the above-described unfair, unlawful and/or fraudulent business practices
17 in the future.

18 90. Plaintiff, individually, and on behalf of members of the putative class, have no plain,
19 speedy, and/or adequate remedy at law to redress the injuries which the Class Members suffered
20 as a consequence of the Defendants' unfair, unlawful and/or fraudulent business practices. As a
21 result of the unfair, unlawful and/or fraudulent business practices described above, Plaintiff,
22 individually, and on behalf of members of the putative Class, have suffered and will continue to
23 suffer irreparable harm unless the Defendants are restrained from continuing to engage in said
24 unfair, unlawful and/or fraudulent business practices.

25 91. Plaintiff also alleges that if Defendants are not enjoined from the conduct set forth
26 above, they will continue to avoid paying the appropriate taxes, insurance and other withholdings.

27 92. Pursuant to California Business and Professions Code sections 17200, *et seq.*,
28 Plaintiff and putative Class Members are entitled to restitution of the wages withheld and retained

1 by Defendants during a period that commences four years prior to the filing of this complaint; a
2 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and Class
3 Members; an award of attorneys' fees under California Code of Civil Procedure section 1021.5
4 and other applicable laws; and an award of costs.

5 **EIGHTH CAUSE OF ACTION**

6 **(Civil Penalties Under the Private Attorneys General Act of 2004,**

7 **Cal. Lab. Code, §§ 2698, *et seq.*)**

8 93. Plaintiff incorporates by reference and re-allege as if fully stated here paragraphs 1
9 through 92 in this Complaint.

10 94. At all times herein mentioned, Defendants were subject to the California Labor
11 Code and the applicable IWC Wage Orders.

12 95. California Labor Code section 2699, subdivision (a) specifically provides for a
13 private right of action to recover penalties for violations of the California Labor Code:
14 "Notwithstanding any other provision of law, any provision of this code that provides for a civil
15 penalty to be assessed and collected by the Labor and Workforce Development Agency or any of
16 its departments, divisions, commissions, boards, agencies, or employees, for a violation of this
17 code, may as an alternative, be recovered through a civil action brought by an aggrieved employee
18 on behalf of himself or herself and other current or former employees pursuant to the procedures
19 specified in Section 2699.3."

20 96. Plaintiff has exhausted her administrative remedies pursuant to California Labor
21 Code section 2699.3. On or about June 20, 2024, Plaintiff gave written notice by online filing to
22 the Labor and Workforce Development Agency and by certified mail to Defendants of the specific
23 provisions of the California Labor Code that Defendants have violated against Plaintiff and current
24 and former Aggrieved Employees, including the facts and theories to support the violations.
25 Plaintiff also paid the filing fee on or about June 20, 2024. Plaintiff's PAGA case number is
26 LWDA-CM-1035375-24.

27 97. More than 65 days has elapsed since Plaintiff provided notice, but the Labor and
28 Workforce Development Agency has not indicated that it intends to investigate Defendants' Labor

Code violations discussed in the notices. Accordingly, Plaintiff may commence a civil action to recover penalties under California Labor Code section 2699 pursuant to section 2699.3 for the violations of the Labor Code described in this Complaint. Thus, pursuant to California Labor Code section 2699, subdivision (a), Plaintiff, for herself and all current and former Aggrieved Employees, seeks recovery of any and all applicable civil penalties for Defendants' violation of California Labor Code sections 226, 226.3, 226.7, 558, 1197.1, 2699, 2800, and 2802.

98. In addition, Plaintiff seeks penalties for Defendants' violation of California Labor Code section 1174, subdivision (d). Pursuant to California Labor Code section 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by California Labor Code section 1174 is subject to a penalty under section 1174.5. Pursuant to the applicable IWC Order section 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods, and total hours worked daily shall also be recorded. Additionally, pursuant to the applicable IWC Order section 7(A)(5), every employer shall keep total hours worked in the payroll period and applicable rates of pay.

99. During the time period of employment for Plaintiff and the Aggrieved Employees, Defendants failed to maintain records pursuant to the California Labor Code and IWC Orders by failing to maintain accurate records showing meal periods, and accurate records showing when employees begin and end each work period. Defendants' failure to provide and maintain records required by the California Labor Code and IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial. Because of Defendants' knowing failure

1 to comply with the California Labor Code and applicable IWC Wage Orders, Plaintiff and the
2 Aggrieved Employees have also suffered an injury in that they were prevented from knowing,
3 understanding, and disputing the wage payments paid to them.

4 100. Based on the conduct described in this Complaint, Plaintiff is entitled to an award
5 of civil penalties on behalf of the State of California and similarly Aggrieved Employees of
6 Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown
7 according to proof at trial. These penalties are in addition to all other remedies permitted by law.

8 101. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs pursuant
9 to California Labor Code section 2699, subdivision (g)(1) which states, "Any employee who
10 prevails in any action shall be entitled to an award of reasonable attorney's fees and costs."

11 **VII. PRAYER FOR RELIEF**

12 Plaintiff, individually, and on behalf of all others similarly situated only with respect to the
13 class claims, pray for relief and judgment against Defendants, jointly and severally, as follows:

14 Class Certification

15 1. That this action be certified as a class action with respect to the First, Second, Third,
16 Fourth, Fifth, Sixth, and Seventh Causes of Action;

17 2. That Plaintiff be appointed as the representatives of the Class; and,

18 3. That counsel for Plaintiff be appointed as Class Counsel.

19 As to the First Cause of Action

20 4. That the Court declare, adjudge, and decree that Defendants violated California
21 Labor Code section 204 and 1194 and applicable IWC Wage Orders by willfully failing to pay all
22 minimum and straight time wages due;

23 5. For unpaid wages as may be appropriate;

24 6. For pre-judgment interest on any unpaid compensation commencing from the date
25 such amounts were due;

26 7. For penalties, restitution, and liquidated damages under California Labor Code
27 section 1197.1;

28 8. For liquidated damages;

9. For reasonable attorneys' fees and for costs of suit incurred herein under California Labor Code section 1194, subdivision (a); and,

10. For any other relief that the Court may deem equitable and appropriate.

As to the Second Cause of Action

11. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due;

12. For unpaid wages at overtime wage rates as may be appropriate;

13. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

14. For reasonable attorneys' fees and for costs of suit incurred herein under California Labor Code section 1194, subdivision (a); and,

15. For any other relief that the Court may deem equitable and appropriate.

As to the Third Cause of Action

16. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7 and 512, and the IWC Wage Orders;

17. For unpaid meal period premium wages as may be appropriate;

18. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;

19. For reasonable attorneys' fees under California Code of Civil Procedure section 1021.5, and for costs of suit incurred herein; and,

20. For any other relief that the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

21. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7 and 512, and the IWC Wage Orders;

22. For unpaid rest period premium wages as may be appropriate;

23. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;

24. For reasonable attorneys' fees under California Code of Civil Procedure section 1021.5, and for costs of suit incurred herein; and,

25. For any other relief that the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

26. That the Court declare, adjudge, and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders, and willfully failed to provide accurate itemized wage statements thereto;

27. For all actual damages, according to proof;

28. For statutory penalties under California Labor Code section 226, subdivision (e);

29. For injunctive relief to ensure compliance with this section, under California Labor Code § 226(h);

30. For reasonable attorneys' fees and for costs of suit incurred herein; and,

31. For any other relief that the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

32. That the Court declare, adjudge, and decree that Defendants violated California Labor Code section 2802 by willfully failing to indemnify employees for expenditures;

33. For unpaid wages or unreimbursed business expenses as may be appropriate;

34. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;

35. For reasonable attorneys' fees and for costs of suit incurred herein; and,

36. For any other relief that the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

37. That the Court declare, adjudge, and decree that Defendants violated California Business and Professions Code sections 17200, *et seq.* by failing to pay wages for all hours worked (including minimum, straight time, and overtime wages), failing to provide meal periods, failing to authorize and permit rest periods, failing to furnish accurate wage statements, and failing to indemnify employees for expenditures;

38. For restitution of unpaid wages to Plaintiff and all Class Members and prejudgment

1 interest from the day such amounts were due and payable;

2 39. For the appointment of a receiver to receive, manage and distribute any funds
3 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a
4 result of violations of California Business and Professions Code sections 17200 *et seq.*;

5 40. For reasonable attorneys' fees and costs of suit incurred herein under California
6 Code of Civil Procedure section 1021.5;

7 41. For injunctive relief to ensure compliance with this section, under California
8 Business & Professions Code sections 17200, *et seq.*; and,

9 42. For any other relief that the Court may deem equitable and appropriate.

10 As to the Eighth Cause of Action

11 43. That the Court declare, adjudge, and decree that Defendants violated the California
12 Labor Code by failing to pay wages for all hours worked (including minimum, straight time, and
13 overtime wages), failing to provide meal periods, failing to authorize and permit rest periods,
14 failing to furnish accurate wage statements, and failing to indemnify employees for expenditures;

15 44. For all civil penalties pursuant to California Labor Code section 2699, *et seq.*, and
16 all other applicable Labor Code provisions;

17 45. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
18 California Labor Code section 2699; and,

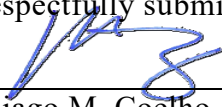
19 46. For such other and further relief as the Court may deem equitable and appropriate.

20 As to all Causes of Action

21 47. For any additional relief that the Court deems just and proper.

22 Dated: October 25, 2024

Respectfully submitted,

23 
24 Thiago M. Coelho

Lauren Lenzion

Jesenia A. Martinez

Patrick O'Connor

Jesse S. Chen

N. Nima Shamtoub

27 **WILSHIRE LAW FIRM, PLC**

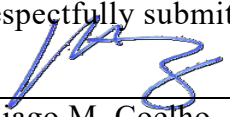
28 *Attorneys for Plaintiff and the Putative
Class*

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury as to all causes of action triable by jury.

Dated: October 25, 2024

Respectfully submitted,



Thiago M. Coelho

Lauren Lenzion

Jesenia A. Martinez

Patrick O'Connor

Jesse S. Chen

N. Nima Shamtoub

WILSHIRE LAW FIRM, PLC

*Attorneys for Plaintiff and the Putative
Class*

Exhibit “A”

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Dorota James, Esq.
Shooka Dadashzadeh, Esq.
Arlene Elyasi, Esq.
Maxim Gorbunov, Esq.
Bradford Smith, Esq.
Arman A. Salehi, Esq.

June 20, 2024

LWDA

Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
(Via Online Submission)

Hallcon Corporation
14325 West 95th Street
Lenexa, KS 66215
(Via Certified Mail, Return Receipt Requested)
9489 0090 0027 6620 2786 10

CSC – Lawyers Incorporating Service
Agent for Service of Process for: Hallcon Corporation
2710 Gateway Oaks Drive
Sacramento, CA 95833
(Via Certified Mail, Return Receipt Requested)
9489 0090 0027 6620 2786 27

Renzenberger Inc.
14325 W. 95th Street
Lenexa, KS 66215
(Via Certified Mail, Return Receipt Requested)
9489 0090 0027 6620 2786 34

C T Corporation System
Agent for Service of Process for: Renzenberger Inc.
330 N. Brand Blvd., Suite 700
Glendale CA, 91203
(Via Certified Mail, Return Receipt Requested)
9489 0090 0027 6620 2786 41

Re: ***Asha Martin v. Hallcon Corporation, et al.***
Notice of Labor Code Violations and PAGA Penalties

To Whom It May Concern:

Please be advised that my office has been retained by Asha Martin (“Plaintiff”) to pursue a Labor Code Private Attorneys General Act (“PAGA”) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against Plaintiff’s former employers, Hallcon Corporation and Renzenberger Inc. (collectively as “Defendants”). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendants engaged in with respect to Plaintiff and all of Defendants’ Aggrieved Employees.

Plaintiff wishes to pursue this action as an aggrieved employee, on behalf of the State of California, as well as on behalf of all other persons who worked for Defendants in California as a non-exempt or hourly-paid employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees suffered the Labor Code violations described below.

Plaintiff's Employment with Defendant

Defendants own/owned and operates/operated an industry, business, and establishment within the State of California. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission ("IWC"), and the California Business & Professions Code.

Plaintiff worked for Defendants in California as an hourly-paid, non-exempt employee during the past year. During Plaintiff's employment for Defendants, Defendants paid Plaintiff an hourly wage and classified Plaintiff as non-exempt from overtime. Defendants typically scheduled Plaintiff to work at least five days in a workweek and at least eight hours per day, but Plaintiff regularly worked more than eight hours in a workday and/or more than forty (40) hours in a workweek.

Throughout Plaintiff's employment, Defendants: failed to pay for all hours worked (including minimum, straight time, and overtime wages); failed to provide Plaintiff with legally compliant meal periods (and pay corresponding meal period premium wages at the correct rate of pay); failed to authorize and permit Plaintiff to take rest periods; failed to include all non-discretionary remuneration when calculating overtime pay, sick pay, and meal and rest period premium pay; failed to timely pay all final wages to Plaintiff when Defendants terminated Plaintiff's employment; failed to furnish accurate wage statements to Plaintiff; and failed to indemnify Plaintiff for expenditures. As discussed below, Plaintiff's experience working for Defendants were typical and illustrative.

Defendants Failed to Pay for All Hours Worked, Including Minimum, Straight Time, and Overtime Wages

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

Throughout the statutory period, Defendants maintained a policy and practice of not paying Plaintiff and the Aggrieved Employees for all hours worked, including minimum, straight time, and overtime wages. Defendants required Plaintiff and the Aggrieved Employees to work "off-the-clock", uncompensated, by, for example, requiring Plaintiff and the Aggrieved Employees to

perform work prior to clocking in for the workday, during unpaid meal periods, and after clocking out for the workday. Some of this unpaid work should have been paid at the overtime rate. In failing to pay for all hours worked, Defendants also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

The failure to pay for all hours worked also includes a system of time rounding and/or synthetic timekeeping that resulted in unpaid compensation for time worked pre-shift, post-shift, and when meal periods were supposedly recorded. If proven to be implemented by Defendant, this system resulted, over a period of time, in failing to compensate Plaintiff and the Aggrieved Employees properly for all the time they have actually worked even though the realities of Defendants' operations are such that it is possible, practical, and feasible to count and pay for work time to the minute. Accordingly, this system frequently paid Plaintiff and the Aggrieved Employees less than all their work time. Some of this unpaid work also should have been paid at the overtime rate. In failing to pay for all hours worked, again Defendants may have also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including minimum, straight time, and overtime wages.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendants wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendants regularly, but not always, required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, uninterrupted, and duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Instead, Defendants continued to assert control over Plaintiff and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, or by denying Plaintiff and the Aggrieved Employees permission to take a meal period. Defendants also never informed Plaintiff of the right to, nor permitted Plaintiff to take, a second meal period when Plaintiff worked at least ten hours in a workday. Accordingly, Defendants' policy and practice was not to provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages

for each workday he or she was not provided with all required meal period(s). Defendants, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of ten uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is six hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Throughout the statutory period, Defendants have wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take legally compliant rest periods. Defendants regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendants authorizing and permitting them to take a 10-minute, uninterrupted, duty-free rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Instead, Defendants continued to assert control over Plaintiff and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory rest periods, or by denying Plaintiff and the Aggrieved Employees permission to take a rest period. Accordingly, Defendants' policy and practice was to not authorize and permit Plaintiff and the Aggrieved Employees to take rest periods in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendants, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Accurately Calculate Overtime Pay, Sick Pay, and Meal Period Premium Pay When Issuing Non-Discretionary Remuneration

Federal law defining and interpreting "regular rate" under the FLSA governs this case. (*Alonzo v. Maximus, Inc.* (C.D. Cal. 2011) 832 F.Supp.2d 1122, 1129.) This "construction is supported by

California case law and the DLSE Manual, each of which looks to FLSA standards to interpret the ‘regular rate of pay’ under California law.” (*Ibid.*) “Under the FLSA, the ‘regular rate’ of pay ‘at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee,’ subject to certain enumerated exceptions.” (*Id.* at pp. 1129-30, quoting 29 U.S.C. § 207(e)(3).) “The burden is on Defendant to establish that its bonus payments fall within one of the exceptions in § 207(e).” (*Ibid.*)

The Department of Labor has interpreted section 207 to permit an employer to exclude a “discretionary bonus,” but not a “promised bonus” from the “regular rate” of pay:

Bonuses which are announced to employees to induce them to work more steadily or more rapidly or more efficiently or to remain with the firm are regarded as part of the regular rate of pay. Attendance bonuses, individual or group production bonuses, bonuses for quality and accuracy of work, bonuses contingent upon the employee’s continuing in employment until the time the payment is to be made and the like are in this category. They must be included in the regular rate of pay.

(29 C.F.R. § 778.211 (2011); *see also* DLSE Manual § 49.1.2.4(3), incorporating 29 C.F.R. § 778.211.)

Plaintiff and/or the Aggrieved Employees received various forms of bonuses/commissions/incentive payments during pay periods where overtime was worked, but Defendants failed to *accurately* factor in the non-discretionary remuneration into their regular rate of pay.

As outlined by the California Supreme Court in *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878, for purposes of paying sick pay and premiums, “the term ‘regular rate of compensation’ in section 226.7(c) has the same meaning as ‘regular rate of pay’ in section 510(a) and encompasses not only hourly wages but all nondiscretionary payments for work performed by the employee.”

Defendants should have included all non-discretionary remuneration when calculating overtime pay, sick pay, and meal period premium pay. Because it didn’t, Defendants are liable to Plaintiff and/or the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2).

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendant also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month.

Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for overtime hours worked. However, during all such times, Defendants systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendants, all wages for all rest periods not authorized and permitted by Defendants, and all wages for all hours worked. As a result, Defendants owe employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under California Labor Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendants, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendants' failure to provide and maintain records required by the California Labor Code and the applicable IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendants' knowing failure to comply with the California Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later

than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of many other Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the employment of others will be terminated. However, during the relevant time period, Defendant failed, and continues to fail to pay terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employment. These unpaid wages include wages for unpaid work time (including minimum, straight time, and overtime wages), missed meal period premium wages, and missed rest period premium wages.

Defendants' conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendants their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to thirty (30) days maximum pursuant to Labor Code § 203.

Moreover, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and 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. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an

aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees." (Lab. Code § 226(e)(1).)

Throughout the statutory period, Defendants failed to furnish Plaintiff and the Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net wages earned (including correct hours worked, correct wages for meal periods that were not provided in accordance with California law, and correct wages for rest periods that were not authorized and permitted to take in accordance with California law). Whether unpaid premiums for missed meal periods must be reported as "wages earned" and credited as "hours worked" in wage statements has been a settled issue since at least 2022.

Because Defendants violated Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights. Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

Moreover, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Indemnify for Necessary Expenditures

Labor Code § 2802(a) provides that employers shall indemnify his or her employees for all necessary business expenditures or losses that have been incurred by the employees in direct discharge of his or her duties. Throughout the statute of limitations period applicable to this cause of action, Defendants wrongfully required Plaintiff and/or the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendants. Plaintiff and/or the Aggrieved Employees paid out-of-pocket for necessary employment-related expenses (which is defined as including, without limitation, work attire, work equipment, personal protective equipment, use of personal cell phones, and/or use of personal vehicles). Plaintiff and/or the Aggrieved Employees incurred substantial expenses as a direct result of performing their job duties for Defendants, but Defendants failed to indemnify Plaintiff and/or the Aggrieved Employees for these employment-related expenses.

As a result, Defendants are liable to Plaintiff and/or the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 2802 and 2699(f)(2) for failing to indemnify Plaintiff and/or the Aggrieved Employees for necessary business expenditures.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendants violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages, and overtime wages;

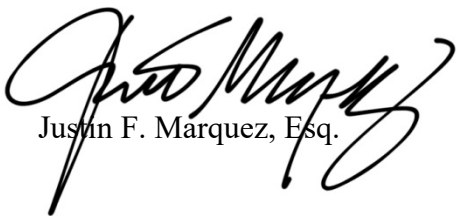
2. Labor Code § 226.7 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code §§ 226.7, 246, 510, and applicable Wage Orders by failing to include all non-discretionary remuneration when calculating overtime pay, sick pay, and meal period premium pay;
5. Labor Code § 204 by failing to pay all earned wages two times per month;
6. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
7. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
8. Labor Code § 226 by failing to provide accurate itemized wage statements; and
9. Labor Code § 2802 by failing to indemnify for necessary expenditures.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699(f)(2).

Plaintiff has placed Defendants on notice by mailing a certified copy of this correspondence, as indicated on the first page. Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

WILSHIRE LAW FIRM



Justin F. Marquez, Esq.