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County of San Bernardino
Rancho Cucamonga District
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

KARLA BULNES, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

NONGSHIM AMERICA, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. CIVRS2400678

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

- (1) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197, 1198);**
- (2) **FAILURE TO PAY ALL OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, and 1198);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, and 558);**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, and 558);**
- (5) **FAILURE TO INDEMNIFY FOR ALL
NECESSARY BUSINESS
EXPENDITURES (LABOR CODE §§
2802 and 2804);**
- (6) **WAGE STATEMENT
VIOLATIONS (LABOR CODE §
226 *et seq.*);**
- (7) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (8) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**
- (9) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE §
2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Karla Bulnes (“Plaintiff”) hereby brings this First Amended Class and
2 Representative Action Complaint (“Complaint”) against Defendants Nongshim America, Inc., a
3 California corporation; and DOES 1 through 100, inclusive (collectively, “Defendants”), and on
4 information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
7 Complaint for recovery of unpaid wages and penalties under Labor Code §§ 201-203, 204, 226,
8 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, 2802 and 2804,
9 California Business & Professions Code § 17200 *et seq.*, and Industrial Welfare Commission
10 Wage Order No. 1 (“Wage Order 1”), in addition to seeking declaratory relief and restitution.
11 This Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has
12 jurisdiction over Defendants’ violations of the California Labor Code because the amount in
13 controversy exceeds this Court’s jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to California Code of Civil
16 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
17 occurred in San Bernardino County. Defendants own, maintain offices, transact business, have an
18 agent or agents within San Bernardino County, and/or otherwise are found within San Bernardino
19 County, and Defendants are within the jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is, a California resident. Within the statute of limitations periods
23 applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-
24 exempt employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices
25 complained of herein, lost money and/or property, and has been deprived of the rights guaranteed
26 to her by Labor Code §§ 201-203, 204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2,
27 1197, 1198, 2698 *et seq.*, 2802, and 2804, California Business & Professions Code § 17200 *et*
28 *seq.*, and Wage Order No. 1, which sets employment standards for the manufacturing industry.

1 4. Plaintiff is informed and believes, and based thereon alleges, that during the time
2 period relevant to this action, Defendants did (and do) business of food and beverage
3 manufacturing.

4 5. Plaintiff is informed and believes, and based thereon alleges, that at all times
5 mentioned herein, Defendants were licensed to do business in California and were the employers
6 of Plaintiff and of the members of the Classes (as defined in Paragraph 15).

7 6. Plaintiff does not know the true names, capacities, relationships, and/or the extent
8 of participation of Defendants DOES 1 through 100, inclusive, in the conduct alleged in this
9 Complaint. For that reason, Defendants DOES 1 through 100, inclusive, are sued under such
10 fictitious names. Plaintiff prays for leave to amend this Complaint when their true names and
11 capacities are known. Plaintiff is informed and believes, and based thereon alleges, that each
12 fictitiously named Defendant is and was responsible in some way for the alleged wage-and-hour
13 violations and other wrongful conduct that subjected Plaintiff and the Classes, as defined below,
14 to the illegal employment practices, wrongs and injuries complained of herein. All references in
15 this Complaint to “Defendants” shall be deemed to include all DOE Defendants.

16 7. At all times herein mentioned, each of said Defendants participated in the doing
17 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
18 Defendants, and each of them, were the agents, servants, and employees of each and every one of
19 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
20 were acting within the course and scope of said agency and employment. Defendants, and each
21 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
22 omissions complained of herein.

23 8. At all times mentioned herein, Defendants, and each of them, were members of
24 and engaged in a joint venture, partnership, and common enterprise, and acted within the course
25 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
26 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the
27 Classes (as defined in Paragraph 15).

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GENERAL FACTUAL ALLEGATIONS

9. Defendants employed Plaintiff in the non-exempt job position of “Operator” (or similar job position) from approximately September 2020 until November 2023. Plaintiff’s job duties included overseeing the production line, completing necessary operational and compliance-related documentation, and performing various tasks related to production line equipment maintenance.

10. During Plaintiff’s employment with Defendants, Plaintiff and other non-exempt employees were required to put on specific work gear prior to the commencement of their shifts, including a uniform, hairnet, company-issued footwear and pants, and, in certain departments, gloves. During the COVID-19 pandemic, additional protective gear, such as masks and plastic shields, was also required. This pre-shift preparation took approximately 10 minutes each day. Despite the time spent on these mandatory pre-shift activities, Defendants’ timekeeping system failed to account for this time, as it did not compensate Plaintiff and other non-exempt employees for these additional minutes worked. Further, on occasions when Plaintiff worked over eight hours in a workday and/or forty hours in a workweek, Defendants’ failure to account for pre-shift preparation time deprived her of additional overtime wages earned. Due to Defendants’ timekeeping policies/practices that fail to compensate for all hours worked, Plaintiff and other non-exempt employees were not compensated for all required minimum and overtime wages.

11. Defendants also failed to provide Plaintiff and other non-exempt employees with all legally compliant meal periods due to Defendants’ meal period policies/practices, which have resulted in late (commencing after the fifth hour of work) and short (less than 30 minutes) meal periods. Specifically, Plaintiff’s meal periods were often provided after the completion of five hours of work due to work demands imposed by Defendants. In addition, Defendants’ meal period policies/practices failed to provide Plaintiff and other non-exempt employees with all legally compliant meal periods because they failed to provide Plaintiff and other non-exempt employees with a 30-minute “net meal period.” Specifically, upon information and belief, Defendants required Plaintiff and other non-exempt employees to utilize a break area located approximately four minutes from their workstations, with the timeclock situated an additional two minutes away

1 from the break room. On those occasions when Plaintiff was not provided with all legally
2 compliant meal periods to which she was entitled, Defendants failed to always compensate
3 Plaintiff with the required meal period premium(s) for each workday in which she experienced a
4 meal period violation as mandated by Labor Code § 226.7.

5 12. Defendants have also failed to authorize and permit all required rest periods for
6 Plaintiff and other non-exempt employees as Defendants' rest period policies/practices failed to
7 authorize and permit employees to take an off-duty rest period of at least 10 minutes for every
8 four hours worked, or major fraction thereof. Specifically, as with meal periods, Defendants failed
9 to authorize and permit a full ten minutes of "net rest" in an area appropriate for rest away from
10 the workstation during rest periods. Despite failing to authorize and permit Plaintiff and other
11 non-exempt employees to take all rest periods to which they are entitled, upon information and
12 belief, during at least a portion of the relevant time period, Defendants maintained no mechanism
13 for the payment of rest period premium payments as required by Labor Code § 226.7 and did not
14 always pay Plaintiff or other non-exempt employees any rest period premiums when they
15 experienced a rest period violations.

16 13. Defendants have also failed to reimburse Plaintiff and other non-exempt
17 employees for all necessary business expenses. Specifically, Plaintiff was required to purchase
18 scissors, markers, pencils, and folders for work-related purposes, however, Defendants failed to
19 reimburse Plaintiff for these necessary business expenses. As a result, Defendants have failed to
20 reimburse Plaintiff and other non-exempt employees for expenses incurred in the course of their
21 employment.

22 14. As a result of Defendants' failure to compensate Plaintiff and other non-exempt
23 employees for all minimum wages, overtime wages, and all meal and rest period premium wages,
24 Defendants maintained inaccurate payroll records and failed to issue accurate, compliant,
25 itemized wage statements. As a further result of Defendants' failure to pay Plaintiff and other
26 non-exempt employees for all minimum wages, overtime wages, and meal and rest period
27 premium wages earned, Defendants failed to pay all wages to Plaintiff and other formerly
28 employed non-exempt employees at the separation of their employment.

CLASS ACTION ALLEGATIONS

15. Class Definitions: Plaintiff brings this Complaint on behalf of herself and the following Classes pursuant to Section 382 of the Code of Civil Procedure:

- a. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who were required to put on specific work gear and were subject to Defendants' timekeeping policies and/or practices, during the four years immediately preceding the filing of the Complaint through the present.
- b. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who worked more than eight (8) hours per day and/or forty (40) hours per week, were required to put on work gear, and were subject to Defendants' timekeeping policies/practices, during the four years immediately preceding the filing of the Complaint through the present.
- c. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who: (i) worked at least one shift in excess of 5.0 hours; and/or (ii) worked at least one shift in excess of 10.0 hours, during the four years immediately preceding the filing of the Complaint through the present.
- d. The Rest Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 3.5 hours in duration, during the four years immediately preceding the filing of the Complaint through the present.
- e. The Expense Reimbursement Class consists of all Defendants' current and former non-exempt employees in California who purchased tools for business related purposes, during the four years immediately preceding the filing of the Complaint through the present.
- f. The Wage Statement Class consists of all members of the Minimum Wage Class, Overtime Class, Meal Period Class and/or Rest Period Class, during the one year immediately preceding the filing of the Complaint through the present.
- g. The Waiting Time Penalty Class consists of Defendants' formerly employed

members of the Minimum Wage Class, Overtime Class, Meal Period Class, and/or Rest Period Class, during the three years immediately preceding the filing of this action through the present.

16. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the classes and subclasses are unknown to Plaintiff, at this time; however, it is estimated that the number is in excess of two hundred (200) individuals as to each class. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

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

- i. Whether Defendants paid all minimum wages owed to members of the Minimum Wage Class for all hours worked pursuant to Labor Code §§ 1182.12, 1194, 1194.2 and 1197;
- ii. Whether Defendants violated the applicable Labor Code provisions, including, but not limited to, §§ 510 and 1194 by requiring members of the Overtime Class to perform overtime work and not paying for said work in accordance with the overtime laws of the State of California;
- iii. Whether Defendants' timekeeping policies/practices resulted in the failure to properly compensate members of the Overtime and Minimum Wage Classes for all hours worked;
- iv. Whether Defendants provided legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code sections 226.7 and 512;
- v. Whether Defendants correctly paid meal period premium payments for non-compliant meal periods pursuant to Labor Code section 226.7;
- vi. Whether Defendants authorized and permitted legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code sections 226.7 and 516;

- vii. Whether Defendants correctly paid rest period premium payments for non-compliant rest periods pursuant to Labor Code section 226.7;
- viii. Whether Defendants' reimbursement policies/practices failed to reimburse or indemnify Expense Reimbursement Class members for necessary business expenditures, thereby depriving members of the Expense Reimbursement Class of all reimbursements to which they have been entitled as a matter of law;
- ix. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code section 226; and
- x. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of separation from employment were unlawful.

18. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law and fact set forth above are numerous and substantial and stem from Defendants' uniform policies and/or practices applicable to each individual class member including, but not limited to, Defendants' timekeeping policies/practices and meal and rest period policies and/or practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

19. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statutes of limitation applicable to each cause of action pled in this Complaint. As alleged herein, Plaintiff, like the members of the Classes, was not compensated all minimum and overtime wages, was not provided all required meal periods, was not authorized and permitted to take all required rest periods, did not receive meal and rest period premium wages for missed and/or non-compliant meal and rest periods, was not reimbursed for all necessary business expenditures, was not issued accurate itemized wage statements, and was not paid all wages owing at the termination of employment.

1 20. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
2 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,
3 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of
4 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-
5 hour class actions in state and federal courts in the past and are committed to vigorously
6 prosecuting this action on behalf of the members of the Classes.

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

individual prosecution considering all of the concomitant costs and expenses attending thereto.
As such, the Classes are maintainable as classes under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

23. Wage Order 1, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon.

24. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiff and members of the Minimum Wage Class for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 1.

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

26. As a consequence of Defendants' non-payment of minimum wages, Plaintiff and members of the Minimum Wage Class seek penalties pursuant to Wage Order 1 § 20(A) and California Labor Code § 1199; interest pursuant to California Labor Code §§ 218.6 and 1194 and Civil Code §§ 3287 and 3289; liquidated damages pursuant to California Labor Code § 1194.2; attorneys' fees and costs of suit pursuant to California Labor Code § 1194 et seq.; and damages and/or penalties pursuant to California Labor Code § 558(a).

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY ALL OVERTIME WAGES**

3 **(AGAINST ALL DEFENDANTS)**

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

5 28. This cause of action is brought pursuant to Labor Code §§ 204, 510, 1194, and
6 1198, which provide that non-exempt employees are entitled to all overtime wages and
7 compensation for all overtime hours worked and provide a private right of action for the failure
8 to pay all overtime compensation for overtime work performed.

9 29. At all times relevant herein, Defendants were required to properly compensate
10 non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime
11 hours worked pursuant to California Labor Code § 1194 and Wage Order 1. Wage Order 1, § 3
12 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular
13 rate of pay” for all overtime hours work. Defendants caused Plaintiff and members of the
14 Overtime Class to work overtime hours, but failed to credit these employees with all overtime
15 hours actually worked.

16 30. The foregoing policies and practices are unlawful and create entitlement to
17 recovery by Plaintiff and the Overtime Class members in a civil action for the unpaid amount of
18 overtime premiums owing, including interest thereon, statutory penalties, attorneys’ fees, and
19 costs of suit according to California Labor Code §§ 204, 210, 216, 218.6, 510, 1194, and 1198;
20 Code of Civil Procedure § 1021.5; and Civil Code §§ 3287(b) and 3289.

21 **THIRD CAUSE OF ACTION**

22 **MEAL PERIOD VIOLATIONS**

23 **(AGAINST ALL DEFENDANTS)**

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

25 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
26 failed in their affirmative obligation to provide all of their non-exempt employees in California,
27 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
28 in accordance with the mandates of the California Labor Code and Wage Order 1, § 11. Despite

Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members of the Meal Period Class at their respective regular rates of pay, in accordance with California Labor Code §§ 204, 210, 226.7, and 512.

33. As a result, Defendants are responsible for paying premium compensation for meal period violations pursuant to Labor Code §§ 226.7, 512, 558, Wage Order 1, and Civil Code §§ 3287(b) and 3289, including interest thereon, statutory penalties, civil penalties, and costs of suit.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

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

35. Wage Order 1, § 12 and Labor Code §§ 226.7, 516 and 558 establish the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof. Despite Defendants' failure to authorize and permit Plaintiff and members of the Rest Period Class to take all legally complaint rest periods as alleged herein, Defendants did not pay these individuals an additional hour of pay at their respective regular rate for the rest periods that they failed to authorize and permit them to take, as required by Labor Code § 226.7.

36. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor Code §§ 226.7, 516, 558, Wage Order 1, and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

FAILURE TO INDEMNIFY ALL NECESSARY BUSINESS EXPENDITURES

(AGAINST ALL DEFENDANTS)

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

38. At all relevant times herein, Defendants were subject to Labor Code § 2802, which states that "an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or his

1 or her obedience to the directions of the employer.”

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

7 40. As a proximate result of Defendants’ policies and/or practices in violation of Labor
8 Code §§ 2802 and 2804, and Wage Order 1, § 9, Plaintiff and members of the Expense
9 Reimbursement Class were damaged in sums, which will be shown according to proof.

10 41. Plaintiff and members of the Expense Reimbursement Class are entitled to
11 attorneys’ fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

12 42. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of
13 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
14 Plaintiff and members of the Expense Reimbursement Class are entitled to interest, which shall
15 accrue from the date on which they incurred the necessary expenditures.

16 **SIXTH CAUSE OF ACTION**

17 **WAGE STATEMENT VIOLATIONS**

18 **(AGAINST ALL DEFENDANTS)**

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

20 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants
21 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
22 and members of the Wage Statement Class with accurate and complete, itemized wage statements
23 that included, among other requirements, all hours worked, total gross wages earned, all rates of
24 pay and corresponding number of hours worked, total net wages earned, and the correct name and
25 address of the legal entity that is the employer in violation of Labor Code § 226 *et seq.*

26 45. Defendants’ failure to furnish Plaintiff and members of the Wage Statement Class
27 with accurate and complete, itemized wage statements resulted in actual injury, as said failures
28 led to, among other things, the non-payment of all overtime and minimum wages and meal and

rest period premium wages owed, and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

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

SEVENTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

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

48. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages earned immediately at the time of termination of employment in the event the employer discharges the employee or the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

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

50. Defendants' willful failure to timely pay Plaintiff and members of the Waiting Time Class their earned wages upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203,

1 plus reasonable attorneys' fees and costs of suit.

2 **EIGHTH CAUSE OF ACTION**

3 **UNFAIR COMPETITION**

4 **(AGAINST ALL DEFENDANTS)**

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

6 52. Defendants have engaged and continue to engage in unfair and/or unlawful
7 business practices in California in violation of Business & Professions Code § 17200 *et seq.*, by:
8 (a) failing to compensate Plaintiff and members of the Minimum Wage and Overtime Class with
9 all minimum and overtime wages; (b) failing to provide Plaintiff and members of the Meal Period
10 Class with all meal periods to which they are entitled, and/or failing to pay them meal period
11 premium payments; (c) failing to authorize and permit all required duty-free rest periods to
12 Plaintiff and members of the Rest Period Class, and/or failing to pay them rest period premiums
13 payments; (d) failing to indemnify members of the Expense Reimbursement Class for all
14 necessary business expenses; (e) knowingly failing to furnish Plaintiff and the Wage Statement
15 Class with all accurate and complete, itemized wage statements in violation of Labor Code § 226;
16 and (f) failing to pay all final wages owed to employees upon their separation from employment
17 with Defendants.

18 53. Defendants' utilization of these unfair and/or unlawful business practices deprived
19 Plaintiff and continues to deprive members of the Classes of compensation to which they are
20 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
21 over Defendants' competitors who have been and/or are currently employing workers and
22 attempting to do so in honest compliance with applicable wage and hour laws.

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

27 55. The acts complained of herein occurred within the last four years immediately
28 preceding the filing of the Plaintiff's Complaint.

1 56. Plaintiff was compelled to retain the services of counsel to file this Complaint to
2 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf
3 of Defendants' current non-exempt employees, and to enforce important rights affecting the
4 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
5 which she is entitled to recover under Code of Civil Procedure § 1021.5.

6 **NINTH CAUSE OF ACTION**
7 **PRIVATE ATTORNEYS GENERAL ACT**
8 **(AGAINST ALL DEFENDANTS)**

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

10 58. Defendants have committed several Labor Code violations against Plaintiff,
11 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
12 within the meaning of Labor Code § 2698 et seq., acting on behalf of herself and other aggrieved
13 employees, brings this representative action against Defendants to recover the civil penalties due
14 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
15 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
16 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
17 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
18 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
19 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
20 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
21 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
22 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
23 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each
24 subsequent violation per employee per pay period for those violations of the Labor Code for which
25 no civil penalty is specifically provided, based on the following Labor Code violations:

- 26 a. Failing to pay the statutory minimum wages for all hours worked to Plaintiff, the
27 Minimum Wage Class, and other aggrieved employees in violation of Labor Code
28 §§ 1182.12, 1194, 1194.2, 1197, and 1198;

- b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to provide all legally required meal periods, and failure to pay meal period premium wages, to Plaintiff, the Meal Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- d. Failing to authorize and permit all legally required rest periods, and failure to pay rest period premium wages, to Plaintiff, the Rest Period Class, and other aggrieved employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- e. Failing to reimburse Plaintiff, the Expense Reimbursement Class, and other aggrieved employees for all necessary business expenses incurred in violation of Labor Code §§ 2802 and 2804;
- f. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved employees with accurate and compliant itemized wage statements in violation of Labor Code § 226;
- g. Failing to timely pay all final wages and compensation earned by Plaintiff, the Waiting Time Class, and other aggrieved employees at the time of separation in violation of Labor Code §§ 201, 202, and 203;
- h. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and
- i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code § 1174 and 1198.

59. On August 21, 2024, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in Paragraph 58 (a)-(i). Now that sixty-five days have passed from Plaintiff

1 notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice
2 that it intends to investigate the violations, Plaintiff has exhausted her administrative requirements
3 for bringing a claim under the Private Attorneys General Act with respect to these violations.

4 60. Based on the foregoing, Plaintiff seeks to represent herself and all Aggrieved
5 Employees, as defined by Labor Code § 2699(c).

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

10 **PRAYER**

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

- 13 1. For an order certifying the proposed Classes;
- 14 2. For an order appointing Plaintiff as representative of the Classes;
- 15 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 16 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
17 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2,
18 1197, and 1198;
- 19 5. Upon the Second Cause of Action, for compensatory, consequential, general and
20 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 21 6. Upon the Third Cause of Action, for compensatory, consequential, general and
22 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
- 23 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
24 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
- 25 8. Upon the Fifth Cause of Action, for compensatory, consequential, general, and
26 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
- 27 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §
28 226 *et. seq.*;

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Dated: October 28, 2024

By:

Paul K. Haines
Attorneys for Plaintiff