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BY: 
Makeda Joyeux, Deputy

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Sean M. Blakely (SBN 264384)
sblakely@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

RUTH BARBOSA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

THE FROZEN BEAN INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. CIVRS2401313

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

- (1) **MINIMUM WAGE VIOLATIONS**
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);
- (2) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 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) **WAGE STATEMENT VIOLATIONS**
(LABOR CODE § 226 *et seq.*);
- (6) **WAITING TIME PENALTIES**
(LABOR CODE §§ 201-203);
- (7) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**
- (8) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE §
2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Ruth Barbosa (“Plaintiff”) hereby brings this First Amended Class and
2 Representative Action Complaint (“Complaint”) against Defendants The Frozen Bean 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, 202, 203, 204,
8 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and 2698 *et seq.*, California
9 Business & Professions Code § 17200 *et seq.*, and Industrial Welfare Commission Wage Order
10 No. 1 (“Wage Order 1”), in addition to seeking declaratory relief and restitution. This Complaint
11 is brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over
12 Defendants’ violations of the California Labor Code because the amount in controversy exceeds
13 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, 202, 203, 204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194,
27 1194.2, 1197, 1198, and 2698 *et seq.*, Business and Professions Code Section § 17200 *et seq.*, and
28 Wage Order 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 by manufacturing specialty
3 desserts and beverages for the food service industry.

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 Respondent 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 are in the business of manufacturing specialty desserts and beverages. Defendants have employed Plaintiff since approximately August 2019 as a non-exempt warehouse worker. Plaintiff's job duties included labeling and packaging products for distribution and palletizing boxes for distribution.

10. During Plaintiff's employment with Defendants, Defendants utilized a timekeeping system which resulted in Plaintiff and other non-exempt employees not being compensated for all hours actually worked, whether by rounding, time-shaving, or otherwise. Specifically, although Defendants' timekeeping system recorded Plaintiff and other non-exempt employees' time to the minute, Defendants rounded Plaintiff's timekeeping entries in an uneven manner to a quarter of an hour increment, so that, over a period of time, Plaintiff and other non-exempt employees were deprived of all earned minimum and overtime wages. Upon information and belief, Defendants' timekeeping system regularly, systematically, and impermissibly rounded the hours worked by Plaintiff and other non-exempt employees in Defendants' favor, resulting in the failure to compensate Plaintiff and other non-exempt employees for all hours worked. As a result, Plaintiff and other non-exempt employees were not compensated for all required minimum and overtime wages.

11. Defendants 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 first meal periods were occasionally provided after the conclusion of five hours of work due to work demands imposed by Defendants. Defendants also failed to provide Plaintiff or other non-exempt employees with second meal periods on shifts over 10.0 hours. On those occasions when Plaintiff was not provided with all legally-required meal periods to which she was entitled, Defendants did not compensate Plaintiff with the required meal period premium for each workday in which she experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief, during at least a portion of the putative class period, Defendants maintained no payroll code for paying meal period premiums under Labor

1 Code § 226.7.

2 12. Plaintiff was also not authorized and permitted to take all legally compliant rest
3 periods due to Defendants' rest period policies/practices, which fail to authorize and permit an
4 off-duty rest period for every four hours worked, or major fraction thereof. Specifically, due to
5 work demands imposed by Defendants, Plaintiff was regularly prevented from being relieved of
6 all work duties during required rest periods. Moreover, Plaintiff was not authorized and permitted
7 to take a third rest period on shifts in excess of 10.0 hours due to Defendants' rest period
8 policies/practices, which fail to authorize and permit non-exempt employees to take a third rest
9 period on occasions when they worked over 10.0 hours in a workday. On the occasions when
10 Plaintiff was not provided with all legally-compliant rest periods to which she was entitled,
11 Defendants failed to compensate Plaintiff with the required rest period premium for each workday
12 in which she experienced a rest period violation as mandated by Labor Code § 226.7. Upon
13 information and belief, during at least a portion of the putative class period, Defendants
14 maintained no payroll code or other mechanism for the payment of rest period premiums as
15 required by Labor Code § 226.7 in the event a legally compliant rest period was not provided to
16 their non-exempt employees.

17 13. As a result of Defendants' failure to compensate Plaintiff and other non-exempt
18 employees for all minimum wages, overtime wages, and all meal and rest period premium wages
19 earned, Defendants maintained inaccurate payroll records and failed to issue accurate, compliant,
20 itemized wage statements.

21 14. As a further result of Defendants' failure to pay all minimum and overtime wages
22 and failure to pay all required meal and rest period premium wages, Defendants failed to pay all
23 wages to Plaintiff and other formerly employed non-exempt employees at the separation of their
24 employment.

25 **CLASS ACTION ALLEGATIONS**

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

28 a. The Minimum Wage Class consists of all of Defendants' current and former non-

1 exempt employees in California who were subject to Defendants' timekeeping
2 policies and/or practices, during the four years immediately preceding the filing of
3 the Complaint through the present.

4 b. The Overtime Class consists of all of Defendants' current and former non-exempt
5 employees in California who worked more than 8.0 hours per day and/or 40.0
6 hours per week and were subject to Defendants' timekeeping policies and/or
7 practices, during the four years immediately preceding the filing of the Complaint
8 through the present.

9 c. The Meal Period Class consists of all of Defendants' current and former non-
10 exempt employees in California who worked at least one shift: (i) in excess of 5.0
11 hours without a meal period of at least 30 minutes commencing prior to the end of
12 the fifth hour of work, and who do not have a corresponding meal period premium
13 payment made for such shifts; and/or (ii) in excess of 10.0 hours without a second
14 meal period of at least 30 minutes in duration commencing prior to the conclusion
15 of the tenth hour of work, and who do not have a corresponding meal period
16 premium payment made for such shifts, during the four years immediately
17 preceding the filing of the Complaint through the present.

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

22 e. The Waiting Time Class consists of all members of the Minimum Wage Class,
23 Overtime Class, Meal Period Class, and/or Rest Period Class who no longer
24 perform work for Defendants and who last worked for Defendants in the three
25 years immediately preceding the filing of the Complaint through the present.

26 f. The Wage Statement Class consists of all members of the Minimum Wage Class,
27 Overtime Class, Meal Period Class, and/or Rest Period Class, during the one year
28 immediately preceding the filing of the Complaint through the present.

1 16. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
2 joinder of all members would be unfeasible and not practicable. The membership of the classes
3 and subclasses are unknown to Plaintiff, at this time; however, it is estimated that the Classes
4 number is in excess of fifty (50) individuals as to each class. The identity of such membership is
5 readily ascertainable via inspection of Defendants' employment records.

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

- 10 i. Whether Defendants paid all minimum wages owed to members of the Minimum
11 Wage Class for all hours worked pursuant to Labor Code sections 1182.12, 1194,
12 1194.2 and 1197;
- 13 ii. Whether Defendants violated the applicable Labor Code provisions, including, but
14 not limited to, sections 510 and 1194 by requiring members of the Overtime Class
15 to perform overtime work and not paying for said work in accordance with the
16 overtime laws of the State of California;
- 17 iii. Whether Defendants' timekeeping policies/practices resulted in the failure to
18 properly compensate members of the Overtime Class and Minimum Wage Class;
- 19 iv. Whether Defendants provided legally compliant meal periods to members of the
20 Meal Period Class pursuant to Labor Code sections 226.7 and 512;
- 21 v. Whether Defendants correctly paid meal period premium payments for non-
22 compliant meal periods pursuant to Labor Code section 226.7;
- 23 vi. Whether Defendants authorized and permitted legally compliant rest periods to
24 members of the Rest Period Class pursuant to Labor Code sections 226.7 and 516;
- 25 vii. Whether Defendants correctly paid rest period premium payments for non-
26 compliant rest periods pursuant to Labor Code section 226.7;
- 27 viii. Whether Defendants furnished legally compliant wage statements to members of
28 the Wage Statement Class pursuant to Labor Code section 226; and

ix. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to Waiting Time Class members at their separation of employment were lawful.

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' uniform timekeeping policies and/or 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 properly paid minimum and overtime wages due to Defendants' timekeeping policies/practices, was not provided all required meal periods, was not authorized and permitted to take all required rest periods, did not receive all meal and rest period premium wages for missed and/or non-compliant meal and rest periods, was not paid all final wages upon separation of employment, and/or was not issued accurate itemized wage statements.

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

21. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from

1 exploitation by employers who have the responsibility to follow the laws and who may seek to
2 take advantage of superior economic and bargaining power in setting onerous terms and
3 conditions of employment. The nature of this action and the format of laws available to Plaintiff
4 and members of the Classes make the class action format a particularly efficient and appropriate
5 procedure to redress the violations alleged herein. If each employee were required to file an
6 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
7 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
8 their vastly superior financial and legal resources. Moreover, requiring each member of the
9 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
10 employees who would be disinclined to file an action against their former and/or current employer
11 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
12 employment. Further, the prosecution of separate actions by the individual class members, even
13 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
14 with respect to the individual class members against Defendants herein; and which would
15 establish potentially incompatible standards of conduct for Defendants; and/or legal
16 determinations with respect to individual class members which would, as a practical matter, be
17 dispositive of the interest of the other class members not parties to adjudications or which would
18 substantially impair or impede the ability of the class members to protect their interests. Further,
19 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
20 individual prosecution considering all of the concomitant costs and expenses attending thereto.
21 As such, the Classes are maintainable as classes under § 382 of the Code of Civil Procedure.

22 **FIRST CAUSE OF ACTION**

23 **MINIMUM WAGE VIOLATIONS**

24 **(AGAINST ALL DEFENDANTS)**

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

26 23. Wage Order 1, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
27 right of employees to be paid minimum wages for all hours worked, in amounts set by state law.
28 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal

1 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
2 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
3 wages and interest accrued thereon.

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

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

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

19 27. The foregoing practices and policies are unlawful and create an entitlement to
20 recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid
21 amount of minimum wages owing, including interest thereon, liquidated damages, statutory and
22 civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 558,
23 1194, 1197, and 1198, Wage Order 1, and Code of Civil Procedure § 1021.5.

24 **SECOND CAUSE OF ACTION**

25 **FAILURE TO PAY ALL OVERTIME WAGES**

26 **(AGAINST ALL DEFENDANTS)**

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

28 29. This cause of action is brought pursuant to Labor Code §§ 204, 510, 1194, and

1 1198, which provide that non-exempt employees are entitled to all overtime wages and
2 compensation for all overtime hours worked and provide a private right of action for the failure
3 to pay all overtime compensation for overtime work performed.

4 30. At all times relevant herein, Defendants were required to properly compensate
5 non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime
6 hours worked pursuant to California Labor Code § 1194 and Wage Order 1. Wage Order 1, § 3
7 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular
8 rate of pay” for work in excess of 8 hours per work day and/or in excess of 40 hours of work in
9 the workweek. As alleged herein, Defendants caused Plaintiff to work overtime hours, but did not
10 compensate Plaintiff or members of the Overtime Class with one and one-half times their regular
11 rate of pay for such hours.

12 31. The foregoing policies and practices are unlawful and create an entitlement to
13 recovery by Plaintiff and members of the Overtime Class in a civil action for the unpaid amount
14 of overtime premiums owing, including interest thereon, statutory penalties, attorneys’ fees, and
15 costs of suit according to California Labor Code §§ 204, 210, 216, 510, 1194, and 1198; and Code
16 of Civil Procedure § 1021.5.

17 **THIRD CAUSE OF ACTION**

18 **MEAL PERIOD VIOLATIONS**

19 **(AGAINST ALL DEFENDANTS)**

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

21 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
22 failed in their affirmative obligation to provide all of their non-exempt employees in California,
23 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
24 in accordance with the mandates of the California Labor Code and Wage Order 1, § 11. Despite
25 Defendants’ violations, Defendants did not pay an additional hour of pay to Plaintiff and members
26 of the Meal Period Class at their respective regular rates of pay, in accordance with California
27 Labor Code §§ 204, 210, 226.7, and 512.

28 34. As a result, Defendants are responsible for paying premium compensation for meal

1 period violations pursuant to Labor Code §§ 226.7 and 512, and Wage Order 1, including interest
2 thereon, statutory penalties, civil penalties, and costs of suit.

3 **FOURTH CAUSE OF ACTION**

4 **REST PERIOD VIOLATIONS**

5 **(AGAINST ALL DEFENDANTS)**

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

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

10 37. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
11 of the Rest Period Class to take all required rest periods.

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

16 **FIFTH CAUSE OF ACTION**

17 **WAGE STATEMENT VIOLATIONS**

18 **(AGAINST ALL DEFENDANTS)**

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

20 40. 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 of
25 the legal entity that is the employer in violation of Labor Code § 226 *et seq.*

26 41. 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 minimum and overtime wages and meal and rest

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

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

7 **SIXTH CAUSE OF ACTION**

8 **WAITING TIME PENALTIES**

9 **(AGAINST ALL DEFENDANTS)**

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

11 44. This cause of action is brought pursuant to Cal. Labor Code §§ 201-203, which
12 require an employer to pay all wages immediately at the time of separation of employment in the
13 event the employer discharges the employee or the employee provides at least 72 hours of notice
14 of their intent to quit. In the event the employee provides less than 72 hours of notice of their
15 intent to quit, said employee's wages become due and payable not later than 72 hours upon said
16 employee's last date of employment.

17 45. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
19 at their separation from employment, including unpaid minimum and overtime wages as well as
20 unpaid meal and rest period premium wages.

21 46. Further, Plaintiff is informed and believes, and based thereon alleges, that as a
22 matter of policy and practice, Defendants continue to fail to pay Plaintiff and members of the
23 Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to
24 the requirements of Cal. Labor Code §§ 201-203.

25 47. Defendants' failure to pay all final wages was willful within the meaning of Cal.
26 Labor Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the
27 Waiting Time Class their earned wages upon separation from employment results in a continued
28 payment of daily wages up to thirty days from the time the wages were due.

1 48. Plaintiff and members of the Waiting Time Class are entitled to compensation
2 pursuant to Cal. Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

3 **SEVENTH CAUSE OF ACTION**

4 **UNFAIR COMPETITION**

5 **(AGAINST ALL DEFENDANTS)**

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

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

18 51. 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 52. 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 53. The acts complained of herein occurred within the last four years immediately
28 preceding the filing of the Plaintiff's Complaint.

1 54. Plaintiff was compelled to retain the services of counsel to file this Complaint to
2 protect her 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 **EIGHTH CAUSE OF ACTION**
7 **PRIVATE ATTORNEYS GENERAL ACT**
8 **(AGAINST ALL DEFENDANTS)**

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

10 56. Defendants have committed several Labor Code violations against Plaintiff,
11 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee" within
12 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 subsequent
24 violation per employee per pay period for those violations of the Labor Code for which no civil
25 penalty is specifically provided, based on the following Labor Code violations:

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

- b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 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 furnish Plaintiff, the Wage Statement Class, and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- f. 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;
- g. 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
- h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code § 1174 and 1198.

57. On October 11, 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 56 (a)-(h). Now that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted her administrative requirements

for bringing a claim under the Private Attorneys General Act with respect to these violations.

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

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

PRAYER

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

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 1194, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code § 226 *et. seq.*;
9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;
10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or

practices declared by this Court to be in violation of Bus. & Prof. Code § 17200, *et seq.*;

11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code violations identified in Paragraph 56 (a)-(h);

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

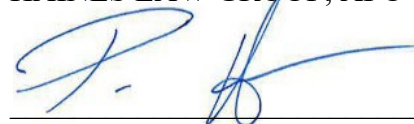
13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 226, 1194, and 2699(g), and Code of Civil Procedure § 1021.5; and

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

Dated: December 19, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

By:



Paul K. Haines
Attorneys for Plaintiff

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Dated: December 19, 2024

By:



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FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT