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November 20, 2020

**VIA CERTIFIED MAIL AND SUBMITTED VIA LWDA'S PAGA CLAIM NOTICE
ONLINE FORM**

Golden Labor Services, LLC
% Ramiro Marin Perez
233 Caroline Lane
Shafter, California 93263

Pacific Ag Management, Inc.
% Mitchell M. Millwee
29431 Kimberlina Road
Wasco, California 93280

Human Resources
Golden Labor Services, LLC
233 Caroline Lane
Shafter, California 93263

Human Resources
Pacific Ag Management, Inc.
P.O. Box 1200
Wasco, California 93280

Re: *Dulce Maria Santacruz Sanchez v. Golden Labor Services, LLC, et al.*
California Labor Code § 2699.3 Notice of Intent to File PAGA Representative Action

To whom it may concern:

This office represents Dulce Maria Santacruz Sanchez ("Plaintiff") and similarly-situated employees in a representative action (the "Action") to be filed against Golden Labor Services, LLC and Pacific Ag Management, Inc. (collectively, "Defendants") in a civil action entitled Dulce Maria Santacruz Sanchez v. Golden Labor Services, LLC, et al. to be filed in Kern County Superior Court. A copy of the complaint as currently drafted, and as is intended to be filed in the Action, is enclosed herein as **Exhibit A**. This letter incorporates by reference all facts, law, and allegations of Exhibit A.

This letter serves as notice pursuant to Labor Code section 2699.3, et seq. that we intend to include representative claims for civil penalties under the Private Attorney's General Act ("PAGA") on behalf of "aggrieved employees" defined as: all individuals who are or were employed in California as non-exempt employees by Defendants, from one year prior to the date of this letter and ongoing ("Aggrieved Employees").

As set forth in more detail in Exhibit A, Defendants violated their obligations to Plaintiff and Aggrieved Employees under California law by failing to pay minimum wages for all hours worked, failing to pay overtime wages, failing to provide lawful rest periods and pay missed rest period premiums, failing to provide lawful meal periods and pay meal period premiums, failing to maintain accurate employment records, failing to provide all wages in full and on time during

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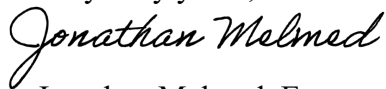
employment, failing to pay all wages earned and unpaid at separation, failing to provide accurate and complete wage statements, failing to reimburse Plaintiff and the Aggrieved Employees for business expenditures, failing to provide required potable water, and failing to provide required toilet facilities to Plaintiff and the Aggrieved Employees.

Because of these systemic violations, Defendants violated: Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1198, 1199, 2802, and 2804; California Industrial Welfare Commission Wage Orders 8-2001, 13-2001, and/or 14-2001, sections 3, 4, 7, 11, and 12 (Cal. Code of Regs., tit. 8, §§ 11080, 11130, 11140); and the California Occupational Safety and Health Standards Board occupational safety and health standards governing potable water and toilet facilities (Cal. Code Regs., tit. 8, §§ 3364, 3395). The enclosed Complaint further details: (1) the alleged violations; (2) the facts and theories supporting these violations; (3) the people and entities, dates, classifications, violations, events, and actions at issue; and (4) the illegal practices instituted by Defendants.

Together with this correspondence, the enclosed complaint provides notice that we intend to proceed with a claim for civil penalties in the Action pursuant to PAGA. (See Lab. Code, §§ 2698–2699.6.) We intend to fully prosecute the representative claims alleged in the complaint, including by obtaining civil penalties under PAGA.

Please do not hesitate to contact me at the information provided above.

Very truly yours,

A handwritten signature in cursive script that reads "Jonathan Melmed".

Jonathan Melmed, Esq.
of Melmed Law Group P.C.

Enclosure

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EXHIBIT A

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Attorneys for Plaintiff and the Putative Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN**

DULCE MARIA SANTACRUZ
SANCHEZ, an individual, on behalf herself
and on behalf of all others similarly situated,

Plaintiff,

v.

GOLDEN LABOR SERVICES, LLC, a
California Limited Liability Company;
PACIFIC AG MANAGEMENT, INC., a
California Corporation; and DOES 1 TO 50,
inclusive,

Defendants.

Case No.

Class Action Complaint for:

1. Failure to Pay All Minimum Wages,
2. Failure to Pay All Overtime Wages,
3. Failure to Provide Rest Periods and Pay Missed Rest Period Premiums,
4. Failure to Provide Meal Periods and Pay Missed Meal Period Premiums,
5. Failure to Pay Wages Timely during Employment,
6. Failure to Pay All Wages Earned and Unpaid at Separation,
7. Failure to Indemnify All Necessary Business Expenditures,
8. Failure to Furnish Accurate Itemized Wage Statements, and
9. Violations of California's Unfair Competition Law (Bus. & Prof. Code, § 17200, et seq.)

DEMAND FOR JURY TRIAL

1 Plaintiff Dulce Maria Santacruz Sanchez (“Plaintiff”), on behalf herself and all other
2 similarly situated-situated employees within the State of California (hereafter “Class Members,”
3 as defined below), complains and alleges of defendants Golden Labor Services, LLC (“Golden
4 Labor Services”), Pacific Ag Management, Inc. (“Pacific Ag Management”), and Does 1 to 50
5 (collectively, “Defendants”), and each of them, as follows:

6 **I. INTRODUCTION**

7 1. This is a class action complaint brought pursuant to California Code of Civil
8 Procedure section 382 on behalf all individuals who were employed by Defendants in California
9 during the applicable limitations period, as defined below, to the present (Code Civ. Proc., § 382).

10 2. Plaintiff brings this action on behalf of herself and all others similarly situated, as
11 a class action, against Defendants for:

- 12 A. Failure to pay all minimum wages,
- 13 B. Failure to pay all overtime wages,
- 14 C. Failure to provide rest periods and pay missed rest period premiums,
- 15 D. Failure to provide meal periods and pay missed meal period premiums,
- 16 E. Failure to pay wages timely during employment,
- 17 F. Failure to pay all wages earned and unpaid at separation,
- 18 G. Failure to indemnify all necessary business expenditures,
- 19 H. Failure to furnish accurate itemized wage statements,
- 20 I. Violations of California’s Unfair Competition Law (“UCL”) (Bus. & Prof.
21 Code, § 17200, et seq.).

22 3. The “Class Period” is designated as the period from four years prior to the filing of
23 this action through the trial date.

24 4. Defendants’ violations of California’s wage and hour laws and unfair competition
25 laws as described more fully below have been ongoing throughout the Class Period and are still
26 ongoing.

27 5. Plaintiff is informed and believes and thereon alleges that the California Industrial
28 Welfare Commission (“IWC”) Wage Orders applicable to the facts of this case are IWC Wage

1 Orders 8-2001, 13-2001, and/or 14-2001 (the “Applicable Wage Orders”) and possibly others that
2 may be applicable (Cal. Code of Regs., tit. 8, §§ 11080, 11130, 11140). Plaintiff reserves the right
3 to amend or modify the definition of “Applicable Wage Orders” with greater specificity or add
4 additional IWC Wage Orders if additional applicable wage orders are discovered during the course
5 of litigation.

6 **II. JURISDICTION & VENUE**

7 6. This Court has subject matter jurisdiction over any and all causes of action asserted
8 herein pursuant to article VI, section 10, of the California Constitution and Code of Civil Procedure
9 section 410.10 by virtue of the fact that this is a civil action in which the matter in controversy,
10 exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the
11 laws of the State of California or is subject to adjudication in the courts of the State of California.

12 7. This court has personal jurisdiction over Defendants because Defendants have
13 caused injuries in the County of Kern and the State of California through their acts, and by their
14 violation of the California Labor Code and California state common law. Defendants transact
15 millions of dollars of business within the State of California. Defendants own, maintain offices,
16 transact business, have an agent or agents within the County of Kern, and/or otherwise are found
17 within the County of Kern, and Defendants are within the jurisdiction of this Court for purposes
18 of service of process.

19 8. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of
20 the Code of Civil Procedure. Defendants operate within California and do business within Kern
21 County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all of
22 Defendants’ employees within Kern County and surrounding counties where they may remotely
23 operate.

24 9. This matter is not appropriate for removal under the Class Action Fairness Act (28
25 U.S.C. § 1332) as the amount in controversy for Plaintiff’s, and the Class Members’ claims, in
26 aggregate, is less than \$5,000,000.00. Additionally, all the allegations herein occurred in the State
27 of California. As such, if the amount in controversy does exceed \$5,000,000.00 this matter would
28

1 still not be appropriate for removal under the “local controversy” exception to the Class Action
2 Fairness Act (28 U.S.C. § 1332, subd. (d)(4)(A)).

3 **III. THE PARTIES**

4 **A. PLAINTIFF**

5 10. At all relevant times, Plaintiff, who is over the age of 18, was and currently is a
6 citizen of California residing in the State of California. Defendants employed Plaintiff as a non-
7 exempt hourly employee in the County of Kern.

8 11. Plaintiff brings this action on behalf of herself and the following class pursuant to
9 section 382 of the Code of Civil Procedure as follows: *all individuals who are or were employed*
10 *as non-exempt employees by Defendants in California from four years prior to the filing of this*
11 *complaint through the date of trial* (the “Class” or the “Class Members”).

12 12. The Class Members, at all times pertinent hereto, are or were employees of
13 Defendants during the Class Period.

14 **B. DEFENDANTS**

15 13. Plaintiff is informed and believes and thereon alleges that Defendants were
16 authorized to and doing business in Kern County and is and/or was the legal employer of Plaintiff
17 and the other Class Members during the applicable statutory periods. Plaintiff and the other Class
18 Members were, and are, subject to Defendants’ policies and/or practices complained of herein and
19 has been deprived of the rights guaranteed to her by California Labor Code sections 201, 202, 203,
20 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802,
21 and 2084, amongst others, and California Business and Professions Code section 17200, et seq.
22 (“UCL”), and the Applicable Wage Orders (Cal. Code of Regs., tit. 8, §§ 11080, 11130, 11140).

23 14. Plaintiff is informed and believes, and based thereon alleges, that during the four
24 years preceding the filing of this complaint and continuing to the present, Defendants did (and
25 continue to do) business in the State of California, County of Kern. Defendants operations are
26 headquartered in Kern County.

27 15. Plaintiff does not know the true names or capacities, whether individual, partner,
28 or corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said

1 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
2 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
3 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
4 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
5 and proximately caused Plaintiff and the Class to be subject to the unlawful employment practices,
6 wrongs, injuries and damages complained of herein.

7 16. Plaintiff is informed, and believes, and thereon allege, that at all times mentioned
8 herein, Defendants were and are the employers of Plaintiff and the other Class Members. At all
9 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
10 alleged to have been done by the named Defendants; and furthermore, the Defendants, and each
11 of them, were the agents, servants, and employees of each and every one of the other Defendants,
12 as well as the agents of all Defendants, and at all times herein mentioned were acting within the
13 course and scope of said agency and employment. Defendants, and each of them, approved of,
14 condoned, and/or otherwise ratified each and every one of the acts or omissions complained of
15 herein.

16 17. At all relevant times, Defendants, and each of them, were members of and engaged
17 in a joint venture, partnership, and common enterprise, and acting within the course and scope of
18 and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff
19 alleges that all Defendants were joint employers for all purposes of Plaintiff and the other Class
20 Members.

21 **IV. COMMON FACTS & ALLEGATIONS**

22 18. Plaintiff and the other Class Members (collectively, the “Class Members”) are, and
23 were at all relevant times, employed by the Defendants within the State of California.

24 19. The Class Members are, and were at all relevant times, non-exempt employees for
25 the purposes of overtime, rest breaks, meal periods, and the other claims alleged in this complaint.

26 20. Specifically, Plaintiff was employed by Defendants within the statutory Class
27 Period, working as an hourly, non-exempt fieldworker for Defendants. Plaintiff’s duties included
28

maintaining and preparing fruit trees for production and harvest, maintaining and operating machinery used to spray trees, and other fieldwork.

A. MINIMUM WAGE VIOLATIONS

21. Labor Code section 1197 requires employees to be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code section 1194 entitles “any employee receiving less than the legal minimum wage . . . to recover in a civil action the unpaid balance of the full amount of this minimum wage.” Likewise, IWC Wage Orders 8-2001, 13-2001, and/or 14-2001 also obligate employers to pay each employee minimum wages for all hours worked (Cal. Code of Regs., tit. 8, §§ 11080, 11130, 11140, subds. 4).

22. These minimum wage standards apply to each hour that employees work. Therefore, an employer’s failure to pay for any particular time worked by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324).

23. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law. The Class Members were not compensated 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 the Applicable Wage Orders. Among other violations, the Class Members worked off-the-clock and did not receive minimum wage for each hour worked.

24. For example, the Class Members did not receive compliant meal periods. These missed meal periods were nevertheless subtracted from their work hours, as though they had taken a fully-compliant meal break. Their time worked during these meal periods was thus unpaid, in violation of California’s requirement that employees be compensated for all hours worked (Lab. Code, §§ 1194, 1197; Cal. Code of Regs., tit. 8, §§ 11080, 11130, 11140, subds. 4).

25. Likewise, Defendants had no formal clock-in or clock-out system with which the Class Members could record their hours. Rather, their hours were estimated after-the-fact by one of the supervising employees. That employee, however, would often misstate or altogether fail to

1 record the Class Members' hours worked. This resulted in shortages to the Class Members' hours
2 worked. In some cases, entire shifts were not recorded and the Class Members were thus not paid
3 for those days. This uncompensated time violated California's requirement that employees be
4 compensated for all hours worked (Lab. Code, §§ 1194, 1197; Cal. Code of Regs., tit. 8, §§ 11080,
5 11130, 11140, subds. 4).

6 26. Labor Code section 1198 makes unlawful the employment of an employee under
7 conditions that the IWC Wage Orders prohibit. Labor Code sections 1194, subdivision (a), and
8 1194.2, subdivision (a), provide that an employer who has failed to pay its employees the legal
9 minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well
10 as liquidated damages in an amount equal to the wages due and interest thereon.

11 27. When employees, such as the Class Members, are not paid for all hours worked
12 under Labor Code section 1194, they are entitled to recover minimum wages for the time which
13 they received no compensation (See *Sillah v. Command International Security Services* (N.D. Cal.
14 2015) 154 F.Supp.3d 891 [employees suing for failure to pay overtime could recover liquidated
15 damages under Labor Code section 1194.2 if they also showed they were paid less than minimum
16 wage]).

17 28. Labor Code section 1197.1 authorizes employees who are paid less than the
18 minimum wage fixed by an applicable state or local law, or by an order of the commission a civil
19 penalty, among other damages, as follows:

20 (1) "For any initial violation that is intentionally committed, one
21 hundred dollars (\$100) for each underpaid employee for each pay
22 period for which the employee is underpaid."

23 (2) "For each subsequent violation for the same specific offense, two
24 hundred fifty dollars (\$250) for each underpaid employee for each
25 pay period for which the employee is underpaid regardless of
26 whether the initial violation is intentionally committed." (Lab.
27 Code, § 1197.1, subd. (a)).
28

1 29. As set forth above, Defendants failed to compensate the Class Members for all
2 minimum wages. Accordingly, the Class Members are entitled to recover liquidated damages for
3 violations of Labor Code section 1197.1.

4 30. Based upon these same factual allegations, the Class Members are likewise entitled
5 to penalties under Labor Code sections 1199.

6 **B. OVERTIME VIOLATIONS**

7 31. Labor Code section 510 requires an employer to compensate an employee who
8 works more than eight hours in one workday, forty hours in a workweek, and for the first eight (8)
9 hours worked on the seventh consecutive day no less than one and one-half times the regular rate
10 of pay for an employee (Lab. Code, § 510, subd. (a)). Further, Labor Code section 510 obligates
11 employers to compensate employees at no less than twice the regular rate of pay when an employee
12 works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive
13 day of work (Lab. Code, § 510, subd. (a)). These rules are also reflected in IWC Wage Orders 8-
14 2001 and 13-2001 (Cal. Code of Regs., tit. 8, §§ 11080, 11130, subds. 3).

15 32. IWC Wage Order 14-2001, section 3(A), is similar, but provides in pertinent part:

16 “(1) Such employees shall not be employed more than ten (10) hours in
17 any one workday or more than six (6) days in any workweek unless
18 the employee receives one and one-half (1½) times such employee’s
19 regular rate of pay for all hours worked over ten (10) hours in any
20 workday and for the first eight (8) hours on the seventh (7th) day of
21 work and double the employee’s regular rate of pay for all hours
22 worked over eight (8) on the seventh (7th) day of work in the
23 workweek.

24 “(2) For employers of more than 25 employees:

25 “(a) Starting January 1, 2019, an employee shall not be employed
26 more than nine and one-half (9½) hours per workday or fifty-five
27 (55) hours per workweek unless the employee receives one and one-
28 half (1½) times such employee’s regular rate of pay for all hours

1 worked over nine and one-half (9½) hours in any one workday or
2 more than fifty-five (55) hours in any one workweek.

3 “(b) Starting January 1, 2020, an employee shall not be employed
4 more than nine (9) hours per workday or fifty (50) hours per
5 workweek unless the employee receives one and one-half (1½)
6 times such employee’s regular rate of pay for all hours worked over
7 nine (9) hours in any one workday or more than fifty (50) hours in
8 any one workweek.” (Cal. Code of Regs., tit. 8, § 11140, subd. 3).

9 33. In accordance with Labor Code section 1194 and the Applicable Wage Orders,
10 Plaintiff and the Aggrieved Employees could not then agree and cannot now agree to work for a
11 lesser wage than the amount proscribed by Labor Code sections 510 and 1194 or the Applicable
12 Wage Orders.

13 34. Here, Defendants violated their duty to accurately and completely compensate
14 Plaintiff and the Class Members for all overtime worked. For example, Defendants had a policy
15 and practice of denying the Class Members their lawfully-owed unpaid meal breaks, but
16 nevertheless subtracting meal period time from the Class Members’ paid hours. As a result,
17 Defendants systematically undercounted the hours worked, including the overtime hours worked,
18 by the Class Members.

19 35. Likewise, Defendants had no formal clock-in or clock-out system with which the
20 Class Members could record their hours. Rather, their hours were estimated after-the-fact by one
21 of the supervising employees. These after-the-fact estimations routinely undercounted the Class
22 Members’ hours worked and, as a result, systematically underpaid the Class Members for their
23 overtime worked.

24 36. These actions were and are in clear violation of California’s overtime laws as set
25 forth in Labor Code sections 510, 1194, and the Applicable Wage Orders (Cal. Code of Regs., tit.
26 8, §§ 11080, 11130, 11140, subds. 3). As a result of Defendants’ faulty policies and practices, the
27 Class Members were not compensated for all hours worked or paid accurate overtime
28 compensation.

1 **C. REST BREAK VIOLATIONS**

2 37. Pursuant to Labor Code section 226.7 and the Applicable Wage Orders, Defendants
3 were required to provide the Class Members with compensated, duty-free rest periods of not less
4 than ten (10) minutes for every major fraction of four hours worked. Under the applicable IWC
5 Wage Orders, an employer must authorize and permit all employees to take ten (10) minute duty
6 free rest periods for every major fraction of four hours worked (Cal. Code of Regs., tit. 8, §§ 11080,
7 11130, 11140, subds. 12).

8 38. Likewise, Labor Code section 226.7 provides that “[a]n employer shall not require
9 an employee to work during a meal or rest or recovery period mandated pursuant to an applicable
10 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission”
11 (Lab. Code, § 226.7, subd. (b)). Labor Code section 226.7 also provides that employers must pay
12 their employees one additional hour of pay at the employee’s regular rate for each workday that a
13 “meal or rest or recovery period is not provided.” (Lab. Code, § 226.7, subd. (c)). Thus, the Wage
14 Orders set when and for how long the rest period must take place and the Labor Code establishes
15 that violations of the IWC Wage Order are unlawful and sets forth the premium pay employer
16 must pay their employees when employers fail to provide rest periods.

17 39. The California Supreme Court has held that, during required rest periods,
18 “employers must relieve their employees of all duties and relinquish any control over how
19 employees spend their break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th
20 257, 260). Relinquishing control over employees during rest periods requires that employees be
21 “free to leave the employer’s premises” and be “permitted to attend to personal business.” (*Id.* at
22 p. 275). The *Brinker* Court explained in the context of rest breaks that employer liability attaches
23 from adopting an unlawful policy:

24 “An employer is required to authorize and permit the amount of rest break time
25 called for under the wage order for its industry. If it does not—if, for example, it
26 adopts a uniform policy authorizing and permitting only one rest break for
27 employees working a seven-hour shift when two are required—it has violated the
28

1 wage order and is liable.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th
2 1004, 1033).

3 40. Here, Defendants did not permit the Class Members to take duty-free rest breaks,
4 free from Defendants’ control as required by Labor Code section 226.7, IWC Wage Orders 8-
5 2001, 13-2001, and/or 14-2001, and applicable precedent (See *Augustus v. ABM Security Services,*
6 *Inc.* (2016) 2 Cal.5th 257, 269 [concluding that “during rest periods employers must relieve
7 employees of all duties and relinquish control over how employees spend their time.”]). At all
8 relevant times, the Class Members were not provided with legally-complaint and timely rest
9 periods of at least ten (10) ten minutes for each four (4) hour work period, or major fraction thereof
10 due to Defendants’ unlawful rest period policies/practices. The Class Members were expected and
11 required to continue working through rest periods in order to meet the expectations Defendants
12 and finish the workday. On occasions when the Class Members worked in excess of ten (10) hours
13 in a shift, Defendants systematically failed to authorize and/or permit a third mandated rest period.
14 As a result, the Class Members were unable to take compliant rest periods. In addition, Defendants
15 also failed to maintain any mechanism for the accurate payment of rest period premium payments
16 as required by Labor Code section 226.7.

17 41. Since Defendants did not offer the Class Members the opportunity to receive a
18 compliant off-duty rest period, “the court may not conclude employees voluntarily chose to skip
19 those breaks.” (*Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal.App.4th 388, 410 (2015)
20 [“If an employer fails to provide legally compliant meal or rest breaks, the court may not conclude
21 employees voluntarily chose to skip those breaks.”]; *Brinker Rest. Corp. v. Superior Court, supra,*
22 53 Cal.4th at p. 1033 [“No issue of waiver ever arises for a rest break that was required by law but
23 never authorized; if a break is not authorized, an employee has no opportunity to decline to take
24 it.”].)

25 42. In addition to failing to authorize and permit compliant rest periods, the Class
26 Members were not compensated with one hour’s worth of pay at their regular rate of compensation
27 when they were not provided with a compliant rest period in accordance with Labor Code section
28

226.7, subdivision (c). Thus, Defendants have violated Labor Code section 226.7 and IWC Wage Orders 8-2001 and/or 13-2001.

43. Based on the foregoing, Plaintiff seeks to recover on behalf of herself and other non-exempt employees' rest period premiums and penalties.

D. MEAL BREAK VIOLATIONS

44. Labor Code section 512 and the applicable IWC Wage Orders require employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period within the first five hours of work (Lab. Code, § 512, subd. (a) ["An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes"]; Cal. Code of Regs., tit. 8, §§ 11080, 11130, 11140, subds. 11 ["No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes"]). Additionally, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period (Lab. Code, § 512, subd. (a) ["An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes"]).

45. "An on-duty meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal break." (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932). The written agreement must include a provision allowing the employee to revoke it at any time (*Ibid*). Generally, the California Department of Industrial Relations, Division of Labor Standards Enforcement ("DLSE") and courts have "found that the nature of the work exception applies: '(1) where the work has some particular external force that requires the employee to be on duty at all times, and (2) where the employee is the sole employee of a particular employer.'" (*Id.* at p. 945; *Abdullah v. U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959). "[I]t is the employer's obligation to determine whether the nature of the work prevents an employee from being relieved before requiring an employee to take an on-duty meal period." (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 946).

1 46. Here, the Class Members were never asked to sign any agreement agreeing to an
2 on-duty meal period. Moreover, nothing in the nature of their work involved the kind of “external
3 force” that might justify on-duty meal breaks (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th
4 at p. 945). Nevertheless, Defendants did not provide off-duty meal periods within the first five
5 hours of work for the Class Members.

6 47. As with rest breaks, meal breaks must be duty-free (*Brinker Restaurant Corp. v.*
7 *Superior Court*, *supra*, 53 Cal.4th at p. 1035 [“The IWC’s wage orders have long made a meal
8 period’s duty-free nature its defining characteristic.”]). Relinquishing control over employees
9 during meal periods requires that employees be “free to leave the employer’s premises” and be
10 “permitted to attend to personal business.” (*Augustus v. ABM Security Services, Inc.*, *supra*, 2
11 Cal.5th at p. 275). Under Labor Code section 512, if an employer maintains a uniform policy that
12 does not authorize and permit the amount of meal time called for under the law (as specified in the
13 applicable IWC Wage Order), “it has violated the wage order and is liable.” (*Brinker Restaurant*
14 *Corp. v. Superior Court*, *supra*, 53 Cal.4th at p. 1033).

15 48. At all relevant times here, the Class Members were denied legally-complaint and
16 timely off-duty meal periods of at least thirty (30) minutes due to Defendants’ unlawful meal
17 period policy/practices. As a result of Defendants’ uniform meal period policies and practices, the
18 Class Members routinely were not permitted to take complaint first meal periods before the end of
19 the fifth hour of work, and second meal periods before the end of the tenth hour of work. The
20 Class Members were also not permitted to take second meal periods for shifts in excess of ten (10)
21 hours. Defendants thus violated Labor Code section 512 and the applicable IWC Wage Orders by
22 failing to advise, authorize, or permit the Class Members of their right to receive thirty (30) minute,
23 off-duty meal periods within the first five hours of their shifts.

24 49. Labor Code section 226.7 provides that “[a]n employer shall not require an
25 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
26 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab.
27 Code, § 226.7, subd. (b)). Labor Code section 226.7, subdivision (c), and IWC Wage Orders 8-
28 2001 and/or 13-2001 further obligate employers to provide an employee to pay employees one

1 additional hour of pay at the employee's regular rate of compensation for each workday that the
2 meal period is not provided (Lab. Code, § 226.7, subd. (c); Cal. Code of Regs., tit. 8, §§ 11080,
3 11130, subds. 11(d) ["If an employer fails to provide an employee a meal period in accordance
4 with the applicable provisions of this order, the employer shall pay the employee one (1) hour of
5 pay at the employee's regular rate of compensation for each workday that the meal period is not
6 provided."]).

7 50. Accordingly, for each day that the Class Members did not receive compliant meal
8 periods, they were and are entitled to receive meal period premiums pursuant to Labor Code
9 section 226.7 and IWC Wage Orders 8-2001 and/or 13-2001. Defendants, however, failed to pay
10 the Class Members meal period premiums for each workday that the employees did not receive a
11 compliant meal period. Thus, Defendants have violated Labor Code section 226.7 and IWC Wage
12 Orders 8-2001 and/or 13-2001.

13 51. Based on the foregoing, Plaintiff seeks to recover on behalf of herself and other
14 non-exempt employees' meal period premiums and penalties.

15 **E. UNTIMELY WAGES DURING EMPLOYMENT**

16 52. Labor Code section 204 expressly requires employers who pay employees on a
17 weekly, biweekly, or semimonthly basis to pay all wages "not more than seven calendar days
18 following the close of the payroll period." Labor Code section 210, subdivision (a), makes
19 employers who violate Labor Code section 204 subject to a penalty of:

20 "(1) For any initial violation, one hundred dollars (\$100) for each failure
21 to pay each employee.

22 "(2) For each subsequent violation, or any willful or intentional
23 violation, two hundred dollars (\$200) for each failure to pay each
24 employee, plus 25 percent of the amount unlawfully withheld."
25 (Lab. Code, § 210, subd. (a)).

26 53. Notably, the penalty provided by Labor Code section 210 is "[i]n addition to, and
27 entirely independent and apart from, any other penalty provided in this article" (Lab. Code,
28 § 210, subd. (a)).

1 54. Due to Defendants’ failure to pay Plaintiff and other Class Members minimum and
2 overtime wages as described above, along with rest and meal break premiums, Defendants failed
3 to timely pay employees within seven calendar days following the close of payroll in accordance
4 with Labor Code section 204 on a regular and consistent basis. (See *Parson v. Golden State FC,*
5 *LLC* (N.D. Cal., May 2, 2016, No. 16-CV-00405-JST) 2016 WL 1734010, at p. *3–5, 2016 U.S.
6 Dist. LEXIS 58299 [finding that a failure to pay rest period premiums can support claims under
7 Labor Code sections 203 and 204]).

8 **F. UNTIMELY WAGES AT SEPARATION**

9 55. Labor Code section 203 provides “if an employer willfully fails to pay . . . any
10 wages of an employee who is discharged or who quits, the wages of the employee shall continue
11 as a penalty . . .” for up to 30 days (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487,
12 492). As a result of Defendants’ failure to pay the Class Members for all hours worked as
13 described above, along with meal and rest period premiums, Defendants violated and continue to
14 violate Labor Code section 203.

15 56. Due to Defendants’ faulty pay policies, those former Class Members whose
16 employment with Defendants concluded were not compensated for each and every hour worked
17 at the appropriate rate. Defendants have failed to pay former Class Members whose sums were
18 certain at the time of termination within seventy-two (72) hours of their resignation and have failed
19 to pay those sums for thirty (30) days thereafter.

20 **G. FAILURE TO REIMBURSE BUSINESS EXPENSES**

21 57. At all relevant times herein, Defendants were subject to Labor Code section 2802,
22 which states that “an employer shall indemnify his or her employees for all necessary expenditures
23 or losses incurred by the employee in direct consequence of the discharge of his or her duties, or
24 of his or her obedience to the directions of the employer.” The purpose of this section is to “prevent
25 employers from passing along their operating expenses onto their employees.” (*Gattuso v. Harte-*
26 *Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 562).

27 58. At all relevant times herein, Defendants were subject to Labor Code section 2804,
28 which states that “any contract or agreement, express or implied, made by any employee to waive

1 the benefits of this article or any part thereof, is null and void, and this article shall not deprive any
2 employee or his personal representative of any right or remedy to which he is entitled under the
3 laws of this State.”

4 59. Thus, the Class Members were and are entitled to reimbursement for the expenses
5 they incurred during the course of their duties. The duty to reimburse even extends to the use of
6 equipment the employee may already own and would be required to pay for anyway (*Cochran v.*
7 *Schwan's Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144 [“The threshold question in this
8 case is this: Does an employer always have to reimburse an employee for the reasonable expense
9 of the mandatory use of a personal cell phone, or is the reimbursement obligation limited to the
10 situation in which the employee incurred an extra expense that he or she would not have otherwise
11 incurred absent the job? The answer is that reimbursement is always required. Otherwise, the
12 employer would receive a windfall because it would be passing its operating expenses on to the
13 employee.”]).

14 60. Here, Defendants failed to fully reimburse the Class Members for necessary
15 expenditures incurred as a direct consequence and requirement of performing their job duties,
16 including to the costs associated with their personal cell phone use. Consequently, Defendants
17 failed to comply with Labor Code section 2802 and Applicable Wage Orders.

18 **H. WAGE STATEMENT VIOLATIONS**

19 61. Defendants also failed to provide accurate itemized wage statements in accordance
20 with Labor Code sections 226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226,
21 subdivision (a), obligates employers, semi-monthly or at the time of each payment to furnish an
22 itemized wage statement in writing showing:

- 23 (1) The gross wages earned;
- 24 (2) The total hours worked by the employee;
- 25 (3) The number of piece-rate units earned and any applicable piece rate
26 if the employee is paid on a piece rate basis;
- 27 (4) All deductions, provided that all deductions made on written orders
28 of the employee may be aggregated and shown as one item;

- 1 (5) The net wages earned;
- 2 (6) The inclusive dates of the period for which the employee is paid;
- 3 (7) The name of the employee and only the last four digits of his or her
- 4 social security number or an employee identification number other
- 5 than a social security number;
- 6 (8) The name and address of the legal entity that is the employer; and
- 7 (9) All applicable hourly rates in effect during the pay period and the
- 8 corresponding number of hours worked at each hourly rate by the
- 9 employee.

10 62. Due to Defendants' failure to pay the Class Members minimum and overtime wages

11 for all hours worked (including, but not limited to, donning and doffing and/or pre- and post-shift

12 activities), along with meal and rest break premiums, the wage statements issued do not indicate

13 the correct amount of gross wages earned, total hours worked, or the net wages earned, or the

14 applicable hourly rates in effect during the pay period and the corresponding number of hours

15 worked at each hourly rate. Thus, Defendants have violated Labor Code section 226, subdivisions

16 (a)(1), (2), (5), and (9).

17 63. In addition to Labor Code section 226, subdivision (a), Defendants also knowingly

18 and intentionally failed to provide the Class Members with accurate itemized wage statements in

19 violation of Labor Code section 226, subdivision (e). Defendants knew that they were not

20 providing the Class Members with wage statements required by California law. (See *Garnett v.*

21 *ADT LLC* (E.D. Cal. 2015) 139 F.Supp.3d 1121, 1134 [finding the defendant knowingly and

22 intentionally violated Labor Code section 226 because the "[d]efendant knew that it was not

23 providing total hours worked to plaintiff or other employees paid on commission" even though it

24 believed that employees paid solely on commission or commission and salary "are exempt and

25 therefore we do not record hours on a wage statement."]).

26

27

28

1 **I. RECORDKEEPING VIOLATIONS**

2 64. Labor Code section 226, subdivision (a), requires employers to keep an accurate
3 record of, among other things, all hours worked by employees. Labor Code section 226.3 provides,
4 in pertinent part, as follows:

5 “Any employer who violates subdivision (a) of Section 226 shall be subject to a
6 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per
7 violation in an initial citation and one thousand dollars (\$1,000) per employee for
8 each violation in a subsequent citation, for which the employer fails to provide the
9 employee a wage deduction statement or fails to keep the records required in
10 subdivision (a) of Section 226. **The civil penalties provided for in this section**
11 **are in addition to any other penalty provided by law.”** (Lab. Code, § 226.3,
12 emphasis added).
13

14 65. Likewise, Labor Code section 1174, subdivision (d), requires every employer,
15 including Defendants, to:

16 “Keep, at a central location in the state or at the plants or establishments at which
17 employees are employed, **payroll records showing the hours worked daily** by
18 and the wages paid to, and the number of piece-rate units earned by and any
19 applicable piece rate paid to, employees employed at the respective plants or
20 establishments. These records shall be kept in accordance with rules established
21 for this purpose by the commission, but in any case shall be kept on file for not less
22 than three years. An employer shall not prohibit an employee from maintaining a
23 personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units
24 earned.” (Lab. Code, § 1174, subd. (d), emphasis added).
25

26 66. As explained in detail above, Defendants failed to provide Plaintiff and the Class
27 Members with accurate itemized wage statements. Moreover, because of Defendants’ policy and
28 practice of having no formal clock-in or clock-out system with which the Class Members could

1 record their hours, instead inaccurately estimating their hours after-the-fact, Defendants failed to
2 accurately record the hours that the Class Members actually worked. Defendants have thus failed
3 to keep accurate records of the “total hours worked by the employee[s]” in violation of Labor Code
4 section 226, subdivision (a), and are therefore subject to the penalties provided by Labor Code
5 section 226.3. These penalties are “in addition to any other penalty provided by law.” (Lab. Code,
6 § 226.3).

7 67. The failure to accurately track hours worked also resulted in a failure of Defendants
8 to keep a record of all “payroll records showing the hours worked daily by” Defendants’
9 employees, including Plaintiff and other Class Members, in violation of Labor Code section 1174,
10 subdivision (d).

11 **J. POTABLE WATER VIOLATIONS**

12 68. Labor Code section 142.3 authorizes the California Occupational Safety and Health
13 Standards Board (“OSHSB”) to adopt occupational safety and health standards and orders.
14 Pursuant to its authority, OSHSB has adopted the “Maria Isabel Vasquez Jimenez heat illness
15 standard,” which applies to all outdoor places of employment. (Cal. Code Regs., tit. 8, § 3395,
16 subd. (a)(1)). This standard requires that all outdoor employees have access to potable water that
17 is “fresh, pure, suitably cool” and provided to employees free of charge. The water must be located
18 as close as practicable to the areas where employees are working. If not plumbed or otherwise
19 continuously supplies, it must be furnished at the beginning of the shift in sufficient quantity to
20 provide one quart per employee per hour for the entire shift. (Cal. Code Regs., tit. 8, § 3395, subd.
21 (c))

22 69. Here, Defendants failed to provide the Class Members water that was fit to drink,
23 or potable, and free from odors that would discourage workers from drinking the water. No clean
24 water source was made available to Defendants’ employees, including the Class Members. This
25 failure, in addition to violating OSHSB’s safety and health standards (and, by extension, the Labor
26 Code), resulted in a failure to provide adequate cool-down recovery periods pursuant to Labor
27 Code section 226.7. (Lab. Code, § 226.7, subd. (c) [“If an employer fails to provide an employee
28 a meal or rest or recovery period in accordance with a state law, including, but not limited to, an

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

6 **K. TOILET VIOLATIONS**

7 70. In addition to the requirement of potable water, OSHSB has adopted a standard
8 requiring California employers to provide separate toilet facilities for males and females based on
9 the numbers of employees of each sex. (Cal. Code Regs., tit. 8, § 3364.) These toilet facilities
10 must be "kept clean, maintained in good working order and be accessible to the employees at all
11 times." (Cal. Code Regs., tit. 8, § 3364, subd. (b).) Likewise, "[w]here practicable, toilet facilities
12 should be within 200 feet of locations at which workers are regularly employed" (Cal. Code
13 Regs., tit. 8, § 3364, subd. (b).)

14 71. Here, Defendants failed to provide the Class Members with suitable toilet facilities
15 within a reasonable distance of their worksite. The Class Members were often forced to urinate
16 and defecate outdoors in unsanitary, humiliating, and exposed conditions. This failure, in addition
17 to violating OSHSB's safety and health standards (and, by extension, the Labor Code), resulted in
18 a failure to provide adequate cool-down recovery periods pursuant to Labor Code section 226.7,
19 subdivision (c).

20 **V. CLASS ACTION ALLEGATIONS**

21 72. As mentioned above, Plaintiff brings this action on behalf of herself and the Class
22 Members pursuant to section 382 of the Code of Civil Procedure.

23 73. **Numerosity/Ascertainability:** The members of the Class are so numerous that
24 joinder of all members would be unfeasible and not practicable. The membership of the Class is
25 unknown to Plaintiff at this time; however, it is estimated that the Class number greater than one
26 hundred (100) individuals. The identity of such membership is readily ascertainable via inspection
27 of Defendants' employment records.
28

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

5 A. Whether Defendants' pay policies/practices resulted in a failure to pay
6 members of the Class for all hours worked, including all minimum, regular, and overtime
7 wages;

8 B. Whether Defendants' rest period policies and practices afforded legally
9 compliant rest periods or compensation in lieu thereof;

10 C. Whether Defendants' meal period policies and practices afforded legally
11 compliant meal periods or compensation in lieu thereof;

12 D. Whether Defendants timely paid all wages during employment;

13 E. Whether Defendants timely paid all wages earned and unpaid at separation;

14 F. Whether Defendants indemnified their employees for all necessary business
15 expenditures;

16 G. Whether Defendants furnished legally compliant wage statements to
17 members of the Class pursuant to Labor Code section 226; and

18 H. Whether Defendants' violations of the Labor Code and the Applicable
19 Wage Orders amounted to a violation of California's UCL.

20 **75. Predominance of Common Questions:** Common questions of law and fact
21 predominate over questions that affect only individual members of the Class. The common
22 questions of law set forth above are numerous and substantial and stem from Defendants' uniform
23 policies and practices applicable to each individual class member, such as Defendants' uniform
24 policy and practice of failing to pay for all hours worked, Defendants' uniform policies and
25 practices which failed to provide complaint meal and rest periods, and Defendants' failure to
26 provide accurate itemized wage statements. As such, the common questions predominate over
27 individual questions concerning each individual class member's showing as to his or her eligibility
28 for recovery or as to the amount of his or her damages.

1 76. **Typicality:** The claims of Plaintiff are typical of the claims of the Class because
2 Plaintiff was employed by Defendants as a non-exempt employee in California during the
3 statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As
4 alleged herein, Plaintiff, like the members of the Class, was deprived of minimum, regular, and
5 overtime wages as a result of Defendants' unlawful timekeeping policies and practices, was
6 deprived of meal and rest periods and premium wages in lieu thereof, was subject to Defendants'
7 uniform meal and rest period policies and practices, was not provided accurate itemized wage
8 statements, and was not paid all wages in full and on time.

9 77. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
10 to represent fairly and adequately the interests of the members of the Class. Moreover, Plaintiff's
11 attorneys are ready, willing and able to fully and adequately represent the members of the Class
12 and Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour class actions in state
13 and federal court in the past and are committed to vigorously prosecuting this action on behalf of
14 the members of the Class.

15 78. **Superiority:** The California Labor Code is broadly remedial in nature and serves
16 an important public interest in establishing minimum working conditions and standards in
17 California. These laws and labor standards protect the average working employee from
18 exploitation by employers who have the responsibility to follow the laws and who may seek to
19 take advantage of superior economic and bargaining power in setting onerous terms and conditions
20 of employment. The nature of this action and the format of laws available to Plaintiff and members
21 of the Class make the class action format a particularly efficient and appropriate procedure to
22 redress the violations alleged herein. If each employee were required to file an individual lawsuit,
23 Defendants would necessarily gain an unconscionable advantage since they would be able to
24 exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior
25 financial and legal resources.

26 79. Moreover, requiring each member of the Class to pursue an individual remedy
27 would also discourage the assertion of lawful claims by employees who would be disinclined to
28 file an action against their former or current employer for real and justifiable fear of retaliation and

1 permanent damages to their careers at subsequent employment. Further, the prosecution of
2 separate actions by the individual class members, even if possible, would create a substantial risk
3 of inconsistent or varying verdicts or adjudications with respect to the individual class members
4 against Defendants herein, and which would establish potentially incompatible standards of
5 conduct for Defendants or legal determinations with respect to individual class members which
6 would, as a practical matter, be dispositive of the interest of the other class members not parties to
7 adjudications or which would substantially impair or impede the ability of the class members to
8 protect their interests.

9 80. Further, the claims of the individual members of the Class are not sufficiently large
10 to warrant vigorous individual prosecution considering the concomitant costs and expenses
11 attending thereto. As such, the Class identified above are maintainable as Class under section 382
12 of the Code of Civil Procedure.

13 **VI. CAUSES OF ACTION**

14 FIRST CAUSE OF ACTION

15 *Failure to Pay All Minimum Wages*

16 *(Against All Defendants)*

17 81. Plaintiff realleges and incorporates by reference all previous paragraphs.

18 82. Section 4 of the Applicable Wage Orders and Labor Code section 1197 establish
19 the right of employees to be paid minimum wages for all hours worked, in amounts set by state
20 law (Lab. Code, § 1197; Cal. Code of Regs., tit. 8, §§ 11080, 11130, 11140). Labor Code sections
21 1194, subdivision (a), and 1194.2, subdivision (a), provide that an employee who has not been
22 paid the legal minimum wage as required by Labor Code section 1197 may recover the unpaid
23 balance, together with attorneys' fees and costs of suit, as well as liquidated damages in an amount
24 equal to the unpaid wages and interest accrued thereon.

25 83. At all relevant times herein, Defendants failed to conform their pay practices to the
26 requirements of the law. Plaintiff and other Class Members were not compensated for all hours
27 worked including, but not limited to, all hours they were subject to the control of Defendants and/or
28 suffered or permitted to work under the Labor Code and the Applicable Wage Orders.

84. Labor Code section 1198 makes unlawful the employment of an employee under conditions that the IWC Wage Orders prohibit. Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (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.

85. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the Class Members have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the Labor Code and Applicable Wage Orders.

86. Defendants' practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and the Class Members in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code sections 204, 1194, 1194.2, 1197, and 1198, and Code of Civil Procedure section 1021.5.

SECOND CAUSE OF ACTION

Failure to Pay Overtime Wages

(Against All Defendants)

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

88. This cause of action is brought pursuant to Labor Code sections 204, 510, 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours worked and provide a private right of action for the failure to pay all overtime compensation for overtime work performed. At all times relevant herein, Defendants were required to properly pay Plaintiff and other Class Members for all overtime wages earned pursuant to Labor Code section 1194 and Applicable Wage Orders. Defendants caused Plaintiff and other Class Members to work overtime hours but did not compensate them at one and one-half times their regular rate of pay for such hours in accordance with California law.

89. Defendants failed to conform their pay practices to the requirements of California law. This unlawful conduct includes but is not limited to Defendants' uniform and unlawful pay policies/practices of failing to accurately record all the time that non-exempt employees were under the supervision and control of Defendants. The foregoing policies and practices are unlawful and allow Plaintiff and the Class Members to recover in a civil action the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code section 204, 510, 1194, and 1198, Applicable Wage Orders, and Code of Civil Procedure section 1021.5.

THIRD CAUSE OF ACTION

Failure to Provide Rest Periods and Pay Missed Rest Period Premiums

(Against All Defendants)

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

91. Section 12 of the Applicable Wage Orders, and Labor Code section 226.7 establishes 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. (See Cal. Code of Regs., tit. 8, §§ 11080, 11130, 11140).

92. Due to Defendants' unlawful rest period policies and practices described in detail above, Defendants did not authorize and permit Plaintiff and the other Class Members to take all rest periods to which they were legally entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay to Plaintiff and members of the Class at their respective regular rates of pay for each violation, in accordance with California Labor Code section 226.7.

93. The foregoing violations create an entitlement to recovery by Plaintiff and the Class Members in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, and costs of suit pursuant to Applicable Wage Orders, and California Labor Code section 226.7.

1 FOURTH CAUSE OF ACTION

2 *Failure to Provide Meal Periods and Pay Missed Meal Period Premiums*

3 *(Against All Defendants)*

4 94. Plaintiff realleges and incorporates by reference all previous paragraphs.

5 95. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed
6 in their affirmative obligation to provide all of their hourly non-exempt employees, including
7 Plaintiff and the other Class Members, with all required meal periods in accordance with the
8 mandates of the Labor Code and Applicable Wage Orders, for the reasons set forth herein above.

9 96. As a result, Defendants are responsible for paying premium compensation for meal
10 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to the
11 Applicable Wage Orders and Labor Code sections 226.7 and 512, and Civil Code sections 3287,
12 subdivision (b), and 3289. (See Cal. Code of Regs., tit. 8, §§ 11080, 11130, 11140).

13 FIFTH CAUSE OF ACTION

14 *Failure to Pay Wages Timely during Employment*

15 *(Against All Defendants)*

16 97. Plaintiff realleges and incorporates by reference all previous paragraphs.

17 98. Labor Code section 200 provides that “wages” include all amounts for labor
18 performed by employees of every description, whether the amount is fixed or ascertained by the
19 standard of time, task, pieces, commission basis, or other method of calculation. Labor Code
20 section 204 states that all wages earned by any person in any employment are payable twice during
21 the calendar month, and must be paid not more than seven days following the close of the period
22 when the wages were earned. Labor Code section 210, subdivision (a), makes employers who
23 violate Labor Code section 204 subject to a penalty of \$100 for any initial failure to timely pay
24 each employee’s full wages and \$200 for each subsequent violation, plus 25% of the amount
25 unlawfully withheld.

26 99. Labor Code section 216 establishes that it is a misdemeanor for any person, with
27 regards to wages due, to “falsely deny the amount or validity thereof, or that the same is due, with
28 intent to secure himself, his employer or other person, any discount upon such indebtedness, or

1 with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such
2 indebtedness is due.”

3 100. Defendants as a matter of established company policy and procedure in the State of
4 California, scheduled, required, suffered, and/or permitted Plaintiff and the Class Members, to
5 work without compensation, work without legally compliant off-duty meal periods and rest
6 periods, and failed to pay Plaintiff and the Class Members, for their hours worked, meal period
7 premiums, and rest period premiums within seven days of the close of payroll, as required by law.

8 101. Defendants, as a matter of established company policy and procedure in the State
9 of California, falsely deny they owe Plaintiff and the other members of the Class these wages, with
10 the intent of securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress,
11 hinder, delay, and/or defraud Plaintiff and the Class Members.

12 102. Defendants’ pattern, practice and uniform administration of its corporate policy of
13 illegally denying employees compensation, as described herein, is unlawful and entitles Plaintiff
14 and the Class Members are entitled to recover, pursuant to Labor Code section 218, the unpaid
15 balance of the compensation owed to them in a civil action and any applicable penalties owed to
16 them pursuant to Labor Code section 210.

17 SIXTH CAUSE OF ACTION

18 *Failure to Timely Pay All Wages Earned and Unpaid at Separation*

19 *(Against All Defendants)*

20 103. Plaintiff realleges and incorporates by reference all previous paragraphs.

21 104. The actionable period for this cause of action is three years prior to the filing of this
22 complaint through the present, and ongoing until the violations are corrected or the class is certified
23 (*Pineda v. Bank of America, N.A.* (2010) 50 Cal.4th 1389, 1395; *Murphy v. Kenneth Cole*
24 *Productions, Inc.* (2007) 40 Cal.4th 1094, 1109; Code Civ. Proc., § 338, subd. (a)). Labor Code
25 sections 201 and 202 of the California Labor Code require Defendants to pay all compensation
26 due and owing to the formerly-employed Class Members during the actionable period for this
27 cause of action at or around the time that their employment is or was terminated, or ended.
28

105. Section 203 of the Labor Code provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty (30) work days.

106. Here, Defendants willfully failed to pay Plaintiff and the formerly-employed Class Members for all hours worked, including minimum and overtime wages and their meal and rest period premiums, prior to or upon termination or separation from employment with Defendants as required by Labor Code sections 201 and 202.

107. As a result, Defendants are liable to Plaintiff and the formerly-employed Class Members for waiting time penalties amounting to thirty (30) days wages for the formerly-employed Class Members pursuant to Labor Code section 203 (See, e.g., DLSE Manual, § 4.3.4 [failure to pay any sort of wages due upon termination entitles an employee to recover waiting time penalties]).

SEVENTH CAUSE OF ACTION

Failure to Indemnify All Necessary Business Expenditures

(Against All Defendants)

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

109. California Labor Code Section 2802 states that employers must “indemnify” an employee for “all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” Likewise, Labor Code section 2804 states that “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

110. Here, Plaintiff and the other Class Members paid out of pocket for tools to aide them in working, such as their personal cell phones. Defendants did not fully reimburse these necessary business expenses.

1 111. Thus, Plaintiff and the other Class Members are entitled to recover the cost of such
2 necessary business expenses, plus interest from the date each incurred such business expenses,
3 plus fees and costs (Lab. Code, § 2802, subds. (b), (c)).

4 EIGHTH CAUSE OF ACTION

5 *Failure to Furnish Accurate Itemized Wage Statements*

6 *(Against All Defendants)*

7 112. Plaintiff realleges and incorporates by reference all previous paragraphs.

8 113. Labor Code section 226, subdivision (a), obligates employers, semi-monthly or at
9 the time of each payment to furnish an itemized wage statement in writing showing:

- 10 (1) The gross wages earned;
- 11 (2) The total hours worked by the employee;
- 12 (3) The number of piece-rate units earned and any applicable piece rate
13 if the employee is paid on a piece rate basis;
- 14 (4) All deductions, provided that all deductions made on written orders
15 of the employee may be aggregated and shown as one item;
- 16 (5) The net wages earned;
- 17 (6) The inclusive dates of the period for which the employee is paid;
- 18 (7) The name of the employee and only the last four digits of his or her
19 social security number or an employee identification number other
20 than a social security number;
- 21 (8) The name and address of the legal entity that is the employer; and
- 22 (9) All applicable hourly rates in effect during the pay period and the
23 corresponding number of hours worked at each hourly rate by the
24 employee.

25 114. As set forth above, Defendants issued and continues to issue wage statements to its
26 non-exempt employees including Plaintiff and the other Class Members that are inadequate under
27 Labor Code section 226, subdivision (a). By failing to pay Plaintiff and the other Class Members
28 for all hours worked, including, but not limited to, all minimum and overtime wages, and missed

1 meal and rest period premiums, Defendants failed to include required information on Plaintiff and
2 the other Class Members' wage statements, including, but not limited to, the gross wages earned,
3 the net wages earned in violation of Labor Code section 226, subdivision (a).

4 115. Defendants' failure to comply with Labor Code section 226, subdivision (a), of the
5 Labor Code was knowing and intentional. (Lab. Code, § 226, subd. (e)).

6 116. As a result of Defendants' issuance of inaccurate itemized wage statements to
7 Plaintiff and the other Class Members in violation of Labor Code section 226, subdivision (a),
8 Plaintiff and the Class Members are each entitled to recover an initial penalty of \$50, and
9 subsequent penalties of \$100, up to an amount not exceeding an aggregate penalty of \$4,000 per
10 Plaintiff and per each member of the Class from Defendants pursuant to Labor Code section 226,
11 subdivision (e), along with costs and reasonable attorneys' fees.

12 NINTH CAUSE OF ACTION

13 *Violations of California's Unfair Competition Law*

14 *(Against All Defendants)*

15 117. Plaintiff realleges and incorporates by reference all previous paragraphs.

16 118. Defendants have engaged and continue to engage in unfair and/or unlawful business
17 practices in California in violation of California Business and Professions Code section 17200 et
18 seq., by failing to pay for all hours worked, including all minimum and overtime wages, by failing
19 to provide all legally required meal and rest periods or make premium payments in lieu thereof,
20 by failing to pay them in full and on time during employment, by failing to pay them all wages
21 due at the time of separation, by failing to compensate them for all necessary business
22 expenditures, and by failing to provide accurate wage statements to Plaintiff and the other Class
23 Members .

24 119. Defendants' utilization of these unfair and unlawful business practices deprived and
25 continue to deprive Plaintiff and the Class Members of compensation to which they are legally
26 entitled. These practices constitutes unfair and unlawful competition, and provides an unfair
27 advantage over Defendants' competitors who have been and/or are currently employing workers
28 and attempting to do so in honest compliance with applicable wage and hour laws.

120. Because Plaintiff is a victim of Defendants' unfair and unlawful conduct alleged herein, Plaintiff for herself and on behalf of the Class Members, seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code sections 17203 and 17208.

121. The acts complained of herein occurred within the last four years immediately preceding the filing of the Complaint in this action.

122. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and those of the Class Members, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt employees and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which Plaintiff is entitled to recover under Code of Civil Procedure section 1021.5.

VII. PRAYER FOR RELIEF

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 Class;
2. For an order appointing Plaintiff as representative of the Class;
3. For an order appointing Plaintiff's counsel as counsel for the Class;
4. For the First Cause of Action, compensatory, consequential, general and special damages according to proof pursuant to Labor Code sections 1194, 1194.2, 1197;
5. For the Second Cause of Action, compensatory, consequential, general and special damages according to proof pursuant to Labor Code sections 204, 510, 1194, and 1198;
6. For the Third Cause of Action, compensatory, consequential, general and special damages according to proof pursuant to Labor Code section 226.7;
7. For the Fourth Cause of Action, compensatory, consequential, general and special damages according to proof pursuant to Labor Code sections 226.7 and 512;

- 1 **8.** For the Fifth Cause of Action, the unpaid balance of the compensation owed to
- 2 Plaintiff and the other Class Members and any applicable penalties owed to them
- 3 pursuant to Labor Code section 210;
- 4 **9.** For the Sixth Cause of Action, statutory waiting time penalties pursuant to Labor
- 5 Code sections 201 through 203, for the Class Members who quit or were fired in
- 6 an amount equal to their daily wage multiplied by thirty (30) days, as may be
- 7 proven;
- 8 **10.** For the Seventh Cause of Action, all unreimbursed business expenses, and interest
- 9 thereon, that they are owed, pursuant to Labor Code section 2802, and attorney fees,
- 10 pursuant to Labor Code section 2802, subdivision (c);
- 11 **11.** For the Eighth Cause of Action, statutory waiting time penalties pursuant to Labor
- 12 Code sections 201–203, and 226, subdivisions (a) and (e);
- 13 **12.** For the Ninth Cause of Action, restitution to Plaintiff and Class Members of all
- 14 money and/or property unlawfully acquired by Defendants by means of any acts or
- 15 practices declared by this Court to be in violation of Business and Professions Code
- 16 sections 17200 et seq.;
- 17 **13.** Prejudgment interest on all due and unpaid wages pursuant to Labor Code section
- 18 218.6 and Civil Code sections 3287 and 3289;
- 19 **14.** On all causes of action, for attorneys’ fees and costs as provided by Labor Code
- 20 sections 218.5, 226, and Code of Civil Procedure section 1021.5;
- 21 **15.** For an order enjoining Defendants, and each of them, and their agents, servants,
- 22 and employees, and all persons acting under, in concert with, or for them, from
- 23 acting in derogation of any rights or duties adumbrated in this complaint; and
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16. For such other and further relief, the Court may deem just and proper.

Dated: November 20, 2020

MELMED LAW GROUP P.C.



Jonathan Melmed
Attorney for Plaintiff and the Putative Class