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enbirelle
By _____, Deputy
Case Number:
34-2022-00328520

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

Stephanie Darlene Kelly, individual and on
behalf of all other similarly situated,

PLAINTIFF,

v.

Wal-Mart Associates, Inc. a California
Delaware corporation, DOES 1 Through 20,
Inclusive,
DEFENDANTS.

CASE NO.
CLASS ACTION COMPLAINT:

1. Failure To Pay Minimum Wages (CLC §1194, 1197 And Wage Order)
2. Penalties For Failure to Provide Accurate Itemized Statements (CLC §226);
3. For Failure to Pay Wages Upon Termination and Waiting Time Penalties [CLC § 201, 203];
4. Waiting Time Penalties (CIC §201-203, 558);
5. Unfair Business Practice (Business & Professions Code §17200 Et Seq.)
6. Labor Code Violations for which the Recovery of Civil Penalties is Authorized by the Private Attorneys General Act of 2004, Lab Code §2698 Et Seq. (PAGA)

BY FAX

Demand for Jury Trial

All allegations in this Complaint are based upon information and belief except for those allegations which pertain to the PLAINTIFF named herein and her counsel. Each allegation has evidentiary support, or is likely to have evidentiary support, after a reasonable opportunity for further investigation and discovery. PLAINTIFF alleges the following:

NOTICE TO DEFENDANTS OF DUTIES TO RETAIN EVIDENCE

1. TO ALL DEFENDANTS: Note and adhere to your duties to retain, and not delete or destroy, all documents, emails, databases, electronic records, electronically stored information, and

1 all other evidence that may be pertinent to this lawsuit, and to cease any destruction or deletion of
2 such evidence that might otherwise take place in the ordinary course of your business or affairs.

3 **I.**

4 **JURISDICTION AND VENUE**

5 2. The court has jurisdiction over this Complaint under Cal. Civ. Proc. Code §410.10. The
6 PLAINTIFF brings this Complaint on their own behalf.

7 3. Venue is proper in the Court pursuant to Cal. Civ. Proc. Code §§395 and 395.5 because
8 the claims made, and the Cal. Lab. Code Violations as against the persons identified herein, occurred
9 in the County of Sacramento. Further, each of the DEFENDANTS owned and operated their
10 businesses in the County of Sacramento.

11 4. Jurisdiction is proper in this Court because alleged damages exceed \$25,000.00 and
12 because PLAINTIFF seeks equitable relief.

13 **II.**

14 **THE PARTIES**

15 **THE PLAINTIFF**

16 5. At all times mentioned herein, PLAINTIFF Stephanie Darlene Kelly, (“PLAINTIFF”)
17 is adult resident of Sacramento County, State of California.

18 6. PLAINTIFF reserves the right to seek leave to amend this complaint to add new
19 PLAINTIFFS, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v.*
20 *American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

21 **THE DEFENDANTS**

22 7. PLAINTIFF is informed and believes, and on that basis alleges, that at all times
23 mentioned herein, DEFENDANT Wal-Mart Associates, Inc., (“Employer”) was and is a California
24 Delaware corporation, with its principal place of business located at 702 SW 8th Street, Bentonville,
25 Arkansas, 72716, and the properties of primary employment located in the County of Sacramento,
26 State of California. The Defendant, a Delaware corporation, also conducts business in numerous
27 counties throughout the state of California including Sacramento.

28 8. Wal-Mart Associates, Inc. is the former employer of PLAINTIFF and the current

1 and/or former employer of the putative Class because Defendant Wal-Mart Associates, Inc.,
2 permitted PLAINTIFF and the Class to work, and/or controlled their wages, hours, or working
3 conditions.

4 9. PLAINTIFF is ignorant of the true names and capacities of the DEFENDANTS sued
5 herein as DOES 1 through 20, inclusive, and therefore sue said DEFENDANTS by such fictitious
6 names and capacities. PLAINTIFF will amend this complaint to show said DEFENDANTS' true
7 names and capacities when they have been ascertained. PLAINTIFF is informed and believes and, on
8 that basis, alleges, that each of these fictitiously named DEFENDANTS is responsible in some
9 manner for the unlawful actions, policies, and practices alleged in this complaint.

10 10. Wal-Mart Associates, Inc. and DOES 1 through 20 are collectively referred to as
11 "DEFENDANTS" throughout this complaint.

12 **RELATIONSHIPS BETWEEN DEFENDANTS**

13 11. PLAINTIFF is informed and believes and on that basis alleges, that at all relevant
14 times, DEFENDANTS, and each of them, including each of said fictitiously named DOE
15 DEFENDANTS, was a business entity or individual person who owned, controlled, or managed the
16 business for which PLAINTIFF worked, and who directly exercised control over PLAINTIFF'S
17 hours, working conditions, and who had decision-making responsibility for hiring and firing and
18 establishment and implementation of the illegal practices alleged herein which have damaged
19 PLAINTIFF, and is therefore individually liable to PLAINTIFF.

20 12. PLAINTIFF is informed and believes and on that basis alleges, that at all relevant
21 times, DEFENDANTS, and each of them, were in some fashion, by contract or otherwise, the
22 successor, assignor, indemnitor, guarantor, or third-party beneficiary of one or more of the remaining
23 DEFENDANTS, and at all relevant times to PLAINTIFF'S claim alleged herein, was acting within
24 that capacity. PLAINTIFF further alleges DEFENDANTS and each of them, assumed the liabilities
25 of the other DEFENDANTS, by virtue of the fact that each to some degree, wrongfully received
26 and/or wrongfully benefited from the flow of assets from the other DEFENDANTS to the detriment
27 of PLAINTIFF. PLAINTIFF further alleges that by wrongfully receiving and/or benefiting from
28 DEFENDANTS' assets, and in the consummation of such transactions, a de facto merger of the

1 DEFENDANTS, and each of them, resulted, such that DEFENDANTS, and each of them, maybe
2 treated as one employer of PLAINTIFF.

3 13. PLAINTIFF is informed and believes and on that basis alleges, that at all relevant times
4 mentioned herein, DEFENDANTS, and each of them, were the partners, agents, servants, employees,
5 joint venturers or co-conspirators of each other defendant, and that each defendant was acting within
6 the course, scope and authority of such partnership, agency, employment, joint venture or conspiracy,
7 and that each defendant, directly or indirectly, authorized, ratified and approved the acts of the
8 remaining DEFENDANTS, and each of them.

9 III

10 INTRODUCTION & PRELIMINARY STATEMENT

11 14. PLAINTIFF brings the Causes of Action individually and as a class action on behalf of
12 themself and certain current and former employees of Defendants (hereinafter collectively referred to
13 as the "Class" or "Class Members," and defined more fully below). The Class consists of PLAINTIFF
14 and all other persons who have been employed by any Defendant in California as an exempt
15 employee during the statute of limitations period applicable to the claims pleaded here.

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

21 16. Despite these requirements, throughout the statutory period, Defendants maintained a
22 systematic, company-wide policy and practice of not complying with California Labor Code.

23 17. On information and belief, Defendants, and each of them were on actual and
24 constructive notice of the improprieties alleged herein and intentionally refused to rectify their
25 unlawful policies. Defendants' violations, as alleged below, during all relevant times herein were
26 willful and deliberate.

27 18. At all relevant times, Defendants were and are legally responsible for all of the
28 unlawful conduct, policies, practices, acts and omissions as described in each and all of the

1 foregoing paragraphs as the employers of PLAINTIFF and the Class. Further, Defendants are
2 responsible for each of the unlawful acts or omissions complained of herein under the doctrine of
3 "respondeat superior."

4 **IV.**

5 **FACTUAL ALLEGATIONS COMMON TO MORE THAN ONE CAUSE OF ACTION**

6 19. DEFENDANT operates retail store chains in Sacramento County.

7 20. PLAINTIFF was hired as a store project coach by Defendants, to work in Sacramento
8 County starting January 31, 2022, and her last day of employment was May 4, 2022. The PLAINTIFF
9 was hired to work in various stores across the Sacramento County.

10 21. The PLAINTIFF was moved from Indiana to work in Sacramento County division of
11 Walmart. She was offered an annual salary of \$50,000, in violation of California labor board as to
12 minimum wage.

13 22. On information and belief, Defendants' failure to timely pay PLAINTIFF and the
14 class members final wages when her employment terminated was not a single, isolated incident,
15 but was instead consistent with Defendants' policy and practice that applied to PLAINTIFF
16 and the Class.

17 **V.**

18 **CLASS ACTION ALLEGATIONS**

19 23. PLAINTIFF brings certain claims individually, as well as on behalf of each and all
20 other persons similarly situated, and thus, seeks class certification under California Code of Civil
21 Procedure § 382.

22 24. All claims alleged herein arise under California law for which PLAINTIFF seeks relief
23 authorized by California law.

24 25. The proposed Class consists of and is defined as:

25 All persons who worked for any Defendant in California as an hourly-paid or non-exempt
26 employee at any time during the period beginning four years before the filing of the initial
27
28

complaint in this action and ending when notice to the Class is sent.¹

26. At all material times, PLAINTIFF was a member of the Class.

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

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

- a. **Numerosity:** The members of the Class (and each subclass, if any) are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire Class is unknown to PLAINTIFF at this time; however, the Class is estimated to be greater than forty (40) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' records.
- b. **Typicality:** PLAINTIFF is qualified to, and will, fairly and adequately protect the interests of each Class Member with whom there is a shared, well- defined community of interest, and PLAINTIFF claims (or defenses, if any) are typical of all Class Members' claims as demonstrated herein.
- c. **Adequacy:** PLAINTIFF is qualified to, and will, fairly and adequately protect the interests of each Class Member with whom there is a shared, well- defined community of interest and typicality of claims, as demonstrated herein. PLAINTIFF has no conflicts with or interests antagonistic to any Class Member. PLAINTIFF'S attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. PLAINTIFF has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.
- d. **Superiority:** A Class Action is superior to other available methods for the fair and

¹In response to the COVID-19 pandemic, the Judicial Council of California adopted Emergency Rule 9(a) (California Rules of Court), whereby "statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 to October 1, 2020.

efficient adjudication of the controversy, including consideration of:

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

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

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

30. This Court should permit this action to be maintained as a class action pursuant to California Code of Civil Procedure§ 382 because:

- a. The questions of law and fact common to the Class predominate over any question affecting only individual members;
- b. A class action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the Class;
- c. The members of the Class are so numerous that it is impractical to bring all

members of the class before the Court;

- d. PLAINTIFF, and the other members of the Class, will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the statutory violations, and in obtaining adequate compensation for the damages and injuries for which Defendants are responsible in an amount sufficient to adequately compensate the members of the Class for the injuries sustained;
- f. Without class certification, the prosecution of separate actions by individual members of the class would create a risk of:
 - i. Inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants; and/or,
 - ii. Adjudications with respect to the individual members which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests, including but not limited to the potential for exhausting the funds available from those parties who are, or may be, responsible Defendants; and,
- g. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the class as a whole.

31. PLAINTIFF contemplates the eventual issuance of notice to the proposed members of the Class that would set forth the subject and nature of the instant action. The Defendants' own business records may be utilized for assistance in the preparation and issuance of the contemplated notices. To the extent that any further notices may be required, PLAINTIFF contemplates the use of additional techniques and forms commonly used in class actions, such as published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by

1 other methods suitable to the Class and deemed necessary and/or appropriate by the Court.

2 **FIRST CAUSE OF ACTION**

3 **FAILURE TO PAY MINIMUM WAGE**

4 **[LAB CODE §§ 204, 1194, 1194.2, 1197, 8 CAL CODE REGS §§ 11020 and 11040]**

5 **(PLAINTIFF Individually and as a Class Action Against All DEFENDANTS)**

6 32. PLAINTIFF hereby incorporates by reference all preceding paragraphs as if the same
7 were fully set forth herein.

8 33. Pursuant to the applicable IWC Wage Order No. 7-2001, DEFENDANTS were the
9 joint employers of PLAINTIFF and class members.

10 34. Compensable work time is defined in Industrial Wage Order No. 7-2001 as “the time
11 during which an employee is subject to the control of an employer and includes all the time the
12 employee is suffered or permitted to work, whether or not required to do so.” 8 CAL. CODE REGS. §§
13 11020(2)(K) and 11040(2)(K) (defining “Hours Worked”).

14 35. CAL. LAB. CODE § 1194 establishes an employee’s right to recover unpaid wage
15 compensation, interest thereon, together with the costs of suit, and attorneys’ fees.

16 36. CAL. LAB. CODE § 1194.2 establishes an employees’ right to recover liquidated
17 damages in an amount equal to the wages unlawfully unpaid and interest thereon in an action for
18 payment of a wage less than the minimum wage fixed by the Industrial Welfare Commission or by
19 statute.

20 37. Labor Code section 515 states:

21 “The Industrial Welfare Commission may establish exemptions from the requirement that an
22 overtime rate of compensation be paid pursuant to Sections 510 and 511 for executive,
23 administrative, and professional employees, if the employee is primarily engaged in the duties
24 that meet the test of the exemption, customarily and regularly exercises discretion and
25 independent judgment in performing those duties, and earns a monthly salary equivalent to no
26 less than two times the state minimum wage for full-time employment. The commission shall
27 conduct a review of the duties that meet the test of the exemption. The commission may, based
28 upon this review, convene a public hearing to adopt or modify regulations at that hearing

1 pertaining to duties that meet the test of the exemption without convening wage boards. Any
2 hearing conducted pursuant to this subdivision shall be concluded not later than July 1, 2000.”

3 38. As of January 1, 2022, the minimum wage was increased to \$15.00 per hour and
4 minimum exempt employee salary is \$30/hour or \$62,400 per year for employers with more than 25
5 employees. Nevertheless, the Company paid Ms. Kelly and other employees less than the minimum
6 wage. For example, Ms. Kelly was paid \$50,000 per year starting January 1st , 2022.

7 39. At all times relevant hereto, PLAINTIFF and class members were paid by
8 DEFENDANTS on salary basis. Additionally, PLAINTIFF and class members did not reside at the
9 place of employment.

10 40. During PLAINTIFF and class member’s employment, DEFENDANTS failed to
11 properly pay PLAINTIFF and class members double the legal minimum wage.

12 41. DEFENDANTS acted intentionally, oppressively, and maliciously toward PLAINTIFF
13 and class members, with a conscious disregard of them, or the consequences to them, with the intent
14 of depriving them of property and legal rights and otherwise causing them injury. By virtue of
15 DEFENDANTS’ unlawful failure to pay wages, PLAINTIFF and class members have suffered, and
16 will continue to suffer damages in an amount which is presently unknown to them, but which exceeds
17 the jurisdictional limits of the Court and which will be ascertained according to proof at trial.

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

24 43. PLAINTIFF and class members, request recovery of minimum wages according to
25 proof, interest, as well as the assessment of any statutory penalties against DEFENDANTS, in a sum
26 as provided by the CAL. LAB. CODE (§§ 218.5, 218.6, and 1194(a).) and/or other statutes. PLAINTIFF
27 and class members also request recovery of liquidated damages as provided by CAL. LAB. CODE §
28 1194.2. PLAINTIFF and class members additionally request reasonable attorneys’ fees and costs.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS AND MAINTAIN

ACCURATE PAYROLL RECORDS

(PLAINTIFF Individually and as a Class Action Against All DEFENDANTS)

44. PLAINTIFF hereby incorporates by reference all preceding paragraphs as if the same were fully set forth herein.

45. Labor Code §226, 8 CCR §11040, Section 7, and IWC Wage Order No. 7-2001, obligate DEFENDANTS, and each of them, as employers, to keep an accurate record of the hours worked by PLAINTIFF and class members and to prepare and submit with each payment of wages an itemized statement accurately showing the total hours worked.

46. Specifically, Labor Code §226(a) provides, in pertinent part:

“(a) Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

“(b) An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or copy the records pertaining to that current or former employee, upon reasonable request to the employer. The employer may take reasonable steps to assure the identity of a current or former employee. If the employer provides

1 copies of the records, the actual cost of reproduction may be charged to the current or
2 former employee.

3 “(c) An employer who receives a written or oral request to inspect or copys pursuant to
4 subdivision (b) pertaining to a current or former employee shall comply with the request
5 as soon as practicable, but no later than 21 calendar days from the date of the request. A
6 violation of this subdivision is an infraction. Impossibility of performance, not caused by
7 or a result of a violation of law shall be an affirmative defense for an employer in any
8 action alleging a violation of this subdivision. An employer may designate the person to
9 whom a request under this subdivision will be made.

10 * * *

11 “(e) An employee suffering injury as a result of a knowing and intentional failure by an
12 employer to comply with subdivision (a) is entitled to recover the greater of all actual
13 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
14 one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
15 not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to
16 an award of costs and reasonable attorney's fees.

17 “(f) A failure by an employer to permit a current or former employee to inspect or copy
18 records within the time set forth in subdivision (c) entitles the current or former employee
19 or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from
20 the employer.

21 “(g) An employee may also bring an action for injunctive relief to ensure compliance
22 with this section, and is entitled to an award of costs and reasonable attorney's fees.”

23 47. If a violation of CAL. LAB. CODE § 226 occurs, CAL. LAB. CODE § 226(e) provides that
24 an employee: (a) is entitled to recover the greater of all actual damages or minimum statutory
25 damages of \$50 for the initial pay period in which a violation occurs and \$100 for each subsequent
26 violation, up to a maximum of \$4,000.

27 48. Additionally, CAL. LAB. CODE § 1174(d) provides that “[e]very person employing labor
28 in this state shall ... [k]eep a record showing the names and addresses of all employees employed and
the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments
at which employees are employed, payroll records showing the hours worked daily by and the wages
paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees
employed at the respective plants or establishments...”

49. CAL. LAB. CODE § 1174.5 provides that employers are subject to a \$500 civil penalty if
they fail to maintain accurate and complete records as required by section 1174(d).

50. DEFENDANTS intentionally completely failed to furnish to PLAINTIFF and class
members, upon the payment of wages, itemized statements accurately showing any of the information

1 required by CAL. LAB. CODE § 226.

2 51. PLAINTIFF and class members were damaged by these failures because, among other
3 things, the failures led PLAINTIFF and other class members to believe that they were not entitled to
4 be paid for all hours worked even though they were so entitled, and because these failures hindered
5 PLAINTIFF and class members from determining the amounts of wages owed to them.

6 52. Additionally, PLAINTIFF is informed and believes, and based upon that information
7 and belief allege, that DEFENDANTS willfully failed to maintain accurate payroll records showing
8 the daily hours PLAINTIFF and class members worked and the wages paid thereto as a result of
9 failing to record hours that PLAINTIFF and class members worked.

10 53. PLAINTIFF and the Class are entitled to recover from Defendants the greater of their
11 actual damages caused by Defendants' failure to comply with California Labor Code § 226(a).

12 54. PLAINTIFF and the Class are also entitled to injunctive relief, as well as an award of
13 attorney's fees and costs to ensure compliance with this section, pursuant to California Labor Code §
14 226(h).

15 55. PLAINTIFF and the class are also entitled to recovery of damages, penalties, and
16 interest pursuant to CAL. LAB. CODE §§ 226, 1174, and 1198. PLAINTIFF additionally requests the
17 recovery of reasonable attorneys' fees and costs.

18 **THIRD CAUSE OF ACTION**

19 **FOR FAILURE TO PAY WAGES UPON TERMINATION AND WAITING TIME**

20 **PENALTIES**

21 **[CAL. LAB. CODE § 201, 203]**

22 **(PLAINTIFF Individually and as a Class Action Against All DEFENDANTS)**

23 56. PLAINTIFF hereby incorporates by reference all preceding paragraphs as if the same
24 were fully set forth herein.

25 57. Pursuant to the applicable IWC Wage Order No. 7-2001, DEFENDANT was the
26 employers of PLAINTIFF.

27 58. CAL. LAB. CODE § 201(a) provides that a discharged employee's unpaid wages are due
28 and payable immediately. Under CAL. LAB. CODE § 202(a), when an employee not having a written

contract for a definite period is terminated, his or her wages become immediately due and payable.

59. CAL. LAB. CODE § 203 (a) provides that “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections [201 and 202], any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.”

60. PLAINTIFF and class members did not have a written contract for definite terms of employment. PLAINTIFF and class members were discharged from their employment with DEFENDANTS within the applicable statute of limitations. DEFENDANTS willfully failed to pay PLAINTIFF and the class members the wages due to them without abatement or reduction.

61. Under CAL. LAB. CODE § 203, PLAINTIFF and class members are entitled to one day’s wages for each day they were not timely paid all wages due, up to a maximum of 30 days’ wages. Because DEFENDANTS failed to pay overtime wages owed, minimum wages owed, and never paid for meal and rest period wages owed, PLAINTIFF and class members are entitled to 30 days’ wages, and applicable penalties. PLAINTIFF and class members additionally request the recovery of reasonable attorneys’ fees and costs pursuant to California Labor Code §§ 218.5, 218.6 and 1194.

FOURTH CAUSE OF ACTION

WAITING TIME PENALTIES PURSUANT TO

[LABOR CODE §§201-203, 558]

(PLAINTIFF Individually and as a Class Action Against All DEFENDANTS)

62. PLAINTIFF re-alleges and incorporates by reference each and every paragraph of this complaint as though fully set forth herein.

63. Pursuant to Labor Code §§201 – 203 and, PLAINTIFF is entitled to receive at the termination of her employment, all earned and unpaid wages.

64. DEFENDANTS, and each of them, willfully failed to pay all such wages owing to PLAINTIFF.

65. CAL. LAB. CODE § 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision

1 regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject
2 to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid
3 employee for each pay period for which the employee was underpaid in addition to an amount
4 sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100)
5 for each underpaid employee for each pay period for which the employee was underpaid in addition
6 to an amount sufficient to recover underpaid wages.” CAL. LAB. CODE § 558(a) also provides that
7 “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty
8 provided by law.”

9 66. At all relevant times, DEFENDANTS violated the rights of PLAINTIFF by violating
10 various sections of the CAL. LAB. CODE. As such, PLAINTIFFS seek the remedies set forth in CAL.
11 LAB. CODE § 558.

12 67. Pursuant to Labor Code §§201 – 203, PLAINTIFF is entitled to a waiting time penalty
13 equal to thirty (30) days times the daily rate (hourly rate times eight (8) hours).

14 **FIFTH CAUSE OF ACTION**

15 **UNFAIR BUSINESS PRACTICES IN VIOLATION OF BUSINESS & PROFESSIONS CODE**

16 **§17200 ET SEQ.**

17 **(PLAINTIFF Individually and as a Class Action Against All DEFENDANTS)**

18 68. PLAINTIFF hereby incorporate by reference all preceding paragraphs as if the same
19 were fully set forth herein.

20 69. Pursuant to California Business & Professions Code §17200 *et seq.*, DEFENDANTS,
21 and each of them, were obligated to refrain from engaging in unfair business practices, including the
22 unfair business practices of failing to comply with applicable wage and hour laws and regulations of
23 the State of California.

24 70. It is the policy of this State to enforce minimum labor standards, to ensure that
25 employees are not required or permitted to work under substandard and unlawful conditions, and to
26 protect those employers who comply with the law from losing competitive advantage to other
27 employers who fail to comply with labor standards and requirements.

28 71. DEFENDANTS, and each of them, have engaged in the unfair business practices of

consistently and knowingly committing the violations against PLAINTIFF and class members as alleged in this Complaint, each of which is specifically incorporated into this Cause of Action by this reference.

72. PLAINTIFF and class members are “persons” within the meaning of the Business & Professions Code §17204, and thus possess standing to bring this suit for injunctive relief, restitution, and receivership. As alleged in this Complaint, PLAINTIFF and class members have suffered injury in fact from the unfair business practices of DEFENDANTS, and each of them, as required by Business & Professions Code §17204, and are entitled to obtain restitution pursuant to Business & Professions Code §17203, of all earned, and unpaid wages and monies improperly withheld, deducted, collected, or received from PLAINTIFF and class members, as alleged herein plus interest.

73. Pursuant to Business & Professions Code §17203, PLAINTIFF further request that a receiver be appointed to control and monitor all of the business affairs of DEFENDANTS, and each of them, to ensure compliance with applicable wage and hour laws of the State of California, and to ensure that full restitution is made to PLAINTIFF.

74. Pursuant to Business & Professions Code §17203, PLAINTIFF further requests that the Court order an accounting of all amounts unlawfully deducted, withheld, taken, or unpaid to PLAINTIFF by DEFENDANTS, and each of them, to ensure that PLAINTIFF and class members are permitted to fully and fairly determine the extent of restitution from DEFENDANTS, and each of them, to which they are entitled.

75. Pursuant to Business & Professions Code §17203, injunctive relief is necessary to prevent DEFENDANTS from continuing to engage in unfair business practices as alleged herein. PLAINTIFF is informed and believe and on that basis allege, that DEFENDANTS, and persons acting in concert with them, have committed and will continue to commit the above unlawful acts unless restrained or enjoined by this Court. Unless the relief prayed for below is granted, PLAINTIFF and class members have no plain, speedy, or adequate remedy at law, in that pecuniary compensation would not afford adequate and complete relief. The above-described acts will cause great and irreparable damage to PLAINTIFF and class members to other interested persons, and to the public unless DEFENDANTS are restrained from committing further illegal acts.

76. The success of PLAINTIFF and class members in this action will result in the enforcement of important rights affecting the public and will confer a significant benefit upon the general public. Private enforcement of the rights enumerated in this complaint is necessary, as public agencies have only sought limited enforcement of those rights if any. PLAINTIFF and class members have incurred and continues to incur a financial burden in pursuing this action on behalf of the general public. PLAINTIFF and class members further seek to enjoin the above-referenced unlawful actions under the Labor Code. Therefore, PLAINTIFF and class members seek an award of attorney's fees and costs of suit on this cause of action pursuant to Code of Civil Procedure §1021.5 and applicable Labor Code sections.

SIXTH CAUSE OF ACTION

RECOVERY OF CIVIL PENALTIES FUNDER THE PRIVATE ATTORNEYS GENERAL
ACT OF 2004 FOR VIOLATION OF §§226, 226.3, 558, 1174, 1198, 204, 1194, 1194.2, 1197, 201,
AND 558

(PLAINTIFF Individually and as a Class Action Against All DEFENDANTS)

77. Plaintiff, on behalf of the State of California, realleges and incorporates by reference all previous paragraphs.

78. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2698, *et seq.* because of Defendants' violations of Labor Code §§ 226, 226.3, 558, 1174, 1198, 204, 1194, 1194.2, 1197, 201, and 558 as well as IWC Wage Order 7-2001.

79. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula unless a civil penalty is already proscribed under the Labor Code:

- \$100 for the initial violation per employee per pay period; and
- \$200 for each subsequent violation per employee per pay period.

80. These penalties will be allocated 75% to the Labor Workforce Development Agency and 25% to the affected employees. These penalties may be stacked separately for each of Defendants violations of the California Labor Code. *See e.g. Kaanaana v. Barrett Business Services, Inc.*, 29 Cal.App.5th 778, 808 (2018) (acknowledging that the employees could get separate PAGA penalties

1 for interrupted meal periods because interrupted meal periods violated Labor Code sections 1194 and
2 512 and remanding to the trial court to determine the amount of PAGA penalties to award); *Lopez v.*
3 *Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017) (“hold[ing] a plaintiff seeking civil penalties
4 under PAGA for a violation of Labor Code section 226(a) does not have to satisfy the ‘injury’ and
5 ‘knowing and intentional’ requirements of section 226(e)(1) and acknowledging that a Plaintiff could
6 recover separately under PAGA for violations of Labor Code §§ 226(a) and 226(e)); *Magadia vs.*
7 *Wal-Mart*, No. 17-CV-00062-LHK, 2019 U.S. Dist. LEXIS 91792 (N.D. Cal. May 31, 2019)
8 (awarding three sets of PAGA penalties including several during the same pay period); *Hernandez v.*
9 *Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx) 2012 U.S. Dist. LEXIS 86975, at *59, fn. 77
10 (C.D. Cal. June 22, 2012) (holding that although the plaintiff did not seek stacked PAGA penalties,
11 that “PAGA penalties can be ‘stacked,’ i.e., multiple PAGA penalties can be assessed for the same
12 pay period for different Labor Code violations.”); *accord Schiller v. David's Bridal, Inc.*, No. 1:10-
13 cv-00616 AWI SKO) 2010 U.S. Dist. LEXIS 81128, at *17 (E.D. Cal. July 14, 2010); *Pulera v. F &*
14 *B, Inc.*, No. 2:08-cv-00275-MCE-DAD, 2008 U.S. Dist. LEXIS 72659, 2008 WL 3863489, at * 2-3
15 (E.D. Cal. Aug. 19, 2008); *Smith v. Brinker Intern, Inc.*, No. C 10-0213 VRW, 2010 U.S. Dist.
16 LEXIS 54110, 2010 WL 1838726, at * 2-6 (N.D. Cal. May 5, 2010).

17 81. In addition, Plaintiff and the aggrieved employees seek the default penalty provided by
18 Labor Code § 226.3. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
19 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
20 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each
21 violation in a subsequent citation, for which the employer fails to provide the employee a wage
22 deduction statement or fails to keep the required in subdivision (a) of Section 226.”

23 82. Labor Code § 210 provides that “in addition to, an entirely independent and apart from,
24 any other penalty provided in this article, every person who fails to pay the wages of each employee
25 as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial
26 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent
27 violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay
28 each employee, plus 25% of the amount unlawfully withheld.”

83. As a result of the faulty compensation policies and practices described in detail above, the State of California is entitled to recover penalties under Labor Code § 210 through PAGA.

84. Further, Labor Code § 558 imposes a penalty upon employers “who violates, or causes to be violated...any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid...” Based upon the above factual allegations related to overtime, meal period, and rest period violations, Plaintiff and the aggrieved employees are entitled to recover civil penalties under Labor Code § 558 and not any underpaid wages under PAGA. *ZB, N.A. v. Sup. Ct.* 8 Cal.5th 175 (2019).

PRAYER

WHEREFORE, PLAINTIFF prays judgment as follows, against DEFENDANTS, and each of them:

1) CLASS CERTIFICATION

- a) That this action be certified as a class action with respect to all, Causes of Action;
- b) That Plaintiff be appointed as the representative of the Class; and,
- c) That counsel for Plaintiff be appointed as Class Counsel.

2) ON THE FIRST CAUSE OF ACTION:

- a) That the Court declare, adjudge, and decree that Defendants violated California Labor Code §§ 204 and 1194 and applicable IWC Wage Orders by willfully failing to pay all minimum and straight time wages due;
- b) For unpaid wages as may be appropriate;
- c) For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;
- d) For liquidated damages;

1 e) For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California
2 Labor Code § 1194(a); and,

3 f) For such other and further relief as the Court may deem equitable and appropriate.

4 **3) ON THE SECOND CAUSE OF ACTION:**

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

8 b) For all actual damages, according to proof;

9 c) For injunctive relief to ensure compliance with this section, pursuant to California Labor
10 Code § 226(h);

11 d) For reasonable attorneys' fees and for costs of suit incurred herein; and,

12 e) For such other and further relief as the Court may deem equitable and appropriate.

13 **4) ON THE THIRD CAUSE OF ACTION:**

14 a) That the Court declare, adjudge and decree that Defendants violated California Labor Code
15 §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the time of
16 termination of the employment;

17 b) For statutory wage penalties pursuant to California Labor Code § 203 for former employees
18 who have left Defendants' employ;

19 c) For pre-judgment interest on any unpaid wages from the date such amounts were due;

20 d) For reasonable attorneys' fees and for costs of suit incurred herein; and,

21 e) For such other and further relief as the Court may deem equitable and appropriate

22 **5) ON THE FOURTH CAUSE OF ACTION:**

23 a) For statutory wage penalties pursuant to California Labor Code § 201, 203, and 558 for
24 current and former employees who have left Defendants' employ

25 b) For compensatory, special damages according to proof, together with interest hereon

26 c) For reasonable attorney's fees according to proof.

1 **6) ON THE FIFTH CAUSE OF ACTION:**

- 2 a) That the Court declare, adjudge, and decree that Defendants violated California Business &
3 Professions Code §§ 17200, et seq. by failing to pay for all hours worked (minimum,
4 straight time, and overtime wages);
- 5 b) For restitution of unpaid wages to Plaintiff and all Class Members and prejudgment interest
6 from the day such amounts were due and payable;
- 7 c) For the appointment of a receiver to receive, manage and distribute any and all funds
8 disgorged from Defendants and determined to have been wrongfully acquired by
9 Defendants as a result of violations of California Business & Professions Code §§ 17200 et
10 seq.;
- 11 d) For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code
12 of Civil Procedure § 1021.5;
- 13 e) For injunctive relief to ensure compliance with this section, pursuant to California Business
14 & Professions Code §§ 17200, et seq.; and,
- 15 f) For such other and further relief as the Court may deem equitable and appropriate.

16 **7) ON THE SIXTH CAUSE OF ACTION:**

- 17 a) penalties under Labor Code § 2698, et seq. for Plaintiff and all aggrieved employees
18 because of Defendants' violation of Labor Code §§ 204, 210, 226(a) and (c), 226.3
19 b) 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198 and 1198.5 as well as IWC
20 Wage Order No. 5-2001

21 **8) ON ALL CAUSES OF ACTION:**

- 22 c) For reasonable attorneys' fees; and costs of suit
- 23 d) For any and all other applicable statutory and/or civil penalties, as provided by law;
- 24 e) pre-judgment/ post-judgment interest (e.g., per LC §218.6, 1194, Code of Civil Procedure
25 §685.010 et seq. and 3287 et seq.);
- 26 f) statutory damages and penalties (e.g., per LC §203, 98.6(b)(3), 210, 226(e-f), 226.3, 246(i),
27 558,558.1, 1194, 1197.1, 1198.5(k), and 2699(f-g));
- 28 g) For other and further relief their court deems just and proper.

1 h) For interest on all unpaid wages, at the legal rate according to proof;
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5 Dated: October 17, 2022

Southern California Attorneys, Inc.

7 By: Mac. E. Nehoray

8 Mac E. Nehoray

9 Attorneys for PLAINTIFF
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