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Superior Court of California
County of Sacramento
12/18/2025
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

ESMERALDA CASTANON, NATASHA KING, GENEVA PUTNAM, DARLENE KANENBLEY, ANDREW CARO, and EVERARDO GARZA, JR., on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

WINCO HOLDINGS, INC., an Idaho Corporation, doing business as WINCO FOODS; and DOES 1-10, inclusive,

Defendants.

CASE NO.: 34-2020-00282233

FIRST AMENDED CONSOLIDATED CLASS AND PAGA ACTION COMPLAINT FOR:

(1) FAILURE TO PAY MINIMUM WAGES;
(2) FAILURE TO PAY ALL OVERTIME WAGES;
(3) FAILURE TO PROVIDE MEAL PERIODS;
(4) FAILURE TO AUTHORIZE AND PERMIT REST PERIODS;
(5) FAILURE TO TIMELY PAY WAGES OWED UPON SEPARATION OF EMPLOYMENT;
(6) FAILURE TO TIMELY PAY WAGES OWED DURING EMPLOYMENT;
(7) FAILURE TO FURNISH ACCURATE WAGE STATEMENT;
(8) FAILURE TO MAINTAIN PAYROLL RECORDS;
(9) FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES;
(10) FAILURE TO PAY ALL SICK TIME WAGES;
(11) FAILURE TO PAY ALL VACATION WAGES;

(12) UNFAIR COMPETITION;
(13) CIVIL PENALTIES PURSUANT TO PRIVATE ATTORNEYS' GENERAL ACT

DEMAND FOR JURY TRIAL

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Plaintiffs Esmeralda Castanon, Natasha King, Geneva Putnam, Darlene Kanenbley, Andrew Caro, and Everardo Garza Jr. (collectively, "Plaintiffs"), on behalf of themselves and all other similarly situated non-exempt employees, alleges and complains of defendant WinCo Holdings, Inc., and DOES 1 to 50 (collectively, "Defendants") and each of them, as follows:

INTRODUCTION

1. Defendant WinCo Holdings Inc. dba WinCo Foods operates numerous grocery stores and its network of distribution and transportation across California.

2. Plaintiffs bring this class action against Defendants for alleged violations of the California Labor Code and Business and Professions Code.

3. As set forth below, Plaintiffs, on behalf of themselves and all current and former non-exempt, hourly employees working for WinCo in California at its retail stores and distribution centers at any time between May 19, 2016 to August 28, 2024 (the "Class" or "Class Members"), allege that Defendants failed to pay minimum wages for all hours worked; failed to include all hours worked and all forms of compensation when calculating the regular rate of pay used to pay overtime wages; failed to pay all sick time and vacation or paid time off wages at the separation of employment and at the employee's regular rate of pay; failed to provide compliant and timely meal, rest, and recovery periods, or premium wages at the regular rate of pay in lieu thereof; failed to reimburse non-exempt employees for all necessary business expenses; failed to maintain and provide accurate payroll records and personnel files upon request; and failed to provide required written notices of material employment information changes, including notices of termination of employment.

4. As a result of the foregoing, Plaintiffs allege that Defendants failed to provide non-exempt employees with accurate written itemized wage statements, failed to provide timely wages owed during employment, and failed to pay all final wages in a timely manner upon separation of employment.

5. Based on these alleged Labor Code violations, Plaintiffs now bring this class action and PAGA representative to recover unpaid wages, restitution, penalties, and other related relief on behalf of themselves and all others similarly situated.

JURISDICTION AND VENUE

6. Plaintiffs, on behalf of themselves and all other similarly situated employees hereby brings this class action for recovery of unpaid wages and penalties under Labor Code §§201, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.3, 226.7, 227.3, 245-249, 510, 512, 516, 551, 552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2800-2802, 2804, and 2810.5, and applicable Wage Orders, in addition to seeking declaratory relief and restitution pursuant to California Business and Professions Code § 17200, *et. seq*., as well as reasonable attorneys' fees and costs pursuant to Labor Code §§ 218.5, 226, 1194, and Code of Civil Procedure § 1021.5, and prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6 and Civil Code §§ 3287 and 3289.

7. This class action is brought pursuant to California Code of Civil Procedure § 382.

8. This Court has jurisdiction over Defendants' violations of the California Labor Code and applicable Wage Orders because the amount in controversy exceeds this Court's jurisdictional minimum.

9. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, Defendants own and/or operate within the County of Sacramento, and/or otherwise are found within the County of Sacramento and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

10. At all relevant times herein, Plaintiffs, who are over 18, currently or previously resided in the State of California.

11. Plaintiffs are informed and believe and thereon allege that Defendants are corporations authorized to and do business in California and are and/or were the legal employer of Plaintiffs and the Classes during the applicable statutory periods.

12. Plaintiffs are current and/or former employees of Defendants in California.

13. Plaintiffs are informed and believe, and based thereon allege, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business in the State of California, County of Sacramento.

14. Plaintiffs do not know the true names or capacities, whether individual, partner, or

corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiffs are informed, and believe, and thereon allege, that each of said fictitious defendants, whether individual, partners, or corporate, was responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiffs and the Classes to be subject to the unlawful employment practices alleged herein.

15. Plaintiffs are informed, and believe, and thereon allege, that at all times mentioned herein, Defendants were and are the employers of Plaintiffs and all members of the Classes. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

16. At all times mentioned herein, Defendants were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiffs allege that all Defendants and the herein-named related entities were joint employers for all purposes of Plaintiffs and all members of the Classes.

COMMON FACTUAL ALLEGATIONS

17. Defendants operate numerous grocery stores and their own distribution and transportation network across California.

18. Plaintiffs were employed as non-exempt employees at Defendant's grocery stores and/or distribution centers during the relevant liability period.

19. First, at all relevant times, Plaintiffs and other non-exempt employees were not properly paid minimum wages for all hours worked. Plaintiffs and other non-exempt employees were required to work while off the clock, and Defendants failed to record those hours worked and failed

to pay Plaintiffs and other non-exempt employees for said hours worked off the clock.

20. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law or by an order of the commission a civil penalty, restitution of wages, and liquidated damages as follows: (1) for any initial violation that is intentionally committed, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars ($250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation was intentionally committed.

21. As set forth above, Defendants failed to compensate Plaintiffs and other non-exempt employees for all hours worked. Accordingly, through PAGA and to the extent permitted by law Plaintiffs and other non-exempt employees are entitled to recover liquidated damages for violations of Labor Code § 1197.1.

22. Plaintiff and Class Members were required to clock in and out for their shifts and meal periods using an electronic time clock which recorded the exact time in hours, minutes, and seconds (e.g., HH:MM:SS). However, Defendant improperly rounded Plaintiffs and the Class Members' time such that it resulted in a lower pay over time.

23. Under Defendant's rounding policy and practice, Defendant compensated Class Members based on their rounded time instead of actual hours worked. Such policy and practices were not neutral and necessarily benefited Defendant at the expense of the Class Members.

24. Defendant rounded total time worked each day to the nearest fifteen-minute interval (e.g., 0 minutes (0.0), 15 minutes (0.25), 30 minutes (0.5) 45 minutes (0.75) and 60 minutes (1.0)). For example, if a class member worked a total of 8 hours, 7 minutes, and 55 seconds, the class member's total time worked would be rounded down to the previous minute (8 hours and 7 minutes) which would then be rounded down to 8 hours.

25. Defendant's rounding policy and practice is not neutral on its face because it systematically undercompensates employees by always rounding total seconds down to the previous minute. Therefore, if a Class Member worked 8 hours, 7 minutes, and 55 seconds, instead of rounding the class member's time up to 8 hours and 8 minutes, and therefore up to 8 hours and 15 minutes,

Defendant rounded down to 8 hours and 7 minutes, and therefore down to 8 hours. This system of rounding seconds to the previous minute, when combined with Defendant's fifteen-minute interval rounding, results in a gain for Defendant for all actual time worked ending between 7 minutes and 8 minutes, 22 minutes and 23 minutes, 37 and 38 minutes, and 52 and 53 minutes. In other words, the seconds that are rounded down to the previous minute during those time intervals always result in a net gain to Defendant and a net loss to Class Members.

26. As a further result of Defendant's rounding policy and practices, Defendant did not pay overtime to Class Members for overtime hours worked between 8 hours and 8 hours, 7 minutes, and 59 seconds. In other words, Defendant's rounding policy and practice never provided overtime pay when it was not owed, but sometimes failed to pay overtime pay when it was owed.

27. The precision of the time requirements set out in Labor Code section 510 and IWC wage order 7-2001- any work in excess of eight hours in one workday and any work in excess of 40 hours in any workweek – is at odds with the imprecise calculations that rounding involves. See *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 68 (In the meal period context under Lab. Code, §§ 512, 226.7, employers cannot round time punches because the meal period provisions are designed to prevent even minor infringements on meal period requirements, and rounding is incompatible with that objective).

28. In conjunction with Defendant's companywide practice of scheduling 8-hour shifts, Defendant's rounding policy and practices were not fair and neutral on their face and resulted, over a period of time, in a failure to compensate Plaintiffs and Class Members for all the time they actually worked.

29. Upon information and belief, Defendant's electronic timekeeping and payroll systems are capable of using Class Member's actual times instead of rounded times to calculate Class Member's compensation. To the extent that Defendant argues that, even if their time-rounding practice results in underpayment of wages, the unpaid time is "de minimis" and therefore not compensable, this would violate the California Supreme Court's ruling in *Troester v. Starbucks*, 5 Cal.5th 829 (2018) that the de minimis doctrine adopted under the federal Fair Labor Standards Act (FLSA) does not apply to California employers.

30. As a result of Defendants' failure to record or pay Plaintiffs and other non-exempt employees for all hours worked, Plaintiffs and other non-exempt employees were not properly paid at their overtime rate for all hours worked off the clock in excess of eight (8) hours per workday and/or forty (40) hours per workweek.

31. Furthermore, at all relevant times, Plaintiffs and other non-exempt employees were not properly paid at the correct overtime rate for all hours worked in excess of eight (8) hours per workday and/or forty (40) hours per workweek. Although Plaintiffs and other Class Members regularly worked overtime hours, they were not compensated at one and one-half times their "regular rate of pay" because Defendants failed to include all forms of compensation, including, but not limited to, non-discretionary bonuses, shift differentials, incentive pay, and other forms of remuneration when calculating the "regular rate of pay" used for payment of overtime wages.

32. For example, Plaintiffs and, upon information and belief, Class Members received bonuses or incentives ("bonus") in the form of a gift card which were not included in their regular rate of pay for purposes of calculating overtime. The only requirement to be eligible for the bonus was that the employee be hired before a certain date, have hours worked in the bonus period, and be actively employed at the time the bonus was distributed and therefore was a non-discretionary bonus.

33. Under the California Labor Code (as well as the FLSA), courts have consistently held that regularly paid non-discretionary bonuses (and other forms of pay) must be included in determining an employee's "regular rate of pay" for purposes of calculating overtime. (See *Haber v. The Americana Corp*. 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency bonuses must be included in calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc*. 435 F. Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgement to Plaintiffs under California and federal law on the grounds, that Defendant improperly calculated overtime by excluding annual bonuses paid to employees from the "regular rate of compensation"].)

34. By their policy of requiring Plaintiffs and the other non-exempt employees to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the lawful rate of one-half (1 1/2) their "regular rate of pay," Defendants willfully violated the provisions of Labor Code § 510 and the applicable Wage Orders.

35. Accordingly, to the extent permitted by law, Plaintiffs and other non-exempt employees are entitled to recover unpaid wages and penalties for violations of Labor Code §§ 204, 210, 510, 1197.1.

36. Moreover, at all relevant times, Defendants failed in their obligation to provide Plaintiffs and other non-exempt employees the legally required paid sick days at the legal "regular rate of pay" pursuant to Labor Code §§ 246(a),(b).

37. Pursuant to Labor Code §§ 246(a),(b), "[a]n employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment." Additionally, Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must be "calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek." Furthermore, Labor Code § 246(l)(2) states that the paid sick time must be "calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment." Finally, Labor Code § 246(i) requires employers to "provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages."

38. Here, at all relevant times, Defendants failed in their obligation to provide Plaintiffs and other non-exempt employees the legally required paid sick days at the "regular rate of pay" pursuant to Labor Code §§246(a),(b). Instead, Defendants paid sick time at the non-exempt employees' base rate of pay, rather than the "regular rate of pay" as required by Labor Code §§246(l)(1-2).

39. Accordingly, to the extent permitted by law, Plaintiffs and other non-exempt employees are entitled to recover unpaid sick wages and penalties for violations of Labor Code § 246.

40. Moreover, Labor Code section 227.3 provides that whenever a contract of employment

or employer policy provides for paid vacations, and an employee is separated without having used his or her vested vacation time, all vested vacation time shall be paid as wages at their final rate in accordance with such contract of employment or employer policy respecting eligibility or time.

41. At all relevant times, Defendants held a policy and practice of providing paid vacation time or paid time off to Plaintiffs and other non-exempt employees. However, at all relevant times, Defendants failed in their obligation to provide Plaintiffs and other non-exempt employees the legally required paid vacation time or paid time off at the time of their separation of employment with Defendants, pursuant to Labor Code section 227.3. As such, Defendants have violated Labor Code section 227.3 with respect to Plaintiffs and other non-exempt employees.

42. Accordingly, to the extent permitted by law, Plaintiffs and other non-exempt employees are entitled to recover unpaid vacation wages and penalties for violations of Labor Code § 227.3.

43. At all relevant times, Plaintiffs and the non-exempt employees were denied compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to Defendants' uniform meal period policies/practices and work demands, the non-exempt employees were often unable to take timely and uninterrupted 30-minute first meal periods before the end of the fifth hour of work.

44. Further, when the non-exempt employees worked in excess of 10.0 hours in a shift, they were not always allowed and permitted to take a mandated second meal period before the end of the tenth hour of work in violation of the Labor Code and applicable Wage Orders.

45. Additionally, the non-exempt employees were not properly paid meal period premiums for missed or non-compliant meal periods at the "regular rate of pay" pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858 and Labor Code § 226.7.

46. Moreover, Defendant’s company-wide meal and rest break policy mandated that Class Members were prohibited from leaving the retail store without prior permission from a store manager. Specifically, Defendant’s Company Personnel Policies states that “Retail employees are not permitted to leave the store interior on a rest break without permission from management.” Plaintiffs and, upon information and belief, Class Members are required to sign the Company Personnel Policies acknowledging their understanding that “I understand what the policies mean, and agree to comply

with them, as well as any other Company rules and policies. I understand that violation of such policies and rules may be sufficient cause for disciplinary actions, up to and including immediate discharge."

47. If a store manager was unavailable or could not be readily located, Plaintiffs and, upon information and belief, Class Members were impeded and/or discouraged from leaving the store for meal and/or rest breaks.

48. In addition, Defendant's policy that Class Members are not permitted to leave the store interior on a rest break without permission from management violates *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012) and *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016) because Defendant fails to relinquish all control over the activities of Class Members during breaks.

49. In addition, Defendant's Company Personnel Policies mandated that Class Members were prohibited from leaving their post or position to take a meal or rest break without prior permission from a store manager. This also impeded or discouraged Plaintiffs, and upon information and belief, Class Members for taking meal and rest breaks.

50. Per Defendant's documents, its companywide policy is that the break period begins when leaving the work post and ends when returning to the work post. Employees were not permitted to leave the retail store interior without the permission of store management or the person in charge of the store. Employees were required to complete customer transactions before taking breaks. This also impeded or discouraged Plaintiff, and upon information and belief, Class Members for taking meal and rest breaks. Upon information and belief, Defendant lacked a compliant meal and rest period policy advising Class Members of their meal and rest periods rights under California law including the number and timing of meal and rest periods. Because Defendant's meal and rest period policy required Class Members to remain on premises during unpaid meal periods, they were under Defendant's control and thus should have been compensated for those hours.

51. On information and belief, Plaintiffs and Class Members did not waive their rights to meal periods including second meal periods under the law.

52. Plaintiffs and the Class Members were not provided with valid lawful on-duty meal

periods.

53. Despite the above-mentioned meal period violations, Defendant failed to compensate Plaintiff, and on information and belief, failed to compensate Class Members, one additional hour of pay at their regular rate as required by California law when meal periods were not timely or lawfully provided in a compliant manner.

54. Accordingly, due to Defendants' uniform meal period practices, Plaintiffs and non-exempt employees were also regularly denied legally compliant meal periods in violation of Labor Code §§ 226.7, 512, 516, and applicable Wage Orders.

55. Next, at all relevant times, Plaintiffs and the non-exempt employees were not provided with all 10-minute rest periods for every four hours worked, or a major fraction thereof, due to Defendants' uniform rest period policies/practices and work demands. As a result, the non-exempt employees were and are routinely unable to take a net 10-minute duty-free rest period for every major fraction of four hours worked. This includes a second rest period for shifts in excess of six hours, and a third rest period for shifts in excess of 10 hours in a workday.

56. In practice, by not relieving all non-exempt employees of all duties during rest periods, Defendants failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that "during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time."]. In Augustus, the California Supreme Court expressly rejected the employers' assertion that it could provide an on-duty rest period to employees who worked as security guards and further explained "that employers [must] relinquish any control over how employees spend their break time and relieve their employees of all duties." *Id*. at 273.

57. Each time the non-exempt employees were unable to take a compliant rest period, Defendants failed and continues to fail to adequately pay rest period premium payments at the "regular rate of pay" as required by Labor Code § 226.7.

58. Accordingly, due to Defendants' uniform rest period policies/practices and work demands, the non-exempt employees were also regularly denied legally compliant rest breaks in violation of Labor Code §§ 226.7, 512, and applicable Wage Orders.

59. As a result of Defendants' failure to pay Plaintiffs and other non-exempt employees all minimum wages, overtime wages, sick pay, vacation pay, and meal, rest, and recovery period premiums at the "regular rate of pay," Defendants issued wage statements which failed to accurately identify the gross wages earned, the total hours worked, the net wages earned, and the correct corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9). In addition, Defendants' wage statements independently fail to state "all applicable rates of pay and units" in violation of Labor Code 226(a)(9).

60. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial violation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226."

61. Thus, for the violations of Labor Code § 226 described above, Plaintiffs and other non-exempt employees may also recover Labor Code § 226.3 penalties for Defendants' violations of Labor Code § 226(a). Consequently, because Defendants failed to comply with Labor Code § 226(a), Plaintiffs and other non-exempt employees would be entitled to recover penalties under Labor Code § 226(e).

62. As a further result of Defendants' failure to pay all minimum wages, overtime wages, sick pay and vacation wages, and meal, rest, and recovery period premiums at the "regular rate of pay," Defendants also failed and continues to fail to pay the non-exempt employees all wages owed during their employment and at their time of separation from employment in violation of Labor Code §§ 201-204.

63. At all relevant times, Plaintiffs and other non-exempt employees, at the direction of Defendants and/or Defendants' knowledge and acquiescence, have used their personal cell phones to communicate with their supervisors, managers, and co-workers in the discharge of their duties, and for other work-related purposes. Defendants required Plaintiffs and other non-exempt employees to incur the costs associated with business use of their personal cell phones and did not provide any reimbursement of these costs. (See *Cochran v. Schwan's Home Service, Inc*. (2014) 228 Cal.App.4th

1137 ("We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.") (reversing denial of class certification in cell phone reimbursement class action and setting forth the applicable law for these claims); *Aguilar v. Zep, Inc*., 2014 WL 4245988 *17 (N.D. Cal. 2014) (granting Plaintiffs' motion for partial summary judgment on the Mr. Toys' cell phone reimbursement claim); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. 2014) (certifying class of cell phone reimbursement claim and adopting the logic of Cochran).

64. Here, although Plaintiffs and other non-exempt employees routinely used their personal cell phones in the discharge of their job duties with the knowledge or acquiescence of Defendants, they were not reimbursed in any amount for expenses incurred. Defendants' failure to reimburse Plaintiffs and other non-exempt employees for their ongoing cell phone business expenses incurred in the discharge of their duties continues through the present day. Indeed, any reimbursement is absent from the Plaintiffs' wage statements during her employment.

65. Accordingly, due to Defendants' failure to reimburse for necessary business expenditures in violation of Labor Code §§ 2802-2804 and applicable Wage Orders.

66. Moreover, at all relevant times, Plaintiffs and other non-exempt employees were required by Defendants' policies and procedures to use personal protective equipment, such as earplugs, while performing work duties and responsibilities, for safety reasons. However, at all relevant times, Defendants failed to provide Plaintiffs and the Putative Classes with personal protective equipment, such as earplugs, to keep them safe.

67. Furthermore, at all relevant times, Defendants, as the relevant employers here, were required to maintain certain employment and payroll records for Plaintiffs and other non-exempt employees.

68. Pursuant to Labor Code § 1174, subdivision (d), an employer shall keep 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 wages paid to employees employed at the respective

plants or establishments. These records must be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years.

69. Defendants have intentionally and willfully failed to keep accurate and complete records showing the daily hours worked and wages paid to Plaintiffs and other non-exempt employees. Thus, Plaintiffs and the other non-exempt employees have been denied their legal right and protected interest in having available at a central location at the plant or establishment where they are employed accurate and complete payroll records showing the hours worked daily and the wages paid to, employees at those respective locations pursuant to Labor Code § 1174.

70. Accordingly, to the extent permitted by law, Plaintiffs and other non-exempt employees are entitled to recover a civil penalty of $500 for an employer's failure to maintain accurate and complete records pursuant to Labor Code § 1174.5.

CLASS ACTION ALLEGATIONS

71. Plaintiffs bring this action on behalf of themselves and the following Classes pursuant to § 382 of the Code of Civil Procedure:

> All current and former non-exempt, hourly employees working for WinCo in California at its retail stores and distribution centers at any time between May 19, 2016 to August 28, 2024 ("Class").

72. **Numerosity/Ascertainability**: The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiffs at this time; however, it is estimated that the Classes consist of at least one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment and payroll records.

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

1. Whether Defendants' pay policies/practices resulted in a failure to pay all minimum and

overtime wages;

2. Whether Defendants' pay policies/practices resulted in a failure to pay all overtime wages at the "regular rate of pay" because Defendants failed to include all forms of compensation, including, but not limited to, shift differentials, non-discretionary bonuses, incentive pay, and other forms of remuneration;

3. Whether Defendants' payroll policies/practices resulted in a failure to pay all sick pay at the "regular rate of pay";

4. Whether Defendants' payroll policies/practices resulted in a failure to pay all vacation or paid time off wages at the separation of employment with Defendants;

5. Whether Defendants provided legally compliant meal and rest periods or proper compensation in lieu thereof to members of the Class;

6. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Subclass pursuant to Labor Code § 226(a);

7. Whether the timing and amount of payment of final wages to members of the Waiting Time Penalty Subclass at the time of separation from employment were unlawful;

8. Whether the timing and amount of payment of wages made to members of the Class during employment were unlawful;

9. Whether Defendants failed to maintain necessary personnel and payroll records;

10. Whether Defendants failed to provide copies of personnel and payroll records upon request; and

11. Whether Defendants failed to reimburse necessary business expenses.

74. **Predominance of Common Questions**: Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as but without limitation, Defendants' time rounding policies, Defendants' failure to pay all overtime wages and sick pay at the "regular rate" including all forms of compensation, Defendants' practice of failing to provide all compliant meal, rest and recovery periods or adequate compensation at the "regular rate of pay" in

lieu thereof, Defendants' resulting failure to provide accurate itemized wage statements and to pay for all wages due upon separation of employment. As such, the common questions predominate over individual questions concerning each class member's showing as to his or her eligibility for recovery or the amount of his or her damages.

75. **Typicality**: The claims of Plaintiffs are typical of the claims of the Classes because Plaintiffs was employed by Defendants as a non-exempt employee in California during the statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein, Plaintiffs, like the members of the Classes, was deprived of minimum wages, overtime wages, and sick pay at the "regular rate," was subject to Defendants' meal, rest, and recovery period policies/practices, was not provided accurate itemized wage statements, was not provided her personnel file and payroll records upon request to Defendant, was not provided all necessary safety equipment and safeguards, was not provided written notice of material changes to employment, was not reimbursed for all business expenses, and was not paid all wages owed upon separation of employment.

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

77. **Superiority**: The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiffs and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would

necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual Plaintiffs with their vastly superior financial and legal resources.

78. Moreover, requiring each member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the class need to be sufficiently large to warrant vigorous individual prosecution, considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 71 are maintainable as Classes under § 382 of the Code of Civil Procedure.

<u>FIRST CAUSE OF ACTION</u>

FAILURE TO PAY MINIMUM WAGES

(AGAINST ALL DEFENDANTS)

79. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

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

81. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes but is not limited to Defendants' requiring

that Plaintiffs and the Class work while off the clock, resulting in these individuals not being paid for all hours actually worked. Accordingly, Plaintiffs and the Classes 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 applicable Wage Orders.

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

83. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiffs and the Classes 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 California Labor Code and applicable Wage Orders.

84. Defendants' practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiffs and the Classes 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 §§ 204, 558, 558.1, 1194 *et seq*., 1197, 1197.1 1198, and Code of Civil Procedure § 1021.5.

<u>SECOND CAUSE OF ACTION</u>

FAILURE TO PAY OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

85. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

86. This cause of action is brought pursuant to Labor Code §§ 204, 210, 510, 558, 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.

87. At all times relevant herein, Defendants were required to properly pay Plaintiffs and

members of the Class for all overtime hours worked pursuant to California Labor Code § 1194 and the applicable Wage Orders.

88. Section 3 of the applicable Wage Order requires an employer to pay an employee "one and one-half (11⁄2) times the employee's regular rate of pay" for work in excess of 8 hours per workday and/or in excess of 40 hours of work in the workweek. The same section also requires an employer to pay an employee double the employee's regular rate of pay for work in excess of twelve hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Plaintiffs to work overtime hours but did not compensate Plaintiffs or members of the Overtime Subclass at one and one-half times their regular rate of pay for such hours.

89. Defendants failed to include all forms of compensation, including, but not limited to, shift differentials, non-discretionary bonuses, incentive pay, and other forms of remuneration when calculating the "regular rate of pay" used in payment of overtime wages, all of which resulted in Plaintiffs and the Overtime Subclass not being paid all overtime wages owed.

90. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiffs and the members of the Overtime Subclass in a civil action for the unpaid amount of overtime wages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code §§ 204, 210, 510, 1194, and 1198, the applicable Wage Orders, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

91. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

92. Labor Code § 512(a), in part, provides that employers, including Defendants, may not employ an employee for a work period of more than five (5) hours per day without providing the employee the opportunity to take an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is no more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

Employers may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes. Furthermore, Labor Code § 512(b) requires employers to provide uninterrupted meal periods to employees before the commencement of the employees' sixth (6^{th}) hour of work.

93. Pursuant to Labor Code § 226(b) and the applicable IWC Wage Order, Defendants shall pay an employee one (1) additional hour of pay at the employee's "regular rate of pay" for each meal period that is missed.

94. At all relevant times, Plaintiffs and the Class were denied compliant and timely 30-minute off-duty meal periods as mandated by California law. Specifically, due to Defendants' uniform meal period policies/practices and operating requirements, Plaintiffs and the Class often could not take timely and uninterrupted 30-minute first meal periods before the end of the fifth hour of work. Further, when Plaintiffs and the Class worked in excess of 10.0 hours in a shift, they were not always allowed and permitted to take a mandated second meal period before the end of the tenth hour of work in violation of the Labor Code and applicable Wage Orders.

95. Additionally, for each missed or non-compliant meal period, Defendants failed to maintain a mechanism by which non-exempt employees were paid meal period premiums at the "regular rate of pay" pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5^{th} 858 and Labor Code § 226.7.

96. Accordingly, as a result of Defendants' failure to provide legally compliant meal periods in violation of Labor Code §§ 226.7, 510, 516, and applicable IWC Wage Orders.

<u>FOURTH CAUSE OF ACTION</u>

REST PERIODS VIOLATIONS

(AGAINST ALL DEFENDANTS)

97. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

98. During the relevant time period, Plaintiffs and the Class were not provided with all 10-minute rest periods for every four hours worked, or a major fraction thereof due to Defendants' uniform rest period policies/practices and scheduling practices. As a result, Plaintiffs and the Class were and are often unable to take a net 10-minute duty-free rest period for every major fraction of

four hours worked. This includes a second rest period for shifts in excess of six hours and a third rest period for shifts in excess of 10 hours in a workday.

99. By not relieving all non-exempt employees of all duties during rest periods, Defendants failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that "during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time."]. In *Augustus*, the California Supreme Court expressly rejected the employer's assertion that it could provide an on-duty rest period to employees who worked as security guards and further explained: "that employers [must] relinquish any control over how employees spend their break time and relieve their employees of all duties." *Id*. at 273.

100. Additionally, for each missed or non-compliant rest period, Defendants failed to maintain a mechanism by which non-exempt employees were paid rest period premiums at the "regular rate of pay" pursuant to Labor Code § 226.7.

101. Accordingly, as a result of Defendants' failure to provide legally compliant rest periods in violation of Labor Code §§ 226.2, 226.7, 512, and applicable IWC Wage Orders.

FIFTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

102. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

103. The actionable period for this cause of action is three years before the filing of this Complaint through the present, and ongoing until the violation is corrected or the class is certified.

104. Labor Code §§ 201 and 202 require Defendants to pay all compensation due and owing to Plaintiffs and the Waiting Time Subclass during the actionable period for this cause of action at or around the time that their employment is or was terminated or ended.

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

106. Defendants willfully failed to pay all overtime wages, sick pay, and premium wages for missed meal and rest periods prior to or upon termination or separation from employment with Defendants as required by Labor Code §§ 201 and 202.

107. As a result, Defendants are liable to the Waiting Time Subclass for waiting time penalties amounting to thirty (30) days wages for Plaintiffs and the Waiting Time Subclass pursuant to Labor Code §§ 203 and 256. *See,* e.g., DLSE Manual, 4.3.4 (Failure to pay any wages due upon separation entitles an employee to recover waiting time penalties).

SIXTH CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES OWED DURING EMPLOYMENT

(AGAINST ALL DEFENDANTS)

108. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

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

110. Labor Code section 216 establishes that it is a misdemeanor for any person, with regards to wages due, to "falsely deny the amount or validity thereof, or that the same is due, with intent to secure himself, his employer or other person, any discount upon such indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due."

111. Defendants as a matter of established company policy and procedure in the State of California, without limitation, scheduled, required, suffered, and/or permitted Plaintiffs and the Classes, to work without full compensation, to work without legally-compliant off-duty meal periods, to work without legally-compliant off-duty rest and recovery periods, failed to reimburse all business

expenses, failed to pay sick wages, and thereby failed to fully pay Plaintiffs and the Classes within seven days of the close of payroll, as required by law.

112. Defendants, as a matter of established company policy and procedure in the State of California, falsely deny they owe Plaintiffs and the Classes these wages, with the intent of securing for itself a discount upon its indebtedness and/or to annoy, harass, oppress, hinder, delay, and/or defraud Plaintiffs and the Classes.

113. Defendants' pattern, practice, and uniform administration of its corporate policy of illegally denying employees compensation, as described herein, is unlawful and entitles Plaintiffs and the Classes to recover, pursuant to Labor Code section 218, the unpaid balance of the compensation owed to them in a civil action and any applicable penalties, attorney fees, and interest owed to them pursuant to Labor Code sections 210 and 218.5.

SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(AGAINST ALL DEFENDANTS)

114. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

115. Labor Code § 226(a) states in pertinent part the following:

> "(a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if 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, (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 only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee."

116. As set forth above, during the Class Period, Defendants issued and continue to issue

wage statements to their employees, including Plaintiffs and members of the Wage Statement Subclass, which are inadequate under Labor Code section 226(a).

117. As a result of Defendants failure to pay Plaintiffs and the Wage Statement Subclass for all and overtime wages and sick pay at the regular rate off pay, Defendants failed to include required information on Plaintiffs and the Wage Statement Subclass' wage statements, including, but not limited to, the gross wages earned, the net wages earned in violation of Labor Code section 226(a)(1,2,5, and 9).

118. Further, during the relevant time period, Defendants' wage statements also failed to state "all applicable rates of pay and units" in violation of Labor Code § 226(a)(9).

119. Defendants' failure to comply with section 226(a) of the Labor Code was knowing and intentional.

120. As a result of Defendants' issuance of inaccurate itemized wage statements to Plaintiffs and members of the Wage Statement Subclass in violation of section 226(a) of the California Labor Code, Plaintiffs and members of the Wage Statement Subclass are each entitled to recover an initial penalty of $50, and subsequent penalties of $100, up to an amount not exceeding an aggregate penalty of $4,000 per Plaintiffs and per every member of the Wage Statement Subclass from Defendants pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys' fees.

EIGHT CAUSE OF ACTION

FAILURE TO MAINTAIN PAYROLL RECORDS

(AGAINST ALL DEFENDANTS)

121. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

122. Pursuant to California Labor Code section 1174, subdivision (d), an employer shall keep 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 wages paid to employees employed at the respective plants or establishments. These records must be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for at least two years.

123. Labor Code section 1174.5 imposes a civil penalty of $500 for an employer's failure

to maintain accurate and complete records.

124. Defendants have intentionally and willfully failed to keep accurate and complete records showing the hours worked daily and wages paid to Plaintiffs and the Classes. Thus, Plaintiffs and the Classes have been denied their legal right and protected interest in having available at a central location at the plant or establishment where they are employed, accurate and complete payroll records showing the hours worked daily by, and the wages paid to, employees at those respective locations pursuant to Labor Code § 1174.

NINTH CAUSE OF ACTION

FAILURE TO INDEMNIFY NECESSARY BUSINESS EXPENSES

(AGAINST ALL DEFENDANTS)

125. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

126. It was necessary for Plaintiffs and Class members to incur various expenses as outlined above in the discharge of their job duties. These expenses include but are not limited to expenses associated with using a personal cell phone with a data plan and expenses related to the performance of their job duties. Although Plaintiffs and members of the Class incurred these expenses at the direction of Defendants and/or in the direct discharge of their job duties, Defendants did not adequately reimburse these employees for such necessary work expenditures during the four years preceding the filing of the Complaint.

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

128. At all relevant times herein, Defendants were subject to Labor Code § 2804, which 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."

129. As a proximate result of Defendants' policies and/or practices in violation of Labor

Code §§ 2802 and 2804, Plaintiffs and members of the Classes were damaged in sums, which will be shown according to proof at trial.

130. Plaintiffs and members of the Classes are entitled to attorneys' fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

131. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiffs and members of the Class are entitled to interest, which shall accrue from the date on which they incurred the initial necessary expenditure.

TENTH CAUSE OF ACTION

FAILURE TO PAY ALL SICK TIME

(AGAINST ALL DEFENDANTS)

132. Plaintiffs reallege and incorporate by reference all previous paragraphs.

133. This cause of action is brought pursuant to Labor Code §§ 246, 558, 1194.2, 1197.1, 1198, and 1199 which provide that non-exempt employees are entitled to have their sick time paid at the regular rate, including all forms of compensation/remuneration.

134. At all times relevant herein, Defendants were required to properly pay Plaintiffs and members of the Class for all accrued sick leave taken, pursuant to California Labor Code § 246.

135. Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes but is not limited to Defendants' uniform and unlawful policy/practice of failing to include all forms of compensation, including but not limited to shift differentials, non-discretionary bonuses, and other forms of remuneration into the calculation of the "regular rate of pay," which resulted in Plaintiffs and the Class not being paid all sick time wages owed.

136. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiffs and the members of the Class in a civil action for the unpaid amount of sick time wages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code §§ 233, 234, 246, 246.5, 558, 1194.2, 1197.1, 1198, the applicable Wage Orders, and Code of Civil Procedure § 1021.5.

ELEVENTH CAUSE OF ACTION

FAILURE TO PAY ALL VACATION WAGES

(AGAINST ALL DEFENDANTS)

137. Plaintiffs re-allege and incorporate all previous paragraphs by reference.

138. This cause of action is brought pursuant to Labor Code § 227.3, which provides that whenever a contract of employment or employer policy provides for paid vacations and an employee is separated without having used his or her vested vacation time, all vested vacation shall be paid as wages at their final rate in accordance with such contract of employment or employer policy respecting eligibility or time.

139. At all relevant times, Defendant maintained such a paid vacation policy, yet Defendant failed to pay all vested and unused vacation time to Plaintiffs and the Class members at their respective final rates of pay at their time of separation. As such, the Defendant has violated Labor Code § 227.3.

140. Defendant failed to pay accrued vacation time, failed to pay vacation time at the proper rate, failed to report accrued and paid vacation in wage statements, and failed to keep accurate records of same.

141. Defendant's practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and members of the Class in a civil action for the unpaid amount of wages, liquidated damages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code §§ 227.3, 558, 1194 *et seq*., 1197.1, 1198, 1199 and Code of Civil Procedure § 1021.5.

TWELEFTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

142. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

143. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq*. by failing to pay all minimum and overtime wages, sick and vacation pay, and premium wages for missed meal, rest and recovery periods.

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

145. Because Plaintiffs is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiffs for themselves and on behalf of the members of the Classes, 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 §§ 17203 and 17208.

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

147. Plaintiffs were compelled to retain the services of counsel to file this court action to protect their interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current hourly non-exempt employees, and to enforce important rights affecting the public interest. Plaintiffs have thereby incurred the financial burden of attorneys' fees and costs, which she is entitled to recover under Code of Civil Procedure § 1021.5.

<u>THIRTEENTH CAUSE OF ACTION</u>

PRIVATE ATTORNEYS GENERAL ACT PENALTIES

(AGAINST ALL DEFENDANTS)

148. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

149. Defendants have committed several Labor Code violations against Plaintiffs and other non-exempt employees. Plaintiffs, "aggrieved employees" within the meaning of Labor Code § 2698 *et seq*., acting on behalf of themselves and other non-exempt employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiffs, other similarly non-exempt employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to (1) $100 for each initial violation and (2) $200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided based on the following Labor Code violations:

a. Failing to provide Plaintiffs and other non-exempt employees all minimum and overtime wages, sick and vacation pay compensation at the appropriate premium rate in violation of Labor Code §§ 204, 210, 227.3, 233, 234, 246, 246.5, 510, 558, 558.1, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 1199;

b. Failing to provide Plaintiffs and other non-exempt employees with all of their statutorily mandated meal, rest or recovery periods or compensation at the "regular rate of pay" in lieu thereof in violation of Labor Code §§ 204, 226.2, 226.7, 510, 558, 1194 and 1198, and California Code of Regulations, Title 8, § 3395;

c. Failing to reimburse Plaintiffs and other non-exempt employees for all necessary business expenditures in violation of Labor Code §§ 2800, 2802, and 2804;

d. Failing to timely compensate Plaintiffs and other non-exempt employees with all earnings during and at their separation of employment in violation of Labor Code §§ 200-204, 210, 216, 218, 218.5, and 256; and

e. Failing to furnish Plaintiffs and other non-exempt employees with complete, accurate, itemized wage statements in violation of Labor Code §§ 226(a) and 226.3;

150. Plaintiffs have notified Defendants via certified mail, and the California Labor and Workforce Development Agency ("LWDA") via its website of Defendants' violations of the California Labor Code § 2698 *et seq*., with respect to violations of the California Labor Code identified in Paragraph 110(a)-(h).

151. Plaintiffs will have exhausted their administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

152. Plaintiffs were compelled to retain the services of counsel to file this court action to protect their interests and the interests of other non-exempt employees, and to assess and collect the civil penalties owed by Defendants. Plaintiffs have hereby incurred attorneys' fees and costs, which she is entitled to receive under California Labor Code § 2698 *et seq*.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment for themselves and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;

2. For an order appointing Plaintiffs as representatives of the Classes;

3. For an order appointing Counsel for Plaintiffs as Counsel for the Classes;

4. Upon the First Cause of Action (Failure to Pay Minimum Wages), for compensatory damages, statutory penalties, and restitution according to proof, pursuant to Labor Code §§ 1194, 1197, 1197.1, and 1198;

5. Upon the Second Cause of Action (Failure to Pay All Overtime Wages), for compensatory damages, statutory penalties, and restitution according to proof, pursuant to Labor Code §§ 510, 558, 1194, and 1198;

6. Upon the Third Cause of Action (Meal Period Violations), for meal period premiums, penalties, and damages according to proof, pursuant to Labor Code §§ 226.7 and 512;

7. Upon the Fourth Cause of Action (Rest Period Violations), for rest period premiums, penalties, and damages according to proof, pursuant to Labor Code §§ 226.7 and 516;

8. Upon the Fifth Cause of Action (Waiting Time Penalties), for statutory penalties pursuant to Labor Code §§ 201–203;

9. Upon the Sixth Cause of Action (Failure to Timely Pay Wages Owed During Employment), for unpaid wages, penalties, interest, and attorneys' fees pursuant to Labor Code §§ 200, 204, 210, 216, 218, and 218.5;

10. Upon the Seventh Cause of Action (Wage Statement Violations), for penalties and attorneys' fees pursuant to Labor Code § 226(e);

11. Upon the Eighth Cause of Action (Failure to Maintain Payroll Records), for civil penalties pursuant to Labor Code § 1174.5;

12. Upon the Ninth Cause of Action (Failure to Reimburse Necessary Business Expenses), for reimbursement, penalties, and attorneys' fees pursuant to Labor Code § 2802;

13. Upon the Tenth Cause of Action (Failure to Pay All Sick Time Wages), for compensatory damages and penalties pursuant to Labor Code §§ 246 and 248.5;

14. Upon the Eleventh Cause of Action (Failure to Pay All Vacation Wages), for payment of all accrued but unpaid vacation or paid time off and associated waiting time penalties

under Labor Code §§ 201–203;

15. Upon the Twelfth Cause of Action (Unfair Competition), for restitution and injunctive relief pursuant to Business and Professions Code §§ 17200–17208;

16. Upon the Thirteenth Cause of Action (PAGA Penalties), for civil penalties recoverable by aggrieved employees and the State of California pursuant to Labor Code § 2699(a) and (f), including but not limited to $100 for each initial violation and $200 for each subsequent violation per employee per pay period for violations where no other civil penalty is specified;

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

18. For attorneys' fees and costs as provided by Labor Code §§ 218.5, 226, 1194, and Code of Civil Procedure § 1021.5; and

19. For such other relief that the Court may deem just and proper.

Dated: November 05, 2025

JAMES HAWKINS APLC

By: ______________________

James R. Hawkins
Christina M. Lucio
Mitchell J. Murray

Attorneys for Plaintiffs and the Putative Classes

PROOF OF SERVICE, COUNTY OF ORANGE

I am a resident of the State of California, County of Orange. I am over the age of eighteen years and not a party to the within action. My business address is 9880 Research Drive., Suite 200, Irvine, California 92618.

On November 5, 2025, I served on the interested parties in this action the following document(s) entitled:

FIRST AMENDED COMPLAINT

[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address irma@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SERVICE LIST
PLEASE SEE PAGE ATTACHED

[X] STATE: I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

Executed on November 5, 2025, at Irvine, California.

Irma Ceja

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