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ELECTRONICALLY FILED
Superior Court of California
County of Marin
05/24/2024

James M. Kim, Clerk of the Court
By: J. Miller, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN**

AIDA GARCIA, an individual, on her
own behalf and on behalf of all others
similarly situated,

Plaintiffs,

vs.

GOOD EARTH NATURAL FOODS,
INC. a California corporation; and DOES
1 through 100, inclusive,

Defendants.

CASE NO.: CV0002956

CLASS ACTION COMPLAINT FOR:

- 1. FAILURE TO PAY PREMIUM OVERTIME WAGES DUE (Cal. Labor Code §§ 510, 511, 558, 1194, 1198);**
- 2. FAILURE TO PAY MINIMUM WAGES (Cal. Labor Code §§ 1194, 1197, 1197.1, 1198, 119);**
- 3. FAILURE TO PROVIDE TIMELY OFF DUTY MEAL PERIODS (Cal. Labor Code §§ 226.7, 512);**
- 4. FAILURE TO PROVIDE REST PERIODS (Cal. Labor Code § 226.7);**
- 5. FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. Labor Code §226);**
- 6. FAILURE TO PAY WAGES ON TERMINATION AND/OR RESIGNATION (Cal. Labor Code §§201-203);**
- 7. FAILURE TO PAY ALL SICK LEAVE WAGES WHEN DUE (Cal. Labor Code §§201-204, 218, 218.5, 233, 245, 246 et seq.);**
- 8. FAILURE TO PAY VESTED VACATION PAY ON SEPARATION OF EMPLOYMENT (Cal. Labor Code §227.3);**
- 9. FAILURE TO PROVIDE SUITABLE SEATING (Wage Order No. 7);**

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**10. FAILURE TO REIMBURSE BUSINESS
EXPENSES (Cal. *Labor Code* §2802);
11. FAILURE TO ALLOW INSPECTION OF
EMPLOYMENT RECORDS (Cal. *Labor
Code* §1198.5); and
12. UNFAIR COMPETITION (Cal. *Bus. & Prof.
Code* §§17200 *et seq.***

DEMAND FOR A 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.

AIDA GARCIA (“Plaintiff”) alleges the following:

1. This is a class action brought under California law by an individual who was employed by Good Earth Natural Foods, Inc. (along with DOES 1 through 100, collectively “Defendants”). Plaintiff brings this action on behalf of herself and others similarly situated to recover wages from Defendant due to Defendant’s systematic failure to pay overtime, failure to pay minimum wages, failure to provide meal and rest breaks (or pay the statutory compensation due), failure to maintain records and to provide accurate itemized wage statements, failure to pay wages on termination and/or resignation, failure to pay all sick leave wages when due, failure to pay vested vacation pay, failure to provide suitable seating, failure to reimburse business expenses and failure to allow inspection of employment records.

2. Plaintiff has worked as an employee for Defendant’s retail store in Fairfax, California beginning on March 15, 2017 through November 18, 2022. While working, Plaintiff and members of the Class have been forced to endure stressful and illegal workplace conditions created by Defendant’s efforts to maximize profits and tightly control labor costs.

3. Plaintiff, like her co-workers whom Defendant also employed during the applicable limitations period, spend their workdays as cashiers and other nonexempt hourly employees, under illegal and highly regimented circumstances. That regimen results from Defendant's insistence to strictly monitor and curtail labor costs, which Defendant accomplishes by not paying for all labor costs, failing to pay overtime, failing to pay minimum wages, failing to provide meal and rest breaks (or pay the statutory compensation due), failing to maintain records and to provide accurate itemized wage statements, failing to pay wages on termination and/or resignation, failing to pay all sick leave wages when due, failing to pay vacation wages, failing to provide suitable seating, failing to reimburse business expenses, failing to allow inspection of employment records and by using other unlawful stratagems to ensure that labor costs remain artificially low.

4. Plaintiff brings this class action to recover, among other things, wages and penalties from unpaid wages earned and due, including but not limited to, premium overtime wages, minimum wages, late and missed meal/rest break wages, wages due to discharged or quitting employees, penalties for failure to maintain required records and to provide accurate itemized wage statements, wages on termination and/or resignation, sick pay wages, vacation pay, damages for failing to provide suitable seating, expense reimbursement, employment records and interest, attorneys' fees, costs.

5. Plaintiff seeks compensatory, statutory, declaratory, and injunctive relief for herself and all members of the class, to compensate these workers for the unpaid wages and to protect current and future workers of Defendant from being subjected to similar wage theft and otherwise unlawful working conditions.

6. Plaintiff also brings an action seeking relief for Defendant's violations of California *Business & Professions Code* §§ 17200 *et seq.*, including full restitution and disgorgement of all compensation retained by Defendant as a result of its unlawful and unfair business practices, as well as injunctive relief.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this Complaint under Code of Civil Procedure

1 §410.10. This action is brought under *Code of Civil Procedure* § 382, and *Business &*
2 *Professions Code* §§ 17200 *et seq.* Plaintiff Aida Garcia brings this Complaint on her own
3 behalf and on behalf of all persons in the Class as defined in paragraph 16 below.

4 8. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and
5 395.5, because the claims made, and the *Labor Code* violations as against the persons identified
6 herein, occurred in the County of Marin and because Defendant owned and operated their
7 businesses in the County of Marin.

8 THE PARTIES

9 PLAINTIFF

10 9. At all times relevant hereto, Plaintiff was:

- 11 (a) An individual over age 18 and a resident of Contra Costa County,
12 California;
- 13 (b) Employed as a non-exempt hourly employee for Defendant Good Earth
14 Natural Foods, Inc. (“Good Earth” or “Defendant”) in Fairfax,
15 California;
- 16 (c) Did not receive overtime compensation as required by *Labor Code*
17 §§510 and 1194 and the applicable Wage Orders;
- 18 (d) Did not receive minimum wage compensation as required by *Labor*
19 *Code* §§ 1194, 1197, 1197.1, 1198, 119 and the applicable Wage Orders;
- 20 (e) Did not receive the meal periods required by *Labor Code* §266.7 and the
21 applicable Wage Orders;
- 22 (f) Did not receive the rest periods required by *Labor Code* §266.7 and the
23 applicable Wage Orders;
- 24 (g) Did not receive accurate itemized wage statements as mandated by
25 *Labor Code* §226;
- 26 (h) Was not paid wages on termination and/or resignation in violation of
27 *Labor Code* §§201-203;

- 1 (i) Was not paid sick leave wages when due in violation of Cal. *Labor Code*
2 §§201-204, 218, 218.5, 233, 245, 246 et seq.;
- 3 (j) Was not paid vacation wages when due in violation of Cal. *Labor Code*
4 §227.3;
- 5 (k) Was not provided suitable seating in violation of Wage Order No. 7;
- 6 (l) Was not reimbursed business expenses in violation of Cal. *Labor Code*
7 §2802; and
- 8 (m) Was not allowed to inspect her employment records in violation of Cal.
9 *Labor Code* §1198.5.

10 **DEFENDANT**

11 10. Plaintiff is informed and believes, and based on that information and belief,
12 alleges, Defendant Good Earth is, and at all times mentioned herein was:

- 13 (a) A California corporation, with a principal place of business at 720 Center
14 Blvd. Fairfax, California 94930. Good Earth has been authorized to do
15 business and has been doing business in the County of Marin;
- 16 (b) The former employer of Plaintiff and the current and former employer of
17 the putative Class members;
- 18 (c) Paid Plaintiff and all Class Members on an hourly basis;
- 19 (d) Failed to pay Plaintiff and all putative Class members premium overtime
20 wages;
- 21 (e) Failed to Plaintiff and all putative Class members minimum wages;
- 22 (f) Failed to provide Plaintiff and all putative Class members with meal and
23 rest periods, failed to provide Plaintiff and all putative Class Members
24 with accurate itemized wage statements;
- 25 (g) Did not properly pay wages on termination and/or resignation;
- 26 (h) Failed to pay sick pay wages;
- 27 (i) Failed to pay vacation wages;
- 28 (j) Failed to provide suitable seating;

1 (k) Failed to reimburse business expenses; and

2 (l) Failed to allow inspection of personnel records. Each of these was a
3 violation of the *Labor Code*.

4 11. The true names and capacities, whether individual, corporate, subsidiary,
5 partnership, associate or otherwise of Defendants DOES 1 through 100, inclusive, are unknown
6 to Plaintiff, who therefore sues these Defendants by such fictitious names pursuant to *Code of*
7 *Civil Procedure* § 474. Plaintiff will seek leave to amend her Complaint to allege the true
8 names and capacities of DOES 1 through 100, inclusive, when they are ascertained.

9 12. Plaintiff is informed and believes, and based on that information and belief
10 alleges, that Defendant DOES 1 through 100 are persons, corporations or other entities which
11 reside in or are authorized to do, or are otherwise doing, business in the State of California.
12 Specifically, DOES 1 through 100 maintain offices, operate businesses, employ persons, and
13 conduct business in the County of Marin. Each of the Defendants DOES 1 through 100 was the
14 managerial agent, employee, predecessor, successor, joint-venturers, co-conspirator, alter ego
15 and/or representative of one or more of the other Defendants named herein, and acting with
16 permission, authorization, and/or ratification and consent of the other Defendants.

17 13. Plaintiff is informed and believes, and based on that information and belief
18 alleges, that the Defendants named in this Complaint, including DOES 1 through 100,
19 inclusive, are responsible in some manner for one or more of the events and happenings that
20 proximately caused the injuries and damages hereinafter alleged.

21 14. Plaintiff is informed and believes, and based on that information and belief
22 alleges, that Defendants named in this Complaint, including DOES 1 through 100, inclusive,
23 are, and at all times mentioned herein were, the agents, servants, and/or employees of each of
24 the other Defendants and that each Defendant was acting within the course and scope of his,
25 hers or its authority as the agent, servant and/or employee of each of the other Defendants.
26 Consequently, all of the Defendants are jointly and severally liable to the Plaintiff, and the
27 Class, for the damages sustained as a proximate result of their conduct.

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15. Plaintiff is informed and believes, and based on that information and belief alleges, that the Defendant named in this Complaint, including DOES 1 through 100, inclusive, knowingly and willfully acted in concert, conspired and agreed together among themselves and entered into a combination and systemized campaign of activity to *inter alia* damage Plaintiff, and the Class, and to otherwise consciously and/or recklessly act in derogation of the rights of Plaintiff and the Class, and the trust reposed by Plaintiff, and the Class, the acts being negligently and/or intentionally inflicted. Their conspiracy, and Defendant's concerted actions, were such that, to Plaintiff's information and belief, and to all appearances, Defendant, represented a unified body so that the actions of one Defendant were accomplished in concert with, and with the knowledge, ratification, authorization and approval of each of the other Defendants.

CLASS ALLEGATIONS

A. The Definition of the Class

16. The Class (“the Class”) is defined as follows:

(a) “All current and former employees of Defendant in California who were paid hourly at any time during the period commencing on the date that is four (4) years prior to the filing of this Complaint and continuing through the present date (the “Class Period”).”

(b) “All persons who were employees of Defendant in California who were paid hourly and left the employ of Defendant at any time during the period commencing on the date that is within one (1) year prior to the filing of this Complaint and continuing through the present date (the “Class Period”).”

17. Plaintiff reserves her right under Rule 3.765 of the California Rules of Court to amend or modify the Class description with greater specificity or further division into subclasses or limitation to particular issues.

18. Pursuant to the California Labor Code, Plaintiff intends to file a notice with Labor and Workforce Development Agency (LWDA) and pursue claims against Defendants

1 under the Private Attorney General Act (PAGA). As such, Plaintiff further reserves the right to
2 amend this Complaint once she completes and complies with the provisions under the law.

3 **B. Maintenance of the Action**

4 19. Plaintiff brings this action individually and on behalf of herself and as
5 representative of all similarly situated persons under *Business & Professions Code* §§ 17203
6 and 17204 and *Code of Civil Procedure* § 382.

7 **C. The Class Requisites**

8 20. At all material times, Plaintiff was a member of the Class.

9 21. The Class action meets the statutory prerequisites for maintaining a class action
10 under Code of Civil Procedure § 382 in that:

- 11 (a) The persons who comprise the Class are so numerous that the joinder of all
12 those persons is impracticable and the disposition of their claims as a Class
13 will benefit the parties and the Court;
- 14 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
15 that are raised in this Complaint are common to the Class and will apply
16 uniformly to every Class member;
- 17 (c) The claims of the representative Plaintiff are typical of the claims of each
18 Class member. Plaintiff, like all Class members, has sustained damages
19 arising from Defendant's violations of the laws of the State of California.
20 Plaintiff, and the Class members, were and are similarly or identically
21 harmed by the same unlawful, deceptive, unfair, systematic and pervasive
22 pattern of misconduct engaged in by the Defendant;
- 23 (d) The representative Plaintiff has, and will continue to, fairly and adequately
24 represent and protect the interests of the Class and has retained counsel
25 who are competent and experienced in class action litigation. There are no
26 material conflicts between the claims of the representative Plaintiff and the
27 Class members that would make class certification inappropriate. Counsel
28 for the Class will vigorously assert the claims of all Class members.

1 22. The persons who comprise the Class are so numerous that joining all of them is
2 impracticable, and jointly adjudicating their claims will benefit the parties and the Court.
3 Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent. Plaintiff
4 will fairly and adequately protect the interests of the Class she seeks to represent. Plaintiff does
5 not have any interests that are antagonistic to the Class she seeks to represent. Counsel for
6 Plaintiff are experienced, qualified and generally able to conduct complex class action
7 litigation.

8 23. The Court should permit the action to be maintained as a class action under
9 *Code of Civil Procedure* § 382 because:

- 10 (a) The questions of law and fact common to the Class predominate over any
11 question affecting only individual members;
- 12 (b) A class action is superior to any other available method for fairly and
13 efficiently adjudicating the claims of the Class;
- 14 (c) The Class members are so numerous that it is impractical to bring all of
15 them before the Court;
- 16 (d) Plaintiff and other Class members will not be able to obtain effective and
17 economic legal redress unless the action is maintained as a class action;
- 18 (e) There is a community of interest in obtaining appropriate legal and
19 equitable relief for the statutory violations, and in obtaining adequate
20 compensation for the damages and injuries for which Defendants are
21 responsible in an amount sufficient to adequately compensate the Class
22 members;
- 23 (f) Without Class certification, the prosecution of separate actions by
24 individual Class members would create a risk of:
- 25 i. Inconsistent or varying adjudications for individual Class members
26 that would establish incompatible standards of conduct for
27 Defendants; and/or,
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ii. Adjudication for individual Class members that would, as a practical matter, dispose of other non-party members' interests, or that would substantially impair or impede the non-parties' ability to protect their interests, by, for example, potentially exhausting the funds available from Defendant, and

(g) Defendant has acted or refused to act on grounds generally applicable to the Classes, making final injunctive relief appropriate for the Class, as a whole.

24. Plaintiff contemplates eventually issuing notice to the proposed Class Members that would set forth the subject and nature of the action. The Defendant's own business records may be utilized for assisting to prepare and issue the contemplated notice. To the extent that any further notices may be required, Plaintiff would contemplate using additional media and/or mailing.

GENERAL ALLEGATIONS

25. At all times material hereto, Good Earth has been, and is, a retail store selling natural and organic foods.

26. Plaintiff and members of the Class were employed as cashiers and other nonexempt hourly employees in California by Defendant at various times during the Class Period.

THE CONDUCT

27. Plaintiff seeks relief from Defendant's uniform policies and practices of denying Plaintiff and members of the Class wages and compensation owed under California law.

28. Starting on or about March 15, 2017 and continuing through the November 18, 2022, Defendant employed Plaintiff as a Cashier at its Good Earth location in Fairfax, California.

29. While employed by Defendant, Plaintiff was paid \$21.75 per hour.

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1 30. The employment by Defendant of the Class Members, and each them, is
2 governed by Industrial Welfare Commission Wage Order 7, which covers those persons
3 employed in the mercantile industry.

4 **OFF-THE-CLOCK WORK**

5 31. Employers must compensate non-exempt employees for “off-the-clock” work
6 (before punching in or after punching out on a time clock) if the employers knew or should
7 have known that the employees were working those hours. *Morillion v. Royal Packing Co.*
8 (2000) 22 Cal. 4th 575, 585.

9 32. Defendant required Plaintiff and the Class to regularly perform compensable
10 tasks pre-shift off-the-clock for which they did not receive any compensation. Specifically, as
11 part of the Class members’ employment beginning in March 2020 and continuing through July
12 2022, Defendant required Plaintiff and the Class, to undergo COVID-19 temperature checks
13 and completion of questionnaires, before the start of their work, off-the-clock. Plaintiff and
14 members of the Class were required to wait in line between 5-10 minutes prior to doing the
15 COVID screenings and the screening took between 1-2 minutes. Only after such temperature
16 checks and screenings were completed, was Plaintiff and the Class, finally able clock in for
17 their shifts. As a result, and because they improperly treated such pre-shift COVID-19
18 screening time as non-compensable, Defendant failed to compensate Plaintiff and the Class for
19 such time.

20 33. At all times relevant, Plaintiff and Class members consistently worked hours for
21 which they were not paid because Plaintiff and the Class members were required to wait in line
22 while off the clock for time clocks to become available to clock in and out. Plaintiff and Class
23 members typically had to wait 5-10 minutes in line at least once per week to clock in for their
24 shifts, start of meal breaks and end of meal breaks. At times, the timeclocks were not operating
25 and Plaintiff and Class members had to wait between 10-20 minutes to clock in and/or out.

26 **FAILURE TO PAY OVERTIME/MINIMUM WAGES**

27 34. Under California law, non-exempt employees as defined by Wage Order 7, are
28 entitled to premium wages for overtime worked. Under California law, an hourly paid

1 employee is entitled to overtime pay when they exceed eight hours of work in a single day,
2 exceed 40 hours of work in a week or work seven days in a row.

3 35. Under California law, non-exempt employees as defined by the applicable Wage
4 Order are entitled to minimum wages. Labor Code Section 1197 states the California
5 requirement that employees must be paid at least the minimum wage fixed by the Commission
6 or by any applicable state or local law, and any payment of less than the minimum wage is
7 unlawful. Similarly, Labor Code Section 1194 entitles "any employee receiving less than the
8 legal minimum wage...is entitled to recover in a civil action the unpaid balance of the full
9 amount of this minimum wage." The applicable IWC Wage Order(s), including IWC Wage
10 Order No. 1-2001, obligates employers to pay each employee minimum wages for all hours
11 worked.

12 36. These minimum wage standards apply to each hour employees worked or were
13 subject to control by the employer for which they were not paid. Therefore, an employer's
14 failure to pay for any particular hour of time worked by an employee or subject to the
15 employer's control is unlawful, even if averaging an employee's total pay over all hours
16 worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v.*
17 *Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

18 37. Defendant required Plaintiff and the Class to regularly perform compensable
19 tasks pre-shift off the clock for which they did not receive any compensation.

20 38. At all times during the relevant time period, Plaintiff and the Class routinely
21 worked schedules such that they were due pay at overtime and minimum wage rates. During
22 this period, it was the practice and policy of Defendant to not pay employees overtime and
23 minimum wages. Monies for unpaid overtime and minimum wages remain due and owing.

24 **INTERRUPTED MEAL BREAKS**

25 39. Under California law, non-exempt employees as defined by Wage Order 7, are
26 entitled to premium wages for overtime worked, a 30-minute lunch period for each 5 hours
27 worked, a 10-minute paid rest break for every four hours worked, or major fraction thereof.

1 Non-exempt employees are entitled to one hour pay at their regular pay rate for each day the
2 requisite rest and/or meal periods are not provided.

3 40. Plaintiff and the Class were routinely not provided uninterrupted meal breaks.

4 41. Defendant's policies and procedures were applied to all non-exempt employees
5 in California and resulted in non-exempt employees working time which was not compensated
6 by any wages in violation of Labor Code sections 510, 1194 and the applicable Wage Orders.
7 As a result, Defendant owes wages at the legal overtime rate for unpaid overtime to each of
8 their California non-exempt employees whose meal periods were interrupted.

9 **REST BREAKS ROUTINELY INTERRUPTED**

10 42. Plaintiff and the Class's rest breaks were routinely interrupted. Further, Plaintiff
11 and members of the Class were restricted from leaving their work areas during their breaks.

12 **FAILURE TO PROPERLY PAY SICK PAY WAGES**

13 43. Defendant acted intentionally and with deliberate disregard to the rights of
14 Plaintiff and members of the Class by failing to pay any sick pay. Plaintiff's check detail
15 reports do not show any sick pay. Rather, the check detail reports show only vacation pay.
16 Defendant used Plaintiff and other Class members' vacation pay when she and Class members
17 were sick, and did not provide sick pay, only vacation pay.

18 44. Further, the reports do not show any vacation pay accrual rates. As a result, it is
19 not possible to verify if Plaintiff and Class members received the correct number of paid
20 sick/vacation days.

21 **EXCLUSION OF BONUSES FROM REGULAR RATE OF PAY**

22 45. California law uses the terms "compensation" and "pay" interchangeably and
23 requires that all applicable remuneration, including but not limited to, commissions, and/or
24 non-discretionary bonuses, and/or gift cards and/or cash payments based on sales numbers,
25 etc., be included when calculating an employee's regular rate of pay.

26 46. Defendant failed to properly pay and calculate wages due to excluding
27 nondiscretionary bonuses from regular rate of pay calculations. Such bonus payments are
28 required under California law to be included in an employee's regular rate of pay for wage

1 calculation. Defendant failed to do so, thereby failing to pay employees their full wages as
2 required under the Labor Code.

3 47. Plaintiff and members of the Class received bonuses that must be included when
4 calculating their regular rates of pay for purposes of wages. However, Defendant failed to
5 correctly calculate Plaintiff and members of the Class's regular rate of pay to include all
6 applicable remuneration, including, but not limited to, bonuses. Defendant issued Plaintiff \$10
7 bonuses twice per month for cash register accuracy. The bonuses were not blended into
8 Plaintiff and Class member's regular rate of pay.

9 48. Further, Plaintiff's check detail reports show that Plaintiff was paid "ProfShar"
10 for the same period as overtime at exactly 1.5 times the base rate. Thus, bonuses were not
11 incorporated into the overtime rate. Additionally, the check detail reports show that Plaintiff
12 was paid "ProfShar" for same period as vacation pay, at exactly the base rate. As a result,
13 bonuses were not incorporated into Plaintiff and Class members' vacation/sick pay.

14 49. Defendant provided Plaintiff and Class members with certain extra benefits such
15 as employee discounts. However, the check detail reports do not show any extra benefits. The
16 extra benefits were not incorporated into Plaintiff and Class members' regular and overtime
17 rates of pay.

18 **FAILURE TO ISSUE ACCURATE WAGE STATEMENTS**

19 50. As a result of Defendant's failure to pay employees at required overtime time
20 rates, minimum wages, premium pay for missed meal/rest breaks, sick pay, vacation pay, the
21 wage statements issued to the employees did not comply with Labor Code §226 and California
22 Industrial Welfare Commission ("IWC") Wage Order 7 in that they did not accurately reflect
23 all wages earned and due and owing.

24 **FAILURE TO PAY WAGES ON TERMINATION**

25 51. As a further result of Defendant's failure to pay employees at required overtime
26 rates and minimum wages and premium pay for missed meal/rest breaks, sick pay, vacation
27 pay, when the employees left their employ, they were not timely paid all wages due them, as
28 required by *Labor Code* §§ 201, 202 and Wage Order 7.

1 **FAILURE TO PAY VESTED VACATION PAY ON SEPARATION OF**
2 **EMPLOYMENT**

3 52. Defendant failed to pay vested vacation pay on termination. Further, Defendant
4 had an policy which did not allow rollover of accrued vacation time. Plaintiff and Class
5 members were not paid the full amount of their accrued and unused Paid Time Off (“PTO”)
6 upon separation of employment.

7 **FAILURE TO PROVIDE SUITABLE SEATING**

8 53. Defendant failed to provide Plaintiff and Class members with suitable seating.

9 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

10 54. Defendant failed to reimburse Plaintiff and Class members with their necessary
11 business expenses, such as cell phone use.

12 **FAILURE TO ALLOW INSPECTION OF PERSONNEL RECORDS**

13 55. Defendant failed to allow Plaintiff and Class members to timely and fully
14 inspect their records and payroll files.

15 **FIRST CAUSE OF ACTION**

16 **FAILURE TO PAY OVERTIME TIME**

17 **(Labor Code §§510, 558, 1194.3 and Wage Order 7 By Plaintiffs Against Defendant and**
18 **Does 1-100)**

19 56. Plaintiff and the Class reallege and incorporate by reference all of the allegations
20 set forth in this Complaint.

21 57. During Plaintiff’s entire employment with Defendant, pursuant to Cal. Lab.
22 Code §§200, 510, 1194, and 1198, and IWC Wage Order No. 7, Defendant was required to
23 compensate Plaintiff with premium pay for all overtime work, for hours worked in excess of
24 eight (8) hours per day and/or forty (40) hours per week.

25 58. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee
26 who had not been paid overtime compensation could recover the unpaid balance of the full
27 amount of overtime wages due, including interest thereon, together with reasonable attorneys’
28 fees and costs of suit.

1 59. Pursuant to IWC Wage Order No. 7-2001, § 3, “Employment beyond eight (8)
2 hours in any workday is permissible provided the employee is compensated for such overtime
3 at not less than: (a) One and one-half (1 1/2) times the employee’s regular rate of pay for all
4 hours worked in excess of eight (8) hours up to and including twelve (12) hours in any
5 workday...

6 60. California Labor Code section 558 provides in pertinent part:

7 (a) Any employer or other person acting on behalf of an employer who
8 violates, or causes to be violated, a section of this chapter or any
9 provision regulating hours and days of work in any order of the
10 Industrial Welfare Commission shall be subject to a civil penalty as
follows:

11 (1) For any initial violation, fifty dollars (\$50) for each underpaid
12 employee for each pay period for which the employee was underpaid in
addition to an amount sufficient to recover underpaid wages.

13 (2) For each subsequent violation, one hundred dollars (\$100) for each
14 underpaid employee for each pay period for which the employee was
15 underpaid in addition to an amount sufficient to recover underpaid
wages.

16 (3) Wages recovered pursuant to this section shall be paid to the affected
17 employee...

18 (c) The civil penalties provided for in this section are in addition to any
19 other civil or criminal penalty provided by law.

20 61. Plaintiff and members of the Class were required to undergo Covid temperature
21 checks and complete questionnaires that were off-the-clock prior to clocking in for their shifts.
22 Additionally, Plaintiff and members of the Class had to wait in line to clock in and out for their
23 shift start/end times and start/end times of meal breaks, while off the clock.

24 62. At all times relevant, Plaintiff and members of the Class consistently worked
25 hours for which they were not paid because Defendant failed to pay Plaintiff and the members
26 of the Class for these off-the clock activities and as a result thereof, Plaintiff and the Class were
27 not paid overtime that was due to them.
28

1 63. The regular rate of pay under California law includes all remuneration for
2 employment paid, on behalf of the employer, to the employee. Employers must properly factor
3 all economic items into the regular rate of pay for purposes of calculating the overtime wages
4 due to its employees. *See Alvarado v. Dart Container Corp. of California* (2018) 4 Cal. 5th
5 542, 554, 568 (the regular rate of pay must include the “value of any nonhourly compensation,”
6 including bonuses).

7 64. Specifically, Defendant had a company-wide policy of paying Plaintiff and
8 members of the Class nondiscretionary bonuses. Upon information and belief, Defendant’s
9 nondiscretionary bonuses were not incorporated into Plaintiff and Class members’ regular,
10 overtime rates of pay and sick/vacation pay.

11 65. Defendant violated the rights of Plaintiff and the members of the Class by not
12 correctly calculating their regular rate of pay to include all applicable remuneration, including,
13 but not limited to, non-discretionary bonuses and extra benefits such as employee discounts.

14 66. Plaintiff and Class Members were required to work in excess of 8 hours, but
15 were not paid for overtime.

16 67. Throughout Plaintiff’s employment, Defendant failed and refused to pay and
17 properly calculate overtime compensation to Plaintiff and members of the Class as required by
18 law.

19 68. The foregoing overtime compensation is owed and unpaid. As a direct and
20 proximate result of Defendant’s failure and refusal to pay overtime compensation, Plaintiff and
21 Class Members suffered damages in an amount to be proven at trial.

22 69. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal
23 counsel in order to enforce Plaintiff’s rights to overtime, is entitled to recover Plaintiff’s
24 attorneys’ fees, costs and interest.

25 **SECOND CAUSE OF ACTION**

26 **FOR FAILURE TO PAY MINIMUM WAGES**

27 **(Labor Code §§ 1194, 1197, 1197.1, 1198, 119, IWC Wage Order 7 By Plaintiffs Against**
28 **Defendant)**

1 70. Plaintiff and the Class reallege and incorporate by reference all of the allegations
2 set forth in this Complaint.

3 71. Labor Code § 1197 states the California requirement that employees must be
4 paid at least the minimum wage fixed by the Commission, and any payment of less than the
5 minimum wage is unlawful. Similarly, Labor Code § 1194 entitles "any employee receiving
6 less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of
7 the full amount of this minimum wage." IWC Wage Order 4-2001 also obligates employers to
8 pay each employee minimum wages for all hours worked. These minimum wage standards
9 apply to each hour employees worked for which they were not paid.

10 72. During the four years preceding the filing of this lawsuit, Defendant was
11 required to compensate Plaintiff and members of the Class at the minimum wage, but failed to
12 carry out its duties and responsibilities as an employer imposed under the laws and regulations
13 of the State of California by failing to pay Plaintiff a minimum wage as required by the Cal.
14 Lab. Code and/or IWC Wage Order No. 7. Specifically, Defendant committed the following
15 acts:

- 16 a. failing to pay overtime time;
- 17 b. failing to pay minimum wages;
- 18 c. failing to provide meal breaks as required by law;
- 19 d. failing to provide rest breaks as required by law;
- 20 e. failing to maintain records and provide accurate itemized wage
21 statements;
- 22 f. failing to pay wages on resignation or termination;
- 23 g. failing to pay sick pay;
- 24 h. failing to pay vacation pay;
- 25 i. failing to reimburse business expenses;
- 26 j. failing to provide employment records; and
- 27 k. all other reasons to be discovered.

1 73. Plaintiff and members of the Class engaged in off the clock work and were not
2 afforded proper meal/rest breaks. As a result, Plaintiff and members of the Class were paid
3 less than minimum wage.

4 74. Labor Code § 1194 provides, in part, that any employee receiving less than the
5 legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum
6 wage, including interest thereon, reasonable attorneys' fees, and costs of suit.

7 75. Labor Code § 1194.2 allows an employee to recover liquidated damages in an
8 amount equal to the wages unlawfully unpaid and interest thereon for any action under Labor
9 Code § 1194. Where an employee, such as Plaintiff and the other Class members, are not paid
10 for all hours worked under Labor Code § 1194, the employee may recover minimum wages
11 for the time associated with the overtime for which they received no compensation. See *Sillah*
12 *v. Command Int'l Sec. Servs.*, 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees
13 suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also
14 showed they were paid less than minimum wage); accord *Andrade v. Arby's Rest. Grp., Inc.*,
15 225 F. Supp. 3d 1115, 1132-33 (N.D. Cal. 2016).

16 76. Plaintiff and the other Class Members suffered and continue to suffer losses
17 related to the use and enjoyment of compensation due and owing to them as a direct result of
18 Defendant's unlawful acts and Labor Code violations in an amount to be shown according to
19 proof at trial and within the jurisdictional limitations of this Court.

20 77. Therefore, pursuant to Labor Code §§200, 218.5, 558 and 1194, Plaintiff and the
21 Class are entitled to recover the unpaid balances of the minimum wages Defendant owes them,
22 plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to
23 proof.

24 **THIRD CAUSE OF ACTION**

25 **FOR FAILURE TO PROVIDE TIMELY OFF-DUTY MEAL PERIODS**

26 **(Failure to Provide Timely Off-Duty Meal Periods in Violation of IWC Wage Order No.**
27 **7; Labor Code §§ 226.7, 512 By Plaintiffs Against Defendant)**

1 78. Plaintiff and the Class reallege and incorporate by reference all of the allegations
2 set forth in this Complaint.

3 79. California Labor Code §226.7(a) prohibits an employer from requiring an
4 employee to work during any meal period mandated by an applicable Industrial Wage Order.
5 Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
6 employee to work during a meal or rest break or recovery period mandated pursuant to an
7 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
8 Commission..."

9 80. California Labor Code §1198 makes unlawful the employment of an employee
10 under conditions the IWC prohibits.

11 81. IWC Order No. 7-2001(11)(A) provides, in relevant part: "No employer shall
12 employ any person for a work period of more than five (5) hours without a meal period of not
13 less than 30-minutes, except that when a work period of not more than six (6) hours will
14 complete the day's work the meal period may be waived by mutual consent of the employer and
15 the employee."

16 82. IWC Order No. 7-2001 (11)(c) further provides, in relevant part: "Unless the
17 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
18 considered an 'on duty' meal period and counted as time worked."

19 83. Section 512(a) of the California Labor Code provides, in relevant part, that:

20 An employer may not employ an employee for a work period of more than five
21 hours per day without providing the employee with a meal period of not less
22 than 30-minutes, except that if the total work period per day of the employee is
23 no more than six hours, the meal period may be waived by mutual consent of
24 both the employer and employee. An employer may not employ an employee
25 for a work period of more than 10 hours per day without providing the
26 employee with a second meal period of not less than 30-minutes, except that if
the total hours worked is no more than 12 hours, the second meal period may
be waived by mutual consent of the employer and the employee only if the first
meal period was not waived.

27 84. The Labor Code and Wage Order provisions cited above require California
28 employers to provide employees with off-duty 30-minute meal periods on or before the fifth

1 hour of their shifts. To satisfy this obligation, California employers must: (1) make employees
2 aware of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and
3 (2) ensure that employees are actually free of job duties for thirty minutes per day on or before
4 the fifth hour of their shifts.

5 85. At times, Plaintiff and members of the Class meal breaks interrupted.

6 86. Under California law, employers must also record their employees' meal
7 periods: "Every employer shall keep accurate information with respect to each employee,
8 including the following: ... Meal periods ... shall also be recorded. Meal periods during which
9 operations cease ... need not be recorded." IWC Order No. 7, § (7)(A)(3). Here, Defendant
10 failed to ensure that Plaintiff and members of the Class record their meal breaks. Plaintiff and
11 Class members did not enter their meal breaks' start and stop times. Where the employer has
12 failed to keep records required by statute, the consequences of such failure should fall on the
13 employer, not the employee. In such a situation, imprecise evidence by the employee can
14 provide a sufficient basis for liability." *Hernandez v. Mendoza*, 199 Cal. App. 3d 721, 727
15 (1988). Inasmuch as Defendant had an obligation under the record-keeping requirements of the
16 Wage Order to track meal periods unless "all work ceases", Defendant knew or should have
17 known its employees were regularly missing meal periods during the Class Period.

18 87. Defendant has a policy or practice of failing to ensure that Plaintiff and
19 members of the class take the meal periods and record their meal breaks required by California
20 Labor Code §226.7 and IWC Wage Order No. 7-2001 §11.

21 88. By their actions in failing to afford Plaintiff and Class Members uninterrupted
22 meal periods, Defendant violated Cal. Lab. Code §226.7(b) and section 11 of the Wage Order
23 in the amount of one additional hour of pay at the employee's regular rate of compensation for
24 each work period during each day in which Defendant failed to provide employees with
25 statutory timely off-duty meal periods.

26 89. Defendant also has a policy or practice of failing to pay each of their employees
27 who was not provided with a meal period as required an additional one hour of compensation
28 at each employee's regular rate of pay. Alternatively, to the extent that Defendant did pay

1 Plaintiff and Class members premium pay for missed, late, and interrupted meal periods,
2 Defendant did not pay Plaintiff and Class members at the correct rate of pay for premium
3 wages because Defendant systematically failed to include all forms of compensation, such as
4 nondiscretionary bonuses and/or other forms of remuneration, in the regular rate of pay. As a
5 result, Defendant failed to provide Plaintiff and Class members compliant meal periods in
6 violation of California Labor Code sections 226.7, 512, and 516 and failed to pay the full meal
7 period premiums due.

8 90. Cal. Labor Code § 218 authorizes Plaintiff and the members of the Class to
9 bring a private right of action to recover wages due based on the deprivation of timely meal
10 periods under Cal. Labor Code § 226.7(b).

11 91. As a direct and proximate result of Defendant's unlawful conduct as alleged
12 herein, Plaintiff and members of the Class have sustained economic damages, including but not
13 limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled
14 to recover economic and statutory damages, attorneys' fees and penalties and other appropriate
15 relief due to Defendant's violations of the California Labor Code and the applicable IWC Wage
16 Orders.

17 **FOURTH CAUSE OF ACTION**

18 **FOR FAILURE TO PROVIDE REST PERIODS**

19 **(Labor Code § 226.7 and IWC Wage Order No. 7 By Plaintiffs Against Defendant and**
20 **Does 1 through 100)**

21 92. Plaintiff and the Class reallege and incorporate by reference all of the allegations
22 set forth in this Complaint.

23 93. Labor Code § 226.7 and the applicable Wage Order provide that employers shall
24 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time
25 per four hours of work, or major fraction thereof.

26 94. Labor Code § 226.7 and the applicable Wage Order provide that if an employer
27 fails to provide an employee with rest periods in accordance with those provisions, the
28

1 employer shall pay the employee one hour of pay at the employee's regular rate of
2 compensation for each workday that the rest periods were not so provided.

3 95. Defendant has intentionally and improperly denied rest periods to Plaintiff and
4 the Class in violation of Labor Code § 226.7 and the applicable Wage Order.

5 96. At all times relevant hereto, Plaintiff and members of the Class have worked 8
6 or more hours daily.

7 97. At all times relevant hereto, Defendant failed to provide rest periods as required
8 by Labor Code § 226.7 and the applicable Wage Order. Plaintiff and Class members rest
9 breaks were at times interrupted. Further, Defendant required Plaintiff and Class members to
10 not leave the premises during their breaks. Alternatively, to the extent that Defendant did pay
11 Plaintiff and Class members premium pay for missed and interrupted rest periods, Defendant
12 did not pay Plaintiff and Class members at the correct rate of pay for premium wages because
13 Defendant systematically failed to include all forms of compensation, such as nondiscretionary
14 bonuses and/or other forms of remuneration, in the regular rate of pay. As a result, Defendant
15 failed to provide Plaintiff and Class members compliant rest periods in violation of California
16 Labor Code sections 226.7, 512, and 516 and failed to pay the full rest period premiums due.

17 98. By virtue of Defendant's unlawful failure to provide rest periods to the Plaintiff
18 and the Class, Plaintiff and the Class have suffered, and will continue to suffer, damages in
19 amounts which are presently unknown to Plaintiff and the Class, but which exceed the
20 jurisdictional limits of the Court and which will be ascertained according to proof at trial.

21 **FIFTH CAUSE OF ACTION**

22 **FOR FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE WAGE**

23 **ITEMIZED STATEMENTS**

24 **(Labor Code §226 By Plaintiffs Against Defendant and Does 1 through 100)**

25 99. Plaintiff and the Class reallege and incorporate by reference all of the allegations
26 set forth in this Complaint.

27 100. Pursuant to the applicable IWC Wage Orders, Defendant is/was the employers
28 of Plaintiff and the Class.

1 101. Pursuant to California Labor Code sections 226 and 1174, and Wage Order 7-
2 2001 section 7, Defendant is required to maintain and provide accurate records relating to
3 employee compensation including all formulas and production records used to calculate wages
4 due.

5 102. Defendant is further required to provide semimonthly or at the time of each
6 payment of wages, an accurate itemized statement showing: (1) gross wages earned; (2) all
7 deductions from wages; (3) net wages earned; (4) the inclusive dates of the period for which the
8 employee is being paid; (5) the name of the employee; and (6) the name and address of the
9 legal entity that is the employee's actual employer. Cal. Labor Code §226(a).

10 103. Section 226(e) provides that an employee is entitled to recover \$50 for the
11 initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay
12 period, not to exceed \$4,000, plus an award of costs and reasonable attorneys' fees, for all pay
13 periods in which the employer knowingly and intentionally failed to provide accurate itemized
14 statements to the employee causing the employee to suffer injury.

15 104. Notwithstanding these provisions. Defendant has engaged in a uniform practice
16 of refusing to maintain and provide the accurate records and wage statements required by
17 California law.

18 105. Throughout the Class Period, Defendant intentionally and knowingly provided
19 Plaintiff and other members of the Class with weekly itemized wage statements containing
20 inaccurate information regarding the wages earned by Plaintiff and members of the Class in
21 that the payments owed to Plaintiff and the members of the Class for overtime compensation,
22 minimum wages, untimely or missed meal and rest periods, sick pay, vacation pay, were not
23 included in gross wages earned by Plaintiff and members of the Class. Further, Defendant
24 failed to furnish Plaintiff and the Class, upon payment of wages, itemized statements accurately
25 showing the number of hours worked and the rates paid.

26 106. As a result, Plaintiff and members of the Class have been injured by having been
27 deprived of the true facts pertaining to their compensation and employment.
28

107. Plaintiff and members of the Class were damaged by these failures because, among other things, the failures led them to believe that they were not entitled to overtime compensation, minimum wages, to be paid for meal and rest periods not provided, sick pay, vacation pay, suitable seating, even though they were so entitled and these failures hindered them from determining the amounts of wages owed to them.

108. Plaintiff and members of the Class are entitled to the amounts provided in Labor Code §226(e), plus attorneys' fees and costs.

109. As result, Plaintiff seeks recovery of the penalties authorized by Labor Code sections 226(e) and 558, and such other penalties and legal and equitable remedies as are provided by law for Defendant's improper conduct.

SIXTH CAUSE OF ACTION

FOR FAILURE TO PAY WAGES UPON TERMINATION AND/OR RESIGNATION

(Labor Code §§201-203 By Plaintiff Against Defendant and Does 1 through 100)

110. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Complaint.

111. Labor Code § 201(a) provides that a discharged employee's unpaid wages are due and payable immediately. Labor Code § 202(a) provides that when an employee resigns from employment, unpaid wages are due and payable within 72 hours of resignation.

112. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until paid, not to exceed thirty days.

113. Plaintiff and/or members of the Class were discharged and/or resigned from Defendant's employ and Defendant willfully failed to pay Plaintiff and the Class wages due them.

114. Under Labor Code § 203(a), Plaintiff and the Class are entitled to one days' wages for each day he or she was not timely paid, not to exceed 30 days' wages.

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1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PAY ALL SICK LEAVE WAGES WHEN DUE**

3 **(Cal. Labor Code §§201-204, 218, 218.5, 233, 245, 246 et. seq. – By Plaintiff against**
4 **Defendant and Does 1 through 100)**

5 115. Plaintiff and the Class reallege and incorporate by reference all of the allegations
6 set forth in this Complaint.

7 116. Section 246 (1) requires that employers pay sick time pay to non-exempt
8 employees at the employee's "regular rate of pay." Employers must calculate paid sick leave
9 for nonexempt employees (1) "in the same manner as the regular rate of pay for the workweek
10 in which the employee uses paid sick time, whether or not the employee actually works
11 overtime in that workweek" or (2) "by dividing the employee's total wages, not including
12 overtime premium pay, by the employee's total hours worked in the full pay periods of the
13 prior 90 days of employment."

14 117. The "regular rate of pay" includes all remuneration for employment paid to the
15 employee with the exception of overtime pay and includes, but is not limited to base hourly
16 wages, shift differentials, assignment-based differentials, longevity differentials, and other
17 forms of non-discretionary wages.

18 118. Moreover, Section 204 provides that wages are generally due and payable no
19 later than seven days after the end of a pay period or at least twice during each calendar
20 month, on days designated in advance as the regular paydays. Section 201 provides if an
21 employer discharges an employee, the wages earned and unpaid at the time of discharge are
22 due and payable immediately. Section 202 provides that an employee is entitled to receive all
23 unpaid wages no later than 72 hours after an employee quits his or her employment, unless the
24 employee has given seventy-two (72) hours previous notice of his or her intention to quit, in
25 which case the employee is entitled to his or her wages at the time of quitting. Section 203
26 provides that if an employer willfully fails to pay wages owed in accordance with Sections 201
27 and 202, then the wages of the employee shall continue as a penalty from the due date, and at
28 the same rate until paid, but the wages shall not continue for more than thirty (30) days.

1 119. Defendant used Plaintiff and other Class members' vacation pay when she and
2 Class members were sick, and did not provide sick pay, only vacation pay.

3 120. Because Defendant did not pay, or timely pay, Plaintiff and members of the
4 Class all owing and unpaid sick pay wages, Defendant violated Sections 201-204, 246, and
5 other Labor Code sections. Defendant willfully failed to timely pay Plaintiff and members of
6 the Class all their wages due during employment and failed to timely pay all their wages due
7 upon the termination of their employment within the times prescribed by the Labor Code and
8 are therefore subject to applicable penalties, including a waiting time penalty, for each day, up
9 to a thirty (30) day maximum, pursuant to Section 203.

10 121. Labor Code section 233 provides: "Any employer who provides sick leave for
11 employees shall permit an employee to use in any calendar year the employee's accrued and
12 available sick leave entitlement, in an amount not less than the sick leave that would be
13 accrued during six months at the employee's then current rate of entitlement, for the reasons
14 specified in subdivision (a) of Section 246.5."

15 122. During the relevant time period, Defendant intentionally and willfully failed to
16 pay Plaintiff and members of the Class their sick pay wages at the regular rate of pay required
17 by law. Accordingly, Plaintiff and members of the Class did not receive the full amount of
18 paid sick time that they were entitled to receive by law, and were therefore denied the right to
19 use sick leave within the meaning of Labor Code Sections 233(a) and (c).

20 123. Any employer who violates Labor Code section 233 is liable to employees for
21 the greater of one day's pay or actual damages, reasonable equitable relief, and reasonable
22 attorneys' fees and costs. Lab. Code sections 233(d), (e).

23 124. Labor Code section 218 authorizes a private right of action to recover unpaid
24 wages, including under sections 204 and 233.

25 125. Pursuant to Labor Code sections 218 and 218.5, Plaintiff and members of the
26 Class are entitled to recover the full amount of their unpaid wages, applicable penalties,
27 prejudgment interest on the amount of their unpaid wages, reasonable attorneys' fees and costs
28 of suit.

EIGHTH CAUSE OF ACTION
FAILURE TO PAY VESTED VACATION PAY ON SEPARATION OF
EMPLOYMENT

(Cal. Labor Code §227.3 – By Plaintiffs against Defendant and Does 1 through 100)

126. Plaintiff and the Class reallege and incorporate by reference all of the allegations set forth in this Complaint.

127. California law, including Labor Code § 227.3, prohibits employers in California from imposing a cap on the accrual of vacation time that is unreasonable. When an employer has a vacation policy, the pay constitutes additional wages for services performed and it must pay out all accrued but unused vacation time upon termination. Once a proportionate right to paid vacation vests as labor is rendered, an employer may not adopt policies that require forfeiture of vested vacation time without compensation. (*Suarez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774, 784 [“The right to a paid vacation, when offered in an employer's policy or contract of employment, constitute deferred wages for services rendered”]; *Rhea v. General Atomics* (2014) 227 Cal. App. 4th 1560, 1571 [“California law prohibits an employer from requiring the forfeiture of vacation time”].) A vacation policy and/or PTO policy that provides for forfeiture of vested vacation pay if not used within a designated time, such as before termination, is impermissible. (*Boothby v. Atlas Mechanics, Inc.* (1992) 6 Cal. App. 4th 1595, 1602.)

128. As a matter of policy, Defendant did not allow rollover of any accrued vacation time.

129. Defendant's vacation policy, which applies to all of its employees in California, violates California law because it imposes an unreasonable cap on the accrual of vacation.

130. Plaintiff and Class members did not receive proper protections and benefits of the laws governing payment of vested vacation time and/or PTO upon separation of employment.

131. Pursuant to Labor Code § 227.3, an employer that has implemented a paid vacation, paid time off, or compensated time off policy must, upon an employee's separation

1 from employment, pay to the employee all vested but unused vacation and/or paid time off at
2 his final rate of pay.

3 132. Further, Defendant paid Plaintiff and the members of the Class for PTO at the
4 incorrect rate of pay. Defendant failed to take into account all non-discretionary incentives,
5 such as bonuses and employee discounts. This resulted in underpayments of PTO to Plaintiff
6 and members of the Class.

7 133. Defendant used Plaintiff and other Class members' vacation pay when she and
8 Class members were sick, and did not provide sick pay, only vacation pay.

9 134. Here, Plaintiff did not use all her PTO prior to her termination. Plaintiff's and
10 Class members' check detail reports do not show accrual rates and balances of PTO.

11 135. As a result, Defendant failed to pay Plaintiff and Class members all vested, but
12 unused vacation time and/or PTO upon separation from employment, thereby receiving an
13 economic benefit.

14 136. Plaintiff is informed and believes and based thereon alleges Defendant's willful
15 failure to pay all vacation wages due and owing to Plaintiff and Class members upon
16 separation from employment results in a continued payment of wages up to thirty (30) days
17 from the time the wages were due. Therefore, Plaintiff and Class members are also entitled to
18 compensation pursuant to Labor Code sections 201-203.

19 137. Plaintiff and members of the Class have been damaged by Defendant's vacation
20 policy because they have been forced to forfeit earned vacation wages.

21 138. As a direct and proximate result of Defendant's unlawful conduct, Plaintiff and
22 members of the Class have sustained damages, including loss of earnings in an amount to be
23 established at trial, in addition to prejudgment interest, costs, and attorneys' fees pursuant to
24 applicable law.

25 **NINTH CAUSE OF ACTION**

26 **FAILURE TO PAY PROVIDE SUITABLE SEATING**

27 **(IWC Wage Order No. 7 By Plaintiffs against Defendant and Does 1 through 100)**

28

1 139. Plaintiff and the Class reallege and incorporate by reference all of the allegations
2 set forth in this Complaint.

3 140. California Labor Code section 1198 makes unlawful the employment of an
4 employee under conditions the IWC prohibits.

5 141. IWC Wage Order No. 7-2001 section 14 requires Defendant to provide Plaintiff
6 and Class members with an adequate number of suitable seats placed in reasonable proximity
7 to the work area and permit Plaintiff and Class Members to use such seats when Plaintiff and
8 Class Members are not engaged in active duties and when it does not interfere with the
9 performance of their duties.

10 142. At all relevant times, Defendant has failed to provide such suitable seating to
11 Plaintiff and Class Members, since it would not interfere with performance of their duties as
12 cashiers.

13 143. Plaintiff and Class Members are entitled to recover all remedies available for
14 violations of California Labor Code section 1198 and IWC Wage Order No. 7-2001, section
15 14.

16 **TENTH CAUSE OF ACTION**

17 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

18 **(Cal. Labor Code § 2802; IWC Wage Order No. 7 By Plaintiffs against Defendant and**
19 **Does 1 through 100)**

20 144. Plaintiff and the Class reallege and incorporate by reference all of the allegations
21 set forth in this Complaint.

22 145. Labor Code §2802 requires employers to indemnify employees for all necessary
23 expenditures incurred by employees in the discharge of their duties.

24 146. At all times relevant herein, Defendant was aware that Plaintiff and Class
25 members were using their personal cell phones for business, but failed to indemnify Plaintiff
26 for all her business-related expenses, including wear and tear expenses, in accordance with
27 Labor Code §2802. Plaintiff is informed and believes and thereon alleges that at all relevant
28 times, Defendant maintained a practice of not reimbursing Plaintiff and Class Members for

1 their work-related expenses that they incurred in using their cell phones for work-related
2 purposes.

3 147. As a result of Defendant's conduct, Plaintiff and Class Members suffered
4 damages in an amount, subject to proof, to the extent they were not reimbursed for all of their
5 business-related expenses incurred in the discharge of their duties.

6 148. Pursuant to Labor Code §2802, Plaintiff and Class Members are entitled to
7 recover the full amount of their unreimbursed business expenses, reasonable attorneys' fees and
8 costs of suit.

9 **ELEVENTH CAUSE OF ACTION**

10 **FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS**

11 **(Cal. Labor Code § 1198.5; IWC Wage Order No. 7 By Plaintiffs against Defendant and**
12 **Does 1 through 100)**

13 149. Plaintiff and the Class reallege and incorporate by reference all of the allegations
14 set forth in this Complaint.

15 150. California Labor Code Section 1198.5 provides:

16 (a) Every current and former employee, or his or her representative, has the right
17 to inspect and receive a copy of the personnel records that the employer
18 maintains relating to the employee's performance or to any grievance
concerning the employee.

19
20 (b) The employer shall make the contents of those personnel records available
21 for inspection to the current or former employee, or his or her representative, at
22 reasonable intervals and at reasonable times, but not later than 30 calendar days
23 from the date the employer receives a written request, unless the current or
24 former employee, or his or her representative, and the employer agree in writing
25 to a date beyond 30 calendar days to inspect the records, and the agreed-upon
26 date does not exceed 35 calendar days from the employer's receipt of the written
request to inspect the records. Upon a written request from a current or former
employee, or his or her representative, the employer shall also provide a copy of
the personnel records,..... later than 30 calendar days from the date the employer
receives the request...

27 (k) If an employer fails to permit a current or former employee, or his or her
28 representative, to inspect or copy personnel records within the times specified I

1 this section... the current or former employee may recover a penalty of seven
2 hundred fifty dollars (\$750) from the employer.

3 (1) A current or former employee may also bring an action for injunctive relief
4 to obtain compliance with this section, and may recover costs and reasonable
5 attorney's fees in such an action.

6 151. Additionally, pursuant to Wage Order 7, at section 7 re: Records, employers are
7 required to keep accurate payroll records on each employee, and such records must be made
8 readily available for inspection by the employee upon reasonable request. The employer must
9 also maintain accurate production records.

10 152. On or about October 12, 2023, through her former counsel, Plaintiff issued a
11 written request to Defendant for copies of her personnel records.

12 153. Under California Labor Code Sections 226, 432 and 1198.5, such records were
13 to include all records relating to Plaintiff's hours worked, wage statements and compensation.
14 Plaintiff's counsel and Defendant did not enter into an agreement to enlarge the time for
15 Defendant's compliance, and Defendant has failed and refused to permit Plaintiff copies of her
16 records. Defendant failed to produce its employee handbook and other documents relating to
17 Plaintiff's personnel file despite multiple follow-up attempts.

18 154. As a direct result and consequence of Defendant's failure and refusal to permit
19 Plaintiff full access to her records, Plaintiff seeks injunctive relief in the form of an order or
20 decree mandating Defendant's compliance. Plaintiff has suffered and will suffer harm as a
21 result of Defendant's ongoing refusal to comply. Plaintiff also seeks recovery of the statutory
22 penalty of \$750 based upon Defendant's violation of § 1198.5.

23 **TWELFTH CAUSE OF ACTION**

24 **FOR UNFAIR COMPETITION**

25 **(Business & Professions Code §§ 17200 *et seq.* By Plaintiffs Against Defendant and Does 1**
26 **through 100)**

27 155. Plaintiff and the Class reallege and incorporate by reference all of the allegations
28 set forth in this Complaint.

1 156. Pursuant to applicable IWC Wage Orders, Defendant was the employer of
2 Plaintiff and the Class. Defendant is also a "person" as that term is defined in Business &
3 Professions Code §17021.

4 157. The Business & Professions Code defines unfair competition as any unlawful,
5 unfair, or fraudulent business practice. At all times relevant herein, by and through the conduct
6 described herein, Defendant has engaged in unfair and unlawful practices by failing to (1) pay
7 overtime time compensation; (2) pay minimum wages; (3) pay for meal periods not provided,
8 (4) pay for rest periods not provided; (5) pay wages due to discharged or quitting employees,
9 (6) furnish Plaintiff and the Class with accurate itemized wage statements, as mandated by the
10 applicable Labor Code and Industrial Welfare Commission requirements, (7) pay all sick leave
11 wages when due, (8) pay vacation wages, (9) provide suitable seating, (10) reimburse business
12 expenses; and (11) allow inspection of employment records, all in violation of Business &
13 Professions Code §§ 17200 et seq.

14 158. By and through the unfair and unlawful business practices described herein,
15 Defendant has obtained valuable property, money and services from the Plaintiff and the Class
16 and have deprived them of valuable rights and benefits guaranteed by law all to the detriment
17 of Plaintiff and the Class.

18 159. All the acts described herein are violations of, among other things, the Labor
19 Code and applicable Industrial Commission Wage Orders, are unlawful and in violation of
20 public policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and
21 thereby constitute unfair and unlawful business practices in violation of Business & Professions
22 Code §§ 17200 et seq.

23 160. Plaintiff and the Class are entitled to, and do, seek such relief as may be
24 necessary to restore to them the money and property which Defendant has acquired, or of
25 which Plaintiff and the Class have been deprived by means of the above-described unfair and
26 unlawful business practices.

27 161. Plaintiff and the Class are further entitled to, and do, seek a declaration that the
28 above-described business practices are unfair and unlawful and that injunctive relief should be

1 issued restraining Defendant from engaging in any of the above described unfair and unlawful
2 business practices in the future.

3 162. Plaintiff and the Class have no plain, speedy, and/or adequate remedy at law to
4 redress the injuries which they have suffered as a consequence of the unfair and unlawful
5 business practices of Defendant. As a result of the unfair and unlawful business practices
6 described above, Plaintiff and the Class have suffered and will continue to suffer irreparable
7 harm unless Defendant is restrained from continuing to engage in these unfair and unlawful
8 business practices. In addition, Defendant should be required to disgorge the unpaid moneys to
9 Plaintiff and the Class.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in her favor
12 and against Defendant as follows:

13 1. For compensatory damages in the amount of unpaid overtime due to Plaintiff
14 and Class Members, according to proof;

15 2. For compensatory damages in the amount of unpaid minimum wages due to
16 Plaintiff and Class Members, according to proof;

17 3. For one (1) hour of pay at the regular rate of compensation for Plaintiff and
18 Class Members for each workday that a meal and/or rest period was not provided;

19 4. For payment of unpaid wages in accordance with California labor and
20 employment law;

21 5. For an award of consequential damages in Plaintiff and Class Members' favor
22 and against Defendant, in an amount to be proven at trial;

23 6. For statutory damages pursuant to Cal. *Lab. Code* §226, according to proof;

24 7. For payment to Plaintiff and Class Members of waiting time penalties pursuant
25 to Cal. *Lab. Code* §203, in an amount equal to her respective daily rates of pay at the time of
26 termination or layoff, multiplied by the total amount of days elapsed between the date of the
27 involuntary termination, and/or 72 hours after notice of the voluntary termination, up to a
28 maximum of 30 days' pay, according to proof;

1 8. For specific relief enforcing waiting time penalties of 30 days of per diem wages
2 pursuant to Cal. *Bus. & Prof. Code* §17200 and Cal. *Lab. Code* §203, according to proof;

3 9. For compensatory damages in the amount of Plaintiff and Class Members' out
4 of pocket expenses and/or reimbursement of monies incurred while performing Defendant's
5 business-related duties plus interests, costs and attorneys' fees pursuant to Cal. *Code Civ. Proc.*
6 §2802(c);

7 10. For damages for failure to provide suitable seating;

8 11. For unpaid sick pay;

9 12. For all vacation wages owed;

10 13. For prejudgment interest accrued on all due and unpaid overtime and minimum
11 wages from the date that wages were due and payable, pursuant to Cal. *Lab. Code* §§218.6 and
12 1194(a), according to proof;

13 14. For statutory penalties pursuant to Cal. *Lab. Code* §§ 558, 203, 210, 225.5,
14 226.7, 248.5, according to proof;

15 15. For reasonable costs, including attorneys' fees, in an amount according to proof
16 pursuant to, *inter alia*, Cal. *Labor Code* §§1194, 218.5, 1198.5(1), 2802 and/or Cal. Code of
17 Civ. Proc. §1021.5;

18 16. For an award of restitution of wages to Plaintiff and Class Members in an
19 amount equal to the amount of wages owed and unpaid, according to proof;

20 17. For injunctive relief ordering the continuing unfair business acts and practices to
21 cease, as the Court deems just and proper;

22 18. For other injunctive relief ordering Defendant to notify Plaintiff and Class
23 Members that they have not been paid the proper amounts in accordance with California law;

24 19. For injunctive relief requiring Defendant to comply with Labor Code
25 1198.5(b)(1);

26 20. For punitive and exemplary damages in a sum to be determined at trial;

27 21. For such other and further relief as the Court deems just and proper.
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DEMAND FOR JURY TRIAL

Plaintiff Aida Garcia hereby respectfully requests a trial by jury for all claims and issues raised in her Complaint that may be entitled to a jury trial.

Date: April 16, 2024

LIPELES LAW GROUP, APC

By: Jasmine Badawi
Jasmine J. Badawi
Attorneys for Plaintiff
Aida Garcia