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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

ISAIAS VAZQUEZ and LINDA
HEFKE on behalf of all other similarly
situated individuals,

Plaintiffs,

vs.

LEPRINO FOODS COMPANY, a Colorado
Corporation; LEPRINO FOODS DAIRY
PRODUCTS COMPANY, a Colorado
Corporation; and DOES 1-50, inclusive,
Defendants.

Defendants.

Case No.: 1:17-cv-00796-AWI-BAM

**THIRD AMENDED CLASS ACTION
COMPLAINT FOR**

1. Failure to Pay Reporting Time Pay in violation of IWC Order 8-2001, Section 5.
2. On Call Meal & Rest Periods.
3. Failure to Properly Itemize Pay Stubs in Violation of California Labor Code §§226(a) and 226(e).
4. Failure to Pay Minimum Wages
5. Failure to Compensate for All Hours Worked
6. Failure to Pay Overtime Wages
7. Unpaid Wages and Waiting Time Penalties
8. Violation of California Business and Professions Code §§17200, et seq.

DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves and all other similarly situated individuals, alleges as follows:

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JURISDICTION

1. Jurisdiction is proper in this Court under the Class Action Fairness Act, 28 U.S.C. §§ 1332(d)(4)(A),(B), et seq., because, as Defendants have admitted, damages exceed five million dollars (\$5,000,000) and there is minimal diversity of citizenship between the parties as Plaintiffs are citizens of the state of California while Defendants are incorporated in the state of Colorado. See, Defendant’s Notice of Removal at Dkt No.1.

2. Venue is proper in this Court because all matters complained of herein took place in Kings County, California.

INTRODUCTION

3. Plaintiffs, ISAIAS VAZQUEZ and LINDA HEFKE, and Class Members are non-union, non-exempt, hourly employees.

4. This is a class action against Leprino Foods Company, Leprino Foods Dairy Products Company, and Does 1-50 (collectively “Leprino” or “Defendants”) on behalf of its hourly employees at Defendants’ Lemoore West dairy/cheese processing facility(ies) to challenge Defendants’ illegal policies and practices.

5. **Reporting Time Pay Violations** (IWC Order 8-2001, Section 5 and other applicable wage orders): Up until May, 2017 it was Leprino’s custom and policy to “de crew” on days in which Leprino had misjudged its production and labor needs. “De crew” is code at Leprino for sending workers home prior to the start of their scheduled shift without pay. De crewing occurs because Leprino had misjudged it labor and production needs and, rather than eating the costs for its mistake, Leprino instead chose to pass on the costs for its mistake onto the backs of its hourly workers. Under the de crewing policy, workers would arrive for their regularly scheduled shifts and then, without prior warning, be informed by Leprino there was a need to “de crew” and be sent away without pay.

1 6. To hide its illegal conduct from legal action and upon information and belief, the
2 state of California, Leprino would require that those workers being sent home fill out Time Off
3 Request forms (TOR). To compound the injury already felt by workers, those workers brave
4 enough to demand their pay were ordered to forfeit a vacation day if they wished to be paid in lieu
5 of Leprino paying them 4 hours of Reporting Time Pay (RTP) as required under law.

6 7. **On Call Meal and Rest Breaks** (§§226.7 and 512 and the applicable IWC wage
7 orders). This is also a class wide action to recover premium wages for all meal and rest periods
8 during the statutory period of this action. The meal and rest period allegations stem from
9 Defendants' policy of requiring Plaintiffs and workers to remain on call and subject to return to
10 discuss business matters and/or return to their work stations if called upon to do so during their
11 rest and meal breaks if called upon to do so by supervisory personnel.

12 8. These illegal and outrageous break/meal, pay and vacation practices have caused
13 substantial financial and emotional hardship to the Plaintiffs, members of the putative class, and
14 their families.

15 9. As a result of these violations, Defendants are also liable for various other penalties
16 under the Labor Code, and for violation the Unfair Business Practices Act ("UCL"), Business and
17 Professions Code §§17200, *et seq.*

18 10. As a result of Defendants' outrageous, fraudulent, deceitful, malicious and
19 belligerent conduct, Plaintiffs seek full compensation and punitive damages on behalf of
20 themselves and all others whom have been affected by this course of illegal conduct. Plaintiffs
21 further seek penalties, on behalf of themselves and the proposed California-law class, for
22 Defendants' violations of the Labor Code and California Industrial Welfare Commission ("IWC")
23 wage orders, as set forth below. Plaintiffs also seek declaratory and injunctive relief, including
24 restitution. Finally, Plaintiffs seeks punitive damages reasonable attorneys' fees and costs under
25 the California Labor Code, California Code of Civil Procedure § 1021.5, and/or other applicable
26 law.

1 11. The practice of coercing employees to fill out TORs and/or if they demand RTP to
2 take a vacation day, constitutes corporate ratification by the Defendants of the oppressive,
3 fraudulent, reprehensible and malicious conduct of its supervisory and administrative personnel.

4 **PARTIES**

5 12. Plaintiffs are residents of King's County and have been employed by Defendants at
6 their "Lemoore West", Lemoore, King's County, California facilities within the statutory period in
7 this case. All matters complained of herein took place in Kings County, California.

8 13. Defendant, Leprino Foods Company, is a Colorado corporation, and at all times
9 relevant to this complaint has been, upon information and belief, a food processor in West
10 Lemoore, California.

11 14. Defendant, Leprino Foods Dairy Products Company, is a Colorado corporation, and
12 at all times relevant to this complaint has been, upon information and belief, a food processor in
13 West Lemoore, California.

14 15. The true names and capacities, whether individual, corporate, associate, or
15 otherwise of Does 1-50, inclusive, are unknown to Plaintiff, who therefore sue the Doe Defendants
16 by fictitious names. Plaintiff is informed, believes, and thereon alleges that each of these
17 fictitiously-named Defendants is responsible in some manner for the occurrences and Plaintiff's
18 and the Class' damages as herein alleged. Plaintiff will amend this Complaint to show their true
19 names and capacities when they have been ascertained.

20 16. At all relevant times, upon information and belief, Defendants have done business
21 under the laws of California, have had places of business in California, including in this judicial
22 district, and have employed Class Members in this judicial district. At all relevant times,
23 Defendants have exercised control over the wages, hours and/or working conditions of Plaintiffs
24 and Class Members, suffered or permitted Plaintiffs and Class Members to work, and/or engaged
25 Plaintiffs and Class Members, thereby creating a common law employment relationship.
26 Defendants are "persons" as defined in California Labor Code §18 and California Business and
27 Professions Code § 17201. Defendants are also "employers" as that term is used in the California
28 Labor Code and the IWC's Orders regulating wages, hours and working conditions.

1 **FACTUAL ALLEGATIONS**

2 17. The policies and practices of Defendants, including failure to pay Reporting Time
3 Pay (“RTP”), coercing workers being sent home to fill out TOR forms, requiring workers who
4 demand their right to 4 hours of RTP to take a vacation day and requiring workers to remain on
5 call during meal and rest periods, the uniform failure to pay meal and rest break premiums to
6 workers forced to remain on call, subject to being called back to the production floor and required
7 to discuss production/work issues with supervisory personnel during meal and rest breaks, at all
8 relevant times have been substantially similar for Plaintiffs and Class Members.

9 18. Leprino has had paid vacation time policies in effect throughout the applicable
10 class period at its Lemoore West cheese processing that applied to the Plaintiffs and all members
11 of the putative class.

12 19. At the end of the day - and after the conclusion of paid time by Defendants –
13 Plaintiffs and class members were required to answer work-related calls from Defendants’
14 supervisors and employees without pay to which they are entitled under California law.

15 **CLASS ACTION ALLEGATIONS**

16 20. Plaintiffs bring this case as a class action on behalf of themselves and all others
17 similarly situated pursuant to California Code of Civil Procedure (“CCP”) §382. The Class that
18 Plaintiffs seeks to represent is defined as follows:

19 All non exempt hourly workers who are currently employed, or formerly have been
20 employed, as nonexempt hourly employees at Defendants’ Lemoore West facilities in
21 Lemoore, California, at any time within four years prior to the filing of the original
22 complaint until resolution of this action.

23 21. Class Members are so numerous that joinder is impracticable. Although the exact
24 number of Class Members is unknown to Plaintiffs, Plaintiffs avers, upon information and
25 belief, that the Class includes hundreds, if not thousands, of employees.

26 22. This action has been brought and may properly be maintained as a class action
27 under CCP §382 because there is a well-defined community of interest in the litigation and the
28 proposed class is easily ascertainable.

1 23. Questions of law and fact common to the Class include:

- 2 i. Whether Defendants, through their policy of requiring workers to report to
3 work for shifts of 8 hours or longer, but then sending them home after they
4 report for work without pay is in violation of the California Labor Code;
- 5 ii. Whether Defendants' policy of requiring workers who demand to be paid
6 reporting time pay, involuntarily take a vacation day before Defendants will
7 pay them violated California law;
- 8 iii. Whether Defendants pay, work and meal- and rest-period policies were in
9 violation of Business and Professions Code § 17200 *et seq.*;
- 10 iv. Whether Defendants, through their policy of not affording Plaintiffs and
11 Class Members ten minutes of off-duty net rest time per four hours, or
12 major fraction thereof, of work is in violation of the California Labor Code;
- 13 v. Whether Defendants, because of their policy of requiring their non-exempt
14 hourly employees to answer radio calls, to speak with group leaders and/or
15 superiors and/or return to their work stations during their 10 minute Rest
16 Breaks and 30 minute meal breaks when asked to do so is in violation of the
17 California Labor Code;
- 18 vi. Whether Defendants uniform failure to pay Meal and Rest Period premiums
19 to Plaintiffs and Class members required to remain on call is in violation of
20 California law.
- 21 vii. Whether Defendants uniform failure to pay minimum wages and overtime
22 pay to Plaintiffs and Class members when required to answer calls from
23 Defendants' supervisors and employees outside of paid time is in violation
24 of California law.
- 25 viii. Whether Defendants, through their policy of requiring their non-exempt
26 hourly employees to remain on call and thus working during meal and rest
27 periods, violated Business and Professions Code § 17200 *et seq.*;
- 28

1 ix. Whether Defendants uniform failure to pay minimum wages and overtime
2 pay to Plaintiffs and Class members when required to answer calls from
3 Defendants' supervisors and employees outside of paid time violated
4 Business and Professions Code § 17200 *et seq.*

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6 x. Whether Defendants' systemic requirement that Plaintiffs and Class
7 Members remain on call during meal and rest periods was an unlawful,
8 unfair or fraudulent business act or practice in violation of Business and
9 Professions Code § 17200 *et seq.*;

10 xi. Whether Defendants' uniform failure to pay RTP and attempting to disguise
11 Reporting Time violations as TOR and/or Vacation resulted in Plaintiffs and
12 Class Members being paid with non-complaint wage statements in violation
13 of the California Labor Code; and

14 xii. Whether the Defendants policy and practice of pressuring Plaintiffs and
15 members of the putative class to fill out TOR forms and/or, if they demand
16 to be paid RTP to take vacation day, is oppressive, fraudulent, reprehensible
17 and malicious conduct meriting punitive damages.

18 xiii. Whether Defendants policy of requiring workers who demand their right to
19 RTP to fill out a vacation request form and, against their will, take a
20 vacation day constitutes wage theft.

21 24. Typicality: Plaintiffs' claims are typical of the claims of the Class. Defendants'
22 common course of conduct in violation of law as alleged herein has caused Plaintiffs and Class
23 Members to sustain the same or similar injuries and damages. Plaintiffs' claims are thereby
24 representative of and co-extensive with the claims of the Class.

25 25. Adequacy of Representation: Plaintiffs are members of the Class, do not have any
26 conflicts of interest with other Class Members, and will prosecute the case vigorously on behalf of
27 the Class. Counsel representing Plaintiffs and the Class are competent and experienced in
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1 litigating large employment class actions, including large minimum-wage and overtime class
2 actions. Plaintiffs will fairly and adequately represent and protect the interests of Class Members.

3 26. Superiority of Class Action: A class action is superior to other available means for
4 the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is
5 not practicable, and questions of law and fact common to the Class predominate over any
6 questions affecting only individual Class Members. Each Class Member has been damaged and is
7 entitled to recovery by reason of Defendants' illegal policies and/or practices. Class action
8 treatment will allow those similarly situated persons to litigate their claims in the manner that is
9 most efficient and economical for the parties and the judicial system.

10 **FIRST CAUSE OF ACTION**

11 **Failure to Pay Reporting Time Pay in violation of IWC Order 8-2001, Section 5 (and other**
12 **applicable wage orders)**
13 **(Against All Defendants)**

14 27. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set
15 forth herein.

16 28. **Reporting Time Pay**

- 17 • (A) Each workday an employee is required to report for work and does report, but is not
18 put to work or is furnished less than half said employee's usual or scheduled day's work,
19 the employee shall be paid for half the usual or scheduled day's work, but in no event for
20 less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay,
21 which shall not be less than the minimum wage.
- 22 • (B) If an employee is required to report for work a second time in any one workday and is
23 furnished less than two (2) hours of work on the second reporting, said employee shall be
24 paid for two (2) hours at the employee's regular rate of pay, which shall not be less than the
25 minimum wage.

26 IWC Order 8-2001 (5) (Reporting Time Pay)

27 29. Pursuant to its authority under Labor Code § 1173, the Industrial Welfare
28 Commission promulgated Wage Order 8-2001. All IWC orders, including but not limited to, 8-

1 2001 at section 5(A) mandate that nonexempt employee be paid reporting time pay as follows:
2 "Each workday an employee is required to report for work and does report, but is not put to work
3 or is furnished less than half said employee's usual or scheduled day's work, the employee shall be
4 paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor
5 more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the
6 minimum wage." *Id.*

7 30. The "primary purpose of the reporting time regulation" is "to guarantee at least
8 partial compensation for employees who report to work expecting to work a specified number of
9 hours, and who are _deprived of that amount because of inadequate scheduling or lack of proper
10 notice by the employer." *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

11 31. Plaintiffs and the Class were required by Defendants to work without
12 compensation, i.e. required to show up for scheduled work, but then, without prior warning, sent
13 home, not paid as required under California law. Thus, Plaintiffs and Class Members were forced
14 to perform work for the benefit of Defendants without compensation.

15 32. In violation of state law, Defendants knowingly and willfully refused to perform
16 their obligations to provide Plaintiffs and the class RTP as required under law, on days that
17 Plaintiffs and Class members reported to work their scheduled shifts, but without prior warning
18 were de crewed by Leprino and ordered to leave the premises without pay. Only those willing to
19 forfeit an earned vacation day would be paid. Defendants committed the acts alleged herein
20 knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiffs and the
21 class, and with improper motives amounting to malice, and in conscious disregard of the rights of
22 Plaintiffs and the class. Plaintiffs and the class are thus entitled to recover nominal, actual,
23 compensatory, punitive, and exemplary damages in amounts according to proof at time of trial.

24 33. As a proximate result of the these knowing and deliberate violations, Plaintiffs and
25 the Class have been damaged in an amount according to proof at time of trial. Pursuant to Labor
26 Code § 218.5 and 218.6, Plaintiffs and Class Members are entitled to an award of reasonable
27 attorneys' fees and costs and to interest on all due and unpaid wages.

28 34. Wherefore, Plaintiffs and the Class request relief as hereinafter provided.

1 **SECOND CAUSE OF ACTION**

2 **Illegal Policy Requiring Hourly Workers to Remain on Call During Meal & Rest Periods**
3 **(Against All Defendants)**

4 35. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set
5 forth herein.

6 36. California Labor Code §§226.7 and 512 and the applicable IWC wage orders
7 require Defendants to provide off duty meal and rest periods to their nonexempt, hourly
8 employees. Labor Code §§226.7 and 512 and the IWC wage orders require employers to provide
9 off duty meal and rest breaks. Unless the employee is relieved of all duty during meal and rest
10 breaks, the employee is considered "on duty" and the meal or rest period is counted as time
11 worked under the applicable wage orders.

12 37. Under §226.7(b) and the applicable wage orders, an employer who fails to provide
13 a required off duty rest period must, as compensation, pay the employee one hour of pay at the
14 employee's regular rate of compensation for each workday that the duty free rest or meal period
15 was not provided. Similarly, under California Code of Regulations, Title 8, sec. 11040 an
16 employer who does not provide its employees with duty free meal breaks, must one (1) hour of
17 pay at the employee's regular rate of compensation for each work day that the meal period is not
18 provided. *Title 8, sec. 11040.*

19 38. Despite these requirements, Defendants have knowingly and willfully refused to
20 perform their obligations to provide Plaintiffs and the Class duty free rest and meal breaks, but
21 rather mandated that Plaintiffs and all hourly workers engaged in the safe production, packaging,
22 storage, movement, testing, monitoring and other all other activities performed by hourly workers
23 and necessary for turning raw ingredients into a safe final cheese product distributed to customers.
24 Plaintiffs and Class Members were still required to discuss work issues and/or report back to their
25 work stations, if called upon to do so, during their rest & meal periods and thus were never
26 afforded duty free rest and meal breaks. Defendants have also uniformly failed to pay Plaintiffs
27 and the Class one hour of pay per violation of requiring Plaintiffs and class members to remain on
28 call during meal and rest periods. Defendants' conduct described herein violated California Labor

1 Code §§226.7 and 512, and the applicable wage orders. Therefore, pursuant to Labor Code
2 §226.7(b) and California Code of Regulations, Title 8, sec. 11040, Plaintiffs and the Class are
3 entitled to compensation for the failure to provide meal and rest periods, plus interest, attorneys'
4 fees, expenses and costs of suit.

5 39. Wherefore, Plaintiffs and the Class request relief as hereinafter provided.

6 **THIRD CAUSE OF ACTION**

7 **Failure to Properly Itemize Pay Stubs**

8 **in Violation of California Labor Code §§226(a) and 226(e)**

9 **(Against All Defendants)**

10 40. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set
11 forth herein.

12 41. At all times relevant to this Complaint, California Labor Code section 226 was in
13 effect and provided (*inter alia*) that, upon paying and employee his or her wages, the employer
14 must:

15 furnish each of his or her employees ... an itemized statement in writing showing
16 (1) gross wages earned, (2) total hours worked by the employee, except for any
17 employee whose compensation is solely based on a salary and who is exempt from
18 payment of overtime under subdivision (a) of Section 515 or any applicable order
19 of the Industrial Welfare Commission, (3) the number of piece-rate units earned and
20 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
21 deductions, provided, that all deductions made on written orders of the employee
22 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
23 dates of the pay period for which the employee is paid, (7) the name of the
24 employee and his or her social security number, (8) the name and address of the
25 legal entity that is the employer, and (9) all applicable hourly rates in effect during
26 the pay period and the corresponding number of hours worked at each hourly rate
27 by the employee.

28 42. Plaintiffs believe, and therefore allege, that, as a result of Defendants uniformly
having failed to pay them Reporting Time Pay, Defendants uniformly failed to furnish them, and
all others similarly-situated, with proper and accurate itemized written statements containing
(without limitation): all the hours that Plaintiffs (and others similarly-situated) worked; gross

1 wages earned; net wages earned; total hours worked on weeks which contained work days in
2 which workers were sent home.

3 43. Plaintiffs allege that Defendants' failure to furnish them with proper itemized wage
4 statements was done knowingly and intentionally, and that they (and others similarly-situated)
5 suffered injury thereby. Thus, under California Labor Code section 226(e), Plaintiffs (and others
6 similarly-situated) is "entitled to recover greater of all actual damages or fifty dollars (\$50) for the
7 initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for
8 each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand
9 dollars (\$4,000) [per employee]..."

10 44. Plaintiffs are also entitled to, and seek on behalf of themselves and all other
11 similarly situated individuals, all reasonable attorneys' fees and costs of suit pursuant to Labor
12 Code section 226(e).

13
14 **FOURTH CAUSE OF ACTION**

15 **Failure to Pay Minimum Wages**

16 **(Against All Defendants)**

17 45. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set
18 forth herein.

19 46. During the applicable statute of limitations period through present, Defendants, and
20 each of them, employed Plaintiffs and Class Members as nonexempt hourly employees.

21 47. During the applicable statute of limitations period through present, Defendants, and
22 each of them, paid Plaintiffs and Class Members less than the applicable minimum wage for all
23 hours worked.

24 48. Pursuant to Labor Code §§ 510, 558, 1194 and 1198, Wage Order No. 8-2001
25 and/or other applicable Wage Orders, and 8 CCR §11080, Defendants, and each of them, were
26 obligated to pay Plaintiffs and Class Members at least the minimum wage of \$8.00 per hour for all
27 hours worked during the applicable statute of limitations period through present.

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1 49. Pursuant to Labor Code § 1194, Plaintiffs and Class Members are entitled to
2 recover unpaid minimum wages, subject to proof at trial, plus interest at the legal rate (Civil Code
3 §§ 3287 and 3289) and attorneys' fees and costs.

4 50. Pursuant to Labor Code §1194.2, Plaintiffs and Class Members are entitled to
5 recover liquidated damages in the amount of unpaid minimum wages proved at trial plus interest
6 thereon.

7 51. Pursuant to Labor Code §558, Defendants, and each of them, are employers and/or
8 persons acting on behalf of an employer, who violated, and who caused to be violated, Labor Code
9 §§ 1194, *et seq.*, Wage Order No. 8 and/or other applicable Wage Orders, and 8 CCR §11080,
10 among other provisions regulating hours and days of work, and are individually subject to civil
11 penalties as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee
12 for each pay period for which the employee was underpaid in addition to an amount sufficient to
13 recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each
14 underpaid employee for each pay period for which the employee was underpaid in addition to an
15 amount sufficient to recover underpaid wages.

16 52. Wherefore, Plaintiffs and the Class request relief as hereinafter provided.

17 **FIFTH CAUSE OF ACTION**

18 **Failure to Compensate for All Hours Worked**

19 **(Against All Defendants)**

20 53. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set
21 forth herein.

22 54. California Labor Code §204 provides that wages for all work performed must be
23 paid "twice during each calendar month, on days designated in advance by the employer as the
24 regular paydays."

25 55. Plaintiffs and the Class were required by Defendants to work without compensation
26 for work they performed. Thus, Plaintiff and Class Members were forced to perform work for the
27 benefit of Defendants without compensation.

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1 56. In violation of state law, Defendants knowingly and willfully refused to perform
2 their obligations to provide Plaintiffs and the Class with compensation for all time worked as
3 required by California law. Defendants committed the acts alleged herein knowingly and
4 willfully, with the wrongful and deliberate intention of injuring Plaintiffs and the Class, with
5 improper motives amounting to malice, and in conscious disregard of the rights of Plaintiff and the
6 Class. Plaintiffs and the Class are thus entitled to recover nominal, actual, and compensatory
7 damages in amounts according to proof at time of trial.

8 57. As a proximate result of the aforementioned violations, Plaintiffs and the Class
9 have been damaged in an amount according to proof at time of trial. Pursuant to Labor Code §
10 218.5 and 218.6, Plaintiffs and Class Members are entitled to an award of reasonable attorneys'
11 fees and costs and to interest on all due and unpaid wages.

12 58. Pursuant to Labor Code §558, Defendants, and each of them, are employers and/or
13 persons acting on behalf of an employer, who violated, and who caused to be violated, Labor Code
14 §§ 1194, *et seq.*, Wage Order No. 8 and/or other applicable Wage Orders, and 8 CCR §11080,
15 among other provisions regulating hours and days of work, and are individually subject to civil
16 penalties as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee
17 for each pay period for which the employee was underpaid in addition to an amount sufficient to
18 recover underpaid wages; (2) For each subsequent violation, one hundred dollars (\$100) for each
19 underpaid employee for each pay period for which the employee was underpaid in addition to an
20 amount sufficient to recover underpaid wages.

21 59. Wherefore, Plaintiffs and the Class request relief as hereinafter provided.
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23 **SIXTH CAUSE OF ACTION**

24 **Failure to Pay Overtime Wages**

25 **(Against All Defendants)**

26 60. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set
27 forth herein.
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1 61. California Labor Code §510(a) provides as follows:

2 Eight hours of labor constitutes a day's work. Any work in excess of eight hours in
3 one workday and any work in excess of 40 hours in any one workweek and the first
4 eight hours worked on the seventh day of work in any one workweek shall be
5 compensated at the rate of no less than one and one-half times the regular rate of
6 pay for an employee. Any work in excess of 12 hours in one day shall be
7 compensated at the rate of no less than twice the regular rate of pay for an
8 employee. In addition, any work in excess of eight hours on any seventh day of a
9 workweek shall be compensated at the rate of no less than twice the regular rate of
10 pay of an employee. Nothing in this section requires an employer to combine more
11 than one rate of overtime compensation in order to calculate the amount to be paid
12 to an employee for any hour of overtime work.

13 62. The IWC Wage Order 8-2001(3)(A)(1), 8 Cal. Code Regs. §11080, states:

14 The following overtime provisions are applicable to employees 18 years of age or
15 over and to employees 16 or 17 years of age who are not required by law to attend
16 school and are not otherwise prohibited by law from engaging in the subject work.
17 Such employees shall not be employed more than eight (8) hours in any workday or
18 more than 40 hours in any workweek unless the employee receives one and one-
19 half (1 1/2) times such employee's regular rate of pay for all hours worked over 40
20 hours in the workweek. Eight (8) hours of labor constitutes a day's work.
21 Employment beyond eight (8) hours in any workday or more than six (6) days in
22 any workweek is permissible under [certain] conditions....

23 63. California Labor Code §1194(a) provides as follows:

24 Notwithstanding any agreement to work for a lesser wage, any employee receiving
25 less than the legal minimum wage or the legal overtime compensation applicable to
26 the employee is entitled to recover in a civil action the unpaid balance of the full
27 amount of this minimum wage or overtime compensation, including interest
28 thereon, reasonable attorney's fees, and costs of suit.

29 64. California Labor Code §200 defines wages as "all amounts for labor performed by
30 employees of every description, whether the amount is fixed or ascertained by the standard of
31 time, task, piece, commission basis or other method of calculation." All such wages are subject to
32 California's overtime requirements, including those set forth above.

33 65. Defendants' across-the-board policy of requiring Plaintiffs and the Class to perform
34 substantial uncompensated work has been unlawful. As a result of this unlawful policy, Plaintiffs

1 and Class Members have worked overtime hours for Defendants without being paid overtime
2 premiums in violation of the California Labor Code, IWC wage orders and other applicable law.

3 66. Defendants have knowingly and willfully refused to perform their obligations to
4 compensate Plaintiffs and the Class for all premium wages for overtime work. As a proximate
5 result of the aforementioned violations, Defendants have damaged Plaintiffs and the Class in
6 amounts to be determined according to proof at time of trial, but in an amount in excess of the
7 jurisdictional requirements of this Court.

8 67. Defendants are liable to Plaintiff and the Class alleged herein for unpaid overtime
9 and civil penalties, with interest thereon. Furthermore, Plaintiffs are entitled to an award of
10 attorneys' fees and costs as set forth below.

11 68. Wherefore, Plaintiffs and the Class request relief as hereinafter provided.

12
13 **SEVENTH CAUSE OF ACTION**

14 **Unpaid Wages and Waiting Time Penalties Pursuant to Labor Code §§201-203**
15 **(Against All Defendants)**

16 69. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set
17 forth herein.

18 70. Labor Code §201 provides:

19 If an employer discharges an employee, the wages earned and unpaid at the
20 time of discharge are due and payable immediately.

21 71. Labor Code §202 provides:

22 If an employee not having a written contract for a definite period quits his or her
23 employment, his or her wages shall become due and payable not later than 72 hours
24 thereafter, unless the employee has given 72 hours previous notice of his or
25 her intention to quit, in which case the employee is entitled to his or her wages at
the time of quitting.

26 72. Labor Code §203 provides, in relevant part:

27 If an employer willfully fails to pay, without abatement or reduction, in
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1 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
2 employee who is discharged or who quits, the wages of the employee shall
3 continue as a penalty from the due date thereof at the same rate until paid or
4 until an action therefore is commenced; but the wages shall not continue for
5 more than 30 days.

6 73. Class Members have left their employment with Defendants during the statutory
7 period, at which time Defendants owed them their unpaid wages. Defendants have
8 willfully refused, and continue to refuse, to pay Class Members all the wages that were due and
9 owing them upon the end of their employment. As a result of Defendants' actions, the Class
10 has suffered and continues to suffer substantial losses, including lost earnings and interest.

11 74. Defendants' willful failure to pay Class Members the wages due and owing them
12 constitutes a violation of Labor Code §§201-202. As a result, Defendants are liable to Plaintiffs
13 and Class Members for all penalties owing pursuant to Labor Code §§201-203.

14 75. Additionally, §203 provides that an employee's wages will continue as a
15 penalty up to thirty (30) days from the time the wages were due. Therefore, the Class is entitled
16 to penalties pursuant to Labor Code §203, plus interest.

17 76. Plaintiffs are entitled to an award of attorneys' fees and costs as set forth below.

18 77. Wherefore, Plaintiffs and the Class request relief as hereinafter provided.

19 **EIGHTH CAUSE OF ACTION**

20 **Violation of California Business and Professions Code §§17200, *et seq.***

21 **(Against All Defendants)**

22 78. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set
23 forth herein.

24 79. California Business and Professions Code §§17200 *et seq.* (also referred to herein
25 as the "Unfair Business Practices Act," "Unfair Competition Law," or "UCL") prohibits unfair
26 competition in the form of any unlawful, unfair or fraudulent business acts or practices.

27 80. California Business and Professions Code §17204 allows a person injured by the
28 unfair business acts or practices to prosecute a civil action for violation of the UCL.

1 81. Labor Code §90.5(a) states it is the public policy of California to vigorously
2 enforce minimum labor standards in order to ensure employees are not required to work under
3 substandard and unlawful conditions, and to protect employers who comply with the law from
4 those who attempt to gain competitive advantage at the expense of their workers by failing to
5 comply with minimum labor standards.

6 82. Beginning at an exact date unknown to Plaintiffs, but at least since the date four
7 years prior to the filing of this suit, Defendants have committed acts of unfair competition as
8 defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent
9 business practices and acts described in this Complaint, including, but not limited to:

- 10 a. violations of Labor Code §204 pertaining to the payment of wages for all
11 hours worked;
- 12 b. violations of Labor Code §§226.7 and 512 and IWC wage orders pertaining
13 to meal and rest periods;
- 14 c. violations of IWC Wage Orders pertaining to Reporting Time Pay;
- 15 d. violations of Labor Code §§201-203;
- 16 e. theft of vacation time pay and vacation time from their hourly work force.

17 83. The violations of these laws and regulations, as well as of the fundamental
18 California public policies involved serve as unlawful predicate acts and practices for purposes of
19 Business and Professions Code §§17200, *et seq.*

20 84. The acts and practices described above constitute unfair, unlawful and fraudulent
21 business practices, and unfair competition, within the meaning of Business and Professions Code
22 §§17200, *et seq.* Among other things, the acts and practices have taken from Plaintiffs and the
23 Class wages rightfully earned by them and vacation time, while enabling Defendants to gain an
24 unfair competitive advantage over law-abiding employers and competitors.

25 85. Business and Professions Code § 17203 provides that a court may make such
26 orders or judgments as may be necessary to prevent the use or employment by any person of any
27 practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to
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1 prevent Defendants from repeating their unlawful, unfair and fraudulent business acts and business
2 practices alleged above.

3 86. As a direct and proximate result of the aforementioned acts and practices, Plaintiffs
4 and Class Members have suffered a loss of money and property, in the form of unpaid wages that
5 are due and payable to them.

6 87. Business and Professions Code § 17203 provides that the Court may restore to any
7 person in interest any money or property that may have been acquired by means of such unfair
8 competition. Plaintiffs and the Class are entitled to restitution pursuant to Business and
9 Professions Code § 17203 for all wages and payments unlawfully withheld from employees during
10 the four-year period prior to the filing of this Complaint.

11 88. Business and Professions Code § 17202 provides: "Notwithstanding Section 3369
12 of the Civil Code, specific or preventive relief may be granted to enforce a penalty, forfeiture, or
13 penal law in a case of unfair competition." Plaintiffs and Class Members are entitled to enforce all
14 applicable penalty provisions of the Labor Code pursuant to Business and Professions Code §
15 17202.

16 89. Plaintiffs' success in this action will enforce important rights affecting the public
17 interest and in that regard Plaintiffs sues on behalf of themselves as well as others similarly
18 situated. Plaintiffs and the Class seek, and are entitled to, unpaid wages, declaratory and
19 injunctive relief, and all other equitable remedies owing to them.

20 90. Plaintiffs herein take upon themselves enforcement of these laws and lawful
21 claims. There is a financial burden involved in pursuing this action, the action is seeking to
22 vindicate a public right, and it would be against the interests of justice to penalize Plaintiffs by
23 forcing her to pay attorneys' fees from the recovery in this action. Attorneys' fees are appropriate
24 pursuant to Code of Civil Procedure §1021.5 and otherwise.

25 91. Wherefore, Plaintiffs and the Class request relief as hereinafter provided.
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PRAYER FOR RELIEF

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WHEREFORE, Plaintiffs pray for relief as follows:

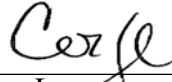
1. Damages and restitution according to proof at trial for all unpaid wages, unpaid minimum wages, unpaid overtime, and other injuries, as provided by the California Labor Code;
2. For a declaratory judgment that Defendants have violated the California Labor Code and public policy as alleged herein;
3. For a declaratory judgment that Defendants have violated Business and Professions Code §§17200 *et seq.*, as a result of the aforementioned violations of the Labor Code and California public policy protecting wages;
4. For preliminary, permanent and mandatory injunctive relief prohibiting Defendants, their officers, agents and all those acting in concert with them, from committing in the future the violations of law herein alleged;
5. For an equitable accounting to identify, locate and restore to all current and former employees the wages and vacation time they are due, with interest thereon;
6. For an order awarding Plaintiffs and Class Members compensatory damages, including lost wages, earnings, return of stolen vacation days and other employee benefits and all other sums of money owed to Plaintiffs and Class Members, together with interest on these amounts, according to proof;
7. For an order awarding Plaintiffs and the Class civil penalties pursuant to the Labor Code provisions cited herein and the Unfair Business Practices Act, with interest thereon.
8. For punitive damages for Defendants' oppressive, fraudulent and malicious conversion of wages, vacation time, and RPT owed to Plaintiffs and class members.
9. For an award of reasonable attorneys' fees as provided by the California Labor Code; California Code of Civil Procedure § 1021.5; and/or other applicable law;
10. For all costs of suit; and

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11. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

The Downey Law Firm, LLC



Cory Lee
Of Counsel
Counsel for the Plaintiffs and the putative class

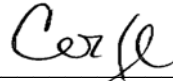
Dated: January 3, 2019

DEMAND FOR JURY TRIAL

Plaintiffs hereby demands a jury trial on all claims and issues for which Plaintiffs is entitled to a jury.

Respectfully submitted,

The Downey Law Firm, LLC



Cory Lee
Of Counsel
Counsel for the Plaintiffs and the putative class

Dated: January 3, 2019