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10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 BRENDA CARDENAS, as an individual  
13 and on behalf of all others similarly  
14 situated,

15 Plaintiff,

16 v.

17 UNDER ARMOUR RETAIL, INC.;  
18 UNDER ARMOUR, INC.; UNDER  
19 ARMOUR RETAIL OF CALIFORNIA,  
20 LLC; and DOES 1 through 50, inclusive,

21 Defendants.

Case No. '22CV647 RBM BLM

**CLASS ACTION**

**CLASS AND COLLECTIVE ACTION  
COMPLAINT**

1. Failure to Pay All Overtime Wages
2. Failure to Pay All Overtime Wages (FLSA)
3. Meal Period Violations
4. Rest Period Violations
5. Unpaid Vacation Wages
6. Untimely Payment of Wages
7. Wage Statement Violations
8. Waiting Time Penalties
9. Failure to Provide PSL & Supp. PSL
10. Unfair Competition

1 Plaintiff BRENDA CARDENAS (“Plaintiff”), as an individual and on behalf of  
2 all others similarly situated, brings this CLASS AND COLLECTIVE ACTION  
3 COMPLAINT against Defendants UNDER ARMOUR RETAIL, INC.; UNDER  
4 ARMOUR, INC.; UNDER ARMOUR RETAIL OF CALIFORNIA, LLC; and DOES  
5 1 through 50 (collectively, “Defendants”), and on information and belief alleges as  
6 follows:

7 **INTRODUCTION**

8 1. This is a class and collective action brought for Defendants’ violations of  
9 the California Labor Code, Business and Professions Code, and the Fair Labor  
10 Standards Act.

11 2. Plaintiff’s allegations address Defendants’ failure to include all required  
12 forms of remuneration in the “regular rate” of pay used to lawfully calculate and pay  
13 certain wages and premiums to employees under state and federal employment laws,  
14 among other issues such as Defendants’ untimely payment of vacation wages, waiting  
15 time penalties, and wage statement violations.

16 **JURISDICTION & VENUE**

17 3. This Court has original federal question jurisdiction under 28 U.S.C. §  
18 1331 because this case is brought under the Fair Labor Standards Act (“FLSA”),  
19 29 U.S.C. §§ 201, *et seq.*, along with jurisdiction under 29 U.S.C. § 216(b) (FLSA  
20 actions “may be maintained against any employer ... in any Federal or State court of  
21 competent jurisdiction”).

22 4. This Court has supplemental jurisdiction over Plaintiff’s state law claims  
23 under 28 U.S.C. § 1367 because the state law wage and hour claims are related with  
24 the federal wage and hour claims and form part of the same case or controversy under  
25 Article III of the United States Constitution.

26 5. Venue is proper in this district under 28 U.S.C. § 1391(b) because  
27 Defendants because a substantial part of the events giving rise to the claims arose in  
28 this district, as Plaintiff brings claims on behalf of a California class of current and

1 former California employees who worked throughout California, including in San  
2 Diego County.

3 **PARTIES**

4 **A. Plaintiff Brenda Cardenas**

5 6. Plaintiff BRENDA CARDENAS is an individual over 18 years of age  
6 who worked for Defendants in SAN DIEGO COUNTY as an hourly, non-exempt  
7 employee until FEBRUARY 2022.

8 **B. Class Members**

9 7. Plaintiff brings this action as an individual and on behalf of the following  
10 classes under Code of Civil Procedure § 382, as well as the following FLSA collective  
11 under 29 U.S.C. § 216(b), altogether referred to in the collective as the “Class” or  
12 “Class Members”:

13 a. California Overtime Class: All current and former non-exempt  
14 employees of Defendants [1] who worked in the State of California  
15 at any time during the four years preceding the filing of this action  
16 through the present, and [2] who were paid overtime wages in the  
17 same pay period in which they were also paid non-excludable  
18 forms of remuneration (including commissions, bonuses, and  
19 differentials, such as the Retail Bonus, OneTime Bonus, Split Shift  
20 Pay, Gifftax-GU, and similar forms of pay).

21 b. FLSA Collective: All current and former non-exempt employees of  
22 Defendants [1] who worked in the United States of America at any  
23 time during the three years preceding the filing of this action  
24 through the present, and [2] who were paid overtime wages in the  
25 same pay period in which they were also paid non-excludable  
26 forms of remuneration (including commissions, bonuses, and  
27 differentials, such as the Retail Bonus, OneTime Bonus, Split Shift  
28 Pay, Gifftax-GU, and similar forms of pay).

- 1 c. Labor Code § 226.7 Premium Class: All current and former non-  
2 exempt employees of Defendants [1] who worked in the State of  
3 California at any time during the four years preceding the filing of  
4 this action through the present, and [2] who were paid meal and/or  
5 rest period premium wages under Labor Code § 226.7 in the same  
6 pay period in which they were also paid non-excludable forms of  
7 remuneration (including commissions, bonuses, and differentials,  
8 such as the Retail Bonus, OneTime Bonus, Split Shift Pay, Gifftax-  
9 GU, and similar forms of pay).
- 10 d. Unpaid Vacation Wages Class: All current and former non-  
11 exempt employees of Defendants [1] who worked in the State of  
12 California at any time during the four years preceding the filing of  
13 this action through the present, and [2] who accrued vacation or  
14 paid time off under Defendants' vacation or PTO policies, and  
15 [3] who were not paid the full balance of those accrued wages  
16 upon separation of employment with Defendants.
- 17 e. Untimely Payment of Wages Class: All individuals who are  
18 members of the following classes: (i) the Unpaid Overtime Class,  
19 (ii) Labor Code § 226.7 Premium Class; (iii) Unpaid Vacation  
20 Wages Class; and (iv) PSL Class.
- 21 f. Wage Statement Class: All individuals who are members of the  
22 following classes who received a wage statement from Defendants  
23 at any time during the one-year period preceding the filing of this  
24 action through the present: (i) the Unpaid Overtime Class,  
25 (ii) Labor Code § 226.7 Premium Class; (iii) Unpaid Vacation  
26 Wages Class; and (iv) PSL Class.
- 27 g. Waiting Time Class: All individuals who are members of the  
28 following classes at any time during the three-year period

1 preceding the filing of this action through the present, excluding  
2 current employees who have never previously separated from  
3 employment with Defendants: (i) the Unpaid Overtime Class,  
4 (ii) Labor Code § 226.7 Premium Class; (iii) Unpaid Vacation  
5 Wages Class; and (iv) PSL Class.

6 h. Paid Sick Leave Class: All current and former non-exempt  
7 employees of Defendants [1] who worked in the State of California  
8 at any time during the four years preceding the filing of this action  
9 through the present, and [2] who were paid paid sick leave wages  
10 in the same pay period in which they were also paid non-  
11 excludable forms of remuneration (including commissions,  
12 bonuses, and differentials, such as the Retail Bonus, OneTime  
13 Bonus, Split Shift Pay, Gifftax-GU, and similar forms of pay).

14 **C. Defendants**

15 8. Defendant UNDER ARMOUR RETAIL, INC. is a corporation registered  
16 to do business in the State of California, doing business and employing labor  
17 throughout San Diego County.

18 9. Defendant UNDER ARMOUR, INC. is a corporation registered to do  
19 business in the State of California, doing business and employing labor throughout  
20 San Diego County.

21 10. Defendant UNDER ARMOUR RETAIL OF CALIFORNIA, LLC is a  
22 limited liability company registered to do business in the State of California, doing  
23 business and employing labor throughout San Diego County.

24 11. The true names and capacities, whether individual, corporate, or  
25 otherwise, of the parties sued as DOES 1 through 50, are presently unknown to  
26 Plaintiff, who sues them by such fictitious names under Code of Civil Procedure  
27 section 474. Plaintiff is informed, believes, and alleges that each of the fictious  
28 defendants is responsible in some manner for the acts and omissions alleged herein.

1 Plaintiff will seek leave to amend this Complaint to reflect their true names and  
2 capacities when they become known.

3 12. Plaintiff is informed, believes, and alleges that all defendants in this  
4 action are employers, co-employers, joint employers, and/or part of an integrated  
5 employer enterprise, as each defendant exercises control over the wages, hours, and  
6 working conditions of Plaintiff and the other aggrieved employees, suffers and permits  
7 them to work, and/or otherwise engages the workforce creating a common law  
8 employment relationship.

9 13. Plaintiff is informed, believes, and alleges that at least some of the  
10 defendants have common ownership, common management, interrelationship of  
11 operations, and centralized control over labor relations and are therefore part of an  
12 integrated enterprise and thus jointly and severally responsible for the acts and  
13 omissions alleged herein.

14 14. Plaintiff is informed, believes, and alleges that each defendant acted in all  
15 respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint  
16 venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity  
17 on behalf of all other co-defendants, such that the acts and omissions of each  
18 defendant may be legally attributable to all others.

19 15. Plaintiff is informed, believes and alleges that the above-mentioned  
20 defendants violated and/or caused to be violated Labor Code and IWC Wage Order  
21 provisions and/or regulating minimum wages and days of work and other provisions  
22 of the Labor Code with respect to the Class of aggrieved employees. As a result, they  
23 may be held personally liable under Labor Code sections 558, 558.1, and 1197.1. *See,*  
24 *e.g., Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809.

25 **GENERAL ALLEGATIONS**

26 16. When Defendants paid overtime to Plaintiff and other Class Members  
27 and FLSA Collective Members, Defendants failed to pay the overtime at the lawful  
28 regular rate of pay.

1 17. Plaintiff and other Class Members regularly worked overtime and earned  
2 bonuses and other forms of remuneration, such as “Retail Bonus,” in the same pay  
3 period.

4 18. In those pay periods, Defendants paid employees at the straight time  
5 hourly rate for the overtime hours, failing to pay overtime hours “at the rate of no less  
6 than one and one-half times the regular rate of pay for an employee[,]” or “at the rate  
7 of no less than twice the regular rate of pay for an employee” for any applicable  
8 double time hours, as required by Labor Code § 510, the IWC Wage Orders, and 29  
9 U.S.C. § 207(a)(1).

10 19. Plaintiff’s wage statements for the pay period of 12/19/2021 through  
11 01/01/2022 shows that she was paid a bonus of \$331.00 and also worked overtime.

12 20. For this pay period, Plaintiff was paid an overtime rate of \$26.63, which  
13 is a simple 1.5x multiple of her \$17.75 base hourly rate.

14 21. However, Plaintiff should have been paid an hourly rate that included the  
15 Retail Bonus earnings, such that her regular rate of pay would be higher than a simple  
16 1.5x multiple, encompassing the bonus she earned during the pay period.

17 22. This is one illustrative example of Defendants’ class-wide unlawful  
18 regular rate calculation, and results in liability for the overtime, civil and statutory  
19 penalties, liquidated damages under the FLSA, interest, and waiting time penalties for  
20 each affected individual.

21 23. Additionally, Defendants failed to consistently provide timely, off-duty  
22 30-minute meal periods to Class Members within the first five hours of work, and  
23 timely second off-duty 30-minute meal periods to the extent they worked shifts of 10  
24 hours or more, in violation of Labor Code sections 226.7, 512 and section 11 of the  
25 applicable IWC Wage Orders.

26 24. “[T]ime records showing noncompliant meal periods raise a rebuttable  
27 presumption of meal period violations, including at the summary judgment stage.”  
28 *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61.

1           25. Plaintiff’s time records (and those of the Class) establish meal period  
2 violations throughout the duration of her employment.

3           26. When Defendants did not provide fully compliant meal periods,  
4 Defendants failed to pay Plaintiff and Class Members a meal period premium at the  
5 regular rate of compensation in violation of Labor Code section 226.7. *See Ferra v.*  
6 *Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863 (“We hold that the terms  
7 are synonymous: “regular rate of compensation” under section 226.7(c), like “regular  
8 rate of pay” under section 510(a), encompasses all nondiscretionary payments, not just  
9 hourly wages”).

10           27. Defendants’ practice of not paying all meal period premiums at the  
11 lawful rate (*i.e.*, including all forms of remuneration in the “regular rate of  
12 compensation”) is a matter of common corporate policy and payroll administration  
13 such that it applies and affected all other Class Members and are evident from the time  
14 records maintained by Defendants, which show late, short and missed meal periods  
15 without an associated meal period premium at the lawful rate on the corresponding  
16 employee wage statement.

17           28. Moreover, Defendants failed to authorize or *permit* ten-minute rest  
18 periods for every four hours of work or major fraction thereof as required by Labor  
19 Code section 226.7 and 516 and section 12 of the applicable IWC Wage Order. When  
20 Defendants did not provide a fully compliant rest periods to Plaintiff or other Class  
21 Members, Defendants failed to pay Plaintiff and other Class Members a rest period  
22 premium at the lawful “regular rate of compensation” in violation of Labor Code  
23 section 226.7.

24           29. In pay periods where Defendants provided Plaintiff and other Class  
25 Members with remuneration in addition to their respective base hourly rate for hours  
26 worked (such as sales commissions)—excluding any forms of pay subject to any  
27 applicable statutory exclusions from the “regular rate”—Defendants failed to properly  
28 calculate and pay paid sick leave at the appropriate regular rate of pay, in violation of



1 Labor Code §§ 246. Defendants paid sick leave at employees’ straight time hourly  
2 rate instead of one of the methods authorized by statute, which required Defendants to  
3 factor in employees’ additional remuneration, such as bonuses or commissions.

4 30. Furthermore, Defendants also failed to pay Covid-19 Supplemental Sick  
5 Leave at a rate authorized by statute because when paying such leave, Defendants  
6 failed to factor in employees’ bonuses, commissions, incentives, and other  
7 compensation. On information and belief, Defendants instead paid Supplemental Sick  
8 Leave at employees’ straight time hourly rate rather than by one of the methods  
9 authorized by Labor Code sections 248.1, 248.2, and 248.6.

10 31. At the time of separation, Defendants failed to pay accrued and unused  
11 vacation time, at the lawful rate of compensation, to Plaintiff and, on information and  
12 belief, to Class Members, in violation of Labor Code section 227.3.

13 32. Labor Code section 227.3 states that if a Defendant offers an employment  
14 contract or policy providing for paid vacation time, such paid vacation time shall be  
15 paid as wages to separated employees. However, upon separation, Plaintiff and other  
16 Class Members were not paid all their accrued vacation time at their respective final  
17 rates.

18 33. With respect to the unpaid wages, PTO, sick leave, and premiums owed  
19 to Plaintiff and Class Members, Defendants failed to pay those wages on time each  
20 pay period or upon separation of employment.

21 34. Because Defendants did not pay Plaintiff and the Class for all  
22 wages/premiums and sick leave owed each pay period of their employment,  
23 Defendants failed to timely pay all wages owed each pay day or upon separation of  
24 employment (or within 72 hours thereof), in violation of Labor Code sections 201  
25 through 203 (waiting time) and 204 and 204b (paydays).

26 35. Defendants equally failed in their affirmative obligation to provide  
27 accurate itemized wage statements each pay period to Plaintiff and Class Members.  
28

1 Defendants issued wage statements to Plaintiff and, on information and belief, other  
2 Class Members, which contain at least two distinct types of violations.

3 36. First, on each wage statement furnished, Defendants failed to accurately  
4 state the “gross wages earned” and “net wages earned” in violation of Labor Code  
5 § 226(a)(1) and (5), as Plaintiff and Class Members earned overtime at one and one-  
6 half times their regular rate of pay, but were underpaid overtime on an hourly basis  
7 (due to the regular rate of pay underpayment), and were deprived of all sick leave and  
8 meal and rest period premiums earned at the lawful rate, resulting in an inaccurate  
9 itemization of gross and net wages earned on those wage statements.

10 37. Second, on each wage statement furnished to Plaintiff and, on  
11 information and belief, the Class Members, Defendants failed to accurately state “all  
12 applicable hourly rates in effect during the pay period and the corresponding number  
13 of hours worked at each hourly rate by the employee” in violation of Labor Code  
14 § 226(a)(9), as the wage statements issued to Plaintiff and Class Members do not  
15 accurately list the applicable hourly overtime rate in effect, but instead a deflated  
16 overtime rate that does not include all forms of non-expected remuneration in the  
17 regular rate required to calculate and pay overtime.

18 38. Defendants’ wage statement issues described above rendered the wage  
19 statements inaccurate and confusing to Plaintiff and Class Members, concealing the  
20 underpayments and presenting a false portrayal of accuracy on the wage statements  
21 relied upon by Plaintiff and Class Members as the sole documentary evidence of their  
22 respective earnings.

23 39. Plaintiff and Class Members suffered injury in the form of confusion  
24 regarding amounts paid for hours worked, and in the form of concealment of the  
25 common payroll practices causing the violations and underpayment of wages and  
26 wage statement deficiencies as addressed in this Complaint.

27 40. Indeed, Plaintiff and, on information and belief, Class Members were  
28 misinformed and misled by the wage statements wages, hours, rates, and earnings. As

1 a result of the inaccuracies on the wage statements, Plaintiff and, on information and  
2 belief, Class Members were led to believe that the hourly rates and net and gross  
3 wages reflected were a complete and accurate reflection of the wages actually earned  
4 under California law.

5 41. Defendants' wage statement violations were knowing and intentional as a  
6 matter of law with respect to Plaintiff and California Class Members given that the  
7 legal obligation was not disputed, the wage statement and wage laws are clear and  
8 unambiguous as written, and because Defendants nevertheless failed to comply  
9 despite the means and ability to do so.

10 42. Plaintiff is informed, believes, and alleges that Defendants' acts and  
11 omissions have knowingly and intentionally caused harm to Plaintiff and the Class.  
12 Plaintiff is informed, believes, and alleges that Defendants have engaged in systemic  
13 violations of the Labor Code and IWC Wage Orders by maintaining practices,  
14 policies, and customs that are inconsistent with their obligations under California law.

15 **CLASS ALLEGATIONS**

16 43. *Numerosity*. The members of the Class are so numerous that joinder of  
17 all individuals would be impracticable. The identity of the Class Members is readily  
18 ascertainable by inspection of employment and payroll records Defendants maintain  
19 and are required to maintain by under the California Labor Code, IWC Wage Orders,  
20 and federal law. Plaintiff is informed, believes, and alleges there are more than 40  
21 Class Members.

22 44. *Adequacy of Representation*. Plaintiff is an adequate class  
23 representative. Plaintiff will take all necessary steps to adequately and fairly represent  
24 and protect the interest of the Class. Plaintiff is represented by attorneys who have  
25 substantial experience prosecuting, defending, resolving and litigating wage and hour  
26 class actions in California state and federal courts.

27 45. *Superiority*. A class action is superior to other means for adjudication of  
28 the claims of the Class and is beneficial and efficient for the parties and the Court.

1 Class treatment will allow for the common issues to be resolved in a single forum,  
2 simultaneously and without duplication of effort and expense.

3 46. **Commonality.** Common questions of law and fact and a community of  
4 interest exists amongst Plaintiff and the Class. These common issues arise from the  
5 employment relationship with Defendants and predominate over any individual issues.

6 47. **Typicality.** Plaintiff’s claims are typical of the claims of the other Class  
7 Members. Plaintiff and Class Members were subject to the same policies and  
8 practices of Defendants, which resulted in losses to Plaintiff and Class Members.  
9 Proof of common unlawful business practices, which Plaintiff experienced and is  
10 representative of, will establish the right of the Class to recover on the causes of action  
11 alleged herein.

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PAY ALL OVERTIME WAGES**

14 **(ALL CLAIMS ALLEGED AGAINST ALL DEFENDANTS)**

15 48. Plaintiff incorporates all outside paragraphs of this Complaint as if set  
16 forth herein.

17 49. This cause of action is brought by the California Overtime Class pursuant  
18 to the IWC Wage Orders and Labor Code §§ 204, 510, 558, 1194, and 1198, which  
19 require non-exempt employees be timely paid overtime wages all overtime hours  
20 worked, and which further provide a private right of action for an employer’s failure  
21 to pay all overtime compensation for overtime hours worked.

22 50. Defendants failed in their affirmative obligation to pay Plaintiff and Class  
23 Members no less than one and one-half times their respective “regular rate of pay” for  
24 all hours worked in excess of eight hours in one day, 40 hours in one week, or the first  
25 eight hours worked on the seventh day of work in any one workweek, and no less than  
26 twice their respective “regular rate of pay” for all hours over 12 hours in one day and  
27 any work in excess of eight hours on any seventh day of a workweek in violation of  
28

1 Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC Wage Orders (the  
2 “Hours and Days of Work” sections of the applicable orders).

3 51. Plaintiff and the Class are entitled to recover to the full amount of the  
4 unpaid overtime, in addition to interest, statutory and civil penalties, and attorneys’  
5 fees, and costs to the extent permitted by law.

6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO PAY ALL OVERTIME WAGES (FLSA)**

8 52. Plaintiff incorporates all outside paragraphs of this Complaint as if set  
9 forth herein.

10 53. This cause of action is brought by Plaintiff and the FLSA Collective  
11 pursuant to 29 U.S.C. §§ 203, 207, and 255, which require non-exempt employees be  
12 paid overtime wages all overtime hours worked, and which further provide a private  
13 right of action for an employer’s failure to pay all overtime compensation for overtime  
14 hours worked.

15 54. Defendants are an “employer” engaged in “interstate commerce” within  
16 the meaning of 29 U.S.C. § 203.

17 55. Defendants have employed, and continue to employ Plaintiff and the  
18 FLSA collective as “employee[s] within the meaning of the Fair Labor Standards Act”  
19 (“FSLA”).

20 56. Defendants knowingly, willfully, and intentionally failed to compensate  
21 Plaintiff and the FLSA Collective all overtime wages due under the FLSA, as  
22 mandated by 29 U.S.C. § 207(a).

23 57. Defendants employed Plaintiff and the FLSA Collective to work, and  
24 they did work, in excess of 40 hours in a workweek.

25 58. Defendants paid Plaintiff and the FLSA Collective forms of remuneration  
26 that were not included in the “regular rate of pay” used to calculate and pay overtime  
27 to them in accordance with the FLSA.

28

1           59. The additional forms of remuneration were not subject to exclusion from  
2 the regular rate of pay pursuant to one of the unambiguous eight exclusions set forth  
3 in 29 U.S.C. § 207(e)(1) through (8).

4           60. Because Defendants' violations of the FLSA have been willful, in plain  
5 violation of 29 U.S.C. § 207(a)(1), a three-year statute of limitations applies, pursuant  
6 to 29 U.S.C. § 255.

7           61. Plaintiff is a member of the FLSA Collective she seeks to represent  
8 because she worked in the United States of America within the past three years for  
9 Defendants and was paid overtime wages in the same pay period in which she also  
10 received additional forms of non-excludable remuneration, such as bonuses.

11           62. Although Plaintiff and the FLSA Collective may have had different job  
12 titles, worked in different states or at different locations, and received different hourly  
13 rates of pay, this action may be properly maintained as a collective action because  
14 Plaintiff and the FLSA Collective were similarly situated as follows:

- 15           a. Plaintiff and the FLSA Collective were all hourly, non-exempt  
16 employees.
- 17           b. Plaintiff and the FLSA Collective were subject to Defendants'  
18 policies, practices, and directives with respect to overtime pay.
- 19           c. Plaintiff and the FLSA Collective were paid overtime wages.
- 20           d. Plaintiff and the FLSA Collective were paid additional forms of  
21 remuneration, such as bonuses;
- 22           e. Regardless of their job title or location, Defendants did not pay  
23 Plaintiff and the FLSA Collective at an overtime rate of at least  
24 1.5x their regular rate of pay for all overtime hours.

25           63. Plaintiff and the FLSA Collective have been harmed as a direct and  
26 proximate result of Defendants' unlawful conduct because they have been deprived of  
27 overtime wages owed for time worked more than 40 hours work week (i.e., due to the  
28 regular rate underpayments).

1           64. The FLSA Collective can be provided notice by first class mail and/or  
 2 email to the last addresses known to their employer.

3           65. Plaintiff and the FLSA Collective are entitled to recover to the full  
 4 amount of unpaid overtime wages owed, in addition to liquidated damages, interest,  
 5 penalties, and attorneys’ fees, and costs to the extent permitted by law, including  
 6 under 29 U.S.C. § 216(b).

7                               **THIRD CAUSE OF ACTION**  
 8                               **MEAL PERIOD VIOLATIONS**

9           66. Plaintiff incorporates all outside paragraphs of this Complaint as if set  
 10 forth herein.

11           67. This cause of action is brought by the Labor Code § 226.7 Class pursuant  
 12 to the IWC Wage Orders and Labor Code §§ 226.7, 558 and 512, which require non-  
 13 exempt employees be provided complaint meal periods (or meal period premiums in  
 14 lieu thereof), and which further provide a private right of action for an employer’s  
 15 failure to lawfully provide all meal periods and/or pay meal period premiums at the  
 16 lawful regular rate of compensation.

17           68. Defendants willfully failed in their affirmative obligation to consistently  
 18 provide Plaintiff and Class Members compliant, duty-free meal periods of not less  
 19 than 30 minutes beginning before the fifth hour of hour for each work period of more  
 20 than five hours per day and a second duty-free meal period of not less than 30 minutes  
 21 beginning before the tenth hour of hour of work in violation of Labor Code sections  
 22 226.7, 512, 558, 1198 and the IWC Wage Orders (the “Meal Periods” sections of the  
 23 applicable orders).

24           69. Further, Defendants willfully failed in their affirmative obligation to  
 25 consistently pay Plaintiff and the Class one additional hour of pay at the respective  
 26 regular rate of compensation for each workday that a fully compliant meal period was  
 27 not provided, in violation of Labor Code sections 226.7, 512, 558, and 1198 and the  
 28 IWC Wage Orders (the “Meal Periods” sections of the applicable orders).

1 70. Plaintiff and the Class are entitled to recover to the full amount of the  
2 meal period premiums owed, in addition to interest, statutory and civil penalties, and  
3 attorneys' fees, and costs to the extent permitted by law.

4 **FOURTH CAUSE OF ACTION**

5 **REST PERIOD VIOLATIONS**

6 71. Plaintiff incorporates all outside paragraphs of this Complaint as if set  
7 forth herein.

8 72. This cause of action is brought by the Labor Code § 226.7 Class  
9 pursuant to the IWC Wage Orders and Labor Code §§ 226.7 and 516, which require  
10 non-exempt employees be authorized to take complaint rest periods (or rest period  
11 premiums in lieu thereof), and which further provide a private right of action for an  
12 employer's failure to lawfully provide all rest periods and/or pay rest period premiums  
13 at the lawful regular rate of compensation.

14 73. Defendants willfully failed in their affirmative obligation to consistently  
15 authorize and permit Plaintiff and Class Members to receive compliant, duty-free rest  
16 periods of not less than ten (10) minutes for every four hours worked (or major  
17 fraction thereof) in violation of Labor Code sections 226.7, 516, 558, and 1198 and  
18 the IWC Wage Orders (the "Rest Periods" sections of the applicable orders).

19 74. Further, Defendants willfully failed in their affirmative obligation to  
20 consistently pay Plaintiff and the Class one additional hour of pay at the respective  
21 regular rate of compensation for each workday that a fully compliant rest period was  
22 not provided, in violation of Labor Code sections 226.7, 516, 558, and 1198 and the  
23 IWC Wage Orders.

24 75. Plaintiff and the Class are entitled to recover to the full amount of the rest  
25 period premiums owed, in addition to interest, statutory and civil penalties, and  
26 attorneys' fees, and costs to the extent permitted by law.

27 **FIFTH CAUSE OF ACTION**

28 **UNPAID VACATION WAGES**





1 83. Defendants willfully failed in their affirmative obligation to timely pay  
2 all wages and premiums earned by Plaintiff and Class Members twice during each  
3 calendar month on days designated in advance by the employer as regular paydays  
4 (for employees paid on a non-weekly basis) and on the regularly-scheduled weekly  
5 payday weekly employees, if any, in violation of Labor Code sections 204 and 204b  
6 and the IWC Wage Orders (the “Minimum Wages” sections of the applicable orders).

7 84. Plaintiff and the Class are entitled to recover to the full amount of the  
8 unpaid wages, in addition to a statutory penalty in the amount of \$100 for the initial  
9 violation for each failure to pay each employee and \$200 for all subsequent violations  
10 and for all willful or intentional violations for each failure to pay each employee, plus  
11 25 percent of the amount unlawfully withheld under provided in Labor Code § 210, in  
12 addition to interest, attorneys’ fees, and costs to the extent permitted by law.

13 **SEVENTH CAUSE OF ACTION**

14 **WAGE STATEMENT VIOLATIONS**

15 85. Plaintiff incorporates all outside paragraphs of this Complaint as if set  
16 forth herein.

17 86. This cause of action is brought by the Wage Statement Class pursuant to  
18 Labor Code §§ 226(a) which requires non-exempt employees be provided accurate  
19 itemized wage statements each pay period, and which further provide a private right of  
20 action for an employer’s failure to comply with this obligation.

21 87. Defendants knowingly and intentionally failed in their affirmative  
22 obligation provide accurate itemized wage statements to Plaintiff and Class Members  
23 resulting in injury to Plaintiff and Class Members. Specifically, the wage statements  
24 issued to Plaintiff and Class Members did not accurately state each pay period all of  
25 the information required by Labor Code § 226(a)(1)-(9).

26 88. Defendants’ unlawful acts and omissions deprived Plaintiff and the Class  
27 of accurate itemized wage statements, causing confusion and concealing wage and  
28 premium underpayments.

1 89. As a result, Plaintiff and the Class are entitled to recover the statutory  
2 penalty of \$50 per employee for the initial pay period in which a violation occurred  
3 and \$100 per employee for each violation in a subsequent pay period, up to an  
4 aggregate penalty of \$4,000 per employee, in addition to interest, attorneys' fees, and  
5 costs to the extent permitted by law, including under Labor Code section 226(e).

6 **EIGHTH CAUSE OF ACTION**

7 **WAITING TIME PENALTIES**

8 90. Plaintiff incorporates all outside paragraphs of this Complaint as if set  
9 forth herein.

10 91. This cause of action is brought by the Waiting Time Penalty Class  
11 pursuant to Labor Code §§ 201 through 203, which require an employer to timely pay  
12 all wages earned upon termination of employment, and which further provide a  
13 private right of action to recover statutory waiting time penalties each day an  
14 employer fails to comply with this obligation, up to a maximum of 30 days wages.

15 92. Defendants willfully failed and continue to fail in their affirmative  
16 obligation to pay all wages earned and unpaid to Plaintiff and members of the Waiting  
17 Time Class immediately upon termination of employment or within 72 hours  
18 thereafter for employees who did not provide at least 72 hours prior notice of his or  
19 her intention to quit, and further failed to pay those sums for 30 days thereafter in  
20 violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

21 93. Plaintiff and the Waiting Time Class are entitled to recover to a waiting  
22 time penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and  
23 costs to the extent permitted by law.

24 **NINTH CAUSE OF ACTION**

25 **FAILURE TO PROVIDE PAID SICK LEAVE & SUPP. PAID SICK**  
26 **LEAVE**

27 94. Plaintiff incorporates all outside paragraphs of this Complaint as if set  
28 forth herein.

1 95. Plaintiff brings this cause of action on behalf of the Paid Sick Leave  
2 Class.

3 96. Defendants knowingly and intentionally failed in their affirmative  
4 obligation provide and pay paid sick leave to Plaintiff and the Paid Sick Leave Class  
5 in violation of Labor Code section 246.

6 97. Labor Code section 246(b)(1) requires that employees accrue sick  
7 leave at the commencement of employment at a rate of 1 hour for every thirty hours  
8 worked. Section 246(c) entitles employees to use any accrued sick leave beginning  
9 on their 90th day of employment.

10 98. Labor Code section 246(l) governs how Defendants were required to  
11 calculate paid sick leave:

12 [A]n employer shall calculate paid sick leave using any of the following  
13 calculations:

14 (1) Paid sick time for nonexempt employees shall be calculated in  
15 the same manner as the regular rate of pay for the workweek in  
16 which the employee uses paid sick time, whether or not the  
17 employee actually works overtime in that workweek.

18 (2) Paid sick time for nonexempt employees shall be calculated by  
19 dividing the employee's total wages, not including overtime  
20 premium pay, by the employee's total hours worked in the full pay  
21 periods of the prior 90 days of employment.

22 (3) Paid sick time for exempt employees shall be calculated in the  
23 same manner as the employer calculates wages for other forms of  
24 paid leave time.

25 99. Defendants failed to pay Plaintiff and the Paid Sick Leave Class paid sick  
26 leave at one of the lawful rates set forth in the statute because Defendants failed to  
27 include in their sick leave calculation the additional remuneration received by Plaintiff  
28 and the Paid Sick Leave Class.

1 100. Furthermore, Defendants knowingly and intentionally failed in their  
2 affirmative obligation to pay Covid-19 Supplemental Sick Leave to the Paid Sick  
3 Leave Class at the correct rate in violation of Labor Code sections 246, 248.1, 248.2,  
4 and 248.6.

5 101. Pursuant to Labor Code section 248.1, Defendants were required to  
6 provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave to employees for  
7 the period of April 20, 2020 to December 31, 2020. Labor Code section 248.2  
8 required Defendants to provide up to 80 hours of Covid-19 Supplemental Paid Sick  
9 Leave for the period of January 1, 2021 through at least September 30, 2021. Labor  
10 Code section 248.6 extended Covid sick leave protections and requires employers to  
11 provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of  
12 January 1, 2022 to September 30, 2022, and may be extended thereafter.

13 102. Under Labor Code section 248.1, employees must be paid for Covid-19  
14 Supplemental Paid Sick Leave at the highest of the following: (1) the regular rate of  
15 pay for the last pay period, (2) state minimum wage, (3) local minimum wage.

16 103. Under Labor Code section 248.2, non-exempt employees must be  
17 paid supplemental paid sick leave according to the highest of the following four  
18 methods:

19 (I) Calculated in the same manner as the regular rate of pay for the  
20 workweek in which the covered employee uses COVID-19  
21 supplemental paid sick leave, whether or not the employee actually  
22 works overtime in that workweek.

23 (II) Calculated by dividing the covered employee's total wages, not  
24 including overtime premium pay, by the employee's total hours worked  
25 in the full pay periods of the prior 90 days of employment.

26 (III) The state minimum wage.

27 (IV) The local minimum wage to which the covered employee is  
28 entitled.



1 108. Plaintiff is a victim of Defendants’ unfair and/or unlawful conduct  
2 alleged in this Complaint, and Plaintiff, as an individual and on behalf of others  
3 similarly situated, seeks full restitution of the moneys as necessary and according to  
4 proof to restore all monies withheld, acquired, and/or converted by Defendants  
5 pursuant to Business and Professions Code §§ 17203 and 17208.

6 109. Plaintiff and the Class are entitled to injunctive relief against Defendants,  
7 restitution, and other equitable relief to return all funds over which Plaintiff and the  
8 Class have an ownership interest and to prevent future damage and the public interest  
9 under Business and Professions Code § 17200, *et seq.* Plaintiff and the Class are  
10 further entitled to recover interest, attorneys’ fees, and costs to the extent permitted by  
11 law, including under Code of Civil Procedure § 1021.5.

12 **PRAYER**

13 Plaintiff prays for judgment as follows:

- 14 a. For certification of this action as a class action;
  - 15 b. For appointment of Plaintiff as the representative of the Class;
  - 16 c. For appointment of above-captioned counsel for Plaintiff as Class  
17 Counsel;
  - 18 d. For an order that Defendants be ordered to file with the Court and  
19 provide Plaintiff’s counsel a list of names and current (or best known)  
20 addresses and emails of all FLSA Collective Members and for facilitated  
21 notice under 29 U.S.C. § 216(b);
  - 22 e. For recovery of damages in amount according to proof;
  - 23 f. For all recoverable pre- and post-judgment interest;
  - 24 g. For recovery of all civil and statutory penalties and liquidated damages,  
25 including under 29 U.S.C. § 216(b);
  - 26 h. For disgorgement of all amounts wrongfully obtained;
  - 27 i. For restitution and injunctive relief;
- 28

- 1           j.     For reasonable attorneys' fees and costs of suit, including expert fees, to  
2           the extent permitted by law, including (without limitation) under 29  
3           U.S.C. § 216(b), Labor Code §§ 218.5, 226, 1194, 2802, and Code of  
4           Civil Procedure section 1021.5; and  
5           k.     For such other relief the Court deems just and proper.

6  
7 Dated: May 9, 2022

Ferraro Vega Employment Lawyers, Inc.

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11 Nicholas J. Ferraro  
12 *Attorneys for Plaintiff*  
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