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on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ROBERTA BROWN, individually and on
behalf of herself and all others similarly
situated,

Plaintiff,

v.

AYA HEALTHCARE SERVICES, INC.,
a Delaware Corporation; PMG GROUP
U.S.A., INC., a Delaware Corporation;
and DOES 1-50, inclusive,

Defendants.

Case No.

COMPLAINT

Assigned for All Purposes To:

Hon.

Dept.:

COMPLAINT FOR DAMAGES FOR:

- 1) **Failure to Pay Minimum Wages;**
- 2) **Failure to Provide Lawful Meal Periods;**
- 3) **Failure To Authorize And Permit Rest Periods;**
- 4) **Failure to Timely Pay Wages During Employment**
- 5) **Failure to Timely Pay Wages Owed Upon Separation From Employment;**
- 6) **Knowing and Intentional Failure to Comply with Itemized Wage Statement Provisions;**
- 7) **Violation of the Unfair Competition Law;**

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff ROBERTA BROWN (“Plaintiff”), individually and on behalf of others similarly situated, and asserts claims against defendants AYA HEALTHCARE, INC., a Delaware Corporation; PMG GROUP U.S.A., INC., a Delaware Corporation; and DOES 1-50, inclusive (collectively “Defendants” or “PMG Group”) as follows:

INTRODUCTION

1. This is a Class Action, pursuant to California Code of Civil Procedure section 382, on behalf of Plaintiff and any and all persons who are or were employed by Defendants, either directly or indirectly, in the State of California at any time from four years prior to the filing of this Complaint (as tolled by Emergency Rule 9) through resolution or trial of the matter. (“Class Members” or “Non-Exempt Employees”).)

2. Defendants implemented uniform policies and practices that deprived Plaintiff and Class Members of earned wages, including minimum wages; straight time wages; overtime wages; premium wages; lawful meal and/or rest breaks; and timely payment of wages.

3. Such actions and policies, as described above and further herein, were and continue to be in violation of the California Labor Code. Plaintiff, on behalf of herself and all Class members, bring this action pursuant to the California Labor Code, including sections 201, 202, 203, 204, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 245-249, 510, 512, 516, 558, 1174, 1194, 1194.2, 1195, 1197, 1198, applicable IWC California Wage Orders (including IWC Wage Order 4-2001 and 5-2001) and California Code of Regulations, Title 8, section 11000 *et seq.*, seeking unpaid wages, unpaid meal and rest period compensation, penalties, liquidated damages, and reasonable attorneys’ fees and costs.

4. Plaintiff, on behalf of herself and others similarly situated, pursuant to Business and Professions Code sections 17200-17208, also seek restitution from Defendants for their failure to pay to Plaintiffs and Class Members all of their wages, including overtime and premium wages.

JURISDICTION AND VENUE

5. This action is brought as a Class Action on behalf of Plaintiff and similarly situated employees of Defendants pursuant to California Code of Civ. Proc. Section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimum jurisdiction limits of the

1 California Superior Court and will be established according to proof at trial.

2 6. This Court has jurisdiction over this action pursuant to the California Constitution
3 Article VI §10, which grants the California Superior Court original jurisdiction in all causes except
4 those given by statute to other courts. The statutes under which this action is brought do not give
5 jurisdiction to any other court.

6 7. This Court has jurisdiction over this Action pursuant to California Code of Civil
7 Procedure, Section 410.10 and California Business & Professions Code, Section 17203.

8 8. This Court has jurisdiction over Defendants because, upon information and belief,
9 each Defendant is either a resident of California, has sufficient minimum contacts in California, or
10 otherwise intentionally avails itself of the California market so as to render the exercise of
11 jurisdiction over them by the California Courts consistent with traditional notions of fair play and
12 substantial justice. Defendants have done and are doing business throughout California and Los
13 Angeles County.

14 9. The unlawful acts alleged herein have a direct effect on Plaintiff and the other
15 similarly situated Non-Exempt Employees within Los Angeles County and it is believed that
16 Defendants have employed hundreds of Class Members as Non-Exempt Employees in Los Angeles
17 County.

18 10. The California Superior Court also has jurisdiction in this matter because the
19 individual claims of the Class Members described herein are presently believed to be under the
20 seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for Federal Court and the
21 aggregate potential damages and recovery by all of the claims of the Plaintiff's Class, including
22 attorneys' fees, placed in controversy by Plaintiff's class-wide claims, is presently believed to be
23 under the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of 2005.
24 Further, there is no federal question at issue, as the issues herein are based solely on California
25 statutes and law, including the Labor Code, IWC Wage Orders, the California Code of Civil
26 Procedure, the California Civil Code, and the California Business and Professions Code.

27 11. Venue is proper in this Court because one or more of the Defendants reside, transact
28 business, or have offices in this County, Plaintiff is a resident of this County, and the acts or

omissions alleged herein took place in this County.

PARTIES

12. Defendant Aya Healthcare Services, Inc. is a Delaware Corporation doing business in the state of California. It is based at 5930 Cornerstone Court West, Suite 300, San Diego, CA 92121.

13. Defendant PMG Group U.S.A., Inc. is a Delaware Corporation doing business in the state of California. It is based at 25 Broadway, San Francisco, CA 94111.

14. Upon information and belief, PMG Group employs Non-Exempt Employees, like Plaintiff, throughout the State of California.

15. During the liability period, Plaintiff Roberta Brown worked in the State of California for Defendants. She worked at various locations in the State, including in Santa Clarita, Hawthorne, and Burbank.

16. Plaintiff was employed in an hourly, non-exempt position by Defendants during the relevant time period.

17. Plaintiff and the members of the putative class were employed as hourly paid employees employed by Defendants, either directly or indirectly, in the State of California at any time from four years prior to the filing of this Complaint (as tolled by Emergency Rule 9).

18. Whenever in this complaint reference is made to any act, deed, or conduct of Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through one or more of Defendants' officers, directors, agents, employees, or representatives, who was actively engaged in the management, direction, control, or transaction of the ordinary business and affairs of Defendants.

19. The true names and capacities of Defendants, whether individual, corporate, associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

20. Plaintiff is informed and believes, and thereon allege, that the Doe Defendants are

1 the partners, agents, or principals and co-conspirators of Defendants and of each other; that
2 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided
3 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits
4 of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the
5 liability of the Defendants as alleged herein.

6 21. Plaintiff is further informed and believes, and thereon allege, that at all times
7 material herein, each Defendant was completely dominated and controlled by its co-Defendants
8 and each was the alter ego of the other. Whenever and wherever reference is made in this complaint
9 to any conduct by Defendant or Defendants, such allegations and references shall also be deemed
10 to mean the conduct of each of the Defendants, acting individually, jointly, and severally.
11 Whenever and wherever reference is made to individuals who are not named as Defendants in this
12 complaint, but were employees and/or agents of Defendants, such individuals, at all relevant times
13 acted on behalf of Defendants named in this complaint within the scope of their respective
14 employments.

15 **FACTUAL ALLEGATIONS**

16 22. During the relevant time frame, Defendants compensated Plaintiff and the Non-
17 Exempt Employees based upon an hourly wage.

18 23. Plaintiff and the Class Members were, and at all times pertinent hereto, have been
19 non-exempt employees within the meaning of the California Labor Code, and the implementing
20 rules and regulations of the IWC California Wage Orders. They are subject to the protections of
21 the IWC Wage Orders and the Labor Code.

22 24. During the relevant time, Plaintiff was employed by Defendants in an hourly, non-
23 exempt position. She worked as a tester at various assigned locations approximately 3 days per
24 week, 15+ hours per week.

25 25. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were
26 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the
27 requirements of California's wage and employment laws.

28 26. All Class Members are similarly situated in that they are all subject to Defendants'

1 uniform policies and systemic practices as specified herein.

2 27. Plaintiff and the Class Members were not paid for all hours worked because
3 employees were required to work off the clock and because Defendants unlawfully rounded the
4 hours worked by Plaintiff and the Class Members such that they were not paid for all hours
5 worked. In addition, Plaintiff and the Class Members were not paid for all hours worked because
6 Defendants deducted time from hours worked for purported meal periods regardless of whether
7 such meal periods were lawfully provided.

8 28. In addition, upon information and belief, Defendants failed to incorporate all forms
9 of non-discretionary compensation into the regular rate, including differentials and incentives.

10 29. Plaintiff and the Class Members were regularly required to work shifts in excess of
11 five hours without being provided a lawful meal period as required by law.

12 30. Indeed, during the relevant time, as a consequence of Defendants' scheduling
13 practices, work demands, and Defendants' policies and practices, Defendants frequently failed to
14 provide Plaintiff and the Class Members timely, legally complaint uninterrupted 30-minute meal
15 periods as required by law.

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

20 32. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
21 should know, knew, and/or should have known that Plaintiff and the other Class Members were
22 entitled to receive accurate premium wages under Labor Code §226.7 but were not receiving
23 accurately calculated compensation.

24 33. Moreover, Defendants failed to record meal breaks as required by law.

25 34. In addition, during the relevant time frame, Plaintiff and the Non-Exempt
26 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
27 period for every four hours worked or major fraction thereof, which is a violation of the Labor
28 Code and IWC wage order.

1 35. Defendants maintained and enforced scheduling practices, policies, and imposed
2 work demands that frequently required Plaintiff and Class Members to forego their lawful, paid
3 rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
4 requisite rest periods were not timely authorized and permitted.

5 36. Despite the above-mentioned rest period violations, Defendants did not
6 compensate Plaintiff, and on information and belief, did not pay Class Members one additional
7 hour of pay at their regular rate as required by California law, including Labor Code section 226.7
8 and the applicable IWC wage order, for each day on which lawful rest periods were not
9 authorized and permitted.

10 37. Defendants also failed to provide accurate, lawful itemized wage statements to
11 Plaintiff and the Class Members in part because of the above specified violations.

12 38. Defendants have also made it difficult to determine applicable rates of pay and
13 account with precision for the unlawfully withheld wages and deductions due to be paid to Non-
14 exempt Employees, including Plaintiff, during the liability period because they did not implement
15 and preserve a lawful record-keeping method to record all hours worked, and non-provided rest
16 and meal periods owed to employees as required for non-exempt employees by 29 U.S.C. section
17 211(c), California Labor Code section 226, and applicable California Wage Orders.

18 39. Plaintiff is informed and believes, and thereon alleges, that at all times herein
19 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
20 thereof for resignations without prior notice as the case may be) they had a duty to accurately
21 compensate Plaintiffs and Class Members for all wages owed including straight time, overtime,
22 meal and rest period premiums, and that Defendants had the financial ability to pay such
23 compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part
24 because of the above-specified violations.

25 40. Plaintiff and the Class Members are covered by applicable California IWC Wage
26 Orders and corresponding applicable provisions of the California Code of Regulations, Title 8,
27 section 11000 *et seq.*

28

1 **CLASS ACTION ALLEGATIONS**

2 41. Plaintiff brings this action on her own behalf, as well as on behalf of each and every
3 other person similarly situated, and thus, seeks class certification under California Code of Civil
4 Procedure §382.

5 42. All claims alleged herein arise under California law for which Plaintiff seeks relief
6 as authorized by California law.

7 43. The proposed class is comprised of and defined as: **all persons who are or were**
8 **employed by the Defendants as hourly paid, non-exempt employees in the State of California**
9 **at any time from four years prior to the filing of this action¹ through resolution or trial of the**
10 **matter.** (hereinafter collectively referred to as the “Class” or “Class Members”).

11 44. Plaintiff also seeks to represent Subclasses included in the Plaintiff’s Class, which
12 are composed of Class Members satisfying the following definitions:

13 a. All Class Members who were not paid at least minimum wage for all hours
14 worked (collectively “**Minimum Wage Subclass**”);

15 b. All Class Members who had their hours worked rounded (collectively
16 “**Rounding Subclass**”);

17 c. All Class Members who worked more than five (5) hours in a workday and
18 were not provided with a timely, uninterrupted lawful meal period of net thirty (30) minutes, and
19 were not paid compensation of one hour premium wages at the employee’s regular rate in lieu
20 thereof (hereinafter collectively referred to as the “**First Meal Period Subclass**”);

21 d. All Class Members who worked more than ten hours in a workday and were
22 not provided with a timely, uninterrupted lawful second meal period of thirty (30) minutes, and
23 were not paid compensation of one hour premium wages at the employee’s regular rate in lieu
24 thereof (hereinafter collectively referred to as the “**Second Meal Period Subclass**”);

25 e. All Class Members who worked more than three and a half hours in a
26 workday and were not authorized and permitted to take a net 10-minute rest period for every four
27 (4) hours or major fraction thereof worked per day and were not paid compensation of one hour

28 ¹ As properly tolled by California Rule of Court App I. R.R. Emergency Rule 9

1 premium wages at the employee's regular rate in lieu thereof (hereinafter collectively referred to
2 as the "**Rest Period Subclass**");

3 f. All Class Members who did not receive all owed wages at time of separation
4 or within 72 hours in the case of resignation (hereinafter collectively referred to as the "**Waiting**
5 **Time Subclass**");

6 g. All Class Members who were not provided with accurate and complete
7 itemized wage statements (hereinafter collectively referred to as the "**Inaccurate Wage Statement**
8 **Subclass**");

9 h. All Class Members who were employed by Defendants and subject to
10 Defendant's Unfair Business Practices (hereinafter collectively referred to as the "**Unfair Business**
11 **Practices Subclass**").

12 45. Plaintiff reserves the right, under Rule 3.765, California Rules of Court, to amend
13 or modify the descriptions of the Class and Subclasses to provide greater specificity as appropriate,
14 or if it should be deemed necessary by the Court or to further divide the Class Members into
15 additional Subclasses or to limit the Subclasses to particular issues. Any reference herein to the
16 Class Members or the Plaintiffs' Class includes the members of each of the Subclasses.

17 46. As set forth in further detail below, this action has been brought and may properly
18 be maintained as a class action under the provisions of section 382 of the Code of Civil Procedure
19 because there is a well-defined community of interest in the litigation, and the proposed Class and
20 Subclasses are easily ascertainable through Defendants' records.

21 a. Numerosity: The members of the Class and Subclasses are so numerous that
22 joinder of all members of the Class and Subclasses would be unfeasible and impractical. The
23 membership of the entire Class and Subclasses is unknown to Plaintiff at this time, however, the
24 Class is estimated to be hundreds of individuals. Accounting for employee turnover during the
25 relevant periods necessarily increases this number substantially. Plaintiff alleges Defendants'
26 employment records would provide information as to the number and location of all Class
27 Members. Joinder of all members of the proposed Class is not practicable.

28

1 b. The proposed class is easily ascertainable. The number and identity of the
2 class members are determinable from Defendants' payroll records and time records for each class
3 member.

4 c. Commonality: There are common questions of law and fact as to the Class
5 and Subclasses that predominate over questions affecting only individual Class Members. These
6 common questions of law and fact include, without limitation:

- 7 1. Whether Defendants accurately paid Class Members for all hours worked;
- 8 2. Whether Defendants rounding practices were lawful;
- 9 3. Whether Defendants knew or should have known that Class Members were
10 required to perform work off the clock;
- 11 4. Whether Defendants recorded meal periods;
- 12 5. Whether Defendants deducted time for hours worked for purportedly
13 provided meal periods;
- 14 4. Whether Defendants had a policy and practice of providing lawful, timely
15 meal periods in accordance with Labor Code § 512, as well as the applicable
16 Industrial Welfare Commission ("IWC") wage order;
- 17 5. Whether Defendants had a policy and practice of complying with Labor Code
18 section 226.7 and IWC Wage Order on each instance that a lawful, timely 30-
19 minute uninterrupted meal period was not provided;
- 20 6. Whether Defendants failed to authorize and permit a lawful, net 10-minute rest
21 period to the Class Members for every four (4) hours or major fraction thereof
22 worked;
- 23 7. Whether Defendants required employees to remain on the premises during rest
24 periods;
- 25 8. Whether Defendants had a policy and practice of complying with Labor Code
26 section 226.7 and the IWC Wage Order on each instance that a lawful rest
27 period was not provided;

- 1 9. Whether Defendants failed to timely pay all wages upon separation in
2 accordance with Labor Code sections 201-202;
3 10. Whether Defendants omitted required information from itemized wage
4 statements;
5 11. Whether Defendants failed to maintain accurate records of Class Members'
6 earned wages, work periods, meal periods and deductions;
7 12. Whether Defendants engaged in unfair competition in violation of section
8 17200 et seq. of the Business and Professions Code;
9 13. Whether Defendants' conduct was willful and/or reckless;
10 14. Whether Defendants failed to provide accurate itemized wage statements in
11 violation of Labor Code § 226; and
12 15. The appropriate amount of damages, restitution, and/or monetary penalties
13 resulting from Defendants' violations of California law.

14 a. Typicality: Plaintiff is qualified to, and will fairly and adequately protect
15 the interests of each member of the Class and Subclasses with whom she has a well-defined
16 community of interest. Plaintiff's claims herein alleged are typical of those claims which could be
17 alleged by any member of the Class and/or Subclasses, and the relief sought is typical of the relief
18 which would be sought by each member of the Class and/or Subclasses in separate actions. All
19 members of the Class and/or Subclasses have been similarly harmed by Defendants' failure to
20 provide lawful meal and rest periods, failure to reimburse expenses, failure to provide accurate
21 wage statements, failure to timely pay wages at termination, failure to pay minimum wages,
22 rounding practices, and failure to accurately pay all wages earned including all owed premium and
23 overtime wages, all due to Defendants' policies and practices that affected each member of the
24 Class and/or Subclasses similarly. Further, Defendants benefited from the same type of unfair
25 and/or wrongful acts as to each member of the Class and/or Subclasses.

26 b. Adequacy: Plaintiff is qualified to, and will fairly and adequately protect the
27 interests of each member of the Class and/or Subclasses with whom she has a well-defined
28 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that

1 he has an obligation to make known to the Court any relationships, conflicts, or differences with
2 any member of the Class and/or Subclasses, and no such relationships or conflicts are currently
3 known to exist. Plaintiff's attorneys and the proposed counsel for the Class and Subclasses are
4 versed in the rules governing class action discovery, certification, litigation, and settlement and
5 experienced in handling such matters. Other former and current employees of Defendants may also
6 serve as representatives of the Class and Subclasses if needed.

7 c. Superiority: The nature of this action makes the use of class action
8 adjudication superior to other methods. A class action will achieve economies of time, effort,
9 judicial resources, and expense, which would not be achieved with separate lawsuits. The
10 prosecution of separate actions by individual members of the Class and/or Subclasses would create
11 a risk of inconsistent and/or varying adjudications with respect to the individual members of the
12 Class and/or Subclasses, establishing incompatible standards of conduct for the Defendants, and
13 resulting in the impairment of the rights of the members of the Class and/or Subclasses and the
14 disposition of their interests through actions to which they were not parties. Thus, a class action is
15 superior to other available means for the fair and efficient adjudication of this controversy because
16 individual joinder of all Class Members is not practicable, and questions of law and fact common
17 to the Class predominate over any questions affecting only individual Class Members. Each
18 member of the Class has been damaged and is entitled to recovery by reason of Defendants'
19 unlawful policies and practices that affected each member of the Class and/or Subclasses similarly.
20 Class action treatment will allow those similarly situated persons to litigate their claims in the
21 manner that is most efficient and economical for both parties and the judicial system. Plaintiff is
22 unaware of any difficulties that are likely to be encountered in the management of this action that
23 would preclude its maintenance as a class action.

24 d. Public Policy Considerations: Employers in the state of California violate
25 employment and labor laws every day. However, current employees are often afraid to assert their
26 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
27 because they believe their former employers may damage their future endeavors through negative
28 references and/or other means. The nature of this action allows for the protection of current and

1 former employees' rights without fear of retaliation or damage. Additionally, the citizens of
2 California have a significant interest in ensuring employers comply with California's labor laws
3 and in ensuring those employers who do not are prevented from taking further advantage of their
4 employees.

5 **CLASS ACTION CLAIMS**

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PAY MINIMUM WAGES**

8 **(By Plaintiff and the Class Against Defendants)**

9 47. Plaintiff incorporates each and every allegation set forth in all of the foregoing
10 paragraphs as if fully set forth herein.

11 48. Labor Code section 204 establishes the fundamental right of all employees in the
12 State of California to be paid wages, including minimum wage, straight time and overtime, in a
13 timely fashion for their work.

14 49. Labor Code section 1194(a) provides that notwithstanding any agreement to work
15 for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
16 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
17 of the full amount of this minimum wage or overtime compensation, including interest thereon,
18 reasonable attorney's fees, and costs of suit.

19 50. Labor Code section 1197 provides: The minimum wage for employees fixed by the
20 commission or by any applicable state or local law, is the minimum wage to be paid to employees,
21 and the payment of a lower wage than the minimum so fixed is unlawful.

22 51. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer
23 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC
24 Wage Order(s).

25 52. The applicable wage orders and California Labor Code sections 1197 and 1182.12
26 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by
27 state law.

28 53. Labor Code sections 1194(a) and 1194.2(a) provide that an employee who has not

1 been paid the legal minimum wage as required by Labor Code section 1197 may recover the unpaid
2 balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount
3 equal to the unpaid wages and interest accrued thereon.

4 54. During all relevant periods, the California Labor Code and wage orders required that
5 Defendants fully and timely pay its non-exempt, hourly employees all wages earned and due for all
6 hours worked.

7 55. The IWC Wage Orders define "hours worked" as "the time during which an
8 employee is subject to the control of an employer, and includes all the time the employee is suffered
9 or permitted to work, whether or not required to do so."

10 56. At all times relevant, Plaintiff and Class Members consistently worked hours for
11 which they were not paid because Defendants frequently required Plaintiff and the Class Members
12 to work off the clock.

13 57. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the
14 Class Members were working off the clock and that they should have been paid for this time.

15 58. In addition, Defendants failed to pay at least minimum wage for all hours worked
16 because, upon information and belief, Defendants rounded hours worked against Plaintiff and the
17 Class Members' interests.

18 59. Defendant's policy and practice of not paying all minimum wages violates
19 California Labor Code sections 204, 210, 216, 558, 1182.12, 1194, 1197, 1197.1, 1198, and the
20 applicable wage order 4-2001 and 5-2001.

21 60. Due to Defendants' violations of the California Labor Code and wage orders,
22 Plaintiff and the Minimum Wage Subclass members are entitled to recover from Defendant their
23 unpaid wages, statutory penalties, reasonable attorneys' fees and costs in this action, and pre-
24 judgment and post-judgment interest, as well as liquidated damages.

25 **SECOND CAUSE OF ACTION**

26 **FAILURE TO PROVIDE LAWFUL MEAL PERIODS**

27 **(By Plaintiff and the Meal Period Subclasses Against All Defendants)**

28 61. Plaintiff incorporates by reference and realleges each and every allegation contained

1 above, as though fully set forth herein.

2 62. Pursuant to Labor Code § 512, no employer shall employ an employee for a work
3 period of more than five (5) hours without providing a meal break of not less than thirty (30)
4 minutes in which the employee is relieved of all of his or her duties, except that when a work period
5 of not more than six (6) hours will complete the day's work the meal period may be waived by
6 mutual consent of the employer and employee.

7 63. For the four (4) years preceding the filing of this lawsuit as properly tolled by
8 Emergency Rule 9, Defendants failed to provide Plaintiff and Class Members timely and
9 uninterrupted first meal periods of not less than thirty (30) minutes within the first five hours of a
10 shift.

11 64. As a consequence of Defendants' policies and practices, requirements, demands,
12 coverage and staffing, Plaintiff and the Class Members were often required to forego such meal
13 periods, take shortened meal periods, and/or commence their meal periods into and beyond the
14 sixth hour of their shifts.

15 65. Upon information and belief, Plaintiff and the Class Members were not paid one
16 hour of pay at their regular rate for each day that a meal period was not lawfully provided.

17 66. Moreover, as a matter of policy and practice, upon information and belief, the Class
18 members were also not provided second meal periods on days when shifts exceeded ten hours (and
19 twelve hours), nor were they provided premium wages in lieu of a second meal period. On
20 information and belief, Plaintiff and the Class Members did not waive their rights to a second meal
21 period on shifts in excess of ten hours.

22 67. As a proximate result of the aforementioned violations, Plaintiff and the Class
23 Members have been damaged in an amount according to proof at time of trial.

24 68. Pursuant to Labor Code § 226.7, Plaintiff and Class Members are entitled to recover
25 one (1) hour of premium pay for each day in which a meal period violation occurred. They are also
26 entitled to recover reasonable attorneys' fees, cost, interest, and penalties as applicable.

27 69. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to
28 represent have been deprived of premium wages in amounts to be determined at trial, and are

1 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
2 under Labor Code sections 218.6, 226.7, 512 and the applicable IWC Wage Orders, and Civil Code
3 section 3287.

4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO AUTHORIZE AND PERMIT LAWFUL REST PERIODS**

6 **(By Plaintiff and the Rest Period Subclasses Against All Defendants)**

7 70. Plaintiff incorporates by reference and realleges each and every allegation contained
8 above, as though fully set forth herein.

9 71. Pursuant to the IWC wage orders applicable to Plaintiff's and Class Members'
10 employment by Defendants, "Every employer shall authorize and permit all employees to take rest
11 periods, which insofar as practicable shall be in the middle of each work period.... [The] authorized
12 rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net
13 rest time per four (4) hours worked or major fraction thereof.... Authorized rest period time shall
14 be counted as hours worked, for which there shall be no deduction from wages."

15 72. Labor Code §226.7(a) prohibits an employer from requiring any employee to work
16 during any rest period mandated by an applicable order of the IWC.

17 73. Defendants were required to authorize and permit employees such as Plaintiff and
18 Class Members to take rest periods during shifts in excess of 3.5 hours, based upon the total hours
19 worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major fraction thereof,
20 with no deduction from wages.

21 74. Despite said requirements of the IWC wage orders applicable to Plaintiff's and Class
22 Member's employment with Defendants, Defendants failed and refused to authorize and permit
23 Plaintiff and Class Members to take lawful, net ten (10) minute rest periods for every four (4) hours
24 worked, or major fraction thereof. Such rest breaks, when provided, were frequently untimely or
25 less than net ten minutes because of the work requirements imposed by Defendants, and frequent
26 calls during rest periods.

27 75. Defendants did not pay Plaintiff one additional hour of pay at her regular rate of pay
28 for each day that a rest period violation occurred. On information and belief, the other members of

1 the Class endured similar violations as a result of Defendants' rest period policies and practices and
2 Defendant did not pay said Class Members premium pay as required by law.

3 76. By their failure to authorize and permit Plaintiff and the Class Members to take a
4 lawful, net ten (10) minute rest period free from work duties every four (4) hours or major fraction
5 thereof worked, including failure to provide two (2) total rest periods on six to ten hour shifts and
6 three (3) total ten (10) minute rest periods on days on which Plaintiff and the other Class Members
7 work(ed) work a third rest period for shifts in excess of ten (10) hours, and by their failure to provide
8 compensation for such unprovided rest periods as alleged herein, Defendants willfully violated the
9 provisions of Labor Code sections 226.7 and the applicable IWC Wage Order(s).

10 77. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to
11 represent have been deprived of premium wages in amounts to be determined at trial, and are
12 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
13 under Labor Code sections 218.6, 226.7, the applicable IWC Wage Orders, and Civil Code 3287.

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO TIMELY PAY WAGES DUE AND PAYABLE DURING EMPLOYMENT**

16 **(By Plaintiff and the Class Against All Defendants)**

17 78. Plaintiff incorporates by reference and realleges each and every allegation contained
18 above, as though fully set forth herein.

19 79. Labor Code section 204 requires that all wages are due and payable twice in each
20 calendar month.

21 80. The wages required by Labor Code §§ 226.7, 510, 1194 and other sections became
22 due and payable to each employee in each month that he or she was not provided with a meal period
23 or rest period or paid minimum wage, straight or overtime wages to which he or she was entitled.

24 81. Defendants violated Labor Code § 204 by systematically refusing to pay wages due
25 under the Labor Code.

26 82. Labor Code section 210 (a) provides that "In addition to, and entirely independent
27 and apart from, any other penalty provided in this article, every person who fails to pay the wages
28

1 of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and
2 1197.5, shall be subject to a penalty as follow:

3 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
4 employee.

5 (2) For each subsequent violation, or any willful or intentional violation, two hundred
6 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount
7 unlawfully withheld.

8 103. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to
9 represent have been deprived of wages in amounts to be determined at trial, and are entitled to
10 recovery of such amounts, penalties, plus interest thereon, attorneys fees, and costs, pursuant to
11 Labor Code § 210, 218.5, 218.6, 510, 1194.

12 **FIFTH CAUSE OF ACTION**

13 **FAILURE TO TIMELY PAY WAGES OWED AT SEPARATION**

14 **(By Plaintiff and the Waiting Time Subclass Against All Defendants)**

15 83. Plaintiff incorporates by reference and realleges each and every allegation contained
16 above, as though fully set forth herein.

17 84. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages
18 due within seventy-two (72) hours of separation of employment.

19 85. Section 203 of the Labor Code provides that if an employer willfully fails to timely
20 pay such wages the employer must, as a penalty, continue to pay the subject employee's wages
21 until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30
22 days of wages.

23 86. Plaintiff and Class Members are entitled to compensation for all forms of wages
24 earned, including but not limited to minimum wages, overtime, and premium meal and rest period
25 compensation, but to date have not received such compensation, therefore entitling them to Labor
26 Code § 203 penalties.

27 87. In addition, irrespective of any derivative violation, Defendants failed to timely pay
28 Plaintiff and, upon information and belief, other Class Members earned compensation at the time

1 of termination despite their obligations under Labor Code 201 and 202.

2 88. More than thirty (30) days have passed since affected Waiting Time Subclass
3 Members have left Defendants' employ, and on information and belief, they have not received
4 payment pursuant to Labor Code § 203.

5 89. Plaintiff and Waiting Time Subclass Members are thus entitled to 30 days' wages
6 as a penalty under Labor Code § 203, together with interest thereon and attorneys' fees and costs.

7 **SIXTH CAUSE OF ACTION**

8 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**
9 **EMPLOYEE WAGE STATEMENT PROVISIONS**

10 **By Plaintiff and Wage Statement Subclass Against Defendants**

11 90. Plaintiff repeats and incorporates herein by reference each and every allegation set
12 forth above, as though fully set forth herein.

13 91. Labor Code section 226(a) reads in pertinent part: "Every employer shall,
14 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either
15 as a detachable part of the check, draft, or voucher paying the employee's wages, or separately
16 when wages are paid by personal check or cash, an accurate itemized statement in writing
17 showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions...
18 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
19 name of the employee and only the last four digits of his or her social security number or an
20 employee identification number other than a social security number, (8) the name and address of
21 the legal entity that is the employer, and (9) all applicable hourly rates in effect during each the
22 pay period and the corresponding number of hours worked at each hourly rate by the
23 employee....".

24 92. Further, the IWC Wage Orders require in pertinent part: Every employer shall
25 keep accurate information with respect to each employee including the following: (3) Time
26 records showing when the employee begins and ends each work period. Meal periods, split shift
27 intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the
28 payroll period and applicable rates of pay...."

1 93. Labor Code section 1174 of the California also requires Defendants to maintain
2 and preserve, in a centralized location, among other items, records showing the names and
3 addresses of all employees employed and payroll records showing the hours worked daily by, and
4 the wages paid to, its employees. On information and belief and based thereon, Defendants have
5 knowingly and intentionally failed to comply with Labor Code section 1174, including by
6 implementing the policies and procedures and committing the violations alleged in the preceding
7 causes of action and herein. Defendants' failure to comply with Labor Code section 1174 is
8 unlawful pursuant to Labor Code section 1175.

9 94. Defendants have failed to record many of the items delineated in applicable
10 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section
11 1174, including by virtue of the fact that each wage statement which failed to accurately
12 compensate Plaintiff and Class Members for all hours worked and for missed and non-provided
13 meal and rest periods, or which failed to include compensation for all minimum wages earned or
14 overtime hours worked, was an inaccurate wage statement. In addition, the wage statements
15 inaccurately stated total hours worked and hours worked at each hourly wage rate.

16 95. On information and belief, Defendants failed to implement and preserve a lawful
17 record-keeping method to record all non-provided meal and rest periods owed to employees or all
18 hours worked, as required for Non-Exempt Employees under California Labor Code section 226
19 and applicable California Wage Orders. In order to determine if they had been paid the correct
20 amount and rate for all hours worked, Plaintiff and Class Members have been, would have been,
21 and are compelled to try to discover the required information missing from their wage statements
22 and to perform complex calculations in light of the inaccuracies and incompleteness of the wage
23 statements Defendants provided to them.

24 96. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
25 Wage Orders, Defendants did not and still do not furnish each of the members of the Wage
26 Statement Class with an accurate itemized statement in writing accurately reflecting all of the
27 required information. Here, Plaintiff asserts the Defendant omitted required information, failed to
28 accurately include total hours, all applicable hourly rates on the wage statements and the

1 corresponding number of hours worked at such rates or hours paid at such rates. By way of
2 example only, certain hours were also double counted. In addition, Defendants have failed to
3 provide accurate itemized wage statements as a consequence of the above-specified violations for
4 failure to accurately pay all wages owed, accurately record all hours worked, and failure to pay
5 meal and rest period premiums as required by law.

6 97. Moreover, upon information and belief, as a pattern and practice, in violation of
7 Labor Code section 226(a) and the IWC Wage Orders, Defendants did not and do not maintain
8 accurate records pertaining to the total hours worked for Defendants by the members of the Wage
9 Statement Class, including but not limited to, beginning and ending of each work period, meal
10 period and split shift interval, the total daily hours worked, and the total hours worked per pay
11 period and applicable rates of pay.

12 98. Plaintiffs and the members of the Wage Statement Class have suffered injury as a
13 result of Defendants' failure to maintain accurate records for the members of the Wage Statement
14 Class in that the members of the Wage Statement Class were not timely provided written accurate
15 itemized statements showing all requisite information, such that the members of the Wage
16 Statement Class were misled by Defendants as to the correct information regarding various items,
17 including but not limited to total hours worked by the employee, net wages earned and all
18 applicable hourly rates in effect during the pay period and the corresponding number of hours
19 worked at each hourly rate.

20 99. Pursuant to Labor Code section 226, and in light of Defendants' violations
21 addressed above, Plaintiff and the Wage Statement Class Members are each entitled to recover up
22 to a maximum of \$4,000.00, along with an award of costs and reasonable attorneys' fees.

23 **SEVENTH CAUSE OF ACTION**

24 **VIOLATION OF THE UNFAIR COMPETITION LAW**

25 **By Plaintiff and Class Against All Defendants**

26 100. Plaintiff incorporates by reference and realleges each and every allegation contained
27 above, as though fully set forth herein.

28 101. Defendants' conduct, as alleged in this complaint, has been, and continues to be,

1 unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the
2 general public. Plaintiff also seeks to enforce important rights affecting the public interest within
3 the meaning of the California Code of Civil Procedure § 1021.5.

4 102. Defendants' policies, activities, and actions as alleged herein are violations of
5 California law and constitute unlawful business acts and practices in violation of California
6 Business and Professions Code §§ 17200, *et seq.*

7 103. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be
8 predicated on the violation of any state or federal law.

9 104. The state law violations, including violations of the relevant IWC Wage Order,
10 detailed herein above are the predicate violations for this cause of action. By way of example only,
11 in the instant case Defendants' policy of failing to lawfully provide Plaintiff and the Class with
12 timely meal and rest periods or pay one (1) hour of premium pay when a meal or rest period was
13 not lawfully provided violates Labor Code § 512, and § 226.7, and the IWC Wage Orders.
14 Defendants further violated the law through their policies of failing to fully and accurately
15 compensate Plaintiff and the Class Members for all hours worked, including minimum wages and
16 overtime, and failing to reimburse for necessary expenses, as well as failing to provide accurate
17 itemized wage statement as specified above.

18 105. Plaintiff and the Class Members have been personally aggrieved by Defendants'
19 unlawful and unfair business acts and practices alleged herein by the loss of money and/or property.

20 106. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiff
21 and the Class Members are entitled to restitution of the wages withheld and retained by Defendants
22 during a period that commences four (4) years prior to the filing of this complaint; an award of
23 attorneys' fees pursuant to California Code of Civil Procedure §1021.5; interest; and an award of
24 costs.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff pray judgment against Defendants, jointly and severally, as
3 follows:

4 **Class Certification**

- 5 1. That this action be certified as a class action;
6 2. That Plaintiff be appointed as the representative of the Class;
7 3. That Plaintiff be appointed as the representatives of the Subclasses; and
8 4. That counsel for Plaintiff be appointed as counsel for the Class and Subclasses.

9 **On the First Cause of Action**

10 **(Failure to pay minimum wages)**

- 11 1. For the unpaid balance of the full amount of any minimum wages, and regular wages
12 owed, as well as interest thereon,
13 2. Penalties according to statute,
14 3. Liquidated damages,
15 4. Reasonable attorneys' fees, and costs of suit;
16 5. For interest and
17 6. For such other and further relief as the Court deems proper.

18 **On the Second Cause of Action**

19 **(Failure to Provide Lawful Meal Periods)**

- 20 1. For one (1) hour of premium pay for each day in which a required meal period was
21 not lawfully provided;
22 2. For reasonable attorneys' fees and costs pursuant to statute; and
23 3. For such other and further relief as the Court deems proper.

24 **On the Third Cause of Action**

(Failure to Authorize and Permit Lawful Rest Periods)

1. For one (1) hour of premium pay for each day in which a required rest period was not lawfully authorized and permitted; and
2. For reasonable attorneys' fees and costs pursuant to statute; and
3. For such other and further relief as the Court deems proper.

On the Fourth Cause of Action

(Failure to Timely Pay Wages Due and Payable During Employment)

1. For unpaid wages;
2. For penalties pursuant to Labor Code § 210 and 25% of the amount of wages unlawfully withheld;
3. For interest;
4. For reasonable attorneys' fees and costs pursuant to statute; and
5. For such other and further relief as the Court deems proper.

On the Fifth Cause of Action

(Failure to Timely Pay Wages At Separation)

6. For unpaid wages;
7. For penalties pursuant to Labor Code § 203;
8. For interest;
9. For reasonable attorneys' fees and costs pursuant to statute; and
10. For such other and further relief as the Court deems proper.

On the Sixth Cause of Action

(Failure to Provide Accurate Itemized Wage Statements)

1. For statutory penalties, including penalties pursuant to Labor Code section 226;
2. For reasonable attorneys' fees and costs; and
3. For such other and further relief as the Court deems proper;

On the Seventh Cause of Action

(Violation of the Unfair Competition Law)

1. That Defendants, jointly and/or severally, pay restitution and/or disgorgement of sums to Plaintiff and Class Members for the Defendants' past failure to pay minimum, overtime and regular wages, for Defendants' past failure to reimburse necessary expenses, and for premium wages for meal and rest periods that were not provided to Plaintiff and Class Members over the last four (4) years in an amount according to proof;

2. For reasonable attorneys' fees that Plaintiff and Class Members are entitled to recover under California Code of Civil Procedure § 1021.5 and Labor Code section 1194, 1197, 1198 ;

3. For pre-judgment interest on any unpaid minimum, regular and overtime wages due from the day that such amounts were due;

4. For costs of suit incurred herein that Plaintiff and Class Members are entitled to recover under the Labor Code; and

5. For such other and further relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of the Class and Subclasses, respectfully demand a jury trial in this matter to the fullest extent available under the law.

Respectfully submitted,

Dated: January 11, 2022

JAMES HAWKINS, APLC
James R. Hawkins, Esq.
Christina M. Lucio, Esq.

Attorneys for ROBERTA BROWN, on behalf of herself
and all others similarly situated