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

WINNIEFREDO MACANDOG,
individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

SOUTHWEST AIRLINES COMPANY, a
Texas Corporation, and DOES 1-10,
inclusive,

Defendants.

Case No.

Assigned for All Purposes to:

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Lawful Wages;
2. Failure to Provide Meal Periods;
3. Failure to Authorize or Permit Rest Periods;
4. Failure to Pay Wages Upon Separation of Employment and Within the Required Time;
5. Failure to Furnish Accurate Wage Statements; and
6. Violation of California Business and Professions Code §§ 17200, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff Winniefred Macandog, individually and on behalf of all others similarly situated,
2 alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Winniefred Macandog (“Plaintiff”) brings this class action, pursuant to
5 California Code of Civil Procedure section 382, on behalf of herself and non-exempt employees
6 employed, or formerly employed, within the State of California by Southwest Airline Co., and any
7 subsidiaries or affiliated companies (hereinafter, along with DOES 1 through 10, collectively
8 referred to as “Southwest” or “Defendants”).

9 2. Southwest is a domestic airline carrier operating nationally and throughout the State
10 of California.

11 3. Through this action, Plaintiff is alleging that Defendants have engaged in a systematic
12 pattern of wage and hour violations under the California Labor Code and Industrial Welfare
13 Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate unfair
14 competition.

15 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have increased
16 their profits by violating state wage and hour laws by, among other things:

- 17 (a) Failing to pay all lawful wages owed, including minimum wages and overtime
18 wages;
- 19 (b) Failing to authorize or permit lawful meal periods or compensation in lieu
20 thereof,
- 21 (c) Failing to authorize or permit lawful rest periods or provide compensation in
22 lieu thereof;
- 23 (d) Willfully failing to provide accurate semi-monthly itemized wage statements;
24 and
- 25 (e) Failing to pay all wages due upon separation of employment.

26 5. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf of
27 herself and all others similarly situated to recover, among other things, unpaid meal period
28 compensation, unpaid rest period compensation, interest, attorney’s fees, costs and expenses and

1 penalties pursuant to Labor Code §§ 201-204, 210, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2,
2 1197, and 1198.

3 6. Plaintiff, on behalf of herself and all class members, pursuant to Business and
4 Professions Code sections 17200, *et seq*, also seeks injunctive relief and restitution for the unfair,
5 unlawful, or fraudulent practices alleged in this complaint.

6 **JURISDICTION AND VENUE**

7 7. This is a class action, pursuant to California Code of Civil Procedure § 382. The
8 monetary damages and restitution sought by Plaintiff exceed the minimal jurisdictional limits of the
9 Superior Court and will be established according to proof at trial.

10 8. This Court has jurisdiction over this action pursuant to the California Constitution,
11 Article VI, § 10, which grants the Superior Court original jurisdiction in all cases except those given
12 by statutes to other courts. The statutes under which this action is brought do not specify any other
13 basis for jurisdiction.

14 9. This Court has jurisdiction over all Defendants because, upon information and belief,
15 Defendants have sufficient minimum contacts in California or otherwise intentionally avail
16 themselves of the California market so as to render the exercise of jurisdiction over them by the
17 California courts consistent with traditional notions of fair play and substantial justice.

18 10. Venue as to each defendant is proper in this judicial district, pursuant to California
19 Code of Civil Procedure section 395.5. Upon information and belief, Defendants transact business
20 or have at least one facility in this county and acts and omissions alleged herein took place in this
21 county.

22 **THE PARTIES**

23 11. Plaintiff Winniefredo Macandog is a resident of California. Plaintiff was employed
24 by Defendants in California from 1993 to January, 2020.

25 12. Defendant Southwest is a domestic airline carrier operating nationally and throughout
26 the State of California, including Alameda county. The unlawful acts alleged herein have a direct
27 effect on Plaintiff and those similarly situated within the state of California and Alameda county.
28

13. Plaintiff is informed and believes, and thereon alleges, that Defendants at all times hereinafter mentioned, were and are employers as defined in and subject to the Labor Code and IWC Wage Orders, whose employees were and are engaged throughout this county and the State of California.

14. Plaintiff is unaware of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 20 but will seek leave of this Court to amend this complaint and serve such fictitiously named defendants once their names and capacities become known.

15. Plaintiff is informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent to this action as the agent of the other defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the employer and/or joint employer of Plaintiff and the class members.

16. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES 1 through 10, acting as the agent or alter ego for the other, with legal authority to act on the other's behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

17. At all relevant times, Defendants, and each of them, acted within the scope of such agency or employment, or ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

18. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently or otherwise responsible for the acts, omissions, occurrences and transactions alleged herein.

CLASS ACTION ALLEGATIONS

19. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of herself and all other members of the general public similarly situated who were affected by Defendants' Labor Code, Business and Professions Code §§ 17200 and IWC Wage Order violations.

1 20. All claims alleged herein arise under California law for which Plaintiff seeks relief
2 authorized by California law.

3 21. Plaintiff's proposed Class consists of and is defined as follows:
4
5 All persons currently or formerly employed as non-exempt employees by
6 Defendants in the State of California within four years prior to the filing of
7 this action to the present.

8 22. Plaintiff also seeks to certify the following Subclass:

9 Waiting Time Subclass

10 All members of the Class who separated their employment from Defendants
11 within three years prior to the filing of this action to the present.

12 23. Members of the Class and Subclass described above will collectively be referred to
13 as "Class Members." Plaintiff reserves the right to establish other or additional subclasses, or modify
14 any Class or Subclass definition, as appropriate based on investigation, discovery and specific
15 theories of liability.

16 24. This action has been brought and may properly be maintained as a class action under
17 the California Code of Civil Procedure § 382 because there are common questions of law and fact as
18 to the Class that predominate over questions affecting only individual members including, but not
19 limited to:

- 20 a. Whether Defendants paid Plaintiff and Class Members all lawful wages owed,
21 including minimum wages and overtime wages;
- 22 b. Whether Defendants deprived Plaintiff and Class Members of timely meal
23 periods;
- 24 c. Whether Defendants deprived Plaintiff and Class Members of rest breaks or
25 required Plaintiff and class members to work through rest breaks;
- 26 d. Whether Defendants failed to timely pay Plaintiff and Waiting Time Subclass
27 Members all wages due upon termination or within 72 hours of resignation;
- 28 e. Whether Defendants failed to furnish Plaintiff and Class Members with
accurate wage statements; and

f. Whether Defendants engaged in unfair business practices in violation of Business & Professions Code §§ 17200, *et seq.*

25. There is a well-defined community of interest in the litigation and the Class is readily ascertainable.

a. Numerosity: The members of the Class are so numerous that joinder of all members is impractical. Although the members of the Class are unknown to Plaintiff at this time, on information and belief, the Class is estimated to be greater than 100 individuals. The identity of the class members are readily ascertainable by inspection of Defendants' employment and payroll records.

b. Typicality: The claims (or defenses, if any) of Plaintiff are typical of the claims (or defenses, if any) of the Class because Defendants' failure to comply with the provisions of California wage and hour laws entitled each class member to similar pay, benefits and other relief. The injuries sustained by Plaintiff are also typical of the injuries sustained by the Class because they arise out of and are caused by Defendants' common course of conduct as alleged herein.

c. Adequacy: Plaintiff is qualified to, and will, fairly and adequately represent and protect the interests of all members of the Class because it is in her best interests to prosecute the claims alleged herein to obtain full compensation and penalties due her and the Class. Plaintiff's attorneys, as proposed class counsel, are competent and experienced in litigating large employment class actions and are versed in the rules governing class action discovery, certification and settlement. Plaintiff has incurred and, throughout the duration of this action, will continue to incur attorneys' fees and costs that have been and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

d. Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies

1 of time, effort and expense as compared with separate lawsuits, and will avoid
2 inconsistent outcomes because the same issues can be adjudicated in the same
3 manner and at the same time for each Class. If appropriate this Court can, and
4 is empowered to, fashion methods to efficiently manage this case as a class
5 action.

- 6 e. Public Policy Considerations: Employers in the State of California and other
7 states violate employment and labor laws every day. Current employees are
8 often afraid to assert their rights out of fear of direct or indirect retaliation.
9 Former employees are fearful of bringing actions because they believe their
10 former employers might damage their future endeavors through negative
11 references and/or other means. Class actions provide the class members who
12 are not named in the complaint with a type of anonymity that allows for the
13 vindication of their rights at the same time as affording them privacy
14 protections.

15 **GENERAL ALLEGATIONS**

16 26. At all relevant times mentioned herein, Defendants employed Plaintiff and other
17 persons as non-exempt, hourly employees.

18 27. Defendants continue to employ non-exempt employees within California.

19 28. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
20 herein, Defendants were advised by skilled lawyers, employees and other professionals who were
21 knowledgeable about California wage and hour law, employment and personnel practices and the
22 requirements of California.

23 29. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and the Class
24 Members were not properly compensated for all hours worked. This is due, in part, to Defendant's
25 failure to pay for time rounded to Defendants' advantage. Plaintiff is informed and believes, and
26 thereon alleges, that Defendant knew or should have known that Plaintiff and Class Members were
27 entitled to receive wages for all hours worked, including overtime compensation. In violation of the
28 Labor Code and IWC Wage Orders, Plaintiff and Class Members were not properly paid for all of

1 their time worked because Defendant rounded Plaintiff's and Class Members' time punches to
2 Defendant's advantage.

3 30. Plaintiff is informed and believes, and thereon alleges, that Defendants also failed to
4 pay Plaintiff and Class Members overtime wages and sick pay at the correct rate due to Defendants'
5 failure to include non-discretionary wages, including, but not limited to, shift differentials and/or
6 other incentive pay in the computation of their overtime rate of pay, which caused Plaintiff and Class
7 Members to not be properly paid for overtime and sick pay. Accordingly, Defendants owe Plaintiff
8 and Class Members unpaid wages.

9 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and class members were entitled to receive all meal periods or
11 payment of one additional hour of pay at Plaintiff's and Class Members' regular rate of pay when
12 they did not receive one timely, uninterrupted meal period when working more than five hours and
13 a second timely, uninterrupted meal period when working more than ten hours. Defendants failed to
14 provide these lawful meal periods to Class Members. These failures include, but are not limited to,
15 failing to provide the first meal periods within the first five hours of work and failing to provide
16 second meal periods for shifts of longer than ten hours.

17 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and Class Members were entitled to receive all rest breaks or
19 payment of one additional hour of pay at Plaintiff and Class Members' regular rate of pay when a
20 rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class
21 Members did not receive all rest breaks or payment of one additional hour of pay at Plaintiff and
22 Class Members' regular rate of pay when a rest break was missed.

23 33. In addition, Plaintiff is informed and believes, and thereon alleges, that Defendant
24 maintained a policy and practice of requiring Plaintiff and Class Members to remain on the premises,
25 and thus under the control of Defendants, during meal and/or rest breaks in violation of California
26 law.

27 34. Despite the above-mentioned meal period and rest break violations, Defendants did
28 not compensate Plaintiff, and on information and belief, did not compensate Class Members, one

1 additional hour of pay at their regular rate as required by California law, including Labor Code
2 section 226.7 and the applicable IWC wage order, for each day on which lawful meal periods and
3 rest breaks were not authorized and permitted. As a result, Plaintiff and Class Members were not
4 paid all lawful wages owed (including overtime wages). Plaintiff is informed and believes, and
5 thereon alleges, that Defendants knew or should have known that Plaintiff and Class Members were
6 entitled to receive all lawful wages owed yet failed to do so in violation of the Labor Code and IWC
7 Wage Orders.

8 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and Waiting Time class members were entitled to timely payment
10 of wages upon separation of employment. In violation of the California Labor Code, Plaintiff and
11 Waiting Time class members did not receive payment of all wages including, but not limited to,
12 compensation for meal period violations and compensation for rest period violations, upon separation
13 of their employment with Defendants.

14 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and Class Members were entitled to receive complete and accurate
16 wage statements in accordance with California law. In violation of the California Labor Code,
17 Plaintiff and Class Members were not furnished with complete and accurate wage statements
18 showing their accurate gross and net wages, all applicable hourly rates in effect during the pay period
19 and the corresponding number of hours, among other things.

20 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known they had a duty to compensate Plaintiff and Class Members, and Defendants had
22 the financial ability to pay such compensation but willfully, knowingly and intentionally failed to do
23 so all in order to increase Defendants' profits.

24 38. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief against
25 Defendants on behalf of herself and all Class Members to recover, among other things, unpaid meal
26 period premium payments, unpaid rest period premium payments, interest, attorneys' fees, penalties,
27 costs and expenses.
28

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL LAWFUL WAGES OWED**

3 **(Violations of Lab. Code §§ 510, 1194, 1199)**

4 39. Plaintiff hereby incorporates all previous paragraphs of this complaint as though fully
5 set forth herein.

6 40. As discussed herein, Defendants' policies and practices resulted in Plaintiff and Class
7 Members not receiving compensation for all earned wages including overtime and/or minimum wage
8 in violation of California state wage and hour laws.

9 41. As discussed herein, Defendants did not compensate Plaintiff and Class Members for
10 all lawful wages including, but not limited to, failing to pay for time rounded to Defendants'
11 advantage; failing to pay overtime and sick time wages at the correct rate; and failing to compensate
12 Plaintiff and Class Members one additional hour of pay at their regular rate for each day on which
13 lawful meal periods and rest breaks were not authorized and permitted as required by California law.
14 As a result, Plaintiff and Class Members were not paid all lawful wages, including minimum wages
15 and overtime wages. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
16 or should have known that Plaintiff and Class Members were entitled to receive all wages owed yet
17 failed to do so.

18 42. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to
19 represent have been deprived of compensation for all earned wages including minimum wage and/
20 or overtime wages in amounts to be determined at trial, and are entitled to recovery of such amounts,
21 plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code section 1194.

22 43. As a result of Defendants' failure to pay Plaintiff and Class Members all lawful
23 wages, Plaintiff and Class Members suffered and continue to suffer a loss of wages and
24 compensation.
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1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL PERIODS**

3 **(Violations of Labor Code §§ 226.7 and 512)**

4 44. Plaintiff hereby incorporates all previous paragraphs of this complaint as though fully
5 set forth herein.

6 45. Labor Code § 226.7 provides that no employer shall require an employee to work
7 during any meal period mandated by the IWC Wage Orders.

8 46. Section 11 of the applicable IWC Wage Order states, “no employer shall employ any
9 person for a work period of more than five (5) hours without a meal period of not less than 30
10 minutes, except that when a work period of not more than six (6) hours will complete the day’s work
11 the meal period may be waived by mutual consent of the employer and the employee.”

12 47. Labor Code § 512(a) provides that an employer may not require, cause or permit an
13 employee to work for a period of more than five (5) hours per day without providing the employee
14 with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work
15 period per day of the employee is not more than six (6) hours, the meal period may be waived by
16 mutual consent of both the employer and the employee.

17 48. Labor Code § 512(a) also provides that an employer may not employ an employee for
18 a work period of more than ten (10) hours per day without providing the employee with a second
19 meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than
20 twelve (12) hours, the second meal period may be waived by mutual consent of the employer and
21 the employee only if the first meal period was not waived.

22 49. Upon information and belief, pursuant to Defendants’ policies and practices, Plaintiff
23 and class members were not regularly authorized and/or permitted to take legally compliant, duty-
24 free meal periods as required by California law. Defendants also maintained a policy and practice of
25 requiring Plaintiff and Class Members to remain on premises, and thus under Defendants’ control,
26 during meal periods in violation of California law. As such, during the relevant time period, Plaintiff
27 and Class Members did not receive compliant meal periods for working more than five (5) and/or
28 ten (10) hours per day because, among other things, Defendant did not provide the first meal periods

1 within the first 5 hours of Class Members' shifts and did not provide second meal periods for shifts
2 over 10 hours.

3 50. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order requires an
4 employer to pay an employee one additional hour of pay at the employee's regular rate of
5 compensation for each workday that a compliant meal period is not provided.

6 51. At all relevant times, Defendants failed to pay Plaintiff and Class Members the full
7 meal period premium for missed and untimely meal periods pursuant to Labor Code § 226.7(b) and
8 section 11 of the applicable IWC Wage Order.

9 52. As a result of Defendants' failure to pay Plaintiff and Class Members an additional
10 hour of pay for each day a compliant meal period was not provided, Plaintiff and Class Members
11 suffered and continue to suffer a loss of wages and compensation.

12 **THIRD CAUSE OF ACTION**

13 **FAILURE TO PERMIT REST PERIODS**

14 **(Violations of Labor Code § 226.7)**

15 53. Plaintiff hereby incorporates all previous paragraphs of this complaint as though fully
16 set forth herein.

17 54. Labor Code § 226.7(a) provides that no employer shall require an employee to work
18 during any rest period mandated by the IWC Wage Orders.

19 55. Section 12 of the applicable IWC Wage Order states "every employer shall authorize
20 and permit all employees to take rest periods, which insofar as practicable shall be in the middle of
21 each work period" and the "authorized rest period time shall be based on the total hours worked daily
22 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the
23 total daily work time is less than three and one-half (3½) hours.

24 56. Upon information and belief, pursuant to Defendants' policies and practices, Plaintiff
25 and class members were not regularly authorized and/or permitted to take legally compliant, duty-
26 free rest breaks as required by California law. Defendants also maintained a policy and practice of
27 requiring Plaintiff and Class Members to remain on premises, and thus under Defendants' control,
28 during rest breaks in violation of California law. As such, during the relevant time period, Plaintiff

1 and Class Members did not receive a ten (10) minute rest period for every four (4) hours or major
2 fraction thereof worked because they were required to work through their daily rest periods and/or
3 were not authorized to take their rest periods.

4 57. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires an
5 employer to pay an employee one additional hour of pay at the employee's regular rate of
6 compensation for each workday that the rest period is not provided.

7 58. At all relevant times, Defendants failed to pay Plaintiff and Class Members the full
8 rest period premium for missed or interrupted rest periods pursuant to Labor Code § 226.7(b) and
9 section 12 of the applicable IWC Wage Order.

10 59. As a result of Defendants' failure to pay Plaintiff and Class Members an additional
11 hour of pay for each day a rest period was not provided, Plaintiff and Class Members suffered and
12 continue to suffer a loss of wages and compensation.

13 **FOURTH CAUSE OF ACTION**

14 **FAILURE TO PAY WAGES UPON SEPARATION**

15 **OF EMPLOYMENT AND WITHIN THE REQUIRED TIME**

16 **(Violations of Labor Code §§ 201, 202, 203 and 210)**

17 60. Plaintiff hereby incorporates all previous paragraphs of this complaint as though fully
18 set forth herein.

19 61. California Labor Code §§ 201 and 202 provide that if an employer discharges an
20 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,
21 and that if an employee voluntarily leaves his or her employment, his or her wages shall become due
22 and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
23 two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled
24 to his or her wages at the time of quitting.

25 62. During the relevant time period, Defendants willfully failed to pay Plaintiff and
26 Waiting Time Subclass Members all their earned wages upon termination including, but not limited
27 to, compensation for failure to provide compliant meal periods and permit compliant rest periods,
28 either at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

63. Defendants' failure to pay Plaintiff and Waiting Time Subclass Members all their earned wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code §§ 201 and 202.

64. California Labor Code § 203 provides that if an employer willfully fails to pay wages owed promptly upon discharge or resignation as required under California Labor Code §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

65. Defendants willfully failed to pay Plaintiff and Waiting Time Subclass Members all wages due and, as a result, owe Plaintiff and Waiting Time Subclass Members regular daily wages for each day they were not paid, at their regular rates of pay up to a thirty (30) day maximum pursuant to California Labor Code § 203 all in an amount to be shown according to proof at trial.

66. Based on these violations, Plaintiff and the Waiting Time Subclass she seeks to represent request relief as described herein and below.

FIFTH CAUSE OF ACTION

FAILURE TO FURNISH ACCURATE WAGE STATEMENTS

(Violation of Labor Code § 226)

67. Plaintiff hereby incorporates all previous paragraphs of this complaint as though fully set forth herein.

68. California Labor Code § 226(a) requires employers to furnish their employees with an accurate itemized writing that shows gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the period for which the employee is paid, the name of the employee and the portion of his or her social security number as required by law, the name and address of the legal entity that is the employer and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

69. Defendants have intentionally and willfully failed to provide Plaintiff and Class Members with complete and accurate wage statements. The deficiencies include, among other things, the failure to list the proper amount of the gross wages earned and net wages earned, all applicable

1 hourly rates in effect during the pay period and the corresponding number of hours, among other
2 things.

3 70. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff and
4 Class Members have suffered injury and damage to their statutorily protected rights. Specifically,
5 Plaintiff and Class Members have been injured by Defendants' intentional violation of California
6 Labor Code § 226(a) because they were denied both their legal right to receive, and their protected
7 interest in receiving, accurate itemized wage statements under California Labor Code § 226(a).
8 Plaintiff has had to file this lawsuit in order to determine the extent of the underpayment of wages,
9 thereby causing Plaintiff to incur expenses and lost time. Plaintiff would not have had to engage in
10 these efforts and incur these costs had Defendants provided the accurate wages earned. This has also
11 delayed Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

12 71. California Labor Code § 226(a) requires an employer to pay the greater of all actual
13 damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred, and one
14 hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus attorney's
15 fees and costs, to each employee who was injured by the employer's failure to comply with California
16 Labor Code § 226(a).

17 72. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff and
18 Class Members from knowing, understanding and disputing the wages paid to them, and resulted in
19 an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
20 intentional failure to comply with California Labor Code § 226(a), Plaintiff and Class Members have
21 suffered an injury, and the exact amount of damages and/or penalties is all in an amount to be shown
22 according to proof at trial.

23 73. Plaintiff and Class Members are also entitled to injunctive relief under California
24 Labor Code § 226(g), compelling Defendants to comply with California Labor Code § 226 and seek
25 the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.
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1 **SIXTH CAUSE OF ACTION**

2 **UNFAIR BUSINESS PRACTICES**

3 **(Violation of Business and Professions Code §§ 17200 *et seq.*)**

4 74. Plaintiff hereby incorporates all previous paragraphs of this complaint as though fully
5 set forth herein.

6 75. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair
7 competition, which includes any "unlawful, unfair or fraudulent business act or practice"

8 76. A violation of California Business and Professions Code §§ 17200, *et seq.* may be
9 predicated on the violation of any state or federal law. In the instant case, Defendants' policies and
10 practices have violated state law, causing Plaintiff and Class Members to suffer and continue to suffer
11 injuries in fact. As alleged herein, Defendants systematically engaged in unlawful conduct in
12 violation of the California Labor Code and IWC Wage Orders, such as failing to pay all lawful wages
13 owed, failing to provide lawful meal periods or compensation in lieu thereof, failing to permit lawful
14 rest periods or compensation in lieu thereof, failing to pay all wages due and owing upon separation
15 of employment and in a timely manner, and failing to furnish accurate wage statements, all in order
16 to decrease their costs of doing business and increase their profits.

17 77. At all times relevant herein, Defendants intentionally avoided paying Plaintiff and
18 Class Members wages and monies, thereby creating for Defendants an artificially lower cost of doing
19 business in order to undercut their competitors and establish and/or gain a greater foothold in the
20 marketplace.

21 78. As a result of Defendants' conduct, Plaintiff and Class Members suffered a loss of
22 wages and monies, all in an amount to be shown according to proof at trial. By violating the foregoing
23 statutes and regulations as herein alleged, Defendants' acts constitute unfair and unlawful business
24 practices under California Business and Professions Code §§ 17200, *et seq.*

25 79. Defendants' violations of the California Labor Code and IWC Wage Orders and their
26 scheme to lower their payroll costs as alleged herein, constitute unlawful business practices because
27 they were done in a systematic manner over a period of time to the detriment of Plaintiff and class
28 members.

80. As a result of the unfair business practices of Defendants, as alleged herein, Plaintiff and Class Members are entitled to injunctive relief, disgorgement and restitution in an amount to be shown according to proof at trial.

81. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, Class Members and to the general public. Based on Defendants' conduct as alleged herein, Plaintiff and Class Members are entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of all others similarly situated, prays for judgment against Defendants as follows:

1. For certification of the proposed Class and Waiting Time Subclass and any other appropriate classes or subclasses under California Code of Civil Procedure § 382;
2. For appointment of Plaintiff as the class representative;
3. For appointment of James Hawkins, APLC as class counsel for all purposes;
4. For general damages;
5. For special damages;
6. For statutory penalties to the extent permitted by law, including those pursuant to the California Labor Code and IWC Wage Orders;
7. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200 *et seq.*;
8. For restitution as provided by California Business and Professions Code §§ 17200, *et seq.*;
9. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and, therefore, constituting unfair competition under California Business and Professions Code §§ 17200 *et seq.*;
10. For an award of damages in the amount of unpaid compensation;

11. For pre-judgment interest;

12. For reasonable attorney's fees and costs of suit to the extent permitted by law;

California Code of Civil Procedure § 1021.5 and California Labor Code § 226(e);

13. For such other relief as the Court deems just and proper.

Dated: August 17, 2020

JAMES HAWKINS, APLC

By: Samantha Smith
Samantha A. Smith
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial with respect to all issues triable of right by jury.

Dated: August 17, 2020

JAMES HAWKINS, APLC

By: Samantha Smith
Samantha A. Smith
Attorneys for Plaintiff