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7 situated

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF LOS ANGELES**

10 CINDY NEWMAN, an individual, individually,
11 on behalf of the general public, and all others
12 similarly situated,

13 Plaintiff,

14 v.

15 WW NORTH AMERICA HOLDINGS, INC. a
corporation; and DOES 1 through 100, inclusive,

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17 Defendants.
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ORIGINAL FILED
Superior Court of California
County of Los Angeles

DEC 15 2020

Sherri R. Carter, Executive Officer/Clerk of Court
By Steven Drew, Deputy

FIRST AMENDED CLASS ACTION
COMPLAINT

Case No.: 20STCV02332

**1. FAILURE TO PAY
COMPENSATION FOR ALL HOURS
WORKED AND MINIMUM WAGE
VIOLATIONS (CAL. LAB. CODE §§
216, 1194, 1194.2, 1197)**

**2. FAILURE TO PAY
OVERTIME COMPENSATION (CAL.
LAB. CODE §§ 1194)**

**3. WAITING TIME
PENALTIES (CAL. LAB. CODE § 203)**

**4. FAILURE TO PAY ALL
WAGES BY THE APPROPRIATE
PAY PERIOD (CAL. LAB. CODE §
204)**

**5. FAILURE TO PROVIDE
ACCURATE ITEMIZED
STATEMENTS (CAL. LAB. CODE §
226, IWC Wage Order)**

**6. UNFAIR BUSINESS
PRACTICES (CALIFORNIA
BUSINESS AND PROFESSIONS
CODE § 17200, ET SEQ.)**

**7. CIVIL PENALTIES UNDER
PRIVATE ATTORNEYS GENERAL
ACT (CAL. LAB. CODE § 2699, *ET
SEQ.*)**

DEMAND FOR JURY TRIAL

Plaintiff CINDY NEWMAN ("PLAINTIFF" or "NEWMAN") individually, and on behalf of herself, all others similarly situated, and the general public, complain and allege on information and belief the following against WW NORTH AMERICA HOLDINGS, INC. (hereinafter "WW") a corporation and DOES 1 through 100, inclusive, (collectively "DEFENDANTS"):

INTRODUCTION

1. This is a class action lawsuit being brought on behalf of all non-exempt employees who work(ed) for DEFENDANTS in California. PLAINTIFF and members of the PLAINTIFF CLASS (defined below) work(ed) as leaders, guides, coaches, and others at DEFENDANTS' various locations in California. PLAINTIFF and members of the PLAINTIFF CLASS have been subjected to numerous wage and hour violations which are the result of systemic policies and procedures implemented by DEFENDANTS.

2. For example, DEFENDANTS pay employees the same flat rate for meetings with its clients, despite these meetings varying in duration (e.g. PLAINTIFF was paid \$29.65, even for meetings lasting several hours). This illustrates DEFENDANTS' policy and practice of underpaying its employees for regular meetings, exemplified by the fact that DEFENDANTS' employee handbook emphasizes diligent timekeeping down to the minute, yet DEFENDANTS do not follow this same diligence in compensating its employees.

3. Further, DEFENDANTS do not disclose its compensation structure to its employees upon initial hire. PLAINTIFF and members of the PLAINTIFF CLASS were not made aware of DEFENDANTS' policy and practice of paying different hourly wages dependent on the type of task completed by its employees, despite these tasks all falling under the

1 designated positions of the PLAINTIFF CLASS (e.g. PLAINTIFF was paid \$15.15 per hour for
2 tasks falling under the “24/7 Expert Chat” category but was only paid \$12.75 per hour for certain
3 “Drop-In Hours” and was paid \$15 per hour for other “Drop-In Hours,” a difference in hourly
4 wage not explained to PLAINTIFF).

5 4. DEFENDANTS’ actions give rise to violations of state wage and hour laws,
6 including laws mandating the payment of wages. Through this lawsuit, PLAINTIFF, and others
7 similarly situated, seek to recover all wages which they and other employees of DEFENDANTS
8 rightfully earned but have been denied, as well as any penalties associated with DEFENDANTS’
9 rampant and willful violations of the law, interest on the unpaid wage amounts, and attorneys’
10 fees.

11 **JURISDICTION AND VENUE**

12 5. The Court has personal jurisdiction over DEFENDANTS because they are
13 residents and/or doing business in the state of California.

14 6. Venue is proper in this Court in accordance with Section 395(a) of the California
15 Code of Civil Procedure because DEFENDANTS, or some of them, reside and/or are doing
16 business in Los Angeles County. Moreover, DEFENDANTS employed PLAINTIFF and others
17 similarly situated in Los Angeles County and the harms occurred in Los Angeles County.

18 **PARTIES**

19 7. PLAINTIFF CINDY NEWMAN is a resident of Los Angeles County, California.

20 8. PLAINTIFF is informed and believe and based thereon alleges that defendant
21 WW NORTH AMERICA HOLDINGS, INC. a corporation which, at all times relevant herein,
22 employed California persons in or near the City of Los Angeles, County of Los Angeles, State of
23 California.

24 9. Section 2 of the applicable Industrial Wage Commission (“IWC”) Order No. 2-
25 2001, which governs persons employed in personal service companies, defines an “employer” as
26 any “person as defined in Section 18 of the Labor Code, who directly or indirectly, or through an
27 agent or any other person, employs or exercises control over the wages, hours or working
28 conditions of any person.” PLAINTIFF, and others similarly situated including the PLAINTIFF

1 CLASS (defined below), are informed and believe and on this basis allege that DEFENDANTS
2 employ or exercise control over the wages, hours or working conditions of PLAINTIFF and the
3 rest of the PLAINTIFF CLASS defined below.

4 10. PLAINTIFF is informed and believes and based thereon alleges that she was
5 employed by DEFENDANTS from April 31, 2011 until October 18, 2019.

6 11. Whenever in this Complaint reference is made to DEFENDANTS, such
7 allegations shall be deemed to mean the acts of all defendants acting individually, jointly, and/or
8 severally.

9 12. PLAINTIFFS are informed and believe, and on that basis allege, that WW
10 NORTH AMERICA HOLDINGS, INC. and DOES 1 through 100 constitute an integrated
11 enterprise based on their interrelation of operations, common management, centralized control of
12 labor relations, and common ownership and financial control. Specifically, PLAINTIFF is
13 informed and believes and thereon alleges that: each of the DEFENDANTS operate according to
14 uniform policies and procedures for controlling the work of PLAINTIFF and the PLAINTIFF
15 CLASS (described below); DEFENDANTS operate as an interrelated operation; DEFENDANTS
16 are operated by a small group of shared officers and directors; and each of the DEFENDANTS
17 share and control the management of the premises where PLAINTIFF and members of the
18 PLAINTIFF CLASS work. Thus, adherence to the fiction of the separate existence of each
19 defendant here would permit abuse, sanction, fraud and promote injustice.

20 13. The true names and capacities of defendants named herein as DOES 1-100,
21 inclusive, whether individual, corporate, associate, or otherwise, are unknown to PLAINTIFF,
22 who therefore sue these defendants by such fictitious names. PLAINTIFF will amend this
23 Complaint to show true names and capacities of these defendants when they are ascertained.

24 14. At all times mentioned herein, DEFENDANTS, and each of them, were the
25 agents, representatives, employees, successors, assigns, parents, subsidiaries, and/or affiliates,
26 each of the other, and at all times pertinent hereto were acting within the course and scope of
27 their authority as such agents, representatives, employees, successors, assigns, parents,
28 subsidiaries and/or affiliates. PLAINTIFF also alleges that DEFENDANTS were, at all times

relevant hereto, the alter egos of each other. Wherever reference is made to DEFENDANTS herein, it is intended to include all of the named DEFENDANTS as well as the DOE defendants. Each of the fictitiously named DOE defendants is responsible for the occurrences herein alleged and proximately caused PLAINTIFF damages as well as damages of members of the PLAINTIFF CLASS (described below).

CLASS ACTION ALLEGATIONS

15. PLAINTIFF brings this action on behalf of herself and all others similarly situated as a class action pursuant to California Code of Civil Procedure section 382. The class that PLAINTIFF seeks to represent ("PLAINTIFF CLASS") is composed and defined as follows: **All California persons who are or have been non-exempt employees of DEFENDANTS since four (4) years prior to the filing of the initial Complaint until the entry of final judgment in this action (the "CLASS PERIOD").**

16. There exists a well-defined community of interests among the PLAINTIFF CLASS with respect to the claims asserted herein, and the PLAINTIFF CLASS is readily ascertainable for the following reasons:

a. Numerosity and Ascertainability: The members of the class are so numerous that joinder of all members would be unfeasible and not practicable. While PLAINTIFF does not know the exact number and identity of all Class members, PLAINTIFF alleges, on information and belief, that the members of the PLAINTIFF CLASS exceed one hundred (100) persons. PLAINTIFF alleges, on information and belief, that the identity of such membership is readily ascertainable via inspection of the personnel records and other documents maintained by DEFENDANTS;

b. Typicality: The claims of PLAINTIFF pled as class action claims are typical of the claims of all members of the class as they arise out of the same course of conduct and are predicated on the same violation(s) of the law. PLAINTIFF and all members of the PLAINTIFF CLASS sustained injuries and damages arising out of DEFENDANTS' common course of conduct in violation of laws as complained of herein.

c. Commonality: Common issues of fact and law predominate in this action over

1 any allegedly individual issues. The claims of PLAINTIFF and the PLAINTIFF CLASS
2 members arise from the same events or patterns or practices and are based on the same legal
3 theories. Specially, the following issues of fact and law, without limitation, predominate and
4 make this action superior to individual actions:

5 i. Whether DEFENDANTS failed to pay the required minimum wage to
6 PLAINTIFF and members of the PLAINTIFF CLASS for every hour where work was
7 performed;

8 ii. Whether DEFENDANTS failed to pay the required overtime wages to
9 PLAINTIFF and members of the PLAINTIFF CLASS for every overtime hour where work was
10 performed;

11 iii. Whether DEFENDANTS denied PLAINTIFF and members of the PLAINTIFF
12 CLASS all of the wages to which they are entitled pursuant to the California Labor Code,
13 California IWC Wage Orders, and all other applicable employment laws and regulations;

14 iv. Whether DEFENDANTS violated California Labor Code section 204 by failing to
15 pay all wages earned in a timely manner;

16 v. Whether DEFENDANTS have failed to properly provide accurate itemized wage
17 statements as well as keep accurate records as required by California Labor Code section 226 and
18 the applicable Industrial Welfare Commission's ("IWC") Wage Order;

19 vi. Whether DEFENDANTS owe PLAINTIFF and members of the PLAINTIFF
20 CLASS waiting time penalties pursuant to California Labor Code section 203;

21 vii. Whether DEFENDANTS engaged in unfair business practices under section
22 17200, *et. seq* of the California Business and Professions Code;

23 viii. The effect upon and the extent of damages suffered by PLAINTIFF and members
24 of the PLAINTIFF CLASS and the appropriate amount of compensation.

25 d. Adequacy: PLAINTIFF and the PLAINTIFF CLASS all worked for
26 DEFENDANTS, share the same interests, and were subjected to DEFENDANTS' unlawful
27 policy and practice of failing to provide meal and rest breaks and failing to adequately
28 compensate employees for all time worked. PLAINTIFF and members of the PLAINTIFF

1 CLASS do not have any conflicts of interest with other members. Given the significance of the
2 deprivation of their rights, PLAINTIFF will prosecute this action vicariously on behalf of the
3 PLAINTIFF CLASS. She has retained competent and experienced legal counsel who specialize
4 in employment, wage and hour, and class action litigation to represent themselves and the
5 proposed PLAINTIFF CLASS;

6 e. Superiority of Class Action: The disposition of PLAINTIFF and the proposed
7 PLAINTIFF CLASS members' claims in a class action will provide substantial benefits to both
8 the parties and the Court. The nature of this action and the nature of the laws available to the
9 PLAINTIFF CLASS make use of the class action format a particularly efficient and appropriate
10 procedure to afford relief to the PLAINTIFF CLASS. Further, this case involves a corporate
11 employer and a large number of individual employees possessing claims with common issues of
12 law and fact. If each employee were required to file an individual lawsuit, the corporate
13 defendant would necessarily gain an unconscionable advantage since each defendant would be
14 able to exploit and overwhelm the limited resources of each individual plaintiff with its vastly
15 superior financial and legal resources. Requiring each class member to pursue an individual
16 remedy would also discourage the assertion of lawful claims by employees who would be
17 disinclined to pursue an action against their present and/or former employer for an appreciable
18 and justifiable fear of retaliation and permanent damage to their careers at present and/or
19 subsequent employment. Proof of a common business practice or factual pattern, of which the
20 named PLAINTIFF experienced, is representative of the class mentioned herein and will
21 establish the right of each of the members of the class to recovery on the claims alleged herein.

22 The prosecution of separate actions by the individual class members, even if possible,
23 would create: (a) a substantial risk of inconvenient or varying verdicts or adjudications with
24 respect to the individual class members against the defendants herein; and/or (b) legal
25 determinations with respect to individual class members which would, as a practical matter, be
26 dispositive of the other class members' claims who are not parties to the adjudications and/or
27 would substantially impair or impede the ability of class members to protect their interests.
28 Further, the claims of the individual members of the class are not sufficiently large to warrant

1 vigorous individual prosecution considering all of the concomitant costs and expenses attending
2 thereto.

3 17. PLAINTIFF is unaware of any difficulties that are likely to be encountered in the
4 management of this action that would preclude its maintenance as a class action.

5 18. In addition, pursuant to California Labor Code §2699.3, on January 14, 2020,
6 PLAINTIFF took the initiative to notify the Labor and Workforce Development Agency
7 (“LWDA”) and DEFENDANTS of these violations, including the facts and theories to support
8 the violations. To date, more than 65 days have passed and the LWDA has not notified Plaintiff
9 whether it will investigate the violations detailed in her letter. Accordingly, PLAINTIFF has
10 followed the appropriate steps to enable her to pursue civil penalties pursuant to California Labor
11 Code §2699 for DEFENDANTS’ California Labor Law violations and violation of California
12 Business & Professions Code §§17200, 17500 *et seq.*, as alleged herein.

13 **FACTS COMMON TO ALL CAUSES OF ACTION**

14 19. PLAINTIFF and members of the PLAINTIFF CLASS are current or former non-
15 exempt employees of DEFENDANTS. PLAINTIFF and members of the PLAINTIFF CLASS
16 have been subjected to a variety of wage and hour violations during their employment with
17 DEFENDANTS.

18 20. Throughout their employment with DEFENDANTS, PLAINTIFF and members of
19 the PLAINTIFF CLASS are required to engage in meetings with clients during the work week,
20 ranging from 1 hour to 3 hours. PLAINTIFF and members of the PLAINTIFF CLASS were paid
21 a flat fee of \$29.65 for all meeting time scheduled, even though these meetings vastly ranged in
22 duration from 2 hours to 3 hours, or more.

23 21. DEFENDANTS furthermore did not pay for all wages due, as the paychecks that
24 PLAINTIFF and members of the PLAINTIFF CLASS were provided with did not account for all
25 hours worked. An example of this is DEFENDANTS practice of paying PLAINTIFF and members
26 of the PLAINTIFF CLASS a flat rate for client meetings even though the actual hours worked for
27 these meetings varied greatly. PLAINTIFF and members of the PLAINTIFF CLASS may have
28 worked 1 hour, 2 hours, or more and yet, were paid the same flat amount regardless of logged time

1 spent working.

2 22. DEFENDANTS also provided inaccurate wage statements to PLAINTIFF and
3 members of the PLAINTIFF CLASS. The wage statements are inaccurate with respect to the actual
4 hours worked by employees, the gross wages earned, and the net wages earned, among other
5 deficiencies. This is due to, for example, DEFENDANTS' violation of minimum wage laws. The
6 inaccurate wage statements create an actual injury, including making it more difficult for
7 PLAINTIFF and members of the PLAINTIFF CLASS to determine what compensation they are
8 owed but were not paid. Overall, DEFENDANTS' itemized statements to PLAINTIFF and
9 members of the PLAINTIFF CLASS make it appear as if they have been paid for all hours worked
10 when in fact there are numerous hours for which they receive unlawfully low compensation, as
11 explained above.

12 23. The aforementioned acts constitute unfair and unlawful practices as defined by law
13 pursuant to California Business and Professions Code section 17200, et seq. By virtue of this
14 action, PLAINTIFFS seek to restore all wages to PLAINTIFFS and members of the PLAINTIFF
15 CLASS that DEFENDANTS wrongfully took or withheld.

16 24. DEFENDANTS' violations of the law were willful and done according to
17 DEFENDANTS' established policies and procedures applicable to PLAINTIFF and all members
18 of the PLAINTIFF CLASS.

19 25. As a direct and proximate result of DEFENDANTS' Labor Code violations and
20 pursuant to California Labor Code §2699 ("The Private Attorneys General Act, or 'PAGA'"),
21 PLAINTIFF and members of the PLAINTIFF CLASS are entitled to recover civil penalties in an
22 amount to be established at trial. Under Labor Code §2699(i), PLAINTIFF and members of the
23 PLAINTIFF CLASS shall be paid twenty-five percent of such penalties, while the remaining
24 seventy-five percent shall be paid to the LWDA. As a further direct and proximate result of
25 DEFENDANTS' unlawful conduct as set forth herein, PLAINTIFF is also entitled to recover
26 attorneys' fees and litigation costs pursuant to California Labor Code §2699(g) and/or California
27 Code of Civil Procedure §1021.5.

28 26. PLAINTIFF has complied with the procedures for bringing suit specified in

1 California Labor Code §2699.3. On January 14, 2020 PLAINTIFF provided notice to LWDA and
2 to DEFENDANTS of the specific provisions of the California Labor Code alleged to have been
3 violated, including the facts and theories to support those violations. Notice was provided to the
4 LWDA via its online filing system and to DEFENDANTS via certified mail.

5 27. More than 65 days have elapsed since PLAINTIFF provided notice as required
6 under the statute, and Plaintiff's counsel has received no response from LWDA stating its
7 intentions to prosecute Plaintiff's PAGA claims. PLAINTIFF has thus adequately exhausted her
8 PAGA administrative remedies. (See *Waisben v. UBS Financial Services, Inc.*, 2008 U.S. Dist.
9 LEXIS 21727, 2008 WL 753896, 1 (N.D. Cal. March 19, 2008); *Amaral v. Cintas Corp. No. 2*,
10 163 Cal. App. 4th 1157, 1199, 1200, 78 Cal. Rptr. 3d 572 (2008) (relation back doctrine protects
11 plaintiff's PAGA claims from dismissal so long as PAGA claims are filed before expiration of the
12 one-year period).

13 **FIRST CAUSE OF ACTION**

14 **FAILURE TO PAY COMPENSATION FOR ALL HOURS WORKED AND MINIMUM** 15 **WAGE VIOLATIONS**

16 **(CALIFORNIA LABOR CODE §§ 216, 1194, 1194.2 and 1197)**

17 By PLAINTIFF in her individual capacity and in her capacity as a representative of all similarly
18 situated members of the PLAINTIFF CLASS against DEFENDANTS.

19 28. PLAINTIFF realleges and incorporates by reference each and every allegation
20 contained in the foregoing paragraphs as though fully set forth here.

21 29. PLAINTIFF and members of the PLAINTIFF CLASS bring this action to recover
22 unpaid compensation for all hours worked as defined by the applicable Industrial Welfare
23 Commission ("IWC") wage order as the time during which an employee is subject to the control
24 of an employer, and includes all the time the employee is suffered or permitted to work, whether
25 or not required to do so.

26 30. Under Section 1197 of the California Labor Code and the relevant IWC Wage order,
27 employers must pay their non-exempt employees an hourly rate equal to or greater than the state's
28 minimum wage. Moreover, the California Labor Code requires payment of the legal minimum

1 wage for each hour worked by an employee and does not allow employers to “average” the wages
2 paid to employees when it comes to determining compliance with state minimum wage laws. As
3 such, a failure to pay for any hours worked by an employee necessarily results in a minimum wage
4 violation under California law.

5 31. PLAINTIFF and members of the PLAINTIFF CLASS’ job duties reflect that they were
6 non-exempt employees and thus subject to minimum wage laws. Therefore, DEFENDANTS were
7 obligated to pay PLAINTIFF and members of PLAINTIFF CLASS the statutory or agreed upon
8 rate for each hour worked.

9 32. DEFENDANTS’ conduct described in this Complaint violates, among other things,
10 Labor Code sections 216, 1194, 1194.2 and 1197.

11 33. PLAINTIFF and members of the PLAINTIFF CLASS are entitled to recover the
12 unpaid balance of compensation DEFENDANTS owe PLAINTIFF and members of the
13 PLAINTIFF CLASS, plus interest on that amount, liquidated damages pursuant to Labor Code
14 section 1194.2, and reasonable attorney fees and costs of this suit pursuant to Labor Code section
15 1194.

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO PAY OVERTIME COMPENSATION**

18 **(Cal. Lab. Code § 1194)**

19 By PLAINTIFF in her individual capacity and in her capacity as representative of all similarly
20 situated members of the PLAINTIFF CLASS against DEFENDANTS.

21 34. PLAINTIFF realleges and incorporates by reference each and every allegation
22 contained in the foregoing paragraphs as though fully set forth here.

23 35. DEFENDANTS, and each of them, required PLAINTIFF and members of the
24 PLAINTIFF CLASS to work hours that were ultimately not compensated, for example, by
25 paying PLAINTIFF and members of the PLAINTIFF CLASS a flat fee for client meetings as
26 opposed to an hourly fee despite meetings vastly varying in duration. The failure to account for
27 true hours worked by PLAINTIFF and members of the PLAINTIFF CLASS caused PLAINTIFF
28 and members of the PLAINTIFF CLASS to not receive all overtime pay owed to them.

1 Therefore, DEFENDANTS, and each of them, failed to compensate PLAINTIFF and members of
2 the PLAINTIFF CLASS for all wages earned, including overtime wages.

3 36. PLAINTIFF is informed, believes, and, thereon, alleges, that the failure of
4 DEFENDANTS, and each of them, to pay PLAINTIFF and members of the PLAINTIFF CLASS
5 overtime compensation was willful, purposeful, and unlawful and done in accordance with the
6 policies and practices of DEFENDANTS' operations.

7 37. As a proximate cause of these violations, PLAINTIFF and members of the
8 PLAINTIFF CLASS have been damaged in an amount according to proof at the time of trial, but
9 in an amount in excess of the jurisdiction of this Court. PLAINTIFF and members of the
10 PLAINTIFF CLASS are entitled to recover the unpaid balance of wages owed, penalties, interest,
11 reasonable attorney fees, and costs of suit.

12 **THIRD CAUSE OF ACTION**

13 **WAITING TIME PENALTIES**

14 **(CALIFORNIA LABOR CODE SECTION 203)**

15 By PLAINTIFF in her individual capacity and in her capacity as a representative of all similarly
16 situated members of the PLAINTIFF CLASS against DEFENDANTS.

17 38. PLAINTIFF realleges and incorporates by reference each and every allegation
18 contained in the foregoing paragraphs as though fully set forth here.

19 39. Pursuant to California Labor Code section 201, if an employer discharges an employee,
20 the wages earned and unpaid at the time of the discharge are due and payable immediately.
21 Pursuant to California Labor Code section 202, if an employee quits his or her employment, the
22 wages earned and unpaid at the time of the discharge are due and payable within seventy-two (72)
23 hours of the resignation. Pursuant to California Labor Code section 203, if an employer willfully
24 fails to pay compensation upon discharge, then the employer is liable for waiting time penalties in
25 the form of compensation of up to thirty (30) work days.

26 40. To this day, neither PLAINTIFF nor members of the PLAINTIFF CLASS have
27 received all the wages and other compensation they rightfully earned.

28 41. DEFENDANTS, and each of them, willfully refused and continue to refuse to timely

1 pay PLAINTIFF and members of the PLAINTIFF CLASS all wages earned in a timely manner, as
2 required by California Labor Code section 203. PLAINTIFF therefore requests restitution and
3 penalties as provided by California Labor Code section 203.

4 42. At all times, PLAINTIFF and members of the PLAINTIFF CLASS have been ready,
5 willing and available to accept payment of these monies.

6 43. PLAINTIFF and members of the PLAINTIFF CLASS are entitled to compensation for
7 all forms of wages earned, including, but not limited to, sums for unlawful deductions from
8 compensation and additional wages, but to date have not received such compensation therefore
9 entitling PLAINTIFF and the class to penalties under California Labor Code section 203.

10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO PAY ALL WAGES BY THE APPROPRIATE PAY PERIOD** 12 **(CALIFORNIA LABOR CODE SECTION 204)**

13 By PLAINTIFF in her individual capacity and in her capacity as a representative of all similarly
14 situated members of the PLAINTIFF CLASS against DEFENDANTS.

15 44. PLAINTIFF realleges and incorporates by reference each and every allegation
16 contained in the foregoing paragraphs as though fully set forth here.

17 45. During the CLASS PERIOD, Labor Code section 204 applied to DEFENDANTS'
18 employment of PLAINTIFF and the PLAINTIFF CLASS. At all relevant times, Labor Code
19 section 204 provided that all wages earned by any employee, such as PLAINTIFF and members of
20 the PLAINTIFF CLASS, in any employment between the 1st and 15th days, inclusive, of any
21 calendar month, other than those wages due upon termination of an employee, are due and payable
22 between the 16th and 26th day of the month during which the work was performed. Furthermore,
23 at all times relevant hereto, Labor Code section 204 provided that all wages earned by any
24 employee, such as PLAINTIFF and members of the PLAINTIFF CLASS, in any employment
25 between the 16th and the last day, inclusive, of any calendar month, other than those wages due
26 upon termination of an employee, are due and payable between the 1st and 10th day of the
27 following month.

28 46. During the CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFF and members

1 of the PLAINTIFF CLASS wages for all hours worked.

2 47. During the CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFF and members
3 of the PLAINTIFF CLASS for all wages earned, and, therefore violated Labor Code section 204.
4 Accordingly, PLAINTIFF and members of the PLAINTIFF CLASS are entitled to recover all
5 damages, penalties and other remedies available for violation of Labor Code section 204.

6 **FIFTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

8 **(CALIFORNIA LABOR CODE § 226, IWC Wage Order)**

9 By PLAINTIFF in her individual capacity and in her capacity as a representative of all similarly
10 situated members of the PLAINTIFF CLASS against DEFENDANTS.

11 48. PLAINTIFF realleges and incorporates by reference each and every allegation
12 contained in the foregoing paragraphs as though fully set forth here.

13 49. California Labor Code section 226(a) and the applicable IWC Wage Order requires
14 that DEFENDANTS keep accurate records and semimonthly or at the time of payment of wages,
15 furnish each of his or her employees, itemize in wage statements, among other things, time records
16 showing when an employee ends and begins, meal periods, split shift intervals and total daily hours
17 worked shall also be recorded, when a piece rate or incentive plan is in operation, piece rates or an
18 explanation of the incentive plan formula shall be provided to the employees, an accurate
19 production record shall be maintained by the employer. Every employer shall also semimonthly
20 or at the time of each payment of wages furnish each employee, an itemized statement showing,
21 among other things all deductions.

22 50. DEFENDANTS knowingly and intentionally failed to comply with California Labor
23 Code section 226(a) and the applicable IWC Wage Order by failing to keep required accurate
24 payroll records and by failing, on each and every wage statement that was provided to PLAINTIFF
25 and members of the PLAINTIFF CLASS, to accurately reflect wage information and properly
26 itemize deductions.

27 51. PLAINTIFF is informed and believes and alleges that DEFENDANTS knowingly and
28 intentionally provided inaccurate payroll records to PLAINTIFF and members of the PLAINTIFF

1 CLASS. PLAINTIFF and members of the PLAINTIFF CLASS have suffered actual damages as
2 a result of DEFENDANTS' violation of Cal. Labor Code § 226(a) and the applicable IWC Wage
3 Order. In addition, PLAINTIFF and the PLAINTIFF CLASS have also suffered, and will continue
4 to suffer, actual damages in the form of additional litigation expenses incurred to calculate lost
5 wages. These additional litigation expenses include, but are not limited to, attorney's fees, expert
6 witnesses and other costs attendant to the calculation of lost wages when such costs would not need
7 to be incurred if DEFENDANTS had provided proper itemized wage statements to PLAINTIFF
8 and members of the PLAINTIFF CLASS that complied with California Labor Code section 226(a)
9 and the applicable IWC Wage Order.

10 52. California Labor Code section 226(e) and (g) provide that an employee suffering injury
11 as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is
12 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
13 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in
14 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) and
15 is entitled to an award of costs and reasonable attorney's fees.

16 53. PLAINTIFF and members of the PLAINTIFF CLASS are therefore entitled to recover
17 all amounts for all such wages and expenses and benefits on such wage statements, penalties,
18 interest, attorney's fees, and other court costs and expenses of suit, according to proof at trial.
19 PLAINTIFF and members of the PLAINTIFF CLASS are also entitled to recover, in addition to or
20 in lieu of some or all wages and expenses and benefits, nominal, actual and compensatory damages
21 in amounts according to proof at trial.

22 **SIXTH CAUSE OF ACTION**

23 **UNFAIR BUSINESS PRACTICES**

24 **(CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200, ET SEQ.)**

25 By PLAINTIFF in her individual capacity and in her capacity as a representative of all similarly
26 situated members of the PLAINTIFF CLASS against DEFENDANTS.

27 54. PLAINTIFF realleges and incorporates by reference each and every allegation
28 contained in the foregoing paragraphs as though fully set forth here.

1 55. DEFENDANTS' violations of the Employment Laws and Regulations, as alleged,
2 include, among other things: (1) DEFENDANTS' failure and refusal to pay all wages earned by
3 PLAINTIFF and the PLAINTIFF CLASS pursuant to DEFENDANTS' illegal pay practices
4 described above; (2) DEFENDANTS' failure to pay the minimum wage for all hours worked and/or
5 for each workweek; and (3) DEFENDANTS' failure to pay overtime compensation where it was
6 due. The aforementioned violations constitute unfair business practices in violation of the Unfair
7 Competition Law, California Business and Professions Code Section 17200, et seq.

8 56. As a result of DEFENDANTS' unfair business practices, DEFENDANTS have reaped
9 unfair benefits and illegal profits at the expense of PLAINTIFF, the PLAINTIFF CLASS and
10 members of the public. DEFENDANTS should be compelled to restore such monies to
11 PLAINTIFF and the PLAINTIFF CLASS.

12 57. DEFENDANTS' unfair business practices entitle PLAINTIFF and the PLAINTIFF
13 CLASS to seek preliminary and permanent injunctive relief, including but not limited to, orders
14 that DEFENDANTS account for and restore to PLAINTIFF and the PLAINTIFF CLASS the
15 compensation unlawfully withheld from them.

16 **SEVENTH CAUSE OF ACTION**

17 **PRIVATE ATTORNEY GENERAL ACT**

18 **(Cal. Lab. Code §2699)**

19 58. PLAINTIFF incorporates in this cause of action each and every allegation of the
20 preceding paragraphs, with the same force and effect as though fully set forth herein.

21 59. California Labor Code §2699(a) states:

22 60. PLAINTIFF and members of PLAINTIFF CLASS are "aggrieved employees," as
23 defined by California Labor Code §2699(c), because they were employed by DEFENDANTS
24 and were among the many employees against whom violations of law were committed.

25 61. PLAINTIFF has met and/or will meet all of the requirements set forth in California
26 Labor Code §2699.3 necessary to maintain a civil action against DEFENDANTS for violations of
27 (and/or recovery under) California Labor Code sections including but not limited to 201, 202,
28 203, 204, 210, 216, 225.5, 226, 226.3, 226.7, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197,

1 1197.1, and 1199; as well as various IWC Wage Orders.

2 62. PLAINTIFF brings this action on behalf of herself and PLAINTIFF CLASS alleging
3 violations of the California Labor Code sections cited in the preceding paragraph.

4 63. As a direct and proximate result of DEFENDANTS' unlawful conduct, as set forth
5 herein, PLAINTIFF is entitled to penalties under California Labor Code Sections 2698 and 2699.

6 64. Pursuant to California Labor Code Section 2699, PLAINTIFF and PLAINTIFF
7 CLASS should be awarded twenty-five percent (25%) of all penalties due under California law.

8
9 **PRAYER FOR RELIEF**

10 WHEREFORE, PLAINTIFF and the PLAINTIFF CLASS pray judgment as follows:

11 1. That the Court determine that Causes of Action 1 through 6 may be maintained as
12 a class action.

13 2. For injunctive relief to stop DEFENDANTS' illegal practices described above,
14 including, but not limited to, the payment of wages, including overtime wages, inaccurate itemized
15 statements, sick days, compensation for sick days, and other practices;

16 3. For general and compensatory damages, according to proof;

17 4. For restitution of all monies due to PLAINTIFF and the PLAINTIFF CLASS;

18 5. For waiting time penalties pursuant to California Labor Code section 203;

19 6. For penalties pursuant to California Labor Code and all other applicable Labor Code
20 and/or Employment Laws and Regulations;

21 7. That the Court declare, adjudge, and decree that this action is a proper representative
22 action pursuant to California Labor Code section 2699;

23 8. That the Court make an award to PLAINTIFF and the PLAINTIFF CLASS of civil
24 penalties for violations of the Labor Code, pursuant to Labor Code section 2699;

25 9. For reasonable attorneys' fees, pursuant to California Labor Code section 2699(g)
26 and/or California Code of Civil Procedure section 1021.5;

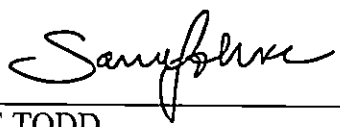
27 7. For interest accrued to date;

28 8. For costs of the suit incurred herein;

- 1 9. For attorney fees and costs pursuant to California Labor Code sections 218.5, 226
2 and 1194;
3 10. For punitive damages as allowed by law; and
4 11. For such other and further relief that the Court may deem just and proper.
5

6 Dated: July 17, 2020

KYLE TODD, P.C.

7
8 By: 

9 KYLE TODD

10 SAMANTHA JOHNSON

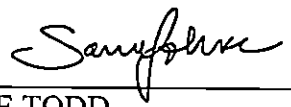
11 Attorneys for Plaintiff CINDY NEWMAN
12 individually, and on behalf of all others similarly
13 situated

14 **DEMAND FOR JURY TRIAL**

15 PLAINTIFF and members of the PLAINTIFF CLASS demand a trial by jury on all issues
16 so triable.

17
18
19 Dated: July 17, 2020

KYLE TODD, P.C.

20
21 By: 

22 KYLE TODD

23 SAMANTHA JOHNSON

24 Attorneys for Plaintiff CINDY NEWMAN
25 individually, and on behalf of all others similarly
26 situated
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