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Superior Court of California
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Original

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Sherri R. [Signature], Executive Officer/Clerk
By [Signature], Deputy
Steven Drew

Attorneys for Plaintiff EMILEE COMEAU, individually, and on behalf of all employees similarly situated.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE

EMILEE COMEAU, an individual,
individually and on behalf of all employees
similarly situated,

Plaintiffs,

vs.

TMC AT WOLFE'S INC., a California
corporation; and DOES 1 to 100, Inclusive,

Defendants.

Case No.: 20STCV04095

CLASS ACTION

Assigned for All Purposes To:
Honorable Daniel J. Buckley
Dept.: 1

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR**

1. FAILURE TO PAY WAGES UNDER THE FLSA [29 USC §§ 206 AND 207];
2. FAILURE TO PAY SPLIT SHIFT PREMIUM PAY;
3. FAILURE TO PAY OVERTIME COMPENSATION;
4. FAILURE TO PROVIDE MEAL PERIODS;
5. FAILURE TO PROVIDE REST PERIODS;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;
7. FAILURE TO PAY WAGES FOR HOURS WORKED;
8. FAILURE TO PAY WAGES DUE AND PAYABLE TWICE MONTHLY;
9. FAILURE TO PAY WAGES UPON TERMINATION OF EMPLOYMENT;
10. UNLAWFUL COMPETITION AND UNFAIR BUSINESS PRACTICES; AND
11. VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT.

DEMAND FOR JURY TRIAL

BY FAX

1 Plaintiff EMILEE COMEAU, on behalf of herself and all others similarly situated,
2 complains of Defendants, and each of them, and for causes of action alleges:

3 **1. INTRODUCTION**

4 1. This is a class action and collective action pursuant to California Code of Civil
5 Procedure § 382 and the Fair Labor Standards Act, on behalf of Plaintiff and all non-exempt
6 employees employed by, or formerly employed by TMC AT WOLFE'S Inc., a California
7 corporation, and any parents, subsidiaries or affiliated companies (hereinafter referred to as "The
8 Meat Cellar" or "Defendants"), within the State of California. The non-exempt employees
9 employed by, or formerly employed by, Defendants within the State of California are hereinafter
10 referred to individually as "Class Members" and collectively as the "Class" or "Classes."

11 2. For at least four (4) years prior to the filing of this action and through to the present,
12 Defendants consistently maintained and enforced against Defendants' non-exempt employees,
13 among others, the following unlawful practices and policies, in violation of California state wage
14 and hour laws:

15 (a) Defendants have had a consistent policy of requiring Class Members within
16 the State of California, including Plaintiff, to work at least five (5) hours
17 without a lawful meal period and failing to pay such employees one (1) hour
18 of pay at the employees' regular rate of compensation for each workday that
19 the meal period is not provided, and not providing a second meal period as
20 required by California state wage and hour laws.

21 (b) Defendants have had a consistent policy of failing to provide Class Members
22 within the State of California, including Plaintiff, rest periods of at least ten
23 (10) minutes per four (4) hours worked or major fraction thereof and failing
24 to pay such employees one (1) hour of pay at the employees' regular rate of
25 compensation for each workday that the rest period is not provided, as
26 required by California state wage and hour laws.

27 (c) Defendants failed to pay wages for hours worked to Class Members.

28 (d) Defendants failed to pay overtime wages to Class Members at the proper

overtime rates for hours worked over 8 in a day and/or 40 per week.

(e) With respect to Class Members who either were discharged, laid off, or resigned, Defendants failed to pay them in accordance with the requirements of Labor Code §§ 201, 202, 203;

(f) Defendants failed to maintain accurate records of Class Members' earned wages and work periods in violation of Labor Code §§ 226 and 1174(d) and Section 7 of the applicable IWC Wage Orders.

(g) Defendants failed to maintain accurate records of Class Members' earned wages and work periods.

3. Plaintiff, on behalf of herself and all other Class Members, brings this action pursuant to California Labor Code §§ 200, 201, 202, 203, 204, 210, 218, 218.6, 226, 226.3, 226.7, 256, 510, 512, 558, 1174, 1194, 1197, 1199, 2802, and California Code of Regulations, Title 8, section 11050 *et seq.*, seeking unpaid meal and rest period compensation, overtime, penalties, injunctive, and other equitable relief, and reasonable attorneys' fees and costs.

4. Plaintiff, on behalf of herself and all Class Members, pursuant to Business and Professions Code §§ 17200-17208, also seeks injunctive relief and restitution for the unfair, unlawful, or fraudulent practices alleged in this Complaint.

2. PARTIES

A. Plaintiff

5. At all times relevant herein, Plaintiff EMILEE COMEAU is a resident of San Bernardino County, California. At relevant times herein, she was employed by Defendants as a non-exempt employee in Los Angeles County and San Bernardino County, and consistently worked more than eight (8) hours a day at Defendants' behest without being paid all wages due with about 30 similarly situated co-workers. Plaintiff and many of the other similarly situated Class Members were employed by Defendants and worked at Defendants' Claremont and Chino Locations, with Plaintiff's assigned responsibilities including hosting, waiting tables and bartending. On information and belief Plaintiff alleges the back of the house employees were treated the same and suffered the same Labor Code and FLSA violations and: (1) shared similar job

1 duties and responsibilities (2) was subjected to the same policies and practices (3) endured similar
2 violations at the hands of Defendants as the other Class Members who served in similar and related
3 positions.

4 6. Defendants failed to record accurate time worked by these employees and provided
5 Plaintiff and the Class Members with inaccurate wage statements that prevented Plaintiff and the
6 Class from learning of these unlawful pay practices. Defendants also failed to provide Plaintiff and
7 the Class with lawful meal and rest periods, as employees were not provided with the opportunity
8 to take uninterrupted and duty-free rest periods and meal breaks as required by the Labor Code.

9 **B. Defendants**

10 7. TMC AT WOLFE'S INC., ("Defendant") is a California corporation, operating in
11 Los Angeles and San Bernardino County, California. Defendant operates its flagship restaurant in
12 Claremont and a second location in Chino. At all relevant times Defendant maintained its principal
13 place of business in Claremont, California, in Los Angeles County.

14 8. The true names and capacities, whether individual, corporate, associate, or
15 otherwise, of Defendants sued herein as DOES 1 to 100, inclusive, are currently unknown to
16 Plaintiff, who therefore sues Defendants by such fictitious names under California Code of Civil
17 Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the
18 Defendants designated herein as a DOE are legally responsible in some manner for the unlawful
19 acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true
20 names and capacities of the Defendants designated hereinafter as DOES when such identities
21 become known.

22 9. Plaintiff is informed and believes, and based thereon alleges, that each defendant
23 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
24 scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are
25 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
26 employer and/or joint employer of Plaintiff and the Class Members.

27 10. Venue as to Defendant is proper in this judicial district, pursuant to California Code
28 of Civil Procedure § 395. On information and belief, Defendants operate and are doing business as

1 TMC AT WOLFE'S INC., in California and are doing business in Los Angeles County, and each
2 defendant is within the jurisdiction of this Court for service of process purposes. The unlawful acts
3 alleged herein have a direct effect on Plaintiff and those similarly situated within the State of
4 California. Defendants employ numerous Class Members in Los Angeles County.

5 **3. FACTUAL BACKGROUND**

6 11. Plaintiff and the Class Members are, and at all times pertinent hereto, have been
7 non-exempt employees within the meaning of the California Labor Code and the implementing
8 rules and regulations of IWC California Wage Orders. Defendants hire hourly employees who
9 work in non-exempt positions for The Meat Cellar locations in California.

10 12. During the course of Plaintiff and the Class Members' employment with
11 Defendants, they were not paid all wages they were owed, including for all work performed
12 (resulting in "off the clock" work) and at the proper rates for all overtime hours worked, and were
13 forced to work off-the-clock to keep labor budgets low. Plaintiff and the Class Members required
14 to stock, roll silverware, cook, wash dishes and clean and were sometimes asked to work shifts
15 over eight (8) hours in a day and/or to work over forty (40) hours in a work week, and it was
16 company policy to not pay overtime for these hours. Although Plaintiff and the Class Members
17 were paid bi-weekly by Defendants, the pay never reflected pay at the proper overtime rates for
18 overtime hours that Plaintiff and the Class Members worked. Plaintiff and the Class Members were
19 also required by Defendants to perform required work duties and tasks completely without pay --
20 while off-the-clock. As a result, Plaintiff and the Class Members worked substantial overtime
21 hours during their employment with Defendants for which they were not compensated at all and/or
22 were not compensated at the proper minimum wage or overtime rates.

23 13. Plaintiff also worked split shifts in her duties as a bartender where she would work
24 two shifts interrupted by non-paid non-working hours consisting of more than 1 hour up to 2 hours.
25 Plaintiff Comeau also worked at Defendants two locations in Claremont and Chino. She would
26 start her first shift at one location and then work a second shift until the closing at the other
27 restaurant location. Plaintiff and other aggrieved employees were not compensated with one hour's
28 pay at minimum wage for each day in which they worked a split-shift.

1 14. As a matter of uniform Company policy, Plaintiff and the Class Members were
2 required to work off the clock, or time which was not compensated by Defendants in violation of
3 the California Labor Code and the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§
4 201 et seq. Plaintiff and the Class Members were also not paid regular wages and the proper
5 overtime wages for the time they were required to comply with other requirements imposed upon
6 them, which they had to complete while off-duty and without compensation.

7 15. In addition, Plaintiff and the Class Members had their regular, overtime and double-
8 time hours taken away from them. Defendants would adjust time records for the Class Members so
9 that their hours were cut. Since Defendants did not want to pay Plaintiff and the Class Members
10 overtime for shifts worked over eight (8) hours, or double time for shifts worked over twelve (12)
11 hours, they would simply delete hours worked in excess of eight (8) and/or twelve (12) hours even
12 though Plaintiff and the Class Members worked those long shifts. The actions of Defendants in
13 taking away Plaintiff and the Class Members' hours in overtime pay situations constitutes wage
14 theft and is a violation of the California Labor Code and the Penal Code.

15 16. As a result of these requirements to work off the clock, daily work demands and
16 pressures to work through breaks, and other wage violations they endured at Defendants' hands,
17 Plaintiff and the Class Members were not properly paid for all time worked and for wages due and
18 owing when they worked more than eight (8) hours in any given day and/or more than forty (40)
19 hours in any given week. As a result of Defendants' unlawful policies and practices, Plaintiff and
20 Class Members were required to work more than eight (8) hours on most work days and worked
21 more than 40 hours in their work weeks, thus consistently incurring overtime hours, but were not
22 paid by Defendants for overtime.

23 17. Defendants followed a policy and practice of further denying overtime payments to
24 Plaintiff and the Class Members at an overtime rate of one and a half (1.5) times the regular rate for
25 the first eight (8) hours of the seventh consecutive work day in a week and overtime payments at
26 the rate of two (2) times the regular rate for hours worked over eight (8) on the seventh consecutive
27 work day, as required under the Labor Code and applicable IWC Wage Orders.

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1 18. Plaintiff and the Defendants' non-exempt employees were not provided lawful meal
2 periods, and were not provided with one hour's wages in lieu thereof, in one or more of the
3 following manners:

- 4 (a) employees were not provided full thirty-minute duty-free meal periods for
5 work days in excess of every five (5) hours worked, were provided with such
6 meal periods after the fifth hour of work, and were not compensated one
7 hour's wages in lieu thereof, all in violation of, among others, Labor Code
8 §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage
9 Order No 4 and Wage Order No. 5;
- 10 (b) employees were required to work through at least part of their daily meal
11 period(s);
- 12 (c) employees were restricted in their ability to take a full thirty-minute meal
13 period; and
- 14 (d) employees did not get a second meal period or compensation in lieu thereof.

15 19. Plaintiff and the Defendants' non-exempt employees were not provided lawful rest
16 periods, and were not provided with one hour's wages in lieu thereof, in one or more of the
17 following manners:

- 18 (a) employees were required to work without being provided a minimum ten-
19 minute rest period for every four (4) hours or major fraction thereof worked
20 and not being compensated one hour of pay at their regular rate of
21 compensation for each workday that a rest period was not provided;
- 22 (b) employees were not provided a complaint rest break for shifts over 10 hours;
23 and
- 24 (c) employees were regularly on call as the Defendants would regular text
25 employees to come back to the line while on an alleged rest break.

26 20. As a result of these illegal policies and practices, Defendants engaged in and
27 enforced the following additional unlawful practices and policies against Plaintiff and the Class
28 Members she seeks to represent:

1 (a) failing to pay Class Members who either were discharged, laid off, or
2 resigned in accordance with the requirements of Labor Code §§ 201, 202,
3 203; and

4 (b) failing to maintain accurate records of Class Members' earned wages and
5 work periods in violation of Labor Code §§ 226 and 1174(d) and Section 7
6 of the applicable IWC Wage Orders.

7 21. Defendants' non-exempt employees spend the majority of their time doing routine
8 non-discretionary tasks. These duties occupy more than fifty percent (50%) of the work time.

9 22. At relevant times herein, the named Plaintiff and the Class Members were
10 employed by Defendants and were paid, on information and belief, predominantly on an hourly
11 basis.

12 23. On information and belief, Plaintiff alleges that Defendants' actions as described
13 throughout this Complaint were willful.

14 24. Defendants have made it difficult to account with precision for the unlawfully
15 withheld meal and rest period compensation owed to Defendants' non-exempt employees,
16 including Plaintiff, during the liability period, because they did not implement and preserve a
17 record-keeping method as required for non-exempt employees by California Labor Code § 226,
18 1174(d), and section 7 of the California Wage Orders. Defendants have failed to comply with
19 Labor Code § 226(a) by accurately reporting total hours worked by Plaintiff and the Class
20 Members. Plaintiff and Class Members are therefore entitled to penalties not to exceed \$4,000.00
21 for each employee pursuant to Labor Code § 226(b).

22 25. Defendants have failed to comply with section 7 of the California IWC Wage
23 Orders by failing to maintain time records showing when the employee begins and ends each work
24 period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked
25 by itemizing in wage statements all deductions from payment of wages and accurately reporting
26 total hours worked by the Class Members.

27 26. **The Fair Labor Standards Act:** The FAIR LABOR STANDARDS ACT OF 1938, as
28 amended, 29 U.S.C. §§ 201 *et seq.* (hereinafter referred to as "FLSA"), provides for minimum

standards for both wages and overtime entitlement, and details administrative procedures by which covered work time must be compensated. The enactment of the provisions of the FLSA provide the Courts with substantial authority to stamp out abuses and enforce the minimum wage and overtime pay provisions at issue in this Complaint. According to Congressional findings, the existence of labor conditions detrimental to the maintenance of the minimum standard of living engenders unfair commercial competition, labor disputes, and barriers to commerce and the free flow of goods in commerce and interferes with the orderly and fair marketing of goods.

4. CLASS ALLEGATIONS

27. Plaintiff brings this action on behalf of herself and all others similarly situated as a class action pursuant to California Code of Civil Procedure § 382. Plaintiff seeks to represent a Class composed of the following individuals and defined as follows:

All persons who are employed or have been employed by Defendants in the State of California who, during any time from four years prior to the filing of this class action to the present, have worked as non-exempt employees.

Further, Plaintiff seeks to represent the following subclasses composed of the following individuals and defined as follows:

- (a) **Subclass 1. Unpaid Overtime Subclass.** All Class Members who worked more than eight (8) hours in a day and/or forty (40) hours in any given week and who were not paid overtime compensation pursuant to the Labor Code and applicable IWC Wage Order requirements.
- (b) **Subclass 2. Shift Pay Premium.** All Class Members who worked two shifts interrupted by non-paid, non-working hours consisting of more than 1-2 hours a day pursuant to the applicable IWC Wage order requirements.
- (c) **Subclass 3. Meal Break Subclass.** All Class Members who have not been provided a meal period for every five (5) hours or major fraction thereof worked per day and were not provided one (1) hour's pay for each day on which such meal period was not provided pursuant to Labor Code §§ 226.7 and 512.
- (d) **Subclass 4. Rest Period Subclass.** All Class Members who have not been provided a rest period for every three and a half (3.5) hours or major fraction thereof worked per day and were not provided compensation of one (1) hour's pay for each day on which such rest period was not provided pursuant to Labor Code §§ 226.7 and 512.

- 1 (e) **Subclass 5. Paystub Subclass.** All Class Members who
2 were not provided an itemized wage statement accurately
3 showing (1) gross wages earned, (2) total hours worked by
4 the employee, (3) the number of piece-rate units earned and
5 any applicable piece rate for Class Members paid on a
6 piece-rate basis, (4) all deductions, (5) net wages earned,
7 (6) the inclusive dates of the period for which the employee
8 is paid, (7) the name of the employee and only the last four
9 digits of his or her social security number or an employee
10 identification number other than a social security number,
11 (8) the name and address of the legal entity that is the
12 employer and (9) all applicable hourly rates in effect during
13 the pay period and the corresponding number of hours
14 worked at each hourly rate by the employee pursuant to
15 Labor Code § 226.
- 16 (f) **Subclass 6. Wage Payment Subclass.** All Class
17 Members who were not provided all straight time wages
18 earned pursuant to the Labor Code and applicable IWC
19 Wage Orders.
- 20 (g) **Subclass 7. Twice Monthly Pay Subclass.** All Class
21 Members who were not paid twice monthly in accordance
22 with Labor Code § 204.
- 23 (h) **Subclass 8. Termination Pay Subclass.** All persons who
24 are employed or have been employed by Defendants in the
25 State of California who, during the four years prior to the
26 filing of this class action to the present, have worked as
27 non-exempt employees and were not provided all wages
28 due upon termination or resignation pursuant to Labor
Code §§ 200 through 203.
- (i) **Subclass 9. B&P Code § 17200 Subclass.** All Class
Members who were subjected to Defendants' unlawful,
unfair or fraudulent business acts or practices in the form of
Labor Code violations regarding overtime, meal periods,
rest periods, or minimum wages and/or waiting time
penalties.

21 28. Plaintiff reserves the right under Rule 1855(b), California Rules of Court, to amend
22 or modify the class descriptions with greater specificity or further division into subclasses or
23 limitation to particular issues.

24 29. This action has been brought and may properly be maintained as a class action
25 under California Code of Civil Procedure § 382 because there is a well-defined community of
26 interest in the litigation and the proposed Classes are easily ascertainable.

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28 ///

1 **A. Numerosity**

2 30. The potential members of each Class as defined are so numerous that joinder of all
3 the members of the Class is impracticable. While the precise number of Class Members has not
4 been determined at this time, Plaintiff is informed and believes that Defendants currently employ,
5 and during the relevant time periods employed, hundreds of employees in positions as Defendants'
6 non-exempt employees in California, who are or have been affected by Defendants' unlawful
7 practices as alleged herein.

8 31. Employee turnover during the relevant periods will increase this number
9 substantially. Upon information and belief, Plaintiff alleges Defendants' employment records
10 would provide information as to the number and location of all Class Members. Joinder of all
11 members of the proposed Classes is not practicable.

12 **B. Commonality**

13 32. There are questions of law and fact common to each Class predominating over any
14 questions affecting only individual Class Members, and common answers to these questions. These
15 common questions of law and fact include, without limitation:

- 16 (a) Whether Defendants failed to pay all earned straight time, overtime and
17 double-time in violation of California Labor Code;
- 18 (b) Whether Defendants violated Labor Code §§ 226.7 and 512, section 11 of
19 the IWC Wage Orders, and Cal. Code of Regulations, Title 8, section 11050
20 *et seq.* by failing to provide a thirty-minute meal period to non-exempt
21 employees on days they worked work periods in excess of five (5) hours and
22 failing to compensate said employees one hour's wages in lieu of meal
23 periods;
- 24 (c) Whether Defendants violated Labor Code § 226.7 and section 12 of the IWC
25 Wage Orders, and Cal. Code of Regulations, Title 8, section 11050 *et seq.* by
26 failing to provide daily ten-minute rest periods to non-exempt employees for
27 every four (4) hours or major fraction thereof worked and failing to
28 compensate said employees one hour's wages in lieu of rest periods;

- 1 (d) Whether Defendants violated sections 226 and 1174 of the Labor Code and
2 section 7 of the IWC Wage Orders by failing to maintain accurate records of
3 Class Members' earned wages and work periods
- 4 (e) Whether Defendants violated section 226 of the Labor Code and section 7 of
5 the IWC Wage Orders by failing to accurately maintain records pertaining to
6 Plaintiff and each Class she seeks to represent;
- 7 (f) Whether Defendants violated section 17200 *et seq.* of the Business and
8 Professions Code by failing to provide meal and rest periods without
9 compensating non-exempt employees one hour's pay for every day such
10 periods were not provided, failing to pay compensation for denied meal and
11 rest periods due and owing at the time a Class Member's employment with
12 Defendants terminated, and failing to keep accurate records;
- 13 (g) Whether Defendants violated section 17200 *et seq.* of the Business and
14 Professions Code, Labor Code §§ 201-203, 226.7, 512, 1174, and applicable
15 IWC Wage Orders, which violation constitutes a violation of fundamental
16 public policy; and
- 17 (h) Whether Plaintiff and the Class Members are entitled to equitable relief
18 pursuant to Business and Professions Code § 17200 *et seq.*

19 33. In addition, there is a well-defined commonality of interest in the questions of law
20 and of fact involving and affecting the Class Members to be represented in that all of these
21 employees have been harmed by Defendants' policies and practices.

22 **C. Typicality**

23 34. The claims of the named Plaintiff are typical of the claims of the Class Members.
24 Plaintiff and all members of each Class sustained injuries and damages arising out of and caused by
25 Defendants' common course of conduct in violation of California laws, regulations, and statutes as
26 alleged herein.

27 35. The claims of Plaintiff herein alleged are typical of those claims which could be
28 alleged by any member of the class, and the relief sought is typical of the relief which would be

1 sought by each member of the class in a separate action. All Class Members were subject to failure
2 to pay wages, overtime, and to provide meal and rest periods and the same policies and practices
3 was enforced uniformly against all applicable employees. Defendants' corporate-wide policies and
4 practices affected all Class Members similarly and Defendant benefited from the same type of
5 unfair and/or wrongful acts as to each Class Member.

6 36. Plaintiff is a former employee who lost wages, overtime, double time, meal periods,
7 and rest periods as a result of Defendants' policies and practices. Plaintiff will fairly and
8 adequately represent and protect the interests of all members of the class and there are no known
9 conflicts of interest between the named class representative and the Class Members.

10 **D. Adequacy of Representation**

11 37. Plaintiff will fairly and adequately represent and protect the interests of the
12 members of each Class. Counsel who represents Plaintiff is competent and experienced in litigating
13 large employment class actions.

14 **E. Superiority of Class Action**

15 38. A class action is superior to other available means for the fair and efficient
16 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
17 questions of law and fact common to each Class predominate over any questions affecting only
18 individual members of the Class. Each member of the Class has been damaged and is entitled to
19 recovery by reason of Defendants' unlawful policies and practices alleged in the Complaint.

20 39. Common issues predominate in the employees' claims in that all claims arise out of
21 Defendants' enforcement of its unlawful policies and practices.

22 40. Class action treatment will allow these similarly situated persons to litigate their
23 claims in the manner that is most efficient and economical for the parties and the judicial system.
24 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
25 action that would preclude its maintenance as a class action.

26 **5. DELAYED DISCOVERY**

27 41. Defendants, as a prospective and actual employer of non-exempt, hourly
28 employees, had a special fiduciary duty to disclose to prospective Plaintiff Classes the true facts

1 surrounding Defendants' pay practices, policies and working conditions imposed upon non-
2 exempt, hourly employees as well as the effect of any alleged arbitration agreements that may
3 have been forced upon them. In addition, Defendants knew they possessed special knowledge
4 about pay practices and policies, most notably intentionally refusing to pay overtime and straight
5 time hours actually worked and recorded on Defendants' punch records and the consequence of
6 any of the alleged arbitration agreements and alternative workweek schedules forced on the
7 employees and class as a whole.

8 42. Plaintiff and Plaintiff Classes did not discover the fact that they were entitled to all
9 pay under the Labor Code until shortly before the filing of this lawsuit nor was there ever any
10 discussion about Plaintiff's and the Class' waiver of their Constitutional rights of trial by jury,
11 right to collectively organize and oppose unlawful pay practices under California and federal law
12 as well as obtain injunctive relief preventing such practices from continuing. As a result, the
13 applicable statutes of limitation were tolled until such time as Plaintiff discovered her claims.

14 **FIRST CAUSE OF ACTION**

15 **FOR FAILURE TO PAY WAGES UNDER THE FLSA**

16 **[FLSA 29 USC §§ 203, 206, 207]**

17 **(Against All Defendants)**

18 43. Plaintiff and the members of the Class (and subclasses) and the FLSA collective re-
19 allege and incorporate by reference all of the allegations in the preceding paragraphs of this
20 complaint as though fully set forth herein.

21 44. At all relevant times hereto, Defendants have been an "enterprise engaged in
22 commerce or in the production of goods for commerce," as defined under 29 U.S.C. § 203(s)(1).

23 45. Plaintiff is informed and believes, and thereon alleges, that Defendants have
24 required the Plaintiff and FLSA collective employees as part of their employment to work off the
25 clock and for less than minimum wage under 29 U.S.C. § 206(a)(1). That Section provides the
26 following:

27 Every employer shall pay to each of his employees who in any workweek is engaged in
28 commerce or in the production of goods for commerce, or is employed in an enterprise engaged in

1 commerce or in the production of goods for commerce, wages at the following rates:

- 2 (1) except as otherwise provided in this section, not less than—
3 (A) \$5.85 an hour, beginning on the 60th day after May 25, 2007;
4 (B) \$6.55 an hour, beginning 12 months after that 60th day; and
(C) \$7.25 an hour, beginning 24 months after that 60th day;...

5 46. Plaintiff is informed and believes, and thereon alleges, that Defendants required
6 Plaintiff and the FLSA collective employees to work without overtime in excess of the forty (40)
7 hours per week maximum under 29 U.S.C. § 207(a)(I). That Section provides the following:

8 Except as otherwise provided in this section, no employer shall employ any of his
9 employees ... for a workweek longer than forty hours unless such employee receives
10 compensation for his employment in excess of the hours above specified at a rate which is
not less than one and one-half times the regular rate at which she is employed.

11 47. In the performance of their duties for Defendants, members of the FLSA collective
12 often did work off the clock and over forty (40) hours per week and did not receive minimum
13 wages and overtime compensation for the work, labor and services they provided to Defendants,
14 as required by the FLSA, 29 U.S.C. §§ 206 and 207.

15 48. The FLSA also imposes a record-keeping requirement on employers, including the
16 obligation to keep accurate records of all hours worked by employees. Defendants have
17 knowingly and willfully failed and continue to willfully fail to record, report, and/or preserve
18 accurate records of all hours worked by Plaintiff and FLSA collective employees. By failing to
19 record, report, and/or preserve records of all hours worked by Plaintiff and the FLSA collective
20 employees, Defendants have violated, and continue to violate, the FLSA, 29 U.S.C. §§ 201, *et seq.*

21 49. Plaintiff proposes to undertake appropriate proceedings to have such FLSA Class
22 Members aggrieved by Defendants' unlawful conduct notified of the pendency of this action and
23 to provide them with the opportunity to join this action as plaintiffs, pursuant to 29 U.S.C. §
24 216(b), by filing written consents to joinder with the Court.

25 50. Defendants' violations of the FLSA were willful within the meaning of the statute
26 and interpretive case law and decisions.

27 51. Plaintiff seeks judgment against Defendants on her own behalf and on behalf of
28 those FLSA collective employees similarly situated who file written consents to joinder in this

1 action, for all unpaid wages, including minimum and overtime wages owed by Defendants,
2 pursuant to 29 U.S.C. §§ 206 and 207, together with an award of an additional equal amount as
3 liquidated damages, and costs, interest, and reasonable attorneys' fees, as provided for under 29
4 U.S.C. § 216(b) and which may be brought in "any Federal or State court of competent
5 jurisdiction by any one or more employees for and in behalf of herself or themselves and other
6 employees similarly situated."

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PAY SPLIT SHIFT PREMIUM PAY**

9 **[WAGE ORDER NO. 5-2001]**

10 **(Against All Defendants)**

11 52. Plaintiff and the Members of the Class (and subclasses) re-allege and incorporate
12 by reference, as though fully set forth herein, the paragraphs previously alleged in this Complaint.

13 53. Paragraph 2(R) of the Wage Order defines "split shift" as a work schedule which is
14 interrupted by non-paid non-working periods established by the employer, other than bona fide
15 rest or meal periods." Paragraph 4(C) requires that "[w]hen an employee works a split shift, one
16 hour's pay at the minimum wage shall be paid in addition to the minimum wage for that
17 workday."

18 54. As alleged above, Defendants routinely scheduled employees, including Plaintiff,
19 to work "doubles," e.g., to work both the lunch and dinner shift in the same day. In addition,
20 Defendants scheduled meetings that employees, including Plaintiff, were required to attend, hours
21 before working their shifts scheduled for later in the same day. Defendants failed to pay these
22 employees split shift premiums.

23 55. As a result of the wrongful and unlawful acts of Defendants alleged herein,
24 Plaintiff and the Class members have been deprived of split shift premium pay in amounts to be
25 determined, and are entitled to recovery of said amounts according to proof, interest thereon,
26 injunctive relief, attorneys' fees and costs.

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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PAY REGULAR AND OVERTIME COMPENSATION**

3 **[CALIFORNIA LABOR CODE §§200, 510, 1194 and 1198]**

4 **(Against All Defendants)**

5 56. Plaintiff and the Members of the Class (and subclasses) re-allege and incorporate
6 by reference, as though fully set forth herein, the paragraphs previously alleged in this Complaint.

7 57. This claim is brought by Plaintiff, on behalf of herself and on behalf of the Class
8 and the subclasses thereof.

9 58. In California, employees must be paid at least the then applicable state minimum
10 wage for all hours worked.

11 59. California Labor Code § 1194 provides that “any employee receiving less than the
12 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
13 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
14 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” The action
15 may be maintained directly against the employer in an employee’s name without first filing a
16 claim with the Department of Labor Standards and Enforcement.

17 60. Employees in California shall not be employed more than eight hours in any work
18 day, and/or more than forty (40) hours in any workweek, unless they receive additional
19 compensation beyond their regular wages in amounts specified by law. More specifically, Labor
20 Code § 510 codifies the right to overtime compensation at one and one-half (1.5) times the regular
21 hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week.

22 61. California Labor Code § 1198 provides that “[T]he maximum hours of work and
23 the standard conditions of labor fixed by the commission shall be the maximum hours of work and
24 the standard conditions of labor for employees. The employment of any employee for longer hours
25 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

26 62. At all times relevant hereto, the Labor Code requirements and paragraph 3 of the
27 applicable IWC Wage Orders also provided for payment of overtime wages equal to one and one-
28 half (1.5) times an employee’s regular rate of pay for all hours worked over eight (8) hours a day

1 and/or forty (40) hours in a work week, and for the first eight (8) hours on the seventh consecutive
2 day of work in a work week.

3 63. Defendants, and each of them, have intentionally and improperly avoided payment
4 of overtime wages in violation of the Labor Code and Code of Regulations and the IWC Wage
5 Orders and guidelines set forth by the Division of Labor Standards and Enforcement, as described
6 above. Defendants have also violated these provisions by requiring Plaintiff and other similarly
7 situated non-exempt employee employees to work off the clock, and to work through meal periods
8 when they were required to be clocked out. Defendants, and each of them, have also intentionally
9 and improperly rounded, changed, adjusted and/or modified certain employees' hours, and
10 imposed difficult to attain job and scheduling requirements on Plaintiff and the Class Members,
11 which resulted in an underpayment of wages to employees over a period of time while benefiting
12 Defendants.

13 64. At all times relevant hereto, Plaintiff and the Class Members have worked more
14 than eight (8) hours in a workday, and/or more than forty (40) hours in a workweek, as employees
15 of Defendants. During the relevant time period, Plaintiff and the Class Members were not fully
16 paid for all the hours they worked in excess of eight (8) hours in a day, and/or in excess of forty
17 (40) hours in a week as a result of Defendants' above described policies and practices. In addition
18 to the other overtime payments Defendants failed to make for all off the clock work, Defendants
19 have scheduled Plaintiff and the Class Members to occasionally work shifts for seven consecutive
20 days in a row. However, Defendants followed a policy and practice of further denying overtime
21 payments to Plaintiff and the Class Members at an overtime rate of one and a half (1.5) times the
22 regular rate for the first eight (8) hours of the seventh consecutive work day in a week and
23 overtime payments at the rate of two (2) times the regular rate for hours worked over eight (8) on
24 the seventh consecutive work day, as required under the Labor Code § 510 and paragraph 3 of the
25 applicable IWC Wage Orders.

26 65. Therefore, Plaintiff and the Class Members were not properly paid for all hours
27 worked, including for the hours worked in excess of the maximum hours permissible by law under
28 California Labor Code §§ 1194, 1197 and 1198 and the provisions of IWC Wage Orders and the

1 applicable Code of Regulations sections.

2 66. On information and belief, Plaintiff and the Class Members allege that Defendants
3 followed an unlawful policy and practice of refusing to pay and failing to pay them for all wages
4 earned in each pay period, including by requiring and compelling off the clock work, by failing to
5 pay for overtime hours worked, and for the other reasons set forth in detail above.

6 67. As a result of Defendants' failure to pay overtime pay throughout Plaintiff and the
7 Class Members' employment, Defendants intentionally failed to provide Plaintiff and the Class
8 Members with all earned wages earned by and owed to them during the corresponding pay
9 periods. Defendants willfully violated the provisions of Labor Code § 1194, the applicable IWC
10 Wage Orders, and California law by failing to properly pay Plaintiff and the Class the overtime
11 pay that Plaintiff and the Class Members were due.

12 68. Defendants' failure to pay Plaintiff and the Class Members all wages owed to them
13 also violated California Penal Code §§ 484 and 532 (obtaining labor through false pretenses), to
14 the extent their managers specifically instructed them that they were not entitled to receive
15 overtime under the California Labor Code and related provisions for off the clock work they were
16 required to perform.

17 69. Plaintiff and the Class Members are informed and believe and based upon that
18 information and belief therefore further allege, that Defendants knew or should have known that
19 Plaintiff and the Class did not qualify as exempt employees, and Defendants purposely elected not
20 to pay Plaintiff and the Class Members for their overtime labor performed.

21 70. By virtue of the Defendants' unlawful failure to provide overtime pay to Plaintiff
22 and the Plaintiff Classes, Plaintiff and the Class Members have suffered, and will continue to
23 suffer, damages in amounts which are presently unknown to them, but which exceed the
24 jurisdictional limits of this Court and which will be ascertained according to proof at trial.

25 71. Plaintiff and the Class Members are informed and believe, and based upon that
26 information and belief allege, that Defendants, and each of them, purposely elected not to provide
27 overtime pay.

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72. As a result of Defendants' failure to pay overtime pay throughout Plaintiff and the Class Members' employment, Plaintiff and the Class Members were deprived of wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, for Defendants' violations of Labor Code § 510 and applicable IWC Wage Order provisions.

73. Defendants, and each of them, acted knowing the Plaintiff and Class worked overtime and off the clock without pay, and did so toward Plaintiff and the Class Members with a conscious disregard of their rights, or the consequences to Plaintiff and the Class Members, with the intent of depriving them of property and legal rights and otherwise causing Plaintiff and the Class Members injury.

74. Plaintiff, individually, and on behalf of members of the Class and Plaintiff Classes, requests recovery of both straight time and overtime compensation according to proof, interest, attorney's fees and costs pursuant to Labor Code § 1194(a), as well as the assessment of any statutory penalties against these Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes.

75. Further, Plaintiff and the Class Members are entitled to seek and recover reasonable attorneys' fees and costs pursuant to Labor Code §§ 210 and 1194.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

[CALIFORNIA LABOR CODE §§ 226.7 and 512]

(Against All Defendants)

76. Plaintiff and the Members of the Class (and subclasses) re-allege and incorporate by reference, as though fully set forth herein, the paragraphs previously alleged in this Complaint.

77. This claim is brought by Plaintiff, on behalf of herself and on behalf of the Class Members and the subclasses thereof.

78. Labor Code §§ 226.7 and 512 and paragraph 11 of the applicable IWC Wage Orders provide that no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes.

79. Labor Code § 226.7 and paragraph 11 of the applicable IWC Wage Orders also provide that, if an employer fails to provide an employee a meal period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

80. Defendants failed to provide Plaintiff and the Class Members with meal periods as required by the Labor Code, including by not providing them with the opportunity to take meal breaks, by providing them late or for less than thirty (30) minutes, or by requiring them to perform work during breaks.

81. Defendants, and each of them, have intentionally and improperly denied meal periods to Plaintiff and the Class Members in violation of Labor Code §§ 226.7 and 512 and paragraph 11 of the applicable IWC Wage Orders, along with other applicable regulations and statutes.

82. At all times relevant hereto, Plaintiff and the Class Members have worked more than five (5) hours in a workday.

83. At all times relevant hereto, the Defendants, and each of them, failed to provide meal periods as required by Labor Code §§ 226.7 and 512 and paragraph 11 of the applicable IWC Wage Orders for either first, second, and where applicable third meal periods.

84. By virtue of the Defendants' unlawful failure to provide meal periods to Plaintiff and the Plaintiff Classes, Plaintiff and the Class Members have suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff, but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

85. Plaintiff and the Class Members are informed and believe, and based upon that information and belief allege, that Defendants, and each of them, purposely elected not to provide meal periods.

86. Plaintiff, individually, and on behalf of the Class, requests recovery of meal period compensation pursuant to Labor Code §§ 226.7 and paragraph 11 of the applicable IWC Wage Orders, as well as the assessment of any statutory penalties against these Defendants, and each of them, in a sum as provided by the Labor Code and other statutes.

FIFTH CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS
[CALIFORNIA LABOR CODE §§ 226.7 and 512]
(Against All Defendants)

87. Plaintiff and the Members of the Class (and subclasses) re-allege and incorporate by reference the paragraphs previously alleged in this Complaint.

88. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders provide that employers must authorize and permit all employees to take rest periods at the rate of ten (10) minutes net rest time per three and a half (3.5) work hours.

89. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders provide that if an employer fails to provide an employee rest period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

90. Defendants, and each of them, have intentionally and improperly denied rest periods to Plaintiff and the Class Members in violation of Labor Code §§ 226.7 and 512 and paragraph 12 of the applicable IWC Wage Orders. Defendants failed to authorize and permit Plaintiff and the Class Members to take rest periods, as required by the Labor Code.

91. At all times relevant hereto, Plaintiff and the Class Members, have worked more than three and a half hours in a workday.

92. At all times relevant hereto, the Defendants, and each of them, failed to provide rest periods as required by Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders.

93. By virtue of the Defendants' unlawful failure to provide rest periods to the Plaintiff and the Class Members, Plaintiff and the Class Members have suffered, and will continue to suffer, damages in amounts which are presently unknown to the Plaintiff and the Class Members, but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

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94. Plaintiff and the Class Members are informed and believe, and based upon that information and belief allege, that Defendants, and each of them, knew or should have known that Plaintiff and the Class Members were entitled to rest periods and purposely elected not to provide them with rest periods.

95. Plaintiff, individually, and on behalf of employees similarly situated, requests recovery of rest period compensation pursuant to Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders, as well as the assessment of any statutory penalties against these Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

SIXTH CAUSE OF ACTION

FAILURE TO FURNISH ACCURATE ITEMIZED STATEMENTS

[CALIFORNIA LABOR CODE § 226]

(Against All Defendants)

96. Plaintiff and the Members of the Class (and subclasses) re-allege and incorporate by reference, as though fully set forth herein, the paragraphs previously alleged in this Complaint.

97. Throughout the liability period, Defendants intentionally failed to furnish to Plaintiff and the Class Members, upon each payment of wages, itemized statements accurately showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor Code § 226, amongst other statutory requirements.

98. As a result of Defendants' conduct, Plaintiff and the Class Members have suffered injury in that, among other things, the lack of the required information hindered them from determining the amount of wages owed to them and led them to believe they were not entitled to be paid wages all hours worked, for overtime, missed meal and rest breaks, or for each hour of

labor they performed, and the properly hourly rate where applicable, although they were so entitled. The absence of accurate wage statements has prevented timely challenges to Defendants' unlawful pay practices, caused difficulty and expense in attempting to reconstruct time and pay records, and resulted in the submission by Defendants of inaccurate information about wages and deductions from wages to state and federal government agencies. The entitlement of Plaintiff and the Class Members is to receive wage statements that accurately list the total amount of wages earned and deductions from wages as reflected on wage statements, and Plaintiff and the Class Members have thereby been injured by the Defendants' failure to report the total amount of wages earned during each pay period on each paycheck stub. All Class Members have been similarly injured. As a result of Defendants' conduct, Plaintiff and the Class Members have suffered injury because their legal right to receive accurate wage statements was violated.

99. Labor Code § 226(a) requires Defendants "semimonthly or at the time each payment to wages" to furnish to Plaintiff and the Class Members "an accurate itemized statement in writing" showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate for Class Members paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor Code § 226. Defendants knowingly and intentionally failed to provide Plaintiff and the Class Members with such timely and accurate wage and hour statements.

100. Plaintiff and the Class Members suffered injury as a result of Defendants' knowing and intentional failure to provide them with the wage and hour statements as required by law and are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the Defendants have failed to provide a wage statement, failed to provide accurate and complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9), inclusive, and the Plaintiff and Class Members cannot promptly and easily determine from the wage statement

1 alone one or more of the following: (i) The amount of the gross wages or net wages paid to the
2 employee during the pay period or any of the other information required to be provided on the
3 itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a), (ii)
4 Which deductions the employer made from gross wages to determine the net wages paid to the
5 employee during the pay period, (iii) The name and address of the employer and, (iv) The name of
6 the employee and only the last four digits of his or her social security number or an employee
7 identification number other than a social security number. For purposes of Labor Code § 226(e)
8 “promptly and easily determine” means a reasonable person [i.e. an objective standard] would be
9 able to readily ascertain the information without reference to other documents or information.

10 101. Plaintiff and the Class Members suffered injury as a result of Defendants’ knowing
11 and intentional failure to provide them with the wage and hour statements as required by law.

12 102. Plaintiff and the Class Members are entitled to the amounts provided in Labor Code
13 § 226(e), plus costs and attorneys’ fees.

14 **SEVENTH CAUSE OF ACTION**

15 **FAILURE TO PAY WAGES FOR HOURS WORKED**

16 **[CALIFORNIA LABOR CODE §§ 1194, 1197, 1197.1 and 558]**

17 **(Against All Defendants)**

18 103. Plaintiff and the Members of the Class re-allege and incorporate by reference, as
19 though fully set forth herein, the paragraphs previously alleged in this Complaint.

20 104. Plaintiff brings these claims under California Labor Code §§ 1194, 1197, 1197.1
21 and IWC Wage Orders 4-2001 and 9-2001, as amended.

22 105. California Labor Code §§ 1194, 1197, 1197.1 and Industrial Welfare Commission
23 Wage Orders 4-2001 and 9-2001 entitle non-exempt employees to an amount equal to or greater
24 than the minimum wage for all hours worked. All hours must be paid at the statutory or agreed
25 rate and no part of this rate may be used as a credit against a minimum wage obligation.

26 106. Defendants did not and do not compensate Plaintiff and other hourly employees for
27 time spent off the clock during meal breaks or after hours. Further hours were not paid properly
28 and not in compliance with any alleged Alternative Work Week Schedule. This work was known

1 or should have been known by Defendants as management are and were requesting the off the
2 clock work and receiving the work-related communications.

3 107. As a result of violations of California Labor Code §§ 1194, 1197, 1197.1 and
4 Industrial Welfare Commission Wage Orders 4-2001 and 9-2001, for failure to pay minimum
5 wage, Defendants liable for attorneys' fees and costs, civil penalties pursuant to California Labor
6 Code §§ 558, 1197.1, and 2698 et seq. and other relief.

7 108. California Labor Code § 1194 provides that "any employee receiving less than the
8 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
9 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
10 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action
11 may be maintained directly against the employer in an employee's name without first filing a
12 claim with the Department of Labor Standards and Enforcement.

13 109. At all times relevant hereto, the Labor Code requirements and paragraph 3 of the
14 applicable IWC Wage Orders also provided for payment of overtime wages equal to one and one-
15 half times an employee's regular rate of pay for all hours worked over eight (8) hours a day and/or
16 forty (40) hours in a work week, and for the first eight (8) hours on the seventh consecutive day of
17 work in a work week.

18 110. Defendants, and each of them, have intentionally and improperly rounded,
19 changed, adjusted and/or modified certain employees' hours, including Plaintiff's, to avoid
20 payment of overtime wages and other benefits in violation of the California Labor Code and
21 California Code of Regulations and the IWC Wage Orders and guidelines set forth by the Division
22 of Labor Standards and Enforcement. Defendants have also violated these provisions by requiring
23 Plaintiff and other similarly situated non-exempt employees to work through meal periods when
24 they were required to be clocked out or to otherwise work off the clock to complete their daily job
25 duties.

26 111. Defendants, and each of them, have also intentionally and improperly rounded,
27 changed, adjusted, underpaid, and/or modified certain employees' hours, including by requiring
28 off the clock work, requiring work to be performed while on breaks, and by not properly paying

1 employees all overtime hours they worked and reported and imposed difficult to attain job and
2 scheduling requirements on Plaintiff and the Class Members. This resulted in an underpayment of
3 wages to employees over a period of time while benefiting Defendants.

4 112. During the relevant time period, Plaintiff and the Class Members were not fully
5 paid for all the hours they worked in excess of eight (8) hours in a day, and/or in excess of forty
6 (40) hours in a week as a result of Defendants' above described policies and practices. Therefore,
7 Plaintiff and the Class Members were not properly paid for all of their overtime work. Defendants
8 also followed a policy and practice of further denying overtime payments to Plaintiff and the Class
9 Members at an overtime rate of one and a half (1.5) times the regular rate for the first eight (8)
10 hours of the seventh consecutive work day in a week and overtime payments at the rate of two (2)
11 times the regular rate for hours worked over eight (8) on the seventh consecutive work day, as
12 required under the Labor Code § 510 and paragraph 3 of the applicable IWC Wage Orders.

13 113. During the relevant time period, Defendants willfully failed to pay all regular and
14 overtime wages owed to Plaintiff and the Class Members.

15 114. Defendants' failure to pay Plaintiff and the Class Members the unpaid balance of
16 regular wages owed and overtime compensation, as required by California law, violates the
17 provisions of Labor Code §§ 510 and 1198, and is therefore unlawful.

18 115. Labor Code § 558(a) provides "any employer or other person acting on behalf of an
19 employer who violates, or causes to be violated, a section of this chapter or any provisions
20 regulating hours and days of work in any order of the IWC shall be subject to a civil penalty as
21 follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each pay period
22 for which the employee was underpaid in addition to an amount sufficient to recover underpaid
23 wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
24 employee for each pay period for which the employee was underpaid in addition to an amount
25 sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid
26 to the affected employee." Labor Code § 558(c) states, "the civil penalties provided for in this
27 section are in addition to any other civil or criminal penalty provided by law."

28 ///

1 116. Defendants have violated provisions of the Labor Code regulating hours and days
2 of work as well as the IWC Wage Orders. Accordingly, Plaintiff and the Class Members seek the
3 remedies set forth in Labor Code § 558.

4 117. Upon information and belief, Plaintiff alleges that Defendants' policy of failing to
5 pay employees for all hours worked whether regular time or overtime violates the Labor Code and
6 IWC Wage Orders. Pursuant to Labor Code § 1194, Plaintiff and the Class Members are entitled
7 to recover their unpaid wages owed, including their regular wages and overtime compensation, as
8 well as interest, costs and attorneys' fees.

9 **EIGHTH CAUSE OF ACTION**

10 **FAILURE TO PAY WAGES AT LEAST TWICE IN A CALENDAR MONTH**

11 **[CALIFORNIA LABOR CODE § 204]**

12 **(Against All Defendants)**

13 118. Plaintiff and the Members of the Class (and Plaintiff Classes) re-allege and
14 incorporate by reference the paragraphs previously alleged in this Complaint

15 119. Labor Code § 204 instructs all wages are due and payable twice each calendar
16 month.

17 120. The wages required by Labor Code § 1194 and other sections became due and
18 payable to each employee in each pay period that he or she was not provided with a meal period or
19 rest period or paid straight or overtime wages to which he or she was entitled.

20 121. Defendants violated Labor Code § 204 by systematically refusing to pay wages due
21 under the Labor Code.

22 122. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to
23 represent has been deprived of wages in amounts to be determined at trial, and is entitled to
24 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant
25 to Labor Code §§ 210, 218.5 and 1194.

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1 NINTH CAUSE OF ACTION
2 **FOR FAILURE TO PAY WAGES UPON ENDING EMPLOYMENT**

3 **[CALIFORNIA LABOR CODE § 201-203]**

4 **(Against All Defendants)**

5 123. Plaintiff and the Members of the Class (and subclasses) re-allege and incorporate
6 by reference, as though fully set forth herein, the paragraphs previously alleged in this Complaint.

7 124. Plaintiff and many of the Class Members quit or were discharged from their
8 employment with Defendants within the applicable statute of limitations.

9 125. Defendants failed to pay them without abatement, all wages as defined by
10 applicable California law. Among other things, these employees were not paid any of the overtime
11 compensation or premium pay referred to in this Complaint. Defendants' failure to pay said wages
12 within the required time was willful within the meaning of Labor Code § 203.

13 126. Therefore, each of these employees is entitled to one day's wages for each day he
14 or she was not timely paid all said wages due, up to a maximum of thirty (30) days' wages for
15 each employee. Because none of the employees were ever paid the overtime wages to which they
16 were entitled, as referred to in this Complaint, each of the employees is entitled to thirty (30) days
17 of wages.

18 TENTH CAUSE OF ACTION
19 **FOR UNLAWFUL COMPETITION AND UNLAWFUL BUSINESS PRACTICES**

20 **[CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200, *et seq.*]**

21 **(Against All Defendants)**

22 127. Plaintiff and the Members of the Class (and subclasses) re-allege and incorporate
23 by reference, as though fully set forth herein, the paragraphs previously alleged in this Complaint.

24 128. This claim is brought by Plaintiff, on behalf of herself and on behalf of the Class
25 and the subclasses thereof.

26 129. At all times relevant hereto, from time to time, the Class Members have worked
27 more than eight (8) hours in a workday, and/or more than forty (40) hours in a workweek, as
28 employees of Defendants. The representative Plaintiff herein and members of the Class have had

1 their hours adjusted, changed, underpaid, and/or modified to not reflect their actual number of
2 hours worked per day and per pay period, including by Defendants' failure to pay for all overtime
3 hours worked at the appropriate rate of pay and by requiring off the clock work before and after
4 work shifts.

5 130. At all times relevant hereto, from time to time, Plaintiff and aggrieved employees
6 have worked more than eight (8) hours in a workday and/or more than forty (40) hours in a
7 workweek, as employees of Defendants. Plaintiff herein and members of the Class have not been
8 paid overtime or have not been paid overtime at the appropriate rates, for all hours worked on and
9 after a seventh consecutive work shift.

10 131. At all times relevant hereto, from time to time, Plaintiff and the Class Members
11 have been denied meal breaks by Defendants.

12 132. At all times relevant hereto, from time to time, Plaintiff and the Class Members
13 have been denied rest breaks by Defendants.

14 133. Defendants, and each of them, are "persons" as defined under of Business &
15 Professions Code § 17021.

16 134. Since at least four years prior to the present Complaint filing and at all times
17 relevant hereto, by and through the conduct described herein, the Defendants have engaged in
18 unfair, unlawful and fraudulent business practices, in violation of California Business &
19 Professions Code §§ 17200, *et seq.*, and have thereby deprived Plaintiff, and all persons in
20 interest, of fundamental rights and privileges guaranteed to all employees under California law.

21 135. Defendants own, operate and manage facilities in California which provide services
22 in California to the public as defined in of Business & Professions Code §§ 17022 and 17024.

23 136. Defendants, as set forth in this Complaint, *supra*, engaged in false, unfair and
24 misleading business practices, consisting of acts and omissions that include, but are not limited to:

- 25 (a) The fact that Defendants adjusted, altered, underpaid and/or changed time
26 and/or pay schedules to reflect that employee Class Members had not
27 worked all straight time and overtime hours;
28 (b) The fact that Defendants required non-exempt, hourly employees to work

- 1 more than five (5) hour shifts without a thirty (30) minute meal period;
- 2 (c) The fact that Defendants required non-exempt, hourly employees to work
- 3 more than three and a half (3.5) hour shifts without a ten (10) minute rest
- 4 period;
- 5 (d) The fact that Defendants required non-exempt, hourly employees to work
- 6 more than five (5) hours per week without a thirty (30) minutes rest period,
- 7 and then adjusted, altered and/or changed schedules and/or time clocks to
- 8 reflect that they had received a thirty (30) minute meal period;
- 9 (e) The fact that Defendants kept no detailed records of non-exempt, hourly
- 10 employees' actual daily work activities, in part, to prevent Plaintiff and
- 11 Plaintiff Classes from recovering overtime wages from Defendants after the
- 12 discovery of Defendants' deceptive, fraudulent, false, unfair and unlawful
- 13 conduct;
- 14 (f) The fact that Defendants failed to pay all earned wages to Plaintiff and
- 15 Plaintiff Class for all hours worked.
- 16 (g) The fact that Defendants failed to pay all earned wages to Plaintiff and
- 17 Plaintiff Class twice monthly for all hours worked.
- 18 (h) The fact that Defendants failed to pay all earned wages to Plaintiff and
- 19 Plaintiff Class upon termination of employment.
- 20 (i) The fact that Defendants failed to pay all earned wages to Plaintiff and the
- 21 Plaintiff Class twice monthly.
- 22 (j) The fact that Defendants' activities related to their failure to disclose
- 23 material and relevant information constitutes violations of Business &
- 24 Professions Code § 17200.

25 137. Defendants, and each of them, have underreported to state authorities, wages

26 earned by non-exempt, hourly employees and, therefore, have underpaid state taxes, employer

27 matching funds, unemployment premiums and Worker's Compensation premiums. The aforesaid

28 conduct is criminal in nature and subjects the Defendants, and each of them, to sanctions, fines

1 and imprisonment, and is actionable under of Business & Professions Code §§ 17000, *et seq.* and
2 17200, *et seq.*

3 138. Pursuant to Business & Professions Code §§ 17071 and 17075, the failure of
4 Defendants, and each of them, to pay overtime wages, related benefits, and employment taxes, is
5 admissible as evidence of Defendants' intent to violate Chapter 4 of the Unfair Business Trade
6 Act.

7 139. Defendants' practices are unlawful, unfair, deceptive, untrue, and misleading.
8 Non-exempt, hourly employees, including Plaintiff and Plaintiff Classes are likely to be deceived
9 by these practices.

10 140. As a direct and proximate result of these acts and omissions, Plaintiff, is informed
11 and believes, and based upon that information and belief alleges, that the Defendants, and each of
12 them, were able to unfairly compete with other companies in the state of California by not paying
13 overtime and wages in violation of Business & Professions Code Chapters 4 and 5, *et al.* Due to
14 this unfair business practice, Defendants have been able to charge lower prices for its services
15 than the prices charged by other comparable entities doing business in the state of California.

16 141. The victims of this unfair business practice include, but are not limited to, all non-
17 exempt, hourly employees of Defendants, competitors of Defendants in the state of California, and
18 the general public.

19 142. Plaintiff is informed and believes, and based upon that information and belief
20 alleges, that Defendants, and each of them, performed the above-mentioned acts with the intent of
21 gaining an unfair competitive advantage and thereby injuring Plaintiff, other employees, other
22 competitors, and the general public.

23 143. By and through the conduct described above, Plaintiff, and all non-exempt, hourly
24 employees, has been deprived of the right to be paid all wages earned, including meal and rest
25 premiums and overtime compensation earned by virtue of employment with the Defendants at
26 regular intervals, in accordance with the requirements of Labor Code §§ 200-203, 204, 226.7,
27 1197, 1198, *et seq.*

28 ///

1 144. By and through their unfair, unlawful and/or fraudulent business practices
2 described herein, Defendants, has obtained valuable property, money and services from Plaintiff,
3 and all persons similarly situated, and has deprived Plaintiff, and all non-exempt, hourly
4 employees of valuable rights and benefits guaranteed by law, all to their detriment.

5 145. Plaintiff and the Class have injury-in-fact as a result of Defendants' conduct.
6 Moreover, Plaintiff and the Class have lost money as a direct result of Defendants' unfair,
7 unlawful, deceptive and fraudulent conduct.

8 146. All of the acts described herein as violations of, among other things, the California
9 Labor Code and Industrial Welfare Commission Wage Orders, are unlawful and in violation of
10 public policy; and in addition are immoral, unethical, oppressive, fraudulent and unscrupulous,
11 and thereby constitute unfair, unlawful and/or fraudulent business practices in violation of
12 California Business & Professions Code §§ 17200, *et seq.*

13 147. Plaintiff, individually, and on behalf of members of the Plaintiff Classes, is entitled
14 to, and does seek such relief as may be necessary to disgorge the profits which the Defendants
15 have acquired, or of which Plaintiff has been deprived, by means of the above-described unfair,
16 unlawful and/or fraudulent business practices. Plaintiff, and the members of the Plaintiff Classes,
17 is not obligated to establish individual knowledge of the unfair practices of Defendants in order to
18 recover restitution.

19 148. Plaintiff, individually, and on behalf of members of the Plaintiff Classes, is further
20 entitled to and does seek a declaration that the above described business practices are unfair,
21 unlawful and/or fraudulent, and injunctive relief restraining the Defendants, and each of them,
22 from engaging in any of the above-described unfair, unlawful and/or fraudulent business practices
23 in the future.

24 149. Plaintiff, individually, and on behalf of members of the Plaintiff Classes, has no
25 plain, speedy, and/or adequate remedy at law to redress the injuries which she has suffered as a
26 consequence of the Defendants' unfair, unlawful and/or fraudulent business practices. As a result
27 of the unfair, unlawful and/or fraudulent business practices described above, Plaintiff and the
28 Plaintiff Class have suffered and will continue to suffer irreparable harm unless the Defendants'

1 and each of them, are restrained from continuing to engage in said unfair, unlawful and/or
2 fraudulent business practices.

3 150. Plaintiff also alleges that if Defendants are not enjoined from the conduct set forth
4 herein above, they will continue to fail to pay overtime wages to non-exempt, hourly employees.
5 In addition, Defendants, and each of them, will continue to avoid paying the appropriate taxes,
6 insurance and unemployment holdings.

7 151. Plaintiff, individually, and on behalf of members of the Plaintiff Classes, requests
8 that the Court issue a preliminary and permanent injunction prohibiting the Defendants, and each
9 of them, from requiring non-exempt, hourly employees from working more than eight (8) hours a
10 work day and/or forty (40) hours a week in any work week without payment of overtime wages.

11 152. Plaintiff, individually, and on behalf of members of the Plaintiff Classes, also
12 requests that the Court order Defendants to disgorge all illegally obtained monies from failing to
13 pay taxes, state disability insurance premiums, and unemployment taxes, obtained by way of their
14 violation of Business & Professions Code §§ 17200, *et seq.*

15 153. As Plaintiff seeks to enforce an important right affecting the public interest, to wit,
16 the lawful payment of overtime wages as required by law the disgorgement of ill-gotten gains and
17 the restitution of unlawfully withheld wages, with interest thereon, Plaintiff requests an award of
18 attorneys' fees, pursuant to Code Civil Procedure § 1021.5.

19 **ELEVENTH CAUSE OF ACTION**

20 **FOR VIOLATION OF THE PRIVATE ATTORNEY GENERAL ACT**

21 **[CALIFORNIA LABOR CODE §§ 2698 and 2699]**

22 **(Against All Defendants)**

23 154. Plaintiff, individually, and on behalf of all other similarly aggrieved employees, re-
24 alleges and incorporates by reference, as though fully set forth herein, the paragraphs previously
25 alleged in this Complaint.

26 155. As a result of the previously alleged policies and practices, including violations of
27 the sections of the California Labor Code alleged above, Plaintiff seeks penalties under Labor Code
28 §§ 2698 and 2699.

1 156. Plaintiff has met all of the requirements set forth in Labor Code § 2699.3 necessary
2 to commence a civil action against Defendants for violations of Labor Code §§ 226.7 and 512.
3 Plaintiff sent a letter to the LWDA and the Defendants as prescribed by the Code. Therefore,
4 Plaintiff may proceed and may include in the Complaint a claim for penalties pursuant to Labor
5 Code §§ 2699, et seq.

6 157. Plaintiff, individually, and on behalf of all other similarly situated current and
7 former employees of Defendants, seeks civil penalties in the amount of:

- 8 (a) one hundred dollars (\$100.00) for each of the first violation per employee,
9 per pay period, and;
- 10 (b) two hundred dollars (\$200.00) for each subsequent violation of each such
11 provision, per employee, per pay period.
- 12 (c) For their failure to provide uninterrupted off-duty meal and rest periods,
13 Defendants are liable to all Plaintiffs for one hour of additional pay at the
14 regular rate of compensation for each workday that the full and
15 uninterrupted, off-duty rest and meal periods were not provided.
16 Defendants are also liable for civil penalties pursuant to Labor Code §§
17 558 and 2699 as follows: for any initial violation, \$50.00 for each Plaintiff
18 for each pay period during which the Plaintiffs were not provided proper
19 meal and rest breaks; and for each subsequent violation \$100.00 for each
20 Plaintiff for each pay period during which the Plaintiffs were not provided
21 proper meal and rest breaks.
- 22 (d) For Defendants' failure to pay wages due, Plaintiffs are entitled to recover
23 such amounts, plus interest thereon, attorney's fees and costs. Defendants
24 are also liable for civil penalties pursuant to Labor Code §§ 558 and 2699
25 as follows: for any initial violation, \$50.00 for each Plaintiff for each pay
26 period during which the Plaintiff was not paid all earned wages; and for
27 each subsequent violation, \$100.00 for each Plaintiff for each pay period
28 during which the Plaintiff was not paid all wages.

- 1 (e) For Defendants' failure to furnish accurate wage statements, Plaintiffs are
2 entitled to recover the greater of all actual damages or \$50.00 for the initial
3 violation and \$100.00 for each subsequent violation, up to \$4,000.00.
4 Defendants are additionally liable for civil penalties pursuant to Labor
5 Code §§ 226.3 and 2699 in the amount of \$250.00 for each Plaintiff per
6 initial violation and \$1,000.00 for each Plaintiff per subsequent violation.
- 7 (f) For Defendants' failure to keep accurate payroll records, Defendants are
8 liable for civil penalties pursuant to California Labor Code §§ 1174.5 and
9 2699 in the amount of \$500.00 per violation.

10 158. These penalties will be allocated 75% to the Labor Workforce Development
11 Agency ("LWDA") and 25% to the affected employees.

12 **PRAYER**

13 **WHEREFORE**, the PLAINTIFF DEMANDS and JURY TRIAL and prays for judgment
14 as follows:

15 **ON THE FIRST CAUSE OF ACTION:**

- 16 (a) For Facilitated Notice under 29 USC § 216(b);
17 (b) For compensation, pursuant to the FLSA, 29 U.S.C. §§ 201, 206, 207, *et seq.*
18 (c) Conditional and Final Certification of a Collective Action;
19 (d) For interest on any compensatory damages; and
20 (e) For attorneys' fees, interest, and costs of suit pursuant to 29 U.S.C. § 216(b).

21 **ON THE SECOND CAUSE OF ACTION:**

- 22 (a) For statutory compensation, including one hour of pay for each workday where a
23 split shift was worked;
24 (b) For interest on any compensatory damages;
25 (c) For Certification of the Classes defined herein, or such other Classes and/or
26 subclasses as the Court will certify;
27 (d) For attorneys' fees and costs.

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1 **ON THE THIRD CAUSE OF ACTION:**

- 2 (a) For compensatory damages and/or statutory damages and statutory penalties
3 resulting from improper compensation according to proof;
4 (b) For interest on any compensatory damages;
5 (c) For Certification of the Classes defined herein, or such other Classes and/or
6 subclasses as the Court will certify; and
7 (d) For attorneys' fees and costs as allowed by law.

8 **ON THE FOURTH CAUSE OF ACTION:**

- 9 (e) For statutory compensation, including one hour of pay for each workday that a
10 lawful meal period was not provided;
11 (f) For interest on any compensatory damages;
12 (g) For Certification of the Classes defined herein, or such other Classes and/or
13 subclasses as the Court will certify;
14 (h) For attorneys' fees and costs.

15 **ON THE FIFTH CAUSE OF ACTION:**

- 16 (a) For statutory compensation, including one hour of pay for each workday that a
17 lawful rest period was not provided;
18 (b) For interest on any compensatory damages;
19 (c) For Certification of the Classes defined herein, or such other Classes and/or
20 subclasses as the Court will certify; and
21 (d) For attorneys' fees and costs.

22 **ON THE SIXTH CAUSE OF ACTION:**

- 23 (a) For statutory penalties;
24 (b) For compensatory damages and interest thereon for actual harm caused;
25 (c) For Certification of the Classes defined herein, or such other Classes and/or
26 subclasses as the Court will certify; and
27 (d) For attorneys' fees and costs as allowed by law.

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1 **ON THE SEVENTH CAUSE OF ACTION:**

- 2 (a) For compensatory damages and/or statutory damages and statutory penalties
3 resulting from improper compensation according to proof;
4 (b) For interest on any compensatory damages;
5 (c) For Certification of the Classes defined herein, or such other Classes and/or
6 subclasses as the Court will certify; and
7 (d) For attorneys' fees and costs as allowed by law.

8 **ON THE EIGHTH CAUSE OF ACTION:**

- 9 (a) For statutory penalties; and
10 (b) For attorneys' fees and costs as allowed by law.

11 **ON THE NINTH CAUSE OF ACTION:**

- 12 (a) For statutory penalties, including 30 days of pay for each employee not timely paid
13 wages upon termination;
14 (b) For penalty enhancements for willful conduct;
15 (c) For Certification of the Classes defined herein, or such other Classes and/or
16 subclasses as the Court will certify; and
17 (d) For attorneys' fees and costs.

18 **ON THE TENTH CAUSE OF ACTION:**

- 19 (a) For the equitable, injunctive and declaratory relief;
20 (b) Treble damages;
21 (c) For Certification of the Classes defined herein, or such other Classes and/or
22 subclasses as the Court will certify; and
23 (d) For disgorgement of profits.

24 **ON THE ELEVENTH CAUSE OF ACTION**

- 25 (a) That Defendants be ordered to pay civil penalties pursuant to violations of Labor
26 Code §§ 2698 and 2699, in the amount of \$100 for the first violation per employee
27 per pay period, and \$200 for subsequent violations per employee per pay period to
28 be allocated 75% to the LWDA and 25% to the affected employees.

1 (b) For reasonable attorney's fees and costs as allowed by statute.

2 **ON ALL CAUSES OF ACTION:**

3 (a) For reasonable attorneys' fees;

4 (b) For costs of suit; and,

5 (c) For such other and further relief as this Court may deem just and proper.

6 Dated: March 31, 2020

QUINTILONE & ASSOCIATES

7
8 By: 

9 RICHARD E. QUINTILONE II,
10 ALEJANDRO QUINONES,
11 BRIANNA M. MCCOVEY,
12 Attorneys for Plaintiff EMILEE COMEAU
13 individually and on behalf of all other
14 employees similarly situated

13 **DEMAND FOR JURY TRIAL**

14 Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

15
16 Dated: March 31, 2020

QUINTILONE & ASSOCIATES

17
18 By: 

19 RICHARD E. QUINTILONE II,
20 ALEJANDRO QUINONES,
21 BRIANNA M. MCCOVEY,
22 Attorneys for Plaintiff EMILEE COMEAU
23 individually and on behalf of all other
24 employees similarly situated
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