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KATRINA FOX

ELECTRONICALLY FILED
Superior Court of California,
County of Placer
08/17/2020
By: Olivia Lucatuorto, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF PLACER

KATRINA FOX, an individual, and on behalf
of all current and former aggrieved
employees,

Plaintiff,

v.

FRANCK DENTAL CORPORATION, a
California Corporation; and DOES 1 through
50, inclusive,

Defendants.

CASE NO.: S-CV-0045082

**FIRST AMENDED COMPLAINT
FOR DAMAGES AND CIVIL
PENALTIES FOR:**

- 1. MINIMUM WAGES;
- 2. OVERTIME WAGES;
- 3. MEAL PERIODS;
- 4. REST PERIODS;
- 5. WAGE STATEMENTS;
- 6. WAITING TIME PENALTIES;
- 7. UNFAIR COMPETITION;
- 8. LABOR CODE RETALIATION;
- 9. WRONGFUL TERMINATION;
- 10. VIOLATION OF PAGA

DEMAND FOR JURY TRIAL

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1 1. Plaintiff KATRINA FOX (“Plaintiff”), individually, and on behalf of all
2 aggrieved employees in the State of California pursuant to the California Private Attorneys
3 General Act, alleges as follows:

4 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

5 2. Plaintiff brings this lawsuit against Plaintiff’s former employer, FRANCK
6 DENTAL CORPORATION dba Franck Family Dental (“Defendant”) for violations of
7 California’s wage and hour and anti-retaliation laws. Plaintiff seeks to recover unpaid minimum
8 and overtime wages, premium payments for Defendant’s failure to authorize and permit meal
9 and rest periods, statutory damages for inaccurate wage statements, waiting time penalties for
10 Defendant’s failure to pay all wages due and owing at the time of termination, back pay,
11 prejudgment interest, costs and attorneys’ fees. Plaintiff also brings this lawsuit against
12 Defendant under the Labor Code Private Attorneys General Act of 2004 for the purpose of
13 obtaining civil penalties for violations of the forgoing wage and hour violations (and as set forth
14 herein) on behalf of the State of California and other aggrieved employees.

15 3. At all times relevant herein, Defendant employed, suffered and/or permitted
16 Plaintiff to work in Placer County, California, and Plaintiff was an “employee” within the
17 meaning of the California Labor Code and the applicable California Industrial Wage
18 Commission ("IWC") Order(s). Plaintiff resides in the State of California.

19 4. At all times relevant herein, Defendant was doing business in the State of
20 California, County of Placer, as Franck Family Dental. Defendant maintains corporate offices
21 and operates in California and more particularly, in the County of Placer, State of California.
22 Defendant was at all times herein mentioned, a California corporation duly existing and
23 operating under the laws of the State of California, and under the authority of the County of
24 Placer. Plaintiff is also informed and believes and thereon alleges that at all time relevant hereto,
25 Defendant was authorized by the California Secretary of State to conduct its business in
26 California, and by the County of Placer to transact business therein and, at all times relevant
27 herein, was an “employer” within the meaning of the California Labor Code and the applicable
28 California Industrial Wage Commission ("IWC") Order(s).

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1 5. Plaintiff is not aware of the true names and capacities of the Defendants sued
2 herein as DOES 1 through 50, whether individual, corporate, associate, or otherwise and
3 therefore sues such Defendants by these fictitious names. Plaintiff will amend this Complaint to
4 allege their true names and capacities when ascertained. Plaintiff is informed and believes, and
5 on that basis alleges, that each of the fictitiously named Defendants is responsible in some
6 manner for the occurrences herein alleged and that Plaintiff's injuries and damages herein were
7 legally caused by such Defendants. Unless otherwise indicated, each Defendant was acting
8 within the course and scope of said agency and/or employment, with the knowledge and/or
9 consent of said co-Defendant.

10 6. Plaintiff is informed and believes and thereupon alleges that at all times
11 mentioned herein, each of the Defendants, including each Doe Defendant, was acting as the
12 agent, servant, employee, partner and/or joint venturer of and was acting in concert with each of
13 the remaining Defendants, including each Doe Defendant, in doing the things herein alleged,
14 while at all times acting within the course and scope of such agency, service, employment
15 partnership, joint venture and/or concert of action. Each Defendant, in doing the acts alleged
16 herein, was acting both individually and within the course and scope of such agency and/or
17 employment, with the knowledge and/or consent of the remaining Defendants.

18 7. Plaintiff further alleges that Defendant, including each Doe Defendant identified
19 as DOES, directly or indirectly controlled or affected the terms, wages, working hours, and
20 conditions of employment of Plaintiff and the other aggrieved employees so as to make each of
21 said Defendants employers and, as employers, liable under the statutory provisions set forth
22 herein.

23 8. Defendant FRANCK DENTAL CORPORATION and DOES 1 through 50 will
24 hereinafter collectively be referred to as "Defendant."

25 9. Defendant operates a dental office. Defendant employed Plaintiff as a dental
26 assistant within the four (4) yeas prior to the filing of this lawsuit in the City of Rocklin and/or
27 Roseville, County of Placer, State of California. Defendant had the authority at all relevant times
28 to hire and fire Plaintiff and other aggrieved employees, establish the terms and conditions of

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1 their employment, including their compensation and work schedules, and manager their
2 employment activities. Plaintiff and other aggrieved employees worked as dental assistants.

3 10. Defendant hired Plaintiff and other aggrieved employees and required, suffered
4 and/or permitted them to work, but failed to compensate them for all hours worked, including all
5 minimum wages and applicable overtime, failed to provide proper meal and rest periods or
6 premium compensation in lieu thereof, failed to provide accurate and itemized wage statements,
7 and failed to pay all wages at the time of termination, among other violations described herein.

8 11. Plaintiff is further informed and believes, and based thereupon alleges, that
9 Defendant subjected their non-exempt aggrieved employees to uniform wage and hour policies
10 and practices that deprived them of full compensation for all hours worked. The practices
11 included, but were/are not limited to, failing to accurately record and pay Plaintiff and other
12 aggrieved employees for all hours worked and/or at the correct rate of pay, provide and/or
13 compensate them for improper (i.e., short, late, interrupted, and altogether missed) meal and rest
14 periods, and provide accurate wage statements, among other violations, all in in violation of
15 California law.

16 12. This Court is the proper court, and this action is properly filed in the County of
17 Placer in that Defendant does business within said district and the wrongful acts herein alleged
18 and resulting harm to Plaintiff and aggrieved employees occurred in this judicial district.

19 13. Defendant employed Plaintiff during the relevant time period. Defendant
20 employed the other aggrieved employees during the relevant time period.

21 14. At all times relevant herein, Defendant was subject herein to the Labor Code of
22 the State of California, and Wage Orders promulgated by the Industrial Welfare Commission
23 ("IWC") as contained in 8 Cal. Code Regs. § 11040 et. seq., including Wage Order 4-2001
24 (originally and as amended) and all applicable IWC Wage Order(s).

25 15. Defendant's employment practices included failing to record and pay Plaintiff and
26 other aggrieved employees for all hours worked, including overtime where applicable. For
27 example, Defendant regularly required, suffered or permitted Plaintiff and other aggrieved
28 employees to work off-the-clock. Plaintiff and other employees engaged in pre-shift and post-

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1 shift work that included, but was not limited to, opening and closing the office, turning on
2 computers, preparing exam rooms, and sterilizing tools and other dental instruments. Plaintiff
3 and other aggrieved employees also performed work moving Defendant to a new office building,
4 but Plaintiff and other aggrieved employee were not paid for all hours worked. Plaintiff and other
5 aggrieved employees also performed work during their supposedly off-duty meal periods for
6 which they were not compensated.

7 16. Defendant's employment practices also included failing to provide Plaintiff and
8 other aggrieved employees with state mandated meal and rest periods or premium compensation
9 in lieu thereof. On information and belief, Defendant's meal and rest period policies and
10 practices do not comply with California law. Defendant did not provide Plaintiff and other
11 aggrieved employees with rest periods. Concerning meal periods, as noted above, Defendant
12 often required Plaintiff and other employees to delay or cut short their meal periods in order to
13 assist patients, sterilize medical equipment, or perform tasks directed to them by Defendant.
14 Defendant often discouraged and pressured Plaintiff and other aggrieved employees to delay
15 their meal and rest periods. Moreover, meal and rest periods were often interrupted with pressure
16 to continue working. Plaintiff and other aggrieved employees complained on numerous
17 occasions to Defendant of meal and rest period violations but Defendant ignored or retaliated
18 against them. Plaintiff and aggrieved employees were entitled to meal and rest periods in
19 accordance with the requirements of the applicable Wage Orders and applicable California law,
20 but on numerous occasions relevant herein, Defendant failed to authorize or permit them to take
21 rest and/or meal periods.

22 17. On a regular basis during the relevant time period, Defendant required, suffered or
23 permitted Plaintiff to work daily overtime hours in excess of eight (8) and ten (10) hours and/or
24 weekly overtime hours in excess of forty (40), without paying Plaintiff for overtime hours
25 worked, or at the appropriate overtime rate, and failed to fully or properly document Plaintiff's
26 wages and/or withhold proper taxes.

27 18. At all times herein mentioned, Defendant failed to provide Plaintiff with state
28 mandated meal and rest periods and failed to pay Plaintiff for each missed meal and rest period

at the time of Plaintiff's separation of her employment or any time since.

19. Defendants knew or should have known that Plaintiff was entitled to receive all wages owed to her upon discharge, including overtime and minimum wages and meal and rest period premiums, and she did not, in fact, receive all wages owed to her at the time of discharge. As a result of Defendant's failure to pay Plaintiff all wages due her at the time of discharge, Plaintiff is owed waiting time penalties pursuant to the applicable provision of the California Labor Code.

20. Defendant further retaliated against Plaintiff for reporting and disclosing information on multiple occasions to Defendant and Plaintiff's supervisors that she had reasonable cause to believe disclosed a violation of or noncompliance with local, state and/or federal rules and regulations concerning the labor violations as described herein, including Defendant's policies and procedures concerning the payment of overtime and the provision of timely off-duty meal and rest periods. Defendant's treatment of Plaintiff eventually forced Plaintiff to leave and not work for Defendant.

21. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew or should have known that Defendant had a duty to compensate Plaintiff pursuant to California law, and that Defendant had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiff that she was properly paid wages.

22. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew or should have known that Plaintiff and the other aggrieved employees were entitled to receive at least minimum wages for compensation and that they were not receiving at least minimum wages for all hours worked. Upon information and belief, Defendant required aggrieved employees, for instance, to perform work off-the-clock and after hours, including work performed during purportedly off-duty meal periods for which they were not compensated, resulting in unpaid wages.

23. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew or should have known that Plaintiff and the other aggrieved employees were entitled to receive

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1 certain wages for overtime compensation. Plaintiff and the other aggrieved employees worked in
2 excess of 8 hours in a day and 40 hours in a week and, thus, were entitled to receive overtime
3 compensation. But Plaintiff and aggrieved employees were not paid for all overtime hours
4 worked and/or at the appropriate overtime rate. Upon information and belief, Defendant required
5 Plaintiff and aggrieved employees to perform work off-the-clock, including work performed
6 during purportedly off-duty meal periods for which they were not compensated.

7 24. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
8 or should have known that Plaintiff and the other aggrieved employees were entitled to receive
9 all meal periods or payment of one additional hour of pay at Plaintiff's and the other aggrieved
10 employee's regular rate of pay when a meal period was missed, late or interrupted, and they did
11 not receive all meal periods or payment of one additional hour of pay at Plaintiff's and the other
12 aggrieved employee's regular rate of pay when an improper meal period occurred.

13 25. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
14 or should have known that Plaintiff and the other aggrieved employees were entitled to receive
15 all rest periods or payment of one additional hour of pay at Plaintiff's and the other aggrieved
16 employees' regular rate of pay when a rest period was missed, late or interrupted, and they did
17 not receive all timely and uninterrupted rest periods or payment of one additional hour of pay at
18 Plaintiff's and the other aggrieved employees' regular rate of pay when an improper rest period
19 occurred. Defendant regularly required Plaintiff and other aggrieved employees to work through
20 their rest periods but did not compensate them with an additional hour of pay.

21 26. Plaintiff is informed and believes, and based thereon alleges, that Defendant
22 failed to provide Plaintiff and the other aggrieved employees the required meal periods and rest
23 periods or premium compensation in lieu thereof during the relevant time period as required
24 under the Industrial Welfare Commission Wage Orders and thus they are entitled to any and all
25 applicable penalties.

26 27. Plaintiff is informed and believes, and based thereon alleges, that Defendant
27 knew or should have known that Plaintiff and the other aggrieved employees were entitled
28 to receive all wages owed to them during their employment. Plaintiff and the other

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1 aggrieved employees did not receive payment of all wages, including overtime and
2 minimum wages and meal and rest period premiums, within any time permissible under
3 California Labor Code section 204.

4 28. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
5 or should have known that Plaintiff and the other aggrieved employees were entitled to receive
6 all wages owed to them upon discharge or resignation, including overtime and minimum wages
7 and meal and rest period premiums, and they did not, in fact, receive all such wages owed to
8 them at the time of discharge.

9 29. Plaintiff is informed and believes, and based thereon alleges, that Defendant
10 knew or should have known that Plaintiff and the other aggrieved employees were entitled
11 to receive complete and accurate wage statements in accordance with California law, but
12 they did not receive complete and accurate wage statements from Defendant. The
13 deficiencies included, but were not limited to, the failure to include the total number of
14 hours worked by Plaintiff and the other aggrieved employees as well as all hourly rates in
15 effect during the applicable pay period, among other violations.

16 30. Plaintiff is informed and believes, and based thereon alleges, that Defendant
17 knew or should have known that Defendant had to keep complete and accurate payroll
18 records for Plaintiff and the other aggrieved employees in accordance with California law,
19 but Defendant did not keep complete and accurate payroll records for all the reasons herein
20 mentioned.

21 31. Plaintiff is informed and believes, and based thereon alleges, that Defendant
22 knew or should have known that it had a duty to provide Plaintiff and other aggrieved
23 employees with written notice of important employment information at the time of hire as
24 required by Labor Code section 2810.5, but, upon information and belief, Defendant failed
25 to provide Plaintiff and other aggrieved employees with written notice of all the information
26 required by Labor Code section 2810.5 at the time of hire in violation of California law.
27 Upon information and belief, Defendants have a policy and practice of not complying with
28 Labor Code section 2810.5 in violation of California law.

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1 32. Plaintiff is informed and believes, and based thereon alleges, that Defendant
2 knew or should have known that it had a duty not to retaliate against an employee for
3 disclosing information the employee had reason to believe discloses a violation of or
4 noncompliance with a local, state, or federal rule or regulation. Upon information and belief,
5 Plaintiff complained and disclosed to Defendants and his supervisors his belief that Defendants
6 were not fulfilling their duties and responsibilities to Plaintiff and other aggrieved employees
7 concerning the wage and hour violations, including but not limited to the proper provision
8 of meal and rest periods or premium compensation in lieu thereof. Defendant thereafter failed
9 to address the issues, and retaliated against Plaintiff and other aggrieved employees in the form
10 of heightened scrutiny and discipline, and constructive termination in violation of California law.

11 33. Plaintiff is informed and believes, and based thereon alleges, that Defendant
12 knew or should have known that they had a duty to compensate Plaintiff and the other
13 aggrieved employees pursuant to California law, and that Defendant had the financial ability
14 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
15 falsely represented to Plaintiff and the other aggrieved employees that they were properly
16 compensated.

17 34. At all material times set forth herein, Defendant failed to provide timely and
18 uninterrupted meal periods and rest periods to Plaintiff and the other aggrieved employees; failed
19 to pay Plaintiff and the other aggrieved employees at least minimum wages for all hours worked,
20 and overtime where applicable; failed to pay Plaintiff and the other aggrieved employees all
21 wages owed to them upon discharge or resignation; failed to pay Plaintiff and the other
22 aggrieved employees' wages within any time permissible under California law, including, *inter*
23 *alia*, California Labor Code section 204; failed to provide complete and accurate wage
24 statements to Plaintiff and the other aggrieved employees; failed to keep complete and accurate
25 payroll records for Plaintiff and the other aggrieved employees; retaliated against Plaintiff and
26 other aggrieved employees for reporting and disclosing suspected wage and hour violations; and
27 failed to properly compensate Plaintiff and the other aggrieved employees in compliance with
28 California law in order to enrich themselves at the expense of Plaintiff and the other aggrieved

employees.

35. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty due to him [or her] under this article."

FIRST CAUSE OF ACTION

RECOVERY OF UNPAID MINIMUM WAGES

(Against ALL Defendants)

36. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

37. California law provides that employees must be paid for all hours worked, up to 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage. Plaintiff regularly worked time for which Defendant failed to compensate her at a rate not less than the prevailing minimum wage. Specifically, upon information and belief, Defendant required, suffered or permitted Plaintiff to perform work off-the-clock and during off-duty meal periods for which Plaintiff was not compensated. As a result, Defendant failed to pay Plaintiff for all hours worked at a rate not less than the prevailing minimum wage.

38. Pursuant to Labor Code sections 1194 and 1194.2, Plaintiff is entitled to recover all unpaid wages and liquidated damages, plus attorney's fees and costs, in an amount to be proved at trial.

SECOND CAUSE OF ACTION

RECOVERY OF UNPAID OVERTIME WAGES

(Against ALL Defendants)

39. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

40. California law provides that employees must be paid overtime, equal to 1.5 times the employee's regular rate of pay, for all hours worked in excess of 40 per week or 8 per workday, and be paid double time, equal to 2 times the employee's regular rate of pay, for all hours worked in excess of 12 per workday.

41. Plaintiff regularly worked more than 40 hours per week, 8 hours per workday, and/or more than 12 hours per workday, and/or in excess of seven (7) consecutive days, but was

not paid all overtime wages and double time wages due and owing under California law. Plaintiff was not paid for all overtime hours worked for all the reasons asserted herein.

42. Pursuant to Labor Code section 1194, Plaintiff is entitled to recover all unpaid overtime and double time wages, pre-judgment interest, plus reasonable attorney's fees and costs, in an amount to be proved at trial.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF

(Against ALL Defendants)

43. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

44. Under the Labor Code and IWC Wage Orders, employers are required to provide employees with one 30-minute meal break free from all duties for all shifts longer than 5 hours, and a second 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (as discussed above), and (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed not meal period was provided.

45. Plaintiff regularly worked periods of more than five hours in a workday without being provided a mandatory thirty-minute, duty-free meal period, and would work periods of more than ten hours in a workday without being provided a mandatory second thirty-minute, duty-free meal period. Upon information and belief, Defendant did not maintain meal period policies and practices that complied with California law. Defendant did not authorize and permit Plaintiff to take off-duty meal periods and Defendant frequently interrupted her meal periods. Defendant further failed to compensate her properly for all non-compliant meal periods

1 including, inter alia, short, late, interrupted and missed meal periods.

2 46. Defendant failed to provide Plaintiff with all required meal periods, or with
3 compensation in lieu thereof. As a result, under Labor Code section 226.7, Plaintiff is entitled to
4 one additional hour's pay for each day a meal period was missed, late or interrupted, all in an
5 amount to be proved at trial.

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

8 **(Against ALL Defendants)**

9 47. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

10 48. California law requires an employer to authorize or permit an employee to take a
11 rest period of ten net minutes for every four hours worked, or major fraction thereof, and such
12 rest periods must be in the middle of the four-hour period insofar as practicable. If the employer
13 fails to provide any required rest periods, or fails to provide a fully compliant rest break for a net
14 10 minutes wherein the employee is fully relieved of all duties and all employer control, the
15 employer must pay the employee one hour of pay at the employee's regular rate of compensation
16 for each workday a legally required and/or fully compliant rest period was not provided.

17 49. Defendant failed to provide Plaintiff all required and/or fully compliant rest
18 periods, or compensation in lieu thereof. Defendant employed policies and procedures that
19 ensured Plaintiff would not receive all legally required rest periods, such as not relieving
20 employees of all duties and employer control during their rest breaks. Moreover, Defendant
21 discouraged Plaintiff from taking rest periods by pressuring her to continue working. Defendant
22 did not authorize and permit all required rest periods in strict accordance to, and in compliance
23 with, the timing requirements of all applicable Wage Orders. Defendant further employed
24 policies and practices where Plaintiff did not receive premium wages to compensate her for
25 workdays she did not receive all legally required and fully compliant rest periods.

26 50. Defendant failed to provide Plaintiff with all required rest periods, or with
27 compensation in lieu thereof. As a result, under Labor Code section 226.7, Plaintiff is entitled to
28 one additional hour's pay for each day a rest period was missed, all in an amount to be proved at

trial.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

(Against All Defendants)

51. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

52. The California Labor Code provides that, at the time of each payment of wages, the employer must provide each employee with an itemized statement showing, *inter alia*, gross wages earned, total hours worked, all deductions taken, net wages earned, the inclusive dates for which the employee is being paid, the employee's name and last four digits of their social security number, the name and address of the legal entity that it is the employer, and all applicable hourly rates in effect during the pay period and all hours worked at each rate.

53. Defendant knowingly and intentionally failed to provide Plaintiff with proper, itemized wage statements as the wage statements provided did not accurately state, *inter alia*, gross wages earned, total hours worked, net wages earned and the proper hourly rate for each hour worked. Defendant did not provide accurate itemized wage statements to Plaintiff for all the reasons asserted herein, including failure to pay all minimum and overtime wages and provide meal and rest periods. Accordingly, under Labor Code section 226, Plaintiff is entitled to statutory penalties in the amount of \$50.00 for the initial pay period in which a violation occurred, and \$100.00 for each subsequent pay period in which a violation occurred, up to an aggregate penalty of \$4,000.00, plus attorney's fees and costs, all in an amount to be proved at trial.

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Against All Defendants)

54. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

55. The California Labor Code Sections 201 and 202 require employers to promptly pay all wages owing to an employee at the conclusion of employment.

56. Plaintiff has not been compensated her earned but unpaid minimum and overtime

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1 wages and premium payments for improper meal and rest periods for a period in excess of 30
2 days. As such, Plaintiff is entitled to waiting time penalties based on her daily rate, inclusive of
3 overtime compensation and all additional, non-discretionary remuneration, for a maximum
4 period of 30 days.

5 57. Defendant's failure to pay Plaintiff all wages owed, as further alleged herein, was
6 knowing and willful.

7 58. Under Labor Code section 203, Plaintiff, who is no longer employed with
8 Defendant, is entitled to recover waiting time penalties of up to 30 days' pay, plus attorney's fees
9 and costs, in an amount to be proved at trial.

10 **SEVENTH CAUSE OF ACTION**

11 **UNFAIR BUSINESS PRACTICES – Cal Bus. & Prof. Code Sec. 17200**

12 **(Against All Defendants)**

13 59. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

14 60. At all times relevant hereto, by and through the conduct described herein,
15 Defendant engaged in unfair and unlawful practices by failing pay all wages and/or provide meal
16 and rest periods or premium compensation in lieu thereof pursuant to the applicable Labor Code
17 and Industrial Welfare Commission requirements, in violation of California Business and
18 Professions Code § 17200, et. seq., and have thereby deprived Plaintiff of fundamental rights and
19 privileges and caused Plaintiff to suffer economic injury as herein alleged. Defendant engaged in
20 unfair competition by withholding compensation for hours worked, and Defendant further
21 engaged in unfair and unlawful business practices by failing to keep accurate information and
22 time records and failing to accurately itemize the total hours worked by Plaintiff in violation of
23 California law. In doing the forgoing acts, Defendant gained an unfair business advantage by
24 means of these unlawful practices and gained an unfair competitive advantage with respect to
25 competing businesses, which adhered to lawful business practices. Defendant has, therefore,
26 been unjustly enriched and Plaintiff and others have been systematically harmed. Defendant has
27 uniformly violated California law and regulations including, but not limited to, Labor Code §§
28 201, 202, 203, 216, 218, 226, 226.7, 510, 512, 1174, 1198 and other sections of the California

Labor Code and IWC Orders.

61. Plaintiff is entitled to all relief available under Business and Professions Code § 17200 and Defendant should be restrained from continuing to engage in these unfair and unlawful business practices, and in addition, should be required to disgorge the unpaid monies and ill-gotten gains to Plaintiff herein.

EIGHTH CAUSE OF ACTION

RETALIATION IN VIOLATION OF LABOR CODE 1102.5

(Against All Defendants)

62. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

63. At all times set forth herein, Section 1102.5 was in effect and binding on Defendant. This section prohibits employers from retaliating against employees for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation. An employer further shall not retaliate against an employee for refusing to participate in an activity that would result in the violation of a federal, state, or local rule or regulation.

64. Plaintiff had reasonable cause to believe that Defendant had violated or was not in compliance with state and/or federal laws and regulations concerning the payment of minimum and overtime wages and the provision of off-duty and uninterrupted meal and rest periods or premium compensation in lieu thereof.

65. Plaintiff disclosed to Defendant her belief that Defendant was not in compliance with and/or that laws had been or were being violated.

66. Defendant had authority over Plaintiff, and had the authority to investigate, discover and/or correct the violations and/or noncompliance issues raised by Plaintiff.

67. Defendant, and person acting on behalf of Defendant, retaliated against Plaintiff for disclosing and reporting that information, including by constructive termination,

1 mistreatment, materially reducing job responsibilities and job related benefits, and denying
2 promotion and/or advancement, among other adverse employment actions.

3 68. Defendant's conduct was in violation of Section 1102.5 of the California Labor
4 Code.

5 69. As a proximate result of the aforesaid acts of Defendant, Plaintiff has suffered
6 actual, consequential and incidental financial losses, including without limitation, loss of wages
7 and benefits, and the intangible loss of employment related opportunities in her field and damage
8 to her professional reputation, all in an amount subject to proof at the time of trial.

9 70. As a proximate result of the wrongful acts of Defendant, Plaintiff has suffered and
10 continues to suffer emotional distress, humiliation, mental anguish and embarrassment. Plaintiff
11 is informed and believes, and thereupon alleges, that she will continue to experience said
12 physical and emotional suffering for period in the future not presently ascertainable, all in an
13 amount to prove at the time of trial.

14 71. The retaliatory actions taken against Plaintiff were carried out and ratified by
15 officers and manager of Defendant. Defendant additionally had in place policies and procedures
16 that specifically prohibited retaliation and required Defendants' managers, officers, and agents to
17 prevent retaliation. However, Defendant chose to consciously and willfully ignore said policies
18 and procedures and therefore, their outrageous conduct was fraudulent, malicious, oppressive,
19 and was done in wanton disregard for the rights of Plaintiff and the rights and duties owed by
20 each Defendant to Plaintiff. Each Defendant aided, abetted, participated in, authorized, ratified,
21 and/or conspired to engage in the wrongful conduct alleged above. Plaintiff should, therefore, be
22 awarded exemplary and punitive damages against each Defendant in an amount to be established
23 that is appropriate to punish each Defendant and deter others from engaging in such conduct in
24 the future.

25 **NINTH CAUSE OF ACTION**

26 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

27 **(Against All Defendants)**

28 72. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

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1 73. At all times mentioned, the public policy of the State of California, as codified,
2 expressed and mandated in California's wage and hour laws and regulations is to promote,
3 encourage, maintain, and effect proper payment of all wages due and owing to employees and to
4 prohibit employers from retaliating against any employee for reporting and/or disclosing
5 violations of said statutory and inalienable wage and hour rules, laws and regulations. This public
6 policy of the State of California is designed to protect all employees and to promote the welfare
7 and well being of the community at large. Accordingly, the actions of Defendant, and each of
8 them, in engaging in the conduct as described herein was wrongful and in contravention of the
9 express public policy of the State of California and the laws and regulations promulgated
10 thereunder.

11 74. As a proximate result of the aforesaid acts of Defendant, Plaintiff has suffered
12 actual, consequential and incidental financial losses, including without limitation, loss of wages
13 and benefits, and the intangible loss of employment related opportunities in his field and damage
14 to his professional reputation, all in an amount subject to proof at the time of trial. Plaintiff
15 claims such amounts as damages pursuant to California Civil Code 3287 and/or 3288 and/or any
16 other provision of law providing for prejudgment interest.

17 75. The actions taken against Plaintiff were carried out and ratified by officers and
18 manager of Defendants. Defendants additionally had in place policies and procedures that
19 specifically prohibited retaliation and required Defendant and its managers, officers, and agents
20 to prevent retaliation. However, Defendants chose to consciously and willfully ignore said
21 policies and procedures and therefore, their outrageous conduct was fraudulent, malicious,
22 oppressive, and was done in wanton disregard for the rights of Plaintiff and the rights and duties
23 owed by each Defendant to Plaintiff. Each Defendant aided, abetted, participated in, authorized,
24 ratified, and/or conspired to engage in the wrongful conduct alleged above. Plaintiff should,
25 therefore, be awarded exemplary and punitive damages against each Defendant in an amount to
26 be established that is appropriate to punish each Defendant and deter others from engaging in
27 such conduct in the future.

28

TENTH CAUSE OF ACTION**VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT****(Against All Defendants)**

76. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

77. Plaintiff is an "Aggrieved Employee" under PAGA, as Plaintiff was employed by Defendant during the applicable statutory limitations period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all other current and former Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.

78. Plaintiff seeks to recover the PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Therefore, class certification of the PAGA claims is not required.

79. Therefore, under the provisions of PAGA and Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.3, 226.7, 510, 512(a), 1102.5, 1174(d), 1194, 1197, 1197.1, 1198, 2810.5 and 2699, and all applicable Wage Orders, as well as all interpretations of these laws by California Courts and administrative bodies, as well as any other law that is enforceable through PAGA, Defendant is liable for the following penalties:

(i) All statutorily-specified penalties recoverable under PAGA as enumerated in the relevant California Labor Code provisions listed herein only if permitted by the PAGA statute; and

(ii) Default PAGA penalties for any violation of the enumerated list of Labor Code violations without a civil penalty recoverable under the PAGA, all in the default amounts provided by Labor Code Section 2699(f).

80. The proper measure of penalties under PAGA is the number of violations, whether those violations were committed as against Plaintiff or any Aggrieved Employee, whether a party to this action or not. Further, as a PAGA action, this claim need not be certified as a class action to proceed with a company-wide recovery and/or discovery. (See *Arias v. Superior Court* (2009) 46 Cal.4th 969; *Williams v. Superior Court* (2017) 3 Cal.5th 531.)

82. Under Labor Code section 2699.3, the LWDA must give written notice by certified mail to the parties that it intends to investigate the alleged violations within 65 days of the date of the Plaintiff's written notice. As of the date of this Complaint, the LWDA has not provided the parties any notice of its intention to investigate Plaintiff's claims on behalf of herself and other similarly aggrieved employees. Furthermore, Defendants have not responded to Plaintiff's PAGA notice in an attempt to cure. Accordingly, Plaintiff has exhausted all administrative remedies required by law.

WHEREFORE, Plaintiff, prays for judgment against each Defendant, jointly and severally, as follows:

- FIRST AMENDED COMPLAINT FOR DAMAGES AND CIVIL PENALTIES

LURTZ LEGAL
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DATED: August 17, 2020

Respectfully submitted,
LURTZ LEGAL



By: _____
Marshall R. Lurtz
Attorneys for Plaintiff
Katrina Fox

DEMAND FOR JURY TRIAL

Plaintiff KATRINA FOX demands a trial by jury on all claims so triable.

Respectfully submitted,

DATED: August 17, 2020

LURTZ LEGAL



By: _____
Marshall R. Lurtz
Attorneys for Plaintiff
Katrina Fox

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