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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

OLIVIA ROSE RAMIREZ and KRYSTAL
PECORARO, as individuals and on behalf of all
others similarly situated,

Plaintiff,

vs.

WYNDHAM VACATION OWNERSHIP, INC.,
a Delaware Corporation; and DOES 1 through
100,

Defendants.

Case No.: 20CV01715

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) FAILURE TO PAY ALL OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (2) MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);**
- (3) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (4) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (5) WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226 *et seq.*);**
- (6) WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (7) UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**

**(8) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

Plaintiff Olivia Rose Ramirez (“Plaintiff”) on behalf of herself and all others similarly situated, hereby brings this First Amended Class and Representative Action Complaint (“Complaint”) against Defendant Wyndham Vacation Ownership, Inc., a Delaware corporation, and DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief alleges as follows:

JURISDICTION

1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this action for recovery of unpaid wages and penalties under California Labor Code §§ 201-204, 226 *et seq.*, 226.7, 246, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, and Business and Professions Code § 17200 *et. seq.*, and Industrial Welfare Commission Wage Order 5 (“Wage Order 5”), in addition to seeking declaratory relief and restitution. This class action is brought per California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations of the California Labor Code because the amount in controversy exceeds this Court’s jurisdictional minimum.

VENUE

2. Venue is proper in this judicial district per California Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the County of Santa Barbara. Defendants own, maintain offices, transact business, have an agent or agents within the County of Santa Barbara, and/or otherwise are found within the County of Santa Barbara, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was and currently is a California resident. During the four years immediately preceding

1 the filing of this action and within the statute of limitations periods applicable to each cause of
2 action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff
3 claims she was, and is, a victim of Defendants' policies and/or practices complained of herein,
4 lost money and/or property, and has been deprived of the rights guaranteed by Labor Code §§
5 201-204, 226 *et seq.*, 226.7, 246, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et*
6 *seq.*, California Business and Professions Code § 17200 *et seq.* ("Unfair Competition Law"), and
7 Wage Order 5, which sets employment standards for the public housekeeping industry.

8 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
9 years preceding the filing this action and continuing to the present, Defendants did (and continue
10 to do) business within the County of Santa Barbara and the State of California by operating a
11 chain of hotels, and therefore, were (and are) doing business in the County of Santa Barbara and
12 the State of California.

13 5. Plaintiff does not know the true names or capacities, whether individual, partner,
14 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
15 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
16 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
17 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
18 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
19 and proximately caused Plaintiff and the Classes (as defined herein) to be subject to the unlawful
20 employment practices, wrongs, injuries and damages complained of herein.

21 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
22 mentioned herein, Defendants were and are the employers of Plaintiff and all members of the
23 Classes.

24 7. At all times herein mentioned, each of said Defendants participated in the doing
25 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
26 Defendants, and each of them, were the agents, servants, and employees of each and every one of
27 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
28 were acting within the course and scope of said agency and employment. Defendants, and each

1 of them, approved of, condoned, and/or otherwise ratified each one of the acts or omissions
2 complained of herein.

3 8. At all times mentioned herein, Defendants, and each of them, were members of
4 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
5 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
6 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
7 members of the Classes.

8 **GENERAL FACTUAL ALLEGATIONS**

9 9. Defendants manages a chain of vacation ownership resorts, including a location in
10 Solvang, California, where Defendants employed Plaintiff Olivia Rose Ramirez as a non-exempt
11 employee from approximately May 31, 2016 to February 22, 2019. Plaintiff Ramirez worked in
12 the position of “Housekeeper” until approximately August 2018, thereafter she worked as a
13 “Guest Services Agent” from approximately September 2018 to the end of her employment,
14 primarily answering phones and checking-in guests.

15 10. Plaintiff routinely worked in excess of 8.0 hours per workday and/or 40.0 hours
16 per workweek but did not receive overtime compensation equal to one and one-half times her
17 regular rate of pay for working overtime hours. Specifically, Plaintiff and other non-exempt
18 employees earned non-discretionary incentive bonuses, and other forms of pay that cannot be
19 excluded from the regular rate of pay as a matter of law, including but not limited to, payments
20 denoted in their wage statements as “Incentive-Mthly,” “Incentive-Biwk,” “Incentive,”
21 “Recognition,” and “CountOnMe” (hereinafter collectively referred to as “Incentive Pay”). By
22 way of example, based on the timekeeping records that Plaintiff currently has access to, during
23 the pay period beginning on November 12, 2016 and ending November 25, 2016, Plaintiff
24 received Incentive Pay and worked overtime, but did not receive overtime compensation equal to
25 one and one-half times her regular rate of pay. As a result of paying Plaintiff and other non-
26 exempt employees Incentive Pay, Defendants failed to properly calculate the regular rate of pay
27 in pay periods when both Incentive Pay was paid and overtime hours were worked, resulting in
28 unpaid overtime wages.

1 11. For at least a portion of the relevant time period, Defendants utilized a timekeeping
2 system, which upon information and belief, resulted in Plaintiff not being compensated for all
3 hours actually worked, whether by rounding, time-shaving, or otherwise. As a result of
4 Defendants' non-neutral timekeeping policies/practices, Plaintiff and non-exempt employees
5 were not paid all minimum and overtime wages owed to them. *See See's Candy Shops, Inc. v.*
6 *Superior Court* (2012) 210 Cal.App.4th 889, 907 (rounding policy must be "fair and neutral on
7 its face" and implemented in a manner that will "not result, over a period of time, in failure to
8 compensate the employees properly for all the time they have actually worked.") By way of
9 example, based on the timekeeping records that Plaintiff currently has access to, on November
10 12, 2016, Plaintiff's time records show a total on-the-clock hours of 4 hours and 55 minutes, but
11 Plaintiff was only paid for 4 hours and 45 minutes on November 12, 2016. Similarly, on March
12 3, 2017, Plaintiff's time records show a total on-the-clock time of 7 hours and 26 minutes, but
13 Plaintiff was only paid for 7 hours and 15 minutes on March 3, 2017.

14 12. Defendants failed to provide Plaintiff and other non-exempt employees with all
15 required meal periods to which they are entitled. Specifically, Defendants' unlawful meal period
16 policies/practices failed to provide a second uninterrupted, duty-free 30-minute meal period when
17 employees worked shifts in excess of 10.0 hours. *See Brinker Restaurant Corp. v. Superior Court*
18 (2012) 53 Cal.4th 1004, 1033 ("...if a break is not authorized, an employee has no opportunity to
19 decline to take it.") As a Guest Services Associate, Plaintiff was not permitted to leave the front
20 desk unattended, and as a result, was regularly not provided with a timely first meal period
21 commencing before the end of the fifth hour of work due to Defendants' work demands.
22 Similarly, when Plaintiff worked as a "Housekeeper" she was not always provided with a timely
23 first meal period commencing before the fifth hour of work due to Defendants' work demands.
24 By way of example, based on the timekeeping records that Plaintiff currently has access to, on
25 February 22, 2017, Plaintiff worked a shift over 6.0 hours but was not provided with any meal
26 period. On occasions when Plaintiff and other non-exempt employees were not provided with all
27 lawful meal periods to which they were entitled, Defendants failed to compensate these
28 employees with an additional hour of premium pay at their respective rates of compensation for

each workday in which a meal period violation occurred, as required by Labor Code § 226.7.

13. Upon information and belief, during at least a portion of the relevant time period, Defendants failed to maintain a pay code for the payment of meal period premium payments as required by Labor Code § 226.7.

14. Defendants also failed to authorize and permit Plaintiff and other non-exempt employees to take all duty-free 10-minute rest periods for every four hours worked, or major fraction thereof, due to Defendants' unlawful rest period policies/practices. Specifically, Defendants failed to authorize and permit Plaintiff and other non-exempt employees to take a third rest period on occasions when they worked shifts in excess of 10.0 hours. Defendants also failed to authorize and permit Plaintiff, and other similarly situated employees in the position of "Front Desk" receptionist, to take any rest periods throughout their workday due to Defendants' requirement that they not leave the front desk unattended. During at least a portion of the relevant time period, Defendants failed to compensate Plaintiff and other non-exempt employees with an additional hour of premium pay at their respective regular rates of pay for each workday in which a rest period violation occurred, as required by Labor Code § 226.7.

15. As a result of Defendants' failure to pay all overtime wages, minimum wages, paid sick leave, and meal and rest period premium wages, Defendants also maintained inaccurate payroll records, and issued inaccurate wage statements to Plaintiff and other non-exempt employees. Defendants also failed to pay all final wages owed to Plaintiff and other non-exempt employees upon their respective separations of employment

16. Based on the foregoing, Plaintiff seeks to represent herself, the putative class members, and all aggrieved employees, as defined by Labor Code § 2699(c), which includes all current and former non-exempt employees who worked for Defendant in California between February 5, 2019, and the present.

CLASS ACTION ALLEGATIONS

17. **Class Definitions:** Plaintiff brings this action on behalf of herself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

a. The Overtime Class consists of all Defendants' current and former non-exempt

employees in California who worked in the position of Guest Services Associate, Housekeeper, or similarly titled position, and worked more than 8.0 hours per workday and/or 40.0 hours per workweek and: (i) received Incentive Pay; and/or (ii) were subject to Defendants' timekeeping policies and/or practices, during the four years immediately preceding the filing of this action through the present.

b. The Minimum Wage Class consists of all Defendants' current and former non-exempt employees in California who worked in the position of Guest Services Associate, Housekeeper, or similarly titled position, and who were subject to Defendants' timekeeping policies and/or practices, during the four years immediately preceding the filing of this action through the present.

c. The Meal Period Class consists of all Defendants' current and former non-exempt employees in California who: (i) worked in the position of Guest Services Associate, Housekeeper, or similarly titled position, and worked at least one shift in excess of 5.0 hours without a recorded 30-minute meal period commencing prior to the end of the fifth hour of work; and/or (ii) worked at least one shift in excess of 10.0 hours without a second recorded 30-minute meal period commencing prior to the end of the tenth hour of work, during the four years immediately preceding the filing of this action through the present.

d. The Rest Period Class consists of all Defendants' current and former non-exempt employees in California who: (i) worked in the position of Guest Services Associate, Housekeeper, or similarly titled position, and worked a shift in excess of 3.5 hours; and/or (ii) worked a shift in excess of 10.0 hours and were not authorized to take a third rest period, during the four years immediately preceding the filing of this action through the present.

e. The Wage Statement Class consists of all members of the Overtime Class, Minimum Wage Class, Meal Period Class, and/or Rest Period Class, during the one year immediately preceding the filing of this action through the present.

f. The Waiting Time Class consists of all members of the Overtime Class, Minimum

1 Wage Class, Meal Period Class, and/or Rest Period Class who separated their
2 employment with Defendants during the three years immediately preceding the
3 filing of this action through the present.

4 18. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
5 joinder of all members would be unfeasible and not practicable. The membership of the Classes
6 are unknown to Plaintiff at this time; however, it is estimated that the members of the Classes
7 number greater than one hundred (100) individuals. The identity of such membership is readily
8 ascertainable via inspection of Defendants' employment records.

9 19. **Common Questions of Law and Fact Predominate/Well Defined Community**
10 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
11 situated non-exempt employees, which predominate over questions affecting only individual
12 members including, without limitation:

- 13 i. Whether Defendants violated Labor Code §§ 204, 510, 558, 1194 and 1198 by
14 requiring members of the Overtime Class to perform overtime work and not
15 paying for all said work;
- 16 ii. Whether Defendants lawfully paid all minimum wages for all hours worked to
17 members of the Minimum Wage Class pursuant to Labor Code §§ 1182.12, 1194,
18 1194.2 and 1197;
- 19 iii. Whether Defendants provided all legally compliant meal periods to members of
20 the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- 21 iv. Whether Defendants authorized and permitted all lawful rest periods to members
22 of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- 23 v. Whether Defendants paid meal and/or rest period premium payments for non-
24 compliant meal and/or rest periods pursuant to Labor Code § 226.7;
- 25 vi. Whether Defendants paid all paid sick leave pursuant to Labor Code § 246;
- 26 vii. Whether Defendants furnished legally compliant wage statements to members of
27 the Wage Statement Class pursuant to Labor Code § 226; and
- 28 viii. Whether Defendants paid all wages/compensation due upon separation to

members of the Waiting Time Class pursuant to Labor Code §§ 201-203.

20. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' regular rate of pay calculation, uniform timekeeping policies/practices, and meal and rest period policies/practices. As such, common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

21. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the action. As alleged herein, Plaintiff, like the members of the Classes, was deprived of all overtime and minimum wages and paid sick leave owed, was not provided all required meal periods, was not authorized and permitted to take all required rest periods, was not provided with accurate, itemized wage statements, and did not receive all final wages owed at the time of her separation from employment.

22. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing and able to represent the members of the Classes and Plaintiff fully and adequately. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

23. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and

1 conditions of employment. The nature of this action and the format of laws available to Plaintiff
2 and members of the Classes make the class action format a particularly efficient and appropriate
3 procedure to redress the violations alleged herein. If each employee were required to file an
4 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
5 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
6 their vastly superior financial and legal resources. Moreover, requiring each member of the
7 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
8 employees who would be disinclined to file an action against their former and/or current employer
9 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
10 employment. Further, the prosecution of separate actions by the individual class members, even
11 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
12 with respect to the individual class members against Defendants herein; and which would
13 establish potentially incompatible standards of conduct for Defendants; and/or legal
14 determinations with respect to individual class members which would, as a practical matter, be
15 dispositive of the interests of the other class members not parties to adjudications, or which would
16 substantially impair or impede the ability of the class members to protect their interests. Further,
17 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
18 individual prosecution considering all of the concomitant costs and expenses attending thereto.
19 As such, the Classes identified herein are maintainable as a Class under § 382 of the Code of Civil
20 Procedure.

21 **FIRST CAUSE OF ACTION**

22 **FAILURE TO PAY ALL OVERTIME WAGES**

23 **(AGAINST ALL DEFENDANTS)**

24 24. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25 25. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
26 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
27 overtime hours worked, and provide a private right of action for the failure to pay all overtime
28 compensation for overtime work performed.

1 26. At all times relevant herein, Defendants were required to properly pay Plaintiff
2 and members of the Overtime Class for all overtime hours worked pursuant to California Labor
3 Code § 1194 and Wage Order 5. Wage Order 5, § 3 requires an employer to pay an employee
4 “one and one-half (1½) times the employee’s regular rate of pay for all hours worked in excess
5 of eight (8) hours” per workday and/or in excess of 40 hours of work in the workweek.

6 27. At all times relevant herein, Defendants caused Plaintiff and members of the
7 Overtime Class to work overtime hours but did not compensate Plaintiff or members of the
8 Overtime Class at one and one-half times their regular rate of pay for such hours.

9 28. The foregoing policies and practices are unlawful and create entitlement to
10 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
11 premiums owing, including interest thereon, statutory and civil penalties, attorney’s fees, and
12 costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order
13 1, and Code of Civil Procedure § 1021.5.

14 **SECOND CAUSE OF ACTION**

15 **MINIMUM WAGE VIOLATIONS**

16 **(AGAINST ALL DEFENDANTS)**

17 29. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

18 30. Wage Order 5, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
19 right of employees to be paid minimum wages for all hours worked, in amounts set by state law.
20 California Labor Code § 1198 makes unlawful the employment of an employee under conditions
21 that the Industrial Welfare Commission prohibits. Labor Code §§ 1194(a) and 1194.2(a) provide
22 that an employee who has not been paid the legal minimum wage as required by Labor Code §
23 1197 may recover the unpaid balance together with attorneys’ fees and costs of suit, as well as
24 liquidated damages in an amount equal to the unpaid wages and interest accrued thereon.

25 31. At all relevant times herein, Defendants failed to conform their pay practices to
26 the requirements of the law. This unlawful conduct includes but is not limited to all hours they
27 were subject to Defendants’ control. Accordingly, Plaintiff and members of the Minimum Wage
28 Class were not compensated for all hours actually worked as required by the California Labor

Code and Wage Order 5.

32. Defendants' timekeeping policies/practices are unlawful and create an entitlement to recovery by Plaintiff and members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties, civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 558, 1194, 1194.2, and 1198, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

33. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

34. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 5, § 11, for the reasons set forth in the factual allegations and class definitions sections of this Complaint. Despite Defendants' violations, Defendants did not pay an additional hour of premium pay to Plaintiff and members of the Meal Period Class at their respective regular rates of compensation, in accordance with California Labor Code §§ 226.7 and 512.

35. As a result, Defendants are responsible for paying premium compensation for meal period violations, including interest thereon, statutory penalties, civil penalties, and costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 5, and Code of Civil Procedure § 1021.5.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

36. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

37. Wage Order 5, § 12 and Labor Code §§ 226.7 and 516 establish the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour

1 period worked, or major fraction thereof.

2 38. As alleged herein, and due to Defendants' unlawful rest period policies and/or
3 practices, Defendants failed to authorize and permit Plaintiff and members of the Rest Period
4 Class to take all lawful rest periods to which they were legally entitled. Despite Defendants'
5 violations, Defendants failed to pay an additional hour of premium pay to Plaintiff and members
6 of the Rest Period Class at their respective regular rates of pay for each violation, as required by
7 California Labor Code § 226.7.

8 39. The foregoing violations create an entitlement to recovery by Plaintiff and
9 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
10 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according
11 to Labor Code §§ 226.7, 516, and 558, Wage Order 5, and Code of Civil Procedure § 1021.5.

12 **FIFTH CAUSE OF ACTION**

13 **WAGE STATEMENT VIOLATIONS**

14 **(AGAINST ALL DEFENDANTS)**

15 40. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

16 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
18 and members of the Wage Statement Class with complete and accurate itemized wage statements
19 that included, among other requirements, all overtime and minimum wages earned, and all meal
20 and rest period premium wages owed, in violation of Labor Code § 226 *et seq.*

21 42. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
22 with complete and accurate, itemized wage statements resulted in actual injury, as said failures
23 led to, among other things, the non-payment of all overtime and minimum wages owed and all
24 meal and rest period premium wages owed, and deprived them of the information necessary to
25 identify the discrepancies in Defendants' reported data.

26 43. Defendants' failures create an entitlement to recovery by Plaintiff and members of
27 the Wage Statement Class in a civil action for damages and/or penalties pursuant to Labor Code
28 § 226 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and costs

of suit according to California Labor Code § 226 *et seq.*

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

44. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

45. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages earned immediately at the time of separation from employment in the event the employer discharges the employee, or if the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

46. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at the time of their separation including, among other things, underpaid overtime wages owed, unpaid minimum wages owed, and meal and rest period premium wages. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

47. Defendants' willful failure to timely pay Plaintiff and members of the Waiting Time Class all earned wages upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

48. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

1 49. Defendants have engaged, and continue to engage, in unfair and/or unlawful
2 business practices in California in violation of California Business and Professions Code § 17200
3 *et seq.*, by, amongst other things, failing to pay Plaintiff and the Classes all overtime and minimum
4 wages owed, and failing to pay all required meal and rest period premium wages owed.

5 50. Defendants' utilization of these unfair and/or unlawful business practices deprived
6 Plaintiff, and continues to deprive members of the Classes, of compensation to which they are
7 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
8 over Defendants' competitors who have been and/or are currently employing workers and
9 attempting to do so in honest compliance with applicable wage and hour laws.

10 51. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
11 herein, Plaintiff, for herself and on behalf of the members of the Classes, seeks full restitution of
12 monies as necessary and according to proof to restore any and all monies withheld, acquired
13 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

14 52. The acts complained of herein occurred within the last four years immediately
15 preceding the filing of this action.

16 53. Plaintiff was compelled to retain the services of counsel to file this court action to
17 protect Plaintiff's interests and those of the Classes, to obtain restitution and injunctive relief on
18 behalf of Defendants' current non-exempt employees, and to enforce important rights affecting
19 the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
20 which they are entitled to recover under Code of Civil Procedure §1021.5.

21 **EIGHTH CAUSE OF ACTION**

22 **PRIVATE ATTORNEYS GENERAL ACT**

23 **(AGAINST ALL DEFENDANTS)**

24 54. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25 55. Defendants have committed several Labor Code violations against Plaintiff,
26 members of the Classes, and other aggrieved employees. Plaintiff is an "aggrieved employee"
27 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved
28 employees, brings this representative action against Defendants to recover the civil penalties due

1 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
2 according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to: (1)
3 \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each
4 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
5 failure to pay each employee; (2) \$50.00 for each initial violation and \$100.00 for each subsequent
6 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
7 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
8 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
9 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
10 each initial violation and \$200.00 for each subsequent violation per employee per pay period for
11 those violations of the Labor Code for which no civil penalty is specifically provided, based on
12 the following Labor Code violations:

- 13 a. Failing to pay Plaintiff and other aggrieved employees all overtime compensation
14 earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- 15 b. Failing to pay Plaintiff and other aggrieved employees the statutory minimum
16 wage for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1194.2,
17 and 1197;
- 18 c. Failing to provide meal periods as required by law and failing to pay meal period
19 premiums to Plaintiff and other aggrieved employees at the employees' respective
20 regular rates of compensation for meal period violations in violation of Labor
21 Code §§ 226.7, 512, and 558;
- 22 d. Failing to authorize and permit Plaintiff and other aggrieved employees to take all
23 lawful rest periods and failing to pay rest period premiums to Plaintiff and other
24 aggrieved employees at the employees' respective regular rates of compensation
25 for rest period violations in violation of Labor Code §§ 226.7, 516, and 558;
- 26 e. Failing to furnish Plaintiff and other aggrieved employees with accurate and
27 complete itemized wage statements in violation of Labor Code § 226, *et seq.*;
- 28 f. Failing to timely pay all final wages due to Plaintiff and other aggrieved employees

in violation of Labor Code §§ 201, 202 and 203;

g. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and

h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 1174 and 1198.

56. On or around February 11, 2020 and February 1, 2023, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in Paragraph 55 (a)-(g). Now that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

57. Based on the foregoing, Plaintiff seeks to represent herself and all Aggrieved Employees, as defined by Labor Code § 2699(c), which includes all current and former non-exempt employees who worked for Defendants in California between February 5, 2019 and the present.

58. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which she is entitled to recover under California Labor Code § 2699.

PRAYER

WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;

1 4. Upon the First Cause of Action, for compensatory, consequential, general and
2 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;

3 5. Upon the Second Cause of Action, for payment of minimum wages, liquidated
4 damages, and penalties owed according to proof pursuant to Labor Code §§ 1182.12, 1194,
5 1194.2 and 1197;

6 6. Upon the Third Cause of Action, for compensatory, consequential, general and
7 special damages according to proof pursuant to Labor Code §§ 226.7, 512 and 558;

8 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
9 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

10 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §
11 226 *et seq.*;

12 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
13 Labor Code §§ 201-203;

14 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the
15 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
16 practices declared by this Court to be in violation of California Business and Professions Code §
17 17200 *et seq.*;

18 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other
19 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
20 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
21 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
22 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee; (2)
23 \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor
24 Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for
25 each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4)
26 \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor
27 Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and
28 \$200.00 for each subsequent violation per employee per pay period for those violations of the

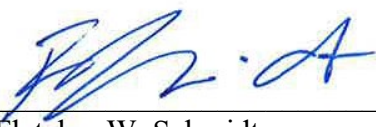
1 Labor Code for which no civil penalty is specifically provided, based on the violations of Labor
2 Code sections identified in Paragraph 55 (a)-(g) above;

3 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor
4 Code § 218.6 and Civil Code §§ 3287 and 3289;

5 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code
6 §§ 218.5, 1194 *et seq.*, 226, and 2698 *et seq.*, and Code of Civil Procedure § 1021.5; and

7 14. For such other and further relief the Court may deem just and proper.
8

9 Dated: May 25, 2023 Respectfully submitted,
HAINES LAW GROUP, APC

10 By: 
11 Fletcher W. Schmidt
12 Attorneys for Plaintiff
13

14 **DEMAND FOR JURY TRIAL**

15 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

16 Dated: May 25, 2023 HAINES LAW GROUP, APC

17 By: 
18 Fletcher W. Schmidt
19 Attorneys for Plaintiff
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