

CRIMINAL JUSTICE
CENTRAL DIVISION
2020 MAY 26 AM 9:09
CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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VICTORIA RAMOS

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10 VICTORIA RAMOS, an individual,) CASE NO. 37-2020-00006126-CU-OE-CTL
11 Plaintiff,)
12) FIRST AMENDED COMPLAINT
13 v.) FOR DAMAGES AND CIVIL
14) PENALTIES FOR:
15) 1. OVERTIME WAGES;
16) 2. MEAL PERIODS;
17) 3. REST PERIODS;
18) 4. WAGE STATEMENTS;
19) 5. WAITING TIME PENALTIES;
20) 6. UNFAIR COMPETITION;
21) 7. LABOR CODE RETALIATION;
22) 8. VIOLATION OF PAGA
23) DEMAND FOR JURY TRIAL
24)
25)
26)
27)
28)

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1 1. Plaintiff VICTORIA RAMOS ("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, CAFFE
6 CALABRIA COFFEE ROASTING COMPANY, INC. and CALABRIA CAFÉ AND
7 PIZZERIA, INC. (collectively, "Defendant") for violations of California's wage and hour laws.
8 Plaintiff seeks to recover unpaid minimum and overtime wages, premium payments for
9 Defendant's failure to authorize and permit meal and rest periods, statutory damages for
10 inaccurate wage statements, waiting time penalties for Defendant's failure to pay all wages due
11 and owing at the time of termination, back pay, prejudgment interest, costs and attorneys' fees.
12 Plaintiff also brings this lawsuit against Defendant under the Labor Code Private Attorneys
13 General Act of 2004 for the purpose of obtaining civil penalties for violations of the forgoing
14 wage and hour violations (and as set forth herein) on behalf of the State of California and other
15 aggrieved employees.

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

20 4. At all times relevant herein, Defendant was doing business in the State of
21 California, County of San Diego, as Caffe Calabria. Defendant maintains corporate offices and
22 operates throughout California and more particularly, in the County of San Diego, State of
23 California. Defendant was at all times herein mentioned, a California corporation duly existing
24 and operating under the laws of the State of California, and under the authority of the County of
25 San Diego. Plaintiff is also informed and believes and thereon alleges that at all time relevant
26 hereto, Defendant was authorized by the California Secretary of State to conduct its business in
27 California, and by the County of San Diego to transact business therein and, at all times relevant
28 herein, was an "employer" within the meaning of the California Labor Code and the applicable

1 California Industrial Wage Commission ("IWC") Order(s).

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

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

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

24 8. Defendant CAFFE CALABRIA COFFEE ROASTING COMPANY, INC. and
25 CALABRIA CAFÉ AND PIZZERIA, INC., and DOES 1 through 50 will hereinafter collectively
26 be referred to as "Defendant."

27 9. Defendant employed Plaintiff within the four (4) yeas prior to the filing of this
28 lawsuit at 3933 30th Street in San Diego, California 92104. Defendant had the authority at all

1 relevant times to hire and fire Plaintiff and other aggrieved employees, establish the terms and
2 conditions of their employment, including their compensation and work schedules, and manager
3 their employment activities. Defendant gave Plaintiff the title of "Office Manager."

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

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

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

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

22 14. At all times relevant herein, Defendant was subject herein to the Labor Code of
23 the State of California, and Wage Orders promulgated by the Industrial Welfare Commission
24 ("IWC") as contained in 8 Cal. Code Regs. § 11050 et. seq., including Wage Order 5-2001
25 (originally and as amended).

26 15. Defendant's employment practices included misclassifying employees as exempt,
27 not paying earned overtime wages, not providing accurate itemized wage statements listing the
28 hours worked by Plaintiff and other aggrieved employees during each pay period and other

1 required information, not providing Plaintiff and other aggrieved employees with state mandated
2 meal and rest periods, not providing Plaintiff and aggrieved employees all wages due upon
3 termination, and other wrongful acts currently unknown by Plaintiff herein. These policies and
4 practices were in direct violation of Wage Order 5-2001 (originally and as amended), and
5 California Labor Code §§ 201, 202, 203, 216, 218, 226, 510, 512, 558, 1174, and 1198, and
6 subparagraphs 3, 7, 11, 12, and 20 of IWC Wage Order 5-2001 of 8 Cal. Code Regs. 11050,
7 among others as hereinafter alleged.

8 16. Defendant classified Plaintiff as an exempt employee. However, Plaintiff's work
9 for Defendant hardly related to management policies and did not amount to high-level business
10 operations. Plaintiff's duties included mostly data entry and filing that Plaintiff performed at the
11 direction of Defendant. Plaintiff rarely exercised discretion and independent judgment or
12 performed work along specialized or technical lines requiring special training, experience, or
13 knowledge. When Plaintiff did perform these functions, she was never "primarily engaged" in
14 these duties. Moreover, the work performed did not require a license or knowledge of any
15 advanced type.

16 17. Despite being classified as an exempt employee, at all times herein mentioned,
17 Plaintiff performed non-exempt labor for Defendant herein, and was entitled to overtime
18 pursuant to the California Labor Code and Industrial Wage Orders.

19 18. Plaintiff was also entitled to meal and rest periods in accordance with the
20 requirements of the applicable Wage Orders and applicable California law. Throughout
21 Plaintiff's employment, Defendant failed to authorize or permit Plaintiff to take rest and/or meal
22 periods and repeatedly denied Plaintiff overtime wages and premium wages due her.

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

28 20. Defendant failed to pay Plaintiff for her overtime hours worked and failed to

1 compensate Plaintiff for all regular hours and all overtime hours worked at the time of Plaintiff's
2 separation of employment with Defendant.

3 21. At all times herein mentioned, Defendant failed to provide Plaintiff with state
4 mandated meal and rest periods and failed to pay Plaintiff for each missed meal and rest period
5 at the time of Plaintiff's separation of her employment or any time since.

6 22. Defendants knew or should have known that Plaintiff was entitled to receive all
7 wages owed to her upon discharge, including overtime and minimum wages and meal and rest
8 period premiums, and she did not, in fact, receive all wages owed to her at the time of discharge.

9 23. As a result of Defendant's failure to pay Plaintiff all wages due her at the time of
10 discharge, Plaintiff is owed waiting time penalties pursuant to the applicable provision of the
11 California Labor Code.

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

17 25. Plaintiff is informed and believes, and based thereon alleged, that Defendant
18 knew or should have known that it was responsible for timely paying payroll taxes on behalf
19 of Plaintiff and other employees, but willfully, knowingly, and intentionally failed to do so.
20 Plaintiff became aware of the issue and reported this information to Defendant because
21 Plaintiff believed the nonpayment was noncompliant and/or unlawful, and, as a consequence
22 of doing so, Defendant retaliated against Plaintiff.

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

1 27. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
2 or should have known that Plaintiff and the other aggrieved employees were entitled to receive
3 certain wages for overtime compensation. Plaintiff and the other aggrieved employees worked in
4 excess of 8 hours in a day and 40 hours in a week and, thus, were entitled to receive overtime
5 compensation. But Plaintiff and aggrieved employees were not paid for all overtime hours
6 worked and/or at the appropriate overtime rate. Upon information and belief, Defendant
7 misclassified non-exempt employees as exempt, and required Plaintiff and aggrieved employees
8 to perform work off-the-clock, including work performed during purportedly off-duty meal
9 periods for which they were not compensated.

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

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

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

28 31. Plaintiff is informed and believes, and based thereon alleges, that Defendant

1 knew or should have known that Plaintiff and the other aggrieved employees were entitled
2 to receive all wages owed to them during their employment. Plaintiff and the other
3 aggrieved employees did not receive payment of all wages, including overtime and
4 minimum wages and meal and rest period premiums, within any time permissible under
5 California Labor Code section 204.

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

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

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

23 35. Plaintiff is informed and believes, and based thereon alleges, that Defendant
24 knew or should have known that they had a duty to compensate Plaintiff and the other
25 aggrieved employees pursuant to California law, and that Defendant had the financial ability
26 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
27 falsely represented to Plaintiff and the other aggrieved employees that they were properly
28 denied wages.

1 36. At all material times set forth herein, Defendant misclassified Plaintiff and other
2 aggrieved employees; Defendant failed to pay Plaintiff and other aggrieved employees for all
3 hours worked, including all overtime hours worked and/or at the correct rate of pay; Defendant
4 failed to provide Plaintiff and other aggrieved employees with proper meal and rest periods or
5 premium compensation in lieu thereof; Defendant failed to provide Plaintiff and other aggrieved
6 employees with accurate itemized wage statements; Defendant failed to keep accurate payroll
7 records; and Defendant failed to pay Plaintiff and other aggrieved employees all wages owed to
8 them upon discharge. Defendant failed to properly compensate Plaintiff and other aggrieved
9 employees in compliance with California law in order to enrich themselves at the expense of
10 Plaintiff and Defendant's non-exempt employees. Defendant further retaliated against Plaintiff
11 for disclosing to Defendant the nonpayment of payroll taxes that she had reasonable cause to
12 believe was noncompliant and/or unlawful. Defendant terminated Plaintiff shortly thereafter in
13 December 2019.

14 **FIRST CAUSE OF ACTION**

15 **RECOVERY OF UNPAID OVERTIME WAGES**

16 **(Against ALL Defendants)**

17 37. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

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

22 39. Plaintiff regularly worked more than 40 hours per week, 8 hours per workday,
23 and/or more than 12 hours per workday, and/or in excess of seven (7) consecutive days, but was
24 not paid all overtime wages and double time wages due and owing under California law. Plaintiff
25 was not paid for all overtime hours worked because, as discussed herein, Defendant misclassified
26 Plaintiff as an exempt employee. Plaintiff was paid only a set salary regardless of the number of
27 hours she worked. However, Plaintiff did not exercise discretion and independent judgment in
28 the performance of her duties, and she instead performed primarily non-exempt duties.

1 Furthermore, upon information and belief, Defendant intentionally misclassified Plaintiff to
2 avoid paying her overtime.

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

6 **SECOND CAUSE OF ACTION**

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

8 **(Against ALL Defendants)**

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

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

22 43. Plaintiff regularly worked periods of more than five hours in a workday without
23 being provided a mandatory thirty-minute, duty-free meal period, and would work periods of
24 more than ten hours in a workday without being provided a mandatory second thirty-minute,
25 duty-free meal period. Upon information and belief, Defendant did not maintain meal period
26 policies and practices that complied with California law. Defendant did not authorize and permit
27 Plaintiff to take meal periods. Defendant did not inform Plaintiff that she was entitled to meal
28 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 44. 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 **THIRD CAUSE OF ACTION**

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

8 **(Against ALL Defendants)**

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

10 46. 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 47. 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 misclassifying
20 Plaintiff as an exempt employee. Defendant did not inform Plaintiff that she was entitled to rest
21 periods. Moreover, Defendants discouraged Plaintiff from taking rest periods by pressuring her
22 to continue working to meet strict accounting deadlines. Defendant did not authorize and permit
23 all required rest periods in strict accordance to, and in compliance with, the timing requirements
24 of all applicable Wage Orders. Defendant further employed policies and practices where Plaintiff
25 did not receive premium wages to compensate her for workdays she did not receive all legally
26 required and fully compliant rest periods.

27 48. Defendant failed to provide Plaintiff with all required rest periods, or with
28 compensation in lieu thereof. As a result, under Labor Code section 226.7, Plaintiff is entitled to

1 one additional hour's pay for each day a rest period was missed, all in an amount to be proved at
2 trial.

3 **FOURTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

5 **(Against All Defendants)**

6 49. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

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

13 51. Defendant knowingly and intentionally failed to provide Plaintiff with proper,
14 itemized wage statements as the wage statements provided did not accurately state, *inter alia*,
15 gross wages earned, total hours worked, net wages earned and the proper hourly rate for each
16 hour worked. Defendant did not provide accurate itemized wage statements to Plaintiff because
17 Defendant misclassified Plaintiff. Accordingly, under Labor Code section 226, Plaintiff is
18 entitled to statutory penalties in the amount of \$50.00 for the initial pay period in which a
19 violation occurred, and \$100.00 for each subsequent pay period in which a violation occurred, up
20 to an aggregate penalty of \$4,000.00, plus attorney's fees and costs, all in an amount to be
21 proved at trial.

22 **FIFTH CAUSE OF ACTION**

23 **WAITING TIME PENALTIES**

24 **(Against All Defendants)**

25 52. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

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

28 54. Plaintiff has not been compensated her earned but unpaid overtime wages and

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

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

7 56. 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 **SIXTH CAUSE OF ACTION**

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

12 **(Against All Defendants)**

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

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

1 510, 512, 1174, 1198 and other sections of the California Labor Code and IWC Orders.

2 59. Plaintiff is entitled to all relief available under Business and Professions Code §
3 17200 and Defendant should be restrained from continuing to engage in these unfair and
4 unlawful business practices, and in addition, should be required to disgorge the unpaid monies
5 and ill-gotten gains to Plaintiff herein.

6 **SEVENTH CAUSE OF ACTION**

7 **RETALIATION IN VIOLATION OF LABOR CODE 1102.5**

8 **(Against All Defendants)**

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

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

19 62. Plaintiff had reasonable cause to believe that Defendant had violated or was not in
20 compliance with state and/or federal laws and regulations concerning the payment of payroll
21 taxes.

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

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

26 65. Defendant, and person acting on behalf of Defendant, retaliated against Plaintiff
27 for disclosing and reporting that information, including by termination, materially reducing job
28 responsibilities and job related benefits, and denying promotion and/or advancement, among

1 other adverse employment actions.

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

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

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

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

24 **EIGHTH CAUSE OF ACTION**

25 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT**

26 **(Against All Defendants)**

27 70. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

28 71. Plaintiff is an "Aggrieved Employee" under PAGA, as Plaintiff was employed by

1 Defendant during the applicable statutory limitations period and suffered one or more of the
2 Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of
3 herself and all other current and former Aggrieved Employees, the civil penalties provided by
4 PAGA, plus reasonable attorney's fees and costs.

5 72. Plaintiff seeks to recover the PAGA civil penalties through a representative action
6 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal. 4th
7 969 (2009). Therefore, class certification of the PAGA claims is not required.

8 73. Therefore, under the provisions of PAGA and Labor Code §§ 201, 202, 203, 204,
9 223, 226(a), 226.3, 226.7, 510, 512(a), 1102.5, 1174(d), 1194, 1197, 1197.1, 1198, and 2699,
10 and all applicable Wage Orders, as well as all interpretations of these laws by California Courts
11 and administrative bodies, as well as any other law that is enforceable through PAGA, Defendant
12 is liable for the following penalties:

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

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

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

24 75. Plaintiff complied with the procedures for bringing suit specified in Labor
25 Code sections 2699.3 and 2699.5. By letter postmarked February 4, 2020, Plaintiff gave
26 written notice to the California Labor and Workforce Development Agency ("LWDA") via
27 electronic mail at PAGAFilings@dir.ca.gov, and via certified mail to Defendant, of the
28 specific provisions of the Labor Code and Wage Orders allegedly violated, including the facts

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and theories to support the alleged violations.

76. 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.

PRAYER

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

1. For all general damages in an amount within the jurisdictional limits of this Court;
2. For all special damages, according to proof;
3. For all loss of earnings, according to proof;
4. For all prejudgment interest, according to proof;
5. For all civil penalties, according to proof;
6. For all punitive damages;
7. For all reasonable attorney's fees;
8. For costs of suit incurred herein; and
9. For such other and further relief as the Court deems just and proper.

Respectfully submitted,

DATED: May 26, 2020

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By: Marshall R. Lurtz
Attorneys for Plaintiff
Victoria Ramos

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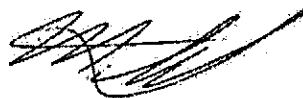
DEMAND FOR JURY TRIAL

Plaintiff VICTORIA RAMOS demands a trial by jury on all claims so triable.

Respectfully submitted,

DATED: May 26, 2020

LURTZ LEGAL



By: _____
Marshall R. Lurtz
Attorneys for Plaintiff
Victoria Ramos