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Attorneys for Plaintiff ROSE SMITH

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

ROSE SMITH, Individually and on behalf of
all other current and former all similarly-
situated and aggrieved employees of
Defendants in the State of California,

Plaintiffs,

v.

TRADITION ONE and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 37-2020-00024461-CU-OE-CTL

Unlimited Civil - Amount Demanded
Exceeds \$25,000.00

COMPLAINT

CLASS ACTION [CCP § 382]

1. Failure to Pay Minimum and Regular Wages
2. Failure to Pay Overtime Wages
3. Failure to Authorize and Permit Rest Periods
4. Failure to Provide Meal Periods
5. Failure to Provide and Maintain Accurate Itemized Wage Statements
6. Failure to Timely Pay Wages Due Upon Separation of Employment
7. Unfair Business Practices (Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*)
8. PAGA Claim for Civil Penalties
9. Unlawful Discrimination Based Upon Race in Violation of FEHA – Government Code Sections 12940 *et seq.*
10. Unlawful Discrimination Based Upon Sexual Orientation in Violation of FEHA – Government Code Sections 12940 *et seq.*
11. Retaliation in Violation of FEHA - Government Code Sections 12940 *et seq.*

Plaintiff ROSE SMITH on behalf of herself and all other current and former other similarly-situated and aggrieved employees alleges as follows:

I.

NATURE OF ACTION AND INTRODUCTORY STATEMENT

1. Plaintiff ROSE SMITH (hereinafter “SMITH”) brings this individual and class action suit against Defendant TRADITION ONE (“Tradition One”) and DOES 1 through 50, inclusive (collectively referred to herein as “Defendants”), on behalf of herself and all other current and former similarly-situated and aggrieved employees for engaging in a systemic pattern of wage and hour violations under California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders. In addition, Plaintiff brings this suit against Defendant TRADITION ONE, individually, for engaging in unlawful discrimination and retaliation.

2. TRADITION ONE, founded in 1971, provides residential alcohol and other drug rehabilitation treatment services for adult men. Its main business office is located in San Diego, California.

3. ROSE SMITH, at times relevant, was employed by Defendants as a Substance Use Disorder counselor in San Diego, California.

4. At all relevant times. TRADITION ONE. through its manager, employees, and agents, has intentionally discriminated Plaintiff, who is an African-American female and a lesbian, based on her race and sexual orientation.

5. At all relevant times, Ms. Smith was unnecessarily subjected to increased offensive and hostile remarks and comments regarding her race and physical appearance and retaliation due to her reports of the workplace harassment and discrimination. Ultimately, Plaintiff was terminated because of TRADITION ONE’S illegal discriminatory conduct.

6. Plaintiff was repeatedly discriminated against by TRADITION ONE and never had an opportunity to succeed because of TRADITION ONE’s discriminatory conduct regarding her race and sexual orientation.

7. Plaintiff suffered serious economic, physical, and emotional harm as a result of this discriminatory treatment during her employment tenure at TRADITION ONE.

9. In addition, Plaintiff is informed and believes, and thereon alleges, that Defendants decreased their employment-related costs in order to increase their level of productivity and profits by systematically violating both state wage and hour laws and the relevant IWC Wage Order, including, but not limited to:

- a. Failing to pay for minimum, regular and overtime wages for all hours worked;
- b. Failing to provide compliant meal and rest breaks;
- c. Failing to provide and maintain accurate records and itemized wage statements;
and
- d. Failing to timely pay wages due during and upon termination of employment.

II.

PARTIES, JURISDICTION AND VENUE

11. Plaintiff ROSE SMITH is and at all relevant times was a resident of the State of California and was employed by Defendants in San Diego, California.

12. Defendant TRADITION ONE (“Tradition One”), is a California non-profit organization with a principal place of business in San Diego, California. According to its website, Tradition One’s center maintains and operates a campus dedicated to the rehabilitation of persons in the continuing process of recovery from alcoholism and other drug addictions.

1 13. Plaintiff is informed and believes, and thereon alleges, that at times relevant TRADITION
2 ONE and Does 1 through 50 are the alter egos of each other and directly or indirectly, or through agents
3 or other persons, employed Plaintiff and other similarly-situated employees, and exercised control over
4 their wages, hours, and/or working conditions. Plaintiff is informed and believes, and thereon alleges,
5 that each Defendant directly or indirectly, or through agents or other persons, acted and/or ratified in all
6 respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
7 plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the
8 other Defendants.

9 14. Plaintiff was employed by Defendants in San Diego, California as a Substance Use
10 Disorder counselor and was subject to the employment policies, procedures and practices implemented by
11 Defendants which applied to all of their employees throughout the State of California, including in San
12 Diego County.

13 15. Defendants, at all relevant times, conducted business in the State of California and were
14 employers who violated, or caused to be violated, a section of Part 2, Chapter 1, of the California Labor
15 Code or any provision regulating hours and days of work in any order of the Industrial Welfare
16 Commission and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code
17 § 558 and or 558.1.

18 16. The true names and capacities of the Defendants named as DOES 1 through 50, inclusive,
19 are presently unknown to Plaintiff. Plaintiff will amend this Complaint setting forth the true names and
20 capacities of these fictitious defendants when they are ascertained. Plaintiff is informed and believes, and
21 on that basis, alleges that each of the fictitious Defendants have participated in the acts alleged in this
22 Complaint.

23 17. Jurisdiction and venue are proper for San Diego County Superior Court because
24 Defendants maintain offices, transact business, and/or have an agent in San Diego County and some of
25 the acts and events complained of herein occurred in the judicial district of San Diego County and the
26 State of California.

III.

GENERAL ALLEGATIONS

18. Plaintiff SMITH, who as an African-American female and lesbian is a member of a protected class, was employed by Defendants as Substance Use Disorder counselor from September 21, 2019 until January 27, 2020 when her employment was abruptly terminated. She worked at Tradition One's facility located in San Diego, California. During her tenure with Tradition One, Plaintiff's primary job duties were to conduct initial interviews with patients and recommend initial treatment plans designed by a multidisciplinary team of specialists.

19. Defendant TRADITION ONE provides residential alcohol and other drug rehabilitation treatment services for adult men.

20. Approximately two months into Plaintiff's employment with Defendants, she was called into the director's office and informed that her-coworker advised the management that he did not want to share his office with Plaintiff because Plaintiff was "black." TRADITION ONE's management failed to take appropriate steps to correct this obviously discriminatory behavior and instead acquiesced to Plaintiff's co-worker's racially-charged demands- thereby ratifying this illegal discriminatory behavior. As a result of Plaintiff's coworker's complaint, Plaintiff was moved to a different floor and office where she was required to work by herself.

21. Plaintiff was further notified that her work attire was not appropriate and had to change. Plaintiff, who identifies herself as a lesbian usually wears pants and loafers and, in general, dresses in a more masculine way which could be perceived by some individuals as not confirming to the standard feminine cultural norms. However, men who wore similar attire were not reprimanded and were permitted to continue with this attire. When Plaintiff raised concerns regarding whether other male employees who wore similar attire or female employees whose attire was not always appropriate for an office setting were requested to change their dress, her supervisor failed to provide any response and instead insisted that the disparate treatment of Plaintiff was justified. Plaintiff thereafter advised her employer she feels targeted and discriminated on account of her race and sexual orientation.

22. After Plaintiff complained about being targeted on account of her race and gender identity, she suffered a chilled attitude from her supervisor and colleagues and was subject to a persistent condescending tone and comments, especially regarding her work attire. On two different occasions, she was told her clothes she was inappropriate despite the fact that other male employees wore similar attire. Ms. Smith observed that she was not treated in the same manner as her white co-workers treated each other. She felt alienated from her co-workers. Indeed, only four months after she commenced her employment with TRADITION ONE, on January 27, 2020, Plaintiff was terminated by her Defendants. She was informed she is “incohesive with other staff members” and does not fit into the employer’s culture. Before the date of her termination Plaintiff had never received any complaints and/or negative comments pertaining to her work performance from her employer.

23. At all relevant times, Plaintiff and all other current and former similarly-situated and aggrieved employees of Defendants worked, on information and belief, under similar wage and hour policies, practices, and procedures relating to wage statements, recordkeeping, and payment of wages.

24. At all relevant times, Defendants failed to pay Plaintiff and all other current and former similarly-situated and aggrieved employees for all time suffered or permitted to work. Defendants had a common policy and practice of failing to pay all minimum, regular and overtime wages to Plaintiff and all other current and former similarly-situated and aggrieved employees of Defendants.

25. At all relevant times, Plaintiff and all other current and former similarly-situated and aggrieved employees worked more than 8 hours in a workday and/or more than forty hours in a workweek. To meet strict deadlines imposed by the California Health and Human Services Agency and/or Behavioral Health Services, Plaintiff and other current and former employees were forced to complete the Addiction Severity Index reports, Treatment Plan reports, the 30-day update reports, and other administrative paperwork after their scheduled shifts. Although Tradition One management was aware Plaintiff and other current and former employees worked off-the clock, Plaintiff and other current and former employees were never compensated for the off-the-clock time worked because the time records would not reflect their actual hours worked.

1 26. At all relevant times, Defendants did not maintain compliant meal period policies for
2 Plaintiff as required by the California Labor Code, nor did they provide 30 minute off-duty meal periods
3 compliant under California law, to Plaintiff and other employees. Defendants failed to adequately inform
4 Plaintiff and all other current and former similarly-situated and aggrieved employees of their rights to take
5 30 minute off-duty meal periods.

6 27. Although Plaintiff and other similarly-situated employees were non-exempt employees
7 under California law, Plaintiff and other employees were regularly prevented from taking timely meal
8 periods and/or were required to miss their meal periods completely due to the working conditions and job
9 duties imposed by Defendants. Even when Plaintiff was able to take a meal period, she was not afforded
10 a full, timely 30 minutes of uninterrupted time in which she could leave the premises and was relieved of
11 all duties. In addition, Defendants failed to provide Plaintiff and all other current and former similarly-
12 situated and aggrieved employees with suitable break room areas. On rare occasions, when Plaintiff and
13 other current and former employees were able to take lunch breaks, they were forced to consume their
14 meals either at their office desks or in the cafeteria designated for patients. As a result of the control
15 exerted by Defendants over Plaintiff and all other current and former similarly-situated and aggrieved
16 employees , the meal periods were not compliant and a wage premium is owed to each employee for each
17 non-compliant meal break.

18 28. Defendants failed to pay Plaintiff and other employees meal period premium wages for
19 each day in which they did not provide Plaintiff an opportunity to take a compliant meal period.

20 29. At all times relevant, Defendants did not maintain compliant off-duty rest period policies
21 for Plaintiff as required by the California Labor Code, nor did they provide rest periods compliant under
22 California law, to Plaintiff and other employees. During Plaintiff's employment, Defendants had a
23 common pattern and practice of failing to properly authorize and permit compliant off-duty rest periods
24 to Plaintiff and other employees when they worked more than 3.5 hours in a workday.

25 30. Furthermore, during Plaintiff's employment, Defendants did not maintain a compliant rest
26 period policy applicable to Plaintiff and other employees. Defendants did not authorize or permit Plaintiff
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1 to take 10-minute paid rest periods, nor did they ever inform her or other employees of their right to take
2 compliant rest periods.

3 31. Defendants failed to pay Plaintiff and other employees rest period premium wages for each
4 day in which they did not authorize or permit them to take compliant rest periods.

5 32. At all times relevant, Defendants failed to provide Plaintiff and other similarly situated
6 employees with accurate and itemized wage statements as required by Labor Code § 226(a) and Section
7 7 of the applicable Wage Order. As a result of Defendants' knowing and intentional failure to provide
8 wage statements, Plaintiff and other similarly situated employees were unable to determine if they were
9 properly paid for all regular and overtime hours worked by them or compensated for missed meal and rest
10 breaks.

11 33. Defendants also failed to provide Plaintiff and all other current and former similarly-
12 situated and aggrieved employees with a written notice including employment-related information
13 pursuant to Labor Code Section 2810.5(a). Plaintiff and all other current and former similarly-situated and
14 aggrieved employees suffered a loss of wages, interest and attorney's fees as a result of Defendants' failure
15 to provide this notice. Defendants' failure to provide this information resulted in the underpayment and
16 late payment of wages. In addition, Plaintiff suffered an actual loss of damages due to her inability to
17 properly determine whether her wages actually reflected the proper work performed based on her rate of
18 pay, her regular payday, and the correct legal entity that was the employer and the correct legal address of
19 that entity in a reasonably efficient manner.

20 34. Defendants failed to maintain accurate records reflecting the beginning and ending time of
21 each shift and each meal period as required by law. Defendants instructed Plaintiff and other similarly-
22 situated employees to record inaccurate hours worked and not the true and correct time worked despite
23 having specific knowledge that Plaintiff and other similarly-situated employees worked through their
24 lunches and worked off-the-clock to complete their reporting duties.

25 35. Defendants failed to pay Plaintiff and other similarly-situated employees for all wages due
26 and owing and by the times required by law in the time periods set forth by Labor Code § 204 and Section
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1 4 of the applicable Wage Order in that Defendants failed to properly compensate said employees for all
2 hours worked.

3 36. On information and belief, Defendants failed to pay Plaintiff and other similarly-situated
4 employees all wages due and owing at the time of termination of employment, including, but not limited
5 to, minimum wages, regular wages, and overtime wages, as required by Labor Code §§ 201(a) and 202(a).

6 37. Defendants have engaged in unfair business practices in California and willingly and
7 knowingly have practiced, employed, and utilized the employment patterns and practices alleged in this
8 complaint in violation of Business & Professions Code §§ 17200, *et seq.*

9 **IV.**

10 **CLASS ACTION DESIGNATION**

11 38. Plaintiff brings this class action pursuant to Code of Civil Procedure § 382 on behalf
12 of all other similarly-situated employees. The Class that Plaintiff seeks to represent is defined as follows:

13 All current and former non-exempt employees who were employed by
14 Defendants in the State of California at any time commencing four (4) years
15 prior to the filing of this Action.

16 39. As to Causes of Action One through Seven, Plaintiff seeks to recover on behalf of the Class
17 all remedies available to the extent permitted by law including, but not limited to, wages, damages,
18 penalties, liquidated damages, interest, attorney's fees, costs, other monies due and owing and injunctive
19 relief.

20 40. Causes of Action One through Seven are appropriately suited for a class action under Code
21 of Civil Procedure § 382 because:

22 a. Numerosity: The potential Class as defined is significant in size because Plaintiff
23 is informed and believes and thereon alleges that at all relevant times, Defendants employed over 20
24 similarly-situated current and former employees who were affected by the unlawful employment
25 practices alleged herein. Based on the potential class size, joinder of all employees individually would
26 be impractical. Plaintiff also believes that there are more than 20 people that are members of the Class.

1 b. Commonality: This action involves common questions of law and fact particular
2 to the putative Class because the action focuses on Defendants' systematic course of illegal conduct
3 with respect to violating the Labor Codes and the applicable IWC Wage Order and implementing
4 company-wide policies uniformly applied to all members of the putative Class. These common questions
5 of law and fact include, without limitation:

- 6 i. Whether Defendants failed to pay wages and/or overtime compensation as
7 required by the Labor Code and the applicable Wage Order under Labor Code §§
8 510, 1194, 1198 and 1199;
- 9 ii. Whether Defendants violated Labor Code §§ 226.7 and the applicable IWC Wage
10 Order, by failing to inform Plaintiff and the Proposed Class of their right to take
11 compliant off-duty rest periods and failing to authorize and permit these required
12 rest periods throughout the term of employment and failing to compensate said
13 employees one (1) hours wages in lieu of rest periods;
- 14 iii. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
15 IWC Wage Order, by failing to inform Plaintiff and the Proposed Class of their
16 right to take compliant off-duty meal periods and failing to authorize and permit
17 Plaintiff and the Proposed Class to take complaint, off-duty meal periods
18 throughout the term of their employment and failing to compensate said
19 employees one (1) hours wages in lieu of meal periods;
- 20 iv. Whether Defendants violated Labor Code § 226(a) and the applicable IWC Wage
21 Order, and Cal. Code Regs., Title 8, Section 11160 by failing to provide an
22 accurate itemized wage statements that identifies all hours worked and all wages
23 earned by Plaintiff and the Proposed Class;
- 24 v. Whether Defendants violated §§ 201-203 of the Labor Code by failing to pay
25 compensation due and owing at the time that any proposed Class Member's
26 employment with Defendants terminated;
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vi. Whether Defendants maintained accurate records of the hours worked by Plaintiff and the Propose Class members as required under the relevant provisions of the Labor Code; and

vii. Whether Defendants violated § 17200 et seq. of the Business & Professions Code by engaging in the acts previously alleged.

c. Typicality: Plaintiff's claims as alleged herein are typical of the claims of each of the putative Class because Plaintiff was subjected to the same violations of her rights under California law and seeks the same types of damages, restitution, and other relief on the same theories and legal grounds as those of the members of the putative Class she seeks to represent.

d. Adequacy of Representation: Plaintiff is able to fairly and adequately protect the interests of all members of the putative Class because it is in her best interest to prosecute the claims alleged herein to obtain full compensation due to her for all pay, benefits and other relief afforded under the Labor Code and the applicable IWC Wage Order. Plaintiff's interest is not in conflict with those of the putative class members. Plaintiff's counsel are competent and experienced in litigating large employment class actions including wage and hour cases such as this case.

e. Superiority of Class Action: Class certification is appropriate because a class action is superior to other available means for the fair and efficient adjudication of these claims. Each putative class member has been damaged and is entitled to recovery by reason of Defendants' illegal policies, and/or practices as alleged herein. Class action treatment will allow those similarly-situated persons to litigate his/her claims in the manner that is most efficient and economical for the parties and the judicial system.

V.

PRIVATE ATTORNEYS GENERAL ACT OF 2004 DESIGNATION

41. The Causes of Action alleged herein are appropriately suited for a Labor Code Private Attorneys General Act of 2004 (hereinafter referred to as "PAGA") representative action because:

42. This action involves allegations of violations of provisions of the California Labor Code that either do not provide for a civil penalty or provide for a civil penalty to be assessed and collected

1 by the Labor and Workforce Development Agency (hereinafter referred to as "LWDA") or any
2 departments, divisions, commissions, boards, agencies or employees;

3 43. Plaintiff SMITH is an "aggrieved employee" because she is employed by the alleged
4 violators and had one or more of the alleged violations committed against her and, therefore, is properly
5 suited to represent the interests of all other current and former employees of Defendants;

6 44. Plaintiff SMITH seeks to recover all applicable penalties under PAGA on behalf of
7 herself and all other aggrieved employees including, but not limited to, an amount sufficient to recover
8 underpaid wages including all unpaid and/or underpaid wages pursuant to Labor Code § 558.

9 45. Pursuant to Labor Code § 2698, et seq., Plaintiff SMITH has complied with her notice
10 requirements by serving via certified mail, return receipt requested, the LWDA and TRADITION ONE,
11 INC., a notice with her claims for wage and hour violations and penalties. The PAGA claims have been
12 tolled during the pendency of the notice period to the LWDA. The statutory period expired, and the
13 LWDA did not serve Plaintiff SMITH with a notice of intent to assume jurisdiction over the applicable
14 penalty claims. Therefore, Plaintiff SMITH has satisfied and exhausted the procedural notice
15 requirement to pursue penalties against Defendants pursuant to Labor Code § 2698, et seq.

16 **VI.**
17 **CAUSES OF ACTION**

18 **FIRST CAUSE OF ACTION**
19 **FAILURE TO PAY MINIMUM AND REGULAR WAGES**
(Violation of Labor Code §§ 1194, 1197, 1198 and the Applicable Wage Order)
(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

20 46. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set
21 forth herein.

22 47. Plaintiff and members of the putative Class are/were "non-exempt" employees of
23 Defendants in the State of California within the meaning of the Labor Code and the applicable Wage
24 Order.

25 48. Labor Code § 1197 states "The minimum wage for employees fixed by the commission or
26 by any state or local law, is the minimum wage to be paid to employees, and the payment of a less wage
27 than minimum wage so fixed is unlawful."
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49. Labor Code § 1198 states “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

50. Section 4 of the applicable IWC Wage Order provides that an employer may not pay employees less than the applicable minimum wage for all hours worked.

51. Labor Code § 1194 states “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of his minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees and costs of suit.”

52. As set forth above, Plaintiff and the members of the putative Class were not paid all minimum and regular wages for all hours worked, including but not limited to the time they worked off-the clock to complete administrative tasks and paperwork such as the Addiction Severity Index reports, Treatment Plan reports, and the 30-day update reports or worked through their lunches.

53. At all material times, Defendants were and/or are Plaintiff’s and/or all other current and former similarly-situated and aggrieved employees’ employers and/or persons acting on behalf of Defendants within the meaning of Labor Code § 558/558.1, who violated or caused to be violated, a section of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code § 558/558.1 including the payment of the underpaid wages to affected employees.

54. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and individually as employers of Plaintiff, and/or a person acting on behalf of Plaintiff’s and all other current and former similarly-situated and aggrieved employees’ employer, who violated, or caused to be violated, any provision regulating minimum wages or hours and days of work in the applicable order of the Industrial Welfare Commission, as well as the California Labor Code Sections 203, 226, 226.7, 1193.6,

1 1194 and 2802, and as such, are liable as an employer of Plaintiff for such violations pursuant to California
2 Labor Code § 558.1.

3 55. As a direct result of Defendants' violations alleged herein, Plaintiff and the members of
4 the putative Class have suffered and continue to suffer, substantial losses related to the use and enjoyment
5 of such wages, including lost interest on such monies and expenses and attorney's fees in seeking to
6 compel Defendants to fully perform their obligation under state law, all to their respective damage in
7 amounts according to proof at trial and within the jurisdictional limitations of this Court.

8 56. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the
9 unpaid wages resulting from Defendants' minimum wage violations including interest thereon, reasonable
10 attorney's fees and costs of suit, penalties, and liquidated damages to the fullest extent permissible
11 including those permitted pursuant to Labor Code §§ 558, 1194 and 1194.2 and Code of Civil Procedure
12 § 1021.5.

13 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

14 **SECOND CAUSE OF ACTION**
15 **FAILURE TO PAY OVERTIME WAGES**

16 (Violation of Labor Code §§ 510, 1198 and the Applicable Wage Order)
(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

17 57. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set
18 forth herein.

19 58. Plaintiff and members of the putative Class are/were "non-exempt" employees of
20 Defendants in the State of California within the meaning of the Labor Code and the applicable Wage
21 Order.

22 59. Labor Code § 510 provides in pertinent part: "Eight hours of labor constitutes a day's work.
23 Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek
24 and the first eight hours worked on the seventh day of work in any one workweek shall be compensated
25 at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in
26 excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay
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1 for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall
2 be compensated at the rate of no less than twice the regular rate of pay of an employee.”

3 60. Labor Code § 1198 states “The maximum hours of work and the standard conditions of
4 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor
5 for employees. The employment of any employee for longer hours than those fixed by the order or under
6 conditions of labor prohibited by the order is unlawful.”

7 61. Section 3 of the applicable IWC Wage Order provides that an employer may not pay non-
8 exempt employees less than the applicable overtime rate for all overtime hours worked.

9 62. Through Defendants’ conduct during the applicable statutory period including, but not
10 limited to, the conduct alleged herein, including that alleged on information and belief, Defendants failed
11 to pay all Plaintiff and Class Members all overtime wages for all overtime worked and recorded, all in
12 violation of Labor Code §§ 510, 1198 and the applicable Wage Order.

13 63. At all material times, Defendants were and/or are Plaintiff’s and/or all other current and
14 former similarly-situated and aggrieved employees’ employers and/or persons acting on behalf of
15 Defendants within the meaning of Labor Code § 558/558.1, who violated or caused to be violated, a
16 section of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of
17 work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each
18 underpaid employee as set forth in Labor Code § 558/558.1 including the payment of the underpaid wages
19 to affected employees.

20 64. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
21 individually as employers of Plaintiff, and/or a person acting on behalf of Plaintiff’s and all other current
22 and former similarly-situated and aggrieved employees’ employer, who violated, or caused to be violated,
23 any provision regulating minimum wages or hours and days of work in the applicable order of the
24 Industrial Welfare Commission, as well as the California Labor Code Sections 203, 226, 226.7, 1193.6,
25 1194, 1198 and 2802, and as such, are liable as an employer of Plaintiff for such violations pursuant to
26 California Labor Code § 558.1.

65. As a direct result of Defendants' violations alleged herein, Plaintiff and the members of the putative Class have suffered and continue to suffer substantial losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

66. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the unpaid wages resulting from Defendants' overtime wage violations including interest thereon, reasonable attorney's fees and costs of suit, and penalties, to the fullest extent permissible including those permitted pursuant to Labor Code §§ 510, 558, 1194 and 1194.2 and Code of Civil Procedure §1021.5.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS

(Violation of Labor Code §§ 226.7(b), 512(a), 1198
and the "Meal Period" Section of the Applicable Wage Order)
(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

67. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth herein.

68. At all times relevant, Plaintiff and members of the putative Class are/were "non-exempt" employees of Defendants in the State of California within the meaning of the Labor Code and the applicable Wage Order.

69. Labor Code § 226.7(b) provides: "No employer shall require any employee to work during any meal or rest or recovery period mandated by an applicable order of the Industrial Welfare Commission."

70. Labor Code § 512(a) provides: "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not

1 employ an employee for a work period of more than 10 hours per day without providing the employee
2 with a second meal period of not less than 30 minutes.”

3 71. Labor Code § 1198 states “The maximum hours of work and the standard conditions of
4 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor
5 for employees. The employment of any employee for longer hours than those fixed by the order or under
6 conditions of labor prohibited by the order is unlawful.”

7 72. Section 11 of the applicable IWC Wage Order provides, in part, that no employer shall
8 employ any person for a work period of more than five (5) hours without a meal period of not less than
9 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work
10 the meal period may be waived by mutual consent of the employer and the employee. An employer may
11 not employ an employee for a work period of more than ten (10) hours per day without providing the
12 employee with a second meal period of not less than 30 minutes, except that if the total hours worked is
13 no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the
14 employee only if the first meal period was not waived. Subsection D of the applicable IWC Wage Order
15 § 11 provides that if an employer fails to provide an employee a meal period in accordance with the
16 applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
17 employee’s regular rate of compensation for each workday that the meal period is not provided.

18 73. Through Defendants’ conduct during the applicable statutory period including, but not
19 limited to, the conduct alleged herein, including that alleged on information and belief, Defendants
20 violated Labor Code §§ 226.7(b), 512(a), 1198, and the applicable Wage Order when they failed to provide
21 a 30-minute uninterrupted, duty-free meal period no later than the start of the sixth hour of work during
22 work periods in excess of five consecutive hours and, when applicable, when they failed to provide a
23 second 30-minute uninterrupted, duty-free meal period no later than the start of the eleventh hour of work.

24 74. Labor Code § 226.7(c) and the applicable IWC Wage Order § 11(D), provides that the
25 employer shall pay an employee one hour of pay at the employee’s regular rate of compensation for each
26 workday that the compliant off-duty meal period is not provided. Defendants have not paid the appropriate
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1 meal premium wages to Plaintiff and all other current and former similarly-situated and aggrieved
2 employees .

3 75. At all material times, Defendants were and/or are Plaintiff's and/or all other current and
4 former similarly-situated and aggrieved employees' employers and/or persons acting on behalf of
5 Defendants within the meaning of Labor Code § 558/558.1, who violated or caused to be violated, a
6 section of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of
7 work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each
8 underpaid employee as set forth in Labor Code § 558/558.1 including the payment of the underpaid wages
9 to affected employees.

10 76. Pursuant to California Labor Code § 558.1, Defendants a person acting on behalf of
11 Plaintiff's and all other current and former similarly-situated and aggrieved employees' employer, who
12 violated, or caused to be violated, any provision regulating minimum wages or hours and days of work in
13 the applicable order of the Industrial Welfare Commission, as well as the California Labor Code Sections
14 203, 226, 226.7, 1193.6, 1194, 1198 and 2802, and as such, are liable as an employer of Plaintiff for such
15 violations pursuant to California Labor Code § 558.1.

16 77. As a direct result of Defendants' violations alleged herein, Plaintiff and the members of
17 the putative Class have suffered and continue to suffer substantial losses related to the use and enjoyment
18 of such wages, including lost interest on such monies and expenses and attorney's fees in seeking to
19 compel Defendants to fully perform their obligation under state law, all to the respective damage in
20 amounts according to proof at trial and within the jurisdictional limitations of this Court.

21 78. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the
22 unpaid wages resulting from Defendants' meal period violations including interest thereon, reasonable
23 attorney's fees and costs of suit, and penalties to the fullest extent permissible including those permitted
24 pursuant to Labor Code §§ 226.7, 512, 558, 558.1, and Code of Civil Procedure § 1021.5.

25 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

26 ///

27 ///

FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS

(Violation of Labor Code §§ 226.7(b), 1198,
and the “Rest Period” Section of the Applicable Wage Order)
(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

79. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth herein.

80. At all times relevant, Plaintiff and members of the Proposed Class are and/or were “non-exempt” employees of Defendants in California within the meaning of the Labor Code and the applicable Wage Order.

81. Labor Code § 1198 makes the employment of any employee under conditions of labor prohibited by a Wage Order unlawful.

82. By Order of the Industrial Welfare Commission, every employer shall authorize and permit all employees to take off-duty rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes rest time per four (4) hours or major fraction thereof. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages as provided in the applicable IWC Wage Order.

83. Pursuant to Labor Code § 226.7(c) and the applicable IWC Wage Order, Defendants shall pay Plaintiff one additional hour of pay at the employees’ regular rate of compensation for each day that a non-compliant rest period is not authorized and permitted.

84. Through Defendants’ conduct during the applicable statutory period including the conduct alleged herein, Defendants violated Labor Code §§ 226.7 and 1198 and the IWC Wage Order when they failed to authorize and permit full 10-minute, uninterrupted, duty-free rest periods for every four hours worked (or major fraction thereof) to Plaintiff during the time period each employee worked for Defendants.

85. Defendants further have failed to pay to Plaintiff the rest period wage premiums pursuant to Section 226.7. Defendants’ omissions in failing to pay the applicable wages set forth in Section 226.7

1 are not in good faith, and further, Defendants had no reasonable grounds for believing the omissions are
2 not in violation of the Labor Code relating to an order of the commission.

3 86. At all material times, Defendants were and/or are Plaintiff's and all other current and
4 former similarly-situated and aggrieved employees' employers or persons acting on behalf of their
5 employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a
6 section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of
7 work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each
8 underpaid employee as set for in Labor Code § 558 including the payment of the underpaid wages to
9 affected employees.

10 87. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
11 individually as employers of Plaintiff and all other current and former similarly-situated and aggrieved
12 employees, and/or a person acting on behalf of Plaintiff's and all other current and former similarly-
13 situated and aggrieved employees' employer, who violated, or caused to be violated, any provision
14 regulating minimum wages or hours and days of work in the applicable order of the Industrial Welfare
15 Commission, as well as the California Labor Code Sections 203, 226, 226.7, 1193.6, 1194, 1198 and 2802,
16 and as such, are liable as an employer of Plaintiff for such violations pursuant to California Labor Code §
17 558.1.

18 88. As a direct result, Plaintiff and the members of the Proposed Class have suffered and
19 continue to suffer, substantial losses related to the use and enjoyment of such wages, including lost interest
20 on such monies and expenses and attorney's fees in seeking to compel Defendants to fully perform their
21 obligation under state law, all to the respective damage in amounts according to proof at trial and within
22 the jurisdictional limitations of this Court.

23 89. Pursuant to the Labor Code, Plaintiff seeks to recover in a civil action the unpaid balance
24 of the full amount of the unpaid wages including interest thereon, reasonable attorney's fees and costs of
25 suit to the fullest extent permissible including those permitted pursuant to Labor Code §§ 226.7, 558,
26 558.1, and Code of Civil Procedure § 1021.5.

27 WHEREFORE, Plaintiff prays for relief as hereinafter requested.
28

FIFTH CAUSE OF ACTION
FAILURE TO PROVIDE AND MAINTAIN ACCURATE
ITEMIZED WAGE STATEMENTS

(Violation of Labor Code §§ 226(a), 1198 and the Applicable Wage Order)
(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

90. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth herein.

91. At all times relevant, Plaintiff and the members of the Proposed Class are/were “non-exempt” employees of Defendants within the meaning of the Labor Code and the applicable Wage Order.

92. Labor Code § 226(a) states in pertinent part “Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing:

(1) Gross wages earned;

(2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

(3) The number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate basis;

(4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;

(5) Net wages earned;

(6) The inclusive dates of the period for which the employee is paid;

(7) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than the social security number;

(8) The name and address of the legal entity that is the employer...;

(9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.... The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and

1 year, and a copy of the statement and the record of the deductions shall be kept on file by the employer
2 for at least three years at the place of employment or at a central location within the State of California.”

3 93. Labor Code § 1198 states “The maximum hours of work and the standard conditions of
4 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor
5 for employees. The employment of any employee for longer hours than those fixed by the order or under
6 conditions of labor prohibited by the order is unlawful.”

7 94. Section 7(A) of the applicable IWC Wage Order states in relevant part that the employer
8 shall keep accurate information regarding “(3) Time Records showing when the employee begins and ends
9 each work period... (4) Total wages paid each payroll period, including value of board, lodging, or other
10 compensation actually furnished to the employee. (5) Total hours worked in the payroll period and
11 applicable rates of pay.”

12 95. Through Defendants’ conduct during the applicable statutory period including, but not
13 limited to, the conduct alleged herein, including that alleged on information and belief, Defendants failed
14 to provide accurate wage statements. For example, in addition to the derivative violations suffered as a
15 result of the other violations detailed above, Defendants also failed to provide a wage statement that
16 properly identified the number of overtime hours worked and meal and rest break premiums paid.

17 96. Plaintiff suffered injuries as a result of Defendants’ intentional and knowing failure to
18 provide to Plaintiff and maintain the writings required by Labor Code § 226(a) and the applicable IWC
19 Wage Order. Defendants’ failure to provide and maintain accurate statements left Plaintiff without the
20 ability to know, understand and question the hours worked and wage earned and due. As a direct result,
21 Plaintiff has suffered and continues to suffer substantial injuries, losses and actual damages related to
22 Defendants’ violations, including lost wages, lost interest on such wages, and expense and attorney’s fees
23 in seeking to compel Defendants to fully perform their obligations.

24 97. Labor Code § 226(e)(1) states “An employee suffering injury as a result of a knowing and
25 intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all
26 actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
27 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate
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1 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's
2 fees." Labor Code §226(e)(2)(B) states "An employee is deemed to suffer injury for purposes of this
3 subdivision if the employer fails to provide accurate and complete information as required by any one or
4 more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily
5 determine from the wage statement alone one or more of the following: (i) The amount of gross wages or
6 net wages paid to the employee during the pay period or any other information required to be provided on
7 the itemized wage statement pursuant to items (2) to (4), inclusive, (6) and (9) of subdivision (a)..."
8 Because Plaintiff at times did not receive any wage statements, or the wage statements did not include,
9 among other things, an accurate accounting of gross wages earned or total hours worked she is deemed to
10 have suffered injury.

11 98. Labor Code § 226(h) states "An employee may also bring an action for injunctive relief to
12 ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees."

13 99. At all material times, Defendants were and/or are Plaintiff's and/or all other current and
14 former similarly-situated and aggrieved employees' employers and/or persons acting on behalf of
15 Defendants within the meaning of Labor Code § 558, who violated or caused to be violated, a section of
16 Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of work in any
17 Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid
18 employee as set forth in Labor Code § 558 including the payment of the underpaid wages to affected
19 employees.

20 100. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
21 individually as employers of Plaintiff and all other current and former similarly-situated and aggrieved
22 employees and/or a person acting on behalf of Plaintiff's and all other current and former similarly-
23 situated and aggrieved employees' employer, who violated, or caused to be violated, any provision
24 regulating minimum wages or hours and days of work in the applicable order of the Industrial Welfare
25 Commission, as well as the California Labor Code Sections 203, 226, 226.7, 1193.6, 1194, 1198 and
26 2802, and as such, are liable as an employer of Plaintiff for such violations pursuant to California Labor
27 Code § 558.1.

101. As a direct result of Defendants' violations alleged herein, Plaintiff and members of the putative Class have suffered and continue to suffer injury including substantial losses related to the use and enjoyment of such wages, lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligation under state law, all to the respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

102. Plaintiff seeks to recover in a civil action all remedies including damages, unpaid wages, penalties, attorney's fees and costs, and injunctive relief to the fullest extent permissible including those permitted pursuant to Labor Code §§ 226(e) and (h), 558, 558.1, and Code of Civil Procedure § 1021.5.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

SIXTH CAUSE OF ACTION
FAILURE TO TIMELY PAY WAGES DUE
DURING AND UPON SEPARATION OF EMPLOYMENT

(Violation of Labor Code §§ 201(a), 202(a), 203, and 204(a)
(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

103. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth herein.

104. Plaintiff and members of the putative Class are/were "non-exempt" employees of Defendants within the meaning of the Labor Code and the applicable Wage Order.

105. Labor Code § 201(a) states "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

106. Labor Code § 202(a) states "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting."

1 107. Labor Code section 204(a) states in pertinent part, “All wages . . . earned by any person in
2 any employment are due and payable twice during each calendar month, on days designated in advance
3 by the employer as the regular paydays.”

4 108. On information and belief, Defendants willfully failed to provide Plaintiff and the members
5 of the Proposed Class with all wages due and owing, including minimum wages, overtime wages, regular
6 wages, by the time specified by Labor Code §§ 201(a), 202(a), and 204 (a) as applicable.

7 109. Labor Code § 203(a) states, in relevant part, “If an employer willfully fails to pay, without
8 abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an
9 employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the
10 due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall
11 not continue for more than 30 days.”

12 110. At all material times, Defendants were and/or are Plaintiff’s and all other current and
13 former similarly-situated and aggrieved employees’ employers and/or persons acting on behalf of
14 Defendants within the meaning of Labor Code § 558/558.1, who violated or caused to be violated, a
15 section of Part 2, Chapter 1, of the California Labor Code or any provision regulating hours and days of
16 work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each
17 underpaid employee as set forth in Labor Code § 558/558.1 including the payment of the underpaid wages
18 to affected employees.

19 111. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
20 individually as employers of Plaintiff and all other current and former similarly-situated and aggrieved
21 employees, and/or a person acting on behalf of Plaintiff’s and all other current and former similarly-
22 situated and aggrieved employees’ employer, who violated, or caused to be violated, any provision
23 regulating minimum wages or hours and days of work in the applicable order of the Industrial Welfare
24 Commission, as well as the California Labor Code Sections 203, 226, 226.7, 1193.6, 1194, 1198 and 2802,
25 and as such, are liable as an employer of Plaintiff for such violations pursuant to California Labor Code §
26 558.1.

112. As a direct result of Defendants' violations alleged herein, Plaintiff and members of the putative Class have suffered and continue to suffer substantial losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

113. Plaintiff seeks to recover in a civil action all remedies to the fullest extent permissible including those permitted pursuant to Labor Code § 203.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

SEVENTH CAUSE OF ACTION
VIOLATION OF BUSINESS & PROFESSIONS CODE §§ 17200, ET SEQ.
(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

114. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth herein.

115. Business & Professions Code § 17200 states "As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code."

116. Through Defendants' conduct during the applicable statutory period including, but not limited to, the conduct alleged herein, including that alleged on information and belief, Defendants have engaged in business practices in California by practicing, employing, and utilizing, the employment practices outlined in the preceding paragraphs all in violation of California law and the applicable Industrial Welfare Commission Wage Order. Defendants' use of such practices constitutes an unfair business practice, unfair competition, and provides an unfair advantage over Defendants' competitors doing business in the State of California that comply with their obligations to properly provide employment conditions in compliance with the law and provide reasonable accommodations due to protected medical conditions pay employees for all earned wages and compensation as required by law.

117. Defendants' violations of the Labor Code and the applicable Industrial Welfare Commission Wage Order and their scheme to lower payroll costs as alleged herein constitute unlawful

1 business practices because these actions were done in a systematic manner over a period of time to the
2 detriment of Plaintiff and the Class. The acts complained of herein occurred within the last four (4) years
3 preceding the filing of this complaint and include, but are not limited to, failure to (i) pay proper minimum,
4 overtime, and regular wages; (ii) to lawfully deduct of wages; (iii) pay timely wages during and upon
5 separation of employment; (iv) maintain accurate records and provide and maintain accurate itemized
6 wage statements; (v) provide compliant meal and rest breaks; (vi) provide legally-mandated reasonable
7 accommodations; and (vii) provide proper hiring and commission documents to employees during their
8 employment.

9 118. Plaintiff is informed and believes and on that basis alleges that, at all times herein
10 mentioned, Defendants have engaged in the above-mentioned acts of unlawful, deceptive, and unfair
11 business practices prohibited by California Business and Professions Code §§ 17200, *et seq.*, including
12 those set forth in the preceding paragraph, thereby depriving Plaintiff and the Class the minimum working
13 condition standards and conditions due, including those under California Labor Code and the applicable
14 Wage Order of the Industrial Welfare Commission.

15 119. As a result of Defendants' unfair competition as alleged herein, Plaintiff has suffered injury
16 in fact and lost money or property. Plaintiff has been deprived of the rights to wages and benefits due as
17 alleged herein.

18 120. Pursuant to California Business & Professions Code § 17203, Plaintiff is entitled to seek
19 restitution of all wages and other monies owed on behalf of herself and the represented employees
20 belonging to them, including interest thereon, which Defendants wrongfully withheld from them and
21 retained for themselves by means of its unlawful and unfair business practices.

22 121. Plaintiff is entitled to an injunction and other declaratory and equitable relief against such
23 practices to prevent future damage for which there is no adequate remedy at law, and to avoid a multiplicity
24 of lawsuits.

25 122. Plaintiff is informed and believes, and on that basis, alleges, that the illegal conduct alleged
26 herein is continuing and there is no indication that Defendants will not continue such activity into the
27 future. Plaintiff alleges that if Defendants are not enjoined from the conduct set forth in this Complaint,
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1 they will continue to fail to pay the wage and compensation required to be paid and will fail to comply
2 with other requirements of the California Labor Code and the applicable Wage Order of the Industrial
3 Welfare Commission.

4 123. As a direct and proximate result of Defendants' conduct, Defendants have received and
5 will continue to receive monies that rightfully belong to members of the general public who have been
6 adversely affected by Defendants' conduct, as well as to Plaintiff by virtue of unpaid wages and other
7 monies.

8 124. Plaintiff is entitled and seeks any and all available remedies including restitution and
9 recovery of reasonable attorney's fees pursuant to California Code of Civil Procedure §1021.5, Business
10 and Professions Code § 17200, *et seq.*, the substantial benefit doctrine, and/or the common fund doctrine.

11 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

12 **EIGHTH CAUSE OF ACTION**

13 **PRIVATE ATTORNEY GENERAL ACT (PAGA)**

14 (Violation of Labor Code § 2699, *et seq.*)

15 (Alleged by Plaintiff Individually and On Behalf of all current and former Aggrieved Employees
16 Against All Defendants)

17 125. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set
18 forth herein.

19 126. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a
20 civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions,
21 boards, agencies or employees for violation of the code may, as an alternative, be recovered through a
22 civil action brought by an aggrieved employee on behalf of herself or herself and other current or former
23 aggrieved employees pursuant to the procedures specified in Labor Code § 2699.3.

24 127. Plaintiff SMITH is an "aggrieved employee" because she was employed by the alleged
25 violator and had one or more of the alleged violations committed against her, and therefore is properly
26 suited to represent the interests of other current and former aggrieved employees of Defendants.

27 128. On or about March 18, 2020 pursuant to Labor Code § 2698, *et seq.*, Plaintiff SMITH
28 served via certified mail, return receipt requested, the LWDA, and DEFENDANT with her claims for
wage and hour violations and penalties. The statutory period expired, and the LWDA did not serve

1 Plaintiff with a notice of intent to assume jurisdiction over the applicable penalty claims. Therefore,
2 Plaintiff has satisfied and exhausted the procedural notice requirement to pursue penalties against
3 Defendants pursuant to Labor Code §2698, *et seq.*

4 129. Labor Code § 1198 states “The maximum hours of work and the standard conditions of
5 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor
6 for employees. The employment of any employee for longer hours than those fixed by the order or under
7 conditions of labor prohibited by the order is unlawful.”

8 130. Defendants violated Labor Code §§ 226.7, 512, and 1198 by failing to provide Plaintiff
9 and current and former aggrieved employees lawfully complaint meal periods and by failing to pay them
10 wages for each day a meal period was not provided. Under Labor Code § 2699(f)(2) Defendants are subject
11 to a civil penalty of \$100 for each aggrieved employee per pay period for an initial violation and \$200 for
12 each aggrieved employee per pay period for each subsequent violation.

13 131. Defendants violated Labor Code §§ 226.7 and 1198 by failing to provide Plaintiff and
14 current and former aggrieved employees duty-free rest periods and by failing to pay them premium wages
15 for each day a rest period was not provided. Under Labor Code § 2699(f)(2) Defendants are subject to a
16 civil penalty of \$100 for each aggrieved employee per pay period for an initial violation and \$200 for each
17 aggrieved employee per pay period for each subsequent violation.

18 132. Defendants violated Labor Code §§ 1194, 1197, and 1198 by failing to pay Plaintiff and
19 current and former aggrieved employees at least minimum and regular wages for the time permitted to
20 work, engaged in work, and/or under Defendants’ control as alleged herein. Under Labor Code § 2699
21 (f)(2) Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for an
22 initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

23 133. Defendants violated Labor Code §§ 510 and 1198 by failing to pay Plaintiff and current
24 and former aggrieved employees overtime wages for the time permitted to work, engaged in work, and/or
25 under Defendants’ control as alleged herein. On information and belief, at all relevant times, Plaintiff and
26 other current and former aggrieved employees were not paid overtime wages when they worked in excess
27 of eight (8) hours a day or forty (40) hours within a workweek. Therefore, under Labor Code § 2699(f)(2)

1 Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for an initial
2 violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

3 134. Defendants violated Labor Code §§ 226(a), 1174(d), and 1198 and Section 6 of the
4 applicable IWC Wage Order by failing to maintain records detailing the start and end times of work shifts
5 and meal periods, and knowingly and intentionally failing to maintain and provide Plaintiff and other
6 current and former aggrieved employees of Defendants with accurate wage statements itemizing all
7 information required by Labor Code § 226(a), as alleged herein, including the correct total hours worked,
8 all regular hours worked, overtime hours worked, the correct applicable hourly rate per hour worked, the
9 and the correct total wages earned. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil
10 penalty of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code §§
11 226(a) and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

12 135. Alternatively, Labor Code § 226.3 provides for a civil penalty in the amount of \$250 per
13 violation in an initial citation and \$1,000 for each violation in a subsequent citation for failure to provide
14 accurate itemized wage statements.

15 136. Under Labor Code § 1174.5 an employer who willfully fails to maintain the records by
16 Labor Code § 1174 is a subject to a civil penalty of \$500.

17 137. Defendants violated section 11(C) of the applicable Wage Order and Labor Code § 1198
18 by failing to provide suitable break room areas to Plaintiff and other current and former aggrieved
19 employees. Under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each
20 aggrieved employee per pay period for the initial violation of the relevant provisions of the applicable
21 Wage Order and Labor Code §1198, and \$200 for each aggrieved employee per pay period for each
22 subsequent violation.

23 138. Defendants violated Labor Code §§ 201, 202, 203, and 1198 by failing to pay Plaintiff and
24 other current and former aggrieved employees all minimum, regular, and overtime wages owed, and all
25 meal and rest premiums wages owed by the time set forth by law upon their separation of employment as
26 alleged herein. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for
27
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each aggrieved employee per pay period for the initial violation of Labor Code §§ 201, 202, 203, and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

139. Defendants violated Labor Code §§ 204 and 1198 by failing to pay Plaintiff and other current and former aggrieved employees all minimum, regular, and overtime wages owed, and all meal and rest premiums wages owed by the time set forth by law upon during their employment as alleged herein. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code §§ 204 and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

140. As set forth herein, Defendants violated Labor Code sections 201, 202, 203, 204, 223, 226, 226.7, 510, 511, 512, 1174, 1197, 1198, 2802, and Labor Code § 2699, *et seq.*, imposes upon Defendants, and each of them, penalties for violating the Labor Code, including those penalties set forth in 210, 226.3, 558, 1174.5, 1197.1, 1194.2 and 2698, *et seq.*

141. Pursuant to Labor Code § 2699, Plaintiff SMITH seeks to recover civil penalties on behalf of herself and other current and former aggrieved employees of Defendants who suffered one or more the labor code violations described herein. The exact amount of the applicable penalty is all in an amount to be shown according to proof at trial.

142. For bringing this action, Plaintiff SMITH is entitled to attorney's fees and costs incurred herein.

WHEREFORE, Plaintiff SMITH prays for relief as hereinafter requested.

NINTH CAUSE OF ACTION

UNLAWFUL DISCRIMINATION BASED UPON RACE AND SEXUAL ORIENTATION VIOLATION OF FEHA

(Cal. Gov. Code §§ 11135, 12900-12996, and Labor Code §§ 98.7, 1050-1054, 1101-1105, 1171-1200, and 2922 Alleged by Plaintiff Individually Against All Defendants)

143. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth herein.

144. Plaintiff is an African-American female and a lesbian – which is a protected class.

145. At all times herein mentioned, California Constitution, Article I, § 8, California

1 Government Code §§ 11135, 12900-12996, and Labor Code §§ 98.7, 1050-1054, 1101-1105, 1171-
2 1200, and 2922 were in full force and effect, and were binding on Defendants. Said sections and laws,
3 *inter alia*, mandated that Defendants refrain from discriminating against any employee on the basis of
4 race, gender, ethnicity, or national origin and sex, among other things.

5 146. Defendants were aware of Plaintiff's sexual orientation (Plaintiff is lesbian) and
6 subjected Plaintiff to adverse action based on her sexual identity and race. Defendants' discriminatory
7 actions against Plaintiff, as alleged above, constituted unlawful discrimination in employment on
8 account of race, gender and/or sexual orientation in violation of the California Constitution, Government
9 Codes and Labor Codes referenced above.

10 147. As a direct and proximate result of Defendants' discriminatory actions against Plaintiff,
11 as alleged above, Plaintiff has been harmed in that she has suffered physical and emotional injury,
12 consequential and incidental losses, including but not limited to loss of income and benefits.

13 148. As a further proximate result of Defendants' despicable discriminatory actions, as alleged
14 above, Plaintiff has suffered general and compensatory damages in that Plaintiff has foreseeably suffered
15 humiliation, mental anguish, severe emotional and physical distress, and has been injured in mind and
16 body in an amount according to proof.

17 149. In committing the foregoing acts, Defendants have been guilty of oppression, fraud,
18 and/or malice under California Civil Code section 3294, thereby entitling Ms. SMITH to punitive
19 damages in a sum appropriate to punish and make an example out of the foregoing Defendants.

20 150. The act of oppression, fraud, and/or malice were engaged in by employees of Defendants.
21 Defendants had advance knowledge of the unfitness of each employee who acted with oppression, fraud,
22 and/or malice, and/or authorized or ratified the wrongful conduct for which an award of punitive
23 damages sought, and/or was personally guilty of oppression, fraud, and/or malice. The advance
24 knowledge and conscious disregard, authorization, ratification, or act of oppression, fraud, and/or malice
25 was committed by or on part of an officer, director, or managing agent of Defendants, thereby entitling
26 Ms. SMITH to punitive and exemplary damages against Defendants in accordance with California Civil
27 Code section 3294 in a sum appropriate to punish and to make an example of Defendants.

151. The California Fair Employment and Housing Act (FEHA) provides for an award of reasonable attorney's fees and costs incurred by a prevailing plaintiff in an action brought under its provisions. Ms. SMITH has employed and will continue to employ attorneys for the initiation and prosecution of this action. Ms. SMITH has incurred and will continue to incur attorney's fees and costs herein. Ms. SMITH is entitled to an award of attorney's fees and costs.

152. Ms. SMITH has been generally damaged in an amount within the jurisdictional limits of this Court.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

TENTH CAUSE OF ACTION
FAILURE TO PREVENT UNLAWFUL
DISCRIMINATION IN VIOLATION OF FEHA

(Cal. Gov. Code § 12940(k) Alleged by Plaintiff Individually Against All Defendants)

153. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth herein.

154. California Government Code section 12904(k) makes it an unlawful employment practice for an employer to "fail to take all reasonable steps to prevent discrimination and harassment from occurring." Defendants violated this provision by failing to prevent discrimination against Plaintiff, including the discrimination described in paragraphs above. Notwithstanding notice of discrimination and/or harassment in the work places maintained by the Defendants, Defendants took no steps to prevent such discrimination from occurring, but rather endorsed the discriminatory conduct. Specifically, Defendants refused to investigate the complaints by the Plaintiff of discrimination and harassment and Defendants also refused to discipline individuals who discriminated against and harassed Plaintiff. These failures constitute a breach of the Defendant's obligation to prevent discrimination on the basis of race and color and sexual orientation.

155. As a proximate result of the conduct of Defendants, Ms. SMITH has suffered and will continue to suffer damages in terms of lost wages, lost bonuses, lost benefits, and other pecuniary loss according to proof. Ms. SMITH has also suffered and will continue to suffer physical and emotional injuries, including nervousness, humiliation, depression, anguish, embarrassment, fright, shock, pain, discomfort, fatigue, and anxiety. The amount of Ms. SMITH's damages will be ascertained at trial.

156. In committing the foregoing acts, Defendants have been guilty of oppression, fraud, and/or malice under California Civil Code section 3294, thereby entitling Ms. SMITH to punitive damages in a sum appropriate to punish and make an example out of the foregoing defendants.

157. The act of oppression, fraud, and/or malice were engaged in by employees of Defendants. Defendants had advance knowledge of the unfitness of each employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the wrongful conduct for which an award of punitive damages is sought, and/or was personally guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard, authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on part of an officer, director, or managing agent of Defendants, thereby entitling Ms. SMITH to punitive and exemplary damages against Defendants in accordance with California Civil Code section 3294 in a sum appropriate to punish and make an example of Defendants.

158. FEHA provides for an award of reasonable attorney's fees and costs incurred by a prevailing plaintiff in an action brought under its provisions. Ms. SMITH has employed and will continue to employ attorneys for the initiation and prosecution of this action. Ms. SMITH has incurred and will continue to incur attorney's fees and costs herein. Ms. SMITH is entitled to an award of attorney's fees and costs.

159. Ms. SMITH has been generally damages in an amount within the jurisdictional limits of this Court.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

ELEVENTH CAUSE OF ACTION
RETALIATION IN VIOLATION OF FEHA

(Cal. Gov. Code § 12940(h) and Code of Civil Procedure § 1021.5 Alleged by Plaintiff Individually Against All Defendants)

160. Plaintiff realleges and incorporates by reference the foregoing allegations, as though set forth herein.

161. At all relevant times, it was a violation of Government Code §12940(h) for an employer or any individual to retaliate against an employee who opposed any practices forbidden under FEHA, including complaining of or voicing opposition to or reporting race discrimination or harassment.

1 162. At all relevant times, it was a violation of Labor Code §1102.5, et seq., for an employer
2 to retaliate against an employee who disclosed or reported information believed to be a violation of or
3 noncompliance with a state or federal statute, city practice or policy, including complaining of, voicing
4 opposition to or reporting race discrimination.

5 163. On various occasions and as described above, Plaintiff complained of the discrimination
6 and harassment and brought the unlawful conduct to the attention of the management of Defendants.

7 164. The Defendants, rather than taking adequate remedial measures, retaliated against
8 Plaintiff by allowing and ratifying continued harassment and engaging in further discrimination based
9 upon her race and color.

10 165. The foregoing conduct by the Defendants and each of them was in retaliation for
11 Plaintiff's complaints of race and sexual orientation harassment and discrimination in violation of
12 Government Code Section 12940(h) and other provisions of FEHA, which preclude an employer from
13 retaliating against any employee for protesting conduct prescribed by FEHA. As a proximate result of
14 the conduct of Defendants, Ms. SMITH has suffered and will continue to suffer damages in terms of
15 lost wages, lost bonuses, lost benefits, and other pecuniary loss according to proof. Ms. SMITH has also
16 suffered and will continue to suffer physical and emotional injuries, including nervousness, humiliation,
17 depression, anguish, embarrassment, fright, shock, pain, discomfort, fatigue, and anxiety. The amount
18 of Ms. SMITH's damages will be ascertained at trial.

19 166. As a proximate result of the said retaliation, Plaintiff suffered emotional distress damages
20 in an amount in excess of the minimum jurisdiction of this court and according to proof.

21 167. As a further proximate result of this retaliation as pled above, Plaintiff lost employment
22 benefits, including lost wages and fringe benefits in an amount in excess of the minimum jurisdiction of
23 this Court and according to proof.

24 168. FEHA provides for an award of reasonable attorney's fees and costs incurred by a
25 prevailing plaintiff in an action brought under its provisions. Ms. SMITH has employed and will
26 continue to employ attorneys for the initiation and prosecution of this action. Ms. SMITH has incurred
27 and will continue to incur attorney's fees and costs herein. Ms. SMITH is entitled to an award of
28

1 attorney's fees and costs.

2 169. The above pled conduct of Defendants constitutes oppression, fraud, and malice thereby
3 entitling Plaintiff to an award of punitive damages as to Defendants.

4 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for damages for judgment against Defendants, jointly and
8 severally, as applicable, as follows:

- 9 a. For injunctive relief as provided by the Labor Code and to the extent permitted by law
10 including, but not limited to, pursuant to § 226(h) and Business and Professions Code
11 §17200, *et seq.* and including injunctive relief to compel Defendants to produce all records
12 as required by § 226(h) and the "Records" section of the applicable IWC Wage Order;
- 13 b. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
- 14 c. For an order requiring Defendants to restore and disgorge all funds to each affected
15 person acquired by means of any act or practice declared by this Court to be unlawful,
16 unfair or fraudulent and, therefore, constituting unfair competition under Business and
17 Professions Code §§ 17200, *et seq.*;
- 18 d. For penalties to the extent permitted pursuant to the Labor Code, Orders of the Industrial
19 Welfare Commission including, but not limited to, waiting time penalties under Labor
20 Code § 203, penalties under Labor Code §§ 226(e), 226.3, 210, 226.7, 226.8, 558, and
21 1174.5; PAGA penalties pursuant to Labor Code §2698 *et seq.*;
- 22 e. For Punitive and exemplary damages against Defendants pursuant to Civil Code § 3294,
23 *et seq.*;
- 24 f. For an award of unpaid wages, including regular wages, minimum and overtime wages,
25 to the extent permissible by law to each affected person;
- 26
27
28

- g. For penalties to the extent permitted pursuant to the Labor Code, Orders of the Industrial Welfare Commission including, but not limited to, waiting time penalties under Labor Code § 203, penalties under Labor Code §§ 226(e), and 558.1 penalties;
- h. For an award of actual damages to the extent permissible by the Labor Code including Labor Code § 226(e);
- i. For an award of liquidated damages to the extent permissible by Labor Code § 1194.2;
- j. For pre- and post-judgment interest to the extent permitted by law including, but not limited to, Labor Code §§ 218.6 and 1194;
- k. For reasonable attorney's fees and cost of suit and, to the extent permitted by law, including pursuant to Labor Code §§ 218.5, 226, 1194, 1198 and Code of Civil Procedure § 1021.5; and Cal. Gov. Code § 12965(b); and
- l. An award of such other and further relief as this Court deems proper and just.

Dated: July 14, 2020

ShortLegal, APC



By: _____

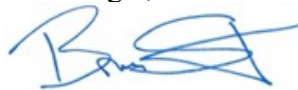
BRIAN R. SHORT
DOROTA A. JAMES
Attorneys for Plaintiff ROSE SMITH

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury to the extent authorized by law.

Dated: July 14, 2020

ShortLegal, APC



By: _____

BRIAN R. SHORT
DOROTA A. JAMES
Attorneys for Plaintiff ROSE SMITH