

Brian R. Short (SBN 236140)
Email: Brian@ShortLegal.com
Dorota A. James (SBN 309933)
Email: Dorota@ShortLegal.com
350 10th Ave., Suite 1000
San Diego, California 92101
Telephone: 619.272.0720
Facsimile: 619.839.3129

Attorneys for Plaintiff ROSE SMITH

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
03/13/2020 at 12:21:09 PM
Clerk of the Superior Court
By Iris Tellez, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

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

Plaintiffs,

v.

MCALISTER INSTITUTE FOR
TREATMENT & EDUCATION, INC. and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 37-2020-00014055-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.*)

1 Plaintiff ROSE SMITH on behalf of herself and all other similarly-situated employees alleges as
2 follows:

3 I.

4 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

5 1. Plaintiff ROSE SMITH (hereinafter “SMITH”) brings this individual and class action suit
6 against Defendant MCALISTER INSTITUTE FOR TREATMENT & EDUCATION INC. (“McAlister”)
7 and DOES 1 through 50, inclusive (collectively referred to herein as “Defendants”), on behalf of herself
8 and all other current and former similarly-situated employees for engaging in a systemic pattern of wage
9 and hour violations under California Labor Code and Industrial Welfare Commission (“IWC”) Wage
10 Orders.

11 2. MCALISTER INSTITUTE FOR TREATMENT & EDUCATION INC. is an alcohol and
12 drug treatment provider of programs for patients with substance abuse problems. Its main business office
13 is located in El Cajon, San Diego County, California.

14 3. SMITH, at times relevant, was employed by Defendants as a Substance Use Disorder
15 counselor in their Lemon Grove facility, San Diego County, California.

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

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

24 5. Plaintiff brings this lawsuit seeking injunctive, restitution and monetary relief against
25 Defendants, and each of them, on behalf of Plaintiff individually and on behalf of all similarly-situated
26 employees to recover, among other things, unpaid wages and benefits, interest, penalties, liquidated
27 damages, attorney’s fees and costs pursuant to California Labor Code §§ 201, 202, 203, 204, 210, 218,
28

1 218.5, 218.6, 223, 226, 226.7, 247, 248.5, 510, 511, 512, 558, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198,
2 2810.5, and California Code of Civil Procedure 1021.5, and provisions of the relevant IWC Wage Order.
3 Plaintiff reserves the right to name additional representatives throughout the State of California.

4 **II.**

5 **PARTIES, JURISDICTION AND VENUE**

6 6. Plaintiff SMITH is and at all relevant times was a resident of the State of California and
7 was employed by Defendants in their Lemon Grove center, San Diego County, California.

8 7. Defendant MCALISTER INSTITUTE FOR TREATMENT & EDUCATION INC.
9 (“McAlister”), is a California Corporation with a principal place of business in El Cajon, San Diego
10 County, California. According to its website, McAlister’s regional recovery centers provide inpatient and
11 outpatient programs for adults struggling with substance abuse and other drug-related problems, including
12 co-occurring mental problems.

13 8. Plaintiff is informed and believes, and thereon alleges, that at times relevant MCALISTER
14 INSTITUTE FOR TREATMENT & EDUCATION INC. and Does 1 through 50 are the alter egos of each
15 other and directly or indirectly, or through agents or other persons, employed Plaintiff and other similarly-
16 situated employees, and exercised control over their wages, hours, and/or working conditions. Plaintiff is
17 informed and believes, and thereon alleges, that each Defendants directly or indirectly, or through agents
18 or other persons, acted and/or ratified in all respects pertinent to this action as the agent of the other
19 Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts
20 of each Defendant is legally attributable to the other Defendants.

21 9. Plaintiff was employed by Defendants in Lemon Grove, San Diego County, California as
22 a Substance Use Disorder counselor and was subject to the employment policies, procedures and practices
23 implemented by Defendants which applied to all of their employees throughout the State of California,
24 including in San Diego County.

25 10. Defendants, at all relevant times, conducted business in the State of California and were
26 employers who violated, or caused to be violated, a section of Part 2, Chapter 1, of the California Labor
27 Code or any provision regulating hours and days of work in any order of the Industrial Welfare
28

Commission and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code § 558 and or 558.1.

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

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

III.

GENERAL ALLEGATIONS

13. Plaintiff SMITH was initially employed by Defendants as an overnight staff employee since May 2016 until October 2017. From approximately October 2017 until February 2019 and then July 2019 until September 2019, she worked as a Substance Use Disorder counselor. She worked at McAlister's facility located in Lemon Grove, California. During her tenure with McAlister, Plaintiff's primary job duties were to conduct initial interviews with patients and design initial treatment plans in coordination with a multidisciplinary team of specialists.

14. Defendant MCALISTER INSTITUTE FOR TREATMENT & EDUCATION INC. claims to be San Diego County's largest alcohol and other drug treatment providers of programs for patients with substance abuse problems

15. At all relevant times, Plaintiff and other similarly-situated 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.

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

4 17. At all relevant times, Plaintiff and similarly-situated employees worked more than 8 hours
5 in a workday and/or more than forty hours in a workweek. To meet strict deadlines imposed by the
6 California Health and Human Services Agency and/or Behavioral Health Services, Plaintiff and other
7 current and former employees were forced to complete the Addiction Severity Index reports, Treatment
8 Plan reports, the 30-day update reports, and other administrative paperwork after their scheduled shifts.
9 Although McAlister managers were well-aware, Plaintiff and other current and former employees worked
10 off-the clock, Plaintiff and other current and former employees were never compensated for that time they
11 worked before an/or after they punched in and/or out for the day because the time records would not reflect
12 they actual hours worked.

13 18. At all relevant times, Defendants did not maintain compliant meal period policies for
14 Plaintiff as required by the California Labor Code, nor did they provide off-duty meal periods compliant
15 under California law, to Plaintiff and other employees. Defendants failed to adequately inform Plaintiff
16 and other similarly-situated employees of their rights to take 30 minute off-duty meal periods.

17 19. As part of their job duties, Plaintiff and other similarly situated employees were required
18 to stay on the premises to ensure safety of the patients to provide them with immediate assistance if
19 necessary.

20 20. Although Plaintiff and other similarly-situated employees were non-exempt employees
21 under California law, Plaintiff and other employees was regularly prevented from taking timely meal
22 periods and/or was required to miss their meal periods completely due to the working conditions and job
23 duties imposed by Defendants. Even when Plaintiff was able to take a meal period, she was not afforded
24 a full, timely 30 minutes of uninterrupted time in which she could leave the premises and was relieved of
25 all duties. In addition, Defendants failed to provide Plaintiff and other similarly-situated employees with
26 suitable break room areas. On rare occasions, when Plaintiff and other current and former employees were
27 able to take lunch breaks, they were forced to consume their meals either at their office desks or in the
28

1 cafeteria designated for patients. As a result of the control exerted by Defendants over Plaintiff and
2 similarly-situated employees, the meal periods were not compliant and a wage premium is owed to each
3 employee for each non-compliant meal break.

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

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

11 23. Furthermore, during Plaintiff's employment, Defendants did not maintain a compliant rest
12 period policy applicable to Plaintiff and other employees. Defendants did not authorize or permit Plaintiff
13 to take 10-minute paid rest periods, nor did they ever inform her or other employees of their right to take
14 compliant rest periods.

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

17 25. At all times relevant, Defendants failed to provide Plaintiff and other similarly-situated
18 employees with wage statements that truly and accurately reflected the number of hours worked by them,
19 or the wages due to them, specifically including but not limited to, failing to reflect the number of actual
20 hours worked, the number of hours worked overtime, the amount of regular time, and overtime wages
21 due, compensation due for missed meal and rest breaks as required by Labor Code § 226(a) and Section
22 7 of the applicable Wage Order.

23 26. As a result of these deficiencies and inaccuracies, Plaintiff and other similarly-situated
24 employees were not able to promptly and easily determine from this wage statements alone their total
25 overtime and/or all wages earned.

26 27. Defendants also failed to provide Plaintiff and similarly-situated employees with a written
27 notice including employment-related information pursuant to Labor Code Section 2810.5(a). Plaintiff and
28

1 similarly-situated employees suffered a loss of wages, interest and attorney's fees as a result of Defendants'
2 failure to provide this notice. Defendants' failure to provide this information resulted in the underpayment
3 and late payment of wages. In addition, Plaintiff suffered an actual loss of damages due to her inability
4 to properly determine whether her wages actually reflected the proper work performed based on her rate
5 of pay, her regular payday, and the correct legal entity that was the employer and the correct legal address
6 of that entity in a reasonably efficient manner.

7 28. Defendants failed to maintain accurate records reflecting the beginning and ending time of
8 each shift, including meal periods, and all wages earned as required by law. Defendants instructed Plaintiff
9 and other similarly-situated employees to record inaccurate hours worked and not the true and correct time
10 worked despite having specific knowledge that employees worked more hours.

11 29. At all times relevant, Defendants failed to provide Plaintiff and other similarly-situated
12 employees with wage statements that truly and accurately reflected the number of hours worked by them,
13 or the wages due to them, specifically including but not limited to, failing to reflect the number of actual
14 hours worked, the number of hours worked overtime, the amount of regular time, and overtime wages
15 due, compensation due for missed meal and rest breaks as required by Labor Code § 226(a) and Section
16 7 of the applicable Wage Order.

17 30. Defendants failed to pay Plaintiff and other similarly-situated employees for all wages due
18 and owing and by the times required by law in the time periods set forth by Labor Code § 204 and Section
19 4 of the applicable Wage Order in that Defendants failed to properly compensate said employees for all
20 hours worked.

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

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

27 ///

IV.

CLASS ACTION DESIGNATION

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

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

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

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

a. Numerosity: The potential Class as defined is significant in size because Plaintiff is informed and believes and thereon alleges that at all relevant times, Defendants employed over 50 similarly-situated current and former employees who were affected by the unlawful employment practices alleged herein. Based on the potential class size, joinder of all employees individually would be impractical. Plaintiff also believes that there are more than 50 people that are members of the Class.

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

- i. Whether Defendants failed to pay wages and/or overtime compensation as required by the Labor Code and the applicable Wage Order under Labor Code §§ 510, 1194, 1198 and 1199;

- ii. Whether Defendants violated Labor Code §§ 226.7 and the applicable IWC Wage Order, by failing to inform Plaintiff and the Proposed Class of their right to take compliant off-duty rest periods and failing to authorize and permit these required rest periods throughout the term of employment and failing to compensate said employees one (1) hours wages in lieu of rest periods;
- iii. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Order, by failing to inform Plaintiff and the Proposed Class of their right to take compliant off-duty meal periods and failing to authorize and permit Plaintiff and the Proposed Class to take complaint, off-duty meal periods throughout the term of their employment and failing to compensate said employees one (1) hours wages in lieu of meal periods;
- iv. Whether Defendants violated Labor Code § 226(a) and the applicable IWC Wage Order, and Cal. Code Regs., Title 8, Section 11160 by failing to provide an accurate itemized wage statements that identifies all hours worked and all wages earned by Plaintiff and the Proposed Class;
- v. Whether Defendants violated §§ 201-203 of the Labor Code by failing to pay compensation due and owing at the time that any proposed Class Member's employment with Defendants terminated;
- 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.

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. CAUSES OF ACTION

FIRST CAUSE OF ACTION
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)

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

37. Plaintiff and members of the 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.

38. Labor Code § 1197 states “The minimum wage for employees fixed by the commission or by any state or local law, is the minimum wage to be paid to employees, and the payment of a less wage than minimum wage so fixed is unlawful.”

39. 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.”

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

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

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

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

17 44. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
18 individually as employers of Plaintiff, and/or a person acting on behalf of Plaintiff’s employer, who
19 violated, or caused to be violated, any provision regulating minimum wages or hours and days of work
20 in the applicable order of the Industrial Welfare Commission, as well as the California Labor Code
21 Sections 203, 226, 226.7, 1193.6, 1194 and 2802, and as such, are liable as an employer of Plaintiff for
22 such violations pursuant to California Labor Code § 558.1.

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

1 46. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the
2 unpaid wages resulting from Defendants' minimum wage violations including interest thereon, reasonable
3 attorney's fees and costs of suit, penalties, and liquidated damages to the fullest extent permissible
4 including those permitted pursuant to Labor Code §§ 558, 1194 and 1194.2 and Code of Civil Procedure
5 § 1021.5.

6 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

7 **SECOND CAUSE OF ACTION**
8 **FAILURE TO PAY OVERTIME WAGES**

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

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

12 48. Plaintiff and members of the Class are/were "non-exempt" employees of Defendants in the
13 State of California within the meaning of the Labor Code and the applicable Wage Order.

14 49. Labor Code § 510 provides in pertinent part: "Eight hours of labor constitutes a day's work.
15 Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek
16 and the first eight hours worked on the seventh day of work in any one workweek shall be compensated
17 at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in
18 excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay
19 for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall
20 be compensated at the rate of no less than twice the regular rate of pay of an employee."

21 50. Labor Code § 1198 states "The maximum hours of work and the standard conditions of
22 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor
23 for employees. The employment of any employee for longer hours than those fixed by the order or under
24 conditions of labor prohibited by the order is unlawful."

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

52. 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 failed to pay all Plaintiff and Class Members all overtime wages for all overtime worked and recorded, all in violation of Labor Code §§ 510, 1198 and the applicable Wage Order.

53. At all material times, Defendants were and/or are Plaintiff's and/or other similarly-situated 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 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, 1194, 1198 and 2802, and as such, are liable as an employer of Plaintiff for such violations pursuant to California Labor Code § 558.1.

55. As a direct result of Defendants' violations alleged herein, Plaintiff and Class Members 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.

56. 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)

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

58. At all times relevant, Plaintiff was a “non-exempt” employee of Defendants in the State of California within the meaning of the Labor Code and the applicable Wage Order.

59. 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.”

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

61. 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.”

62. Section 11 of the applicable IWC Wage Order provides, in part, that no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is

1 no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the
2 employee only if the first meal period was not waived. Subsection D of the applicable IWC Wage Order
3 § 11 provides that if an employer fails to provide an employee a meal period in accordance with the
4 applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
5 employee's regular rate of compensation for each workday that the meal period is not provided.

6 63. Through Defendants' conduct during the applicable statutory period including, but not
7 limited to, the conduct alleged herein, including that alleged on information and belief, Defendants
8 violated Labor Code §§ 226.7(b), 512(a), 1198, and the applicable Wage Order when they failed to provide
9 a 30-minute uninterrupted, duty-free meal period no later than the start of the sixth hour of work during
10 work periods in excess of five consecutive hours and, when applicable, when they failed to provide a
11 second 30-minute uninterrupted, duty-free meal period no later than the start of the eleventh hour of work.

12 64. Labor Code § 226.7(c) and the applicable IWC Wage Order § 11(D), provides that the
13 employer shall pay an employee one hour of pay at the employee's regular rate of compensation for each
14 workday that the compliant off-duty meal period is not provided. Defendants have not paid the appropriate
15 meal premium wages to Plaintiff and other similarly-situated employees.

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

22 66. Pursuant to California Labor Code § 558.1, Defendants a person acting on behalf of
23 Plaintiff's employer, who violated, or caused to be violated, any provision regulating minimum wages or
24 hours and days of work in the applicable order of the Industrial Welfare Commission, as well as the
25 California Labor Code Sections 203, 226, 226.7, 1193.6, 1194, 1198 and 2802, and as such, are liable as
26 an employer of Plaintiff for such violations pursuant to California Labor Code § 558.1.

27 ///

67. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered and continues 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 the respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

68. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the unpaid wages resulting from Defendants' meal period 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 §§ 226.7, 512, 558, 558.1, and Code of Civil Procedure § 1021.5.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

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)

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

70. At all times relevant, Plaintiff is and/or was a "non-exempt" employee of Defendants in California within the meaning of the Labor Code and the applicable Wage Order.

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

72. 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.

///

///

73. 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.

74. 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.

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

76. At all material times, Defendants were and/or are Plaintiff's employers or persons acting on behalf of their employer, within the meaning of California Labor Code § 558, 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 for in Labor Code § 558 including the payment of the underpaid wages to affected employees.

77. 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 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, 1194, 1198 and 2802, and as such, are liable as an employer of Plaintiff for such violations pursuant to California Labor Code § 558.1.

78. As a direct result, Plaintiff has suffered and continues to suffer, substantial losses related to the use and enjoyment of such wages, including lost interest on such monies and expenses and attorney's

1 fees in seeking to compel Defendants to fully perform their obligation under state law, all to the respective
2 damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

3 79. Pursuant to the Labor Code, Plaintiff seeks to recover in a civil action the unpaid balance
4 of the full amount of the unpaid wages including interest thereon, reasonable attorney's fees and costs of
5 suit to the fullest extent permissible including those permitted pursuant to Labor Code §§ 226.7, 558,
6 558.1, and Code of Civil Procedure § 1021.5.

7 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

8 **FIFTH CAUSE OF ACTION**
9 **FAILURE TO PROVIDE AND MAINTAIN ACCURATE**
10 **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)

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

13 81. At all times relevant, Plaintiff was an employee of Defendants within the meaning of the
14 Labor Code and the applicable Wage Order.

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

19 (1) Gross wages earned;

20 (2) Total hours worked by the employee, except for any employee whose compensation is
21 solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section
22 515 or any applicable order of the Industrial Welfare Commission;

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

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

27 (5) Net wages earned;
28

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

83. 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.”

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

85. 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 failed to provide accurate wage statements. For example, in addition to the derivative violations suffered as a result of the other violations detailed above, Defendants also failed to provide a wage statement that properly identified the number of overtime hours worked and meal and rest break premiums paid.

86. Plaintiff suffered injuries as a result of Defendants’ intentional and knowing failure to provide to Plaintiff and maintain the writings required by Labor Code § 226(a) and the applicable IWC Wage Order. Defendants’ failure to provide and maintain accurate statements left Plaintiff without the ability to know, understand and question the hours worked and wage earned and due. As a direct result,

1 Plaintiff has suffered and continues to suffer substantial injuries, losses and actual damages related to
2 Defendants' violations, including lost wages, lost interest on such wages, and expense and attorney's fees
3 in seeking to compel Defendants to fully perform their obligations.

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

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

20 89. At all material times, Defendants were and/or are Plaintiff's and/or other similarly-situated
21 employees' employers and/or persons acting on behalf of Defendants within the meaning of Labor Code
22 § 558, who violated or caused to be violated, a section of Part 2, Chapter 1, of the California Labor Code
23 or any provision regulating hours and days of work in any Order of the Industrial Welfare Commission
24 and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code § 558
25 including the payment of the underpaid wages to affected employees.

26 90. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
27 individually as employers of Plaintiff, and/or a person acting on behalf of Plaintiff's employer, who
28

1 violated, or caused to be violated, any provision regulating minimum wages or hours and days of work
2 in the applicable order of the Industrial Welfare Commission, as well as the California Labor Code
3 Sections 203, 226, 226.7, 1193.6, 1194, 1198 and 2802, and as such, are liable as an employer of Plaintiff
4 for such violations pursuant to California Labor Code § 558.1.

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

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

13 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

14 **SIXTH CAUSE OF ACTION**
15 **FAILURE TO TIMELY PAY WAGES DUE**
16 **DURING AND UPON SEPARATION OF EMPLOYMENT**

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

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

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

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

25 96. Labor Code § 202(a) states "If an employee not having a written contract for a definite
26 period quits his or her employment, his or her wages shall become due and payable not later than 72 hours
27 thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which
28 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

1 payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall
2 constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the
3 notice of quitting.”

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

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

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

15 100. At all material times, Defendants were and/or are Plaintiff’s and other similarly-situated
16 employees’ employers and/or persons acting on behalf of Defendants within the meaning of Labor Code
17 § 558/558.1, who violated or caused to be violated, a section of Part 2, Chapter 1, of the California Labor
18 Code or any provision regulating hours and days of work in any Order of the Industrial Welfare
19 Commission and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code
20 § 558/558.1 including the payment of the underpaid wages to affected employees.

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

102. As a direct result of Defendants' violations alleged herein, Plaintiff and members of the 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.

103. 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)

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

105. 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."

106. 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 as 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.

107. 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.

9 108. 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.

15 109. 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.

18 110. 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.

22 111. 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.

25 112. 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,
28

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.

4 113. 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.

8 114. 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 **PRAYER FOR RELIEF**

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

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

- e. For an award of unpaid wages, including regular wages, minimum and overtime wages, to the extent permissible by law to each affected person;
- f. 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;
- g. For an award of actual damages to the extent permissible by the Labor Code including Labor Code § 226(e);
- h. For an award of liquidated damages to the extent permissible by Labor Code § 1194.2;
- i. For pre- and post-judgment interest to the extent permitted by law including, but not limited to, Labor Code §§ 218.6 and 1194;
- j. 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
- k. An award of such other and further relief as this Court deems proper and just.

Dated: March 12, 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: March 12, 2020

ShortLegal, APC



By: _____

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