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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

JACQUELINE HERNDON, individually
and on behalf of all others similarly
situated,

Plaintiff,

vs.

MOSAIC HOTELS SERVICE
CORPORATION, a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: **RIC2002462**

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT:**

1. VIOLATION OF LAB. CODE §§ 201, 202 AND 203;
2. VIOLATION OF LAB. CODE § 226.7;
3. VIOLATION OF LAB. CODE §§ 226.7 AND 512;
4. VIOLATION OF LAB. CODE § 226;
5. VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.*;
6. VIOLATION OF LAB. CODE § 2698 *ET SEQ.*

DEMAND OVER \$25,000.00

1 Plaintiff Jacqueline Herndon (“Plaintiff”) hereby submits this Class and Representative
2 Action Complaint (“Complaint”) against her former employer Defendant Mosaic Hotels Service
3 Corporation (“Defendant” or “Mosaic”), and Does 1 through 50 (collectively, “Defendants”), on
4 behalf of herself and a class of all other similarly situated current and former employees of
5 Defendant for wages and penalties for violations of the California Labor Code, including without
6 limitation, failure to pay overtime and provide employees with accurate itemized wage
7 statements, as follows:

8 **INTRODUCTION**

9 1. This representative action is within the Court’s jurisdiction under California
10 Labor Code sections 201-203, 226(a), 226.7, 246, 512, 2698, *et seq.*, the Private Attorneys
11 General Act (“PAGA”), Business and Professions Code section 17200, *et seq.* (the “UCL”), and
12 the applicable Wage Orders of the California Industrial Welfare Commission (“IWC”).

13 2. This Complaint challenges systemic illegal employment practices resulting in
14 violations of the California Labor Code against individuals who worked for Defendant.

15 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
16 jointly and severally, have acted intentionally and with deliberate indifference and conscious
17 disregard to the rights of all employees by failing to properly provide off-duty meal and rest
18 periods, failing to pay additional compensation for missed meal and rest periods, failing to pay
19 overtime wages based on the correct regular rate of pay that factored in any non-discretionary
20 incentives, and failing to provide accurate itemized wage statements to its employees.

21 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
22 have engaged in, among other things a system of willful violations of the California Labor code
23 and the applicable IWC Wage Orders by creating and maintaining policies, practices and
24 customs that knowingly deny employees the above stated rights and benefits.

25 **JURISDICTION AND VENUE**

26 5. The Court has jurisdiction over the violations of the California Labor Code
27 sections 201-203, 226(a), 226.7, 246, 512, 2698, the UCL and the applicable Wage Orders.

28 6. Venue is proper in Riverside County because Plaintiff worked at Defendant’s

1 location in Palm Springs, California.

2 **PARTIES**

3 7. Plaintiff was employed by Defendant as an hourly non-exempt employee from on
4 or about November 2016 to on or about September 24, 2019.

5 8. Plaintiff was and is the victims of the policies, practices, and customs of
6 Defendant complained of in this action in ways that have deprived her of the rights guaranteed
7 by California Labor Code sections 201-203, 226(a), 226.7, 246, 512 and 2698, and the UCL.

8 9. Plaintiff is informed and believes, and based thereon alleges, that Mosiac is a
9 California corporation that maintains operations in the State of California, including in Riverside
10 County, California.

11 10. Plaintiff is informed and believes, and based thereon alleges, that at all times
12 herein mentioned Does 1 through 50, are and were corporations, business entities, individuals,
13 and partnerships, licensed to do business and actually doing business in the State of California.
14 As such, and based upon all the facts and circumstances incident to Defendants' business,
15 Defendants are subject to the California Labor Code and the UCL.

16 11. Plaintiff does not know the true names or capacities, whether individual, partner
17 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
18 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
19 complaint when the true names and capacities are known. Plaintiff is informed and believes and
20 based thereon alleges that each of said fictitious defendants was responsible in some way for the
21 matters alleged herein and proximately caused Plaintiff and members of the general public and
22 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

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

28 13. Plaintiff is informed and believes, and based thereon alleges, that at all times

1 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
2 joint venturer of, or working in concert with each of the other co-Defendants and was acting
3 within the course and scope of such agency, employment, joint venture, or concerted activity. To
4 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
5 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
6 Defendants.

7 14. At all times herein mentioned, Defendants, and each of them, were members of,
8 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
9 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

10 15. At all times herein mentioned, the acts and omissions of various Defendants, and
11 each of them, concurred and contributed to the various acts and omissions of each and all of the
12 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
13 herein mentioned, Defendants, and each of them, ratified each and every act or omission
14 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
15 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
16 damages as herein alleged.

17 **CLASS ACTION ALLEGATIONS**

18 16. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
19 California Code of Civil Procedure section 382. Plaintiff proposes the following Classes and
20 Subclasses:

21 a. All current and former non-exempt California employees of Defendant who were
22 paid sick pay wages and non-discretionary incentive wages, including without limitation
23 commission pay, and whose employment ended, either voluntarily or involuntarily, at any time
24 during the period of time from April 6, 2017, through the present (the “Sick Pay Class” and
25 “Sick Pay Class Members”).

26 b. All current and former non-exempt employees of Defendant in the State of
27 California who worked more than 3.5 hours in any shift, at any time during the period of April 6,
28 2016, through the present (the “Rest Period Class” or “Rest Period Class Members”).

1 c. All current and former non-exempt California employees of Defendant who were
2 paid a rest period premium and non-discretionary incentive wages, including without limitation
3 commission pay, during the same workweek, at any time during the period of April 6, 2016,
4 through the present (the “Regular Rate Rest Period Sub-Class” or “Regular Rate Rest Period
5 Sub-Class Members”).

6 d. All current and former non-exempt employees of Defendant in the State of
7 California who worked more than five (5) hours in any shift, at any time during the period of
8 April 6, 2016, through the present (the “Meal Period Class” or “Meal Period Class Members”).

9 e. All current and former non-exempt California employees of Defendant who were
10 paid a meal period premium and non-discretionary incentive wages, including without limitation
11 commission pay, during the same workweek, at any time during the period of April 6, 2016,
12 through the present (the “Regular Rate Meal Period Sub-Class” or “Regular Rate Meal Period
13 Sub-Class Members”).

14 17. Numerosity and Ascertainability: The members of the Class are so numerous that
15 joinder of all members would be impractical, if not impossible. The identity of the members of
16 the Class is readily ascertainable by review of Defendant’s records, including payroll records.
17 Plaintiff is informed and believes, and based thereon alleges, that Defendant: (a) failed to pay
18 sick pay at the correct regular rate of pay by not including all non-discretionary incentive wages
19 in the regular rate, including but not limited to commissions, in violation of Labor Code sections
20 201-203 and 246; (b) failed to provide off-duty rest breaks, or pay rest period premiums at the
21 correct regular rate of pay, in violation of Labor Code section 226.7; (c) failed to provide off-
22 duty meal breaks, or pay meal period premiums at the correct regular rate of pay, in violation of
23 Labor Code sections 226.7, and 512; (d) failed to provide accurate and complete wage
24 statements, in violation of Labor Code section 226(a); (e) failed to pay final wages in a timely
25 manner, in violation of Labor Code sections 201-203; and (f) engaged in unfair business
26 practices in violation of the California Labor Code and the UCL.

27 18. Adequacy of Representation: The named Plaintiff is fully prepared to take all
28 necessary steps to represent fairly and adequately the interests of the class defined above.

1 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the Class and
2 the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class
3 actions in the past and currently have a number of wage-and-hour class actions pending in
4 California state and federal courts.

5 19. Defendant uniformly administered a corporate policy, practice of: (a) failing to
6 pay sick pay at the correct regular rate of pay by not including all non-discretionary incentive
7 wages in the regular rate, including but not limited to commissions, in violation of Labor Code
8 sections 201-203 and 246; (b) failing to provide off-duty rest breaks, or pay rest period premiums
9 at the correct regular rate of pay, in violation of Labor Code section 226.7; (c) failing to provide
10 off-duty meal breaks, or pay meal period premiums at the correct regular rate of pay, in violation
11 of Labor Code sections 226.7, and 512; (d) failing to provide accurate and complete wage
12 statements, in violation of Labor Code section 226(a); (e) failing to pay final wages in a timely
13 manner, in violation of Labor Code sections 201-203; and (f) engaging in unfair business
14 practices in violation of the California Labor Code and the UCL.

15 20. Plaintiff is informed and believes, and based thereon alleges, that Defendant had a
16 consistent and uniform policy, practice and procedure of willfully failing to comply with Labor
17 Code 201-203, 226(a), 226.7, 246 and 512, and the UCL.

18 21. Common Question of Law and Fact: There are predominant common questions
19 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
20 concerning Defendant's policy and practice of: (a) failing to pay sick pay at the correct regular
21 rate of pay by not including all non-discretionary incentive wages in the regular rate, including
22 but not limited to commissions, in violation of Labor Code sections 201-203 and 246; (b) failing
23 to provide off-duty rest breaks, or pay rest period premiums at the correct regular rate of pay, in
24 violation of Labor Code section 226.7; (c) failing to provide off-duty meal breaks, or pay meal
25 period premiums at the correct regular rate of pay, in violation of Labor Code sections 226.7, and
26 512; (d) failing to provide accurate and complete wage statements, in violation of Labor Code
27 section 226(a); (e) failing to pay final wages in a timely manner, in violation of Labor Code
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1 sections 201-203; and (f) engaging in unfair business practices in violation of the California
2 Labor Code and the UCL.

3 22. Typicality: The claims of Plaintiff are typical of the claims of all members of the
4 class in that Plaintiff has suffered the harms alleged in this Complaint in a similar and typical
5 manner as the Class Members. Plaintiff and Sick Pay Class Members routinely earned non-
6 discretionary incentive wages such as commission pay, which should have been factored into the
7 regular rate of pay that Defendant use to calculate sick pay wages. However, when sick pay
8 wages were paid, it was paid at the employee's base rate of pay rather than the regular rate.

9 23. Additionally, Defendant failed to provide proper meal and rest breaks, and pay
10 meal and rest period premiums fully and in a timely manner. More specifically, as a pattern and
11 practice, Defendant provided a limited budget for staffing of employees, which limited the ability of
12 Plaintiff and other employees to take off-duty meal and rest breaks. Defendant, moreover, regularly
13 required Plaintiff, the Meal Period Class and Rest Period Class to work during legally mandated
14 meal and rest periods, including but not limited to requiring that these employees perform
15 massage services for clients of Defendant. When Defendant paid meal and rest period premiums
16 for such missed breaks, the premiums were paid at the employee's base hourly rate of pay rather
17 than the regular rate. As such, meal and rest period premium wages did not include additional
18 compensation resulting from non-discretionary incentive wages, such as commission pay.

19 24. As a result of Defendant's unlawful sick pay policy and meal and rest period
20 practices, the wage statements provided to Plaintiff and Class Members displayed the wrong
21 information, including but not limited to, inaccurate rates of pay, total hours worked and net and
22 gross wages earned. Therefore, Plaintiff is a member of the Class and has suffered the alleged
23 violations of Labor Code 201-203, 226(a), 226.7, 246 and 512, and the UCL.

24 25. The California Labor Code upon which Plaintiff bases these claims are broadly
25 remedial in nature. These laws and labor standards serve an important public interest in
26 establishing minimum working conditions and standards in California. These laws and labor
27 standards protect the average working employee from exploitation by employers who may seek
28 to take advantage of superior economic and bargaining power in setting onerous terms and

1 conditions of employment.

2 26. The nature of this action and the format of laws available to Plaintiff and
3 members of the Class identified herein make the class action format a particularly efficient and
4 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
5 file an individual lawsuit, the corporate defendants would necessarily gain an unconscionable
6 advantage since it would be able to exploit and overwhelm the limited resources of each
7 individual plaintiff with their vastly superior financial and legal resources. Requiring each Class
8 Member to pursue an individual remedy would also discourage the assertion of lawful claims by
9 employees who would be disinclined to file an action against their former and/or current
10 employer for real and justifiable fear of retaliation and permanent damage to their careers at
11 subsequent employment.

12 27. The prosecution of separate actions by the individual class members, even if
13 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
14 to individual Class members against the Defendants and which would establish potentially
15 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
16 individual Class members which would, as a practical matter, be dispositive of the interest of the
17 other Class members not parties to the adjudications or which would substantially impair or
18 impede the ability of the Class members to protect their interests. Further, the claims of the
19 individual members of the Class are not sufficiently large to warrant vigorous individual
20 prosecution considering all of the concomitant costs and expenses.

21 28. Such a pattern, practice and uniform administration of corporate policy regarding
22 illegal employee compensation described herein is unlawful and creates an entitlement to
23 recovery by Plaintiff and the Class identified herein, in a civil action, for overtime wages,
24 inaccurate wage statements, applicable penalties, reasonable attorneys' fees, and costs of suit
25 according to the mandate of California Labor Code 201-203, 226(a), 226.7, 246 and 512, the
26 UCL and Code of Civil Procedure section 1021.5.

27 29. Proof of a common business practice or factual pattern, which the named Plaintiff
28 experienced and is representative of, will establish the right of each of the members of the

1 Plaintiff Class to recovery on the causes of action alleged herein.

2 30. The Class is commonly entitled to a specific fund with respect to the
3 compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to
4 restitution of those funds being improperly withheld by Defendants. This action is brought for
5 the benefit of the entire class and will result in the creation of a common fund.

6 **FIRST CAUSE OF ACTION**

7 **VIOLATIONS OF LABOR CODE §§ 201, 202 AND 203**

8 **(BY PLAINTIFF AND THE SICK PAY CLASS AGAINST DEFENDANTS)**

9 31. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 30 as
10 though fully set for herein.

11 32. Labor Code section 246(l)(1) requires that nonexempt employees be paid sick
12 time in the same manner as the regular rate of pay for the workweek in which the employee uses
13 paid sick time, whether or not the employee actually works overtime in that workweek. Labor
14 Code section 246(l)(2) further requires that paid sick time for nonexempt employees be calculated
15 by dividing the employee's total wages, not including overtime premium pay, by the employee's
16 total hours worked in the full pay periods of the prior 90 days of employment.

17 33. Defendant violated Labor Code section 246 by failing to pay sick pay at the
18 regular rate of pay. Plaintiff and Sick Pay Class Members routinely earned non-discretionary
19 incentive wages (such as commission pay) and thus increasing their regular rate of pay. However,
20 when sick pay was paid, it was paid at their base rate of pay rather than the regular rate of pay, as
21 required under Labor Code section 246.

22 34. As a pattern and practice, Defendants regularly failed to pay Plaintiff and other
23 members of the Sick Pay Class their correct wages and accordingly owe waiting time penalties
24 pursuant to Labor Code section 203. Further, Plaintiff is informed and believes and based thereon
25 alleges that such failure to pay sick pay at regular rate was willful, such that Plaintiff and Sick Pay
26 Class Members are entitled to waiting time penalties pursuant to Labor Code sections 201-203.

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1 **SECOND CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE § 226.7**

3 **(BY PLAINTIFF, THE REST PERIOD CLASS, AND THE REGULAR RATE REST**
4 **PERIOD SUB-CLASS AGAINST ALL DEFENDANTS)**

5 35. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 34 as
6 though fully set forth herein.

7 36. At all relevant times, Defendant failed in its affirmative obligation to ensure that
8 Plaintiff and the Rest Period Class had the opportunity to take and were provided with off-duty
9 10-minute rest periods in accordance with the mandates of the California Labor Code and the
10 applicable IWC Wage Order. Specifically, as a pattern and practice, Defendant provided a limited
11 budget for staffing of employees, which limited the ability of Plaintiff and the Rest Period Class to take
12 off-duty rest breaks. Defendant, moreover, regularly required Plaintiff and the Rest Period Class to
13 work during legally mandated rest periods, including but not limited to requiring that employees
14 perform massage services for clients of Defendant.

15 37. Defendant further failed to pay Plaintiff and the Regular Rate Rest Period Sub-
16 Class rest period premium compensation, as mandated by Labor Code section 226.7. For each
17 workday that a rest period is not provided, employees are entitled to one additional hour of pay at
18 the employee's regular rate of pay/compensation. When Defendant paid rest period premiums for
19 missed breaks, the premiums were paid at the employee's base hourly rate of pay rather than the
20 regular rate. As such, rest period premium wages did not include additional compensation
21 resulting from non-discretionary incentive wages, such as commission pay.

22 38. Plaintiff is informed and believes, and based thereon alleges, that Defendant
23 willfully failed to pay employees who were not provided the opportunity to take rest breaks the
24 premium compensation set out in Labor Code section 226.7, and the applicable IWC Wage
25 Order and that Plaintiff, the Rest Period Class and the Regular Rate Rest Period Sub-Class are
26 owed wages and waiting time penalties for the rest period violations set forth above.

27 39. Such a pattern, practice and uniform administration of corporate policy as
28 described herein is unlawful and creates an entitlement to recovery by Plaintiff, the Rest Period

1 Class, and the Regular Rate Rest Period Sub-Class identified herein, in a civil action, for the
2 unpaid balance of the premium compensation pursuant to Labor Code section 226.7, and the
3 applicable IWC Wage Order, including interest thereon, penalties, reasonable attorneys' fees,
4 and costs of suit.

5 **THIRD CAUSE OF ACTION**

6 **VIOLATION OF LABOR CODE §§ 226.7 AND 512**

7 **(BY PLAINTIFF, THE MEAL PERIOD CLASS, AND THE REGULAR RATE MEAL**
8 **PERIOD SUB-CLASS AGAINST ALL DEFENDANTS)**

9 40. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 39 as
10 though fully set forth herein.

11 41. At all relevant times, Defendant failed in its affirmative obligation to ensure that
12 Plaintiff and the Meal Period Class had the opportunity to take and were provided with off-duty
13 30-minute meal periods in accordance with the mandates of the California Labor Code and the
14 applicable IWC Wage Order. Specifically, as a pattern and practice, Defendant provided a limited
15 budget for staffing of employees, which limited the ability of Plaintiff and the Meal Period Class to take
16 off-duty meal breaks. Defendant, moreover, regularly required Plaintiff and the Meal Period Class
17 to work during legally mandated meal periods, including but not limited to requiring that
18 employees perform massage services for clients of Defendant.

19 42. Defendant further failed to pay Plaintiff and the Regular Rate Meal Period Sub-
20 Class meal period premium compensation, as mandated by Labor Code section 226.7. For each
21 workday that a meal period is not provided, employees are entitled to one additional hour of pay
22 at the employee's regular rate of pay/compensation. When Defendant paid meal period
23 premiums for missed breaks, the premiums were paid at the employee's base hourly rate of pay
24 rather than the regular rate. As such, meal period premium wages did not include additional
25 compensation resulting from non-discretionary incentive wages, such as commission pay.

26 43. Plaintiff is informed and believes, and based thereon alleges, that Defendant
27 willfully failed to pay employees who were not provided the opportunity to take meal periods the
28 premium compensation set out in Labor Code section 226.7, and the applicable IWC Wage

Order and that Plaintiff, the Meal Period Class and the Regular Rate Meal Period Sub-Class are owed wages and waiting time penalties for the meal period violations set forth above.

44. Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by Plaintiff, the Meal Period Class, and the Regular Rate Meal Period Sub-Class identified herein, in a civil action, for the unpaid balance of the premium compensation pursuant to Labor Code section 226.7, and the applicable IWC Wage Order, including interest thereon, penalties, reasonable attorneys' fees, and costs of suit.

FOURTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 226

(BY PLAINTIFF, THE SICK PAY CLASS, REST PERIOD CLASS, REGULAR RATE REST PERIOD SUB-CLASS, MEAL PERIOD CLASS AND REGULAR RATE MEAL PERIOD SUB-CLASS AGAINST ALL DEFENDANTS)

45. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 44 as though fully set forth herein.

46. Defendant failed in its affirmative obligation to provide accurate itemized wage statements, in violation of Labor Code section 226(a).

47. Plaintiff, the Sick Pay Class, Rest Period Class, Regular Rate Rest Period Sub-Class, Meal Period Class and Regular Rate Meal Period Sub-Class were paid on an hourly basis. As such, the wage statements should have reflected the number of hours worked and the applicable hourly rates, and the gross and net wages earned during the pay period.

48. As a result of Defendant's unlawful sick pay policy and meal and rest period practices alleged above, the wage statements provided to employees displayed the wrong information, including but not limited to, inaccurate rates of pay, total hours worked and net and gross wages earned.

49. Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by Plaintiffs and the classes identified herein, in a civil action, for all penalties pursuant to Labor Code section 226, including

1 interest thereon, attorneys' fees, and costs of suit according to the mandate of California Labor
2 Code section 226.

3 **FIFTH CAUSE OF ACTION**

4 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, ET SEQ.**
5 **(BY PLAINTIFF, THE SICK PAY CLASS, REST PERIOD CLASS, REGULAR RATE**
6 **REST PERIOD SUB-CLASS, MEAL PERIOD CLASS AND REGULAR RATE MEAL**
7 **PERIOD SUB-CLASS AGAINST ALL DEFENDANTS)**

8 50. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 49 as
9 though fully set forth herein.

10 51. Plaintiff is informed and believes, and based thereon alleges, that at all times
11 herein mentioned Defendant has engaged in unlawful, deceptive and unfair business practices, as
12 proscribed by California Business and Professions Code section 17200, *et seq.*, including those
13 set forth herein above thereby depriving Plaintiff and other members of the classes identified
14 herein the minimum working condition standards and conditions due to them under the
15 California laws and the applicable IWC Wage Orders as specifically described therein.

16 52. More specifically, Defendant has engaged and continues to engage in unfair and
17 unlawful business practices in California by practicing, employing and utilizing the employment
18 practices outlined above, including, by failing to: (a) failing to pay sick pay at the correct regular
19 rate of pay by not including all non-discretionary incentive wages in the regular rate, including
20 but not limited to commissions, in violation of Labor Code sections 201-203 and 246; (b) failing
21 to provide off-duty rest breaks, or pay rest period premiums at the correct regular rate of pay, in
22 violation of Labor Code section 226.7; and (c) failing to provide off-duty meal breaks, or pay
23 meal period premiums at the correct regular rate of pay, in violation of Labor Code sections
24 226.7, and 512.

25 53. Defendant's utilization of such unfair and unlawful business practices constitutes
26 unfair, unlawful competition and provides an unfair advantage over Defendant's competitors.

27 54. Plaintiff seeks, on her own behalf and on behalf of other members of the classes
28 identified herein, full restitution of monies, as necessary and according to proof, to restore any

1 and all monies withheld, acquired and/or converted by the Defendant's by means of the unfair
2 practices complained of herein.

3 **SIXTH CAUSE OF ACTION**

4 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

5 **(PRIVATE ATTORNEYS GENERAL ACT)**

6 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

7 55. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 54 as
8 though fully set for herein.

9 56. Plaintiff brings this cause of action as a proxy for the State of California, and in
10 this capacity, seeks penalties on behalf of all Aggrieved Employees of Defendants from March 6,
11 2019, through the present, for Defendant's policy and practice of failing to: pay sick pay at the
12 correct regular rate of pay by not including all non-discretionary incentive wages in the regular
13 rate, including but not limited to commissions, in violation of Labor Code sections 201-203 and
14 246; (b) provide off-duty rest breaks, or pay rest period premiums at the correct regular rate of
15 pay, in violation of Labor Code section 226.7; (c) provide off-duty meal breaks, or pay meal
16 period premiums at the correct regular rate of pay, in violation of Labor Code sections 226.7, and
17 512; (d) provide accurate and complete wage statements, in violation of Labor Code section
18 226(a); and (e) pay final wages in a timely manner, in violation of Labor Code sections 201-203

19 57. On or about March 6, 2020, Plaintiff sent written notice to the California Labor &
20 Workforce Development Agency of Defendant's violations of Labor Code sections 201, 202,
21 203, 226(a), 246, 226.7 and 512, pursuant to Labor Code section 2699 *et seq.* Pursuant to Labor
22 Code section 2699.3, Plaintiff also sent her PAGA written notice to Defendant via certified mail.

23 58. As of the date of the filing of this Complaint, the LWDA has not responded nor
24 informed Plaintiff that it intends to investigate the Labor Code violations provided for in the
25 written notice. As such, pursuant to Labor Code section 2699(a), Plaintiff and Aggrieved
26 Employees may seek recovery of any and all applicable civil penalties on behalf of the State of
27 California for Defendant's violation of Labor Code sections 201, 202, 203, 226(a), 246, 226.7
28 and 512.

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1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as the representative of the Classes as described herein;
3. For an order appointing counsel for Plaintiff as class counsel;
4. Upon the First Cause of Action, for damages and/or penalties pursuant to statute as set forth in Labor Code sections 201, 202, 203 and 246, and for costs and attorneys' fees;
5. Upon the Second Cause of Action, for damages and/or penalties pursuant to Labor Code sections 201, 202, 203 and 226.7, and for costs and attorneys' fees;
6. Upon the Third Cause of Action, for damages and/or penalties pursuant to Labor Code sections 201, 202, 203, 226.7 and 512, and for costs and attorneys' fees;
7. Upon the Fourth Cause of Action, for statutory penalties pursuant to Labor Code section 226, and for costs and attorneys' fees;
8. Upon the Fifth Cause of Action, for restitution to Plaintiff and other similarly affected members of the general public of all funds unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business & Professions Code section 17200, *et seq.*, and for costs and attorneys' fees;
9. Upon the Sixth Cause of Action, for civil penalties according to proof pursuant to Labor Code section 2698, *et. seq.*;
10. On all causes of action for attorneys' fees and costs as provided by California Labor Code sections 201, 202, 203, 226, 226.7, 246, 512 and 2698 *et. seq.*, and Code of Civil Procedure section 1021.5; and
11. For such other and further relief the Court may deem just and proper.

1 DATED: May 4, 2020

DIVERSITY LAW GROUP, P.C.

2
3 By:



Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiff and the Class