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County of San Diego
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

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

Plaintiffs,

v.

RESPIRONICS CALIFORNIA, LLC and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 37-2020-00013942-CU-OE-CTL

Unlimited Civil - Amount Demanded
Exceeds \$25,000.00

IMAGED FILE

FIRST AMENDED 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 Indemnify/Reimburse Expenses
6. Failure to Provide and Maintain Accurate Itemized Wage Statements
7. Failure to Timely Pay Wages Due Upon Separation of Employment
8. Retaliation
9. Unfair Business Practices (Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*)
10. PAGA Claim for Civil Penalties

Date Complaint Filed: March 12, 2020
Judge: Richard E. Strauss
Dept.: C-75

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

I.

NATURE OF ACTION AND INTRODUCTORY STATEMENT

1. Plaintiff JANINE GARCIA (hereinafter “GARCIA”), brings this individual, representative PAGA action and class action suit against Defendant RESPIRONICS CALIFORNIA, LLC (“Respironics”) and DOES 1 through 50, inclusive (collectively referred to herein as “Defendants”), on behalf of herself and all other similarly-situated and current and former aggrieved employees for engaging in a systemic pattern of wage and hour violations under California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders.

2. RESPIRONICS CALIFORNIA, LLC is a company designing, developing, manufacturing and servicing of ventilators, and associated respiratory equipment with their main business office in Carlsbad, San Diego County, California.

3. GARCIA, at times relevant, has been employed by Defendants as a customer advocate in San Diego, California.

4. 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. Misclassifying Plaintiff and all other current and former similarly-situated and aggrieved employees as exempt employees;
- b. Failing to pay minimum, regular and overtime wages for all hours worked;
- c. Failing to provide compliant meal and rest breaks;
- d. Failing to indemnify Plaintiff and all other current and former similarly-situated and aggrieved employees for necessary expenses and losses in discharging their duties;
- e. Failing to provide and maintain accurate records and itemized wage statements;
- f. Failing to timely pay wages due during and upon termination of employment; and

g. Retaliation.

5. Plaintiff brings this lawsuit seeking injunctive, restitution and monetary relief against Defendants, and each of them, on behalf of Plaintiff individually and on behalf of all other current and former similarly-situated and aggrieved employees to recover, among other things, unpaid wages and benefits, interest, penalties, liquidated damages, attorney's fees and costs pursuant to California Labor Code §§ 98.6, 201, 202, 203, 204, 210, 218, 218.5, 218.6, 223, 226, 226.7, 233, 510, 511, 512, 558, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, Labor Code § 2698 et seq., and California Code of Civil Procedure 1021.5, and provisions of the relevant IWC Wage Order. Plaintiff reserves the right to name additional representatives throughout the State of California.

II.

PARTIES, JURISDICTION AND VENUE

6. Plaintiff GARCIA is and at all relevant times was a resident of the State of California and is currently employed by Defendants in their San Diego office, California.

7. Defendant RESPIRONICS CALIFORNIA, LLC ("Respironics"), is a California Corporation with its principal place of business in San Diego County. According to its website, Respironics is an innovative leader that designs, develops, manufactures, and services of ventilators, and associated respiratory equipment worldwide. They claim to service more than 100 countries and have more than 70,000 employees.

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

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10. Defendants, at all relevant times, conducted business in the State of California and were employers 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 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.

GENERAL ALLEGATIONS

13. Plaintiff GARCIA has been employed by Defendants as a customer advocate since February 28, 2019 until May 29, 2020 when she resigned. She works at Respironics' facilities located in San Diego, California.

14. Defendant RESPIRONICS CALIFORNIA, LLC is an employer doing business in the State of California and, according to its website designs, develops, manufactures and services of ventilators, and associated respiratory equipment worldwide.

15. At all relevant times, Plaintiff and all other current and former similarly-situated and aggrieved employees were misclassified by Defendants as exempt employees pursuant to the provisions

1 of the Labor Code and relevant Wage Order, which pertain to the payment of overtime wages and meal
2 and rest breaks. However, in fact Plaintiff and all other current and former similarly-situated and aggrieved
3 employees were not exempt from said statutory provisions because they were not primarily engaged in
4 duties which meet the tests for any exemption provided by the relevant Wage Order.

5 16. Throughout their employment with Defendants, Plaintiff and all other current and former
6 similarly-situated and aggrieved employees performed low-level duties under direct supervision and with
7 little-to-no independent discretion. Plaintiff performed an entry level role in the highly uniform and
8 standardized quality assurance operations in the Respironics. As with all other current and former
9 similarly-situated and aggrieved employees who did not meet the test of any exemption, Plaintiff's main
10 duties are/were to assess the initial complaints of customers for reporting purposes and, subsequently,
11 assign them to the appropriate Level 1 or Level 2 Complaint Analyst for further investigation, and
12 ultimately reporting to US and/or international regulatory agencies. The assessment of the complaints is
13 based on strictly enforced unfettered adherence to Respironics' uniform, nationwide applicable standard
14 operating instructions, policies, and practices so Plaintiff and other current and former employees have
15 minimal, if any, discretion to make their own decisions or use their own judgment in the process of
16 determining whether the complaint is reportable or not. Indeed, nearly every aspect of their jobs requires
17 higher-level review, involves an automated function, or is a routine, non-managerial and non-exempt job
18 duty. In addition, Plaintiff and all other current and former similarly-situated and aggrieved employees
19 are required to collaborate with Engineering, Customer Support, Field personnel, Market Service Order
20 reviewers and other appropriate groups in order to provide an adequate initial evaluation of customers
21 complaints.

22 17. At all relevant times, Plaintiff and all other current and former similarly-situated and
23 aggrieved employees have been trained on all aspects of how to perform their job duties in a uniform and
24 standardized way by Respironics training and development department. Moreover, all of the California
25 employees, including Plaintiff use the same computer software TrackWise, which is a quality software
26 tool that automates and standardizes all aspects of the determination whether a complaint is reportable for
27 further investigation. Plaintiff and all other current and former similarly-situated and aggrieved employees
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1 have none or a very little actual discretion in performing their job duties. Rather they merely process the
2 customer complaints strictly following and applying the complaint handling instructions which provide in
3 great details every step of the complaint handling work-flow procedures. Consequently, none of the job
4 duties performed by Plaintiff and all other current and former similarly-situated and aggrieved employees
5 could be considered primarily intellectual, managerial, or creative and requiring exercise of discretion and
6 independent judgment. Thus, neither Plaintiff nor all other current and former similarly-situated and
7 aggrieved employees fall under the executive, administrative, or professional exemptions from overtime
8 requirements under the California Labor Code and the relevant Wage Order and, therefore, they are/were
9 entitled to the protections afforded to non-exempt employees under the California Labor Code.

10 18. Because Plaintiff and other similarly-situated employees were misclassified, they were
11 entitled to overtime compensation as provided by section 3(A) of the relevant Wage Order, and meal and
12 rest periods as provided by Sections 11 and 12 of the applicable Wage Order, In addition, section 7 of the
13 relevant Wage Order requires the employer to maintain accurate records of the hours worked by
14 employees.

15 19. At all relevant times, Plaintiff and all other similarly-situated and current and former
16 aggrieved employees were required and encouraged by their supervisors to work overtime, and, indeed,
17 they work in excess of eight hours a day and 40 hours within a workweek to get their job done, attend
18 online training classes posted on Philips TEDS EveryOne (a multi-user software system) and Philips
19 Online University, read voluminous manuals and instructions regarding the investigation of customer
20 complaints provided to them by Respironics, and meet their employer's expectations. However, Plaintiff
21 and all other current and former similarly-situated and aggrieved employees were not paid at least
22 minimum wage for each hour worked, including these training and administrative tasks, nor were they
23 provided overtime wages for all overtime hours worked. Accordingly, Defendants failed to pay Plaintiff
24 and all other current and former similarly-situated and aggrieved employees all minimum, regular and
25 overtime wages for all hours worked.

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

3 21. During the time they were misclassified, Plaintiff and all other current and former
4 similarly-situated and aggrieved employees were routinely denied their meal breaks in order to timely
5 perform all the job duties imposed upon them by Defendants.

6 22. Defendants failed to pay Plaintiff and all other current and former similarly-situated and
7 aggrieved employees meal period premium wages for each day in which they did not provide Plaintiff an
8 opportunity to take a compliant meal period.

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

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

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

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

25 27. Defendants failed to maintain accurate records reflecting the beginning and ending time of
26 each shift, including meal periods, and all wages earned as required by law. Defendants instructed Plaintiff
27 and all other current and former similarly-situated and aggrieved employees to record inaccurate hours
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1 worked and not the true and correct time worked.

2 28. Defendants further had a policy and practice of failing to indemnify Plaintiff and all other
3 current and former similarly-situated and aggrieved employees for all necessary expenditures or losses
4 incurred in direct consequence of their duties. As a condition of her employment and part of her job
5 duties, Plaintiff was required to maintain and utilize her own cellphone and pay all costs associated with
6 the internet access to perform her job duties and to communicate with customers, other employees
7 involved in the investigation of complaints, and with her supervisors regarding assignments and/or
8 completion of projects, and any other issues related to her job. Plaintiff was not reimbursed for these
9 necessary expenses incurred for the benefit of Defendants.

10 29. Defendants failed to pay Plaintiff and all other current and former similarly-situated and
11 aggrieved employees for all wages due and owing and by the times required by law in the time periods
12 set forth by Labor Code § 204 and Section 4 of the applicable Wage Order in that Defendants failed to
13 properly compensate said employees for all hours worked.

14 30. Defendants failed to pay Plaintiff, and on information and belief, all other current and
15 former similarly-situated and aggrieved employees all wages due and owing at the time of termination of
16 employment, including, but not limited to, minimum wages, regular wages, and overtime wages, as
17 required by Labor Code §§ 201(a) and 202(a).

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

21 **IV.**

22 **CLASS ACTION DESIGNATION**

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

25 All employees who were employed by Defendants in the State of California
26 in the position of “*customer advocate*” or jobs with similar titles at any time
27 commencing four (4) years prior to the filing of this Action and were
28 classified as exempt from the provisions of the California Labor Code by
Defendants.

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

5 34. Causes of Action One through Seven and Nine are appropriately suited for a class action
6 under Code of Civil Procedure § 382 because:

7 a. Numerosity: The potential Class as defined is significant in size because Plaintiff
8 is informed and believes and thereon alleges that at all relevant times, Defendants employed over 100
9 all other similarly-situated employees who were affected by the unlawful employment practices alleged
10 herein. Based on the potential class size, joinder of all employees individually would be impractical.
11 Plaintiff also believes that there are more than 100 people that are members of the Class.

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

- 17 i. Whether Defendants had a policy and practice of misclassifying Plaintiff and the
18 Proposed Class as exempt employees;
- 19 ii. Whether Defendants failed to pay wages and/or overtime compensation as
20 required by the Labor Code and the applicable Wage Order under Labor Code §§
21 510, 1194, and 1199;
- 22 iii. Whether Defendants violated Labor Code §§ 226.7 and the applicable IWC Wage
23 Order, by failing to inform Plaintiff and the Proposed Class of their right to take
24 rest periods and failing to provide required rest periods throughout the term of
25 employment and failing to compensate said employees one (1) hours wages in
26 lieu of rest periods;
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iv. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage, by 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;

v. 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;

vi. 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;

vii. 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

viii. 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.

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

7 V.

8 **PRIVATE ATTORNEYS GENERAL ACT OF 2004 DESIGNATION**

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

11 36. This action involves allegations of violations of provisions of the California Labor Code
12 that either do not provide for a civil penalty or provide for a civil penalty to be assessed and collected
13 by the Labor and Workforce Development Agency (hereinafter referred to as "LWDA") or any
14 departments, divisions, commissions, boards, agencies or employees;

15 37. Plaintiff GARCIA is an "aggrieved employee" because she is employed by the alleged
16 violators and had one or more of the alleged violations committed against her and, therefore, is properly
17 suited to represent the interests of all other current and former employees of Defendants;

18 38. Plaintiff GARCIA seeks to recover all applicable penalties under PAGA on behalf of
19 herself and all other aggrieved employees including, but not limited to, an amount sufficient to recover
20 underpaid wages including all unpaid and/or underpaid wages pursuant to Labor Code § 558.

21 39. Pursuant to Labor Code § 2698, et seq., Plaintiff GARCIA has complied with her notice
22 requirements by serving via certified mail, return receipt requested, the LWDA and RESPIRONICS
23 CALIFORNIA, LLC, a notice with her claims for wage and hour violations and penalties. The PAGA
24 claims have been tolled during the pendency of the notice period to the LWDA. The statutory period
25 expired, and the LWDA did not serve Plaintiff GARCIA with a notice of intent to assume jurisdiction
26 over the applicable penalty claims. Therefore, Plaintiff GARCIA has satisfied and exhausted the
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procedural notice requirement to pursue penalties against Defendants pursuant to Labor Code § 2699, et seq. Pursuant to Labor Code § 2698, et seq.

VI.
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)

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

41. Plaintiff and members of the Proposed 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.

42. 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.”

43. 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.”

44. 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.

45. 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.”

46. As set forth above, Plaintiff and the members of the Proposed Class were misclassified as “exempt employees” and as result of the misclassification were not paid all minimum and regular wages for all hours worked, including but not limited to the time they attended online training classes posted on

Philips TEDS EveryOne and Philips Online University, read voluminous manuals and instructions regarding the investigation of customer complaints provided to them by Respirationics.

47. 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.

48. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and individually as employers of Plaintiff and all other current and former similarly-situated and aggrieved employees, and/or a person acting on behalf of Plaintiff 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 201, 202, 203, 226, 226.7, 1193.6, 1194 and 2802, and as such, are liable as an employer of Plaintiff for such violations pursuant to California Labor Code § 558.1.

49. As a direct result of Defendants' violations alleged herein, Plaintiff all other current and former similarly-situated and aggrieved employees 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.

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

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

SECOND CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES

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

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

52. 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.

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

54. 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.”

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

56. 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, on information and belief, all other similarly-situated and current and former aggrieved employees all overtime wages for all overtime worked and recorded, all in violation of Labor Code §§ 510, 1198 and the applicable Wage Order.

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

8 58. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
9 individually as employers of Plaintiff and all other current and former similarly-situated and aggrieved
10 employees, and/or a person acting on behalf of Plaintiff and all other similarly-situated and current and
11 former aggrieved employees' employer, who violated, or caused to be violated, any provision regulating
12 minimum wages or hours and days of work in the applicable order of the Industrial Welfare Commission,
13 as well as the California Labor Code Sections 201,202, 203, 226, 226.7, 1193.6, 1194 and 2802, and as
14 such, are liable as an employer of Plaintiff for such violations pursuant to California Labor Code § 558.1.

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

21 60. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the
22 unpaid wages resulting from Defendants' overtime wage 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 §§ 510, 558, 1194 and 1194.2 and Code of Civil Procedure §1021.5.

25 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

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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)

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

62. 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.

63. 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.”

64. 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.”

65. 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.”

66. 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 no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. Subsection D of the applicable IWC Wage Order

§ 11 provides that if an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

67. 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 violated Labor Code §§ 226.7(b), 512(a), 1198, and the applicable Wage Order when they failed to provide to Plaintiff and, on information and belief, all other current and former similarly-situated and aggrieved employees a 30-minute uninterrupted, duty-free meal period no later than the start of the sixth hour of work during work periods in excess of five consecutive hours and, when applicable, when they failed to provide a second 30-minute uninterrupted, duty-free meal period no later than the start of the eleventh hour of work.

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

69. At all material times, Defendants were and/or are Plaintiff and 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.

70. Pursuant to California Labor Code § 558.1, Defendants a person acting on behalf of Plaintiff 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

201,202, 203, 226, 226.7, 1193.6, 1194 and 2802, and as such, are liable as an employer of Plaintiff for such violations pursuant to California Labor Code § 558.1.

71. As a direct result of Defendants' violations alleged herein, Plaintiff and all other current and former similarly-situated and aggrieved employees 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 the respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

72. 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 §§ 203, 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)

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

74. 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.

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

76. By Order of the Industrial Welfare Commission, every employer shall authorize and permit all employees to take 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

1 hours worked, for which there shall be no deduction from wages as provided in the applicable IWC Wage
2 Order.

3 77. Pursuant to Labor Code § 226.7(c) and the applicable IWC Wage Order, Defendants shall
4 pay Plaintiff and all other current and former similarly-situated and aggrieved employees one additional
5 hour of pay at the employees' regular rate of compensation for each day that the rest period is not
6 authorized and permitted.

7 78. Through Defendants' conduct during the applicable statutory period including the conduct
8 alleged herein, Defendants violated Labor Code §§ 226.7 and 1198 and the IWC Wage Order when they
9 failed to authorize and permit full 10-minute, uninterrupted, duty-free rest periods for every four hours
10 worked (or major fraction thereof) to Plaintiff and all other current and former similarly-situated and
11 aggrieved employees during the time period each employee worked for Defendants.

12 79. Defendants further have failed to pay to Plaintiff, and on information and belief, all other
13 current and former similarly-situated and aggrieved employees the rest period wage premiums pursuant
14 to Section 226.7. Defendants' omissions in failing to pay the applicable wages set forth in Section 226.7
15 are not in good faith, and further, Defendants had no reasonable grounds for believing the omissions are
16 not in violation of the Labor Code relating to an order of the commission.

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

24 81. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
25 individually as employers of Plaintiff, and/or a person acting on behalf of Plaintiff and all other current
26 and former similarly-situated and aggrieved employees' employer, who violated, or caused to be violated,
27 any provision regulating minimum wages or hours and days of work in the applicable order of the
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Industrial Welfare Commission, as well as the California Labor Code Sections 201, 202, 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.

82. As a direct result, Plaintiff and all other current and former similarly-situated and aggrieved employees 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 the respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

83. Pursuant to the Labor Code, Plaintiff seeks to recover in a civil action the unpaid balance of the full amount of the unpaid wages including interest thereon, reasonable attorney's fees and costs of suit to the fullest extent permissible including those permitted pursuant to Labor Code §§ 203, 226.7, 558, 558.1, and Code of Civil Procedure § 1021.5.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

FIFTH CAUSE OF ACTION
FAILURE TO INDEMNIFY PLAINTIFF EXPENSES
AND LOSSES IN DISCHARGING HER DUTIES

(Violation of Labor Code § 2802)
(Alleged by Plaintiff against All Defendants)

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

85. At all times relevant herein, as a condition of her employment, Plaintiff was required to utilize her own supplies, including personal cell phones, to perform her job duties.

86. Labor Code § 2802(a) states "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

87. At all relevant times herein, Defendants failed to reimburse Plaintiff, and on information and belief all other current and former similarly-situated and aggrieved employees for necessary expenditures and losses incurred in direct consequence to the discharge of their duties in violation of Labor

1 Code § 2802. Consequently, Plaintiff and all other current and former similarly-situated and aggrieved
2 employees are entitled to reimbursement for expenses incurred as a result of being required to purchase,
3 maintain and utilize their personal cell phones and internet access which were necessary to perform their
4 job duties. Defendants, and each of them, derived and continue to derive an unjust and inequitable
5 economic benefit by failing to comply with the sections alleged herein.

6 88. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
7 individually as employers of Plaintiff and all other current and former similarly-situated and aggrieved
8 employees, and/or a person acting on behalf of Plaintiff and all other current and former similarly-
9 situated and aggrieved employees' employer, who violated, or caused to be violated, any provision
10 regulating minimum wages or hours and days of work in the applicable order of the Industrial Welfare
11 Commission, as well as the California Labor Code Sections 201,202, 203, 226, 226.7, 1193.6, 1194 and
12 2802, and as such, are liable as an employer of Plaintiff for such violations pursuant to California Labor
13 Code § 558.1.

14 89. As a direct result of violating Labor Code § 2802(a), Plaintiff and all other current and
15 former similarly-situated and aggrieved employees have suffered and continue to suffer, substantial losses
16 related to such earned but unpaid wages, incurred expenses, unlawful deductions, and the use and
17 enjoyment of earned wages, lost interest on such wages and expenses and attorney's fees in seeking to
18 compel Defendants to fully perform her obligations under the law, all in an amount to be proved at time
19 of trial.

20 90. Labor Code § 2802(b) states "All awards made by a Court or by the Division of Labor
21 Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest
22 at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee
23 incurred the necessary expenditure or loss." The exact amount of interest is in an amount to be proven at
24 time of trial.

25 91. Furthermore, Labor Code §2802(c) states "For the purposes of this section, the term
26 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's
27 fees incurred by the employee in enforcing the rights granted by this section." Therefore, Plaintiff will
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1 seek to recover the amounts unreimbursed, interest, and the costs and attorney's fees she will necessarily
2 incur in pursuing same. The exact amount of reimbursements, interest, costs and attorney's fees will be
3 in an amount to be proved at time of trial.

4 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

5 **SIXTH CAUSE OF ACTION**
6 **FAILURE TO PROVIDE AND MAINTAIN ACCURATE**
7 **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)

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

10 93. At all times relevant, Plaintiff was an employee of Defendants within the meaning of the
11 Labor Code and the applicable Wage Order.

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

- 16 (1) Gross wages earned;
- 17 (2) Total hours worked by the employee, except for any employee whose compensation is
18 solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section
19 515 or any applicable order of the Industrial Welfare Commission;
- 20 (3) The number of piece-rate units earned and any applicable piece rate if the employee is
21 paid on a piece rate basis;
- 22 (4) All deductions, provided that all deductions made on written orders of the employee
23 may be aggregated and shown as one item;
- 24 (5) Net wages earned;
- 25 (6) The inclusive dates of the period for which the employee is paid;
- 26 (7) The name of the employee and only the last four digits of his or her social security
27 number or an employee identification number other than the social security number;
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1 (8) The name and address of the legal entity that is the employer...;

2 (9) All applicable hourly rates in effect during the pay period and the corresponding
3 number of hours worked at each hourly rate by the employee.... The deductions made from payment of
4 wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and
5 year, and a copy of the statement and the record of the deductions shall be kept on file by the employer
6 for at least three years at the place of employment or at a central location within the State of California.”

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

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

16 97. Through Defendants’ conduct during the applicable statutory period including, but not
17 limited to, the conduct alleged herein, including that alleged on information and belief, Defendants failed
18 to provide accurate wage statements. For example, in addition to the derivative violations suffered as a
19 result of the other violations detailed above, Defendants also failed to provide a wage statement that
20 properly identified the number of overtime hours worked and numbers of vacation and sick hours accrued.

21 98. Plaintiff and all other current and former similarly-situated and aggrieved employees
22 suffered injuries as a result of Defendants’ intentional and knowing failure to provide to Plaintiff and all
23 other current and former similarly-situated and aggrieved employees and maintain the writings required
24 by Labor Code § 226(a) and the applicable IWC Wage Order. Defendants’ failure to provide and maintain
25 accurate statements left Plaintiff and all other current and former similarly-situated and aggrieved
26 employees without the ability to know, understand and question the hours worked and wage earned and
27 due. As a direct result, Plaintiff and all other current and former similarly-situated and aggrieved
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1 employees have suffered and continue 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 99. 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.

18 100. 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."

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

27 102. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
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1 individually as employers of Plaintiff and all other current and former similarly-situated and aggrieved
2 employees, and/or a person acting on behalf of Plaintiff and all other current and former similarly-
3 situated and aggrieved employees' employer, who violated, or caused to be violated, any provision
4 regulating minimum wages or hours and days of work in the applicable order of the Industrial Welfare
5 Commission, as well as the California Labor Code Sections 201, 202, 203, 226, 226.7, 1193.6, 1194,
6 1198 and 2802, and as such, are liable as an employer of Plaintiff for such violations pursuant to
7 California Labor Code § 558.1.

8 103. As a direct result of Defendants' violations alleged herein, Plaintiff and all other current
9 and former similarly-situated and aggrieved employees have suffered and continue to suffer injury
10 including substantial losses related to the use and enjoyment of such wages, lost interest on such monies
11 and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligation under
12 state law, all to the respective damage in amounts according to proof at trial and within the jurisdictional
13 limitations of this Court.

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

17 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

18 **SEVENTH CAUSE OF ACTION**
19 **FAILURE TO TIMELY PAY WAGES DUE**
20 **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)

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

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

25 107. Labor Code § 201(a) states "If an employer discharges an employee, the wages earned and
26 unpaid at the time of discharge are due and payable immediately."
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1 108. Labor Code § 202(a) states “If an employee not having a written contract for a definite
2 period quits his or her employment, his or her wages shall become due and payable not later than 72 hours
3 thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which
4 case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other
5 provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive
6 payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall
7 constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the
8 notice of quitting.”

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

12 110. Defendant failed to timely provide Plaintiff with her final paycheck listing all of her hours
13 worked and wages earned and due on the date of this termination. On information and belief, Defendants
14 willfully failed to provide members of the Class with all wages due and owing, including minimum wages,
15 overtime wages, regular wages, by the time specified by Labor Code §§ 201(a), 202(a), and 204 (a) as
16 applicable.

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

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

3 113. Pursuant to California Labor Code § 558.1, Defendants are sued collectively and
4 individually as employers of Plaintiff, and/or a person acting on behalf of Plaintiff and all other current
5 and former similarly-situated and aggrieved employees' employer, who violated, or caused to be violated,
6 any provision regulating minimum wages or hours and days of work in the applicable order of the
7 Industrial Welfare Commission, as well as the California Labor Code Sections 203, 226, 226.7, 1193.6,
8 1194, 1198 and 2802, and as such, are liable as an employer of Plaintiff for such violations pursuant to
9 California Labor Code § 558.1.

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

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

17 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

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19 **EIGHTH CAUSE OF ACTION**
RETALIATION

20 (Violation of Labor Code §§ 98.6, 1102.5)
(Alleged by Plaintiff, Individually, Against Defendants)

21 116. Plaintiff GARCIA realleges and incorporates by reference the foregoing allegations, as
22 though set forth herein.

23 117. At all times herein mentioned, Labor Code § 98.6 was in full force and effect, and was
24 binding upon Defendant. Said section prohibits employers from discriminating or retaliating against
25 employees who complain regarding an employer's violations of wage and hour laws.

26 118. At all times herein mentioned, Labor Code § 1102.5 was in full force and effect, and was
27 binding upon Defendant. Said section provides that an employer may not retaliate against an employee
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1 for reporting or refusing to participate in an activity that would result in a violation of a state or federal
2 statute, rule or regulation.

3 119. As described above, Mrs. Garcia has been suffering from an anxiety disorder which
4 constitutes an impairment and may substantially limit major life activities. See *McAlindin v. County of*
5 *San Diego* (9th Cir. 1999) 192 F.3d 1226, 1232-36. An anxiety disorder and other related manifestation
6 of depression can meet the definition of disability under antidiscrimination laws.” *Auburn Woods I*
7 *Homeowners Ass'n v. Fair Employment and Housing Comm'n* (2004) 121 Cal.App.4th 1578, 1592-93.

8 120. At the commencement of her employment with Respironics, Mrs. Garcia provided the HR
9 Department with required documentation from her treating physicians advising about her anxiety disorder
10 and requesting a reasonable accommodation that Mrs. Garcia is permitted to work remotely from her home
11 office to accommodate her condition. Respironics approved the request allowing Mrs. Garcia to work
12 from home three (3) days a week. However, when Mrs. Garcia attempted to exercise her company’s pre-
13 approved accommodation, her direct supervisor has employed an increased surveillance and monitoring
14 of Mrs. Garcia’s attendance and performance and assigned to her more complaints than to other customer
15 advocates in retaliation for requesting her requisite reasonable accommodations. On more than one
16 occasion, Mrs. Garcia was required to attend an individual mandatory training scheduled by her supervisor
17 on days when Mrs. Garcia was scheduled to work from home. Mrs. Garcia’s supervisor has been
18 continuously questioning the reasoning of Mrs. Garcia’s accommodation and threatened Mrs. Garcia she
19 would seek “further clarity” from the HR and Legal Department as to the terms of the accommodation.
20 Mrs. Garcia was further told that her position is a full-time job and she needs to commit to it or find other
21 work options more suitable for her and her family. All these retaliatory and hostile tactics were aimed at
22 Mrs. Garcia to deter her from exercising her rights under the Americans With Disabilities Act.

23 121. To the extent that Defendant retaliated against Plaintiff for enforcing her rights under the
24 Americans With Disabilities Act, said conduct constitutes unlawful retaliation in violation of Labor Code
25 §§ 98.6 and 1102.5. Said violation caused substantial injury and damage to Plaintiff including, but not
26 limited to, lost wages, benefits and emotional distress in amounts to be determined at trial according to
27 proof.

122. As a result of Defendant's wrongful conduct, Plaintiff is entitled to all damages and penalties allowed by law in amounts to be determined at trial according to proof. Plaintiff also seeks all interest, attorney's fees, and costs allowed by law, including but not limited to, common law and Labor Code §§ 98.6, 1102.5, and 2699.

NINTH CAUSE OF ACTION

VIOLATION OF BUSINESS & PROFESSIONS CODE §§ 17200, ET SEQ.

(Alleged by Plaintiff Individually and On Behalf of the Class Against Defendants)

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

124. 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.”

125. 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.

126. 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 business practices because these actions were done in a systematic manner over a period of time to the detriment of Plaintiff and the Class. The acts complained of herein occurred within the last four (4) years preceding the filing of this complaint and include, but are not limited to, failure to (i) pay proper minimum, overtime, and regular wages; (ii) to lawfully deduct of wages; (iii) pay timely wages during and upon

1 separation of employment; (iv) maintain accurate records and provide and maintain accurate itemized
2 wage statements; (v) provide compliant meal and rest breaks; (vi) provide legally-mandated reasonable
3 accommodation; and (vii) provide proper hiring and commission documents to employees during their
4 employment.

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

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

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

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

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

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

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

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

TENTH CAUSE OF ACTION
PRIVATE ATTORNEY GENERAL ACT (PAGA)

(Violation of Labor Code § 2699, *et seq.*)
(Alleged by Plaintiff Individually and On Behalf of all current and former Aggrieved Employees
Against All Defendants)

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

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

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

137. On or about March 3, 2020 pursuant to Labor Code § 2698, *et seq.*, Plaintiff GARCIA 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 Plaintiff with a notice of intent to assume jurisdiction over the applicable penalty claims. Therefore, Plaintiff has satisfied and exhausted the procedural notice requirement to pursue penalties against Defendants pursuant to Labor Code §2698, *et seq.*

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

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

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

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

20 142. Defendants violated Labor Code §§ 510 and 1198 by failing to pay Plaintiff and current
21 and former aggrieved employees overtime wages for the time permitted to work, engaged in work, and/or
22 under Defendants’ control as alleged herein. On information and belief, at all relevant times, Plaintiff and
23 other current and former aggrieved employees were not paid overtime wages when they worked in excess
24 of eight (8) hours a day or forty (40) hours within a workweek. Therefore, under Labor Code § 2699 (f)(2)
25 Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for an initial
26 violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

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

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

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

15 146. Defendants violated Labor Code §§ 201, 202, 203, and 1198 by failing to pay Plaintiff and
16 other current and former aggrieved employees all minimum, regular, and overtime wages owed, and all
17 meal and rest premiums wages owed by the time set forth by law upon their separation of employment as
18 alleged herein. Thus, under Labor Code § 2699(f)(2), Defendants are subject to a civil penalty of \$100 for
19 each aggrieved employee per pay period for the initial violation of Labor Code §§ 201, 202, 203, and
20 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

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

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148. 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.*

149. Pursuant to Labor Code § 2699, Plaintiff GARCIA 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.

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

WHEREFORE, Plaintiff GARCIA prays for relief as hereinafter requested.

PRAYER FOR RELIEF

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

- a. For injunctive relief as provided by the Labor Code and to the extent permitted by law including, but not limited to, pursuant to § 226(h) and Business and Professions Code §17200, *et seq.* and including injunctive relief to compel Defendants to produce all records as required by § 226(h) and the "Records" section of the applicable IWC Wage Order;
- b. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
- c. For an order requiring Defendants to restore and disgorge all funds to each affected person acquired by means of any act or practice declare by this Court to be unlawful, unfair or fraudulent and, therefore, constituting unfair competition under Business and Professions Code §§ 17200, *et seq.*;
- d. 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), 226.3, 210, 226.7, 226.8, 558, 1174.5, and PAGA penalties pursuant to Labor Code §2698 *et seq.*

- 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: June 12, 2020

ShortLegal, APC

By:


BRIAN R. SHORT
DOROTA A. JAMES
Attorneys for Plaintiff JANINE GARCIA

DEMAND FOR JURY TRIAL

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

Dated: June 12, 2020

ShortLegal, APC

By:


BRIAN R. SHORT
DOROTA A. JAMES
Attorneys for Plaintiff JANINE GARCIA