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 10 role as Representative for the State of California's Labor Code
 11 claims pursuant to the California Private Attorneys General Act

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 13 COUNTY OF LOS ANGELES

14 ZULMA AVELAR, an individual, and
 15 representing the State of California pursuant to
 the California Labor Code Private Attorneys
 General Act

16 Plaintiff,

17 vs.

18 NATIONAL BUILDING SERVICES, L.L.C., a
 19 California Corporation, FEDERICO OLIVER, an
 20 individual, and DOES 1-20,

21 Defendants.
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Case No.

COMPLAINT

1. Failure to Pay Minimum Wages
2. Failure to Pay Overtime Compensation
3. Failure to Provide Rest Periods or Compensation in Lieu Thereof
4. Failure to Provide Meal Periods or Compensation in Lieu Thereof
5. Failure to Maintain and Provide Accurate Itemized Employee Wage Statements
6. Failure to Maintain and Provide Accurate Timekeeping Records
7. Failure to Timely Pay All Wages Owed Upon Termination
8. Violation of Unfair Competition Law, Bus. & Prof. Code §§ 17200 et seq.
9. California Private Attorneys General Act, Labor Code §§ 2698 et seq.

DEMAND FOR JURY TRIAL

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 Superior Court of California
 County of Los Angeles

APR 22 2016

Sherri R. Carter, Executive Officer/Clerk
 By Nancy Alvarez Deputy

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8. Violation of Unfair Competition Law, Bus. & Prof. Code §§ 17200 *et seq.*
9. California Private Attorneys General Act, Labor Code §§ 2698 *et seq.*

DEMAND FOR JURY TRIAL

1 1. ZULMA AVELAR (hereinafter “AVELAR” or “PLAINTIFF”) brings this action
2 against NATIONAL BUILDING SERVICES, L.L.C. (“NBS”), FEDERICO OLIVER
3 (“OLIVER”) and DOES 1-20 (collectively “DEFENDANTS”) on behalf of herself, the State of
4 California, all others similarly situated, and the general public. The allegations in this complaint
5 are made on PLAINTIFF’S personal knowledge, except the allegations made upon information and
6 belief, which are based upon the investigation of counsel.
7

8 **I. NATURE OF THE ACTION**

9 2. This is an individual and private attorneys general wage and hour case to vindicate
10 the rights afforded to employees under California law. This action is brought by PLAINTIFF
11 against DEFENDANTS to recover all relief available to PLAINTIFF under the Labor Code. This
12 action is also brought on behalf of PLAINTIFF as a Private Attorney General pursuant to the
13 California Labor Code’s Private Attorneys General Act, Labor Code §§ 2698 *et seq.* (“PAGA”),
14 and on behalf of herself in conformance with the California Business & Professions Code.
15 PLAINTIFF is informed and believes and thereupon allege that DEFENDANT is a corporation
16 engaged in business in California.

17 3. The core of DEFENDANTS’ violations revolve around the systematic failure to pay
18 all wages earned, failure to pay minimum and overtime wages, failure to provide rest and meal
19 periods, failure to comply with the record keeping, wage statement, and payment deadline
20 provisions of California law, and other derivative remedies.

21 4. In addition, pursuant to the California Private Attorneys General Act (“PAGA”),
22 Labor Code §§ 2698 *et seq.*, PLAINTIFF seeks penalties for the underlying violations of the Labor
23 Code on behalf of herself, the State of California and DEFENDANTS’ current and former
24 employees. PLAINTIFF has suffered the Labor Code violations described herein and is an
25 “aggrieved employee” within the meaning of PAGA. As held by the California Supreme Court in
26 *Arias v. Sup. Ct.* (2009) 46 Cal.4th 969, aggrieved employees have a substantive right to act as a
27 proxy or agent of the State of California in seeking penalties for the State and Defendant’s
28 workforce, and although these aggrieved employees are empowered to do so in a representative

1 fashion, the class action requirements do not apply. As such, for PAGA penalty purposes only, this
2 action is brought on behalf of Defendant's entire past and current workforce and California's Labor
3 & Workforce Development Agency ("LWDA") during the relevant time period covered by the
4 statute of limitations which is one year for most PAGA penalties and three years for Labor Code
5 §§ 256, 203 predicate violations plus tolling based upon prior complaints or PAGA notices.
6 Plaintiff has complied with the administrative requirements pursuant to PAGA by mailing notice to
7 the LWDA and the Defendants on January 11, 2016. PLAINTIFF may assert a PAGA cause of
8 action because she has exhausted the administrative remedies detailed in Labor Code § 2699.3 as
9 the Labor & Workforce Development Agency has failed to provide PLAINTIFF notice within
10 thirty-three (33) days of the postmark date of PLAINTIFF'S PAGA notice, clearing the way for
11 PLAINTIFF to avail herself of PAGA.

12 5. DEFENDANTS NATIONAL BUILDING SERVICES, LLC, FEDERICO
13 OLIVER, and DOES 1-20, are sued as employers as well as "persons" pursuant to Labor Code
14 §§ 558, 18, and 2699 *et seq.*, who violated or caused to be violated the Labor Code and other
15 regulations governing wages, hours and conditions of employment. It is not necessary to be an
16 employer to be liable for PAGA penalties. These penalties include all penalties that the State of
17 California could pursue pursuant to the California Labor Code as well wages owing the employees
18 pursuant to California Labor Code §§ 558 and 1197.1.

19 6. PLAINTIFF further brings claims for failure to pay all wages owed, in violation of
20 California's minimum wage and overtime laws; failure to provide statutory rest and meals; failure
21 to provide accurate itemized wage statements; failure to maintain accurate timekeeping records;
22 and failure to pay all wages owed timely upon separation or termination of employment, on behalf
23 of herself and the Class she seeks to represent. As a result of the above violations, in addition to
24 other violations set forth below, DEFENDANTS have also violated California Business &
25 Professions Code §§ 17200 *et seq.*, by its unlawful and unfair business practices, thereby harming
26 PLAINTIFF.
27
28

1 **II. JURISDICTION AND VENUE**

2 7. This case is subject to the jurisdiction of this Court pursuant to the California Labor
3 Code, Business and Professions Code, and Code of Civil Procedure. DEFENDANTS are
4 California corporations and individuals doing business in the County of Los Angeles.
5 DEFENDANTS are qualified to do business in California and regularly conduct business in the
6 County of Los Angeles.

7 8. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395,
8 because the County of Los Angeles is the county in which the majority of the acts occurred
9 including the underlying policy decisions to intentionally violate and permit the violation of the
10 California Labor Code and the California Business and Professions Code. PLAINTIFF has worked
11 for DEFENDANTS in the County of Los Angeles.

12
13 **III. PARTIES**

14 **A. Plaintiff**

15 9. PLAINTIFF ZULMA AVELAR (“AVELAR”) is, and at all relevant times was, an
16 individual residing in the State of California. At all relevant times herein, PLAINTIFF was
17 employed as a non-exempt employee of Defendant NATIONAL BUILDING SERVICES, L.L.C.
18 at its 1801 Century Park West, Los Angeles, California location until the date of her termination.
19 As a result of DEFENDANTS’ violations of the California Labor Code and California Business &
20 Professions Code, PLAINTIFF has suffered injury in fact and has lost money or property as a
21 result of DEFENDANTS’ practices

22 10. The claims of Real Party in interest, the State of California, are being represented by
23 PLAINTIFF pursuant to the California Private Attorneys General Act, Labor Code §§ 2698 *et seq.*
24 (“PAGA”). These claims are for all “provisions of the code that provide for a civil penalty.”
25 Pursuant to California Labor Code § 2699(a), these claims may be brought by PLAINTIFF on
26 behalf of herself and other current or former employees.

27 11. PLAINTIFF was regularly subjected to, or had personal knowledge of, the
28 violations described in this Complaint.

1 **B. Defendants**

2 12. On information and belief, DEFENDANT NATIONAL BUILDING SERVICES,
3 L.L.C. ("NBS" or "EMPLOYER DEFENDANT") is a California corporation at the following
4 address listed on the California Business Portal Website: 5415 Avenida Hacienda, Tarzana, CA
5 91356, with agent for service of process Frank Shenouda, at 5415 Avenida Hacienda, Tarzana, CA
6 91356. At all times relevant, Defendant NBS conducted and conducts business as a janitorial and
7 building maintenance services provider to commercial office buildings and retails in California and
8 the County of Los Angeles. At all times relevant, Defendant NBS owned, controlled, or operated a
9 business or establishment that employed persons within the meaning of Industrial Welfare
10 Commission ("IWC") Order 5-2001, 8 Cal. Code of Regs. § 11050, and operated as a direct or
11 joint employer of PLAINTIFF and the Class in this case. During all relevant times alleged herein,
12 Defendant NBS employed PLAINTIFF as a non-exempt employee and committed in California
13 and in this County the acts and/or caused the violations complained of herein.

14 13. On information and belief, DEFENDANT FEDERICO OLIVER ("OLIVER") was
15 a Supervisor for DEFENDANT NBS during the relevant time period. On information and belief,
16 DEFENDANT OLIVER resides in Los Angeles, California. DEFENDANT OLIVER is sued
17 pursuant to Labor Code §§ 558, 18, and 2699 *et seq.*, in his capacity as a person who violated or
18 caused to be violated the Labor Code and other regulations governing wages, hours and conditions
19 of employment, including but not limited to, failing to accurately record hours worked, failing to
20 provide rest breaks, failing to provide meal breaks and failing to accurately record meal breaks
21 when they were taken, and auto-deducting thirty (30) minutes from employees' daily pay for meal
22 breaks that were not lawfully provided, among others.

23 14. Defendants are joint employers of PLAINTIFF.

24 15. The acts and failures to act alleged herein were duly performed by and attributable
25 to all DEFENDANTS, each acting as a successor, agent, alter ego, employee, indirect employer,
26 joint employer, and/or integrated enterprise, as the direction and control of the others, except as
27 specifically alleged otherwise. Said acts and failures to act were within the scope of such agency
28 and/or employment, and each DEFENDANT participated in, approved of and/or ratified the

1 unlawful acts and omissions by the other DEFENDANTS complained of herein.

2 16. PLAINTIFF is informed and believes, and based thereon alleges, that each
3 DEFENDANT acted in all respects pertinent to this action as the agent of the other
4 DEFENDANTS, including Does, carried out a joint scheme, business plan, or policy in all respects
5 pertinent hereto, and the acts of each DEFENDANT are legally attributable to the other
6 DEFENDANTS. "DEFENDANTS" herein means each of the defendants as well as all of them.

7 17. The true names and capacities, whether individual, corporate, associate, or
8 otherwise, of Defendants sued herein as Does 1 through 20, inclusive (collectively with
9 Defendants), are currently unknown to Plaintiffs, who therefore sue Does 1 through 20 by such
10 fictitious names pursuant to Code of Civil Procedure § 474. Plaintiffs are informed and believe,
11 and based thereon allege, that each of the Defendants designated herein as a Doe is legally
12 responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of
13 court to amend this Complaint to reflect the true names and capacities of the Defendants
14 designated hereinafter as Does when such identities become known.

15 16 **IV. FACTUAL ALLEGATIONS**

17 16. The claims of this lawsuit spring from a pattern of employer misconduct and
18 wrongdoing that is a characteristic of the janitorial industry, where unpaid and improperly paid
19 labor, as alleged herein, is a common business practice. DEFENDANTS' actions in this case
20 demonstrate a systematic disregard for the rights afforded to PLAINTIFF under California wage
21 and hour law. The following paragraphs detail specific violations of law giving rise to this action.

22 17. For at least four years prior to the filing of this action and through to the present
23 (liability period for the UCL cause of action), EMPLOYER DEFENDANT maintained and
24 enforced against PLAINTIFF unlawful practices and policies in violation of California wage and
25 hour laws, including but not limited to:

- 26 a. forcing PLAINTIFF to work "off-the-clock" time without compensation,
27 including but not limited to time spent working during rest and meal periods,
28

- 1 as instructed and required by DEFENDANTS and under their control, in
2 violation of California state laws, wage orders and public policy;
- 3 b. failing to pay PLAINTIFF overtime premium wages for “off the clock”
4 work, including but not limited to time spent working prior to scheduled
5 start times, and time spent working during rest and meal periods, in violation
6 of California state laws, wage orders, and public policy;
- 7 c. failing to provide PLAINTIFF rest periods of at least ten (10) minutes per
8 five (4) hours worked or major fraction thereof and failing to pay such
9 employees one (1) hour of pay at the employee’s regular rate of
10 compensation for each workday that the rest period is not provided as
11 required by California law, including but not limited to late rest periods and
12 failing to provide net ten (10) minute rest periods because of time spent
13 working during rest periods to manage heavy workload, in violation of
14 California state laws, wage orders, and public policy;
- 15 d. failing to provide PLAINTIFF meal periods of at least thirty (30) minutes
16 per five (5) hours worked and failing to pay such employees one (1) hour of
17 pay at the employee’s regular rate of compensation for each workday that
18 the meal period was not provided as required by California law, including
19 but not limited to failing to provide net thirty (30) minute meal periods
20 because of time spent working during meal periods to manage heavy
21 workload, while auto-deducting thirty (30) minutes from employees for meal
22 periods that are not taken, short, or interrupted, in violation of California
23 state laws, wage orders, and public policy;
- 24 e. failing to provide PLAINTIFF with accurate itemized wage statements, in
25 violation of California law and public policy;
- 26 f. failing to maintain accurate timekeeping records, in violation of California
27 law and public policy;
- 28 g. failing to pay PLAINTIFF statutory penalties pursuant to California Labor

Code Sections 201, 202, 203, 226 and 256.

18. On information and belief, DEFENDANTS were on notice of the improprieties alleged herein by PLAINTIFF, and have intentionally, deliberately, and willfully carried out these unlawful and unfair business practices.

19. DEFENDANTS have made it difficult to account with precision for the unlawfully withheld wages due to DEFENDANTS' non-exempt employees, including PLAINTIFF, during all relevant times herein, because DEFENDANT did not implement and preserve a complete record-keeping method to record all hours worked and to record correct wages as required for non-exempt employees by California Labor Code §§ 226 and 1174(d) and Industrial Welfare Commission Wage Order 5-2001.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGE
(CALIFORNIA LABOR CODE §§ 1197, 1194(A), 1194.2 & WAGE ORDER 5-2001)
(AGAINST EMPLOYER DEFENDANT)

20. PLAINTIFF hereby incorporates by reference each and every allegation contained above in this complaint as though fully set forth herein.

21. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states:

The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

22. The minimum wage effective January 1, 2007 was \$7.50 per hour, the minimum wage effective January 1, 2008 was \$8.00 per hour, and the minimum wage has now been raised to \$9.00 per hour, effective July 1, 2014.

23. The minimum wage provisions of California Labor Code are enforceable by private civil action pursuant to California Labor Code § 1194(a) which 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 this minimum wage or

1 overtime compensation, including interest thereon, reasonable attorney's
2 fees and costs of suit.

3 24. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
4 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

5 25. California Labor Code § 1194.2 also provides for the following remedies:

6 In any action under Section 1194 ... to recover wages because of the
7 payment of a wage less than the minimum wages fixed by an order of the
8 commission, an employee shall be entitled to recover liquidated damages in
an amount equal to the wages unlawfully unpaid and interest thereon.

9 26. DEFENDANTS failed to pay minimum wage "for all hours worked." For example,
10 PLAINTIFF was forced to work "off-the-clock" time without compensation. In particular,
11 PLAINTIFF worked for significant periods of time at wages below the minimum wage and in
12 particular during rest periods and meal periods in order to manage heavy workload.

13 27. DEFENDANTS have the ability to pay minimum wages for all time worked and
14 have willfully refused to pay such wages with the intent to secure for DEFENDANTS a discount
15 upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud
16 PLAINTIFF and have, therefore, also violated California Labor Code § 226(a).

17 28. As a result of DEFENDANTS' violations of the minimum wage by failing to record
18 and pay minimum wage for all hours worked, DEFENDANTS violated California Labor Code
19 § 226(a) by inaccurately stating gross wages earned, total hours worked, deductions, net wages,
20 gross wages, and other issues as described above. As a result of the above unlawful acts,
21 DEFENDANTS also violated California Labor Code § 226.6 and Wage Order 5-2001.

22 29. PLAINTIFF may bring this action for minimum wage, interest, costs of suit, and
23 attorneys' fees pursuant to Labor Code § 1194(a).

24 30. WHEREFORE, PLAINTIFF is entitled to recover the unpaid minimum wages and
25 liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest
26 thereon pursuant to California Labor Code § 1194.2, reasonable attorneys' fees and costs of suit.

SECOND CAUSE OF ACTION
FAILURE TO PAY OVERTIME COMPENSATION
(CALIFORNIA LABOR CODE §§ 510, 1194 & 1194.2 & WAGE ORDER 5-2001)
(AGAINST EMPLOYER DEFENDANT)

31. PLAINTIFF hereby incorporates by reference each and every allegation contained above in this complaint as though fully set forth herein.

32. California Labor Code § 510(a) states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one work week 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.

33. Wage Order 5-2001 § 3(A)(1) requires that overtime hours be compensated as follows:

(a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

IWC Wage Orders are authorized under California Labor Code § 1185.

34. DEFENDANTS failed to pay overtime compensation by employing PLAINTIFF in excess of the limits pursuant to California law without time and one half or double time pay of the regular rate of pay. In particular, PLAINTIFF worked overtime without compensation or without overtime compensation while working through rest periods and meal periods in order to manage heavy workload.

35. PLAINTIFF may bring this action for overtime compensation, interest, costs of suit, and attorneys' fees pursuant to Labor Code § 1194(a).

36. WHEREFORE, PLAINTIFF is entitled to the unpaid balance of the full amount of the above noted overtime and double time compensation, interest, reasonable attorney's fees and

1 costs of suit pursuant to California Labor Code § 1194.2.
2

3 **THIRD CAUSE OF ACTION**
4 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**
5 **(CALIFORNIA LABOR CODE §§ 226.7, 512 & WAGE ORDER 5-2001)**
6 **(AGAINST EMPLOYER DEFENDANT)**

7 37. PLAINTIFF hereby incorporates by reference each and every allegation contained
8 above in this complaint as though fully set forth herein.

9 38. California Labor Code § 226.7 states:

10 (a) No employer shall require any employee to work during any meal or rest
11 period mandated by an applicable order of the Industrial Welfare
12 Commission.

13 (b) If an employer fails to provide an employee a meal period or rest period
14 in accordance with an applicable order of the Industrial Welfare
15 Commission, the employer shall pay the employee one additional hour of
16 pay at the employee's regular rate of compensation for each work day that
17 the meal or rest period is not provided.

18 39. IWC Wage Order 5-2001 § 12 states with regard to rest periods:

19 (A) Every employer shall authorize and permit all employees to take rest
20 periods, which insofar as practicable shall be in the middle of each work
21 period. The authorized rest period time shall be based on the total hours
22 worked daily at the rate of ten (10) minutes net rest time per four (4) hours
23 or major fraction thereof. However, a rest period need not be authorized for
24 employees whose total daily work time is less than three and one-half (3 1/2)
25 hours. Authorized rest period time shall be counted as hours worked for
26 which there shall be no deduction from wages.

27 (B) If an employer fails to provide an employee a rest period in accordance
28 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 work day that the rest period is not provided.

40. PLAINTIFF alleges that she worked for periods of more than four hours and were
not properly scheduled for, provided, or permitted full ten (10) minute rest periods in the employ of
DEFENDANTS as described above.

41. As a result of DEFENDANTS' policy and practice of forcing PLAINTIFF to work
during rest periods in order to manage heavy workload, DEFENDANTS violated California Labor
Code § 226.7 and Wage Order 5-2001 by failing to provide one hour of additional wages at the

1 regular rate of compensation for each work day that the rest periods were not provided. The one
2 hour of additional wages has been held to be "wages" pursuant to California law.

3 42. PLAINTIFF did not voluntarily or willfully waive rest periods. Any express or
4 implied waivers obtained from PLAINTIFF were not willfully obtained, were not voluntarily
5 agreed to, were a condition of employment, or were part of a contract of an unlawful adherence.
6 DEFENDANTS did not permit or authorize PLAINTIFF to take rest periods in accordance with
7 law and did not properly schedule rest periods.

8 43. By their failure to provide rest periods for days on which PLAINTIFF worked work
9 periods in excess of five hours, and failing to pay one hour of additional wages for such
10 unprovided rest periods, DEFENDANTS willfully violated Labor Code §§ 226.7 & 512 and Wage
11 Order 5-2001.

12 44. As a result of the unlawful acts of DEFENDANTS' actions, PLAINTIFF has been
13 deprived of additional wages.

14 45. WHEREFORE, PLAINTIFF is entitled to recover the unpaid additional wages in
15 amounts to be determined at trial.

16
17 **FOURTH CAUSE OF ACTION**
18 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**
19 **(CALIFORNIA LABOR CODE §§ 226.7, 512 & WAGE ORDER 5-2001)**
20 **(AGAINST EMPLOYER DEFENDANT)**

21 46. PLAINTIFF hereby incorporates by reference each and every allegation contained
22 above in this complaint as though fully set forth herein.

23 47. California Labor Code § 226.7 states:

24 (a) No employer shall require any employee to work during any meal or rest
25 period mandated by an applicable order of the Industrial Welfare
26 Commission.

27 (b) If an employer fails to provide an employee a meal period or rest period
28 in accordance with an applicable order of the Industrial Welfare
Commission, the employer shall pay the employee one additional hour of
pay at the employee's regular rate of compensation for each work day that
the meal or rest period is not provided.

48. IWC Wage Order 5-2001 § 11 states:

1 (A) No employer shall employ any person for a work period of more than
2 five (5) hours without a meal period of not less than 30 minutes, except that
3 when a work period of not more than six (6) hours will complete the day's
4 work the meal period may be waived by mutual consent of the employer and
5 employee. Unless the employee is relieved of all duty during a 30 minute
6 meal period, the meal period shall be considered an "on duty" meal period
7 and counted as time worked. An "on duty meal period shall be permitted
8 only when the nature of the work prevents an employee from being relieved
9 of all duty and when by written agreement between the parties an on-the-job
10 paid meal period is agreed to. The written agreement shall state that the
11 employee may, in writing, revoke the agreement at any time.

12 (B) If an employer fails to provide an employee a meal period in accordance
13 with the applicable provisions of this Order, the employer shall pay the
14 employee one (1) hour of pay at the employee's regular rate of
15 compensation for each work day that the meal period is not provided.

16 49. PLAINTIFF alleges she worked for periods of more than five hours without a duty-
17 free meal period of no less than thirty (30) minutes while in the employ of DEFENDANTS and,
18 despite this, DEFENDANTS deducted from PLAINTIFF pay time for a meal period that was not
19 taken.

20 50. As a result of DEFENDANTS' policy and practice of failing to provide net thirty
21 (30) minute meal periods because of time spent working during meal periods to manage heavy
22 workload, while auto-deducting thirty (30) minutes from employees for meal periods that are not
23 taken, short, or interrupted, DEFENDANTS violated California Labor Code §§ 226.7, 512 and
24 Wage Order 5-2001 by failing to authorize and permit proper meal periods and by failing to
25 provide one hour of additional wages at the regular rate of compensation for each work day that a
26 proper meal period was not provided. The one hour of additional wages has been held to be
27 "wages" pursuant to California law.

28 51. PLAINTIFF did not voluntarily or willfully waive meal periods. Any express or
implied waivers obtained from PLAINTIFF were not willfully obtained, were not voluntarily
agreed to, were a condition of employment, or were part of a contract of an unlawful adhesion.
DEFENDANTS did not permit or authorize PLAINTIFF to take meal periods in accordance with
law.

52. By their failure to provide meal periods for days on which PLAINTIFF worked
work periods in excess of six (6) hours, and failing to pay one hour of additional wages for such

1 unprovided meal periods, DEFENDANTS willfully violated Labor Code §§ 226.7 & 512 and
2 Wage Order 5-2001.

3 53. As a result of the unlawful acts of DEFENDANTS' actions, PLAINTIFF has been
4 deprived of additional wages.

5 54. WHEREFORE, PLAINTIFF is entitled to recover the unpaid additional wages in
6 amounts to be determined at trial.

7
8 **FIFTH CAUSE OF ACTION**
9 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
10 **(CALIFORNIA LABOR CODE §§ 226, 1174, 1174.5 & 1175)**
11 **(AGAINST EMPLOYER DEFENDANT)**

12 55. PLAINTIFF hereby incorporates by reference each and every allegation contained
13 above in this complaint as though fully set forth herein.

14 56. California Labor Code § 226(a) states:

15 Every employer shall, semimonthly or at the time of each payment of wages,
16 furnish each of his or her employees, either as a detachable part of the check,
17 draft, or voucher paying the employee's wages, or separately when wages
18 are paid by personal check or cash, an accurate itemized statement in writing
19 showing

20 (1) gross wages earned,

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

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

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

(5) net wages earned,

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

(7) the name of the employee and his or her social security number, except
that by January 1, 2008, only the last four digits of his or her social
security number or an employee identification number other than a social
security number may be shown on the itemized statement,

(8) the name and address of the legal entity that is the employer, and

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

9
10 57. DEFENDANTS failed to provide "accurate itemized statements" to employees,
11 including PLAINTIFF, because the wage statements:

- 12 (i) Falsely understated the gross wages earned by failing to pay for all hours
13 worked;
- 14 (ii) Falsely understated the total hours paid to PLAINTIFF and the Class by
15 ignoring the total of hours actually worked;
- 16 (iii) Falsely understated the net wages earned by failing to pay for all hours
17 worked; and
- 18 (iv) Failed to state the "number of hours worked at each hourly rate,"
19 including work time compensated at a zero rate.

20 58. California Labor Code §§ 226(e) and (g) provide for the remedy for the violations
21 described above. Respectively, they state:

- 22 (e) An employee suffering injury as a result of a knowing and intentional
23 failure by an employer to comply with subdivision (a) is entitled to
24 recover the greater of all actual damages or fifty dollars (\$50) for the
25 Initial pay period in which a violation occurs and one hundred dollars
26 (\$100) per employee for each violation in a subsequent pay period, not
27 exceeding an aggregate penalty of four thousand dollars (\$4,000), and is
28 entitled to an award of costs and reasonable attorney's fees.
- (g) An employee may also bring an action for injunctive relief to ensure
compliance with this section, and is entitled to an award of costs and
reasonable attorney's fees.

59. In addition, Labor Code § 1174 and Wage Order 5-2001(7) require that
DEFENDANTS maintain and preserve, in a centralized location, among other items, records
showing the names and addresses of all employees employed, payroll records showing the hours
worked daily by and the wages paid to its employees. DEFENDANTS have created a uniform
practice of knowingly and intentionally failing to comply with Labor Code § 1174.
DEFENDANTS' failure to comply with Labor Code § 1174 is unlawful pursuant to Labor Code

1 §§ 1174.5 and 1175. When an employer fails to keep such records, employees may establish the
2 hours worked solely by their testimony and the burden of overcoming such testimony shifts to the
3 employer. *Hernandez v. Mendoza* (1988) 199 Cal. App. 3d 721.

4 60. By failing to keep adequate records required by Labor Code §§ 226 and 1174(d),
5 DEFENDANTS have injured PLAINTIFF and made it difficult to calculate the unpaid wages due
6 to PLAINTIFF.

7 61. WHEREFORE, PLAINTIFF is entitled to Labor Code penalties in an amount to be
8 determined at trial not to exceed \$4,000, costs of suit, attorneys' fees and injunctive relief pursuant
9 to Labor Code § 226(g).

10
11 **SIXTH CAUSE OF ACTION**
12 **FAILURE TO MAINTAIN ACCURATE TIMEKEEPING RECORDS**
13 **(CALIFORNIA LABOR CODE §§ 226, 1174, 1174.5 & 1175)**
14 **(AGAINST EMPLOYER DEFENDANT)**

15 62. PLAINTIFF hereby incorporates by reference each and every allegation contained
16 above in this complaint as though fully set forth herein.

17 63. California Labor Code § 1174 states:

18 Every person employing labor in this state shall:

19 (d) Keep, at a central location in the state or at the plants or establishments
20 at which employees are employed, payroll records showing the hours
21 worked daily by and the wages paid to, and the number of piece-rate
22 units earned by and any applicable piece rate paid to, employees
23 employed at the respective plants or establishments. These records shall
24 be kept in accordance with rules established for this purpose by the
25 commission, but in any case shall be kept on file for not less than three
26 years. An employer shall not prohibit an employee from maintaining a
27 personal record of hours worked, or, if paid on a piece-rate basis, piece-
28 rate units earned.

64. IWC Wage Order 5-2001(7) further clarifies an employer's recordkeeping
obligation:

(A) Every employer shall keep accurate information with respect to each
employee including the following:

(3) Time records showing when the employee begins and ends each work
period. Meal periods, split shift intervals and total daily hours worked

1 shall also be recorded. Meal periods during which operations cease and
2 authorized rest periods need not be recorded.

3 65. PLAINTIFF is informed, believes, and based thereon alleges that at all times
4 relevant, DEFENDANTS failed to comply with Labor Code § 1174 and Wage Order 5-2001(7) by
5 failing to maintain certain records which employers are required to maintain, including but not
6 limited to, daily time records showing beginning and ending of each work period, daily time
7 records showing beginning and ending of meal periods, daily time records showing total daily
8 hours worked, and time records showing the total wages paid each payroll period.
9 DEFENDANTS' failure to comply with Labor Code § 1174 is unlawful pursuant to Labor Code
10 §§ 1174.5 and 1175.

11 66. By failing to keep adequate records required by Labor Code § 1174(d),
12 DEFENDANTS have injured PLAINTIFF and made it difficult to calculate the unpaid wages due
13 to PLAINTIFF.

14 67. WHEREFORE, PLAINTIFF is entitled to Labor Code penalties in an amount to be
15 determined at trial not to exceed \$500 pursuant to Labor Code § 1174.5, costs of suit, attorneys'
16 fees and injunctive relief.

17
18 **SEVENTH CAUSE OF ACTION**
19 **FAILURE TO PAY WAGES DUE AT TERMINATION**
20 **(CALIFORNIA LABOR CODE §§ 201, 202 & 203)**
21 **(AGAINST EMPLOYER DEFENDANT)**

22 68. PLAINTIFF hereby incorporates by reference each and every allegation contained
23 above in this complaint as though fully set forth herein.

24 69. California Labor Code Section 201(a) states:

25 If an employer discharges an employee, the wages earned and unpaid at the
26 time of discharge are due and payable immediately. . . .

27 70. California Labor Code Section 202(a) states:

28 If an employee not having a written contract for a definite period quits his or
her employment, his or her wages shall become due and payable not later
than 72 hours thereafter, unless the employee has given 72 hours previous
notice of his or her intention to quit, in which case the employee is entitled
to his or her wages at the time of quitting. Notwithstanding any other

1 provision of law, an employee who quits without providing a 72-hour notice
2 shall be entitled to receive payment by mail if he or she so requests and
3 designates a mailing address. The date of the mailing shall constitute the
4 date of payment for purposes of the requirement to provide payment within
5 72 hours of the notice of quitting.

6
7
8
9
10 71. California Labor Code Section 203 states:

11 If an employer willfully fails to pay, without abatement or reduction, in
12 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
13 employee who is discharged or who quits, the wages of the employee shall
14 continue as a penalty from the due date thereof at the same rate until paid or
15 until an action therefore is commenced; but the wages shall not continue for
16 more than 30 days... Suit may be filed for these penalties at any time before
17 the expiration of the statute of limitations on any action for the wages from
18 which the penalties arose.

19 72. The statute of limitations for an action for the wages at issue is four years pursuant
20 to California Business and Professions Code § 17208. DEFENDANTS, among other things,
21 forced PLAINTIFF to work below minimum wage time without the required compensation; failed
22 to provide rest periods of at least (10) minutes per four (4) hours worked or major fraction thereof
23 and failed to pay one (1) hour of additional wages at the regular rate of compensation for each
24 workday that the rest period is not provided; required PLAINTIFF to work at least five (5) hours
25 without a meal period and failed to pay one (1) hour of additional wages at the regular rate of
26 compensation for each workday that the meal period is not provided. On information and belief,
27 DEFENDANTS willfully failed to pay such amounts, and this failure continued through the time in
28 which employees, including PLAINTIFF, separated or were discharged from their employment
with DEFENDANTS. As a result, DEFENDANTS violated California Labor Code §§ 201 and
202.

73. PLAINTIFF is entitled to compensation for all forms of wages earned as described
above, including, but not limited to, wages for work done "off the clock" and/or at hourly rates
below the minimum wage, overtime wages, and additional wages for unprovided rest and meal
periods. To date, PLAINTIFF has not received such compensation, therefore entitling her to Labor
Code § 203 penalties.

74. More than thirty (30) days have passed since PLAINTIFF left DEFENDANTS'
employ. On information and belief, PLAINTIFF has not received payment pursuant to Labor Code

1 § 203. As a consequence of DEFENDANTS' willful conduct in not paying all earned wages,
2 PLAINTIFF is entitled to thirty (30) working days' wages as a penalty under Labor Code § 203

3 75. WHEREFORE, PLAINTIFF is entitled to Labor Code § 203 penalties in amounts to
4 be determined at trial.

5
6 **EIGHTH CAUSE OF ACTION**
7 **VIOLATION OF UNFAIR COMPETITION LAW**
8 **(CALIFORNIA BUS. & PROF. CODE §§ 17200 *ET SEQ.*)**
9 **(AGAINST EMPLOYER DEFENDANT)**

10 76. PLAINTIFF hereby incorporates by reference each and every allegation contained
11 above in this complaint as though fully set forth herein.

12 77. DEFENDANTS engaged in unlawful and unfair activity prohibited by Business and
13 Professions Code §§ 17200 *et seq.* The actions of DEFENDANTS as alleged within this
14 complaint, constitute unlawful and unfair business practices with the meaning of Business and
15 Professions Code §§ 17200 *et seq.*

16 78. As described above, DEFENDANTS have violated the following California laws:

- 17 (i) violation of California Labor Code § 201 by failing to pay PLAINTIFF
18 all wages earned and unpaid at the time of discharge from employment
19 by DEFENDANTS;
- 20 (ii) violation of California Labor Code § 202 by failing to pay PLAINTIFF
21 all wages earned and unpaid within 72 hours of the time of quitting from
22 employment by DEFENDANTS;
- 23 (iii) violation of California Labor Code § 206 by failing to pay PLAINTIFF,
24 without condition and within the time set by the applicable article, all
25 wages, or parts thereof, conceded by DEFENDANTS to be due;
- 26 (iv) violation of California Labor Code § 226 by failing to provide
27 PLAINTIFF with accurate wage statements;
- 28 (v) commission of a misdemeanor in violation of California Labor Code
§ 226.6 by knowingly and intentionally violating the provisions of
California Labor Code § 226;
- (vi) violation of California Labor Code § 226.7 by requiring PLAINTIFF to
work during meal and rest periods mandated by the applicable Wage
Order and failing to provide PLAINTIFF one (1) hour additional wages
at the non-exempt employee's regular rate of compensation for each
work day that the meal or rest period is not provided;

- 1 (vii) violation of California Labor Code § 510 failing to compensate
2 PLAINTIFF at the rate of no less than one and one-half times the regular
3 rate of pay for an employee for all work in excess of eight hours in one
4 workday and any work in excess of 40 hours in any workweek and the
5 first eight hours worked on the seventh day of work in any one
6 workweek, and by failing to compensate PLAINTIFF at the rate of no
7 less than twice the regular rate of pay for an employee for work in excess
8 of 12 hours in one day and any work in excess of eight hours on any
9 seventh day of a workweek;
- 6 (viii) violation of California Labor Code § 512 by failing to provide
7 PLAINTIFF with a meal period of not less than 30 minutes for every
8 work period of more than five hours per day and by not providing
9 PLAINTIFF with a second meal period of not less than 30 minutes for a
10 work period of more than 10 hours per day;
- 9 (ix) violation of California Labor Code § 1197 by failing to pay at least the
10 minimum wage for all hours worked by PLAINTIFF;
- 11 (x) violation of California Labor Code §§ 1194 by failing to pay minimum
12 and/or overtime wages for all hours worked by PLAINTIFF;
- 12 (xi) violation of California Labor Code § 1194.2 by failing to liquidated
13 damages for failure to pay minimum wages for all hours worked by
14 PLAINTIFF; and
- 14 (xii) violation of the covenant of good faith and fair dealing and breach of
15 contract by failing to comply with promised terms and conditions of
16 employment.

16 79. DEFENDANTS' activities also constitute unfair practices in violation of California
17 Business & Professions Code §§ 17200 *et seq.* because DEFENDANTS' practices violate the
18 above noted laws, and/or violate an established public policy and/or the practice is immoral,
19 unethical, oppressive, unscrupulous and substantially injurious to PLAINTIFF, and cause
20 PLAINTIFF loss of money and/or property.

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

24 81. As a result of their unlawful acts, DEFENDANTS have reaped and continue to reap
25 unfair benefits and unlawful profits at the expense of PLAINTIFF. DEFENDANTS should be
26 enjoined from this activity and made to disgorge these ill-gotten gains and restore to PLAINTIFF
27 the wrongfully withheld wages pursuant to California Business and Professions Code § 17203.
28 PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS are unjustly

1 enriched through their failure to pay legal and contractual wages, and/or other compensation.
2 PLAINTIFF is informed and believes, and thereon alleges, that PLAINTIFF is prejudiced by
3 DEFENDANTS' unfair trade practices.

4 82. As a direct and proximate result of the unfair business practices of DEFENDANTS,
5 and each of them, PLAINTIFF is entitled to equitable and injunctive relief, including full
6 restitution and/or disgorgement of all wages which have been unlawfully withheld from
7 PLAINTIFF as a result of the business acts and practices described herein and enjoining
8 DEFENDANTS to cease and desist from engaging in the practices described herein.

9 83. The unlawful and unfair conduct alleged herein is continuing, and there is no
10 indication that DEFENDANTS will not continue such activity into the future.

11 84. PLAINTIFF further request that the Court issue a preliminary and permanent
12 injunction prohibiting DEFENDANTS from the acts described herein.

13 85. WHEREFORE, PLAINTIFF requests relief as described herein and below.

14
15 **NINTH CAUSE OF ACTION**
16 **VIOLATIONS OF CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT**
17 **(CALIFORNIA LABOR CODE §§ 2698 *ET SEQ.*)**
(AGAINST ALL DEFENDANTS)

18 86. PLAINTIFF hereby incorporates by reference each and every allegation contained
19 above in this complaint as though fully set forth herein.

20 87. PLAINTIFF submits this Complaint to include allegations pursuant to the California
21 Private Attorneys General Act, Labor Code §§ 2699 *et seq.* ("PAGA"). PAGA is an enforcement
22 action that empowers an aggrieved employee to seek penalties on behalf of themselves, current and
23 former employees and the State, without the need to certify a class. For purposes of this claim only,
24 therefore, PLAINTIFF brings this claim for herself and other current and former employees and
25 need not comply with Class Action Certification.

26 88. PLAINTIFF is an aggrieved employee as defined in Labor Code § 2699(a). She
27 brings this cause on behalf of herself and other current or former aggrieved employees affected by
28 the labor law violations alleged in this complaint.

1 89. The pre-lawsuit notice requirements set forth in Labor Code § 2699.3 have been
2 satisfied by written notice by certified mail to all DEFENDANTS and to the Labor and Workforce
3 Development Agency, detailing the Labor Code and IWC Wage Order violations averred herein.
4 The LWDA refused to timely investigate these violations.

5 90. PLAINTIFF submits this Complaint to include allegations pursuant to PAGA, and
6 in particular to include violations of those provisions listed under Labor Code § 2699.5, those
7 listed above, as well as the derivative enforcement statutes contained above or as listed in the
8 California Labor Code.

9 91. Labor Code § 2699(f) provides:

10 For all provisions of this code except those for which a civil penalty is
11 specifically provided, there is established a civil penalty for a violation of
12 these provisions, as follows: . . . (2) If, at the time of the alleged violation,
13 the person employs one or more employees, the civil penalty is one hundred
14 dollars (\$100) for each aggrieved employee per pay period for the initial
15 violation and two hundred dollars (\$200) for each aggrieved employee per
16 pay period for each subsequent violation.

17 92. PLAINTIFF seeks civil penalties as provided under applicable Labor Code sections
18 for violations of the Labor Code alleged herein pursuant to Labor Code § 2699(a). To the extent
19 that any violation alleged herein does not carry a penalty, PLAINTIFF seeks civil penalties
20 pursuant to Labor Code § 2699(f) for PLAINTIFF, other current or former employees, and the
21 State of California for violations of those sections.

22 93. PLAINTIFF seeks penalties on behalf of herself, other aggrieved employees, and
23 the State of California, as provided by Labor Code § 2699(i), including but not limited to penalties
24 due pursuant to Labor Code § 558(a) as a result of DEFENDANTS' violation of the provisions of
25 the Labor Code and IWC Wage Order 5-2001.

26 94. All DEFENDANTS are liable to PLAINTIFF and "other current or former
27 employees and the state" for the civil penalties arising from the violations alleged in this
28 Complaint pursuant to Labor Code §§ 558 and 1197.1. PLAINTIFF is also entitled to an award of
attorneys' fees and costs as set forth below.

 95. PLAINTIFF, on behalf of herself and other current or former employees, requests

1 relief as hereinafter provided.

2
3 **VI. PRAYER FOR RELIEF**

4 WHEREFORE, PLAINTIFF prays for judgment for PLAINTIFF as follows:

- 5 1. For compensatory damages in an amount according to proof with interest thereon;
- 6 2. For economic and/or special damages in an amount according to proof with interest
7 thereon;
- 8 3. For a declaratory judgment that DEFENDANT violated the rights of PLAINTIFF
9 and the Class under the California Labor Code, and applicable wage orders as set forth in the
10 preceding paragraphs;
- 11 4. For an award to PLAINTIFF of statutory damages or, in the alternative, actual
12 damages for DEFENDANT's violations of the California Labor Code;
- 13 5. That DEFENDANT be found to have engaged in unfair competition in violation of
14 California Business and Professions Code §§ 17200 *et seq.*;
- 15 6. That DEFENDANT be ordered and enjoined to make restitution to PLAINTIFF due
16 to their unfair competition, including restitutionary disgorgement of their wrongfully-obtained
17 revenues, earnings, profits, compensation, and benefits, pursuant to California Business and
18 Professions Code §§ 17203 and 17204;
- 19 7. That DEFENDANT be enjoined from continuing the unlawful course of conduct
20 alleged herein;
- 21 8. For premium pay and statutory penalties pursuant to Labor Code § 203, excluding
22 any penalties available solely through the procedures detailed in Labor Code §§ 2698 *et seq.*;
- 23 9. For premium wages pursuant to Labor Code §§ 226 and 226.7;
- 24 10. For minimum wages pursuant to Labor Code §§ 1197, 1194(a), 1194.2, and the
25 Wage Orders;
- 26 11. For liquidated damages pursuant to the Labor Code § 1194.2;
- 27 12. For penalties pursuant to Labor Code § 226.
- 28 13. For attorneys' fees, interests, and costs of suit under the California Labor Code

1 including §§ 226, 1194, and pursuant to the private attorney provisions of California Code of Civil
2 Procedure § 1021.5.

3 14. For unpaid wages, liquidated damages, penalties and other relief as provided by the
4 California Labor Code.

5 15. For such other and further relief as the Court deems just and proper excluding any
6 penalties available solely through the procedures detailed in Labor Code §§ 2698 *et seq.*

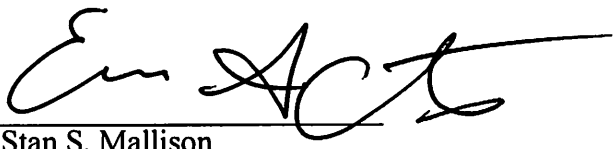
7 16. For penalties for the State, Plaintiff and other current or former employees pursuant
8 to the Labor Code Private Attorney General Act.

9
10 **VII. DEMAND FOR JURY TRIAL**

11 PLAINTIFF hereby demands trial of her claims by jury to the extent authorized by law.

12
13 Dated: April 22, 2016

MALLISON & MARTINEZ

14
15 By: 

16 Stan S. Mallison
17 Hector R. Martinez
18 Marco A. Palau
19 Joseph D. Sutton
20 Eric S. Trabucco
21 Attorneys for Plaintiffs
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