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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

DIANA GONZALEZ, an individual, on behalf
of herself and all others similarly situated,

Plaintiff,

vs.

V.F. CORPORATION “WHICH WILL DO
BUSINESS IN CALIFORNIA AS
PENNSYLVANIA V.F. CORPORATION,” a
Pennsylvania corporation; VOLT
INFORMATION SCIENCES, INC., a New
York corporation; and DOES 1 through 100,

Defendants.

Case No. 20CV366051

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, AND 1197);**
- (2) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194, AND
1198);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7 AND 512);**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7 AND 516);**
- (5) **WAGE STATEMENT
VIOLATIONS (LABOR CODE §
226, *et seq.*);**
- (6) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (7) **FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENSES (LABOR CODE § 2802,
et seq.);**
- (8) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200, *et seq.*); AND**
- (9) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS**

**GENERAL ACT (LABOR CODE §
2698 *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

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1 Plaintiff Diana Gonzalez (hereinafter "Plaintiff"), on behalf of herself and all others
2 similarly situated, hereby brings this First Amended Class and Representative Action Complaint
3 ("FAC") against V.F. Corporation "Which Will Do Business In California as Pennsylvania V.F.
4 Corporation," a Pennsylvania corporation; Volt Information Sciences, Inc., a New York
5 corporation; and DOES 1 through 100, inclusive (collectively "Defendants"), and on information
6 and belief alleges as follows:

7 **JURISDICTION**

8 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
9 class and representative action for recovery of unpaid wages and penalties under California
10 Business and Professions Code § 17200, *et. seq.*; Labor Code §§ 201-204, 226, 226.7, 510, 512,
11 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, and 2802; and Industrial Welfare
12 Commission Wage Order No. 9 ("Wage Order 9"), in addition to seeking declaratory relief and
13 restitution. This class and representative action is brought pursuant to California Code of Civil
14 Procedure § 382. This Court has jurisdiction over Defendants' violations of the California Labor
15 Code because the amount in controversy exceeds this Court's jurisdictional minimum.
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17 **VENUE**

18 2. Venue is proper in this judicial district pursuant to California Code of Civil
19 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
20 occurred in the County of Santa Clara. Defendants own, maintain offices, transact business, have
21 an agent or agents within the County of Santa Clara, and/or otherwise are found within the County
22 of Santa Clara, and Defendants are within the jurisdiction of this Court for purposes of service of
23 process. Venue is further proper in Santa Clara County because Defendants' principal place of
24 business is in Colorado, is incorporated under the laws of Pennsylvania, does business in Santa
25 Clara County, and has not registered a California place of business with the California Secretary
26 of State. As such, venue is proper in any county in California.

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PARTIES

3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was and currently is a resident of California. During the four years immediately preceding the filing of the Complaint in this action and within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein, lost money and/or property, and has been deprived of the rights guaranteed by California Labor Code §§ 201-204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and 2802; California Business and Professions Code § 17200, *et seq.* (Unfair Competition).

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and do) business by operating a warehouse, and employed Plaintiff and other similarly situated non-exempt employees within Santa Clara County and the state of California and, therefore, were (and are) doing business in Santa Clara County and the State of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed and believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined below) to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

6. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

7. At all times herein mentioned, each of said Defendants participated in the doing

1 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
2 Defendants, and each of them, were the agents, servants, and employees of each and every one of
3 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
4 were acting within the course and scope of said agency and employment. Defendants, and each
5 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
6 omissions complained of herein.

7 8. At all times mentioned herein, Defendants, and each of them, were members of
8 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
9 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
10 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
11 members of the Classes.

12 **GENERAL FACTUAL ALLEGATIONS**

13 9. Plaintiff was employed by Defendants as a “logistics specialist” from
14 approximately June 2019 to approximately November 2019. Plaintiff worked five days a week
15 from approximately 8:00 a.m. to approximately 5:00 p.m. per shift for an average of 45 hours of
16 work per week. Plaintiff’s primary duties as a logistics specialist were to coordinate shipments
17 for Defendants’ products, answer and route phone calls to the appropriate channels, coordinate
18 shipments with Defendants’ clients, and generally ensure that Defendants were meeting all of
19 their windows for shipment in a timely manner. Additionally, Plaintiff was responsible for
20 scheduling and confirming pickups of inventory and continuously updating the shipping logs.
21 Plaintiff was responsible for making sure that all shipping and routing of Defendants’ inventory
22 was completed to the satisfaction of Defendants and their clients.

23 **Missed/Shortened Meal Periods**

24 10. Throughout the duration of Plaintiff’s employment with Defendants, Plaintiff
25 generally did not receive compliant meal periods pursuant to California statutory regulations.
26 Specifically, Plaintiff would clock out after her fifth hour of work using an application on her
27 computer and continue working for thirty minutes before clocking back in at the direction of her
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1 supervisors. Plaintiff would bring her lunch to the facility, retrieve it from the break room, and
2 return to her desk to continue working off-the-clock until the thirty minutes had elapsed. This
3 was the general practice and policy of Defendants towards Plaintiff and the putative class in
4 regards to meal periods. The exercise of a duty free thirty-minute meal period was frowned upon
5 by management, and employees who chose to do so would be admonished by their supervisors.
6 On the few occasions that Plaintiff did take a meal period, which she estimates was approximately
7 seven times, her supervisor, Marcela Hernandez, would act with general hostility towards her and
8 pressure her and the rest of the employees to not take their meal periods. Rather, non-exempt
9 employees would be instructed to work through their meal period to ensure that all of the work
10 for the day would be completed in a timely manner. Accordingly, Defendants failed to provide
11 all required first meal periods to Plaintiff and other non-exempt employees.

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13 11. Furthermore, Defendants also did not provide a second meal period to Plaintiff
14 when she worked shifts in excess of 10.0 hours.

15 12. On these instances that Defendants failed to provide Plaintiff with a legally
16 compliant meal period, Defendants did not pay Plaintiff the meal period premiums required by
17 Labor Code § 226.7. Moreover, during at least a portion of the putative class period, on
18 information and belief, Defendants maintained no payroll code or other mechanism for paying
19 meal period premiums when Defendants failed to provide legally compliant meal periods.

20 **Missed Rest Periods**

21 13. Plaintiff and the putative class were not permitted by management to exercise their
22 statutory right to take duty free uninterrupted rest periods of at least ten minutes per four hours
23 worked, or major fraction thereof, throughout the duration of their employment. Specifically, at
24 the beginning of Plaintiff's employment, Plaintiff's supervisor, Mang Chang, informed Plaintiff
25 that "rest breaks are not how we do things around here." In keeping with Defendants'
26 policy/procedure as articulated by Defendants' supervisors, Plaintiff was prohibited from taking
27 all lawful rest periods to which she was entitled.

28 14. On these instances that Defendants failed to authorize and permit Plaintiff to take

1 a legally compliant rest period, Defendants did not pay Plaintiff the rest period premium required
2 by Labor Code § 226.7. Upon information and belief, during at least a portion of the putative
3 class period, Defendants maintained no payroll code or other mechanism for paying rest period
4 premiums when Defendants failed to provide legally compliant rest periods.

5 **Security Checks/Off-The-Clock**

6 15. During Plaintiff's employment with Defendants, she was required to undergo
7 security checks at the direction of Defendants prior to clocking in for the day and after clocking
8 out for the day. Specifically, Plaintiff was told that she had to use the warehouse entrance at the
9 facility she worked at, as she was not considered a corporate employee and as such was not
10 afforded the luxury of using the main entrance. Defendants' policy was that all employees
11 entering and leaving the facility through the warehouse were required to be searched by security.
12 Plaintiff would punch in to verify her identity prior to going through the security check but was
13 not technically considered to be "on-the-clock" until she arrived at her desk, because she could
14 not clock in until she reached her desk. After verifying her identity, security at the warehouse
15 would inspect Plaintiff's person and all of her belongings. If there was a line of employees
16 waiting to go through security, Plaintiff would have to wait anywhere from five to ten minutes,
17 which constituted uncompensated worktime. If there was no line, it would take Plaintiff anywhere
18 from two to five minutes, all time that was uncompensated by Defendants. Additionally, if there
19 were trucks carrying inventory into or out of the warehouse, they would be given precedence over
20 employees that worked inside the warehouse for the security checks. On these instances, Plaintiff
21 would have to wait anywhere from fifteen to twenty minutes for the trucks to pass through security
22 before she was permitted to pass through the security check herself. When this occurred, it would
23 take Plaintiff up to thirty minutes total before she could even enter the facility, all time which was
24 uncompensated by Defendants. Furthermore, at the end of Plaintiff's shifts, she would be
25 required to clock out using the computer at her desk and pass through security again while off-
26 the-clock and was at no point compensated for any time spent doing so.
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28 16. Based on the above, Defendants' security check practices have resulted in

1 substantial amounts of time not recorded as hours worked, most of which constituted overtime
2 hours worked, therefore resulting in substantial amounts of wages not paid to Plaintiff and the
3 putative class.

4 **Failure to Reimburse for Business Expenses**

5 17. During Plaintiff's employment with Defendants, Plaintiff was directed by her
6 supervisor Marcela Hernandez to purchase coffee for the entire office every single Friday. This
7 practice was akin to "hazing" as she was a junior employee at the warehouse. This would cost
8 Plaintiff twenty dollars every single Friday and at no point was she ever provided any
9 reimbursement for these expenses incurred in furtherance of the demands and wishes of
10 management.

11 18. Additionally, during Plaintiff's employment with Defendants, she was instructed
12 that she was required to "wear the brand". This translated to exclusively purchasing Vans brand
13 clothing to wear to the workplace. When Plaintiff first began her employment with Defendants,
14 she spent \$250 on Vans brand apparel to wear to work so as to comply with Defendants uniform
15 requirements. Not only was Plaintiff never reimbursed for these necessary business expenses,
16 she was never even provided any sort of discount. As Plaintiff would be mocked and admonished
17 by management and her coworkers for wearing the same clothes every day, she felt pressured to
18 purchase more Vans brand apparel to wear to work. On three separate occasions, Plaintiff was
19 made to purchase Vans clothing for work which cost her a total of at least one thousand dollars.
20 At no point was Plaintiff provided any reimbursement or discounts for these necessary business
21 purchases.

22 19. Plaintiff was required to be on the phone for the vast majority of the time that she
23 spent on-the-clock. Generally, she would use the phones provided by Defendants. However, on
24 at least five separate occasions, Defendants' phone lines went down and Plaintiff was made to
25 use her personal cellular phone to conduct her regular business duties. At no point was Plaintiff
26 ever provided any sort or reimbursements on these occasions.

27 20. Due to Defendants' timekeeping policies and practices that fail to compensate for
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1 this off-the-clock work, Plaintiff and other non-exempt employees were not compensated for all
2 hours worked, including all overtime hours worked.

3 21. As a result of Defendants' failure to pay all overtime wages, minimum wages,
4 reimbursements, and meal and rest period premium wages, Defendants maintained inaccurate
5 payroll records and issued inaccurate wage statements to Plaintiff, and failed to pay all wages
6 owed to Plaintiff upon her separation of employment with Defendants.

7 **CLASS AND REPRESENTATIVE ACTION ALLEGATIONS**

8 22. Class Definitions: Plaintiff brings this class and representative action on behalf of
9 himself and the following Classes pursuant to Section 382 of the Code of Civil Procedure:

10 a. The Off-The-Clock-Class consists of all Defendants' current and former
11 non-exempt employees in California who were not permitted to record their actual hours
12 worked, during the four years immediately preceding the filing of the Complaint through
13 the present;

14 b. The Meal Period Class consists of all of Defendants' current and former
15 non-exempt employees in California who: (i) worked at least one shift in excess of 5.0
16 hours without a 30-minute meal period beginning prior to the end of the fifth hour of work;
17 and/or (ii) worked at least one shift in excess of 10 hours without a second 30-minute meal
18 period beginning prior to the end of the tenth hour of work during the four years
19 immediately preceding the filing of the Complaint through the present;

20 c. The Rest Period Class consists of all of Defendants' current and former
21 non-exempt employees in California who worked at least one shift in excess of 3.5 hours
22 during the four years immediately preceding the filing of the Complaint through the
23 present;

24 d. The Wage Statement Class consists of all members of the Off-The-Clock,
25 Meal Period Class, and Rest Period Class who received a wage statement during the one
26 year immediately preceding the filing of the Complaint through the present;
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1 e. The Waiting Time Class consists of Defendants' formerly employed
2 members of the Off-The-Clock, Meal Period Class, and Rest Period Class who separated
3 from employment during the three years immediately preceding the filing of the
4 Complaint through the present; and

5 f. The Employee Expense Class consists of all of Defendants' current and
6 former non-exempt employees in California who: (i) were not reimbursed for the purchase
7 of necessary business attire; and/or (ii) were not reimbursed for all expenses necessarily
8 incurred in the performance of their duties during the four years immediately preceding
9 the filing of the Complaint through the present.

10 23. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
11 joinder of all members would be unfeasible and not practicable. The membership of the classes
12 and subclasses are unknown to Plaintiff at this time; however, it is estimated that the Classes
13 number greater than three hundred (300) individuals as to each Class. The identity of such
14 membership is readily ascertainable via inspection of Defendants' employment records.

15 24. **Common Questions of Law and Fact Predominate/Well Defined Community**
16 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
17 situated employees, which predominate over questions affecting only individual members
18 including, without limitation to:
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20 i. Whether Defendants failed to pay members of the Off-The-Clock Class for
21 all hours worked as a result of Defendants' timekeeping practices;

22 ii. Whether Defendants' overtime practices violate the applicable Labor Code
23 provisions including, but not limited to, Sections 510 and 1194 by requiring overtime
24 work and not paying the Off-The-Clock Class for said work according to the overtime
25 laws of the State of California;

26 iii. Whether Defendants provided legally compliant meal periods to members
27 of the Meal Period Class;
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1 iv. Whether Defendants authorized and permitted legally compliant rest
2 periods to members of the Rest Period Class;

3 v. Whether Defendants failed to reimburse members of the Employee
4 Expense Class for business expenditures necessarily incurred in the performance of their
5 duties;

6 v. Whether Defendants furnished legally compliant wage statements to
7 members of the Wage Statement Class pursuant to Labor Code § 226;

8 vi. Whether Defendants' policies and/or practices for the timing and amount
9 of payment of final wages to members of the Waiting Time Class at the time of separation
10 from employment were unlawful.

11 25. **Predominance of Common Questions:** Common questions of law and fact
12 predominate over questions that affect only individual members of the Classes. The common
13 questions of law set forth above are numerous and substantial and stem from Defendants' policies
14 and/or practices applicable to each individual class member, such as Defendants' uniform
15 timekeeping, wage statement, meal and rest period, reimbursement of employee expenses, and
16 payment of final wages policies/practices. As such, the common questions predominate over
17 individual questions concerning each individual class member's showing as to his or her
18 eligibility for recovery or as to the amount of his or her damages.

19 26. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
20 Plaintiff was employed by Defendants as a non-exempt employee in California during the
21 statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As
22 alleged herein, Plaintiff, like the members of the Classes, was deprived of all earned overtime and
23 minimum wages, was subject to Defendants' uniform meal and rest period policies/practices, was
24 furnished with inaccurate and incomplete wage statements, was not reimbursed for all necessary
25 business expenses, and was not paid all wages owed at time of separation of employment.

26 27. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
27 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,
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1 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of
2 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
3 and-hour class actions in state and federal courts in the past and are committed to vigorously
4 prosecuting this action on behalf of the members of the Classes.

5 **28. Superiority:** The California Labor Code is broadly remedial in nature and serves
6 an important public interest in establishing minimum working conditions and standards in
7 California. These laws and labor standards protect the average working employee from
8 exploitation by employers who have the responsibility to follow the laws and who may seek to
9 take advantage of superior economic and bargaining power in setting onerous terms and
10 conditions of employment. The nature of this action and the format of laws available to Plaintiff
11 and members of the Classes make the class action format a particularly efficient and appropriate
12 procedure to redress the violations alleged herein. If each employee were required to file an
13 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
14 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
15 their vastly superior financial and legal resources. Moreover, requiring each member of the
16 Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by
17 employees who would be disinclined to file an action against their former and/or current employer
18 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
19 employment. Further, the prosecution of separate actions by the individual class members, even
20 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
21 with respect to the individual class members against Defendants herein; and which would
22 establish potentially incompatible standards of conduct for Defendants; and/or legal
23 determinations with respect to individual class members which would, as a practical matter, be
24 dispositive of the interest of the other class members not parties to adjudications or which would
25 substantially impair or impede the ability of the class members to protect their interests. Further,
26 the claims of the individual members of the classes are not sufficiently large to warrant vigorous
27 individual prosecution considering all of the concomitant costs and expenses attending thereto.
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1 As such, the Classes identified below are maintainable under Section 382 of the Code of Civil
2 Procedure.

3 **FIRST CAUSE OF ACTION**
4 **MINIMUM WAGE VIOLATIONS**
5 **(AGAINST ALL DEFENDANTS)**

6 29. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

7 30. Wage Order 9, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
8 right of employees to be paid minimum wages for all hours worked in amounts set by state law.
9 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
10 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
11 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
12 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform
13 their pay practices to the requirements of the law by failing to pay Plaintiff and the Minimum
14 Wage Class for all hours actually worked including, but not limited to, all hours they were subject
15 to the control of Defendants and/or suffered or permitted to work under the California Labor Code
16 and Wage Order 9.

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18 31. California Labor Code § 1198 makes unlawful the employment of an employee
19 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
20 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
21 those employees the balance of the unpaid wages as well as liquidated damages in an amount
22 equal to the wages due and interest thereon.

23 32. As a direct and proximate result of Defendants' unlawful conduct as alleged
24 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but
25 not limited to, unpaid wages and lost interest in an amount to be established at trial, and they are
26 entitled to recover economic and statutory damages and penalties and other appropriate relief as
27 a result of Defendants' violations of the California Labor Code and Wage Order 9.

28 33. Defendants' practice and uniform administration of corporate policy regarding

1 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
2 members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages,
3 liquidated damages, including interest thereon, statutory penalties, and attorneys' fees and costs
4 of suit according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198 and Code of
5 Civil Procedure § 1021.5.

6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO PAY ALL OVERTIME WAGES**

8 **(AGAINST ALL DEFENDANTS)**

9 34. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

10 35. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
11 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
12 overtime hours worked, and provide a private right of action for the failure to pay all overtime
13 compensation for overtime work performed.

14 36. At all times relevant herein, Defendants were required to properly compensate
15 Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California
16 Labor Code § 1194 and Wage Order 9. Wage Order 9, § 3 requires an employer to pay an
17 employee "one and one-half (1½) times [the] employee's regular rate of pay" for work in excess
18 of 8 hours per work day and/or in excess of 40 hours of work in the workweek and/or for the
19 first 8 hours of work on the seventh consecutive day of work in a workweek. Wage Order 9, §
20 3 also requires an employer to pay an employee double the employee's regular rate of pay for
21 work in excess of 12 hours each work day and/or for work in excess of 8 hours on the seventh
22 consecutive day of work in the workweek. Defendants caused Plaintiff to work overtime hours,
23 but did not compensate Plaintiff or members of the Overtime Class at one and one-half times
24 their regular rate of pay for such hours.

25 37. The foregoing policies and practices are unlawful and create entitlement to
26 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
27 premiums owing, including interest thereon, statutory penalties, and attorneys' fees and costs of
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1 suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order 9, and
2 Code of Civil Procedure § 1021.5.

3 **THIRD CAUSE OF ACTION**

4 **MEAL PERIOD VIOLATIONS**

5 **(AGAINST ALL DEFENDANTS)**

6 38. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

7 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 failed in their affirmative obligation to provide all of their hourly non-exempt employees,
9 including Plaintiff and members of the Meal Period Class, with all required meal periods in
10 accordance with the mandates of the California Labor Code and Wage Order 9, for the reasons
11 set forth in the factual allegations and class definitions sections of this Complaint.
12

13 40. As a result, Defendants are responsible for paying premium compensation for meal
14 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to
15 Wage Order 9, Labor Code §§ 226.7 and 512, and Civil Code §§ 3287(b) and 3289.

16 **FOURTH CAUSE OF ACTION**

17 **REST PERIOD VIOLATIONS**

18 **(AGAINST ALL DEFENDANTS)**

19 41. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

20 42. Wage Order 9, § 11 and California Labor Code §§ 226.7 and 516 establish the
21 right of employees to be provided with a rest period of at least ten (10) minutes for each four (4)
22 hour period worked, or major fraction thereof.

23 43. Due to their unlawful rest period policy and practice, Defendants did not authorize
24 and permit members of the Rest Period Class to take all rest periods to which they were legally
25 entitled for the reasons set forth in the factual allegations and class definitions sections of this
26 Complaint.

27 44. The foregoing violations create an entitlement to recovery by Plaintiff and
28 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums

1 owing, including interest thereon, statutory penalties, and costs of suit pursuant to Wage Order
2 9, California Labor Code §§ 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

3 **FIFTH CAUSE OF ACTION**

4 **WAGE STATEMENT VIOLATIONS**

5 **(AGAINST ALL DEFENDANTS)**

6 45. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

7 46. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
9 and the Wage Statement Class with accurate and complete itemized wage statements that
10 included, among other requirements, all minimum and overtime wages earned, and meal and rest
11 period premium wages earned, in violation of Labor Code § 226.

12 47. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
13 with complete and accurate itemized wage statements resulted in actual injury, as said failures
14 led to, among other things, the non-payment of all their overtime and minimum wages, meal and
15 rest period premium wages, and deprived them of the information necessary to identify the
16 discrepancies in Defendants' reported data.

17 48. Defendants' failures create an entitlement to recovery by Plaintiff and members of
18 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
19 Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and
20 costs of suit according to Labor Code §§ 226 and 226.3.

21 **SIXTH CAUSE OF ACTION**

22 **WAITING TIME PENALTIES**

23 **(AGAINST ALL DEFENDANTS)**

24 49. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25 50. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
26 an employer to pay all wages immediately at the time of termination of employment in the event
27 the employer discharges the employee or the employee provides at least 72 hours of notice of
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1 his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her
2 intent to quit, said employee's wages become due and payable not later than 72 hours upon said
3 employee's last date of employment.

4 51. Defendants failed to timely pay Plaintiff all of her final wages at the time of
5 termination, which include, among other things, underpaid minimum and overtime wages, and
6 meal and rest period premium wages. Further, Plaintiff is informed and believes, and based
7 thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to
8 pay members of the Waiting Time Class all earned wages at the end of employment in a timely
9 manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all
10 final wages was willful within the meaning of Labor Code § 203.

11 52. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
12 Time Class their earned wages upon separation from employment results in a continued payment
13 of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and
14 members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203,
15 plus reasonable attorneys' fees and costs of suit.
16

17 **SEVENTH CAUSE OF ACTION**

18 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

19 **(AGAINST ALL DEFENDANTS)**

20 53. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

21 54. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
22 states that "an employer shall indemnify his or her employees for all necessary expenditures or
23 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
24 his or her obedience to the directions of the employer..."

25 55. Due to Defendants' unlawful policy and practice of requiring employees to use
26 their personal cellular phones for the performance of their job duties and failing to reimburse
27 employees for all uniform expenses also necessarily incurred in the performance of their duties,
28 Defendants have violated Labor Code § 2802.

56. Plaintiff and members of the Employee Expense Class are entitled to attorneys' fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

57. Pursuant to Labor Code §2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff and members of the Employee Expense Class are entitled to interest, which shall accrue from the date on which they incurred the initial necessary expenditure.

EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION
(AGAINST ALL DEFENDANTS)

58. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

59. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200, *et seq.*, by failing to pay Plaintiff and the Classes all overtime and minimum wages, and meal and rest period premium wages, knowingly failing to furnish accurate and complete itemized wage statements in violation of Labor Code § 226, and willfully failing to timely pay Plaintiff and members of the waiting time class all final wages upon separation of employment.

60. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff, and continues to deprive members of the Classes, of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

61. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for himself, and on behalf of the members of the Classes, seeks full restitution of monies as necessary and according to proof, to restore any and all monies withheld, acquired, and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

62. The acts complained of herein occurred within the four years immediately preceding the filing of the Complaint in this action.

63. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current hourly non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

NINTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)

64. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though full set forth herein.

65. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698 et seq., acting on behalf of herself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum

1 Wage Class, and other similarly aggrieved employees in violation of Labor
2 Code §§ 1182.12, 1194, 1194.2, and 1197;

- 3 b. failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all
4 earned overtime compensation in violation of Labor Code §§ 204, 510, 558,
5 1194, and 1198;
- 6 c. Failing to provide all legally required meal periods, and failing to pay meal
7 period premium pay, to Plaintiff, the Meal Period Class, and other similarly
8 aggrieved employees in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- 9 d. Failing to timely pay all final wages and compensation earned by Plaintiff, the
10 Waiting Time Penalty Class, and other aggrieved employees at the time of
11 separation in violation of Labor Code §§ 201, 202, and 203;
- 12 e. Failing to reimburse Plaintiff and the Employee Expense Class for all required
13 business expenses incurred in violation of Labor Code § 2802;
- 14 f. Failing to authorize and permit all legally required rest periods, and failing to
15 pay rest period premiums, to Plaintiff, the Rest Period Class, and other similarly
16 aggrieved employees in violation of Labor Code §§ 226.7, 512, and 558;
- 17 g. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved
18 employees with complete, accurate, itemized wage statements in violation of
19 Labor Code § 226;
- 20 h. Failing to pay non-exempt employees all earned wages at least twice during
21 each calendar month in violation of Labor Code § 204; and
- 22 i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
23 employees in violation of Labor Code §§ 558 and 1174.

24 66. On April 3, 2020, Plaintiff notified Defendants via certified mail, and notified the
25 California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’
26 violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties
27 under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code
28 identified in Paragraph 65 (a)-(i). The LWDA has not provided notice that it intends to investigate

1 the violations, and therefore Plaintiff has exhausted her administrative requirements for bringing
2 a claim under the Private Attorneys General Act with respect to these violations.

3 67. Plaintiff was compelled to retain the services of counsel to file this court action to
4 protect her interests and the interests of other aggrieved employees, and to assess and collect the
5 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which
6 she is entitled to receive under California Labor Code § 2699(g).

7 **PRAYER**

8 WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf
9 this suit is brought against Defendants, as follows:

- 10 1. For an order certifying the proposed Classes;
- 11 2. For an order appointing Plaintiff as representative of the Classes;
- 12 3. For an order appointing counsel for Plaintiff as counsel for the Classes;
- 13 4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages,
14 and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and
15 1197;
- 16 5. Upon the Second Cause of Action, for compensatory, consequential, general, and
17 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and
18 1198;
- 19 6. Upon the Third Cause of Action, for compensatory, consequential, general, and special
20 damages according to proof pursuant to Labor Code §§ 226.7 and 512;
- 21 7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and special
22 damages according to proof pursuant to Labor Code §§ 226.7 and 516;
- 23 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code § 226,
24 *et seq.*;
- 25 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to Labor
26 Code § 201-203;
- 27 10. Upon the Seventh Cause of Action, for compensatory, consequential, general and
28

1 special damages according to proof pursuant to Labor Code § 2802;

2 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the Classes
3 of all money and/or property unlawfully acquired by Defendants by means of any acts
4 or practices declared by this Court to be in violation of Business and Professions Code
5 § 17200, *et seq.*;

6 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other aggrieved
7 employees, and the State of California according to proof pursuant to Labor Code §§
8 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial
9 violation for each failure to pay each employee and \$200 for each subsequent violation
10 or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay
11 each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial
12 violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
13 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each
14 subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4)
15 \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant
16 to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial
17 violation and \$200 for each subsequent violation per employee per pay period for those
18 violations of the Labor Code for which no civil penalty is specifically provided, based
19 on the following Labor Code violations;

20 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code §
21 218.6 and Civil Code §§ 3287 and 3289;

22 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
23 218.5, 221, 226, 1194, *et seq.*, and 2699(g); and Code of Civil Procedure § 1021.5; and

24 15. For such other and further relief the Court may deem just and proper.
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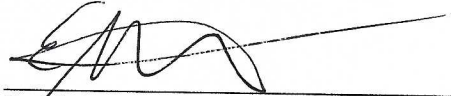
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1 Dated: June 10, 2020

Respectfully submitted,
STANSBURY BROWN LAW

2
3 By:


Daniel J. Brown
Ethan C. Surls
Attorneys for Plaintiff

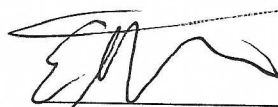
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6
7 **DEMAND FOR JURY TRIAL**

8 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

9
10 Dated: June 10, 2020

Respectfully submitted,
STANSBURY BROWN LAW

11
12 By:


Daniel J. Brown
Ethan C. Surls
Attorneys for Plaintiff

PROOF OF SERVICE

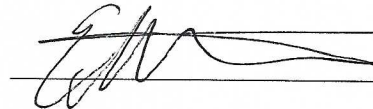
STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 2610 ½ Abbot Kinney Blvd. Venice, CA 90212

On June 10, 2020, I served the document listed below on the parties in this action as follows:
- **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**

- ☐ (BY MAIL) I placed such envelope on the above date, with postage fully prepaid, for deposit in the U.S. Postal Service at my place of business at Venice, California, following the ordinary business practices of my place of business. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mail with the U.S. Postal Service. Under that practice, such correspondence is deposited with the U.S. Postal Service the same day it is collected and processed in the ordinary course of business.
- ☐ (BY HAND DELIVERY) I delivered to an authorized courier or driver authorized by _____ to receive documents to be delivered on the same date.
- ☐ (BY FEDERAL EXPRESS) I am readily familiar with the practice of collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.
- X (BY EMAIL) I caused to be transmitted the document(s) described herein via the email address(s) listed on the attached service list.
- X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 10, 2020, at Redondo Beach, California.



Ethan C. Surls

SERVICE LIST

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