

COPY

AEGIS LAW FIRM, PC
SAMUEL A. WONG, State Bar No. 217104
KASHIF HAQUE, State Bar No. 218672
JESSICA L. CAMPBELL, State Bar No. 280626
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251
Email: JCampbell@aegislawfirm.com

Attorneys for Plaintiff Shannon Forge, individually,
and on behalf of all others similarly situated.

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUL 06 2020

Sherril R. Carter, Executive Officer/Clerk of Court

By: Kristina Vargas, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

SHANNON FORGE, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

CARE PLUS HOME HEALTH INC;
CARE PLUS NURSING SERVICES,
INC.; and DOES 1 through 20, inclusive,

Defendants.

Case No. 20STCV15802

[Amended as a matter of right, pursuant to
Labor Code section 2699.3(a)(2)(C)]

FIRST AMENDED CLASS ACTION
COMPLAINT FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Pay All Wages to Piece-Rate Workers
4. Failure to Provide Meal Periods;
5. Failure to Permit Rest Breaks;
6. Failure to Provide Accurate Itemized Wage Statements;
7. Failure to Pay All Wages Due Upon Separation of Employment;
8. Violation of Business and Professions Code §§ 17200, *et seq.*; and
9. Enforcement of Labor Code § 2698 *et seq.* ("PAGA")

1 Plaintiff Shannon Forge, individually, and on behalf of others similarly situated, alleges
2 as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Shannon Forge (“Plaintiff”) brings this putative class action against
5 defendants Care Plus Home Health Inc¹; Care Plus Nursing Services, Inc.; and DOES 1 through
6 20, inclusive (collectively, “Defendants”), on behalf of herself individually and on behalf of
7 California citizens who are and were employed by Defendants as non-exempt employees
8 throughout California.

9 2. Defendants provide healthcare services in California.

10 3. Through this action, Plaintiff alleges that Defendants have engaged in a
11 systematic pattern of wage and hour violations under the California Labor Code and Industrial
12 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
13 unfair competition.

14 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
15 increased their profits by violating state wage and hour laws by, among other things:

- 16 (a) failing to pay all wages (including minimum wages and overtime
17 wages);
- 18 (b) failing to pay wages to piece-rate workers for time spent in rest breaks
19 and/or recovery periods, and non-productive time;
- 20 (c) failing to provide lawful meal periods or compensation in lieu thereof;
- 21 (d) failing to authorize or permit lawful rest breaks or provide compensation
22 in lieu thereof;
- 23 (e) failing to provide accurate itemized wage statements; and
- 24 (f) failing to pay all wages due upon separation of employment.

25
26 _____
27 ¹ Care Plus Home Health Inc appears to be named erroneously. Plaintiff intends to file a request
28 to dismiss all claims against Care Plus Home Health Inc without prejudice once the amended
complaint is accepted by the Court.

1 5. Plaintiff seeks monetary relief against Defendants on behalf of herself and all
2 others similarly situated in California to recover, among other things, unpaid wages and
3 benefits, interest, attorneys' fees, costs and expenses, and penalties pursuant to Labor Code §§
4 201-203, 204, 210, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194,
5 1194.2, 1197, 1198, 2698, *et seq.*, and Code of California Civil Procedure § 1021.5.

6 **JURISDICTION AND VENUE**

7 6. This is a class action pursuant to California Code of Civil Procedure § 382. The
8 monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits
9 of the Superior Court and will be established according to proof at trial.

10 7. This Court has jurisdiction over this action pursuant to the California
11 Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all
12 causes, except those given by statutes to other courts. The statutes under which this action is
13 brought do not specify any other basis for jurisdiction.

14 8. This Court has jurisdiction over all Defendants because, upon information and
15 belief, they are citizens of California, have sufficient minimum contacts in California, or
16 otherwise intentionally avail themselves of the California market so as to render the exercise of
17 jurisdiction over them by the California courts consistent with traditional notions of fair play
18 and substantial justice.

19 9. Venue is proper in this Court because, upon information and belief, Defendants
20 reside, transact business, or have offices in this county, or the acts and omissions alleged herein
21 took place in this county.

22 **THE PARTIES**

23 10. Plaintiff is a resident of California and worked for Defendants in California
24 during the relevant time periods as alleged herein.

25 11. Plaintiff is informed and believes, and thereon alleges that at all times
26 hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage
27 Orders as employers, whose employees were and are engaged throughout this county and the
28 State of California.

1 12. Plaintiff is unaware of the true names or capacities of the defendants sued herein
2 under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this
3 Complaint and serve such fictitiously named defendants once their names and capacities
4 become known.

5 13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20
6 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants
7 at all relevant times.

8 14. Plaintiff is informed and believes, and thereon alleges, that each defendant acted
9 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
10 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant
11 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as
12 the employer and/or joint employer of Plaintiff and the class members.

13 15. Plaintiff is informed and believes, and thereon alleges, that each and all of the
14 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
15 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
16 the other's behalf. The acts of any and all Defendants were in accordance with, and represent,
17 the official policy of Defendants.

18 16. At all relevant times, Defendants, and each of them, acted within the scope of
19 such agency or employment, or ratified each and every act or omission complained of herein.
20 At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
21 each and all the other Defendants in proximately causing the damages herein alleged.

22 17. Plaintiff is informed and believes, and thereon alleges, that each of said
23 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
24 omissions, occurrences, and transactions alleged herein.

25 **CLASS ACTION ALLEGATIONS**

26 18. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of
27 herself and all others similarly situated who were affected by Defendants' Labor Code,
28 Business and Professions Code §§ 17200, and IWC Wage Order violations.

1 19. All claims alleged herein arise under California law for which Plaintiff seeks
2 relief authorized by California law.

3 20. Plaintiff's proposed class consists of and is defined as follows:

4 Class

5 All California citizens currently or formerly employed by Defendants as non-
6 exempt employees in the State of California at any time between April 6, 2016²
7 and the date the class is certified ("Class").

8 21. Plaintiff also seeks to certify the following subclass of employees:

9 Waiting Time Subclass

10 All Class Members who separated their employment with Defendants at any time
11 between April 6, 2017 and the date the class is certified ("Subclass" or "Waiting
12 Time Subclass").

13 22. Plaintiff reserves the right to modify or re-define the Class, establish additional
14 subclasses, or modify or re-define any class or subclass definition as appropriate based on
15 investigation, discovery, and specific theories of liability.

16 23. Members of the Class and the Subclass described above will be collectively
17 referred to as "Class Members."

18 24. There are common questions of law and fact as to the Class Members that
19 predominate over any questions affecting only individual members including, but not limited to,
20 the following:

21 (a) Whether Defendants fail to pay Plaintiff and Class Members all wages
22 (including minimum wages and overtime wages) for all hours worked by
23 Plaintiff and Class Members.

24 (b) Whether Defendants required Plaintiff and Class Members to work over
25 eight (8) hours per day, over twelve (12) hours per day, over forty (40)
26

27 ² The statute of limitations for this matter was tolled pursuant to Cal. Rules of Court, Appendix I,
28 Emergency Rule No. 9.

1 hours per week, and/or seven (7) consecutive days and failed to pay them
2 overtime compensation at the proper rate.

3 (c) Whether Defendants failed to pay Plaintiff and Class Members for non-
4 productive time, including rest breaks and recovery periods when they
5 were paid on a piece-rate basis.

6 (d) Whether Defendants deprived Plaintiff and Class Members of timely
7 meal periods or required Plaintiff and Class Members to work through
8 meal periods without proper compensation.

9 (e) Whether Defendants deprived Plaintiff and Class Members of rest breaks
10 or required Plaintiff and Class Members to work through rest breaks
11 without proper compensation.

12 (f) Whether Defendants failed to provide Plaintiff and Class Members
13 accurate itemized wage statements.

14 (g) Whether Defendants failed to timely pay the Waiting Time Subclass all
15 wages due upon termination or within seventy-two (72) hours of
16 resignation.

17 (h) Whether Defendants' conduct was willful or reckless.

18 (i) Whether Defendants engaged in unfair business practices in violation of
19 Business and Professions Code §§ 17200, *et seq.*

20 25. There is a well-defined community of interest in this litigation and the proposed
21 Class and Subclass are readily ascertainable:

22 (a) Numerosity: The Class Members are so numerous that joinder of all
23 members is impractical. Although the members of the entire Class and Subclass are unknown
24 to Plaintiff at this time, on information and belief, the class is estimated to be greater than
25 twenty-five (25) individuals. The identities of the Class Members are readily ascertainable by
26 inspection of Defendants' employment and payroll records.

27 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the
28 claims (or defenses, if any) of the Class Members because Defendants' failure to comply with

1 the provisions of California's wage and hour laws entitled each Class Member to similar pay,
2 benefits, and other relief. The injuries sustained by Plaintiff are also typical of the injuries
3 sustained by the Class Members because they arise out of and are caused by Defendants'
4 common course of conduct as alleged herein.

5 (c) Adequacy: Plaintiff will fairly and adequately represent and protect the
6 interests of all Class Members because it is in her best interest to prosecute the claims alleged
7 herein to obtain full compensation and penalties due to her and the Class Members. Plaintiff's
8 attorneys, as proposed class counsel, are competent and experienced in litigating large
9 employment class actions and versed in the rules governing class action discovery,
10 certification, and settlement. Plaintiff has incurred and, throughout the duration of this action,
11 will continue to incur attorneys' fees and costs that have been and will be necessarily expended
12 for the prosecution of this action for the substantial benefit of the Class Members.

13 (d) Superiority: The nature of this action makes use of class action
14 adjudication superior to other methods. A class action will achieve economies of time, effort,
15 and expense as compared with separate lawsuits and will avoid inconsistent outcomes because
16 the same issues can be adjudicated in the same manner for the entire Class and Subclass at the
17 same time. If appropriate, this Court can, and is empowered to, fashion methods to efficiently
18 manage this case as a class action.

19 (e) Public Policy Considerations: Employers in the State of California
20 violate employment and labor laws every day. Current employees are often afraid to assert their
21 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing
22 actions because they believe their former employers might damage their future endeavors
23 through negative references and/or other means. Class actions provide class members who are
24 not named in the complaint with a type of anonymity that allows for the vindication of their
25 rights while affording them privacy protections.

26 **GENERAL ALLEGATIONS**

27 26. At all relevant times mentioned herein, Defendants employed Plaintiff and other
28 California residents as non-exempt employees at Defendants' California business location(s).

1 27. Defendant employed Plaintiff as a non-exempt employee at Defendants'
2 California business location.

3 28. Defendants continue to employ non-exempt employees within California.

4 29. Plaintiff is informed and believes, and thereon alleges, that at all times herein
5 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals
6 who were knowledgeable about California's wage and hour laws, employment and personnel
7 practices, and the requirements of California law.

8 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and Class Members were entitled to receive wages for all time
10 worked (including minimum wages and overtime wages) and that they were not receiving all
11 wages earned for work that was required to be performed. In violation of the Labor Code and
12 IWC Wage Orders, Plaintiff and Class Members were not paid all wages (including minimum
13 wages and overtime wages) at the proper rates for all hours worked.

14 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known they had a duty to separately compensate Plaintiff and Class Members who
16 earned piece-rate pay for time spent in rest breaks or other non-productive time. In violation of
17 the Labor Code, Defendants did not pay piece-rate workers all wages owed.

18 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and Class Members were entitled to receive all required meal
20 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
21 rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the
22 Labor Code and IWC Wage Orders, Plaintiff and Class Members did not receive all meal
23 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
24 rate of pay when they did not receive a timely, uninterrupted meal period.

25 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and Class Members were entitled to receive all rest breaks or
27 payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of pay
28 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff

1 and Class Members did not receive all rest breaks or payment of one (1) additional hour of pay
2 at Plaintiff's and Class Members' regular rate of pay when a rest break was missed.

3 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and Class Members were entitled to receive itemized wage
5 statements that accurately showed the following information pursuant to the Labor Code: (1)
6 gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units
7 earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
8 deductions, provided that all deductions made on written orders of the employee may be
9 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period
10 for which the employee is paid; (7) the name of the employee and only the last four digits of his
11 or her social security number or an employee identification number other than a social security
12 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
13 hourly rates in effect during the pay period and the corresponding number of hours worked at
14 each hourly rate by the employee. In violation of the Labor Code, Plaintiff and Class Members
15 were not provided with accurate itemized wage statements, including but not limited to wage
16 statements lacking inclusive dates of the pay period, rates of pay, and unpaid wages.

17 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that the Waiting Time Subclass was entitled to timely payment of wages
19 due upon separation of employment. In violation of the Labor Code, the Waiting Time Subclass
20 did not receive payment of all wages within permissible time periods.

21 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known they had a duty to compensate Plaintiff and Class Members, and
23 Defendants had the financial ability to pay such compensation but willfully, knowingly, and
24 intentionally failed to do so in order to increase Defendants' profits.

25 37. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief
26 against Defendants on behalf of herself and all Class Members to recover, among other things,
27 unpaid wages (including minimum wages and overtime wages), unpaid meal period premium
28

1 payments, unpaid rest period premium payments, interest, attorneys' fees, penalties, costs, and
2 expenses.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES**

5 (Violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197; Violation of IWC Wage Order §3-4)

6 38. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
7 though fully set forth herein.

8 39. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
9 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
10 wage than the minimum so fixed is unlawful.

11 40. During the relevant time period, Defendants paid Plaintiff and Class Members
12 less than minimum wages when they failed to pay proper compensation for all hours worked.
13 To the extent these hours do not qualify for the payment of overtime, Plaintiff and Class
14 Members were not being paid at least the lawful minimum wage for their work.

15 41. During the relevant time period, Defendants regularly failed to pay at least
16 minimum wage to Plaintiff and Class Members for all hours worked pursuant to Labor Code
17 §§ 1194 and 1197.

18 42. Defendants' failure to pay Plaintiff and Class Members the required minimum
19 wage violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and Class
20 Members are entitled to recover the unpaid balance of their minimum wage compensation as
21 well as interest, costs, and attorneys' fees.

22 43. Pursuant to Labor Code § 1194.2, Plaintiff and Class Members are entitled to
23 recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued
24 interest thereon.

25 **SECOND CAUSE OF ACTION**

26 **FAILURE TO PAY OVERTIME**

27 (Violation of Labor Code §§ 510, 1194, 1198; Violation of IWC Wage Order § 3)

1 44. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
2 though fully set forth herein.

3 45. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
4 unlawful to employ persons without compensating them at a rate of pay either one and one-half
5 (1½) or two (2) times the person's regular rate of pay, depending on the number of hours or
6 days worked by the person on a daily or weekly basis.

7 46. Specifically, the applicable IWC Wage Orders provide that Defendants are and
8 were required to pay overtime compensation to Plaintiff and Class Members at the rate of one
9 and one-half times (1½) their regular rate of pay when working and for all hours worked in
10 excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first
11 eight (8) hours of work on the seventh day of work in a workweek.

12 47. The applicable IWC Wage Orders further provide that Defendants are and were
13 required to pay overtime compensation to Plaintiff and Class Members at a rate of two times
14 their regular rate of pay when working and for all hours worked in excess of twelve (12) hours
15 in a day or in excess of eight (8) hours on the seventh day of work in a workweek.

16 48. California Labor Code § 510 codifies the right to overtime compensation at one
17 and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in
18 a day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
19 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
20 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
21 seventh day of work in a workweek.

22 49. Labor Code § 510 and the applicable IWC Wage Orders provide that
23 employment of more than six days in a workweek is only permissible if the employer pays
24 proper overtime compensation as set forth herein.

25 50. Plaintiff and Class Members were non-exempt employees entitled to the
26 protections of California Labor Code §§ 510 and 1194.

27 51. During the relevant time period, Defendants required Plaintiff and Class
28 Members to work in excess of eight (8) hours in a day, forty (40) hours in a week, and/or for a

seventh consecutive day in a workweek without paying Plaintiff and Class Members proper overtime wages for their work.

52. During the relevant time period, Defendants failed to pay Plaintiff and Class Members overtime wages for all overtime hours worked when Plaintiff and Class Members worked in excess of eight (8) hours in a day, forty (40) hours in a week and/or for a seventh consecutive day of work in a workweek, or when Plaintiff and Class Members worked in excess of twelve (12) hours in a day and/or in excess of eight (8) hours on the seventh day of work in a work week.

53. In violation of state law, Defendants knowingly and willfully refused to perform their obligations and compensate Plaintiff and Class Members for all wages earned and all hours worked.

54. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of overtime and double time compensation, as required by California law, violates the provisions of Labor Code §§ 510 and 1198, and is therefore unlawful.

55. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to recover their unpaid overtime and double time compensation as well as interest, costs, and attorneys' fees.

THIRD CAUSE OF ACTION

FAILURE TO PAY ALL WAGES TO PIECE-RATE WORKERS

(Violation of Labor Code §§ 226.2; Violation of IWC Wage Order)

56. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

57. Labor Code § 226.2 requires employees who are paid on a piece-rate basis to be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

58. Labor Code § 226.2(a) provides that employees compensated on a piece-rate basis shall be compensated for rest and recovery periods, and other nonproductive time separate from any piece-rate compensation. Employees shall be compensated at a regular

1 hourly rate that is no less than the higher of (a) An average hourly rate determined by dividing
2 the total compensation for the workweek, exclusive of compensation for rest and recovery
3 periods and any premium compensation for overtime, by the total hours worked during the
4 workweek, exclusive of rest and recovery periods. (b) The applicable minimum wage.

5 59. During the relevant time period, Plaintiff and Class Members paid on a piece-
6 rate basis were not compensated for rest and recovery periods and other nonproductive time
7 separate from any piece-rate compensation.

8 60. At all relevant times, Defendants knowingly and intentionally failed to comply
9 with Labor Code § 226.2 denying compensated rest and recovery periods to employees paid on
10 a piece-rate basis.

11 61. As a result of Defendants' failure to pay Plaintiff and Class Members
12 compensated rest and recovery periods, Plaintiff and Class Members suffered and continue to
13 suffer a loss of wages and compensation.

14 62. Pursuant to Labor Code § 226.2, Plaintiff and Class Members are entitled to
15 recover their unpaid compensation.

16 **FOURTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE MEAL PERIODS**

18 (Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

19 63. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
20 though fully set forth herein.

21 64. Labor Code § 226.7 provides that no employer shall require an employee to work
22 during any meal period mandated by the IWC Wage Orders.

23 65. Section 11 of the applicable IWC Wage Order states, "[n]o employer shall
24 employ any person for a work period of more than five (5) hours without a meal period of not
25 less than 30 minutes, except that when a work period of not more than six (6) hours will
26 complete the day's work the meal period may be waived by mutual consent of the employer and
27 the employee."
28

1 66. Labor Code § 512(a) provides that an employer may not require, cause, or permit
2 an employee to work for a period of more than five (5) hours per day without providing the
3 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if
4 the total work period per day of the employee is not more than six (6) hours, the meal period
5 may be waived by mutual consent of both the employer and the employee.

6 67. Labor Code § 512(a) also provides that an employer may not employ an
7 employee for a work period of more than ten (10) hours per day without providing the employee
8 with a second meal period of not less than thirty (30) minutes, except that if the total hours
9 worked is no more than twelve (12) hours, the second meal period may be waived by mutual
10 consent of the employer and the employee only if the first meal period was not waived.

11 68. During the relevant time period, Plaintiff and Class Members did not receive
12 compliant meal periods for working more than five (5) and/or ten (10) hours per day because
13 their meal periods were missed, late, short, interrupted, and/or they were not permitted to take a
14 second meal period.

15 69. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order
16 requires an employer to pay an employee one (1) additional hour of pay at the employee's
17 regular rate of compensation for each work day that a compliant meal period is not provided.

18 70. At all relevant times, Defendants failed to pay Plaintiff and Class Members meal
19 period premiums for missed, late, short, and/or interrupted meal periods pursuant to Labor Code
20 § 226.7(b) and section 11 of the applicable IWC Wage Order.

21 71. As a result of Defendants' failure to pay Plaintiff and Class Members an
22 additional hour of pay for each day a compliant meal period was not provided, Plaintiff and
23 Class Members suffered and continue to suffer a loss of wages and compensation.

24 **FIFTH CAUSE OF ACTION**

25 **FAILURE TO PERMIT REST BREAKS**

26 (Violation of Labor Code §§ 226.7; Violation of IWC Wage Order § 12)

27 72. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
28 though fully set forth herein.

73. Labor Code § 226.7(a) provides that no employer shall require an employee to work during any rest period mandated by the IWC Wage Orders.

74. Section 12 of the applicable IWC Wage Order states “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period[,]” and the “[a]uthorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof[,]” unless the total daily work time is less than three and one-half (3½) hours.

75. During the relevant time period, Plaintiff and Class Members did not receive a ten (10) minute rest period for every four (4) hours or major fraction thereof worked because they were required to work through their daily rest periods, were not permitted to take timely rest periods, and/or were not authorized to take their rest periods.

76. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a compliant rest period is not provided.

77. At all relevant times, Defendants failed to pay Plaintiff and Class Members rest period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order.

78. As a result of Defendants' failure to pay Plaintiff and Class Members an additional hour of pay for each day a compliant rest period was not provided, Plaintiff and Class Members suffered and continue to suffer a loss of wages and compensation.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Violation of Labor Code § 226; Violation of IWC Wage Order)

79. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

80. Labor Code § 226(a) requires Defendants to provide each employee with an accurate wage statement in writing showing nine pieces of information, including, the following: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of

1 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate
2 basis, (4) all deductions, provided that all deductions made on written orders of the employee
3 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the
4 period for which the employee is paid, (7) the name of the employee and the last four digits of
5 his or her social security number or an employee identification number other than a social
6 security number, (8) the name and address of the legal entity that is the employer, and (9) all
7 applicable hourly rates in effect during the pay period and the corresponding number of hours
8 worked at each hourly rate by the employee.

9 81. During the relevant time period, Defendants have knowingly and intentionally
10 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff
11 and Class Members. Defendants provided Plaintiff and Class Members with wage statements
12 that were missing or inaccurately stated one or more of the following items: (1) gross wages
13 earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and
14 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
15 provided that all deductions made on written orders of the employee may be aggregated and
16 shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the
17 employee is paid, (7) the name of the employee and the last four digits of his or her social
18 security number or an employee identification number other than a social security number, (8)
19 the name and address of the legal entity that is the employer, and/or (9) all applicable hourly
20 rates in effect during the pay period and the corresponding number of hours worked at each
21 hourly rate by the employee.

22 82. As a result of Defendants' knowing and intentional failure to comply with Labor
23 Code § 226(a), Plaintiff and Class Members have suffered injury and damage to their
24 statutorily-protected rights. Specifically, Plaintiff and Class Members are deemed to suffer an
25 injury pursuant to Labor Code § 226(e) where, as here, Defendants intentionally violated Labor
26 Code § 226(a). Plaintiff and Class Members were denied both their legal right to receive, and
27 their protected interest in receiving, accurate itemized wage statements under Labor Code
28 § 226(a). In addition, because Defendants failed to provide the accurate rates of pay on wage

1 statements, Defendants prevented Plaintiff and Class Members from determining if all hours
2 worked were paid at the appropriate rate and the extent of the underpayment. Plaintiff has had
3 to file this lawsuit in order to analyze the extent of the underpayment, thereby causing Plaintiff
4 to incur expenses and lost time. Plaintiff would not have had to engage in these efforts and
5 incur these costs had Defendants provided the accurate hours worked, wages earned, and rates
6 of pay. This has also delayed Plaintiff's ability to demand and recover the underpayment of
7 wages from Defendants.

8 83. Plaintiff and Class Members are entitled to recover from Defendants the greater
9 of all actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or
10 fifty dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred
11 dollars (\$100.00) per employee for each violation in subsequent pay periods in an amount not
12 exceeding four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

13 84. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff
14 and Class Members from knowing, understanding, and disputing the wages paid to them and
15 resulted in an unjustified economic enrichment to Defendants. As a result of Defendants'
16 knowing and intentional failure to comply with California Labor Code § 226(a), Plaintiff and
17 Class Members have suffered an injury, in the exact amount of damages and/or penalties to be
18 shown according to proof at trial.

19 85. Class Members that are still employed by Defendants are also entitled to
20 injunctive relief under California Labor Code § 226(h), compelling Defendants to comply with
21 California Labor Code § 226. Accordingly, affected Class Members seek the recovery of
22 attorneys' fees and costs incurred in obtaining this injunctive relief.

23 SEVENTH CAUSE OF ACTION

24 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

25 (Violation of Labor Code §§ 201, 202, and 203; Violation of IWC Wage Order)

26 86. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
27 though fully set forth herein.
28

87. Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of an intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

88. During the relevant time period, Defendants willfully failed to pay the Waiting Time Subclass all their earned wages upon termination, including, but not limited to, proper minimum wage and overtime compensation, meal period premiums, and rest period premiums either at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

89. Defendants' failure to pay the Waiting Time Subclass all their earned wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is in violation of Labor Code §§ 201 and 202.

90. Labor Code § 203 provides that if an employer willfully fails to pay wages owed immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

91. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover from Defendants the statutory penalty, which is defined as the Waiting Time Subclass members' regular daily wages at their regular hourly rate of pay for each day they were not paid, up to a maximum of thirty (30) days.

EIGHTH CAUSE OF ACTION

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

(Violation of Business and Professions Code §§ 17200, *et seq.*)

92. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

1 93. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of
2 unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice .
3 ...”

4 94. A violation of California Business and Professions Code §§ 17200, *et seq.*, may
5 be predicated on a violation of any state or federal law. In the instant case, Defendants’ policies
6 and practices violated state law, causing Plaintiff and Class Members to suffer and continue to
7 suffer injuries-in-fact.

8 95. Defendants’ policies and practices violated state law in at least the following
9 respects:

- 10 (a) Failing to pay all wages earned (including minimum wage and overtime
11 wages) to Plaintiff and Class Members in violation of Labor Code §§
12 510, 1182.12, 1194, 1194.2, 1197, 1198.
- 13 (b) Failing to pay all wages earned by piece rate workers during rest and
14 recovery periods in violation of Labor Code § 226.2.
- 15 (c) Failing to provide compliant meal periods without paying Plaintiff and
16 Class Members premium wages for every day said meal periods were not
17 provided in violation of Labor Code §§ 226.7 and 512.
- 18 (d) Failing to authorize or permit compliant rest breaks without paying
19 Plaintiff and Class Members premium wages for every day said rest
20 breaks were not authorized or permitted in violation of Labor Code §
21 226.7.
- 22 (e) Failing to provide Plaintiff and Class Members with accurate itemized
23 wage statements in violation of Labor Code § 226.
- 24 (f) Failing to timely pay all earned wages to the members of the Waiting
25 Time Subclass upon separation of employment in violation of Labor
26 Code §§ 201, 202, and 203.

27 96. As alleged herein, Defendants systematically engaged in unlawful conduct in
28 violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages

1 (minimum and overtime wages), failing to provide meal periods and rest breaks or
2 compensation in lieu thereof, failing to furnish accurate wage statements, and failing to pay all
3 wages due and owing upon separation of employment in a timely manner, all in order to
4 decrease their costs of doing business and increase their profits.

5 97. At all relevant times herein, Defendants held themselves out to Plaintiff and
6 Class Members as being knowledgeable concerning the labor and employment laws of
7 California.

8 98. At all times relevant herein, Defendants intentionally avoided paying Plaintiff
9 and Class Members wages and monies, thereby creating for Defendants an artificially lower
10 cost of doing business in order to undercut their competitors and establish and/or gain a greater
11 foothold in the marketplace.

12 99. As a result of Defendants' intentional, willful, purposeful, and wrongful
13 misrepresentation of their conformance with the California Labor Code and IWC Wage Orders,
14 Plaintiff and Class Members suffered a loss of wages and monies, all in an amount to be shown
15 according to proof at trial.

16 100. By violating the foregoing statutes and regulations as herein alleged,
17 Defendants' acts constitute unfair and unlawful business practices under California Business
18 and Professions Code §§ 17200, *et seq.*

19 101. As a result of the unfair and unlawful business practices of Defendants, as
20 alleged herein, Plaintiff and Class Members are entitled to injunctive relief, disgorgement, and
21 restitution in an amount to be shown according to proof at trial.

22 102. Plaintiff seeks to enforce important rights affecting the public interest within the
23 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged
24 herein, has been and continues to be unfair, unlawful, and harmful to Plaintiff, Class Members,
25 and the general public. Based on Defendants' conduct as alleged herein, Plaintiff and Class
26 Members are entitled to an award of attorneys' fees pursuant to California Code of Civil
27 Procedure § 1021.5.
28

1 **EIGHTH CAUSE OF ACTION**

2 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

3 103. Plaintiff hereby re-alleges and incorporate by reference the previous paragraphs
4 as though fully set forth herein.

5 104. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that
6 provides for a civil penalty to be assessed and collected by the Labor and Workforce
7 Development Agency ("LWDA") or any of its departments, divisions, commissions, boards,
8 agencies, or employees for violation of the Labor Code may, as an alternative, be recovered
9 through a civil action brought by an aggrieved employee on behalf of himself or herself and
10 other current or former employees pursuant to the procedures specified in Labor Code §
11 2699.3.

12 105. For all provisions of the Labor Code except those for which a civil penalty is
13 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one
14 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation
15 and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each
16 subsequent pay period in which Defendants violated these provisions of the Labor Code.

17 106. Defendants' conduct violates numerous Wage Order and Labor Code sections,
18 including, but not limited to, the following:

19 (a) violation of Labor Code §§ 201-203, 204, 210, 226.2, 510, 558, 1182.12, 1194,
20 1197, and 1198 for failure to timely pay all earned wages (including minimum
21 wage and overtime wages) owed to Plaintiff and other aggrieved employees
22 during employment and upon separation of employment as herein alleged;

23 (b) violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
24 Plaintiff and other aggrieved employees and failure to pay premium wages for
25 missed meal periods as herein alleged;

26 (c) violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and
27 other aggrieved employees and failure to pay premium wages for missed rest
28 periods as herein alleged;

1 (d) violation of Labor Code § 226 for failure to provide accurate itemized wage
2 statements to Plaintiff and other aggrieved employees as herein alleged; and
3 (e) violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and
4 complete records showing, among other things, the hours worked daily by and
5 the wages paid to aggrieved employees.

6 107. Plaintiff is an “aggrieved employee” because she was employed by the alleged
7 violator and had one or more of the violations committed against her, and therefore is properly
8 suited to represent the interests of all other aggrieved employees.

9 108. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3
10 as to Defendants and is therefore able to pursue a claim for penalties on behalf of herself and all
11 other aggrieved employees under PAGA.

12 109. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
13 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
14 cited above.

15 110. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred
16 herein.

17 **PRAYER FOR RELIEF**

18 Plaintiff, on her own behalf and on behalf of all others similarly situated, prays for relief
19 and judgment against Defendants, jointly and severally, as follows:

- 20 1. For certification under California Code of Civil Procedure § 382 of the proposed
21 Class, Waiting Time Subclass, and any other appropriate subclasses;
- 22 2. For appointment of Shannon Forge as the class representative;
- 23 3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;
- 24 4. For compensatory damages in an amount according to proof at trial;
- 25 5. For an award of damages in the amount of unpaid compensation including, but
26 not limited to, unpaid wages, benefits, and penalties;
- 27 6. For economic and/or special damages in an amount according to proof at trial;
- 28 7. For liquidated damages pursuant to Labor Code § 1194.2;

1 8. For statutory penalties to the extent permitted by law, including those pursuant
2 to the Labor Code and IWC Wage Orders;

3 9. For injunctive relief as provided by the California Labor Code and California
4 Business and Professions Code §§ 17200, *et seq.*;

5 10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

6 11. For an order requiring Defendants to restore and disgorge all funds to each
7 employee acquired by means of any act or practice declared by this Court to be unlawful,
8 unfair, or fraudulent and, therefore, constituting unfair competition under Business and
9 Professions Code §§ 17200, *et seq.*;

10 12. For pre-judgment interest;

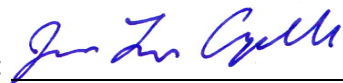
11 13. For civil penalties;

12 14. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted
13 by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§
14 226(e), 1194, 2698, *et seq.*; and

15 15. For such other relief as the Court deems just and proper.

16
17 Dated: July 6, 2020

AEGIS LAW FIRM, PC

18
19 By: 
20 Jessica L. Campbell
21 Attorneys for Plaintiff Shannon Forge
22
23
24
25
26
27
28