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SUPERIOR COURT OF THE STATE CALIFORNIA

COUNTY OF CONTRA COSTA

ANGELO KALAVERAS,

Plaintiffs,

vs.

NCR CORPORATION; and DOES 1-100,
inclusive,

Defendants.

Case No.:

C20-011862

CLASS AND COLLECTIVE ACTION
COMPLAINT

1. FAILURE TO PROPERLY CALCULATE AND PAY OVERTIME
2. FAILURE TO PROVIDE MEAL BREAKS
3. FAILURE TO PROVIDE REST BREAKS
4. FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS
5. FAILURE TO PAY ALL WAGES AT CESSATION OF EMPLOYMENT
6. UNLAWFUL BUSINESS PRACTICES

Plaintiff Angelo Kalaveras brings this class action against NCR and Does 1 through 100, for violations of the Fair Labor Standards Act, the California Labor Code, and the Business and Professions Code.

PARTIES

1. Angelo Kalaveras ("Plaintiff") is and at all times relevant herein was employed in Contra Costa County, California, and was an "employee" as defined by the Fair Labor Standards Act ("FLSA"), the California Labor Code ("Labor Code"), and the applicable California Industrial Wage Commission ("IWC") Order(s).



PER LOCAL RULE, THIS
CASE IS ASSIGNED TO
DEPT. 33, FOR ALL
PURPOSES

2. NCR Corporation ("Defendant" or "NCR") is a Maryland company which does business in California and throughout the United States.

3. At all times relevant herein, NCR has been an "employer" as defined by the Fair Labor Standards Act ("FLSA"), the California Labor Code ("Labor Code"), and the applicable California Industrial Wage Commission ("IWC") Order(s).

4. NCR and Does 1-100 are collectively referred to as Defendants.

5. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sues such Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged and that Plaintiff's injuries and damages herein alleged were legally caused by such Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

6. Plaintiff is informed and believes and thereupon alleges that at all times mentioned herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant, employee, partner and/or joint venturer of and was acting in concert with each of the remaining Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting within the course and scope of such agency, service, employment partnership, joint venture and/or concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and within the course and scope of such agency and/or employment, with the knowledge and/or consent of the remaining Defendants.

JURISDICTION AND VENUE

7. This Court is the proper Court, and this action is properly filed in the Superior Court of California for the County of Contra Costa because NCR conducts business in this County and Plaintiff has performed work for NCR in this County. Plaintiff hereby demands a jury trial.

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GENERAL ALLEGATIONS

8. Plaintiff worked NCR as a Customer Engineer from October 2019 until January 2020.

9. Throughout his employment, Plaintiff was a non-exempt employee. As such, he was eligible for and at times worked overtime.

10. Plaintiff and NCR's other non-exempt employees were eligible for and at times received non-discretionary bonuses, commissions, and other items of compensation.

11. These non-discretionary bonuses, commissions, and other items of compensation included, but were not limited to, shift premiums, "CE Vehicle" pay, and "Biometric Credit" pay.

Exhibit 1.¹

12. Throughout his employment, however, NCR failed to properly calculate and pay the overtime wages owed to Plaintiff and its other non-exempt employees.

13. Specifically, pursuant to its uniform policy, practice and procedure, NCR either (a) failed to include commissions, non-discretionary bonuses and other items of compensation when determining Plaintiff and its other non-exempt employees' "regular rate of pay" for purposes of overtime, or (b) failed to properly calculate and pay the overtime wages owed to Plaintiff and its other non-exempt employees because it failed to properly account for all commissions, non-discretionary bonuses and other items of compensation earned when determining its employees' "regular rate of pay" for purposes of overtime.

14. For example, during the pay period of December 28, 2019 through January 10, 2020, Plaintiff received "Shift 3 Premium" of \$149.00 and "OT Premium" of \$1.99. See **Exhibit 1**. Pursuant to its uniform policy and practice, NCR failed to properly calculate Plaintiff's "OT Premium" when calculating his regular rate of pay and, therefore, underpaid him. *Id.*

15. Further, during the pay period of December 28, 2019 through January 10, 2020, NCR failed to include Plaintiff's "CE Vehicle" pay of \$27.69 and "Biometric Credit" of \$75.00 when calculating his regular rate of pay and, therefore, underpaid him. See *Id.*

¹ Exhibits 1-3 are incorporated by this reference as though fully set forth herein. Some Exhibits have been reduced and/or redacted due to their size and content.

1 16. Similarly, during the pay period of November 30, 2019 through December 13, 2019,
2 Plaintiff received "Shift 3 Premium" of \$108.00 and "OT Premium" of \$1.89. See **Exhibit 2**.
3 Pursuant to its uniform policy and practice, NCR failed to properly calculate Plaintiff's "OT Premium"
4 when calculating his regular rate of pay and, therefore, underpaid him. *Id.*

5 17. Further, during the pay period of November 30, 2019 through December 13, 2019,
6 NCR failed to include Plaintiff's "CE Vehicle" pay of \$27.69 and "Biometric Credit" of \$75.00 when
7 calculating his regular rate of pay and, therefore, underpaid him. See *Id.*

8 18. Additionally, during the pay period of October 19, 2019 through November 1, 2019,
9 NCR failed to include Plaintiff's "CE Vehicle" pay of \$27.69 and "Biometric Credit" of \$75.00 when
10 calculating his regular rate of pay and, therefore, underpaid him. See *Id.*

11 19. Further, during the pay period of October 19, 2019 through November 1, 2019, Plaintiff
12 received "Shift 3 Premium" of \$48.00 and "OT Premium" of \$0.96. See **Exhibit 3**. Pursuant to its
13 uniform policy and practice, NCR failed to properly calculate Plaintiff's "OT Premium" when
14 calculating his regular rate of pay and, therefore, underpaid him. *Id.*

15 20. Further, during the pay period of October 19, 2019 through November 1, 2019, NCR
16 failed to include Plaintiff's "CE Vehicle" pay of \$27.69 when calculating his regular rate of pay and,
17 therefore, underpaid him. See *Id.*

18 21. Plaintiff and NCR's other non-exempt California employees were entitled to meal and
19 rest breaks in accordance with California law.

20 22. Plaintiff and NCR's other hourly, non-exempt California employees were not
21 consistently authorized or permitted to take meal breaks as required by California law.

22 23. NCR also required Plaintiff and its other non-exempt California employees to work
23 through meal breaks due to understaffing and work demands.

24 24. On the occasions that Plaintiff and NCR's other non-exempt California employees were
25 able to take their meal breaks, they routinely occurred after 5 hours of work.

26 25. Further, NCR frequently failed to relieve Plaintiff and its other non-exempt California
27 employees of employer control during their meal breaks.
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1 26. Plaintiff and NCR's other hourly, non-exempt California employees were also not
2 consistently authorized or permitted to take rest breaks as required by California law.

3 27. NCR also required Plaintiff and its other non-exempt California employees to work
4 through rest breaks due to understaffing and work demands.

5 28. Further, NCR frequently failed to relieve Plaintiff and its other non-exempt California
6 employees of employer control during their rest breaks.

7 29. When Plaintiff and NCR's other non-exempt California employees were not provided
8 compliant meal and rest breaks, NCR did not always pay premiums as required by California law.

9 30. When Plaintiff's employment ended, his final paychecks did not include the balance of
10 unpaid overtime or premiums owed to him.

11 31. Because Plaintiff and NCR's other former hourly, non-exempt California employees
12 were not properly paid their overtime wages, provided compliant meal and rest breaks, or paid the
13 premiums associated with missing the same, they were not timely paid all wages due and owing to
14 them during each pay period and at the end of their employment.

15 32. Because of the violations set forth above, and as evidenced in the samples of Plaintiff's
16 wage statements attached hereto as **Exhibits 1-3**, the wage statements furnished by NCR to its non-
17 exempt California employees violated California Labor Code section 226(a) insofar as they failed to
18 accurately show:

- 19 a. The gross wages earned, in violation of section 226(a)(1);
20 b. The total hours worked by the employee in violation of section 226(a)(2);
21 c. The net wages earned, in violation of section 226(a)(5); and
22 d. All applicable hourly rates in effect during the pay period and the corresponding
 number of hours worked at each hourly rate in violation of section 226(a)(9).

23 33. Separately, and independent of the violations set forth above, the wage statements
24 NCR furnishes to its non-exempt California employees violate California Labor Code section 226(a)
25 insofar as they fail to accurately show the total hours worked in violation of section 226(a)(2).

26 34. Specifically, the wage statements NCR furnishes to its non-exempt California
27 employees list multiple different categories of earnings such as (i) "Regular Pay," (ii) "Overtime,"
28 (3) "OT Premium," (4) "Shift 3 Premium", (5) "Training Hours", (6) "Holiday", and (7) "MEAL
PENALTY". See **Exhibits 1-3**.

1 35. With respect to the hours included in the pay period, the wage statements do not
2 provide a separate category calculating the total hours worked by Plaintiff or NCR's other non-
3 exempt California employees. See **Exhibits 1-3**. Rather, the statements appear to list the number of
4 hours worked at the "Regular Pay" rate, "Overtime" rate, "OT Premium" rate, "Shift 3 Premium"
5 rate, "Training Hours" rate, "Holiday" rate, and "MEAL PENALTY" rate. *Id.* Inclusion of multiple
6 categories of "hours worked" render the wage statements inaccurate and confusing and have
7 impeded the ability of Plaintiff and NCR's other non-exempt California employees to promptly and
8 easily determine the total hours worked during the pay period in order to ensure NCR was properly
9 compensating them.

10 36. For example, during the pay period of December 28, 2019 through January 10, 2020,
11 Plaintiff's wage statement suggests that he worked a total of 60 hours at "Regular Pay", 12 hours at
12 "Training Hours", 8 hours at "Holiday", 74.50 hours at "Shift 3 Premium", 2.50 hours at "Overtime",
13 and 1 hour at "Meal Break Penalty". There is no separate category identifying "total hours worked."
14 See **Exhibit 1**.

15 37. If an employee sought to calculate the total number of hours worked during a pay
16 period and added the hours listed under the "Regular Pay", "Training Hours", "Holiday", "Shift 3
17 Premium", "Overtime", and "Meal Break Penalty" categories, the total hours worked would be
18 incorrect. *Id.*; see *McKenzie v. Federal Exp. Corp.*, 275 F.R.D. 290, 292 (C.D. Cal. 2011).

19 38. There is no way to determine from the face of the wage statements the total number of
20 hours actually worked. Simply adding all of the numbers under the "Hours" column, for the December
21 28, 2019 through January 10, 2020 pay period for example (60 + 12 + 8 + 74.50 + 2.5 + 1), results in
22 158.00 hours. Plaintiff did not work 158.00 hours during the pay period of December 28, 2019 through
23 January 10, 2020.

24 39. Similarly, during the pay period of November 30, 2019 through December 13, 2019,
25 Plaintiff's wage statement suggests that he worked a total of 32 hours at "Regular Pay", 48 hours at
26 "Training Hours", 54 hours at "Shift 3 Premium", and 2.50 hours at "Overtime. There is no separate
27 category identifying "total hours worked." See **Exhibit 2**.

1 40. If an employee sought to calculate the total number of hours worked during a pay
2 period and added the hours listed under the “Regular Pay”, “Training Hours”, “Holiday”, “Shift 3
3 Premium”, “Overtime”, and “Meal Break Penalty” categories, the total hours worked would be
4 incorrect. *Id.*; see *McKenzie v. Federal Exp. Corp.*, 275 F.R.D. 290, 292 (C.D. Cal. 2011).

5 41. Separately, and independent of the violations set forth above, the wage statements
6 NCR furnishes to its non-exempt California employees violate California Labor Code section 226(a)
7 insofar as they fail to accurately show applicable hourly rates in effect during the pay period and the
8 corresponding number of hours worked at each hourly rate in violation of section 226(a)(9).

9 42. For example, during the pay period of December 28, 2019 through January 10, 2020,
10 Plaintiff received “Shift 3 Premium” of \$149.00 and “OT Premium” of \$1.99. See **Exhibit 1**. The
11 wage statements do not list the “OT Premium” rate or the number of hours for which it is being paid.

12 43. NCR was, at all times relevant herein, aware of the requirements of California Labor
13 Code section 226.

14 44. NCR has, at all times relevant herein, furnished wage statements to each of its non-
15 exempt California employees pursuant to an established set of policies, procedures and practices.

16 45. Plaintiff and NCR’s other non-exempt California employees, both current and former,
17 have suffered injury as a result of NCR’s knowing and intentional failure to comply with California
18 Labor Code section 226(a).

19 46. Plaintiff and NCR’s other non-exempt California employees, both current and former,
20 were unable to promptly and easily determine their gross wages earned from the wage statements
21 furnished by NCR.

22 47. Plaintiff and NCR’s other non-exempt California employees, both current and former,
23 have suffered injury as a result of NCR’s knowing and intentional failure to furnish wage statements
24 accurately showing the gross wages earned by them in violation of California Labor Code section
25 226(a)(1).

26 48. Plaintiff and NCR’s other non-exempt California employees, both current and former,
27 who worked overtime, were unable to promptly and easily determine their total hours worked from the
28 wage statements furnished by NCR.

1 49. Plaintiff and NCR's other non-exempt California employees, both current and former,
2 who worked overtime, have suffered injury as a result of NCR's knowing and intentional failure to
3 furnish wage statements accurately showing their total hours worked in violation of California Labor
4 Code section 226(a)(2).

5 50. Plaintiff and NCR's other non-exempt California employees, both current and former,
6 were unable to promptly and easily determine their net wages earned from the wage statements
7 furnished by NCR.

8 51. Plaintiff and NCR's other non-exempt California employees, both current and former,
9 have suffered injury as a result of NCR's knowing and intentional failure to furnish wage statements
10 accurately showing the net wages earned by them in violation of California Labor Code section
11 226(a)(5).

12 52. Plaintiff and NCR's other non-exempt California employees, both current and former,
13 were unable to promptly and easily determine all applicable hourly rates in effect during the pay
14 period and the corresponding number of hours worked at each hourly rate from the wage statements
15 furnished by NCR.

16 53. Plaintiff and NCR's other non-exempt California employees, both current and former,
17 have suffered injury as a result of NCR's knowing and intentional failure to furnish wage statements
18 accurately showing all applicable hourly rates in effect during the pay period and the corresponding
19 number of hours worked at each hourly rate in violation of section 226(a)(9).

20 54. From at least four years prior to the filing of this action, NCR has adopted and
21 employed unfair business practices. These unfair business practices include, but are not limited to,
22 failing to properly calculate and pay all overtime wages due, and failing to provide compliant meal and
23 rest breaks, or to pay the premiums associated therewith.

24 **COLLECTIVE ACTION ALLEGATIONS**

25 55. Plaintiff seeks to maintain the second cause of action as an "opt-in" collective action
26 pursuant to 29 U.S.C section 216(b) as to claims for overtime, liquidated damages (or, alternatively,
27 interest) and attorneys' fees under the FLSA. In addition to Plaintiff, numerous other current and
28 former hourly, non-exempt employees of Defendant were not paid all the overtime they are owed.

1 Plaintiff is a representative of those other current and former employees and are acting on behalf of
2 their interests as well as their own in bringing this action. These similarly situated employees are
3 known to Defendant, are readily identifiable, and may be located through Defendant's records. These
4 similarly situated employees may be readily notified of this action, and allowed to opt in pursuant to
5 29 U.S.C. § 216(b), for purpose of collectively adjudicating their claims for overtime compensation,
6 liquidated damages (or, alternatively, interest), and attorneys' fees under the FLSA.

7 CLASS ACTION ALLEGATIONS

8 56. Plaintiff seeks to maintain this action as a class action as to the First through Fifth
9 Causes of Action. Plaintiff brings this action, on behalf of himself and all others similarly situated, as
10 a class action pursuant to Code of Civil Procedure section 382 and/or Rule 23 of the Federal Rules of
11 Civil Procedure. The putative classes which Plaintiff seeks to represent consist of the following:

- 12 a. All current and former non-exempt employees of NCR who earned
13 commissions, non-discretionary bonuses, or other items of compensation and
14 worked overtime during one or more pay periods between June 24, 2016 and the
15 date of trial (the "Regular Rate Class");
- 16 b. All current and former non-exempt California employees of NCR who earned
17 commissions, non-discretionary bonuses, or other items of compensation and
18 worked overtime during one or more pay periods between June 24, 2016 and the
19 date of trial (the "California Regular Rate Class");
- 20 c. All current and former non-exempt California employees of NCR who worked
21 one or more shift of longer than five hours from June 24, 2016 and the date of
22 trial (the "California Meal Break Class");
- 23 d. All current and former non-exempt employees of NCR who worked one or
24 more shift of longer than three and one-half hours from June 24, 2016 and the
25 date of trial (the "California Rest Break Class");
- 26 e. All current and former non-exempt California employees of NCR who received
27 one or more wage statements between June 24, 2019 through the date of trial
28 (the "California Wage Statement Class"); and
- f. All members of the California Regular Rate Class, California Meal Break Class,
and California Rest Break Class whose employment ended between June 24,
2017 and the date of trial (the "California Former Employee Class").

1 The Regular Rate Class, California Regular Rate Class, the California Meal Break Class, California
2 Rest Break Class, the California Wage Statement Class, and the California Former Employee Class are
3 collectively referred to as the Class.

4 57. The class of persons is so numerous that joinder of all members is impracticable, and
5 the disposition of their claims in a class action is a benefit to the parties and to the Court. Plaintiff is
6 informed and believes, and based thereon alleges, that Defendants employ more than 1,000 employees
7 who satisfy the class definition. Although the exact number and identity of class members is not
8 presently known, they can be identified in Defendants' records through coordinated discovery
9 pursuant to this class action.

10 58. This action may be maintained as a class action pursuant to Code of Civil Procedure
11 section 382 and/or Rule 23 of the Federal Rules of Civil Procedure because the questions of law and
12 fact which are common to class members clearly predominate over any questions affecting only
13 individual members and because a class action is superior to other available methods for adjudicating
14 the controversy.

15 59. There are numerous common questions of law and fact arising out of Defendants'
16 conduct. This class action focuses on Defendants' systematic: (a) failure to properly calculate and pay
17 overtime to their non-exempt employees, (b) failure to authorize and permit compliant meal and rest
18 breaks or to pay the premiums associated with the same; (c) failure to provide accurate itemized wage
19 statements; and (d) failure to timely pay all wages due and owing at the cessation of their employment.

20 60. Furthermore, common questions of fact and law predominate over any questions
21 affecting only individual members of the class. The predominating common or class-wide questions
22 of law and fact include the following:

- 23 a. Whether Defendant failed to properly calculate and pay its non-exempt
24 employees' overtime pay in accordance with the requirements of the FLSA;
- 25 b. Whether Defendant failed to properly calculate and pay its non-exempt
26 California employees' overtime pay;

- c. Whether Defendant failed to properly calculate and pay its non-exempt California employees' overtime pay in accordance with the requirements of the California Labor Code;
- d. Whether Defendant failed to provide compliant meal and rest breaks to its non-exempt California employees;
- e. Whether Defendant failed to pay premiums to its non-exempt California employees as a result of non-compliant meal and rest breaks;
- f. Whether Defendant timely paid all wages due and owing to its non-exempt California employees after the cessation of their employment;
- g. Whether the wage statements Defendant furnished to its non-exempt California employees comply with Labor Code section 226;
- h. Whether the alleged violations constitute unfair business practices;
- i. Whether the Class is entitled to injunctive relief; and
- j. Whether the Class is entitled to unpaid wages, statutory penalties and/or restitutionary relief, and the amount of the same.

61. Plaintiff's claims are typical of the claims of the members of the Class as a whole, all of whom have sustained and/or will sustain damage and injury as a proximate and/or legal result of the alleged violations of Defendant. Plaintiff's claims are typical of those of the Class because Defendant subjected Plaintiff and each member of the Class to the same violations alleged herein.

62. The defenses of Defendant, to the extent that such defenses apply, are applicable generally to the whole Class and are not distinguishable as to the proposed class members.

63. Plaintiff will fairly and adequately protect the interests of all members of the Class, and has retained attorneys with extensive experience in litigation, including class and representative actions. Plaintiff has no interests that conflict with those of the Class. Plaintiff is able to fairly and adequately protect the interests of all members of the class because it is in his best interest to prosecute the claims alleged herein in order to obtain the full compensation due themselves and the other class members.

64. A class action is superior to any other method available for fairly and efficiently adjudicating the controversy because 1) joinder of individual class members is not practicable, 2) litigating the claims of individual class members would be unnecessarily costly and burdensome and would deter individual claims, 3) litigating the claims of individual class members would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants, 4) class members still working for Defendants may be fearful of retaliation if they were to bring individual claims, 5) class members would be discouraged from pursuing individual claims because the damages available to them are relatively small, and 6) public policy encourages the use of the class actions to enforce employment laws and protect individuals who, by virtue of their subordinate position, are particularly vulnerable.

65. Judicial economy will be served by maintenance of this lawsuit as a class action. To process numerous virtually identical individual cases will significantly increase the expense on the Court, the class members, and Defendant, all while unnecessarily delaying the resolution of this matter. There are no obstacles to effective and efficient management of this lawsuit as a class action by this Court and doing so will provide multiple benefits to the litigating parties including, but not limited to, efficiency, economy, and uniform adjudication with consistent results.

66. Notice of a certified class action and any result or resolution of the litigation can be provided to class members by mail, email, publication, or such other methods of notice as deemed appropriate by the Court.

FIRST CAUSE OF ACTION
VIOLATION OF FAIR LABOR STANDARDS ACT AND
CALIFORNIA LABOR CODE §§ 510 & 1198
(Failure to Pay Overtime)

Against Defendants on Behalf of the Regular Rate Class and the California Regular Rate Class

67. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

68. The Fair Labor Standards Act, 29 USC §§ 201 et seq. and 29 CFR §§ 778 et seq., requires time-and-a-half pay at the employee's regular rate of pay for the time an employee works over forty hours a week.

1 69. Pursuant to California Labor Code section 510, any work in excess of eight hours in
2 one workday and any work in excess of 40 hours in any one workweek and the first eight hours
3 worked on the seventh day of work in any one workweek shall be compensated at the rate of no less
4 than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours
5 in one day shall be compensated at the rate of no less than twice the regular rate of pay for an
6 employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be
7 compensated at the rate of no less than twice the regular rate of pay of an employee.

8 70. The “regular rate of pay” includes all remuneration for employment paid to the
9 employee and includes, but is not limited to, hourly earnings, salary, piece work earnings,
10 commissions, non-discretionary bonuses, and the value of meals and lodging. See 29 U.S.C. § 207(e);
11 DLSE Enforcement Policies and Interpretations Manual Section 49.

12 71. Pursuant to California Labor Code section 1198, the maximum hours of work and
13 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
14 standard conditions of labor for employees and the employment of any employee for longer hours than
15 those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

16 72. During the relevant time period, Plaintiff and Defendant’s other non-exempt employees
17 regularly worked overtime.

18 73. During the relevant time period, Defendants failed to include commissions, non-
19 discretionary bonuses and/or other items of compensation, when determining the “regular rate of pay”
20 for Plaintiff and their hourly, non-exempt employees.

21 74. During the relevant time period, Defendants failed to properly calculate the “regular
22 rate of pay” for Plaintiff and their other hourly, non-exempt employees.

23 75. During the relevant time period, Defendant intentionally and willfully failed to pay all
24 overtime wages due to Plaintiff and its non-exempt employees.

25 76. Wherefore, Plaintiff and the other members of the Regular Rate Class and California
26 Regular Rate Class have been injured as set forth above and request relief as hereafter provided.

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SECOND CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 226.7, 512
(Failure to Furnish Meal Breaks)
Against Defendants on Behalf of the California Meal Break Class

77. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

78. Labor Code § 226.7 requires employers to provide employees meal periods as mandated by Order of the Industrial Welfare Commission.

79. Labor Code § 512(a) and the applicable IWC Wage Order(s) provide that an employer may not employ a person for a work period of more than 5 hours per day without providing that employee a meal period of not less than 30 minutes, except that if the total work period per day is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

80. The applicable Wage Order(s) and Labor Code section 226.7 further require an employer who fails to provide a meal period to pay the employee one hour of pay at the employee's "regular rate of compensation" for each day that a meal period is missed.

81. As set forth above, Defendants failed to provide Plaintiff and the other members of the California Meal Break Class with meal breaks as required by the Labor Code and IWC Wage Orders.

82. As a proximate result of Defendants' actions, Plaintiff and the other members of the California Meal Break Class have suffered harm.

83. Wherefore, Plaintiff and the other members of the California Meal Break Class have been injured as set forth above and request relief as hereafter provided.

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THIRD CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 226.7
(Failure to Furnish Rest Breaks)
Against Defendants and the California Rest Break Class

84. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

85. Labor Code § 226.7 requires employers to provide employees rest periods as mandated by Order of the Industrial Welfare Commission.

86. The applicable Wage Order(s) require that employers must authorize and permit nonexempt employees to take a rest period that must, insofar as practicable, be taken in the middle of each work period. The rest period is based on the total hours worked daily and must be at the minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction thereof. Employees are not entitled to a rest break if their total daily work is less than three-and-one-half hours.

87. The applicable Wage Order(s) and Labor Code § 226.7 further require an employer who fails to provide a meal period to pay the employee one hour of pay at the employee's regular rate for each day that a meal period is missed.

88. As set forth above, during her employment, Defendants failed to provide Plaintiff and the California Rest Break Class with rest breaks as required by the Labor Code and IWC Orders.

89. As a proximate result of Defendants' actions, Plaintiff and the other members of the California Rest Break Class have suffered harm.

90. Wherefore, Plaintiff and the other members of the California Rest Break Class have been injured as set forth above and request relief as hereafter provided.

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FOURTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)
(Failure to Furnish Accurate Itemized Wage Statements)
Against Defendants on behalf of the California Wage Statement Class

91. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

92. Pursuant to California Labor Code section 226(a) “every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when the wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee [. . .], (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number, (8) the name and address of the legal entity that is the employer [. . .], (9) all applicable hourly rates in effect during the pay period and corresponding number of hours worked at each hourly rate by the employee and, if the employer is a temporary services employer [. . .], the rate of pay and the total hours worked for each temporary services assignment.”

93. An employee suffering injury as a result of the knowing and intentional failure by an employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees. Labor Code § 226(e)(1).

94. An employee is deemed to suffer injury if the employer fails to provide a wage statement or if the employer fails to provide accurate and complete information as required by any one or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee

1 during the pay period or any of the other information required to be provided pursuant to Labor Code
2 section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the
3 name and address of the employer and iv) the name of the employee and the last four digits of his or
4 her social security number or employee identification number. Labor Code § 226(e)(2)(A) and (B)(i)-
5 (iv). "Promptly and easily determine" means a reasonable person would be able to readily ascertain
6 the information without reference to other documents or information. Labor Code § 226(e)(2)(C).

7 95. As set forth above, Defendants intentionally and willfully failed to furnish accurate
8 itemized wage statements which complied with Labor Code section 226.

9 96. Wherefore, Plaintiff and the other members of the California Wage Statement Class
10 have been injured as set forth above and request relief as hereafter provided.

11 **FIFTH CAUSE OF ACTION**
12 **VIOLATION OF LABOR CODE §§ 201, *et seq.***
13 **(Failure to Pay All Wages at Cessation of Employment)**
14 **Against Defendants on Behalf of the California Former Employee Class**

15 97. Plaintiff hereby realleges and incorporates by reference each and every paragraph set
16 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
17 allegations of this cause of action.

18 98. California Labor Code section 201 provides that if an employer discharges an
19 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

20 99. California Labor Code section 202 requires an employer to pay an employee all earned
21 wages within 72 hours of the employee quitting his or her employment, or immediately at the time of
22 quitting if the employee has given 72 hours previous notice of his or her intention to quit.

23 100. As set forth above, Plaintiff and the other members of the California Waiting Time
24 Penalty Class were not timely paid all of their earned but unpaid wages when their employment with
25 Defendants ended.

26 101. Wherefore, Plaintiff and the other members of the California Former Employee Class
27 have been injured as set forth above and request relief as hereafter provided.
28

SIXTH CAUSE OF ACTION
VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200 *ET SEQ.*
(Unfair Business Practices)
Against Defendants on Behalf of the California Regular Rate Class

102. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

103. The statutory violations, as alleged above, are unfair business practices within the meaning of the Unfair Competition Law (Business and Professions Code sections 17200 *et seq.*), and include, but are not limited to failing to properly calculate the “regular rate of pay” for its non-exempt employees, and to pay overtime accordingly and failing to provide complaint meal and rest breaks or to pay the premiums associated with the same..

104. Wherefore, Plaintiff and the other members of the California Regular Rate Class, the California Meal Break Class, and the California Rest Break Class have been damaged as set forth above and request relief as hereafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

As to the First through Sixth Causes of Action:

1. That this Court certify the Classes identified herein;
2. That this Court appoint Plaintiff as the representative of the Class;
3. That this Court appoint Mayall Hurley, P.C. as Class Counsel;
4. That this Court award actual, compensatory, special, and general damages as well as restitutionary relief to Plaintiff and the members of the Class;
5. That this Court award injunctive relief, including that available under 29 U.S.C. § 217, Labor Code §§ 226(h), and Business and Professions Code § 17203;
6. That this Court award penalties and liquidated damages including, but not limited to, those available under 29 U.S.C. 216(b) and Labor Code §§ 203, 226, 226.7, and 512;

- 1 7. That this Court award statutory attorneys' fees and costs, including those available
2 under 29 U.S.C. § 216(b), Labor Code §§ 218.5, 226(e)(1), 226(h), and 1194, as well as
3 Code of Civil Procedure § 1021.5;
4 8. That this Court award prejudgment and post-judgment interest according to any
5 applicable provision of law or as otherwise permitted by law; and
6 9. That this Court award such other and further relief as the court deems just and proper.

7
8 **DATED:** June 24, 2020

MAYALL HURLEY P.C.

9
10 By _____

ROBERT J. WASSERMAN

WILLIAM J. GORHAM

VLADIMIR J. KOZINA

Attorneys for Plaintiff and the Putative Class

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EXHIBIT 1

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Company Information 1 item

Name	Address	Phone
NCR Corporation	864 Spring St NW Atlanta, GA 30308 United States of America	+1 (800) 225-5627

Payslip Information 1 item

Name	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number
Angelo Kalaveras	14200149850	12/28/2019	01/10/2020	01/17/2020	

Current and YTD Totals 2 items

Balance Period	Gross Pay	Pre Tax Deductions	Employee Taxes	Post Tax Deductions	Net Pay
Current	2,429.49	143.32	616.60	0.00	1,669.57
YTD	4,688.49	286.64	1,165.95	0.00	3,235.90

Earnings 10 items

Description	Dates	Hours	Rate	Amount
Overtime	12/28/2019 - 01/03/2020	2.50	39.00	97.50
Regular Pay	12/28/2019 - 01/10/2020	60.00	26.00	1,560.00
Shift 3 Premium	12/28/2019 - 01/10/2020	74.50	2.00	149.00
Training Hours	12/28/2019 - 01/10/2020	12.00	26.00	312.00
CE Vehicle	12/28/2019 - 01/10/2020	0.00	0.00	27.69
Holiday	12/28/2019 - 01/03/2020	8.00	26.00	208.00
OT Premium	12/28/2019 - 01/03/2020	0.00	0.00	1.99
Biometric Credit	12/28/2019 - 01/10/2020	0.00	0.00	75.00
Group Term Life	12/28/2019 - 01/10/2020	0.00	0.00	3.90
Meal Break Penalty	12/28/2019 - 01/03/2020	1.00	26.00	26.00
Total:				2,461.08

Employee Taxes 5 items

Description	Amount	YTD
OASDI	143.70	276.83
Medicare	33.60	64.74
Federal Withholding	315.83	594.15
State Tax - CA	100.61	186.21
CA SDI - CASDI	22.86	44.02
Total:	616.60	1,165.95

Pre Tax Deductions 3 items

Description	Amount	YTD
Dental Plan	9.16	18.32
Eye Plan	4.75	9.50
Medical	129.41	258.82
Total:	143.32	286.64

Taxable Wages 3 items

Description	Amount	YTD
OASDI - Taxable Wages	2,317.76	4,465.03
Medicare - Taxable Wages	2,317.76	4,465.03
Federal Withholding - Taxable Wages	2,317.76	4,465.03

Withholding 3 items

Description	Federal	Work State
Marital Status	Married but withhold at higher Single rate	Married but withhold at higher Single rate
Allowances	0	0
Additional Withholding	0	

Payment Information 1 item

EXHIBIT 2

Angelo Kalaveras: 12/13/2019 (Regular) - Complete Actions

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Company Information 1 item

Name	Address	Phone
NCR Corporation	564 Spring St NW Atlanta, GA 30308 United States of America	+1 (800) 225-5627

Payslip Information 1 item

Name	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number
Angelo Kalaveras	14200149850	11/30/2019	12/13/2019	12/20/2019	

Current and YTD Totals 2 items

Balance Period	Gross Pay	Pre Tax Deductions	Employee Taxes	Post Tax Deductions	Net Pay
Current	2,362.39	140.93	596.83	0.00	1,624.63
YTD	10,116.68	422.79	2,501.60	0.00	7,192.29

Earnings 9 items

Description	Dates	Hours	Rate	Amount	
Overtime	12/07/2019 - 12/13/2019	2.50	39.00	97.50	24
Regular Pay	11/30/2019 - 12/13/2019	32.00	26.00	832.00	1,04
Shift 3 Premium	11/30/2019 - 12/13/2019	54.00	2.00	108.00	28
Training Hours	11/30/2019 - 12/13/2019	48.00	26.00	1,248.00	8,11
CE Vehicle	11/30/2019 - 12/13/2019	0.00	0.00	27.69	11
Holiday					20
OT Premium	12/07/2019 - 12/13/2019	0.00	0.00	1.89	
Biometric Credit	11/30/2019 - 12/13/2019	0.00	0.00	75.00	22
Group Term Life	11/30/2019 - 12/13/2019	0.00	0.00	3.90	1
Total:				2,393.98	10,23

Employee Taxes 5 items

Description	Amount	YTD
OASDI	139.69	609.61
Medicare	32.67	142.34
Federal Withholding	304.23	1,264.83
State Tax - CA	98.02	388.89
CA SDI - CASDI	22.22	96.94
Total:	596.83	2,501.60

Pre Tax Deductions 3 items

Description	Amount	YTD
Dental Plan	6.81	26.43
Eye Plan	4.80	14.40
Medical	127.32	381.96
Total:	140.93	422.79

Taxable Wages 3 items

Description	Amount	YTD
OASDI - Taxable Wages	2,253.05	9,816.35
Medicare - Taxable Wages	2,253.05	9,316.35
Federal Withholding - Taxable Wages	2,253.05	9,816.35

Withholding 3 items

Description	Federal	Work State
Marital Status	Married but withhold at higher Single rate	Married but withhold at higher Single rate
Allowances	0	0
Additional Withholding	0	

Payment Information 1 item

Bank	Account Name	Account Number	Amount in Pay Group Currency	Pay Group Currency
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EXHIBIT 3

Payslip

Angelo Kalaveras: 11/01/2019 (Regular) - Complete Actions

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Company Information 1 item

Name	Address	Phone
NCR Corporation	864 Spring St NW Atlanta, GA 30308 United States of America	+1 (800) 225-5627

Payslip Information 1 item

Name	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number
Angelo Kalaveras	14200149850	10/19/2019	11/01/2019	11/08/2019	

Current and YTD Totals 2 items

Balance Period	Gross Pay	Pre Tax Deductions	Employee Taxes	Post Tax Deductions	Net Pay
Current	2,206.96	0.00	589.60	0.00	1,617.36
YTD	3,246.96	0.00	796.92	0.00	2,450.04

Earnings 6 items

Description	Dates	Hours	Rate	Amount	YT
Overtime	10/26/2019 - 11/01/2019	2.00	39.00	78.00	78.00
Regular Pay	10/26/2019 - 11/01/2019	4.00	26.00	104.00	104.00
Shift 3 Premium	10/19/2019 - 11/01/2019	24.00	2.00	48.00	48.00
Training Hours	10/19/2019 - 11/01/2019	76.00	26.00	1,976.00	3,016.00
CE Vehicle	10/19/2019 - 11/01/2019	0.00	0.00	27.69	27.69
OT Premium	10/26/2019 - 11/01/2019	0.00	0.00	0.96	0.96
Total:				2,234.65	3,274.65

Employee Taxes 5 items

Description	Amount	YTD
OASDI	138.55	203.03
Medicare	32.40	47.48
Federal Withholding	300.18	399.98
State Tax - CA	96.40	113.96
CA SDI - CASDI	22.07	32.47
Total:	589.60	796.92

Taxable Wages 3 items

Description	Amount	YTD
OASDI - Taxable Wages	2,234.65	3,274.65
Medicare - Taxable Wages	2,234.65	3,274.65
Federal Withholding - Taxable Wages	2,234.65	3,274.65

Withholding 3 items

Description	Federal	Work State
Marital Status	Married but withhold at higher Single rate	Married but withhold at higher Single rate
Allowances	0	0
Additional Withholding	0	

Payment Information 1 item

Bank	Account Name	Account Number	Amount in Pay Group Currency	Pay Group Currency
J.P. Morgan Chase Bank	Chase Bank		1,617.36	USD
Total:			1,617.36	