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17 UNITED STATES DISTRICT COURT

18 CENTRAL DISTRICT OF CALIFORNIA

19 MYRICA SMITH, an individual,
20 And KEVIN OCHONMA, an individual,

21 Plaintiff,

22 vs.

23 DI LOGISTICS, LLC, a limited-liability
24 corporation;
25 and DOES 1-100, inclusive,

26 Defendants.

Case No.: 2:20-cv-03734-PSG-AGR

FIRST AMENDED CLASS ACTION
COMPLAINT

1. FAILURE TO PAY MINIMUM WAGE
2. FAILURE TO PAY OVERTIME
3. FAILURE TO PAY WAGES
4. FAILURE TO PROVIDE MEAL PERIODS
5. FAILURE TO PROVIDE REST PERIODS
6. FAILURE TO PROPERLY PAY SICK LEAVE
7. FAILURE TO REIMBURSE FOR ALL BUSINESS EXPENSES
8. FAILURE TO PAY ALL WAGES DUE AND OWING AT END OF EMPLOYMENT
9. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
10. UNLAWFUL BUSINESS PRACTICES

1 Plaintiffs Myrica Smith and Kevin Ochonma bring this class action against DI Logistics, LLC
2 and Does 1 through 100, for violations of the California Labor Code, Fair Labor Standards Act, and the
3 Business and Professions Code.

4 **PARTIES**

5 1. Myrica Smith (“Smith”) is and at all times relevant herein was employed in Stanislaus
6 County, California, and was an “employee” as defined by the California Labor Code (“Labor Code”),
7 the Fair Labor Standards Act, and the applicable California Industrial Wage Commission (“IWC”)
8 Order(s).

9 2. Kevin Ochonma (“Ochonma”) is and at all times relevant herein was employed in
10 Stanislaus County, California, and was an “employee” as defined by the California Labor Code (“Labor
11 Code”) and the applicable California Industrial Wage Commission (“IWC”) Order(s).

12 3. DI Logistics, LLC (“Defendant” or “DI Logistics”) is a California limited-liability
13 corporation which does business in California and throughout the United States.

14 4. At all times relevant herein, DI Logistics has been an “employer” as defined by the
15 Labor Code, the Fair Labor Standards Act, and the applicable IWC Order(s).

16 5. Smith and Ochonma are collectively referred to as Plaintiffs.

17 6. DI Logistics and Does 1-100 are collectively referred to as Defendants.

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

26 8. Plaintiffs are informed and believe and thereupon allege that at all times mentioned
27 herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant,
28 employee, partner and/or joint venturer of and was acting in concert with each of the remaining

1 Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting
2 within the course and scope of such agency, service, employment partnership, joint venture and/or
3 concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and
4 within the course and scope of such agency and/or employment, with the knowledge and/or consent of
5 the remaining Defendants.

6 **JURISDICTION AND VENUE**

7 9. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, as it includes claims arising
8 under the laws of the United States. The Court also has supplemental jurisdiction under the state law
9 claims pursuant to 28 U.S.C. § 1367 because those claims are related such that they form part of the
10 same case and controversy under Article III of the United States Constitution. Venue is proper in this
11 court pursuant to 28 U.S.C. § 1391(b) because DI Logistics resides in Los Angeles County, California.
12 Plaintiffs hereby demand a jury trial.

13 **GENERAL ALLEGATIONS**

14 10. Smith was hired by DI Logistics in or around August 2018. Throughout her
15 employment, Smith typically reported to either DI Logistics' Manteca or Dublin facility to start her
16 day.

17 11. Throughout her employment, Smith was a non-exempt employee. As such, she was
18 entitled to be paid for every hour worked and overtime as appropriate. See **Exhibit 1**.¹

19 12. Ochonma was hired by DI Logistics in or around February 2018. Throughout his
20 employment, Ochonma typically reported to either DI Logistics' Manteca or Dublin facility to start his
21 day.

22 13. Throughout his employment, Ochonma was a non-exempt employee. As such, he was
23 entitled to be paid for every hour worked and overtime as appropriate.

24 14. Throughout their employment, however, Plaintiffs and DI Logistics' other non-exempt
25 California employees were not properly paid for all hours worked, including overtime.

26
27
28 ¹ **Exhibits 1-6** 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 15. Specifically, because of issues with DI Logistics' timekeeping practices, Plaintiffs and
2 DI Logistics' other non-exempt California employees were routinely credited for less hours than they
3 actually worked.

4 16. Additionally, when required to travel to different facilities, Plaintiffs and DI Logistics'
5 other non-exempt California employees were often not paid for all of the time spent traveling between
6 those facilities.

7 17. Smith and DI Logistics' other non-exempt California employees were also eligible for
8 and at times received non-discretionary bonuses, commissions, and other items of compensation. See
9 **Exhibits 1 and 2.**

10 18. Pursuant to DI Logistics' standard employment agreement, Smith and DI Logistics'
11 other non-exempt California employees were entitled to earn, among other things, "per-stop" pay.
12 **Exhibit 1.**

13 19. Nonetheless, Smith and DI Logistics' other non-exempt California employees did not
14 receive per-stop pay. **Exhibit 2.**

15 20. The non-discretionary bonuses, commissions, and other items of compensation to which
16 Smith and DI Logistics' other non-exempt California employees were entitled included, but were not
17 limited to, additional pay for certain stops and deliveries made and "STEM" payments.

18 21. DI Logistics failed to include these non-discretionary bonuses, commissions, and other
19 items of compensation when calculating Smith and its other non-exempt California employees' regular
20 rate of pay for purposes of overtime. See **Exhibit 2.**

21 22. Plaintiffs and DI Logistics' other non-exempt California employees were also entitled
22 for reimbursement of business expenses they incurred performing their job duties. These
23 reimbursements included, but were not limited to mileage, tolls, and insurance. See **Exhibit 3.**

24 23. Notwithstanding the foregoing, DI Logistics failed and refused to reimburse Plaintiffs
25 and its other non-exempt California employees for all of their business expenses.

26 24. For instance, at times DI Logistics deducted Smith and its other non-exempt California
27 employees' non-discretionary bonuses, commissions, and other items of compensation from their
28 reimbursable expenses.

1 25. DI Logistics also failed and refused to reimburse Plaintiffs and its other non-exempt
2 California employees for all of their mileage when they had to travel to different facilities, even though
3 they were required to use their personal vehicles.

4 26. Further, those mileage reimbursements paid by DI Logistics were paid at rates which
5 were insufficient to adequately compensate Plaintiffs and its other non-exempt California employees
6 for the expenses they actually incurred. See **Exhibits 3** and **4**.

7 27. Plaintiffs and DI Logistics' other non-exempt California employees were also not
8 consistently authorized or permitted to take meal and rest breaks as required by California law.

9 28. DI Logistics required Plaintiffs and its other non-exempt California employees to work
10 through meal and rest breaks due to understaffing and work demands.

11 29. On the occasions that Plaintiffs and DI Logistics' other non-exempt California
12 employees were able to take their meal breaks, they routinely occurred after 5 hours of work.

13 30. Further, DI Logistics frequently failed to relieve Plaintiffs and its other non-exempt
14 California employees of employer control during their meal and rest breaks.

15 31. When Smith and DI Logistics' other non-exempt California employees were not
16 provided compliant meal and rest breaks, DI Logistics did not pay premiums as required by California
17 law. Specifically, DI Logistics either (a) failed to pay the premiums in their entirety or (b) paid the
18 premium(s) only at its employees' base rate of pay rather than their regular rate of pay, without
19 accounting for non-discretionary bonuses, commissions, and/or other items of compensation (including
20 shift premiums and differentials).

21 32. DI Logistics also failed and refused to allow Plaintiffs and its other non-exempt
22 California employees to use their sick pay.

23 33. Further, DI Logistics failed to incorporate non-discretionary bonuses, commissions, and
24 other items of compensation into its non-exempt California employees' regular rate of pay when paying
25 sick pay.

26 34. Because of the violations set forth above, and as evidenced in the sample of Plaintiffs'
27 wage statement attached hereto as **Exhibits 2-4**, the wage statements furnished by DI Logistics to its
28

1 non-exempt California employees violate California Labor Code section 226(a) insofar as they fail to
2 accurately show:

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

8 35. Separate and independent of the foregoing allegations, the wage statements that DI
9 Logistics furnishes to their California employees violate California Labor Code section 226(a)(8)
10 insofar as they fail to accurately show the name and address of the entity that is the employer. See
11 **Exhibits 2 and 5.**

12 36. Because DI Logistics fails to pay its non-exempt California employees for all the hours
13 they worked, overtime at the correct rate of pay, sick pay at the correct rate of pay, and because they are
14 not provided compliant meal and rest breaks, or the premiums associated with missing the same, they
15 are not timely paid all wages due and owing to them at the end of their employment.

16 37. Smith and DI Logistics other former non-exempt California employees have not been
17 paid all such wages due and owing to them when their employment with DI Logistics ended.

18 38. From at least four years prior to the filing of this action, DI Logistics has adopted and
19 employed unfair business practices. These unfair business practices include, but are not limited to,
20 failing to properly pay all minimum and overtime wages due, failing to provide compliant meal and rest
21 breaks, failing to properly compensate employees for statutorily required sick leave, and failing to
22 reimburse employees for all business expenses.

23 **CLASS ACTION ALLEGATIONS**

24 39. Plaintiffs seek to maintain this action as a class action as to the First through Tenth
25 Causes of Action. Plaintiffs bring this action, on behalf of themselves and all others similarly situated,
26 as a class action pursuant to Code of Civil Procedure 382. The putative classes which Plaintiffs seek to
27 represent consist of the following:

- 28 a. All current and former non-exempt California employees of DI Logistics who
worked from April 23, 2016 through the date of trial (the "Minimum Wage Class");

- b. All current and former non-exempt California employees of DI Logistics who worked overtime during one or more pay periods from April 23, 2016 through the date of trial (the “Overtime Class”);
- c. All current and former non-exempt California employees of DI Logistics who worked from April 23, 2016 through the date of trial (the “Unpaid Wage Class”);
- d. All current and former non-exempt California employees of DI Logistics who worked one or more shift of longer than five hours from April 23, 2016 through the date of trial (the “Meal Break Class”);
- e. All current and former non-exempt California employees of DI Logistics who worked one or more shift of longer than three and one-half hours from April 23, 2016 through the date of trial (the “Rest Break Class”);
- f. All current and former non-exempt California employees of DI Logistics who (a) were prevented from using their sick leave or (b) received commissions, non-discretionary bonuses and/or other items of compensation and used sick leave during at least one pay period from April 23, 2016 through the date of trial (the “Sick Pay Class”);
- g. All current and former non-exempt California employees of DI Logistics who incurred business expenses in the performance of their duties from April 23, 2016 through the date of trial (“Business Expense Class”);
- h. All current and former non-exempt California employees of DI Logistics who worked from June 17, 2019 through the date of trial (the “Wage Statement Class”);
- i. All current and former California employees of DI Logistics who worked from June 17, 2019 through the date of trial (the “226(a)(8) Class”); and
- j. All members of the Minimum Wage Class, Overtime Class, Unpaid Wage Class, Meal Break Class, Rest Break Class, and Sick Pay Class whose employment ended April 23, 2017 through the date of trial (the “Waiting Time Penalty Class”)

1 The Minimum Wage Class, Overtime Class, Unpaid Wage Class, Meal Break Class, Rest Break
2 Class, Business Expense Class, Sick Pay Class, Wage Statement Class, 226(a)(8) Class, and
3 Waiting Time Penalty Class are collectively referred to as the “Class”.

4 40. The class of persons is so numerous that joinder of all members is impracticable, and the
5 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 600 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 pursuant
9 to this class action.

10 41. This action may be maintained as a class because the questions of law and fact which are
11 common to class members clearly predominate over any questions affecting only individual members
12 and because a class action is superior to other available methods for adjudicating the controversy.

13 42. There are numerous common questions of law and fact arising out of Defendants’
14 conduct. This class action focuses on Defendants’: (a) systematic failure to properly pay employees for
15 all hours worked, including overtime; (b) systemic failure to authorize and permit meal and rest breaks
16 or to pay the requisite premiums in lieu of providing said breaks; (c) systematic failure to properly pay
17 sick pay; (d) systematic failure to reimburse employees for all business expenses; (e) systematic failure
18 to provide accurate itemized wage statements, and (f) systematic failure to pay all wages due and owing
19 at the end of employment.

20 43. 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 of
22 law and fact include the following:

- 23 a. Whether Defendants failed to pay all their non-exempt California employees for
24 all hours worked;
- 25 b. Whether Defendants failed to pay their non-exempt California employees for all
26 overtime worked;
- 27 c. Whether Defendants failed to properly calculate and pay their non-exempt
28 California employees’ overtime pay;

- d. Whether Defendants failed to properly calculate and pay their non-exempt California employees' sick pay;
- e. Whether Defendants failed to provide compliant meal and breaks to their non-exempt California employees;
- f. Whether Defendants failed to pay all earned wages to their non-exempt California employees;
- g. Whether Defendants failed to pay premiums to their non-exempt California employees as a result of non-compliant meal and rest breaks;
- h. Whether Defendants failed to reimburse their non-exempt California employees for business expenses incurred in the performance of their duties;
- i. Whether the Defendants failed to furnish accurate itemized wage statements;
- j. Whether Defendants failed to pay all wages due and owing at end of their non-exempt California employees' employment;
- k. Whether the alleged violations constitute unfair business practices;
- l. Whether the Class is entitled to injunctive relief; and
- m. Whether the Class is entitled to unpaid wages, statutory penalties and/or restitutionary relief, and the amount of the same.

44. Plaintiffs' 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 Defendants. Plaintiffs' claims are typical of those of the Class because Defendants subjected Plaintiffs and each member of the Class to the same violations alleged herein.

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

46. Plaintiffs will fairly and adequately protect the interests of all members of the Class, and have retained attorneys with extensive experience in litigation, including class and representative actions. Plaintiffs have no interests that conflict with those of the Class. Plaintiffs are able to fairly and adequately protect the interests of all members of the class because it is in her best interest to prosecute

1 the claims alleged herein in order to obtain the full compensation due herself and the other class
2 members.

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

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

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

22 **COLLECTIVE ACTION ALLEGATIONS**

23 50. Plaintiffs seeks to maintain the second cause of action as an “opt-in” collective
24 action pursuant to 29 U.S.C. § 216(b) as to claims for overtime, liquidated damages (or,
25 alternatively, interest) and attorneys’ fees under the FLSA. In addition to Plaintiffs, numerous
26 other current and former hourly, non-exempt employees of Defendants were not paid all the
27 overtime they are owed. Plaintiffs are representatives of those other current and former employees
28 and are acting on behalf of their interests as well as their own in bringing this action. These

1 similarly situated employees are known to Defendants, are readily identifiable, and may be located
 2 through Defendants' records. These similarly situated employees may be readily notified of this
 3 action, and allowed to opt in pursuant to 29 U.S.C. § 216(b), for purpose of collectively
 4 adjudicating their claims for overtime compensation, liquidated damages (or, alternatively,
 5 interest), and attorneys' fees under the FLSA.

6 **FIRST CAUSE OF ACTION**
 7 **VIOLATION OF CALIFORNIA LABOR CODE § 1128.12 et seq.**
 8 **(Failure to Pay Minimum Wage)**
 9 **Against Defendants**

10 51. Plaintiffs hereby reallege and incorporate by reference each and every allegation set
 11 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
 12 allegations of this cause of action.

13 52. California Labor Code section 1182.12 establishes the minimum wage for California
 14 employees from July 1, 2014, to present.

15 53. Labor Code Section 1194 provides, in relevant part:

16 Notwithstanding any agreement to work for a lesser wage, any employee
 17 receiving less than the legal minimum wage ... applicable to the employee
 18 is entitled to recover in a civil action the unpaid balance of the full amount
 19 of this minimum wage ... including interest thereon, reasonable attorney's
 20 fees, and costs of suit.

21 54. Labor Code section 1194.2 provides, in relevant part:

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

26 55. Labor Code section 1197 provides that the minimum wage for employees fixed by the
 27 commission is the minimum wage to be paid to employees, and the payment of a lesser wage is
 28 unlawful

29 56. Pursuant to California Labor Code section 1198, the maximum hours of work and
 30 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
 31 standard conditions of labor for employees and the employment of any employee for longer hours than
 32 those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

1 64. During the relevant time period, Plaintiffs and Defendants' other non-exempt California
2 employees regularly worked overtime.

3 65. During the relevant time period, Defendants intentionally and willfully failed to pay
4 Plaintiffs and other members of the Overtime Class the proper overtime wages due to them.

5 66. During the relevant time period, Defendants intentionally and will fully failed to
6 properly calculate and pay overtime wages due to Plaintiffs and the other members of the Overtime
7 Class.

8 67. Wherefore, Plaintiffs and the other members of the other members of the Overtime Class
9 have been injured as set forth above and request relief as hereafter provided.

10 **THIRD CAUSE OF ACTION**
11 **LABOR CODE § 218**
12 **(Failure to Pay Wages)**
 Against Defendants

13 68. Plaintiffs hereby reallege and incorporate by reference each and every allegation set
14 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
15 allegations of this cause of action.

16 69. Labor Code section 218 permits an individual to bring an action to recover unpaid
17 wages, which include any and all compensation owed for labor performed by an employee, whether
18 that amount is calculated by time, task, piece, commission, or some other method and additionally
19 includes bonuses, profit-sharing, and commissions. *Davis v. Farmers Ins. Exchange* (2016) 245
20 Cal.App.4th 1302.

21 70. As set forth above, during the relevant time period, Defendants failed to pay Plaintiffs
22 and the members of the Unpaid Wage Class all wages earned by them, including all wages earned for
23 all time they worked for Defendants, including earned overtime wages, all bonuses earned, all piece-
24 rates earned (such as per-stop pay), and all sick pay owed.

25 71. Wherefore, Plaintiffs and the other members of the Unpaid Wage Class have been
26 harmed and request relief as hereafter provided.

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28 ///

FOURTH CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 226.7, 512 and IWC WAGE ORDERS
(Failure to Provide Meal Periods)
Against Defendants

72. Plaintiffs hereby reallege and incorporate 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.

73. Labor Code § 226.7 requires employers to provide employees meal breaks as mandated by Order of the Industrial Welfare Commission. It states:

- a. No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- b. If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee 1 additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

74. Labor Code § 512(a) and the applicable 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. An employer may not employ a person for a work period of more than 10 hours per day without providing an employee with a second meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than twelve 12 hours, the meal period may be waived by mutual consent of both the employer and the employee, and if the first meal period was not waived.

75. During the relevant time period, Plaintiffs and the other members of the Meal Break Class were not provided with compliant meal breaks, nor did they receive an additional hour of premium pay for each missed meal break.

1 76. Wherefore, Plaintiffs and the other members of the Meal Break Class have been injured
2 as set forth above and request relief as hereafter provided.

3 **FIFTH CAUSE OF ACTION**
4 **VIOLATION OF LABOR CODE §§ 226.7, 512 and IWC WAGE ORDERS**
5 **(Failure to Provide Rest Periods)**
6 **Against Defendants**

7 77. Plaintiffs hereby reallege and incorporate by reference each and every allegation set
8 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
9 allegations of this cause of action.

10 78. Labor Code § 226.7 requires employers to provide employees rest periods as
11 mandated by Order of the Industrial Welfare Commission. It states:

- 12 a. No employer shall require any employee to work during any meal or rest
13 period mandated by an applicable order of the Industrial Welfare
14 Commission.
15 b. If an employer fails to provide an employee a meal period or rest period in
16 accordance with an applicable order of the Industrial Welfare Commission,
17 the employer shall pay the employee 1 additional hour of pay at the
18 employee's regular rate of compensation for each work day that the meal or
19 rest period is not provided

20 79. The applicable Wage Order(s) provides that every "employer shall authorize and
21 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
22 each work period. The authorized rest period time shall be based on the total hours worked daily at
23 the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof..." The
24 applicable Wage Order further provides that "[i]f an employer fails to provide an employee rest
25 period in accordance with the applicable provisions of this order, the employer shall pay the
26 employee one (1) hour of pay at the employee's regular rate of compensation for each workday that
27 the rest period is not provided."

28 80. During the relevant time period, Plaintiffs and other members of the Rest Break Class
were not provided with compliant rest breaks, nor did they receive an additional hour of premium pay
for each missed rest break

1 81. Wherefore, Plaintiffs and the other members of the Rest Break Class have been injured
2 as set forth above and request relief as hereafter provided.

3 **SIXTH CAUSE OF ACTION**
4 **VIOLATION OF LABOR CODE §§ 218, 233, 246 et seq.**
5 **(Failure to Properly Pay Sick Leave)**
6 **Against Defendants**

7 82. Plaintiffs hereby reallege and incorporate by reference each and every allegation set
8 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
9 allegations of this cause of action.

10 83. Labor Code section 246(l) requires that employers pay sick time pay to non-exempt
11 employees at that employee's "regular rate of pay."

12 84. The "regular rate of pay" includes all remuneration for employment paid to the
13 employee and includes, but is not limited to, hourly earnings, salary, piece work earnings, shift
14 differentials, commissions, non-discretionary bonuses, and the value of meals and lodging. See 29
15 U.S.C. § 207(e); DLSE Enforcement Policies and Interpretations Manual Section 49.

16 85. During the relevant time period, Defendants failed to include commissions,
17 incentive payments, non-discretionary bonuses, and/or other items of compensation when
18 determining the "regular rate of pay" for Smith and their other non-exempt California employees
19 for purposes of sick time pay.

20 86. According to the California Supreme Court, sick pay is a form of wages. *Murphy v.*
21 *Kenneth Cole Productions* (2007) 40 Cal.4th 1094, 1103.

22 87. Labor Code section 233 provides that "any employer who provides sick leave for
23 employees shall permit an employee to use in any calendar year the employee's accrued and
24 available sick leave entitlement, in an amount not less than the sick leave that would be accrued
25 during six months at the employee's then current rate of entitlement, for the reasons specified in
26 subdivision (a) of Section 246.5."

27 88. During the relevant time period, Defendants intentionally and willfully failed and
28 refused to allow Plaintiffs and the other members of the Sick Pay Class to use their sick pay.

1 89. During the relevant time period, Defendants also intentionally and willfully failed to
 2 pay Smith and the other members of the Sick Pay Class their sick pay at the rate of pay required by
 3 law. Accordingly, Smith and the other members of the Sick Pay Class did not receive the full
 4 amount of paid sick time that they were entitled to receive by law, and were therefore denied the
 5 right to use sick leave within the meaning of Labor Code sections 233(a) and (c).

6 90. Any employer who violates Labor Code section 233 is liable to employees for the
 7 greater of one days' pay or actual damages, reasonable equitable relief, and reasonable attorneys'
 8 fees and costs. Labor Code §233(d), (e).

9 91. Further, Labor Code section 218 authorizes a private right of action to recover unpaid
 10 wages.

11 92. Wherefore, Smith and the other members of the Sick Pay Class have been injured as set
 12 forth above and request relief as hereafter provided.

13 **SEVENTH CAUSE OF ACTION**
 14 **VIOLATION OF LABOR CODE § 2802**
 15 **(Failure to Reimburse Business Expenses)**
 16 **Against Defendants**

17 93. Plaintiffs hereby reallege and incorporate by reference each and every allegation set
 18 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
 19 allegations of this cause of action.

20 94. Pursuant to California Labor Code § 2802(a), "an employer shall indemnify his or her
 21 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
 22 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
 23 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
 24 unlawful."

25 95. As set forth above, Defendants intentionally and willfully failed to reimburse Plaintiffs
 26 and the other members of the Business Expense Class for all necessary expenditures or losses incurred
 27 in the direct consequence of the discharge of their job duties in violation of Labor Code section 2802.

28 96. Wherefore, Plaintiffs and the other members of the Business Expense Class have been
 injured as set forth above and request relief as hereafter provided.

EIGHTH CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 201, ET SEQ.
(Failure to Pay All Wages Due and Owing at End of Employment)
Against Defendants

97. Plaintiffs hereby reallege and incorporate 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.

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

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

100. As set forth above, Smith and the other members of the Waiting Time Penalty Class Class were not timely paid all of their earned but unpaid wages, including minimum wage, overtime, meal and rest break premiums and improperly compensated sick pay, when their employment with Defendants ended

101. Wherefore, Smith and the other members of the Waiting Time Penalty Class have been injured as set forth above and request relief as hereafter provided.

NINTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)
(Failure to Furnish Accurate Itemized Wage Statements)
Against Defendants

102. Plaintiffs hereby reallege and incorporate 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. 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

1 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
2 employee and only the last four digits of his or her social security number or an employee identification
3 number, (8) the name and address of the legal entity that is the employer [. . .], (9) all applicable hourly
4 rates in effect during the pay period and corresponding number of hours worked at each hourly rate by
5 the employee and, if the employer is a temporary services employer [. . .], the rate of pay and the total
6 hours worked for each temporary services assignment.”

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

13 105. An employee is deemed to suffer injury if the employer fails to provide a wage
14 statement or if the employer fails to provide accurate and complete information as required by any one
15 or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and
16 easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee
17 during the pay period or any of the other information required to be provided pursuant to Labor Code
18 section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the name
19 and address of the employer and iv) the name of the employee and the last four digits of his or her
20 social security number or employee identification number. Labor Code § 226(e)(2)(A) and (B)(i)-(iv).
21 “Promptly and easily determine” means a reasonable person would be able to readily ascertain the
22 information without reference to other documents or information. Labor Code § 226(e)(2)(C).

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

25 107. Wherefore, Ochonma and the other members of the Waiting Time Penalty Class have
26 been injured as set forth above and request relief as hereafter provided.

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TENTH CAUSE OF ACTION
VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200 *ET SEQ.*
(Unfair Business Practices)
Against Defendants

108. Plaintiffs hereby reallege and incorporate 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.

109. 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 pay minimum and overtime wages, failing to pay meal and rest break premiums, failing to properly compensate employees for statutorily required sick leave, and failing to reimburse employees for business expenses incurred while performing their duties.

110. Wherefore, Plaintiffs and the other members of the 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 Tenth Causes of Action:

1. That this Court certify the Class;
2. That this Court appoint Plaintiffs as representatives 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 sections 226(h) and 248.5(e), as well as Business and Professions Code Section 17203;
6. That this Court award penalties and liquidated damages including, but not limited to, those available under Labor Code sections 203, 226, 226.7, 512 and 1194.2, as well as 29 U.S.C. § 216;

DATED: June 25, 2020

By /s/ Robert J. Wasserman
 ROBERT J. WASSERMAN
 VLADIMIR J. KOZINA
 Attorneys for Plaintiffs and the Putative Class