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 and all others similarly situated

8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA

10 ASHLEY MAYS, on behalf of herself
 and all others similarly situated,

11 Plaintiff,

12 v.

13 NURTUR, LLC, an Ohio limited
 liability company; NURTUR LOS
 14 ANGELES, LLC, an Ohio limited
 liability company; and DOES 1 to 10,
 15 inclusive,

16 Defendants.

Case No. 2:20-CV-08335-SB-AGR

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

- (1) Violation of Bus. & Prof. Code §§ 17200, *et seq.* (UCL)
- (2) Violation of Bus. & Prof. Code §§ 17500, *et seq.* (FAL)
- (3) Violation of Civ. Code §§ 1750, *et seq.* (CLRA)
- (4) Breach of Written Contract
- (5) Breach of Implied Covenant of Good Faith and Fair Dealing
- (6) Intentional Misrepresentation
- (7) Negligent Misrepresentation
- (8) Concealment
- (9) False Promise
- (10) Violation of Lab. Code §§ 510, 1182.12, 1194, 1194.2, 1197
- (11) Meal-Period Liability, Lab. Code § 226.7
- (12) Rest-Break Liability, Cal. Lab. Code § 226.7
- (13) Violation of Lab. Code § 226(a)
- (14) Violation of Lab. Code §§ 201, *et seq.*
- (15) Penalties under Lab. Code §§ 2699, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff Ashley Mays (hereinafter, “Plaintiff”) complains of defendants
2 Nurtur, LLC, Nurtur Los Angeles, LLC (collectively “Nurtur”), dba Aveda Institute
3 Los Angeles (“Aveda”), and Does 1 to 10, inclusive, as follows:

4 **NATURE OF THE ACTION**

5 1. This action arises from Nurtur’s exploitation of Californians who sought
6 to better their lives by attending a vocational school based on promises that they
7 would receive an “industry-leading education” providing the foundation for a
8 successful career in esthetics and cosmetology.

9 2. Plaintiff and other former students of Nurtur’s Aveda Institute Los
10 Angeles were deceived into paying thousands of dollars – most of which came in the
11 form of tax-backed Title IV funds – to attend Nurtur’s supposedly elite beauty school.
12 To attract these students Nurtur falsely represented the quality of its educational
13 programs and its job placement rate, among other things.

14 3. State and federal law requires postsecondary schools like Aveda Institute
15 Los Angeles to truthfully disclose such information to students so that they can make
16 informed decisions about whether to attend such programs. By failing to disclose this
17 material information to prospective students, Nurtur was able to enroll hundreds of
18 students and secure millions of dollars in federal financial aid.

19 4. In hindsight, Nurtur’s efforts to hide its poor performance are
20 unsurprising, for the school failed to deliver on even basic statutory requirements.
21 California regulates cosmetology and esthiology programs operating in this state,
22 requiring the completion of minimum clock hours and performance of specific
23 practical operations before students may take the state licensing examination. Nurtur,
24 however, falsely certifies the completion of these requirements to California
25 authorities.

26 5. Students received little to no technical instruction and performed the
27 same basic operations over and over. Worse, much of the students’ time was spent
28 on routine, menial tasks outside the educational experience. In effect, Nurtur’s

1 “students” functioned as an unpaid workforce who ran the school and serviced
2 Nurtur’s paying customers while receiving no compensation in return.

3 6. In short, the Aveda Institute Los Angeles was little more than a diploma
4 mill for rubber-stamping certifications to California authorities so that students could
5 qualify for the state licensing exam, all while providing a worthless education during
6 which students performed uncompensated work.

7 7. Because of the flagrant nature of these violations, this action seeks broad
8 relief, including but not limited to damages, restitution, unpaid wages and overtime,
9 penalties, and interest, as well as declaratory and injunctive relief, on behalf of
10 California consumers.

11 **JURISDICTION**

12 8. For the reasons outlined in Plaintiffs’ forthcoming Motion to Remand,
13 Plaintiff contests that this Court has subject-matter jurisdiction over Plaintiff’s claims.
14 However, Plaintiff files this amended complaint to preserve her rights under the Labor
15 Code Private Attorney General Act of 2004, Cal. Lab. Code §§ 2699, *et seq.*, which
16 requires aggrieved employees to file an amended complaint alleging a claim for civil
17 penalties under PAGA within a statutory period of time. *Id.* at § 2699.3(a)(2)(C).

18 **PARTIES**

19 9. At all times mentioned herein Nurtur Los Angeles, LLC is and was an
20 Ohio limited liability company with its principal place of business at 10935 Weyburn
21 Avenue, Los Angeles, CA 90024, where it operates a beauty school called Aveda
22 Institute Los Angeles.

23 10. At all times mentioned herein Nurtur, LLC is and was an Ohio limited
24 liability company that operates a beauty school called Aveda Institute Los Angeles
25 located at 10935 Weyburn Avenue, Los Angeles, CA 90024.

26 11. At all times mentioned herein Plaintiff was and is a resident of the State
27 of California.

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12. Plaintiff is unaware of the true names and capacities, whether individual, corporate, associate, or whatever else, of the defendants sued herein as Does 1 to 10, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that each of defendants designated herein as Does is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave to amend this Complaint to reflect the true names and capacities of the defendants designated herein as Does when their identities become known.

13. Plaintiff is informed and believes and thereon alleges that each defendant acted in all respects pertinent to this action as the employee, agent, partner, alter-ego, and/or joint venturer of the other defendants; that defendants carried out a joint scheme, business plan, or policy in all respects pertinent hereto; and that the acts of each defendant are legally attributable to the other defendants.

BACKGROUND

14. Nurtur owns and operates an esthetician and cosmetology school called Aveda Institute Los Angeles located at 10935 Weyburn Avenue, Los Angeles, CA 90024.

15. To become an esthetician or cosmetologist, candidates must complete substantial coursework before taking required state licensure exams. Cal. Bus. & Prof. Code § 7317.

16. In California, students in esthiology, for example, must complete a course in skin care consisting of 600 hours of technical and practical instruction. Cal. Bus. & Prof. Code § 7324; 16 Cal. Code Regs. § 950.3.

17. The regulations specify how much technical and practical instruction students must receive before taking their examination. Required topics include “Manual, Electrical and Chemical Facials (70 Hours of Technical Instruction and 140 Practical Operations),” “Laws and Regulations (10 Hours of Technical Instruction),” “Health and Safety Considerations (40 Hours of Technical Instruction),”

1 “Disinfection and Sanitation (10 Hours of Technical Instruction),” “Anatomy and
2 Physiology (15 Hours of Technical Instruction),” “Eyebrow Beautification (25 Hours
3 of Technical Instruction and 50 Practical Operations),” and “Make-up (20 Hours of
4 Technical Instruction and 40 Practical Operations).”

5 18. Nurtur offers courses putatively intended to fulfill these requirements.
6 Nurtur claims to provide “industry-leading education”¹ with an emphasis on “high-
7 touch techniques using high-tech delivery during spa clinic treatments.”²

8 19. “Our educators are the best in the business, with the tools and knowledge
9 to help you succeed. We’ll provide the foundational knowledge, practical training and
10 business-building skills you need[.]”³

11 20. “Our faculty is a skilled team of experienced instructors with knowledge
12 of classic and contemporary techniques. Instructors have met program licensing
13 requirements and are trained in all aspects of hair, skin and nail esthetics, body care
14 and related subjects.”⁴ “Our highly trained educational team and administrative
15 support staff are dedicated to providing you with the skills necessary to be successful
16 in the classroom and as you begin your career.”⁵

17 21. “When you graduate you will be prepared for a profitable and fulfilling
18 career in the beauty industry”⁶ and be “ready to succeed.”⁷

19 22. Nurtur represents that its curriculum will allow students “to learn the
20 technical, personal and business skills necessary to work in a professional salon
21 environment.”⁸ “With the skills you learn at an Aveda Institute, you’ll be prepared to
22 run your own business, work backstage at Fashion Week and provide caring, complete
23 service for your guests.”⁹

24 ¹ <https://nurturavedainstitutes.com/about-us/>

25 ² <https://nurturavedainstitutes.com/programs/>

26 ³ <https://aveda.edu/why-aveda/>

⁴ <https://nurturavedainstitutes.com/los-angeles-consumer-information/#1531421748651-4b91cbf7-6bc7>

⁵ <https://nurturavedainstitutes.com/wp-content/uploads/AILA-Course-Catalog.pdf>

27 ⁶ <https://nurturavedainstitutes.com/about-us/>

⁷ <https://nurturavedainstitutes.com/programs/>

28 ⁸ <https://nurturavedainstitutes.com/programs/>

⁹ <https://aveda.edu/why-aveda/>

23. Nurtur promises students instruction from a “skilled team of experienced instructors” who are “the best in the business, with the tools and knowledge to help you succeed”¹⁰ and that “have met program licensing requirements and are trained in all aspects of hair, skin and nail esthetics, body care and related subjects.”¹¹

24. Nurtur also misleadingly states that Nurtur is located “on the exciting UCLA campus,”¹² thus suggesting affiliation with UCLA, when in fact the Aveda Institute is a for-profit vocational “school” which, at the time Plaintiff attended, was situated in between Jerry’s Famous Deli and Taco Bell. See Cal. Educ. Code § 94897(i) (prohibiting “[u]se of a name in any manner improperly implying ... [t]he institution is affiliated with any government agency, public or private corporation, agency, or association if it is not, in fact, thus affiliated.”).

25. Nurtur’s programs are not cheap. The total cost for Nurtur’s cosmetology program is \$27,748.05 and the total cost for its esthetician program is \$16,007.25.¹³

26. Unfortunately, Nurtur failed to live up to expectations because students received little to no instruction.

27. In Plaintiff’s class, for example, one instructor was habitually absent in order to undergo and recover from breast augmentation surgery and was regularly observed arranging online dates during class time, and the other instructor had no field experience and could not demonstrate the required operations because her arm was injured and in a sling.

28. The majority of the time students did not receive the technical instruction described in 16 Cal. Code Regs. § 950.3; they were forced to learn on their own through YouTube videos or were idle, in violation of California’s Private Postsecondary Education Act of 2009 (PPEA) and corresponding regulations,

¹⁰ <https://aveda.edu/why-aveda/>

¹¹ <https://nurturavedainstitutes.com/los-angeles-consumer-information/#1531421748651-4b91cbf7-6bc7>

¹² <https://nurturavedainstitutes.com/los-angeles/>

¹³ <https://nurturavedainstitutes.com/wp-content/uploads/AILA-Course-Catalog.pdf>

1 including 5 Cal. Code Regs. § 71720,

2 29. This forced autodidacticism is not what students paid thousands of
3 dollars for, and it has its limits. For example, California requires esthiology students
4 to receive instruction on and perform electrical facials, but Nurtur failed to instruct
5 students on this procedure, as required by statute.

6 30. Nurtur's substandard instruction violates accreditor requirements, which
7 requires the institution to employ "an instructional staff that is fully qualified and of
8 adequate size to fulfill the objectives of the educational courses and/or program(s)
9 regardless of mode of delivery."¹⁴

10 31. Moreover, Nurtur fails to accurately disclose job placement rates to
11 would-be students.

12 32. The Department of Education (DOE) regulates vocational programs that
13 offer federal financial assistance, and schools are required to comply with federal
14 regulations to be eligible to participate in financial assistance programs under the
15 Higher Education Act (HEA). *See* 20 U.S.C. § 1094(a); 34 C.F.R. § 668.14(a). To
16 participate, schools sign a program participation agreement (PPA) certifying
17 compliance with regulatory requirements. *Id.*

18 33. Nurtur receives federal funds under the HEA and thus entered into a PPA
19 certifying compliance with DOE regulations.

20 34. Moreover, to receive federal funds, Nurtur must be accredited by the
21 National Accrediting Commission of Career Arts & Sciences (NACCAS), *see* 20
22 U.S.C. § 1002(b)(1)(E), which requires compliance with licensure requirements in the
23 state where the institution is located.¹⁵ Accreditation is also required under California
24 law. *See* Cal. Educ. Code § 94890.

25 35. Under DOE regulations Nurtur is required to disclose job placement
26 rates to prospective students. *See* 20 U.S.C. § 1094(a)(8) (requiring provision of most

27 ¹⁴ *See* 2019 NACCAS Handbook, Standard II, p. 7, available at [http://naccas.org/naccas/naccas-](http://naccas.org/naccas/naccas-handbook)
[handbook](http://naccas.org/naccas/naccas-handbook)

28 ¹⁵ *See* 2019 NACCAS Handbook, pp. 13, 62 available at [http://naccas.org/naccas/naccas-](http://naccas.org/naccas/naccas-handbook)
[handbook](http://naccas.org/naccas/naccas-handbook)

1 recent job placement rates to students); 34 C.F.R. § 668.412(a)(8). *See also* Cal. Educ.
 2 Code § 94897(b), (c), (j) (prohibited business practices include “overstat[ing]
 3 availability of jobs upon graduation,” “advertise[ing] concerning job availability,
 4 degree of skill, or length of time required to learn a trade or skill unless the
 5 information is accurate or not misleading,” or “[i]n any manner mak[ing] an untrue or
 6 misleading ... statement related to ... student completion, placement, employment,
 7 salaries, or financial information”).

8 36. Moreover, Aveda’s accreditor, NACCAS, requires Nurtur to maintain a
 9 job placement rate of at least 60 percent. An institution must maintain compliance
 10 with NACCAS’s Standards and Criteria – including minimum job placement rates –
 11 to maintain accreditation status.¹⁶

12 37. As a program eligible to receive Title IV funds, Nurtur must meet the
 13 requirements of its accrediting agency. 20 U.S.C. § 1094(a)(21).

14 38. Nurtur failed to meet accreditor job placement requirements for both its
 15 esthetician and cosmetology programs and the required placement rates under the
 16 federal regulations.¹⁷

17 39. Nurtur also failed to provide required job placement disclosures to
 18 students or otherwise obscured its job placement disclosures.

19 40. In advertising materials Nurtur states that it “consistently exceed[s]
 20 [a]ccreditor requirements for placement of 60% by currently achieving 74%.”¹⁸ *See*
 21 *also* Course Catalog, which reports job placement to be 77.99%.¹⁹

22 41. But Nurtur’s own statistics for this time period show that only 38 percent
 23 of students find jobs in their field after graduation, and many of these jobs are part-
 24 time.²⁰

25 ¹⁶ *See* NACCAS 2019 Handbook, Section 1.5(a)(7).

26 ¹⁷ *See* NACCAS 2019 Handbook, Standard 1, D5 (requiring 60% job placement rate), available at
<http://naccas.org/naccas/naccas-handbook>; 34 C.F.R. § 668.8(e)(1)(ii).

27 ¹⁸ <https://aveda.edu/career-paths/esthetician-school/>

¹⁹ <https://nurturavedainstitutes.com/wp-content/uploads/AILA-Course-Catalog.pdf>

28 ²⁰ <https://nurturavedainstitutes.com/wp-content/uploads/2019/05/2017-data-AILA-Esthetician-SPFS-FINAL-5-13-19.pdf>

1 42. Nurtur did not provide this required information. Rather, the job
2 placement disclosure provided to Plaintiff and other prospective students was dated
3 and did not include available 2017 or later data showing Nurtur's low job placement
4 rates.

5 43. Indeed no data whatsoever was provided to Plaintiff or putative class
6 members for 2017 or later, including on-time completion rates and gainful
7 employment disclosures that Nurtur was required to provide.

8 44. These disclosures are material to consumers because they include
9 information upon which a reasonable person would rely when deciding whether to
10 attend a vocational school such as Nurtur, and this is precisely why the state and
11 federal law requires vocational schools to provide such information to prospective
12 students. *See also* 34 C.F.R. § 685.222(f)(3) (establishing presumption that each
13 member of a group of borrowers reasonably relied upon misrepresentations relating
14 to the nature of the educational program and the employability of graduates under 34
15 C.F.R. § 668, subpart F).

16 45. Moreover, the practical operations that students performed did not serve
17 an educational purpose; rather they benefited Nurtur.

18 46. Members of the public can visit the Aveda Institute to purchase
19 esthetician and cosmetology treatments (e.g., haircut, facial, color, hair removal)
20 performed by students.²¹ These services are identical to treatments a customer would
21 receive at a salon.

22 47. Nurtur even offers customers monthly facial or blowout memberships,
23 entitling customers to a certain number of treatments per month.²²

24 48. Students perform these services but do not receive compensation or
25 gratuities therefor.

26 49. Despite the diversity of cosmetology services available to the public,
27 students generally performed the same operations over and over again. For instance,

28 ²¹ <https://nurturavedainstitutes.com/los-angeles-service-menu/>

²² *Id.*

1 most of the facials Plaintiffs performed were basic facials.

2 50. Despite Nurtur's representations,²³ instructors did not supervise these
3 operations, or provide instruction or evaluation either before or after the operations.²⁴
4 See 5 Cal. Code Regs. § 71710(f) (requiring state-licensed education program to
5 include "[e]valuation by duly qualified faculty").

6 51. Moreover, students performed repetitive and menial tasks, including but
7 not limited to doing the laundry for the entire school and cleaning workstations and
8 workrooms.

9 52. Nurtur profited from this work. Not only did Plaintiff and other students
10 pay handsomely to attend Aveda Institute, but Nurtur also received money from
11 customers who received services performed entirely by students.

12 53. In effect, students functioned as an unpaid workforce that improved
13 Nurtur's bottom line by providing routine and sometimes menial job duties for paying
14 customers, without receiving the promised and paid-for instruction.

15 54. California law requires cosmetology and esthetician programs to satisfy
16 specific minimum clock-hour requirements. See Cal. Bus. & Prof. Code §§ 7362.5,
17 7364, 7365, 7366; 16 Cal. Code Regs. §§ 950.1-5; see also 34 C.F.R. § 668.8(d).
18 NACCAS, Nurtur's accreditor, also requires compliance with these clock-hour
19 requirements.

20 55. Nurtur falsely represents that students receive hundreds of hours of
21 technical and practical instruction that Nurtur does not actually provide.

22 56. Nurtur provides no instruction for the majority of the time. In the
23 classroom students are left to their own devices without any instruction whatsoever.

24 57. Moreover, students do not receive instruction for practical operations but
25 do the same repetitive tasks again and again without supervision or evaluation from

26 ²³ <https://nurturavedainstitutes.com/programs/>; <http://nurturavedainstitutes.com/los-angeles-service-menu/>

27 ²⁴ See 2019 NACCAS Handbook, Standard VI, A9 p. 13, available at
28 <http://naccas.org/naccas/naccas-handbook> ("Each course or program provides supervised instruction in the applicable skills and competencies.").

1 instructors, or else perform routine, menial, non-educational tasks that should not be
2 counted toward the completion of students' clock-hour requirements. 5 Cal. Code
3 Regs. § 71710(f) (requiring state-licensed education program to include "[e]valuation
4 by duly qualified faculty").

5 58. However, Nurtur includes time that Plaintiff and other students spend on
6 these tasks as part of the clock-hour requirements to enable students to qualify for
7 state licensing exams. Nurtur then falsely certifies to the California Bureau for Private
8 Postsecondary Education and NACCAS compliance with clock-hour requirements.

9 59. In sum, Nurtur violates 34 C.F.R. §§ 668.72 and 668.74, Cal. Educ. Code
10 § 94897, 5 Cal. Code Regs. § 71720, and its own accreditor's standards,²⁵ by
11 misrepresenting, *inter alia*, the number, availability, and qualifications, including
12 training and experience, of its faculty and other personnel; its location (allegedly on
13 the UCLA campus); employability of graduates, including job placement rates; and
14 the appropriateness of its courses and programs to the employment objectives that it
15 states its programs are designed to meet.

16 60. Furthermore, in July 2019, California's Bureau for Private
17 Postsecondary Education (BPPE) issued a citation to Nurtur for violating the Private
18 Postsecondary Education Act of 2009 (PPEA) owing to Nurtur's failure to submit
19 Student Tuition Recovery Fund (STRF) Reporting Forms with STRF assessments for
20 the fourth quarter of 2018 and the first quarter of 2019 and its failure to pay all
21 required fees to the BPPE. An institution that fails to comply with these requirements
22 is not legally permitted to operate in California. See 5 Cal. Code Regs. §§ 71398(d),
23 71485; Cal. Educ. Code 94801.5(c).

24 61. Nurtur's misconduct has real consequences on students like Plaintiff,
25 who had to take time off from work to attend Nurtur's esthetician program, and lost
26 income as a result.

27 ///

28 ²⁵ See NACCAS 2019 Handbook, Policy IV.04 (stating that "[t]he catalogue ... [must] avoid[]
false, misleading and exaggerated statements.").10

62. To compensate for this loss of income, and pay for Nurtur's expensive program, Plaintiff, like 85 percent of other students,²⁶ applied for and received federal financial aid.²⁷ Her loans are still in repayment.²⁸

CLASS ALLEGATIONS

63. Plaintiff brings this action on behalf of herself and on behalf of all others similarly situated pursuant to Cal. Civ. Pro. § 382 on behalf of the following class:

All citizens of the State of California who within the longest applicable limitations period attended Nurtur's esthetician or cosmetology programs in the State of California.

64. Members of the classes, as described above, will be referred to as "class members." Excluded from the classes are: (1) Nurtur, any entity or division in which Nurtur has a controlling interest, and their legal representatives, officers, directors, assigns, and successors; and (2) the judge to whom this case is assigned and the judge's staff and members of their immediate families. Plaintiff reserves the right to amend the above classes and to add additional subclasses as appropriate based on investigation, discovery, and the specific theories of liability.

65. This action has been brought and may properly be maintained as a class action under because questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

A. Numerosity

66. Although the precise number of class members has not been determined at this time, Plaintiff estimates that the classes include hundreds of members and that

²⁶ <https://nurturavedainstitutes.com/wp-content/uploads/2019/05/2017-data-AILA-Esthetician-SPFS-FINAL-5-13-19.pdf>

²⁷ Indeed, Aveda admits that 76 percent of its income for 2017 came from public funding. See <https://nurturavedainstitutes.com/wp-content/uploads/2019/05/2017-data-BPPE-Annual-Report-submitted-5-16-19.pdf>

²⁸ <https://collegescorecard.ed.gov/school/?469957-Aveda-Institute-Los-Angeles> (reporting that typical debt after graduation is approximately \$10,000).

1 the identity of such persons is readily ascertainable through Nurtur's business records.
2 Therefore it is reasonable that the class members are so numerous that joinder is
3 impracticable, and the disposition of their claims in a class action will provide
4 substantial benefits to the parties and the Court.

5 **B. Common Questions Predominate**

6 67. There are questions of law and fact common to the classes that
7 predominate over any questions affecting only individual putative class members.
8 Thus proof of a common set of facts will establish the right of each class member to
9 recovery. These common questions of law and fact include but are not limited to the
10 following:

- 11 a. Whether Nurtur misrepresented the number, availability, and
12 qualifications, including training and experience, of its faculty and
13 other personnel; its location; and the employability of graduates;
- 14 b. Whether Nurtur's instruction failed to satisfy the clock-hour
15 requirements for its esthetician and cosmetology programs by
16 including routine, menial, non-educational tasks toward the completion
17 of students' clock-hour requirements;
- 18 c. Whether Nurtur falsely certified students' clock-hour requirements to
19 its accreditor and the Bureau for Private Postsecondary Education to
20 enable students to qualify for state licensing exams;
- 21 d. Whether Nurtur's job placement rates failed to meet minimum
22 accreditor requirements;
- 23 e. Whether Nurtur falsely represented its job placement rates to
24 prospective students;
- 25 f. Whether Nurtur failed to disclose job placement rates to prospective
26 students;
- 27 g. Whether Nurtur falsely advertised affiliation with the University of
28 California, Los Angeles; and

1 h. Whether Nurtur's representations were material to Plaintiff and
2 putative class members;

3 **C. Typicality**

4 68. Plaintiff's claims are typical of the claims of class members. Plaintiff
5 viewed Nurtur's advertisements and promotional materials, received Nurtur's
6 disclosures, and paid to attend the Aveda Institute Los Angeles. Thus Plaintiff's
7 claims arise from the same practices and course of conduct that give rise to the claims
8 of the class members and are based on the same legal theories.

9 **D. Adequacy**

10 69. Plaintiff will fairly and adequately represent and protect the interests of
11 class members. Counsel who represent Plaintiff and putative class members are
12 experienced and competent in litigating consumer class actions.

13 **E. Superiority of Class Action**

14 70. A class action is superior to other available means for the fair and
15 efficient adjudication of this controversy. Individual joinder of putative class
16 members is not practicable, and questions of law and fact common to class members
17 predominate over any questions affecting only individual putative class members.
18 Each class member has been damaged and is entitled to recovery as a result of the
19 violations alleged herein. Moreover, because the damages suffered by individual
20 class members may be relatively small, the expense and burden of individual litigation
21 would make it difficult or impossible for individual class members to redress the
22 wrongs done to them, while an important public interest will be served by addressing
23 the matter as a class action. Class action treatment will allow those persons similarly
24 situated to litigate their claims in the manner that is most efficient and economical for
25 the parties and the judicial system. Plaintiff is unaware of any difficulties in managing
26 this case that should preclude class action.

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28 ///

FIRST CAUSE OF ACTION

**VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW,
BUS. & PROF. CODE SECTION 17200, *et seq.* (THE “UCL”)**

71. Plaintiff hereby incorporates by reference the allegations contained in this Complaint.

72. California’s Unfair Competition Law (“UCL”), California Business & Professions Code section 17200, *et seq.*, protects both consumers and competitors by promoting fair competition in commercial markets for goods and services.

73. The UCL prohibits any unlawful, unfair, or fraudulent business act or practice. The UCL defines unfair business competition to include any “unlawful, unfair or fraudulent” act or practice, as well as an “unfair, deceptive, untrue or misleading” advertising. Cal Bus. & Prof Code § 17200. A business practice need only meet one of the three criteria to be considered unfair competition.

74. An unlawful business practice is anything that can properly be called a business practice and that at the same time is forbidden by law. A business act or practice is “unlawful” under the UCL if it violates any other law.

75. Nurtur violates the unlawful prong of the UCL by violating DOE regulations, including 34 C.F.R. §§ 668.72 and 668.74, and California law, including Cal. Educ. Code § 94801.5(c), 94897(i) and 5 Cal. Code Regs. §§ 71710(f), 71720, 71398(d), 71485, prohibiting Nurtur from misrepresenting the number, availability, and qualifications, including training and experience, of its faculty and other personnel, its location, and employability of graduates; by violating state and federal laws requiring the completion of clock-hour requirements, including Cal. Bus. & Prof. Code §§ 7362.5, 7364, 7365, 7366, 16 Cal. Code Regs. §§ 950.1-5, *see also* 20 U.S.C. § 1094(a)(8); by violating state and federal laws requiring minimum job placement rates and disclosure of job placement rates to prospective students, including 34 C.F.R. §§ 668.412(a)(8), 668.8(d), 20 U.S.C. § 1002(b)(1)(E) (requiring accreditation with agency that requires minimum job placement rate); and by violating California’s

1 False Advertising Law (FAL), Cal. Bus. & Prof. Code §§ 17500, *et seq.*, the
2 Consumer Legal Remedies Act (CLRA), Cal. Civ. Code § 1750, *et seq.*, and
3 California Labor Code, as alleged below.

4 76. A business act or practice is “unfair” under the Unfair Competition Law
5 if the reasons, justifications and motives of the alleged wrongdoer are outweighed by
6 the gravity of the harm to the alleged victims.

7 77. Nurtur violates the unfair prong of the UCL by charging Plaintiff and
8 putative class members tuition for a course of study in esthetics or cosmetology but
9 failing to provide competent instructors, failing to provide requisite instruction,
10 failing to satisfy clock-hour requirements, falsely certifying clock-hour requirements,
11 and failing to supervise or evaluate practical operations such that Plaintiff and putative
12 class members were effectively deprived of the education for which they paid
13 substantial consideration.

14 78. Nurtur effectively provided students with a worthless education that
15 merely rubber-stamped clock-hour requirements so that students could qualify for the
16 state licensing examination without providing the promised instruction that would
17 prepare them for a career in esthetics or cosmetology.

18 79. Worse, Nurtur used its students as an unpaid workforce to perform
19 treatments to paying customers and to perform routine, repetitive, menial, and non-
20 education tasks that would normally be provided by regular employees. Nurtur
21 retained the value from these treatments performed by its “students” to salon
22 customers without paying students wages and, on the contrary, charging hefty tuition
23 (which students almost always had to take out loans to pay for) in order to provide
24 free labor. In this way, Nurtur obtained a substantial advantage over competitors that
25 paid for the labor it took to run their businesses and did not extract “tuition” from their
26 employees.

27 80. Any utility for Nurtur’s conduct is outweighed by the gravity of the
28 consequences to Plaintiff and class members because the conduct offends public

1 policy. Through its unfair acts and practices, Nurtur improperly obtained, and
2 continues to obtain, money from Plaintiff and the putative class. Plaintiff requests
3 that Nurtur restore this money to Plaintiff and all class members and cease violating
4 the UCL. Without such relief, Plaintiff and the putative class will be irreparably
5 harmed.

6 81. A business act or practice is “fraudulent” under the UCL if it is likely to
7 deceive members of the consuming public.

8 82. Nurtur violates the fraudulent prong of the UCL because it falsely
9 represents that it provides an “industry-leading education” and staffs its institute with
10 sufficient and competent instructors to enable students to begin a successful career in
11 esthetics or cosmetology when, in fact, it provides little to any technical instruction;
12 provides inexperienced, inept, or entirely absent instructors; misrepresents or fails to
13 provide job placement rates; and falsely certifies clock-hour requirements without
14 providing the underlying instruction to literally rubber-stamp student’s Proof of
15 Training Document required by the Board of Barbering, Cosmetology, and
16 Electrology as a prerequisite for examination. Nurtur has duped Plaintiff and putative
17 class members into paying thousands of dollars in tuition to attend Aveda Institute
18 when Nurtur actually used them as an unpaid workforce performing routine,
19 repetitive, menial, and non-educational services for paying customers of Nurtur’s
20 salon without receiving the promised instruction.

21 83. Through its fraudulent acts and practices, Nurtur has improperly
22 obtained money from Plaintiff and the putative class. Plaintiff requests that this Court
23 order Nurtur to restore this money to Plaintiff and the putative class and to enjoin
24 Nurtur from continuing to violate the UCL.

25 84. As a result of Nurtur’s conduct described herein and its willful, reckless,
26 and/or grossly negligent violations of California Business & Professions Code §
27 17203, Plaintiff and putative class members have lost money or property and suffered
28 harm, as described herein.

1 85. Pursuant to California Business & Professions Code § 17203, Plaintiff
 2 seeks an order enjoining Nurtur from continuing to engage in the unfair and unlawful
 3 conduct described herein and for the disgorgement of all ill-gotten profits.

4 **SECOND CAUSE OF ACTION**

5 **VIOLATION OF CALIFORNIA’S FALSE ADVERTISING LAW**

6 **BUS. & PROF. CODE SECTION 17500, *et seq.* (THE “FAL”)**

7 86. Plaintiff hereby incorporates by reference the allegations contained in
 8 this Complaint.

9 87. The California False Advertising Law prohibits unfair, deceptive, untrue,
 10 or misleading advertising, including but not limited to false statements as to worth,
 11 value, and former price.

12 88. As alleged above, Nurtur engages in unfair, deceptive, and misleading
 13 advertising to consumers by misrepresenting the number, availability, and
 14 qualifications, including training and experience, of its faculty and other personnel;
 15 its location (allegedly on the UCLA campus); and employability of graduates,
 16 including job placement rates.

17 89. Nurtur also misrepresents that it provides an education intended to
 18 satisfy clock-hour requirements sufficient to qualify students for the state licensure
 19 examination because it fails to provide technical and practical instruction and requires
 20 students to perform repetitive, routine, menial, and non-education tasks that should
 21 not count toward students’ clock-hour requirements or be included in their practical
 22 operations. Nurtur does not sufficiently disclose that students will be required to
 23 engage in these tasks.

24 90. Through its unfair, deceptive, and misleading acts and practices, Nurtur
 25 has improperly obtained money from Plaintiff and the putative class. Plaintiff
 26 respectfully requests that the Court restore these funds to Plaintiff and the putative
 27 class and enjoin Nurtur’s continuing violations of the FAL to prevent further
 28 irreparable harm to consumers.

THIRD CAUSE OF ACTION

**VIOLATION OF CALIFORNIA’S CONSUMERS LEGAL REMEDIES ACT,
CAL. CIVIL CODE SECTION 1750, *et seq.* (THE “CLRA”)**

91. Plaintiff hereby incorporates by reference the allegations contained in this Complaint.

92. This cause of action is brought pursuant to the Consumers Legal Remedies Act, California Civil Code §§ 1750, *et seq.* (the “CLRA”).

93. Plaintiff and each member of the putative class are “consumers” within the meaning of Civil Code § 1761(d).

94. Nurtur’s cosmetology and esthetician programs are “transactions” within the meaning of Civil Code § 1761(e) because they are agreements between Plaintiff and putative class members and Nurtur for the provision of “goods” or “services” within the meaning of Civil Code § 1761(a).

95. Nurtur has engaged in unfair methods of competition and unfair or deceptive acts or practices in transactions intended to result or that results in the sale or lease of goods or services to consumers, as follows:

- a. misrepresenting the source, sponsorship, approval, or certification of goods or services, in violation of Civ. Code § 1770(a)(2);
- b. misrepresenting the affiliation, connection, or association with, or certification by, another, in violation of Civ. Code § 1770(a)(3);
- c. representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have, in violation of Civ. Code § 1770(a)(5);
- d. representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another, in violation of Civ. Code § 1770(a)(7); and
- e. advertising goods or services with intent not to sell them as advertised, in violation of Civ. Code § 1770(a)(9).

1 96. As a result of these acts and practices, Plaintiff and the putative class
 2 were damaged in that Nurtur's unlawful and misleading acts and practices affected
 3 the decisions of Plaintiff and the putative class to attend Nurtur's esthetician and
 4 cosmetology programs.

5 97. Pursuant to California Civil Code § 1780, Plaintiff, on behalf of herself
 6 and the putative class, seeks to recover damages and restitution, as well as injunctive
 7 relief prohibiting Nurtur from continuing to engage in the unlawful and deceptive
 8 methods, acts, and practices alleged above.

9 98. The aforementioned acts of Nurtur were willful, wanton, malicious,
 10 intentional, oppressive, and despicable, and were done in willful and conscious
 11 disregard of the rights of Plaintiff and class members, thereby justifying an award of
 12 punitive and exemplary damages.

13 99. Pursuant to Civil Code § 1782, on October 7, 2019, Plaintiff sent Nurtur
 14 a letter, by certified mail, in which she outlined the foregoing violations of the CLRA
 15 and requested that Nurtur remedy these violations as to Plaintiff and the class. Nurtur
 16 has not agreed to correct, repair, replace, or otherwise rectify the violations alleged
 17 herein within thirty (30) calendar days after Nurtur's receipt of Plaintiff's letter.
 18 Therefore Plaintiff is entitled to damages, including actual, statutory, and punitive
 19 damages, on behalf of herself and the putative class.

20 **FOURTH CAUSE OF ACTION**

21 **BREACH OF WRITTEN CONTRACT**

22 100. Plaintiff hereby incorporates by reference the allegations contained in
 23 this Complaint.

24 101. Plaintiff and each student entered into contracts with Nurtur whereby
 25 Nurtur promised to provide quality instruction in accordance with regulatory
 26 requirements in exchange for a substantial tuition and promised to comply with all
 27 legal requirements, including those pertaining to completion and job placement
 28

1 rates.²⁹

2 102. Nurtur breached this contract, however, by failing to provide instruction
3 or even instructors qualified to provide instruction, failing to provide required
4 disclosures, falsely certifying the completion of required coursework to the state to
5 qualify students for licensure, and requiring students instead to perform repetitive,
6 menial tasks for paying customers; moreover, Nurtur's failure to provide the required
7 disclosures as described above renders the contracts void or voidable under Cal. Educ.
8 Code § 94902, thus entitling Plaintiff and class members to a refund of their tuition.

9 103. As a direct and proximate result of Nurtur's breach, each student was
10 damaged in the amount of the paid tuition and interest accruing on loans in repayment,
11 as well as loss of income from being wholly unprepared to practice as licensed
12 cosmetologists and estheticians, as promised.

13 **FIFTH CAUSE OF ACTION**

14 **BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR** 15 **DEALING**

16 104. Plaintiff hereby incorporates by reference the allegations contained in
17 this Complaint.

18 105. Plaintiff and putative class members entered into contracts with Nurtur,
19 as alleged hereinabove. Implied in these contracts was a covenant of good faith and
20 fair dealing by each party agreeing not to do anything that would deprive the other
21 parties of the benefits of the contract, including an implied covenant to sufficiently
22 staff the school to provide quality instruction consistent with regulatory and accreditor
23 requirements.

24 106. Plaintiff and putative class members have performed all conditions,
25 covenants, and promises required of them under the contract, i.e., they have paid
26 Nurtur tuition.

27 ²⁹ See NACCAS 2019 Handbook, Policy IV.03 (stating "[a] contractual relationship exists
28 between an institution and its applicant or student. The terms of such agreement are considered to
be of substantial importance and should be clearly understood by all concerned parties, including
unsophisticated applicants and parents.").

1 107. Nurtur breached the implied covenant of good faith and fair dealing by
2 failing to sufficiently staff the school to provide quality instruction consistent with
3 regulatory and accreditor requirements, failing to provide technical instruction, failing
4 to supervise and evaluate practical operations, and falsely certifying the completion
5 of clock-hour requirements.

6 108. As a direct and proximate cause of Nurtur's breach of the implied
7 covenant of good faith and fair dealing, Plaintiff and putative class members have
8 been damaged, as alleged above, in an amount in excess of the jurisdictional limits of
9 this Court to be proven at the time of trial.

10 **SIXTH CAUSE OF ACTION**

11 **INTENTIONAL MISREPRESENTATION**

12 109. Plaintiff hereby incorporates by reference the allegations contained in
13 this Complaint.

14 110. Nurtur made representations of fact regarding the number, availability,
15 and qualifications, including training and experience, of its faculty and other
16 personnel; the location of its campus and affiliation; and the employability of
17 graduates, including job placement rates; and its certification of clock-hour
18 requirements.

19 111. Nurtur's representations with regard to these matters were false, as
20 alleged above.

21 112. Nurtur knew that these representations were false at the time Nurtur
22 made them.

23 113. Nurtur intended that Plaintiff and members of the putative class should
24 rely on its representations whether to attend Nurtur's programs and take the state
25 licensing examination.

26 114. Plaintiff and members of the putative class reasonably relied on Nurtur's
27 representations. *See, e.g.*, 34 C.F.R. § 685.222(f)(3).

28 ///

1 115. Plaintiff and members of the putative class were harmed by Nurtur's
2 representations in that they paid money to attend Nurtur's programs and to take the
3 state licensing exam, and in that they performed free labor outside the educational
4 experience.

5 116. Nurtur's representations were a substantial factor in causing Plaintiff and
6 members of the putative class to attend Nurtur's programs and to take the state
7 licensing exam.

8 117. Nurtur's conduct was malicious, oppressive, and fraudulent in that it was
9 intended to cause Plaintiff and putative class members injury, namely, the deprivation
10 of money, and was done with a willful and knowing disregard of the rights of Plaintiff
11 and putative class members and subjected Plaintiff and putative class members to
12 cruel and unjust hardship in knowing disregard of their rights, thereby justifying an
13 award of putative or exemplary damages.

14 118. Plaintiff and members of the putative class suffered an ascertainable loss
15 and are entitled to relief and compensatory and punitive damages, in an amount to be
16 determined at trial.

17 **SEVENTH CAUSE OF ACTION**

18 **NEGLIGENT MISREPRESENTATION**

19 119. Plaintiff hereby incorporates by reference the allegations contained in
20 this Complaint. Plaintiff pleads this cause of action in the alternative to the foregoing
21 cause of action.

22 120. Nurtur made representations of fact regarding the number, availability,
23 and qualifications, including training and experience, of its faculty and other
24 personnel; the location of its campus and affiliation; the employability of graduates,
25 including job placement rates; and its certification of clock-hour requirements.

26 121. Nurtur had no reasonable grounds for believing that these representations
27 were true.

28 ///

123. Plaintiff and members of the putative class reasonably relied on Nurtur's representations. *See, e.g.*, 34 C.F.R. § 685.222(f)(3).

10 125. Nurtur's representations were a substantial factor in causing Plaintiff and
11 members of the putative class to attend Nurtur's programs and to take the state
12 licensing exam

EIGHTH CAUSE OF ACTION

18 127. Plaintiff hereby incorporates by reference the allegations contained in
19 this Complaint.

25 129. Plaintiff and putative class members were unaware of the concealed
26 facts.

1 131. If Nurtur had sufficiently disclosed the omitted information Plaintiff and
2 putative class members would have acted differently, including not attending Nurtur's
3 programs or paying for the state licensing exam.

4 132. Nurtur intended that Plaintiff and members of the putative class should
5 rely on its representations when deciding to attend Nurtur's programs and take the
6 state licensing exam.

7 133. Plaintiff and members of the putative class reasonably relied on Nurtur's
8 representations. *See, e.g.*, 34 C.F.R. § 685.222(f)(3).

9 134. Plaintiff and members of the putative class were harmed by Nurtur's
10 representations in that they paid money to attend Nurtur's programs and to take the
11 state licensing exam, and in that they performed free labor outside the educational
12 experience.

13 135. Nurtur's representations were a substantial factor in causing Plaintiff and
14 members of the putative class to attend Nurtur's programs and to take the state
15 licensing exam.

16 136. Nurtur's conduct was malicious, oppressive, and fraudulent in that it was
17 intended to cause Plaintiff and putative class members injury, namely, the deprivation
18 of money, and was done with a willful and knowing disregard of the rights of Plaintiff
19 and putative class members and subjected Plaintiff and putative class members to
20 cruel and unjust hardship in knowing disregard of their rights, thereby justifying an
21 award of putative or exemplary damages.

22 137. Plaintiff and members of the putative class suffered an ascertainable loss
23 and are entitled to relief and compensatory and punitive damages, in an amount to be
24 determined at trial.

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NINTH CAUSE OF ACTION

FALSE PROMISE

138. Plaintiff hereby incorporates by reference the allegations contained in this Complaint.

139. Nurtur made promises to Plaintiff and members of the putative class regarding the number, availability, and qualifications, including training and experience, of its faculty and other personnel; the location of its campus and affiliation; and the employability of graduates, including job placement rates; and its certification of clock-hour requirements.

140. Nurtur did not intend to perform these promises when Nurtur made them.

141. Nurtur intended Plaintiff and members of the putative class to rely on these promises when deciding whether to attend Nurtur's programs and take the state licensing examination.

142. Plaintiff and putative class members reasonably relied on Nurtur's promises. *See, e.g.*, 34 C.F.R. § 685.222(f)(3).

143. Nurtur broke its promises to Plaintiff and putative class members in that Nurtur did not provide a sufficient number of qualified instructors to satisfy the clock-hour requirements to become an esthetician or cosmetologist, let alone provide "industry-leading" instruction to enable students to launch a successful career in the field; did not have any affiliation with UCLA or the UCLA campus; and did not have the represented and requisite job-placement rates.

144. Plaintiff and members of the putative class were harmed by Nurtur's representations in that they paid money to attend Nurtur's programs and to take the state licensing exam, and in that they performed free labor outside the educational experience.

145. Nurtur's representations were a substantial factor in causing Plaintiff and members of the putative class to attend Nurtur's programs and to take the state licensing exam.

1 146. Nurtur's conduct was malicious, oppressive, and fraudulent in that it was
 2 intended to cause Plaintiff and putative class members injury, namely, the deprivation
 3 of money, and was done with a willful and knowing disregard of the rights of Plaintiff
 4 and putative class members and subjected Plaintiff and putative class members to
 5 cruel and unjust hardship in knowing disregard of their rights, thereby justifying an
 6 award of putative or exemplary damages.

7 147. Plaintiff and members of the putative class suffered an ascertainable loss
 8 and are entitled to relief and compensatory and punitive damages, in an amount to be
 9 determined at trial.

10 **TENTH CAUSE OF ACTION**

11 **FAILURE TO PAY WAGES AND OVERTIME**

12 **LABOR CODE §§ 510, 1182.12, 1194, 1194.2, 1197**

13 148. Plaintiff incorporates the foregoing paragraphs as though fully set forth
 14 herein.

15 149. As alleged above, Plaintiff and students performed routine, repetitive,
 16 menial, and non-education activity for Nurtur, including but not limited to laundry for
 17 the entire school and cleaning workstations and workrooms; they also repetitively
 18 performed basic services and treatments without supervision, instruction, or
 19 evaluation beyond what was required to complete their coursework or qualify for their
 20 licensing exams.

21 150. Customers visiting Nurtur's salon paid Nurtur for services provided by
 22 these students, who in some respects displaced regular employees of Nurtur, which
 23 would have otherwise had to employ such employees in greater number or for longer
 24 hours.

25 151. However, Plaintiff and putative class members did not receive at least
 26 the minimum wage for all hours worked, in violation of California Labor Code §§
 27 510, 1182.12, 1194, 1194.2, and 1197.

28 ///

1 152. Upon information and belief, Plaintiff and putative class members
2 sometimes performed work in excess of eight hours a day or forty hours a week, thus
3 entitling them to overtime at prevailing overtime rates under Labor Code § 510, which
4 they did not receive.

5 153. Nurtur's failure to pay compensation in a timely fashion also constituted
6 a violation of California Labor Code § 204, which requires that all wages shall be paid
7 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in
8 direct violation of that provision of the California Labor Code, Nurtur has failed to
9 pay all wages earned by Plaintiff and putative class members. Each such failure to
10 make a timely payment of compensation to Plaintiff and putative class members
11 constitutes a separate violation of California Labor Code § 204.

12 154. Plaintiff and putative class members have been damaged by these
13 violations of California Labor Code §§ 204, 510, 1182.12, 1194, and 1197, and the
14 relevant orders of the Industrial Welfare Commission.

15 155. Consequently, pursuant to California Labor Code §§ 204, 510, 1182.12,
16 1194, and 1197 (and the relevant orders of the Industrial Welfare Commission),
17 Nurtur is liable to Plaintiff and putative class members for the full amount of all their
18 unpaid wages and overtime, with interest, plus their reasonable attorneys' fees and
19 costs.

20 156. Pursuant to California Labor Code § 1194.2, Plaintiff and putative class
21 members are also entitled to liquidated damages in an amount equal to the wages
22 unlawfully unpaid and interest thereon.

23 **ELEVENTH CAUSE OF ACTION**

24 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

25 157. Plaintiff incorporates the foregoing paragraphs as though fully set forth
26 herein.

27 158. Plaintiff and putative class members regularly worked greater than five
28 (5) hours and greater than ten (10) hours. Pursuant to Labor Code § 512 an employer

1 may not employ someone for a shift of more than five (5) hours without providing
2 him or her with a meal period of not less than thirty (30) minutes or for a shift of more
3 than ten (10) hours without providing him or her with a second meal period of not less
4 than thirty (30) minutes.

5 159. Nurtur failed to provide Plaintiff and putative class members with meal
6 periods as required under the Labor Code. Because Nurtur did not consider Plaintiff
7 and putative class members employees, it did not provide the required meal periods
8 for work periods exceeding five (5) hours or ten (10) hours.

9 160. Moreover, Nurtur failed to compensate Plaintiff and putative class
10 members with an additional hour of pay at their regular rate of compensation for each
11 day on which meal periods were not provided or were inadequately provided, as
12 required under Labor Code § 226.7.

13 161. Therefore, pursuant to Labor Code § 226.7, Plaintiff and putative class
14 members are entitled to damages in an amount equal to one (1) hour of pay at their
15 regular rate of compensation for each day on which meal periods were not provided
16 or deficiently provided, in an amount to be proven at trial.

17 **TWELFTH CAUSE OF ACTION**

18 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

19 162. Plaintiff incorporates the foregoing paragraphs as though fully set forth
20 herein.

21 163. Plaintiff and putative class members consistently worked consecutive
22 four (4) hour shifts. Pursuant to the Labor Code and the applicable IWC Wage
23 Order, Plaintiff and putative class members were entitled to paid rest breaks of not
24 less than ten (10) minutes for each work period of four (4) hours or major fraction
25 thereof.

26 164. Nurtur failed to provide Plaintiff and putative class members with
27 timely rest breaks of not less than ten (10) minutes per work period of four (4) hours
28 or major fraction thereof.

1 165. Moreover, Nurtur did not compensate Plaintiff and putative class
2 members with an additional hour of pay at each their regular rate of compensation
3 for each day on which Nurtur failed to provide them with adequate rest breaks, as
4 required under Labor Code § 226.7.

5 166. Therefore, pursuant to Labor Code § 226.7, Plaintiff and putative class
6 members are entitled to damages in an amount equal to one (1) hour of pay at their
7 regular rate of compensation for each day worked without the required rest breaks,
8 in an amount to be proven at trial.

9 **THIRTEENTH CAUSE OF ACTION**

10 **VIOLATION OF LABOR CODE § 226(a)**

11 167. Plaintiff incorporates the foregoing paragraphs as though fully set forth
12 herein.

13 168. California Labor Code § 226(a) requires an employer to furnish each of
14 his or her employees with an accurate, itemized statement in writing showing the gross
15 and net earnings, total hours worked, and the corresponding number of hours worked
16 at each hourly rate; these statements must be appended to the detachable part of the
17 check, draft, voucher, or whatever else serves to pay the employee's wages; or, if
18 wages are paid by cash or personal check, these statements may be given to the
19 employee separately from the payment of wages; in either case the employer must
20 give the employee these statements twice a month or each time wages are paid.

21 169. Nurtur failed to provide Plaintiff and putative class members with
22 accurate itemized wage statements in writing, as required by the Labor Code because
23 Nurtur did not consider them employees.

24 170. Nurtur's failure to comply with Labor Code § 226(a) was knowing and
25 intentional in that Nurtur, prior to an alleged violation, has not adopted and is not in
26 compliance with a set of policies, procedures, and practices that fully comply with
27 Labor Code § 226.

28 ///

171. As a direct and proximate cause of Nurtur's violation of Labor Code § 226(a), Plaintiff and putative class members suffered injury in that Nurtur failed to provide wage statements to Plaintiff and putative class members.

172. Pursuant to Labor Code §§ 226(a) and 226(e), Plaintiff and putative class members are 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) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

FOURTEENTH CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 201, *et seq.*

173. Plaintiff incorporates the foregoing paragraphs as though fully set forth herein.

174. Plaintiff and putative class members are no longer employed by Nurtur; however, Nurtur failed to pay Plaintiff and putative class members all wages due and certain at the time of termination or within seventy-two (72) hours of resignation, in violation of Labor Code §§ 201, 202.

175. The wages withheld from Plaintiff and putative class members by Nurtur remained due and owing for more than thirty (30) days from the date of separation of employment.

176. Nurtur's failure to pay wages, as alleged above, was willful in that Nurtur knew wages to be due but failed to pay them; this violation entitles Plaintiff and putative class members to penalties under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

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FIFTEENTH CAUSE OF ACTION

CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699, *et seq.*

177. Plaintiff incorporates the foregoing paragraphs as though fully set forth herein.

178. Plaintiff brings this claim as a representative action on behalf of all current and former aggrieved employees of Nurtur.

179. Plaintiff is an aggrieved employee as defined under Labor Code § 2699(c) in that she suffered the violations alleged in this Complaint and was employed by the alleged violators, Nurtur.

180. Plaintiff seeks wages and penalties under Labor Code § 2699 for Nurtur's violation of all Labor Code provisions identified in this Complaint, including but not limited to Labor Code sections 226, 226.7, 201, 202, 203, 204, 510, 512, 558, 558.1, 1182.12, 1194, 1194.2, 1197, and Industrial Welfare Commission Wage Order 2-2001. These penalties shall be allocated as follows: 75 percent to the Labor and Workforce Development Agency (LWDA) and 25 percent to the affected employees.

181. On or around June 9, 2020, Plaintiff gave written notice by online filing with the LWDA and by certified mail to Nurtur of the specific Labor Code provisions alleged to have been violated and paid the required filing fee. The LWDA has not provided notice of its intent to investigate the alleged violations of the Labor Code provisions listed in Labor Code § 2699.5 that are identified in this Complaint within 65 calendar days of the postmark date of the aforesaid notice, nor has Nurtur cured the violations of all Labor Code provisions other than those listed in Labor Code § 2699.5 that are identified in this Complaint within 33 calendar days of the postmark date of the aforesaid notice.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all members of the proposed class, seeks judgment in her favor and against Nurtur based on the following requested relief:

- (a) Actual damages;
- (b) Statutory damages;
- (c) Punitive damages;
- (d) Restitution;
- (e) Declarative, equitable, and injunctive relief;
- (f) Costs and reasonable attorneys' fees;
- (g) Pre- and post-judgment interest; and
- (h) Such other and further relief as may be necessary, just, and proper.

JURY DEMAND

Plaintiff hereby demands a jury trial on all issues so triable.

DATED: October 9, 2020

COUNSELONE, PC

By /s/ Justin Kachadoorian

Anthony J. Orshansky
Alexandria R. Kachadoorian
Justin Kachadoorian

*Attorneys for Plaintiff Ashley Mays,
on behalf of herself and others
similarly situated*