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on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

AMBER PALMA on behalf of herself and all
others similarly situated

Plaintiff,

vs.

VOLUNTEERS OF AMERICA NORTHERN
CALIFORNIA AND NORTHERN NEVADA,
INC., a California Company, and DOES 1
through 50, inclusive,

Defendants.

Case No.
ASSIGNED FOR ALL PURPOSES TO:
JUDGE:
DEPT:

CLASS ACTION COMPLAINT

- 1) Failure to pay Lawful Wages Owed;**
- 2) Failure to Provide Lawful Meal Periods or Compensation in Lieu Thereof;**
- 3) Failure to Provide Lawful Rest Periods or Compensation in Lieu Thereof;**
- 4) Failure to Timely Pay Wages;**
- 5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; and**
- 6) Violations of the Unfair Competition Law**

JURY TRIAL DEMANDED

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I.

INTRODUCTION

1. Plaintiff AMBER PALMA (hereinafter “Plaintiff”) on behalf of herself and all Non-Exempt Employees employed by VOLUNTEERS OF AMERICA NORTHERN CALIFORNIA AND NORTHERN NEVADA, INC., in California (hereinafter “Non-Exempt Employees” or “Class Members”), assert the following Class Action claim, pursuant to Code of Civil Procedure section 382, against VOLUNTEERS OF AMERICA NORTHERN CALIFORNIA AND NORTHERN NEVADA, INC., and DOES 1 through 50 (hereinafter collectively "Defendants").

2. During the liability period, defined as the applicable statute of limitations for each and every cause of action contained herein, Defendants enforced shift schedules, employment policies and practices, and/or workload requirements wherein Plaintiff and Non-Exempt Employees were, amongst other statutory violations, not paid all lawful wages; not provided compliant rest and meal periods; not provided accurate itemized wage statements; and not paid timely wages at termination.

3. Plaintiff, on behalf of herself and all Class Members, brings this action pursuant to Labor Code sections 201-203, 226, 226.7, 510, 512, 1194, 1197, Title 8, section 11050 and any other applicable Industrial Welfare Commission (“IWC”) Wage Orders, seeking unpaid lawful wages, unpaid rest and meal period compensation, penalties and other equitable relief, and reasonable attorneys’ fees and costs.

4. Plaintiff, on behalf of herself and all others similarly situated, pursuant to Business and Professions Code sections 17200-17208, also seeks restitution from Defendants based on Defendants’ violations of California Labor Code of Regulations, Title 8, section 11050 *et seq.*

II.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to the California Constitution Article VI §10, which grants the California Superior Court original jurisdiction in all causes except those given by statute to other courts. The statutes here do not give jurisdiction to any

1 other court. The monetary damages and restitution sought by Plaintiff exceed the minimum
2 jurisdiction limits of the California Superior Court and will be established according to proof at
3 trial. Venue is proper to each Defendant pursuant to Code of Civil Procedure section 395.
4 Defendants conduct substantial and continuous business activities in Sacramento County and are
5 within the jurisdiction of this Court for service of process purposes. Defendants employ
6 numerous Class Members in Sacramento and other counties throughout California.

7 **III.**

8 **PARTIES**

9 6. Plaintiff is, and at all times mentioned in this complaint was, a resident of
10 Sacramento, California.

11 7. Upon information and belief, Defendants are a non-profit organization helping
12 people in need to rebuild their lives. Plaintiff believes Defendants are qualified to do business in
13 California and continue to do so.

14 8. The true names and capacities of Defendants, whether individual, corporate,
15 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
16 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
17 section 474. Plaintiff is informed and believes, and based thereon alleges that each of the
18 Defendants designated herein as a DOE is legally responsible in some manner for the unlawful
19 acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true
20 names and capacities of the Defendants designated hereinafter as DOES when such identities
21 become known.

22 9. Plaintiff is informed and believes, and based thereon alleges, that Defendants
23 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
24 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
25 legally attributable to the other Defendants.

26 **IV.**

27 **FACTUAL BACKGROUND**

28 10. Plaintiff was employed by Defendants as an Employment Specialist on or about

1 November 4, 2019 through on or about January 27, 2020. Her duties focused on assisting veterans
2 find jobs. Plaintiff typically worked 5 days, and over 40 hours, a week at Defendants' Rancho
3 Cordova location.

4 11. During the liability period, Defendants failed to pay Plaintiff and Non-Exempt
5 Employees lawful wages for all hours worked. For instance, due to the demands of work shifts, at
6 least three days a week, Plaintiff and Non-Exempt Employees clocked-out for lunch but continued
7 working at their desk. In addition, Defendants employed an online clock-in process where it took
8 5-10 minutes for their computer to "boot up" before Plaintiff and Non-Exempt Employees could
9 actually clock-in. Defendants also implemented a non-neutral systematic timekeeping practice
10 that rounded Plaintiff and Non-Exempt Employees' clock-in and clock-out times in a manner that
11 resulted in loss of time worked. As a result, they were consistently underpaid and worked off-the-
12 clock without pay.

13 12. During the liability period, due to the demands of work shifts, Plaintiff and Non-
14 Exempt Employees were required to work in excess of five (5) hours without being provided an
15 uninterrupted thirty (30) minute meal period by the end of the fifth hour and were not compensated
16 one (1) hour of pay at their regular rate of compensation for each workday that a compliant meal
17 period was not provided, in violation of California labor laws, regulations and IWC Wage Orders.
18 Further, on a regular basis, Plaintiff and Non-Exempt Employees did not receive either a thirty-
19 minute meal break or an uninterrupted thirty-minute meal break.

20 13. Due to the demands of work-load requirements from
21 the demands of work shifts, Plaintiff and Non- Exempt Employees were not authorized or
22 permitted to take a minimum ten (10) minute rest period for every four hours or major fraction
23 thereof worked. Plaintiff and Non-Exempt Employees were not compensated one (1) hour of pay
24 at her regular rate of compensation for each workday that rest periods were not provided, in
25 violation of California labor laws, regulations, and IWC Wage Orders. Plaintiff and Non-Exempt
26 Employees were prohibited from leaving the premises during rest breaks.

27 14. On information and belief, Defendants willfully failed to pay Plaintiff and Non-
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1 Exempt Employees all earned wages in a timely manner; nor has Defendant paid, upon or after
2 termination, all compensation due, including but not limited to all wages owed and compensation
3 for having failed to properly provide rest periods and meal periods.

4 15. Defendants have also failed to maintain accurate itemized records reflecting total
5 hours worked and have failed to provide Plaintiff and Non-Exempt Employees with accurate
6 itemized wage statements reflecting total hours worked and appropriate rates of pay.

7 16. Plaintiff is informed and believes, and based thereon alleges, Defendants currently
8 employ and during the relevant time period have employed over fifty (50) employees in the state
9 of California in non-exempt hourly positions.

10 17. Non-Exempt Employees employed by Defendants, all times pertinent hereto, have
11 been non-exempt employees within the meaning of the California Labor Code, and the
12 implementing rules and regulations of the IWC California Wage Orders.

13 **V.**

14 **CLASS ACTION ALLEGATIONS**

15 18. Plaintiff seeks to represent a Class comprised of and defined as: All persons who
16 are employed or have been employed by Defendants in the state of California as hourly nonexempt
17 employees within four (4) years prior to the date this lawsuit is filed (“liability period”) until
18 resolution of this lawsuit (collectively referred to as the “Class” and/or “Class Members”).

19 19. Plaintiff also seeks to represent Subclasses which are composed of persons \
20 satisfying the following definitions:

21 a. All Non-Exempt Employees employed by Defendants in the state of
22 California within the statutory liability period who were not accurately paid all lawful wages,
23 including proper overtime compensation, for all hours worked;

24 b. All Non-Exempt Employees employed by Defendants in the state of
25 California within the statutory liability period who were not accurately paid all lawful wages,
26 including minimum wages, for all hours worked;

27 c. All Non-Exempt Employees employed by Defendants in the state of
28 California within the statutory liability period who were not provided a minimum thirty (30)

1 minute uninterrupted meal period by the end of the fifth hour when they worked over five hours
2 in a shift and were not provided compensation in lieu thereof;

3 d. All Non-Exempt Employees employed by Defendants in the state of
4 California within the statutory liability period who were not authorized and permitted a minimum
5 ten (10) minute rest period for every four (4) hours, or major fraction thereof, worked per day
6 and not provided compensation in lieu thereof;

7 e. All Non-Exempt Employees employed by Defendants in the state of
8 California within the statutory liability period who were not timely paid all wages due and owed
9 to them upon the termination of their employment with Defendants; and

10 f. All Non-Exempt Employees employed by Defendants in the state of
11 California within the statutory liability period who were not provided with accurate and complete
12 itemized wage statements.

13 20. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend
14 or modify the class description with greater specificity or further division into subclasses or
15 limitation to particular issues.

16 21. This action has been brought and may properly be maintained as a class action
17 under the provisions of section 382 of the Code of Civil Procedure because there is a well-defined
18 community of interest in the litigation and the proposed Class is easily ascertainable.

19 **A. Numerosity**

20 22. The potential members of the Class as defined are so numerous that joinder of all
21 the members of the Class is impracticable. While the precise number of Class Members has not
22 been determined at this time, Plaintiff is informed and believes that Defendants currently
23 employ, and/or during the relevant time period employed, approximately over 50 Non-Exempt
24 Employees in California who are or have been affected by Defendants' unlawful practices as
25 alleged herein.

26 **B. Commonality**

27 23. There are questions of law and fact common to the Class predominating over
28 any questions affecting only individual Class Members. These common questions of law and

fact include, without limitation:

- i. Whether Defendants violated Labor Code §§ 510, 1194 and applicable IWC Wage Orders by failing to pay all earned wages, including overtime, to Non-Exempt Employees who worked “off the clock” and in excess of eight (8) hours in a work day and/or more than forty (40) hours in a workweek;
- ii. Whether Defendants violated Labor Codes sections 200, 1194, and 1197 applicable IWC Wage Orders by failing to pay all earned wages, including minimum wages, to Non-Exempt Employees for time spent working "off the clock;"
- iii. Whether Defendants violated sections 226.7, 512 of the Labor Code and applicable IWC Wage Order by failing to provide the statutory thirty (30) minute meal periods to Non-Exempt Employees on days in which they worked in excess of five (5) hours and failing to compensate said employees one hour wages in lieu of meal periods;
- iv. Whether Defendants violated Labor Code section 226.7 and applicable IWC Wage Orders by failing to authorize and permit minimum ten (10) minute rest periods to Non-Exempt Employees for every four hours or major fraction thereof worked and failing to compensate said employees one (1) hours wages in lieu of rest periods;
- v. Whether Defendants violated sections 201-203 of the Labor Code and applicable IWC Wage Orders by failing to pay all earned wages and/or premium wages due and owing at the time that any Non-Exempt Employees' employment with Defendants terminated;
- vi. Whether Defendants violated section 226 of the Labor Code and applicable IWC Wage Orders by failing to, among other violations, maintain accurate records of Non-Exempt Employees' earned wages, work periods, meal periods and deductions; and
- vii. Whether Defendants violated section 17200 *et seq.* of the Business and Professions Code through their violation of the above-referenced Labor Code and Civil Code sections and applicable IWC Wage Orders which violation constitutes a violation of fundamental public policy.

1 **C. Typicality**

2 24. The claims of the named Plaintiff are typical of the claims of the Class. Plaintiff
3 and all members of the Class sustained injuries and damages arising out of and caused by
4 Defendants' common course of conduct in violation of California laws, regulations, and statutes as
5 alleged herein.

6 **D. Adequacy of Representation**

7 25. Plaintiff will fairly and adequately represent and protect the interests of the
8 members of the Class. Counsel who represents Plaintiff is competent and experienced in litigating
9 large employment class actions.

10 **E. Superiority of Class Action**

11 26. A class action is superior to other available means for the fair and efficient
12 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
13 questions of law and fact common to the Class predominate over any questions affecting only
14 individual members of the Class. Each member of the Class has been damaged and is entitled to
15 recovery by reason of Defendants' unlawful policy and/or practice herein complained of.

16 27. Class action treatment will allow those similarly situated persons to litigate their
17 claims in the manner that is most efficient and economical for the parties and the judicial system.
18 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
19 action that would preclude its maintenance as a class action.

20 **VI.**
21 **CAUSES OF ACTION**

22 **First Cause of Action**
23 Failure to Pay Lawful Wages Owed
24 (Lab. Code §§ 510, 1194, 1197, IWC Wage Orders)
25 (Against All Defendants)

26 28. Plaintiff repeats and incorporates herein by reference each and every allegation set
27 forth above, as though fully set forth herein.

28 29. During the liability period, Defendants violated California wage and hour law by
implementing a timekeeping practice that consistently caused Plaintiff and Class Members to

1 clock-out for lunch and continue working. Defendants also implemented a non-neutral systematic
2 timekeeping practice that rounded Plaintiff and Class Members' clock-in and clock-out times in a
3 manner that resulted in loss of time worked. In addition, Defendants employed an online clock-in
4 process where it took 5-10 minutes for their computer to "boot up" before Plaintiff and Class
5 Members could actually clock-in. As a result, they worked off-the-clock without pay.

6 30. Defendants' policies and/or practices resulted in Plaintiff and Class Members
7 working off-the-clock and in excess of eight (8) hours in a workday and/or forty (40) hours in a
8 workweek without receiving the proper overtime compensation at the rate of time and one-half (1
9 1/2) of such employee's regular rate of pay.

10 31. Defendants' policies and/or practices resulted in Plaintiff and Class Members not
11 receiving minimum wages for time spent working off-the-clock while subject to the control of
12 Defendant all without pay.

13 32. As a result of Defendants unlawful acts, Plaintiff and the Class Members she seeks
14 to represent have been deprived of compensation for all earned wages, including overtime wages,
15 in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and
16 penalties thereon, attorneys' fees, and costs, pursuant to Labor Code section 1194.

17 33. WHEREFORE, Plaintiff and Class she seeks to represent request relief as
18 described herein and below.

19 **Second Cause of Action**

20 Failure to Provide Lawful Meal Periods
21 Or Compensation in Lieu Thereof
(Lab. Code §§512, 226.7, IWC Wage Orders)
22 (Against All Defendants)

23 34. Plaintiff repeats and incorporates herein by reference each and every allegation
24 set forth above, as though fully set forth herein.

25 35. By their failure to provide a thirty (30) minute uninterrupted meal periods by the
26 end of the fifth hour for days on which Plaintiff and Class Members worked periods in excess of
27 five (5) hours and failing to provide compensation for such statutorily non-compliant meal periods,
28 Defendants violated the provisions of Labor Code §512 and applicable IWC Wage Orders.

1 36. As a result of Defendants unlawful acts, Plaintiff and the Class she seeks to
2 represent have been deprived of premium wages in amounts to be determined at trial, and are
3 entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code §226.7.

4 37. WHEREFORE, Plaintiff and the Class she seeks to represent request relief
5 as described herein and below.

6 **Third Cause of Action**
7 Failure to Provide Rest Periods
8 Or Compensation in Lieu Thereof
9 (Lab. Code §§226.7, IWC Wage Orders)
10 (Against All Defendants)

11 38. Plaintiff repeats and incorporates herein by reference each and every allegation
12 set forth above, as though fully set forth herein.

13 39. By their failure to authorize and permit a minimum ten (10)
14 minute rest period for every four (4) hours or major fraction thereof worked per day by Plaintiff
15 and Class Members, and failing to provide compensation for such non-provided rest periods, as
16 alleged above, Defendants willfully violated the provisions of Labor Code section 226.7 and IWC
17 applicable Wage Orders.

18 40. As a result of Defendants unlawful acts, Plaintiff and the Class she seeks
19 to represent have been deprived of premium wages in amounts to be determined at trial, and are
20 entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code §226.7.

21 41. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
22 described herein and below.

23 **Fourth Cause of Action**
24 Failure to Timely Pay Wages Due at Termination
25 Lab. Code §§ 201-203, IWC Wage Orders)
26 (Against All Defendants)

27 42. Plaintiff incorporates by reference and realleges each and every allegation
28 contained above, as though fully set forth herein.

 43. Sections 201 and 202 of the California Labor Code require Defendants to pay its
employees all wages due within 72 hours of termination of employment. Section 203 of the Labor
Code provides that if an employer willfully fails to timely pay such wages the employer must, as

1 a penalty, continue to pay the subject employees' wages until the back wages are paid in full or an
2 action is commenced. The penalty cannot exceed 30 days of wages.

3 44. Plaintiff and affected Class Members are entitled to compensation for all forms of
4 wages earned, including compensation for non-provided rest and meal periods, but to date have
5 not received such compensation therefore entitling them Labor Code section 203 penalties.

6 45. More than 30 days have passed since Plaintiff and Class Members have left
7 Defendants' employ, and on information and belief, have not received payment pursuant to Labor
8 Code §203. As a consequence of Defendants' willful conduct in not paying all earned wages,
9 Plaintiff and Class Members are entitled to 30 days' wages as a penalty under Labor Code section
10 203 for failure to pay legal wages.

11 46. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
12 described herein and below.

13 **Fifth Cause of Action**

14 Knowing and Intentional Failure to Comply with Itemized Employee
15 Wage Statement Provisions
(Lab. Code § 226, IWC Wage Orders)
(Against All Defendants)

16 47. Plaintiff repeats and incorporates herein by reference each and every allegation set
17 forth above, as though fully set forth herein.

18 48. Section 226(a) of the California Labor Code requires Defendants to itemize in
19 wage statements all deductions from payment of wages and to accurately report total hours worked
20 by Plaintiff and Class Members. IWC Wage Orders require Defendants to maintain time records
21 showing, among others, when the employee begins and ends each work period, meal periods, split
22 shift intervals and total daily hours worked in an itemized wage statement, and must show all
23 deductions and reimbursements from payment of wages, and accurately report total hours worked
24 by Plaintiff and Class Members. On information and belief, Defendants have failed to record all
25 or some of the items delineated in Industrial Wage Orders and Labor Code §226.

26 49. Defendants violated Section 226(a)(2) by failing to provide Plaintiff and Class
27 Members with wage statements that accurately showed the total hours they worked. Defendants
28 violated Section 226(a)(5) by failing to provide Plaintiff and Class Members with statements of

1 wages that accurately showed the net wages earned for regular hours worked, overtime hours
2 worked. Defendants violated Section 226(a)(9) by failing to provide Plaintiff and Class Members
3 with wage statements that accurately show the applicable hourly rates in effect during the pay
4 period and the corresponding number of hours worked at each hourly rate.

5 50. Plaintiff and Class Members have been injured by Defendants' actions by rendering
6 them unaware of the full compensation to which they were entitled under applicable provisions of
7 the California Labor Code and applicable IWC Wage Orders.

8 51. Pursuant Labor Code §226, Plaintiff and Class Members are entitled up to a
9 maximum of \$4,000.00 each for record-keeping violations.

10 52. WHEREFORE, Plaintiff and the Class she seeks to represent request
11 relief as described herein and below.

12 **Sixth Cause of Action**
13 Violation of Unfair Competition Law
14 (Bus. & Prof. Code, §§ 17200-17208)
(Against All Defendants)

15 53. Plaintiff repeats and incorporates herein by reference each and every allegation set
16 forth above, as though fully set forth herein.

17 54. Business & Professions Code Section 17200 provides:

18 As used in this chapter, unfair competition shall mean and include any **unlawful, unfair**
19 or fraudulent business act or practice and unfair, deceptive, untrue or misleading
advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of
Part 3 of Division 7 of the Business and Professions Code.) (Emphasis added.)

20 55. Defendants' violations of the Labor Code and Wage Order provisions set forth
21 above constitute unlawful and/or unfair business acts or practices.

22 56. The actions of Defendants, as alleged within this Complaint, constitute
23 false, fraudulent, unlawful, unfair, and deceptive business practices, within the meaning of
24 Business and Professions Code section 17200, *et seq.*

25 57. Plaintiff and Class Members have been personally aggrieved by
26 Defendants' unlawful and unfair business acts and practices alleged herein.

27 58. As a direct and proximate result of the unfair business practices of Defendants, and
28

1 each of them, Plaintiff, individually and on behalf of all employees similarly situated, is entitled
2 to restitution of all wages which have been unlawfully withheld from Plaintiff and members of the
3 Plaintiff's Class as a result of the business acts and practices described herein.

4 59. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
5 described herein and below.

6 **VII.**

7 **PRAYER**

8 WHEREFORE, Plaintiff prays for judgment as follows:

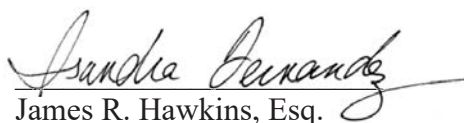
- 9 1. That the Court determine that this action may be maintained as a class action;
10 2. For compensatory damages in an amount according to proof with interest thereon;
11 3. For economic and/or special damages in an amount according to proof with interest
12 thereon;
13 4. For premium wages pursuant to Labor Code §§226.7 and 512;
14 5. For premium pay and penalties pursuant to Labor Code §§203, 226;
15 6. For attorneys' fees, interests, and costs of suit under Labor Code §§226, 1194; and
16 7. For such other and further justifiable relief the Court deems proper.

17
18 **DEMAND FOR JURY TRIAL**

19 Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

20
21 **Dated: July 23, 2020**

JAMES HAWKINS, APLC

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23 

James R. Hawkins, Esq.

Isandra Y. Fernandez, Esq.

Richard Barnwell, Esq.

Attorneys for Plaintiff AMBER PALMA