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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
10/16/2020 at 03:41:00 PM
Clerk of the Superior Court
By Taylor Crandall, Deputy Clerk

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SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

ANTHONY ALVIZ and TAMI WINSLETT,
Individually, and On Behalf of All Others
Similarly Situated,

Plaintiffs,

v.

LHM CORP TSD d/b/a LARRY H. MILLER
TOYOTA LEMON GROVE; LHM CORP
CTO d/b/a LHM TOYOTA OF CORONA;
LHM CORP NSB d/b/a LHM NISSAN OF
SAN BERNARDINO; LHM CORP
CORONA N1 d/b/a LHM NISSAN OF
CORONA; and DOES NOS. 1-50, Inclusive,

Defendants.

Case No. 37-2020-00027584-CU-OE-CTL

CLASS ACTION

**First Amended Class Action Complaint For
Compensatory Damages, Penalties,
Restitution & Injunctive Relief**

1. Failure to Pay All Wages, Including Overtime Compensation, Due to Off-the - Clock Work Time (Cal. Labor Code §§ 204, 210, 510, 1194, and 1197);
2. Failure to Provide Meal Periods, Or Compensation in Lieu Thereof, in Violation of Labor Code §§ 226.7 and 512;
3. Failure to Authorize and Permit Rest Periods, Or Compensation in Lieu Thereof (Cal. Labor Code § 226.7);
4. Failure to Provide Accurate Itemized Wage Statements (Cal. Labor Code § 226);
5. Failure to Pay Compensation When Due at Time of Separation of Employment (Cal. Labor Code §§ 201-203);
6. Unlawful and Unfair Business Practices (Cal. Bus. & Prof. Code § 17200 et seq.);
7. Labor Code Private Attorneys General Act of 2004 (Labor Code § 2698 et seq.).

1 Plaintiffs ANTHONY ALVIZ and TAMI WINSLET, on behalf of themselves and all
2 others similarly situated, and on behalf of all aggrieved employees and the State of California,
3 hereby allege causes of action against defendants, and each of them, as follows:

4 **GENERAL ALLEGATIONS AND IDENTIFICATION OF THE PARTIES**

5 1. Plaintiff ANTONIO ALVIZ (“ALVIZ”) is a competent adult who currently resides
6 in the San Diego County, State of California. Between January 2019 to approximately March
7 2020, ALVIZ was employed by LMH CORP TSD d/b/a LARRY H MILLER TOYOTA LEMON
8 GROVE (“LMH TSD”) as a Service ASM at the Lemon Grove, CA location.

9 2. Plaintiff TAMI WINSLETT (“WINSLETT”) is a competent adult who currently
10 resides in San Diego County, State of California. Between March 2019 to approximately
11 December 2019, WINSLETT was employed by LMH CORP TSD d/b/a LARRY H MILLER
12 TOYOTA LEMON GROVE (“LMH TSD”) as a Service ASM at the Lemon Grove, CA location.

13 3. This is a class action brought by Plaintiffs ALVIZ and WINSLETT (collectively,
14 “PLAINTIFFS” or “Plaintiffs”) individually and on behalf of present and former Service ASMs
15 employed in the State of California by Defendants LHM CORP TSD d/b/a LARRY H. MILLER
16 TOYOTA LEMON GROVE; LHM CORP CTO d/b/a LHM TOYOTA OF CORONA; LHM
17 CORP NSB d/b/a LHM NISSAN OF SAN BERNARDINO; LHM CORP CORONA N1 d/b/a
18 LHM NISSAN OF CORONA; and DOES NOS. 1-50, Inclusive (collectively, “Defendants”) during the Class Period of August 4, 2016 to the present (“Class Period”).

20 4. At all relevant times, Defendants have failed to pay Plaintiffs and other similarly
21 situated Service ASMs for the actual number of hours worked during the Class Period.
22 Specifically, Plaintiffs and other similarly situated Service ASMs were regularly required by
23 Defendants to arrive at work prior to the start of their shift but not clock in until their scheduled
24 start time. Plaintiffs and other similarly situated Service ASMs were not paid for the amount of
25 work time incurred attending required meetings, trainings, and other required non-sales work.

26 5. Plaintiffs and other similarly situated Service ASMs have also been required by
27 Defendants to work during meal periods and rest periods and/or were not able to take these
28 required rest breaks or meal periods. Specifically, at all relevant times, Plaintiffs and other

1 similarly situated Service ASMs were routinely unable to take their uninterrupted meal and rest
2 breaks due to Defendants' under-staffing and/or improper scheduling and work duty requirements
3 imposed by Defendants upon Plaintiffs and other similarly situated Service ASMs. As a result,
4 Plaintiffs and other similarly situated Service ASMs have not been provided with state-mandated
5 meal periods of an uninterrupted thirty minutes within the first five hours of daily work periods
6 lasting more than six hours and/or a second such meal period when shifts worked beyond ten
7 hours. Plaintiffs and other similarly situated Service ASMs have not been authorized or permitted
8 to take their state-mandated rest periods of an uninterrupted ten minutes' rest during every four
9 hour work period, or major fraction thereof.

10 6. The policies and practices of Defendants, as alleged herein, are unlawful, unfair
11 and deceptive business practices whereby Defendants have retained wages due to Plaintiffs and
12 other similarly situated employees for all hours worked, including overtime compensation; and all
13 missed meal and rest periods. Defendants' unlawful, unfair and deceptive employment and wage
14 practices cheat Plaintiffs and other members of the proposed Class out of their lawful
15 compensation due, as required by California law. Plaintiffs therefore seek an injunction enjoining
16 such conduct by Defendants in the future, restitution for the named Plaintiffs and all members of
17 the proposed Class, and all other appropriate equitable relief.

18 7. Defendants' failure to pay Plaintiffs and other similarly situated employees for all
19 hours worked, including off-the-clock work time, has also resulted in Defendants' intentional
20 issuance of inaccurate wage statements to Plaintiffs and other similarly situated employees, as
21 well as Defendants' willful failure to pay all wages due and owing to such Plaintiffs and similarly
22 situated former employees at the time of separation of employment.

23 8. PLAINTIFFS do not know the true names and capacities of DEFENDANTS sued
24 herein as DOES 1 through 50, inclusive, and, if necessary, will amend this complaint to set forth
25 the true names and capacities of said DEFENDANTS, along with the appropriate charging
26 allegations when the same have been ascertained.

27 9. PLAINTIFFS are informed and believe, and on that basis allege, that each of the
28 fictitiously named DEFENDANTS was in some manner legally responsible for the actionable and

1 unlawful actions, policies and practices as alleged herein. PLAINTIFFS will amend this
2 complaint, if necessary, to set forth the true names and capacities of said DEFENDANTS, along
3 with the appropriate charging allegations when the same have been ascertained.

4 10. PLAINTIFFS are informed and believe, and thereon allege, that at all times
5 mentioned herein, all DEFENDANTS, and each of them, were acting as the agent and/or
6 employee of each remaining co-defendant, and were acting with permission and consent of each
7 other, and within the course and scope of said agency and/or employment. PLAINTIFFS are
8 further informed and believe that each co-defendant, by and through its officers, directors or
9 managing agents ratified, authorized and approved, expressly or implicitly, all of the conduct
10 alleged herein.

11 11. When in this complaint reference is made to any act of the “DEFENDANTS,”
12 such shall be deemed to mean that officers, directors, agents, employees, or representatives of the
13 DEFENDANTS named in this lawsuit committed or authorized such acts, or failed and omitted to
14 adequately supervise or properly control or direct their employees while engaged in management,
15 direction, operation or control of the affairs of the DEFENDANTS and did so while acting within
16 the scope of their employment or agency.

17 12. When in this Complaint reference is made to any act by a “DEFENDANT,” such
18 allegations and reference shall also be deemed to mean the acts and failures to act of each of the
19 named DEFENDANTS acting individually, jointly and severally.

20 **JURISDICTION AND VENUE**

21 13. This Court has jurisdiction over this action and Defendants pursuant to California
22 Constitution, Article VI, Section 10, and California Code of Civil Procedure Section 410.10.
23 Defendants engaged in the unlawful acts in this suit, which were promulgated or conducted from
24 or in California.

25 14. This court has jurisdiction over Defendants because they are corporations or other
26 business entity authorized to do business in the State of California and registered with the
27 California Secretary of State to do sufficient business with sufficient minimum contacts in
28 California, and/or otherwise intentionally avails itself of the California market through the

1 ownership and management of vehicle servicing and repair locations throughout the State of
2 California, to render the exercise of jurisdiction by the California courts consistent with
3 traditional notions of fair play and substantial justice.

4 15. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
5 Civil Procedure § 395. Defendants' actionable and unlawful employment practices as to
6 Plaintiffs occurred in San Diego County, State of California.

7 **CLASS ACTION ALLEGATIONS**

8 16. This action is brought and may properly be maintained as a class action pursuant
9 to provisions of the California Code of Civil Procedure § 382. The putative classes PLAINTIFFS
10 will seek to certify are currently composed and defined as follows:

11 (a) **All current and former Service ASMs, and persons with similar job**
12 **titles and similar job duties, who worked at a Larry H. Miller**
13 **dealership in the State of California at any time during the period**
from four years prior to the filing of this Complaint to final
judgment (hereinafter, the "CLASS").

14 (b) **All formerly employed Service ASMs, and persons with similar job**
15 **titles and similar job duties, who worked at a Larry H. Miller**
16 **dealership in the State of California and who separated their**
17 **employment with Larry H. Miller at any time during the period**
from three years prior to the filing of this Complaint to final
judgment (hereinafter, the "FORMER EMPLOYEE SUBCLASS").

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

22 18. ASCERTAINABILITY: The proposed Class and Subclass are ascertainable in
23 that their members can be identified and located using information contained in Defendant's
24 payroll, timekeeping and personnel records.

25 19. NUMEROSITY: The proposed Class and Subclass are so numerous that the
26 individual joinder of all Class members in one action is impracticable. While the exact number
27 and identities of Class members are unknown at this time and can only be ascertained through
28

appropriate investigation and discovery, including Defendant's internal employment records and electronic database(s).

20. TYPICALITY: PLAINTIFFS' claims are typical of the claims of the Class and Subclass mentioned herein because all members sustained injuries and damages arising out of Defendants' common course of conduct in violation of California law, and the injuries and damages of all members of the Class and Subclass were caused by Defendants' wrongful conduct in violation of California law, as alleged herein.

21. ADEQUACY: PLAINTIFFS are adequate representatives of the Class and Subclass, will fairly protect the interests of the members of the Class, has no interests antagonistic to the members of the Class, and will vigorously pursue this suit via attorneys who are competent, skilled and experienced in litigating matters of this type.

22. SUPERIORITY: The nature of this action and the nature of the laws available to PLAINTIFFS make the use of the class action format a particularly effective and appropriate procedure to afford relief to PLAINTIFFS for the wrongs alleged herein:

- a. This case involves large corporate defendants and a large number of individual class members with common issues of law and fact;
- b. If each individual member of the Class was required to file an individual lawsuit, the large corporate defendant would necessarily gain an unconscionable advantage because Defendants would be able to exploit and overwhelm the limited resources of each member of the Class with its vastly superior financial and legal resources.
- c. Requiring each individual member of the Class to pursue an individual remedy would also discourage the assertion of lawful claims by the members of the Class who would be disinclined to pursue an action against Defendants because of an appreciable and justifiable fear of retaliation and permanent damage to their lives, careers and well being;
- d. Proof of a common business practice or factual pattern, of which the members of the Class experienced, is representative of the Class herein and

1 will establish the right of each of the members of the Class to recover on
2 the causes of action alleged herein;

- 3 e. The prosecution of separate actions by the individual members of the
4 Class, even if possible, would create a substantial risk of inconsistent and
5 varying verdicts or adjudications with respect to the individual members of
6 the Class and against Defendants, which would establish potentially
7 incompatible standards of conduct for Defendants and/or legal
8 determinations with respect to individual members of the Class.

9 23. EXISTENCE AND PREDOMINANCE OF COMMON QUESTIONS OF FACT

10 AND LAW: There are common questions of fact and law as to the members of the Class which
11 predominate over questions affecting only individual members of the Class including, without
12 limitation:

- 13 a. Whether Defendants failed to pay members of the Class for all hours
14 worked;
- 15 b. Whether Defendants unlawfully instructed the members of the CLASS to
16 record and submit hours less than those actually worked;
- 17 c. Whether Defendants failed to properly keep time records and/or provide
18 accurate itemized wage statements for members of the Class in violation of
19 Section 226 of the California Labor Code;
- 20 d. Whether the members of the CLASS were paid wages for all hours
21 worked;
- 22 e. Whether the members of the CLASS were paid overtime compensation in
23 accordance with California statutory and regulatory law;
- 24 f. Whether the members of the CLASS were provided with uninterrupted 30-
25 minute meal periods within the first five hours of daily work periods
26 lasting longer than six hours;
- 27 g. Whether Defendants have failed to keep accurate time records showing
28 when members of the CLASS begin and end each meal periods;

- h. Whether the members of the CLASS were authorized and permitted to take 10-minute rest periods during every four hour period, or major fraction thereof;
- i. Whether Defendants have provided wage compensation to the members of the CLASS for work shifts in which meal periods and/or rest periods were not provided;
- j. Whether Defendants required members of the CLASS to work through their meal periods and rest periods;
- k. Whether DEFENDANT failed to pay an hourly rate to commissioned employees for work duties that did not generate commissions;
- l. Whether Defendants knowingly and intentionally failed to furnish accurate, itemized wage statements to members of the CLASS;
- m. Whether Defendants paid all wages due and owing to members of the FORMER EMPLOYEE SUBCLASS at the time of separation of employment, in accordance with Labor Code §§ 201-203;
- n. Whether Defendants' conduct constituted unfair or unlawful business practices within the meaning of Business & Professions Code § 17200 *et seq.*;
- o. Whether the members of the CLASS are entitled to compensatory damages, and if so, the means of measuring such damages;
- p. Whether the members of the CLASS are entitled to injunctive relief;
- q. Whether the members of the CLASS are entitled to restitution;
- r. Whether the members of the CLASS are entitled to disgorgement of profits;
- s. Whether the members of the FORMER EMPLOYEE SUBCLASS are entitled to "waiting time penalties;"
- t. Whether Defendants are liable for pre-judgment interest; and
- u. Whether Defendants are liable for attorneys' fees and costs.

FIRST CAUSE OF ACTION
Failure to Pay All Wages,
Including Overtime and Minimum Wage Compensation
(Cal. Lab. Code §§ 204, 510, 1194, 1197)
(On Behalf of PLAINTIFF and the Class)

24. PLAINTIFFS incorporate by reference all prior paragraphs as if fully set forth herein.

25. Defendants failed to fully compensate PLAINTIFFS and members of the Class for all wages earned, including overtime wages.

26. Labor Code sections 1194, 1197, and IWC Wage Order 7, provide that minimum wage be paid to employees for all hours worked, and the payment of a lesser wage than minimum wage for all hours worked is unlawful.

27. While compensated pursuant to Defendants' commission-only pay policy, PLAINTIFFS and the Class were required, suffered, and/or permitted to work "non-selling" hours – i.e.- engage in numerous work duties that did not allow them to earn commission wages, including, but not limited to, required training, meetings, and arriving at work prior to opening and not clocking in prior to their shift beginning. While Plaintiffs were compensated for some of this time, Defendants failed to compensate PLAINTIFFS and members of the Class at a separate hourly rate for all such non-selling time worked, including rest periods.

28. California law provides that PLAINTIFF and salesmember members of the Class who are compensated via commissions only must be directly compensated at least minimum wage for each hour they work performing activities that do not allow them to directly earn commissions (and compliance cannot be determined by averaging hours).

29. DEFENDANT required PLAINTIFF and members of the Class to work more than eight hours per day and/or forty hours in one week. In fact, Defendants' own time records demonstrate a significant amount of overtime hours being worked by PLAINTIFFS and members of the Class. On information and belief, PLAINTIFFS allege that for some pay periods they did not satisfy the requirements for the "inside sales" exemption and should have been compensated for the overtime hours that they worked, but were not so compensated.

1 30. PLAINTIFFS and members of the Class were instructed to clock out for their meal
2 periods even though they could not take the meal periods and had to keep working. Other times,
3 Defendants would simply adjust the time records to reflect a meal period taken when one was not
4 actually taken by PLAINTIFFS or members of the Class. These falsely reduced hours resulted in
5 the failure of Defendants to compensate PLAINTIFFS and members of the Class for all hours
6 worked and, on some occasions, likely resulted in the failure to pay overtime compensation.

7 31. PLAINTIFFS are informed and believe, and thereon allege, that the failure of
8 Defendants to fully compensate them and the Class for all wages earned and overtime work was
9 willful, purposeful, and unlawful and done in accordance with the policies and practices of
10 Defendants' operations.

11 32. As a proximate cause of the aforementioned violations, PLAINTIFFS and the
12 Class are entitled to recover the unpaid balance of wages owed, penalties, plus interest,
13 reasonable attorney fees and costs of suit according to the mandate of California Labor Code
14 Section 1194, according to proof at trial.

15 **SECOND CAUSE OF ACTION**

16 (Failure to Provide 30-Minute Employee Meal Period)
17 (On Behalf of Plaintiff and the CLASS)

18 33. Plaintiffs reallege by reference, as if fully set forth herein, all of the above
19 Paragraphs.

20 34. Plaintiffs allege, on the basis of information and belief, that within each of the four
21 years prior to the commencement of this action, Defendants have promulgated and enforced
22 policies under which members of the CLASS, including Plaintiffs, regularly worked more than
23 five hours in a daily work period lasting longer than six hours without being provided with an
24 uninterrupted, thirty-minute meal period (or worked more than ten hours without being provided
25 a second meal period) during which members of the CLASS, including Plaintiffs, were relieved
26 of all of their respective work duties, or under which members of the CLASS, including
27 Plaintiffs, were not provided with a thirty-minute meal period during the first five hours of their
28 work shifts. Defendants have also otherwise failed to provide CLASS members with state-
mandated meal periods, including requiring CLASS members to take unlawful "on duty" meal

1 periods.

2 35. Defendants' policies and practices have required their Service ASMs, including
3 Plaintiffs, to remain on the job at the service location due to scheduled appointments every fifteen
4 minutes, plus walk-ins, without any breaks whatsoever to take either a meal period until well after
5 sixt to eight hours into the shift (if at all). This requirement, combined with Defendants' failure to
6 ensure adequate staffing and/or proper scheduling, has resulted in Defendants' failure to provide
7 its Service ASMs, including Plaintiffs, with state-mandated meal breaks. Further, Defendants
8 have regularly either required PLAINTIFFS and members of the Class to clock out for meal
9 periods even though they were required to continue working or, alternatively, retroactively
10 modify the time records of PLAINTIFFS and members of the Class to reflect a meal period taken
11 when one was not.

12 36. All members of the CLASS, including Plaintiff, are entitled to additional wages
13 pursuant to California Labor Code Section 226.7 for each daily work period lasting more than six
14 hours during which members of the CLASS, including Plaintiffs, were not provided with an
15 uninterrupted, thirty minute meal period, or during which members of the CLASS were not
16 provided with an uninterrupted thirty-minute meal period during the first five hours of their work
17 shifts. Members of the CLASS, including Plaintiffs, are also entitled to additional wages
18 pursuant to California Labor Code Section 226.7 for each daily work period lasting more than
19 twelve hours during which members of the CLASS, including Plaintiffs, were not provided with a
20 second uninterrupted, thirty minute meal period, or during which members of the CLASS were
21 not provided with a second uninterrupted thirty-minute meal period during the first ten hours of
22 their work shifts.

23 37. As a result of Defendants' conduct as alleged herein, members of the CLASS,
24 including Plaintiffs, have suffered harm and monetary damages, in an amount to be ascertained at
25 trial.

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38. Plaintiffs reallege by reference, as if fully set forth herein, all of the above Paragraphs.

and procedures that violate California law, including the applicable Industrial Welfare Commission Wage Order. Defendants have failed to authorize and permit members of the CLASS, including Plaintiffs, to take ten-minute rest periods every four hours or major fraction thereof.

42. Plaintiffs allege, on the basis of information and belief, that members of the CLASS, including Plaintiffs, have suffered harm and monetary damages, in an amount to be ascertained at trial. Plaintiffs and the other members of the CLASS and are entitled to additional wages pursuant to California Labor Code Section 226.7 for each four hour work period, or major fraction thereof, during which members of the CLASS were not permitted and authorized to take one or more ten minute rest periods.

1 **FOURTH CAUSE OF ACTION**

2 **Illegal Record Keeping**

3 **(Cal. Lab. Code §§ 226, 1174 Cal. Code Regs., Title 8 § 11040 section 7)**

4 **(On Behalf of PLAINTIFF and the Class)**

5 43. PLAINTIFFS incorporate by reference all prior paragraphs as if fully set forth
6 herein.

7 44. Labor Code Section 226 requires an employer to furnish its employees with an
8 accurate itemized wage statement in writing, showing among other things, (1) gross wages
9 earned, (2) total hours worked by each respective individual, (3) all deductions, (4) net wages
10 earned and/or (5) all applicable hourly rates in effect during each respective pay period and the
11 corresponding number of hours worked at each hourly rate by each respective individual. As a
12 pattern and practice, in violation of Labor Code Section 226(a), DEFENDANTS did not furnish
13 accurate itemized statements.

14 45. During the applicable statutory period, Defendants routinely failed to provide the
15 members of the CLASS, including Plaintiffs, at the time of each payment of wages, an accurate
16 itemized statement in writing showing the requirements of Labor Code § 226 and section 7 of
17 Title 8 CCR § 11040. Defendants' failure to provide accurate itemized wage statements to the
18 members of the CLASS, including Plaintiffs, has been the intentional result of Defendants'
19 manipulation of Plaintiffs' and CLASS members' time records and Defendants' refusal to
20 institute a system for accurately recording hours worked by Plaintiffs and members of the
21 CLASS. Defendants' failure to provide accurate itemized wage statements to members of the
22 CLASS, including Plaintiffs, has repeatedly been brought to the attention of Defendants, has been
23 ignored by Defendants, has been knowing and intentional, and was in clear violation of Labor
24 Code § 226(a).

25 46. DEFENDANT's wage statements failed to provide an "accurate report" of
26 commissions earned, let alone any chargebacks to earned commissions, or allowed PLAINTIFFS
27 or Class members to promptly and easily determine the necessary information from the wage
28 statement alone. Defendants did not provide any information regarding the calculation of
commission amounts paid for any pay period – i.e. – amount of sales, gross commissions on

1 products sold and/or any deductions for returns or other “adjustments” on any wage statements.
2 These omissions themselves are a violation of Labor Code Section 226, as the “number of piece
3 rate units earned and the applicable piece rate” requirement also requires the same information for
4 commissioned employees – i.e. – commission rate and amount of sales, which never appeared on
5 the wage statements.

6 47. The members of the CLASS, including Plaintiffs, have suffered injuries as a result
7 of the knowing and intentional failure of Defendants to comply with Labor Code § 226(a) and
8 Title 8 CCR § 11040(7), in that Defendants’ failure to provide Plaintiff and CLASS Members
9 with accurate itemized wage statements made it impossible for Plaintiff and the members of the
10 CLASS to be aware that unlawful deductions were being made from their earnings, that they
11 were not being paid all wages earned, and that in certain instances their wages fell below the
12 statutory hourly overtime wage rates.

13 48. Plaintiffs are informed and believe, and thereon allege, that Defendants’ knowing
14 and intentional failure to furnish the members of the CLASS with accurate itemized wage
15 statements, as alleged above, violated Labor Code § 226(a), as well as Title 8 CCR § 11040(7).
16 Labor Code § 226(e) entitles Plaintiffs and the members of the CLASS to recover the greater of
17 their actual damages caused by Defendants’ violations, or \$50 per employee for the initial pay
18 period in which the violation occurred, and \$100 per employee for each violation in subsequent
19 pay periods, not exceeding an aggregate penalty of \$4,000 per employee.

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21 **FIFTH CAUSE OF ACTION**
22 **Failure to Pay Compensation When Due at Time of Separation of Employment**
23 **(Cal. Lab. Code Sections 201-203)**
24 **(On Behalf of PLAINTIFF and the Subclass)**

25 49. Plaintiffs reallege by reference, as if fully set forth herein, all of the above
26 Paragraphs.

27 50. California Labor Code Section 201 requires an employer who discharges an
28 employee to pay compensation due and owing said employee immediately upon discharge.
California Labor Code Section 202 requires an employer to promptly pay compensation due and

1 owing an employee within 72 hours of that employee's separation of employment by resignation.
2 California Labor Code Section 203 provides that if an employer willfully fails to pay
3 compensation promptly upon discharge or resignation as required pursuant to California Labor
4 Code Sections 201 and 202, said employer is liable to said employee for waiting time penalties.

5 51. Plaintiffs allege, on the basis of information and belief, that Defendants have
6 willfully failed and have refused to pay all compensation and wages due and owing, including
7 straight time wages and overtime pay, to members of the FORMER EMPLOYEE SUBCLASS,
8 including Plaintiffs, upon their separation of employment.

9 52. Defendants' failure to timely pay compensation and wages to members of the
10 FORMER EMPLOYEE SUBCLASS at the time of their separation of employment has been
11 willful. As a result, Defendants are liable to members of the FORMER EMPLOYEE
12 SUBCLASS for "waiting time penalties" under California Labor Code Section 203, in an amount
13 to be ascertained at trial.

14 **SIXTH CAUSE OF ACTION**
15 **Unfair Competition**
16 **(Business and Professions Code Section 17200 et. seq.)**
17 **(On Behalf of PLAINTIFF and the Class)**

18 53. Plaintiffs reallege by reference, as if fully set forth herein, all of the above
19 Paragraphs.

20 54. Within each of the four years prior to the commencement of this action, Plaintiffs
21 are informed and believe, and thereon allege, that Defendants have unlawfully failed to pay
22 hourly wages and overtime wages to members of the CLASS, including Plaintiffs, in violation of
23 Labor Code §§ 204, 218, 510 and 1194; unlawfully failed to provide meal periods, or
24 compensation in lieu thereof, to members of the CLASS, including Plaintiffs, in violation of
25 Labor Code §§ 226.7 and 512; and unlawfully failed to authorize and permit rest periods, or
26 compensation in lieu thereof, to the members of the CLASS, including Plaintiffs, in violation of
27 Labor Code § 226.7.

28 55. By committing the alleged acts and/or omissions as described in this Complaint,
Defendants have engaged, and continue to engage, in unlawful and/or unfair business practices

1 within the meaning of California Business & Professions Code § 17200 *et seq.*

2 56. Plaintiff alleges, on the basis of information and belief, that by and through
3 Defendants' alleged acts and/or omissions as described in this Complaint, Defendants have
4 obtained valuable property, money, and services from Plaintiffs and members of the CLASS and
5 have deprived Plaintiff and members of the CLASS of valuable rights and benefits guaranteed by
6 law and contract, all to Plaintiffs' and CLASS members' detriment and to the benefit of
7 Defendants.

8 57. A request for injunctive relief, restitution and for the disgorgement of unlawfully
9 earned profits is specifically authorized by California Business & Professions Code § 17200 *et*
10 *seq.* Thus, on behalf of Plaintiffs and members of the CLASS, and on behalf of the general public,
11 Plaintiff seeks injunctive relief, restitution (to members of the CLASS) of all unlawfully withheld
12 funds, and the disgorgement of all unlawfully earned profits (to members of the CLASS) obtained
13 by Defendants as a result of Defendants' alleged unlawful and unfair acts and/or omissions
14 described in this Complaint.

15 58. Plaintiffs are informed and believe, and thereon allege, that unless restrained and
16 ordered to pay restitution and disgorge profits derived from these unlawful and unfair
17 employment practices, Defendants will continue to engage in the unlawful and unfair acts and/or
18 omissions described in this Complaint.

19 **SEVENTH CAUSE OF ACTION**
20 ***Labor Code Private Attorneys General Act of 2004***
21 **(Labor Code § 2698 *et seq.*)**
22 **(On Behalf of PLAINTIFF, All Aggrieved Employees, and the State of California)**

23 59. PLAINTIFFS are informed and believe, and thereon allege, that at all relevant
24 times, DEFENDANTS have violated, and continue to violate, several provisions of the California
25 Labor Code, including but not limited to:

- 26 a. Sections 201 – 203 (Failure to Pay All Compensation Owed at Separation);
27 b. Section 204 (Failure to Timely Pay All Wages Earned);
28 c. Section 221 and 223 (Unlawful Deductions From Wages/Failure To Pay Rate
Required by Statute or Contract);

- d. Section 226 (Failure to Provide Accurate Itemized Wage Statements);
- e. Section 226.3 (Penalties for Failure to Provide Accurate Wage Statements);
- f. Section 510 (Unlawful Overtime Policies and Procedures);
- g. Section 558 (Penalties for Violations in IWC Wage Orders);
- h. Section 1174 (Failure to Maintain Accurate Payroll Records); and
- i. Section 1194 (Failure to Pay Overtime Compensation)
- j. Section 1197 (Failure to Pay Minimum Wage)

60. Pursuant to Labor Code § 2699, PLAINTIFFS bring this cause of action on behalf of themselves and all other current or former employees of DEFENDANTS against whom one or more of the alleged violations was committed and/or is being committed (“aggrieved employees,” as defined by Section 2699(c)).

61. Pursuant to Labor Code Section 2699, PLAINTIFFS seek to recover from DEFENDANTS civil penalties for *each* Labor Code violation. The civil penalties are to be calculated at the rate at which the civil penalty is to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees.

62. Pursuant to Labor Code Section 2699, for all provisions of the California Labor Code that do not specifically provide for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, PLAINTIFFS seek to recover from DEFENDANTS civil penalties for *each* Labor Code violation at the following rate: one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

63. Pursuant to Labor Code Section 2699, PLAINTIFFS seek an award of reasonable attorney's fees and costs for bringing this cause of action on behalf of herself, the State of California and DEFENDANTS' other current and former aggrieved employees against whom one or more of the alleged violations was committed.

1 64. In compliance with Labor Code Section 2699.3, on August 5, 2020, PLAINTIFFS
2 provided DEFENDANTS and the California Labor & Workforce Development Agency
3 (“LWDA”) with written notice, via online filing and via certified mail, of the specific provisions
4 of the Labor Code alleged to have been violated by DEFENDANTS, and the facts and theories to
5 support the allegations.

6 65. More than 65 days have elapsed since PLAINTIFFS notified the LWDA of the
7 specific provisions of the Labor Code alleged to have been violated by DEFENDANTS. To date,
8 the LWDA has not notified PLAINTIFFS nor DEFENDANTS that it intends to investigate the
9 alleged violations contained in Plaintiffs’ August 5, 2020 notice.

10 66. Pursuant to California Labor Code § 2699.3, PLAINTIFFS may commence a civil
11 action against DEFENDANTS for civil penalties on behalf of themselves, the State of California
12 and DEFENDANTS’ other current and former aggrieved employees.

13 67. PLAINTIFFS may maintain this cause of action against DEFENDANTS for civil
14 penalties under Labor Code Section 2698 *et seq.* regardless of whether PLAINTIFFS’ allegations
15 contained herein are certified for class treatment.

16 68. PLAINTIFFS has not alleged any violation of Division 5 (commencing with
17 Section 6300) of the Labor Code.

18 69. In compliance with Labor Code Section 2699.3, PLAINTIFFS’ August 5, 2020
19 notice also provided DEFENDANTS and the LWDA, with written notice, via online filing and
20 via certified mail, of the specific provisions of the Labor Code—not specified in Labor Code
21 Section 2699.5— alleged to have been violated by DEFENDANTS, including Labor Code
22 Section 226.3 and Labor Code Section 558, as well as the facts and theories to support the
23 allegations.

24 70. To date, DEFENDANTS have not cured any of the alleged violations, and
25 DEFENDANTS have not abated any of the violations alleged by PLAINTIFFS in their August 5,
26 2020 notice. At all relevant times, DEFENDANTS have not been in compliance with the
27 underlying statutes as specified in PLAINTIFFS’ August 5, 2020 notice. At all relevant times, no
28

aggrieved employee has been made whole for the Labor Code violations described in PLAINTIFFS' August 5, 2020 notice.

71. To date, DEFENDANTS have not given written notice to PLAINTIFFS nor the LWDA that any Labor Code violation alleged by PLAINTIFFS in their August 5, 2020 notice has been cured.

Pursuant to California Labor Code § 2699.3(c)(2)(A), PLAINTIFFS may commence a civil action against DEFENDANTS for civil penalties on behalf of herself, the State of California and DEFENDANTS' other current and former aggrieved employees with respect to the specific provisions of the Labor Code—not specified in Labor Code Section 2699.5—alleged to have been violated by DEFENDANTS, including Labor Code Section 226.3 and Labor Code Section 558.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on their own behalf, and on behalf of all others similarly situated, prays for judgment as follows:

1. That the Court issue an Order certifying the CLASS and FORMER EMPLOYEE SUBCLASS, appointing the named Plaintiffs as representatives of all others similarly situated and appointing the law firms representing the named Plaintiffs, Blanchard, Krasner and French and the Matcha Law Firm, as counsel for members of the CLASS and FORMER EMPLOYEE SUBCLASS;

2. For compensatory damages according to proof to Plaintiffs and the members of the CLASS and FORMER EMPLOYEE SUBCLASS;

3. For prejudgment interest at the legal rate pursuant to Civil Code §§ 3287, 3288 & 3289, and any other legal rate that may be applicable to Plaintiffs' causes of action;

4. For an Order compelling Defendants to restore unpaid wages, expenditures, losses, income and other related benefits (in the form of restitution) to each of the members of the CLASS and FORMER EMPLOYEE SUBCLASS who have suffered as a result of Defendants' unlawful and unfair employment practices alleged herein;

5. For an order compelling Defendants to disgorge and pay over to Plaintiffs and the

1 members of the CLASS and FORMER EMPLOYEE SUBCLASS all profits and savings
2 resulting from Defendants' unlawful and unfair business practices alleged herein;

3 6. For issuance of a permanent injunction enjoining Defendants, and each of them,
4 from continuing to engage in the unlawful and unfair business practices alleged herein;

5 7. For attorneys' fees and litigation expenses pursuant to all applicable statutes,
6 including Labor Code sections 218.5, 226, 1194, 2699 and 2802, and as otherwise permitted by
7 law;

8 8. For waiting time penalties pursuant to Labor Code sections 201-203;

9 9. For civil penalties pursuant to the Labor Code Private Attorneys General Act of
10 2004, according to the method of calculation set forth in Labor Code Sections 226.3, 558, and
11 2699; and

12 10. For such other and further relief as the court deems just and proper.

13
14 DATED: October 16, 2020

BLANCHARD, KRASNER & FRENCH

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16 
DAVID C. HAWKES

17 Attorneys for Plaintiffs, ANTONIO ALVIZ and
18 TAMI WINSLETT, Individually, on behalf of all
19 others similarly situated, and on behalf of the general
public.

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