

BLANCHARD, KRASNER & FRENCH
David C. Hawkes; SBN: 224241
dhawkes@bkflaw.com
800 Silverado St., 2nd Floor
La Jolla, CA 92037
Telephone: (858) 551-2440
Facsimile: (858) 614-7008

MATCHA LAW
Stephen Matcha; SBN: 249176
steve@matchalaw.com
13223 Black Mountain Rd, #233
San Diego, CA 92129-2699
Telephone: (619) 565-3865

Attorneys for Plaintiff, JACLYN BRIZZI

LAW OFFICE OF DAVID A. HUCH
David A. Huch; SBN: 222892
david.a.huch@gmail.com
12223 Highland Ave., Ste. 106-574
Rancho Cucamonga, CA 91739
Telephone: (909) 463-6363
Facsimile: (909) 614-7008

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Clerk of the Superior Court
By Taylor Crandall, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

**JACLYN BRIZZI, Individually and On
Behalf of All Others Similarly Situated,**

Plaintiffs,

v.

**DIGITAL MEDIA SOLUTIONS, LLC, a
Delaware Limited Liability Company; and
DOES 1 through 50, inclusive,**

Defendants.

) Case No. 37-2020-00027447-CU-OE-CTL

)

) **CLASS ACTION**

)

) **FIRST AMENDED COMPLAINT FOR**

) **COMPENSATORY DAMAGES,**

) **PENALTIES, RESTITUTION &**

) **INJUNCTIVE RELIEF**

)

) **1. Failure to Pay Overtime in Violation of
Cal. Labor Code Section 510;**

)

) **2. Failure to Provide Accurate Itemized
Wage Statements in Violation of Cal.
Labor Code § 226;**

)

) **3. Failure to Pay Compensation When Due
at Time of Separation of Employment in
Violation of Cal. Labor Code §§ 201-203;**

)

) **4. Unlawful and Unfair Business Practices
in Violation of Cal. Bus. & Prof. Code §
17200 et seq.;**

)

) **5. Labor Code Private Attorneys General
Act of 2004 (Labor Code § 2698 et seq.)**

)

)

JURY TRIAL DEMANDED

[Unlimited Civil Action]

1 Plaintiff Jaclyn Brizzi (“PLAINTIFF”), an individual, on behalf of herself and all other
2 similarly situated current and former employees, and on behalf of all aggrieved employees and the
3 State of California, alleges on information and belief, except for her own acts and knowledge
4 which are based on personal knowledge, the following:

5 **THE PARTIES**

6 1. Defendant Digital Media Solutions, LLC (“DMS” or “DEFENDANT”) is a
7 Delaware Limited Liability Company with its principal place of business located in Clearwater,
8 Florida. At all relevant times mentioned herein, DMS conducted and continues to conduct
9 substantial business in the State of California, including the operation of office locations in San
10 Diego County, Los Angeles County and Orange County.

11 2. Founded in 2012, DMS provides data-driven digital marketing and advertising to its
12 global business clients. According to its website, www.digitalmediasolutions.com, "(DMS) is the
13 leading global martech company leveraging innovative, performance-driven brand and marketplace
14 solutions to connect consumers and advertisers."

15 3. According to a May 2020 quarterly report (Form 10-K) filed with the Securities and
16 Exchange Commissions (SEC), on April 23, 2020, DEFENDANT DMS entered into a Business
17 Combination Agreement with Leo Holdings Corp., a Cayman Islands exempted Special Purpose
18 Acquisition Company, and various other entities. Under the Business Combination Agreement,
19 "the combined company will be organized in an 'Up-C' organizational structure, in which
20 substantially all of the assets and business....will be held by [DEFENANT] DMS...At the Closing,
21 [DEFENDANT] DMS and its current equity holders will amend and restate the limited liability
22 company agreement of [DEFENDANT] DMS in its entirety as the Amended Partnership
23 Agreement to, among other things, recapitalize [DEFENDANT] DMS..."

24 4. According to a Form 8-K filed with the SEC on July 15, 2020, in accordance with
25 the Business Combination Agreement, Leo Holdings Corp. "was domesticated and continues as a
26 Delaware corporation, changing its name to 'Digital Media Solutions, Inc.'" Additionally, on July
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1 15, 2020, [DEFENDANT] DMS was paid \$30 million by the newly formed Digital Media
2 Solutions, Inc. "to be used as cash on the DMS balance sheet."

3 5. PLAINTIFF Jaclyn Brizzi was employed by DMS in San Diego, California from
4 December 2019 to July 2020 as a non-exempt employee, and was paid in whole or in part on an
5 hourly basis and received additional compensation from DMS in the form of non-discretionary
6 commission wages and performance bonuses.

7 6. PLAINTIFF brings this Class Action on behalf of herself and a California class,
8 defined as all individuals who are or previously were employed by DEFENDANT Digital Media
9 Solutions, LLC in California as non-exempt employees who received commission and/or bonus
10 compensation payments during the same pay period in which they worked overtime hours (the
11 "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing
12 of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS
13 PERIOD").

14 7. State law provides that employees must be paid overtime at one-and-one-half times
15 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members have been
16 compensated at an hourly rate plus DMS's non-discretionary commission and bonus program, that
17 provides employees paid on an hourly basis with commission and bonus compensation when the
18 employees meet various sales or performance goals. However, when calculating the regular rate of
19 pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members, DMS did
20 not include the non-discretionary commission and bonus monies earned by PLAINTIFF and other
21 CALIFORNIA CLASS Members. Management and supervisors described the commission and
22 bonus program to potential and new employees as part of the compensation package. As a matter
23 of law, the commission and bonus compensation received by the PLAINTIFF and other
24 CALIFORNIA CLASS Members must be included in the "regular rate of pay." The failure to do
25 so has resulted in a systematic underpayment of overtime compensation to PLAINTIFF and other
26 CALIFORNIA CLASS Members by DMS.

1 8. As a result of this miscalculation, the wage statements issued to PLAINTIFF and
2 other CALIFORNIA CLASS Members has violated California law, and in particular, Labor Code
3 Section 226(a), because the wage statements failed to show, among other things, the correct
4 overtime rate and the correct amount of total gross wages earned for certain pay periods during the
5 CALIFORNIA CLASS PERIOD.

6 9. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
7 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the
8 CALIFORNIA CLASS PERIOD caused by DMS's uniform policy and practice which failed to
9 lawfully compensate these employees for all their overtime hours worked. DMS's uniform policy
10 and practice alleged herein was an unlawful, unfair and deceptive business practice whereby DMS
11 retained and continues to retain wages due PLAINTIFF and the other members of the
12 CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek
13 an injunction enjoining such conduct by DMS in the future, relief for the named PLAINTIFF and
14 the other members of the CALIFORNIA CLASS who have been economically injured by DMS's
15 past and current unlawful conduct, and all other appropriate legal and equitable relief.

16 10. The true names and capacities, whether individual, corporate, subsidiary,
17 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
18 unknown to the PLAINTIFF who therefore sues these Defendants by such fictitious names
19 pursuant to Cal. Civ. Proc. Code § 474. The PLAINTIFF will seek leave to amend this Complaint
20 to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
21 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that the
22 Defendants named in this Complaint, including DOES 1 through 50, inclusive, are responsible in
23 some manner for one or more of the events and happenings that proximately caused the injuries
24 and damages hereinafter alleged.

25 11. The agents, servants and/or employees of the Defendants and each of them acting
26 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
27 agent, servant and/or employee of the Defendants, and personally participated in the conduct
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1 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
2 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
3 Defendants are jointly and severally liable to the PLAINTIFF and the other members of the
4 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
5 Defendants' agents, servants and/or employees.

6 **THE CONDUCT**

7 12. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above
8 Paragraphs

9 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed, and continues
10 to fail, to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA
11 CLASS for their overtime hours worked. DEFENDANT systematically, unlawfully and
12 unilaterally has failed to accurately calculate wages for overtime hours worked by the PLAINTIFF
13 and other members of the CALIFORNIA CLASS in order to avoid paying these employees the
14 correct overtime compensation. As a result, the PLAINTIFF and the other members of the
15 CALIFORNIA CLASS forfeit wages due them for regularly working overtime without
16 compensation at the correct overtime rates. DEFENDANT's uniform policy and practice to not pay
17 the members of the CALIFORNIA CLASS the correct overtime rate for all overtime hours worked
18 in accordance with applicable law is evidenced by DEFENDANT's business records, including but
19 not limited to, DEFENDANT'S payroll records, which demonstrate two separate payments each
20 pay period: one separate payment for hourly wages, which is used to calculate overtime rates; and
21 a second separate payment for non-discretionary commission and/or bonus payments, which is not
22 factored into the overtime rate of pay calculation.

23 14. In violation of the applicable sections of the California Labor Code and the
24 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
25 matter of company policy, practice and procedure, intentionally, knowingly and systematically has
26 failed to compensate the PLAINTIFF and the other members of the CALIFORNIA CLASS at the
27 correct rate of pay for all overtime hours worked. This uniform policy and practice of
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1 DEFENDANT is intended to purposefully avoid the payment of the correct overtime compensation
2 as required by California law which allows DEFENDANT to illegally profit and gain an unfair
3 advantage over competitors who complied with the law. To the extent equitable tolling operates to
4 toll claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS
5 PERIOD should be adjusted accordingly.

6 15. DEFENDANT has also failed to provide the PLAINTIFF and the other members of
7 the CALIFORNIA CLASS with complete and accurate wage statements which have failed to
8 show, among other things, the correct overtime rate for overtime hours worked, including, work
9 performed in excess of eight (8) hours in a workday and forty (40) hours in any workweek. Cal.
10 Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an
11 accurate itemized wage statement in writing showing, among other things, gross wages earned and
12 all applicable hourly rates in effect during the pay period and the corresponding number of hours
13 worked at each hourly rate. As a result, DEFENDANT has provided PLAINTIFF and the other
14 members of the CALIFORNIA CLASS with wage statements which violate Cal. Lab. Code § 226.

15 16. By reason of this uniform conduct applicable to PLAINTIFF and all CALIFORNIA
16 CLASS Members, DEFENDANT committed acts of unfair competition in violation of the
17 California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*(the “UCL”), by
18 engaging in a company-wide policy and procedure which fails to accurately calculate and record
19 the overtime rate for the overtime hours worked by the PLAINTIFF and other CALIFORNIA
20 CLASS Members. The proper calculation of these employees’ overtime hour rates is the
21 DEFENDANT’s burden. As a result of DEFENDANT’s intentional disregard of the obligation to
22 meet this burden, DEFENDANT fails to properly calculate and/or pay all required overtime
23 compensation for work performed by the members of the CALIFORNIA CLASS and violated the
24 California Labor Code and regulations promulgated thereunder as herein alleged.

25 17. Specifically as to PLAINTIFF’s pay, DEFENDANT provided compensation to her
26 in the form of two components. One component of PLAINTIFF’s compensation was a base hourly
27 wage. The second component of the PLAINTIFF’s compensation were nondiscretionary
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1 commissions and/or sales and performance bonuses. DEFENDANT pays the commissions and
2 bonuses each month, so long as the PLAINTIFF meets certain predefined sales and/or performance
3 requirements. PLAINTIFF met DEFENDANT's predefined eligibility sales and performance
4 requirements in various months throughout her employment with DEFENDANT and
5 DEFENDANT paid PLAINTIFF the non-discretionary commission and bonus wages. During these
6 months in which PLAINTIFF was paid the non-discretionary commissions and performance bonus
7 compensation from DEFENDANT, PLAINTIFF also worked overtime hours for DEFENDANT,
8 but DEFENDANT never included the commissions and/or bonus compensation in PLAINTIFF's
9 regular rate of pay for the purposes of calculating what should have been PLAINTIFF's accurate
10 overtime rate and thereby underpaid the PLAINTIFF for overtime hours worked throughout her
11 employment with DEFENDANT. As an example, during the pay period of April 24, 2020 to May
12 8, 2020, the following facts are undisputed and are stated on DEFENDANT's itemized wage
13 statements: (a) DEFENDANT paid PLAINTIFF an hourly rate of \$20.50 for non-overtime hours
14 during the April 24-May 8, 2020 pay period; (b) PLAINTIFF worked 5.75 hours of overtime
15 during the April 24-May 8, 2020 pay period; (c) PLAINTIFF earned \$1,197.00 in the form of non-
16 discretionary commission wages during the April 24-May 8, 2020 pay period; (d) DEFENDANT
17 did not include the aforementioned commission wages in PLAINTIFF's overtime rate of pay, but
18 instead calculated PLAINTIFF'S overtime rate of pay to be \$30.75 (based solely off of the \$20.50
19 hourly rate) for the 5.75 hours of overtime incurred by PLAINTIFF during the April 24-May 8,
20 2020 pay period; and (e) DEFENDANT issued two separate paychecks and corresponding
21 itemized wage statements during the April 24-May 8, 2020 pay period: one paycheck for regular
22 and overtime hours worked, and a second, separate paycheck for the commissions earned. The
23 commission and/or bonus monies paid by DEFENDANT constituted wages within the meaning of
24 the California Labor Code and thereby should have been part of PLAINTIFF's "regular rate of
25 pay."

26 18. As a result of the aforementioned conduct, DEFENDANT provided PLAINTIFF
27 with wage statements that failed to accurately display PLAINTIFF's correct rates of overtime pay
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1 for certain pay periods in violation of Cal. Lab. Code § 226(a).

2 19. To date, DEFENDANT has not fully paid PLAINTIFF for all her overtime wages
3 still owed to her or any penalty wages owed to her under California Labor Code § 203.

4 **JURISDICTION AND VENUE**

5 20. Plaintiff realleges by reference, as if fully set forth herein, all of the above
6 Paragraphs.

7 21. This Court has jurisdiction over this Action pursuant to California Code of Civil
8 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action
9 is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
10 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382. This Court has jurisdiction over
11 Defendant because each co-defendant is a corporation, limited liability company or other business
12 entity authorized to do business in the State of California and registered with the California
13 Secretary of State to do sufficient business with sufficient minimum contacts in California, and/or
14 otherwise intentionally avail itself of the California market.

15 22. Venue is proper in this Court pursuant to California Code of Civil Procedure,
16 Sections 395 and 395.5, because PLAINTIFF worked for DEFENDANT in San Diego County,
17 California, and DEFENDANT (i) currently maintains and at all relevant times maintained offices
18 and facilities in this County and/or conducts substantial business in this County, and (ii) committed
19 the wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS
20 and CALIFORNIA LABOR SUB-CLASS.

21 23. The monetary damages and restitution sought by PLAINTIFF exceed the minimal
22 jurisdiction limits of the Superior Court and will be established according to proof at trial.
23 PLAINTIFF concedes that the amount in controversy for each named Plaintiff, which includes
24 each individual Plaintiff's claims for damages, restitution, civil penalties and *pro rata* share of
25 attorneys' fees, is less than \$75,000.

26 **THE CALIFORNIA CLASS AND FORMER EMPLOYEE SUBCLASS**

27 24. Plaintiff realleges by reference, as if fully set forth herein, all of the above
28

1 Paragraphs.

2 25. PLAINTIFF brings the First Cause Action for unpaid overtime, the Second Cause
3 of Action for inaccurate wage statements, and the Fourth Cause of Action for Unfair, Unlawful and
4 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") ,as
5 a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined
6 as "all individuals who are or previously were employed by Defendant Digital Media Solutions,
7 LLC in California as non-exempt employees who received commission and/or bonus compensation
8 payments during the same pay period in which they worked overtime hours (the 'CALIFORNIA
9 CLASS') at any time during the period beginning four (4) years prior to the filing of this Complaint
10 and ending on the date as determined by the Court (the 'CALIFORNIA CLASS PERIOD')."

11 26. PLAINTIFF brings the Third Cause Action for the unlawful failure to pay former
12 employees all wages owed at the time of their separation of employment in California on behalf of
13 a subclass, defined as "all individuals who were previously employed by Defendant Digital Media
14 Solutions, LLC in California as non-exempt employees who received commission and/or bonus
15 compensation payments during the same pay period in which they worked overtime hours at any
16 time during the period beginning three (3) years prior to the filing of this Complaint and ending on
17 the date as determined by the Court (the "FORMER EMPLOYEE SUBCLASS")."

18 27. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS
19 against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

20 28. The California Legislature has commanded that "all wages... ..earned by any person
21 in any employment are due and payable twice during each calendar month, on days designated in
22 advance by the employer as the regular paydays", and further that "[a]ny work in excess of eight
23 hours in one workday and any work in excess of 40 hours in any one workweek . . . shall be
24 compensated at the rate of no less than one and one-half times the regular rate of pay for an
25 employee." (Lab. Code § 204 and § 510(a).) The Industrial Welfare Commission (IWC), however,
26 is statutorily authorized to "establish exemptions from the requirement that an overtime rate of
27 compensation be paid... ..for executive, administrative, and professional employees, provided
28

1 [inter alia] that the employee is primarily engaged in duties that meet the test of the exemption,
2 [and] customarily and regularly exercises discretion and independent judgment in performing those
3 duties...” (Lab. Code § 510(a).) Neither the PLAINTIFF nor the other members of the
4 CALIFORNIA CLASS and/or the FORMER EMPLOYEE SUBCLASS qualify for exemption
5 from the above requirements.

6 29. DEFENDANT, as a matter of company policy, practice and procedure, and in
7 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
8 requirements, and the applicable provisions of California law, intentionally, knowingly, and
9 willfully, engaged in a practice whereby DEFENDANT systematically failed to correctly calculate
10 and record overtime compensation for overtime hours worked by PLAINTIFF and the other
11 members of the CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit of this
12 work, required employees to perform this work and permitted or suffered to permit this overtime
13 work.

14 30. DEFENDANT has the legal burden to establish that each and every CALIFORNIA
15 CLASS Member is paid the applicable rate for all overtime hours worked and to accurately
16 calculate the “regular rate of pay” by including the commission and bonus compensation that
17 PLAINTIFF and members of the CALIFORNIA CLASS were awarded on a monthly basis. The
18 DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed to
19 have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy or
20 practice to ensure that each and every CALIFORNIA CLASS Member is paid the applicable
21 overtime rate for all overtime hours worked, so as to satisfy their burden. This common business
22 practice applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a
23 class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
24 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this claim.

25 31. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
26 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the employee
27 for all overtime hours worked at the applicable rate, as required by California Labor Code §§ 204
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1 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the overtime
2 compensation for any member of the CALIFORNIA CLASS properly recalculated so as to include
3 all earnings in the overtime compensation calculation as required by California Labor Code §§
4 510, *et seq.*

5 32. Numerosity: The potential number of members of the CALIFORNIA CLASS and
6 FORMER EMPLOYEE SUBCLASS as defined is so numerous that joinder of all members would
7 be unfeasible and unpractical. The disposition of their claims through this class action will benefit
8 both the parties and this Court. The quantity of members of the CALIFORNIA CLASS and
9 FORMER EMPLOYEE SUBCLASS is currently unknown to PLAINTFF; however, it is estimated
10 that there are at least 400 members in the CALIFORNIA CLASS, and at least 200 members in the
11 FORMER EMPLOYEE SUBCLASS. The quantity and identity of such membership is readily
12 ascertainable via inspection of DEFENDANT's employment records, which DEFENDANT is
13 required to maintain under California law.

14 33. Typicality: The claims of PLAINTFF are typical of the claims of all members of
15 the CLASS mentioned herein because all members of the CLASS and FORMER EMPLOYEE
16 SUBCLASS sustained injuries and damages arising out of DEFENDANT's common course of
17 conduct in violation of California wage and hour law, and the injuries and damages of all members
18 of the CLASS and SUBCLASS were caused by DEFENDANT's wrongful conduct in violation of
19 California statutory and regulatory law, as alleged herein.

20 34. Adequacy: PLAINTFF is an adequate representative of the CALIFORNIA CLASS
21 and FORMER EMPLOYEE SUBCLASS and will fairly protect the interests of the members of the
22 CALIFORNIA CLASS and FORMER EMPLOYEE SUBCLASS, and has no interests antagonistic
23 to the members of the CALIFORNIA CLASS and FORMER EMPLOYEE SUBCLASS, and will
24 vigorously pursue this suit via attorneys who are competent, skilled and experienced in litigating
25 matters of this type.

26 35. Superiority. The nature of this action and the nature of the laws available to
27 PLAINTFF make the use of the class action format a particularly effective and appropriate
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1 procedure to afford relief to PLAINTFF for the wrongs alleged herein:

- 2 a. This case involves large corporate Defendants and a large number of
3 individual class members with common issues of law and fact.
4
- 5 b. If each individual member of the CALIFORNIA CLASS was required to file
6 an individual lawsuit, the large corporate Defendants would necessarily gain
7 an unconscionable advantage because Defendants would be able to exploit
8 and overwhelm the limited resources of each member of the CALIFORNIA
9 CLASS with Defendants' vastly superior financial and legal resources.
- 10 c. Requiring each individual member of the CALIFORNIA CLASS to pursue
11 an individual remedy would also discourage the assertion of lawful claims
12 by the members of the CALIFORNIA CLASS who would be disinclined to
13 pursue an action against Defendants because of an appreciable and
14 justifiable fear of retaliation and permanent damage to their lives, careers
15 and well being;
- 16 d. Proof of a common business practice or factual pattern, of which the
17 members of the CALIFORNIA CLASS and FORMER EMPLOYEE
18 SUBCLASS experienced, is representative of the CALIFORNIA CLASS
19 and FORMER EMPLOYEE SUBCLASS herein and will establish the right
20 of each of the members of CALIFORNIA CLASS and FORMER
21 EMPLOYEE SUBCLASS to recover on the causes of action alleged herein;
22 and
- 23 e. The prosecution of separate actions by the individual members of the
24 CALIFORNIA CLASS, even if possible, would create a substantial risk of
25 inconsistent and varying verdicts or adjudications with respect to the
26 individual members of the CALIFORNIA CLASS against Defendants,
27 which would establish potentially incompatible standards of conduct for
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1 Defendants and/or legal determinations with respect to individual members
2 of the CALIFORNIA CLASS.

3
4 Existence and Predominance of Common Questions of Fact and Law:

5 36. There are common questions of fact and law as to the members of the
6 CALIFORNIA CLASS and FORMER EMPLOYEE SUBCLASS, which predominate over
7 questions affecting only individual members of the CALIFORNIA CLASS and FORMER
8 EMPLOYEE SUBCLASS including, without limitation:

- 9 a. Whether DEFENDANT has unlawfully failed to correctly calculate and pay
10 overtime compensation to members of the CALIFORNIA CLASS in violation of
11 the California Labor Code and California regulations and the applicable California
12 Wage Order;
- 13 b. Whether the members of the CALIFORNIA CLASS are entitled to overtime
14 compensation for overtime hours worked under the overtime pay requirements of
15 California law;
- 16 c. Whether DEFENDANT fails to accurately record the applicable overtime rates for
17 all overtime hours worked by the PLAINTIFF and the other members of the
18 CALIFORNIA CLASS;
- 19 d. Whether DEFENDANT willfully failed to timely pay Plaintiff and members of the
20 FORMER EMPLOYEE SUBCLASS all wages due at the time of separation from
21 employment in accordance with applicable California law;
- 22 e. Whether DEFENDANT's policies and practices constituted unlawful or unfair
23 business practices under California's Unfair Competition Law;
- 24 f. What relief is necessary to remedy DEFENDANT's unfair and unlawful conduct as
25 herein alleged;
- 26 g. Whether the members of the CALIFORNIA CLASS are entitled to compensatory
27 damages, and if so, the means of measuring such damages;
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- h. Whether the members of the CALIFORNIA CLASS are entitled to injunctive relief;
- i. Whether the members of the CALIFORNIA CLASS are entitled to restitution;
- j. Whether the members of the CALIFORNIA CLASS are entitled to disgorgement of profits;
- k. Whether the members of the FORMER EMPLOYEE SUBCLASS are entitled to “waiting time penalties;”
- l. Whether DEFENDANT is liable for pre-judgment interest; and
- m. Whether DEFENDANT is liable for attorneys’ fees and costs.

FIRST CAUSE OF ACTION

(Failure to Pay Overtime Compensation)

(On Behalf of PLAINTIFF and the CALIFORNIA CLASS)

37. Plaintiff realleges by reference, as if fully set forth herein, all of the above Paragraphs.

38. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANT’s failure to accurately calculate the applicable rates for all overtime hours worked by PLAINTIFF and other member of the CALIFORNIA CLASS and DEFENDANT’s failure to properly compensate the members of the CALIFORNIA CLASS for overtime hours worked, including, work performed in excess of eight (8) hours in a workday and forty (40) hours in any workweek.

39. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

40. Cal. Lab. Code § 510 further provides that employees in California shall not be employed more than eight (8) hours per workday and more than forty (40) hours per workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

41. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages, including overtime compensation and interest thereon, together with attorneys' fees and costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours

1 than those fixed by the Industrial Welfare Commission is unlawful.

2 42. DEFENDANT maintained a uniform wage practice of paying the PLAINTIFF and
3 the other members of the CALIFORNIA CLASS without regard to the correct applicable overtime
4 rate for the number of overtime hours they worked. As set forth herein, DEFENDANT's uniform
5 policy and practice is to unlawfully and intentionally deny timely payment of wages due for the
6 overtime hours worked by the PLAINTIFF and the other members of the CALIFORNIA CLASS,
7 and DEFENDANT has failed to pay these California employees the correct applicable overtime
8 wages for all overtime hours worked.

9 43. In committing these violations of the California Labor Code, DEFENDANT
10 inaccurately calculated the applicable overtime rates and consequently underpaid the actual hours
11 worked. DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and
12 other benefits in violation of the California Labor Code, the Industrial Welfare Commission
13 requirements and other applicable laws and regulations.

14 44. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, the
15 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
16 compensation for all overtime hours worked.

17 45. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
18 the overtime requirements of the law. None of these exemptions are applicable to the PLAINTIFF
19 and the other members of the CALIFORNIA CLASS. Further, the PLAINTIFF and the other
20 members of the CALIFORNIA CLASS are not subject to a valid collective bargaining agreement
21 that would preclude the causes of action contained herein this Complaint. Rather, the PLAINTIFF
22 brings this Action on behalf of herself and the CALIFORNIA CLASS based on DEFENDANT's
23 violations of non-negotiable, non-waiveable rights provided by the State of California.

24 46. During the CALIFORNIA CLASS PERIOD, the PLAINTIFF and the other
25 members of the CALIFORNIA CLASS were paid less for hour worked that they were entitled to,
26 constituting a failure to pay all earned wages.

27 47. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of
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1 the CALIFORNIA CLASS overtime wages for the hours they worked which were in excess of the
2 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
3 though the PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly
4 required to work, and did in fact work, overtime hours as to which DEFENDANT failed to
5 accurately record and pay using the applicable overtime rate as evidenced by DEFENDANT's
6 business records and witnessed by employees.

7 48. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
8 compensation to the PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
9 number of hours they worked, the PLAINTIFF and the other members of the CALIFORNIA
10 CLASS have suffered and will continue to suffer an economic injury in amounts which are
11 presently unknown to them and which will be ascertained according to proof at trial.

12 49. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
13 recovery of all unpaid wages, including overtime wages, according to proof, interest, attorneys'
14 fees and costs of suit, as well as the assessment of any statutory penalties against DEFENDANT, in
15 a sum as provided by the California Labor Code and/or other applicable statutes.

16 **SECOND CAUSE OF ACTION**

17 (Failure to Provide Accurate Itemized Wage Statements in Violation of
18 Labor Code §§ 226 and 226.3; Cal. Code Regs., Title 8 § 11040 section 7)

19 (On Behalf of PLAINTIFF and the CALIFORNIA CLASS)

20 50. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above
21 Paragraphs.

22 51. Labor Code Section 226 requires an employer to keep accurate, itemized pay
23 statements. Under California law, gross wages earned, the precise, actual number of hours and
24 minutes worked by a non-exempt employee, all deductions, net wages earned, inclusive dates of
25 the pay period, the name of the employee, the name and address of the legal entity that is the
26 employer, and all applicable hourly rates in effect during the pay period must be accurately
27 itemized on each pay statement.

1 52. At all times relevant herein, DEFENDANT violated Cal. Lab. Code § 226 in that
2 DEFENDANT failed to provide an accurate wage statement in writing that properly and accurately
3 itemized the effective overtime rates of pay for overtime hours worked by the PLAINTIFF and the
4 other members of the CALIFORNIA CLASS and thereby also failed to set forth the correct
5 overtime wages earned by the employees.

6 53. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code §
7 226, causing injury and damages to the PLAINTIFF and the other members of the CALIFORNIA
8 CLASS. These damages include, but are not limited to, costs expended calculating the correct rates
9 for the overtime hours worked and the amount of employment taxes which were not properly paid
10 to state and federal tax authorities. These damages are difficult to estimate. Therefore, the
11 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS may elect to
12 recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
13 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant
14 to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no event more
15 than four thousand dollars (\$4,000.00) for the PLAINTIFF and each respective member of the
16 CALIFORNIA LABOR SUB-CLASS herein).

17 **THIRD CAUSE OF ACTION**

18 (Failure to Pay Compensation When Due at Time of Separation of Employment
19 in Violation of Labor Code §§ 201-203)

20 (On Behalf of PLAINTIFF and the FORMER EMPLOYEE SUBCLASS)

21 54. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above
22 Paragraphs.

23 55. California Labor Code Section 201 requires an employer who discharges an
24 employee to pay compensation due and owing said employee immediately upon discharge.
25 California Labor Code Section 202 requires an employer to promptly pay compensation due and
26 owing an employee within 72 hours of that employee's separation of employment by resignation.
27 California Labor Code Section 203 provides that if an employer willfully fails to pay compensation
28 promptly upon discharge or resignation as required pursuant to California Labor Code Sections

201 and 202, said employer is liable to said employee for waiting time penalties.

56. PLAINTIFF alleges, on the basis of information and belief, that DEFENDANT has willfully failed and have refused to pay all compensation and wages due and owing, including overtime compensation, to members of the FORMER EMPLOYEE SUBCLASS, including PLAINTIFF, upon their separation of employment.

57. DEFENDANT's failure to timely pay compensation and wages to members of the FORMER EMPLOYEE SUBCLASS at the time of their separation of employment has been willful. As a result, DEFENDANT is liable to PLAINTIFF and the members of the FORMER EMPLOYEE SUBCLASS for "waiting time penalties" under California Labor Code Section 203, in an amount to be ascertained at trial.

FOURTH CAUSE OF ACTION

(Unlawful and Unfair Business Practices: Business & Professions Code §§ 17200 *et seq.*)
(On behalf of PLAINTIFF and the CALIFORNIA CLASS)

58. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

59. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof. Code § 17021.

60. California Business & Professions Code §§ 17200, *et seq.* (the "UCL") defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition. Cal. Bus. & Prof. Code § 17203.

61. By the conduct alleged herein, DEFENDANT has engaged and continues to engage

1 in a business practice which violates California law, including but not limited to, Wage Order 4-
2 2001, the California Code of Regulations and the California Labor Code including Sections 510,
3 1194 & 1198, for which this Court should issue declaratory and other equitable relief pursuant to
4 Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
5 constitute unfair competition, including restitution of wages wrongfully withheld.

6 62. By the conduct alleged herein, DEFENDANT's practices were unlawful and unfair
7 in that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous or
8 substantially injurious to employees, and were without valid justification or utility for which this
9 Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
10 Business & Professions Code, including restitution of wages wrongfully withheld.

11 63. By the conduct alleged herein, DEFENDANT's practices were deceptive and
12 fraudulent in that DEFENDANT's uniform policy and practice failed to pay PLAINTIFF, and
13 other members of the CALIFORNIA CLASS, wages due for overtime hours worked, failed
14 accurately to record the applicable rate of all overtime hours worked, and failed to provide the
15 required amount of overtime compensation due to a systematic miscalculation of the overtime rate
16 that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
17 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
18 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
19 including restitution of wages wrongfully withheld.

20 64. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair
21 and deceptive in that DEFENDANT's employment practices caused the PLAINTIFF and the other
22 members of the CALIFORNIA CLASS to be underpaid during their employment with
23 DEFENDANT.

24 65. By and through the unlawful and unfair business practices described herein,
25 DEFENDANT has obtained valuable property, money and services from the PLAINTIFF and the
26 other members of the CALIFORNIA CLASS, including earned wages for all overtime hours
27 worked, and has deprived them of valuable rights and benefits guaranteed by law and contract, all
28

1 to the detriment of these employees and to the benefit of DEFENDANT so as to allow
2 DEFENDANT to unfairly compete against competitors who comply with the law.

3 66. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
4 and do, seek such relief as may be necessary to restore to them the money and property which
5 DEFENDANT has acquired, or of which the PLAINTIFF and the other members of the
6 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
7 business practices, including earned but unpaid wages for all hours worked.

8 67. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
9 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair and
10 deceptive, and that injunctive relief should be issued restraining DEFENDANT from engaging in
11 any unlawful and unfair business practices in the future.

12 68. PLAINTIFF is informed and believes, and thereon alleges, that unless restrained
13 and ordered to pay restitution and disgorge profits derived from these unlawful and unfair
14 employment practices, DEFENDANT will continue to engage in the unlawful and unfair acts
15 and/or omissions described in this Complaint.

16 **FIFTH CAUSE OF ACTION**
17 ***Labor Code Private Attorneys General Act of 2004***
18 ***(Labor Code § 2698 et seq.)***

19 (On Behalf of PLAINTIFF, All Aggrieved Employees and the State of California)

20 69. PLAINTIFF is informed and believes, and thereon alleges, that at all relevant times,
21 DEFENDANT has violated, and continues to violate, several provisions of the California Labor
22 Code, including but not limited to:

- 23 a. Sections 201 – 203 (Failure to Pay All Compensation Owed at Separation);
- 24 b. Section 204 (Failure to Timely Pay All Wages Earned);
- 25 c. Section 226 (Failure to Provide Accurate Itemized Wage Statements);
- 26 d. Section 226.3 (Penalties for Failure to Provide Accurate Wage Statements);
- 27 e. Section 510 (Unlawful Overtime Policies and Procedures);
- 28 f. Section 558 (Penalties for Violations in IWC Wage Orders);

1 g. Section 1174 (Failure to Maintain Accurate Payroll Records); and

2 h. Section 1194 (Failure to Pay Overtime Compensation).

3 70. Pursuant to Labor Code § 2699, PLAINTIFF brings this cause of action on behalf of
4 herself and all other current or former employees of DEFENDANT against whom one or more of
5 the alleged violations was committed and/or is being committed (“aggrieved employees,” as
6 defined by Section 2699(c)).

7 71. Pursuant to Labor Code Section 2699, PLAINTIFF seeks to recover from
8 DEFENDANT civil penalties for *each* Labor Code violation. The civil penalties are to be
9 calculated at the rate at which the civil penalty is to be assessed and collected by the Labor and
10 Workforce Development Agency or any of its departments, divisions, commissions, boards,
11 agencies, or employees.

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

19 73. Pursuant to Labor Code Section 2699, PLAINTIFF seeks an award of reasonable
20 attorney's fees and costs for bringing this cause of action on behalf of herself, the State of
21 California and DEFENDANT'S other current and former aggrieved employees against whom one
22 or more of the alleged violations was committed.

23 74. In compliance with Labor Code Section 2699.3, on August 5, 2020, PLAINTIFF
24 provided DEFENDANT and the California Labor & Workforce Development Agency (“LWDA”)
25 with written notice, via online filing and via certified mail, of the specific provisions of the Labor
26 Code alleged to have been violated by DEFENDANT, and the facts and theories to support the
27 allegations.

1 75. More than 65 days have elapsed since PLAINTIFF notified the LWDA of the
2 specific provisions of the Labor Code alleged to have been violated by DEFENDANT. To date, the
3 LWDA has not notified PLAINTIFF nor DEFENDANT s that it intends to investigate the alleged
4 violations contained in Plaintiff's August 5, 2020 notice.

5 76. Pursuant to California Labor Code § 2699.3, PLAINTIFF may commence a civil
6 action against DEFENDANT for civil penalties on behalf of herself, the State of California and
7 DEFENDANT'S other current and former aggrieved employees.

8 77. PLAINTIFF may maintain this cause of action against DEFENDANT for civil
9 penalties under Labor Code Section 2698 *et seq.* regardless of whether PLAINTIFF'S allegations
10 contained herein are certified for class treatment.

11 78. PLAINTIFF has not alleged any violation of Division 5 (commencing with Section
12 6300) of the Labor Code.

13 79. In compliance with Labor Code Section 2699.3, PLAINTIFF'S August 5, 2020
14 notice also provided DEFENDANT and the LWDA, with written notice, via online filing and via
15 certified mail, of the specific provisions of the Labor Code—not specified in Labor Code Section
16 2699.5— alleged to have been violated by DEFENDANT, including Labor Code Section 226.3
17 and Labor Code Section 558, as well as the facts and theories to support the allegations.

18 80. To date, DEFENDANT has not cured any of the alleged violations, and
19 DEFENDANT has not abated any of the violations alleged by PLAINTIFF in her August 5, 2020
20 notice. At all relevant times, DEFENDANT has not been in compliance with the underlying
21 statutes as specified in PLAINTIFF'S August 5, 2020 notice. At all relevant times, no aggrieved
22 employee has been made whole for the Labor Code violations described in PLAINTIFF'S August
23 5, 2020 notice.

24 81. To date, DEFENDANT has not given written notice to PLAINTIFF nor the LWDA
25 that any Labor Code violation alleged by PLAINTIFF in her August 5, 2020 notice has been cured.

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

4 **PRAYER FOR RELIEF**

5 WHEREFORE, PLAINTIFF, on her own behalf, and on behalf of all others similarly
6 situated, prays for judgment as follows:

7 1. That the Court issue an Order certifying the CALIFORNIA CLASS and FORMER
8 EMPLOYEE SUBCLASS, appointing the named PLAINTIFF as representatives of all others
9 similarly situated and appointing the law firms representing the named PLAINTIFF as counsel for
10 members of the CALIFORNIA CLASS and FORMER EMPLOYEE SUBCLASS;

11 2. For compensatory damages according to proof to PLAINTIFF and the members of
12 the CALIFORNIA CLASS and FORMER EMPLOYEE SUBCLASS;

13 3. For prejudgment interest at the legal rate pursuant to Civil Code §§ 3287, 3288 &
14 3289, and any other legal rate that may be applicable to PLAINTIFF 's and the CALIFORNIA
15 CLASS' causes of action;

16 4. For an Order compelling DEFENDANT to restore unpaid wages, expenditures,
17 losses, income and other related benefits (in the form of restitution) to each of the members of the
18 CALIFORNIA CLASS, including PLAINTIFF, who have suffered as a result of DEFENDANT's
19 unlawful and unfair employment practices alleged herein;

20 5. For an order compelling DEFENDANT to disgorge and pay over to PLAINTIFF
21 and the members of the CALIFORNIA CLASS all profits and savings resulting from
22 DEFENDANT's unlawful and unfair business practices alleged herein;

23 6. For issuance of a permanent injunction enjoining DEFENDANT from continuing to
24 engage in the unlawful and unfair business practices alleged herein;

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

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

1 9. For civil penalties pursuant to the Labor Code Private Attorneys General Act of
2 2004, according to the method of calculations set forth in Labor Code Sections 226.3, 558 and
3 2699; and

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

5 DATED: October 13, 2020

BLANCHARD, KRASNER & FRENCH

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8 
DAVID C. HAWKES

9 Attorneys for Plaintiff JACLYN BRIZZI,
10 Individually, on behalf of all others similarly situated,
11 on behalf of the general public.

12 MATCHA LAW
13 Stephen Matcha; SBN: 249176
14 steve@matchalaw.com
15 13223 Black Mountain Rd, #233
16 San Diego, CA 92129-2699
17 Telephone: (619) 565-3865

18 LAW OFFICE OF DAVID A. HUCH
19 David A. Huch; SBN: 222892
20 david.a.huch@gmail.com
21 12223 Highland Ave., Ste. 106-574
22 Rancho Cucamonga, CA 91739
23 Telephone: (909) 463-6363
24 Facsimile: (909) 614-7008
25
26
27
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