

FILED/ENDORSED

MAR - 2 2021

By: R. San Miguel
Deputy Clerk

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Brittany V. Berzin (Cal. State Bar No. 325121))
Jessica L. Hart (Cal State Bar No 331441)

Shimoda Law Corp.
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiffs SHIELA KEE, SILVIA
GUTIERREZ, and BELINDA LECHUGA
on behalf of themselves and similarly situated employees

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

SHIELA KEE, SILVIA GUTIERREZ, and
BELINDA LECHUGA on behalf of
themselves and similarly situated employees,

Plaintiffs,

vs.

DR. JEFFREY A. SALADIN, DENTAL
CORPORATION (D/B/A CHILDREN'S
CHOICE PEDIATRIC DENTAL CARE), a
California Corporation; CC AMULET
MANAGEMENT, LLC., a Delaware
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. 34-2020-00290072

**FIRST AMENDED CLASS ACTION AND
PAGA COMPLAINT**

**1. Failure to Pay Overtime Wages
(Labor Code §§ 510, 1194)**

**2. Failure to Pay Minimum Wages
(Labor Code § 1194)**

**3. Meal Period Violations
(Labor Code §§ 512, 226.7)**

**4. Rest Period Violations
(Labor Code §§ 226.7)**

**5. Wage Statement Violations
(Labor Code § 226)**

**6. Waiting Time Penalties
(Labor Code §§ 201-203)**

**7. Failure to Reimburse Expenses
(Labor Code § 2802)**

**8. Unfair Competition (Business &
Professions Code § 17200, et seq.)**

**9. Private Attorneys General Act
(Labor Code § 2699, et seq.)**

1 Plaintiffs SHIELA KEE, SILVIA GUTIERREZ, and BELINDA LECHUGA (hereinafter
2 collectively referred to as "Plaintiffs"), on behalf of themselves and all other similarly situated
3 employees hereby file this Complaint against Defendants DR. JEFFREY A. SALADIN, DENTAL
4 CORPORATION (D/B/A CHILDREN'S CHOICE PEDIATRIC DENTAL CARE), a California
5 Corporation; CC AMULET MANAGEMENT, LLC., a Delaware Corporation; and DOES 1 to 100,
6 inclusive (hereinafter all collectively referred to as "Defendants"). On information and belief,
7 Plaintiffs allege the following:

8 **INTRODUCTION**

9 1. This is a class action and Private Attorneys General Act ("PAGA") lawsuit brought by
10 Plaintiffs for failure to pay overtime wages, failure to pay minimum wages, meal period violations, rest
11 period violations, wage statement violations, waiting time penalties, unpaid reimbursements, and unfair
12 competition.

13 **JURISDICTION AND VENUE**

14 2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to
15 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
16 Labor Code and Wage Order Number 4.

17 3. Venue is proper pursuant to Civil Procedure Code sections 395(a) and 395.5, in that some
18 of the wrongful acts and violations of law asserted herein occurred within Sacramento County.
19 Additionally, Defendants' obligation to pay wages, including violations of California Labor Code
20 sections 201, 202, 203, 226, 226.7, 226.8, 246, 247, 247.5, 248.5, 510, 512, 1174, 1194, 2802, 2810.5,
21 and the applicable Industrial Welfare Commission Wage Order ("Wage Order") arose in Sacramento
22 County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

23 4. Plaintiff KEE has sought permission pursuant to California Labor Code section 2699 *et*
24 *seq.* to pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on
25 behalf of herself and other Aggrieved Employees. Pursuant to California Labor Code section 2699.3,
26 Plaintiff KEE gave written notice via online submission to the Labor and Workforce Development
27 Agency ("LWDA") on approximately September 30, 2020. Plaintiff KEE provided facts and legal bases
28 for her claims within the notice to the LWDA on all violations asserted under the Private Attorneys

1 General Act cause of action. Plaintiff KEE also submitted the \$75.00 filing fee. The September 30,
2 2020, notice was also sent via certified mail to Defendants on the same day. To date, the LWDA has not
3 provided any response to Plaintiff KEE's notice correspondence. Accordingly, Plaintiff KEE has
4 exhausted all administrative remedies pursuant to the Private Attorneys General Act ("PAGA") as to
5 Defendants and may bring this action on behalf of herself and all similarly situated employees, *i.e.*
6 Aggrieved Employees. See Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup.*
7 *Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005). Aggrieved Employees includes but are not
8 limited to the following: all non-exempt employees who have worked, or continue to work, for
9 Defendants in California from September 30, 2019 to the present.

10 PARTIES

11 5. Plaintiff SHIELA KEE ("KEE") is an individual over the age of eighteen (18) and is a
12 resident of the State of California.

13 6. Plaintiff SILVIA GUTIERREZ ("GUTIERREZ") is an individual over the age of
14 eighteen (18) and is a resident of the State of California.

15 7. Plaintiff BELINDA LECHUGA ("LECHUGA") is an individual over the age of
16 eighteen (18) and is a resident of the State of California.

17 8. On information and belief, Plaintiffs allege, DR. JEFFREY A. SALADIN, DENTAL
18 CORPORATION (D/B/A CHILDREN'S CHOICE PEDIATRIC DENTAL CARE) (hereinafter
19 referred to as "CCPDC"), is now and/or at all times mentioned in this Complaint was a California
20 Corporation and the owner and operator of an industry, business and/or facility doing business in the
21 State of California.

22 9. On information and belief, Plaintiffs allege, CC AMULET MANAGEMENT, LLC.,
23 (hereinafter referred to as "AMULET") is now and/or at all times mentioned in this Complaint was a
24 Delaware Corporation and the owner and operator of an industry, business and/or facility doing
25 business in the State of California.

26 10. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
27 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
28 are liable for the actions herein alleged. Plaintiffs will seek to amend this Complaint to allege the true

1 names and capacities of these DOE Defendants when they are ascertained. At all times mentioned
2 herein, each Defendants was the agent or employee of each of the other Defendants and was acting
3 within the course and scope of such agency or employment. The Defendants are jointly and severally
4 liable to Plaintiffs.

5 11. At all times mentioned herein, each Defendants was the agent or employee of each of the
6 other Defendants and was acting within the course and scope of such agency or employment. The
7 Defendants are jointly and severally liable to Plaintiffs.

8 12. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
9 were members of and/or engaged in a joint employment, joint venture, partnership and common
10 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
11 joint venture, partnership and common enterprise.

12 13. Defendants, and each of them, now and/or at all times mentioned in this Complaint
13 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

14 14. Defendants proximately caused Plaintiffs to be subjected to the unlawful practices,
15 wrongs, complaints, injuries and/or damages alleged in this Complaint.

16 **CLASS ALLEGATIONS**

17 **(As between Plaintiffs LECHUGA and GUTIERREZ and Defendants)**

18 15. Plaintiffs LECHUGA and GUTIERREZ bring the First through Eighth Causes of
19 Action on behalf of themselves and all others similarly situated as a class action pursuant to
20 California Code of Civil Procedure section 382. The class which Plaintiffs LECHUGA and
21 GUTIERREZ seek to represent is composed of, and defined, as follows:

22 Plaintiffs LECHUGA and GUTIERREZ and similarly situated employees
23 who have or continue to work for Defendants in California from four (4)
years prior to the filing of the initial Complaint to the present.

24 16. This action has been brought and may be properly maintained as a class action,
25 pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-
26 defined community of interests in the litigation and the proposed class is easily ascertainable.

27 (a) Numerosity: The putative class is so numerous that the individual joinder of all members
28 is impracticable under the circumstances of this case. While the exact number of class

1 members is unknown to Plaintiffs LECHUGA and GUTIERREZ at this time, Plaintiffs
2 LECHUGA and GUTIERREZ are informed and believes that Defendants have employed
3 as many as three hundred (300) individuals falling within the above stated class definition
4 throughout the State of California during the applicable statute of limitations, who were
5 subjected to the policies and practices outlined in this Complaint. As such, joinder of all
6 members of the putative class is not practicable.

7 (b) Common Questions Predominate: Common questions of law and fact exist as to all
8 members of the putative class and predominate over questions that affect only individual
9 members of the class. These common questions of law and fact include, without
10 limitation, the following:

- 11 i. Whether Defendants paid putative class members for all hours worked;
- 12 ii. Whether Defendants paid all overtime wages owed;
- 13 iii. Whether Defendants failed to correctly calculate putative class members' regular
14 rate of pay;
- 15 iv. Whether Defendants maintained accurate payroll records;
- 16 v. Whether Defendants failed to authorize and permit all meal and rest periods;
- 17 vi. Whether, as a result of Defendants' policies and practices, Plaintiffs LECHUGA
18 and GUTIERREZ and putative class members were not authorized and permitted
19 to take all meal and rest periods owed;
- 20 vii. Whether, as a result of Defendants' policies and practices, Plaintiffs LECHUGA
21 and GUTIERREZ and putative class members received all minimum and
22 overtime wages due;
- 23 viii. Whether, as a result of Defendants' policies and practices, Plaintiffs LECHUGA
24 and GUTIERREZ and putative class members received all wages, due and owing,
25 at the time of their termination or separation; and
- 26 ix. Whether Defendants provided Plaintiffs LECHUGA and GUTIERREZ and
27 putative class members with wage statements that complied with Labor Code
28 section 226.

- 1 (c) Typicality: Plaintiffs LECHUGA and GUTIERREZ's claims are typical of the claims of
2 the members of the putative class. The putative class also sustained damages arising out
3 of Defendants' common course of conduct in violation of the law, as complained of
4 herein. Plaintiffs LECHUGA and GUTIERREZ and all members of the putative class
5 were non-exempt employees who were not paid minimum and overtime wages, meal and
6 rest period premiums, and reimbursements arising out of Defendants' common course of
7 conduct in violation of the law, as complained of herein. Additionally, Defendants issued
8 Plaintiffs LECHUGA and GUTIERREZ and all members of the putative class wage
9 statements that did not comply with Labor Code section 226. As a result, Plaintiffs
10 LECHUGA and GUTIERREZ and each member of the putative class will have suffered
11 the same type of harm and seek the same type of recovery based on the same legal
12 theories.
- 13 (d) Adequacy: Plaintiffs LECHUGA and GUTIERREZ will fairly and adequately protect the
14 interests of the members of the putative class. For all relevant times, Plaintiffs
15 LECHUGA and GUTIERREZ resided in California and worked for Defendants in
16 California. Moreover, Plaintiffs LECHUGA and GUTIERREZ are adequate
17 representatives of the putative class as Plaintiffs LECHUGA and GUTIERREZ have no
18 interests that are adverse to those of putative class members. Additionally, Plaintiffs
19 LECHUGA and GUTIERREZ have retained counsel who has substantial experience in
20 complex civil litigation and wage and hour matters.
- 21 (e) Superiority: A class action is superior to other available means for the fair and efficient
22 adjudication of the controversy since individual joinder of all members of the putative
23 class is impracticable. Class action treatment will permit a larger number of similarly
24 situated persons to prosecute their common claims in a single forum simultaneously,
25 efficiently, and without the unnecessary duplication of effort and expense that numerous
26 individual actions would engender. Further, as damages suffered by each individual
27 member of the class may be relatively small, the expenses and burden of the individual
28 litigation would make it difficult or impossible for individual members of the class to

1 redress the wrongs done to them, and an important public interest will be served by
2 addressing the matter as a class action. The cost to the court system of adjudication of
3 such individualized litigation would be substantial. Individualized litigation would also
4 present the potential for inconsistent or contradictory judgments.

5 17. Plaintiffs LECHUGA and GUTIERREZ are unaware of any difficulties that are likely to
6 be encountered in the management of this action that would preclude its maintenance as a class action.

7 **GENERAL ALLEGATIONS**

8 18. Plaintiffs incorporate by reference and re-alleges paragraphs 1 through 17 as though fully
9 set forth herein.

10 19. Plaintiff KEE worked for Defendant CCPDC from approximately September 2019
11 through September 8, 2020, as a non-exempt Dental Assistant. Initially, Plaintiff KEE worked out of the
12 Natomas location, but was, thereafter, transferred to the Stockton location when it opened in the summer
13 of 2020. Plaintiff GUTIERREZ similarly worked for Defendant CCPDC as a non-exempt Dental
14 Assistant from November 2019 until August 2020 at the Natomas and Stockton locations.

15 20. Plaintiff LECHUGA worked for an associated but separate employer, AMULET, as a
16 Treatment Coordinator from March 2020 to January 2021. Plaintiff LECHUGA worked out of the
17 Stockton location, but routinely traveled to locations in Antioch, Lodi, and Lincoln to cover shifts and
18 transport supplies.

19 21. Similarly situated employees also worked for Defendants as non-exempt employees.
20 Plaintiffs and similarly situated employees regularly worked over eight (8) hours in a day and/or forty
21 (40) hours in a week, incurring overtime. Plaintiffs and similarly situated employees were also paid
22 non-discretionary remuneration, such as bonuses, for performing certain tasks – such as dental sealants
23 and signing up patients for treatment plans.

24 22. Due to Defendants policies and staffing and workflow issues, Plaintiffs and similarly
25 situated employees were not authorized and permitted to take all meal and rest periods they were entitled
26 to, being paid meal period premiums on occasions. Additionally, Defendants did not correctly
27 incorporate the value of the non-discretionary remuneration, such as bonuses, into Plaintiffs and
28

1 similarly situated employees' regular rate of pay when calculating overtime, double time, meal and rest
2 period premiums, or sick leave pay.

3 23. Defendants also failed to pay Plaintiffs and similarly situated employees for all hours
4 worked. Plaintiffs and similarly situated employees would sometimes have to wait a few minutes for a
5 computer to be available to log into their shifts in the morning and when they were returning from break.
6 Plaintiffs and similarly situated employees were not paid for this time. Plaintiffs also report that there
7 were time keeping errors on days where the time keeping system would not accept their log in for
8 whatever reason. When the time was then adjusted or corrected, this would sometimes result in
9 underpayment for hours worked. Further, Plaintiffs and similarly situated employees were not
10 consistently, or properly, paid Reporting Time Pay of no less than two (2) hours and no more than four
11 (4) hours when they reported to work and were sent home by management. As a result, Plaintiffs and
12 similarly situated employees were not paid at least the minimum wage for each hour they worked.
13 Defendants also failed to maintain accurate records of the hours Plaintiffs and similarly situated
14 employees worked.

15 24. Defendants further failed to pay Plaintiffs and similarly situated employees for use of
16 their personal cell phones for work purposes and car mileage for work-related car travel. For instance,
17 at times, when the office needed repairs, Plaintiff KEE would use applications on her cell phone to
18 communicate and make arrangement with repair personnel. Plaintiff LECHUGA similarly would use
19 her cell phone to communicate with co-workers, schedule appointments, and take pictures of patients for
20 the Orthodontists. Additionally, Plaintiffs and similarly situated employees would sometimes have to
21 travel to other worksites during the day to pick up supplies. Plaintiffs and similarly situated employees
22 were not properly reimbursed for their cell phone use or mileage for supply runs.

23 25. Finally, Defendants failed to provide Plaintiffs and similarly situated employees with
24 legally compliant paystubs. Specifically, the paystubs Defendants issued did not: (1) correctly identify
25 the employer's legal name and address and (2) did not properly itemize the total hours worked,
26 accurately state the regular and overtime rates of pay, accurately list missed meal and rest period
27 premiums owed, or accurately state gross and net wages earned. As a result, Plaintiffs and similarly
28

1 situated employees were neither able to determine their employer's legal name nor the total wages owed
2 to them from their paystubs alone.

3 26. As of this date of this letter, Defendants have not paid Plaintiffs and similarly situated
4 employees all minimum wages, Reporting Time Pay, overtime and double time wages, reimbursement
5 expenses, paid sick time, and meal and rest period premiums owed to them.

6 **CAUSES OF ACTION**

7 **FIRST CAUSE OF ACTION**
8 **FAILURE TO PAY OVERTIME WAGES**
9 **(As to all Defendants)**

10 27. Plaintiffs incorporate by reference and re-alleges paragraphs 1 through 26 as though fully
11 set forth herein.

12 28. During the period Plaintiffs were employed by Defendants, Defendants were required to
13 compensate Plaintiffs at one and one-half (1½) times the regular rate of pay for hours worked in excess
14 of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
15 hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 1, section (3)(A);*
16 *Cal. Lab. Code §§ 510, 1194.*

17 29. Plaintiffs and similarly situated employees worked in excess of eight (8) hours per day
18 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
19 Defendants failed to compensate Plaintiffs and similarly situated employees for all overtime hours
20 worked at their regular rate of pay.

21 30. Plaintiffs and similarly situated employees were not exempt from overtime protections
22 employees under the California Wage Orders and Labor Code.

23 31. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees
24 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
25 the extent pertinent as if set forth here in full.

26 **SECOND CAUSE OF ACTION**
27 **FAILURE TO PAY MINIMUM WAGES**
28 **(As to all Defendants)**

32. Plaintiffs incorporate by reference and re-alleges paragraphs 1 through 31 as though fully
set forth herein.

33. For the period preceding the filing of this Complaint, Defendants were required to compensate Plaintiffs and similarly situated employees with at least California's applicable minimum for every hour worked. *See* MW-Order 2019; IWC Wage Order, No. 1, section 4(A); Cal. Lab. Code § 1194.

34. Plaintiffs were not exempt to the State's Minimum Wage Order. Defendants were aware of its obligation to pay the minimum wage for each hour worked but failed to do so.

35. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(As to all Defendants)

36. Plaintiffs incorporate by reference and re-alleges paragraphs 1 through 35 as though fully set forth herein.

37. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

38. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 1, section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

39. California Labor Code section 512 and Wage Order No. 1 section 11(B) further provide that employers may not employ employees for a work period for more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes. However, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their regular rate of compensation for each meal period not provided.

40. Defendants employed Plaintiffs and similarly situated employees for periods of more than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiffs and similarly situated employees worked more than ten (10) hours in a day. Defendants also failed to allow Plaintiffs and similarly situated

1 employees to take their first meal period before the completion of their fifth hour of work and failed
2 to allow Plaintiffs and similarly situated employees to take their second meal period before the
3 completion of their tenth hour of work. Plaintiffs and similarly situated employees did not waive
4 their rights to all meal periods throughout their employment.

5 41. Defendants further failed to pay Plaintiffs and similarly situated employees the
6 applicable meal period premiums for any such missed meal breaks.

7 42. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated
8 employees have been damaged as stated in the section below entitled "DAMAGES," which is
9 incorporated here to the extent pertinent as if set forth here in full.

10 **FOURTH CAUSE OF ACTION**
11 **REST PERIOD VIOLATIONS**
(As to all Defendants)

12 43. Plaintiffs incorporate by reference and re-alleges paragraphs 1 through 42 as though fully
13 set forth herein.

14 44. An employer must provide an employee a rest period in accordance with the
15 applicable Wage Order and California Labor Code section 226.7.

16 45. California Labor Code section 226.7 and Wage Order No. 1, section 12(A) require an
17 employer to provide a rest period of not less than ten (10) minutes for each work period of more than
18 four (4) hours or a major fraction thereof.

19 46. Plaintiffs allege that Defendants failed to authorize and permit Plaintiffs and similarly
20 situated employees to take paid rest periods of at least ten (10) minutes for each work period that
21 they worked more than four (4) hours or a major fraction thereof.

22 47. Defendants further failed to pay Plaintiffs and similarly situated employees the
23 applicable rest period premiums for any such missed rest periods.

24 48. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated
25 employees have been damaged as stated in the section below entitled "DAMAGES," which is
26 incorporated here to the extent pertinent as if set forth here in full.

27 //

28 //

FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

49. Plaintiffs incorporate by reference and re-alleges paragraphs 1 through 48 as though fully set forth herein.

50. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

51. Plaintiffs allege that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not accurately itemize all applicable hourly rates in effect during the pay period, all regular, overtime and double time hours worked and corresponding rates of pay, and gross and net wages earned. The paystubs also did not accurately itemize Plaintiffs' and similarly situated employees' total hours worked, due to Defendants' failure to properly pay minimum and overtime wages. Plaintiffs and similarly situated employees were not able to promptly and easily determine their total hours worked from their paystubs alone. Additionally, Plaintiffs and similarly situated employees suffered confusion over whether they received all wages owed and were prevented from effectively

1 challenging information on their wage statements.

2 52. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated
3 employees have been damaged as stated in the section below entitled "DAMAGES," which is
4 incorporated here to the extent pertinent as if set forth here in full.

5 **SIXTH CAUSE OF ACTION**
6 **WAITING TIME PENALTIES**
7 **(As to all Defendants)**

8 53. Plaintiffs incorporate by reference and re-alleges paragraphs 1 through 52 as though fully
9 set forth herein.

10 54. An employer must pay an employee who is terminated all unpaid wages immediately
11 upon termination. *See* Cal. Lab. Code § 201.

12 55. An employer must pay an employee who resigns all unpaid wages within seventy-two
13 (72) hours of their resignation. *See* Cal. Lab. Code § 202.

14 56. Plaintiffs and similarly situated employees did not receive all wages, including minimum
15 and overtime wages, meal and rest period premiums, or all sick leave pay owed at their termination or
16 within the required time after their separation from employment.

17 57. An employer who willfully fails to pay an employee wages in accordance with California
18 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
19 days. *See* Cal. Lab. Code § 203.

20 58. Defendants knew of its obligation to pay Plaintiffs' and similarly situated employees'
21 their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiffs
22 and similarly situated employees were not paid for all regular and overtime hours, as it authorized the
23 practices and policies denying these wages. Such conduct shows Defendants had knowledge of earned,
24 but unpaid wages at the time of separation, yet Defendants still refused to pay the remaining wages
25 owed.

26 59. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees
27 have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by
28 thirty (30) days for Defendants' failure to pay all wages due.

//

SEVENTH CAUSE OF ACTION
FAILURE TO REIMBURSE EXPENSES
(As to all Defendants)

60. Plaintiffs incorporate by reference and re-alleges paragraphs 1 through 59 as though fully set forth herein.

61. California Labor Code section 2802(a) states that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

62. Defendants required Plaintiffs and similarly situated employees to use their personal cell phones for work-related purposes but failed to reimburse them for such use.

63. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to all Defendants)

64. Plaintiffs incorporate by reference and re-alleges paragraphs 1 through 63 as though fully set forth herein.

65. Unfair competition shall mean and include any unlawful, unfair 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. See California Business and Professions ("B&P") Code § 17200.

66. Plaintiffs and similarly situated employees were not paid all wages owed, including minimum and overtime wages, meal and rest period premiums, paid sick leave, and reimbursements for business expenses, during their employment or any time thereafter.

67. Plaintiffs further allege that such actions and/or conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and Professions Code 17200, *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

68. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiffs and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, 1194, 2802, and 29 U.S.C. sections 206, 216 and 217 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

NINTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to Defendants)

69. Plaintiffs incorporate by reference and re-alleges paragraphs 1 through 68 as though fully set forth herein.

70. Plaintiff KEE has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiff KEE and other Aggrieved Employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 4, § 3 (Failure to Pay Overtime Wages);
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 4, §§ 4, 5 (Failure to Pay Minimum Wages, and Reporting Time Pay);
- Violation of Labor Code §§ 226.7, 512 and Wage Order No. 4, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof);
- Violation of Labor Code § 226.7 and Wage Order No. 4, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof);
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements);
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages);
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses);
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave at the correct rate of pay);
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order); and

- Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records).

71. Plaintiff KEE seeks civil penalties against Defendants as provided in the California Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section 2699(f)(2).

72. Plaintiff KEE seeks these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

73. As a proximate result of Defendants' conduct, Plaintiff KEE and Aggrieved Employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;

2. As to the First Cause of Action:

a. Wages in an amount to be proven at trial;

b. Interest for the wages due pursuant to California Labor Code section 1194;

c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;

3. As to the Second Cause of Action:

a. Wages in an amount to be proven at trial;

b. Interest for the wages due pursuant to California Labor Code section 1194;

c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;

d. Liquidated damages pursuant to California Labor Code section 1194.2;

4. As to the Third Cause of Action:

a. Wages in an amount to be proven at trial;

b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;

//

1 5. As to the Fourth Cause of Action:

- 2 a. Wages in an amount to be proven at trial;
- 3 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
- 4 section 1021.5;

5 6. As to the Fifth Cause of Action:

- 6 a. Penalties as provided for in Labor Code section 226, including the greater of all
- 7 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
- 8 violation occurred and one hundred dollars (\$100.00) per employee for each
- 9 violation in the subsequent pay periods, but not to exceed four thousand dollars
- 10 (\$4,000.00);
- 11 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
- 12 226(e);

13 7. As to the Seventh Cause of Action:

- 14 a. An amount to be proven at trial;
- 15 b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

16 8. As to the Ninth Cause of Action:

- 17 a. For civil penalties as provided for in the Labor Code for each enumerated
- 18 violation;
- 19 b. For those Labor Code sections, the violation of which there is no civil penalty
- 20 provided, the default penalty provided in Labor Code section 2699(f): for any
- 21 initial violation, one hundred dollars (\$100) for each Aggrieved Employee per pay
- 22 period; For any subsequent violation, two hundred dollars (\$200) for each
- 23 Aggrieved Employee per pay period;
- 24 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699; and
- 25 d. For any other remedies as allowed by law and/or deemed appropriate by the
- 26 Court.

- 27 9. For such other and further relief as this Court may deem just and proper,
- 28 including, but not limited to:

- 1 a. Wages as proved at trial;
2 b. Injunctive and Declaratory relief;
3 c. Attorney's fees and costs as provided for by law; and
4 d. Interest.

5
6 Dated: March 1, 2021

Shimoda Law Corp.

7
8 By: 

9 Galen T. Shimoda

10 Justin P. Rodriguez

11 Brittany V. Berzin

12 Jessica L. Hart

13 Attorneys for Plaintiffs
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28