

Larry W. Lee (State Bar No. 228175)
Max W. Gavron (State Bar No. 291697)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

Attorneys for Plaintiff and the Class

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

STEPHANIE AGUIRRE, as an individual
and on behalf of all others similarly situated,

Plaintiffs,

vs.

PINNACLE CLAIMS MANAGEMENT,
INC., a California corporation; WESTERN
GROWERS ASSOCIATION, a California
corporation; WESTERN GROWERS
INSURANCE SERVICES, a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 30-2020-01161977-CU-OE-CXC

Assigned for all purposes to: Judge William Claster

Dept: CX104

**CLASS ACTION COMPLAINT FOR
DAMAGES FOR:**

- (1) **VIOLATION OF LABOR CODE §§ 510,
558, AND 1194;**
- (2) **VIOLATION OF LABOR CODE §§ 226.7
AND 512;**
- (3) **VIOLATION OF LABOR CODE §§ 201-
203;**
- (4) **VIOLATION OF LABOR CODE § 226(a);**
- (5) **VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200, *ET SEQ.*;
AND**
- (6) **VIOLATION OF LABOR CODE § 2698,
*ET SEQ.***

DEMAND OVER \$25,000.00

1 Plaintiff Stephanie Aguirre (“Plaintiff”), hereby submits this Class Action Complaint
2 against Defendants Pinnacle Claims Management, Western Growers Association, Western
3 Growers Insurance Services, and Does 1-50 (hereinafter collectively referred to as
4 “Defendants”), as an individual and on behalf of the Class of all other similarly situated current
5 and former employees of Defendant for penalties and/or damages for failure to properly calculate
6 the regular rate of pay for purposes of paying overtime, meal period premiums, and sick pay,
7 provide off-duty meal periods, pay all wages owed upon separation of employment, and provide
8 accurate itemized wage statements under California Labor Code statutes, and restitution for
9 unfair business practices in violation of Business and Professions Code § 17200, *et seq.*, as
10 follows:

11 **INTRODUCTION**

12 1. This class action is within the Court’s jurisdiction under California Labor Code
13 §§ 201-203, 226(a), 226.7, 246, 510, 512, 558, 1194 and 2698, *et seq.*, the California Industrial
14 Welfare Commission’s (“IWC”) Wage Orders, and the California Unfair Competition Law (the
15 “UCL”), codified at California Business and Professions Code § 17200, *et seq.*

16 2. This Complaint challenges systemic illegal employment practices resulting in
17 violations of the California Labor Code and Business and Professions Code against employees of
18 Defendants.

19 3. Plaintiff is informed and believes and based thereon alleges that Defendants
20 jointly and severally have acted intentionally and with deliberate indifference and conscious
21 disregard to the rights of all employees by failing to properly calculate the regular rate of pay for
22 purposes of paying overtime, meal period premiums, and sick pay, provide off-duty meal breaks,
23 pay all wages owed upon separation of employment, and provide accurate itemized wage
24 statements to Plaintiff and the Class.

25 4. Plaintiff is informed and believes and based thereon alleges that Defendants have
26 engaged in, among other things a system of willful violations of the California Labor Code,
27 Business and Professions Code and applicable IWC Wage Orders by creating and maintaining
28 policies, practices and customs that knowingly deny employees the above stated rights and

benefits.

5. The policies, practices and customs of Defendants described above and below have resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that routinely adhere to the strictures of the California Labor Code and the California Business and Professions Code.

JURISDICTION AND VENUE

6. The Court has jurisdiction over the violations of the California Labor Code §§ 201-203, 226(a), 226.7, 246, 510, 512, 558, 1194 and 2698, *et seq.*, and the UCL.

7. Venue is proper in Orange County because Defendants maintain operations in Orange County.

PARTIES

8. Plaintiff was employed by Defendants as a call center representative from about February 2019, until on or about June 1, 2020. Plaintiff worked as an hourly, non-exempt employee.

9. Plaintiff was and is the victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived her of the rights guaranteed by California Labor Code §§ 201-203, 226(a), 226.7, 246, 510, 512, 558, 1194, and 2698, *et seq.*, the applicable IWC Wage Orders, and the UCL.

10. Plaintiff is informed and believes and based thereon alleges that Defendant Pinnacle Claims Management, Inc. was and is a California corporation doing business in the County of Orange. Plaintiff is informed and believes and based thereon alleges that Pinnacle Claims Management, Inc. processes claims for Western Growers Association.

11. Plaintiff is informed and believes and based thereon alleges that Defendant Western Growers Association was and is a California corporation doing business in the County of Orange. Plaintiff is informed and believes and based thereon alleges that Western Growers Association is an association that represents local and regional family farmers growing produce in California and other areas.

12. Plaintiff is informed and believes and based thereon alleges that Defendant

1 Western Growers Insurance Services was and is a California corporation doing business in the
2 County of Orange. Plaintiff is informed and believes and based thereon alleges that Western
3 Growers Insurance Services provides risk mitigation and management solutions for the
4 agriculture industry.

5 13. Plaintiff is informed and believes and based thereon alleges that at all times herein
6 mentioned Defendant and Does 1 through 50 are and were business entities, individuals, and
7 partnerships, licensed to do business and actually doing business in the State of California.

8 14. As such, and based upon all the facts and circumstances incident to Defendants'
9 business in California, Defendants are subject to California Labor Code §§ 201-203, 226(a),
10 226.7, 246, 510, 512, 558, 1194 and 2698, *et seq.*, the IWC Wage Orders, and the UCL.

11 15. Plaintiff does not know the true names or capacities, whether individual, partner
12 or corporate, of the Defendants sued herein as Does 1 through 50, inclusive, and for that reason,
13 said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
14 complaint when the true names and capacities are known. Plaintiff is informed and believes and
15 based thereon alleges that each of said fictitious Defendants were responsible in some way for
16 the matters alleged herein and proximately caused Plaintiff and members of the general public
17 and class to be subject to the illegal employment practices, wrongs and injuries complained of
18 herein.

19 16. At all times herein mentioned, each of said Defendants participated in the doing
20 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
21 Defendants, and each of them, were the agents, servants and employees of each of the other
22 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
23 acting within the course and scope of said agency and employment.

24 17. Plaintiff is informed and believes and based thereon alleges that at all times
25 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
26 joint venturer of, or working in concert with each of the other co-defendants and was acting
27 within the course and scope of such agency, employment, joint venture, or concerted activity.
28 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of

1 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
2 Defendants.

3 18. At all times herein mentioned, Defendants, and each of them, were members of,
4 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
5 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

6 19. At all times herein mentioned, the acts and omissions of various Defendants, and
7 each of them, concurred and contributed to the various acts and omissions of each and all of the
8 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
9 herein mentioned, Defendants, and each of them, ratified each and every act or omission
10 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
11 and abetted the acts and omissions of each and all of the other Defendants in proximately causing
12 the damages as herein alleged.

13 CLASS ACTION ALLEGATIONS

14 20. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
15 California Code of Civil Procedure § 382, of the following classes (collectively, “Class”):

- 16 a. All current and former non-exempt employees of Defendants in the State
17 of California, who earned non-discretionary wages, including but not
18 limited to referral bonus incentive wages, and overtime wages during the
19 same workweek, at any time from April 6, 2016, through the present (the
20 “Overtime Regular Rate Class”);
- 21 b. All current and former non-exempt employees of Defendants in the State
22 of California, who earned non-discretionary wages, including but not
23 limited to referral bonus incentive wages, and CA Lunch Premiums during
24 the same workweek, at any time from April 6, 2016, through the present
25 (the “Meal Period Premium Regular Rate Class”);
- 26 c. All current and former non-exempt employees of Defendants in the State
27 of California, who worked more than 5 hours in any shift, at any time from
28 April 6, 2016, through the present (the “Meal Period Class”);

1 d. All current and former non-exempt employees of Defendants in the State
2 of California who earned non-discretionary wages, including but not
3 limited to referral bonus incentive wages, and sick pay during the same
4 workweek, and whose employment ended at any time from April 6, 2017,
5 through the present (the “Sick Pay Class”).

6 21. **Numerosity and Ascertainability:** The members of the Class are so numerous
7 that joinder of all members would be impractical, if not impossible. The identity of the members
8 of the Class is readily ascertainable by review of Defendants’ records, including payroll records.
9 Plaintiff alleges that Defendants: (a) failed to pay employees overtime wages at the correct
10 regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code
11 §§ 510, 558, and 1194; (b) failed to provide off-duty meal periods to employees who worked 5
12 hours or longer in one shift and/or pay meal period premiums at the correct regular rate of pay
13 that included all non-discretionary remuneration, in violation of Labor Code §§ 226.7, and 512;
14 (c) failed to pay employees sick pay at the correct regular rate of pay that included all non-
15 discretionary remuneration, in violation of Labor Code §§ 201-203 and 246; (d) failed to provide
16 accurate, itemized wage statements, in violation of Labor Code § 226(a); and (e) engaged in
17 Unfair Business Practices in violation of the UCL, the California Labor Code, and the applicable
18 IWC Wage Orders.

19 22. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
20 necessary steps to represent fairly and adequately the interests of the Class defined above.
21 Plaintiff’s attorneys are ready, willing and able to fully and adequately represent the Class and
22 individual Plaintiff. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class
23 actions in the past and currently have a number of wage-and-hour class actions pending in
24 California courts.

25 23. Defendants uniformly administered a corporate policy, practice of: (a) failing to
26 pay employees overtime wages at the correct regular rate of pay that included all non-
27 discretionary remuneration, in violation of Labor Code §§ 510, 558, and 1194; (b) failing to
28 provide off-duty meal periods to employees who worked 5 hours or longer in one shift and/or

1 pay meal period premiums at the correct regular rate of pay that included all non-discretionary
2 remuneration, in violation of Labor Code §§ 226.7, and 512; (c) failing to pay employees sick
3 pay at the correct regular rate of pay that included all non-discretionary remuneration, in
4 violation of Labor Code §§ 201-203 and 246; (d) failing to provide accurate, itemized wage
5 statements, in violation of Labor Code § 226(a); and (e) engaging in Unfair Business Practices in
6 violation of the UCL, the California Labor Code, and the applicable IWC Wage Orders.

7 **24. Common Question of Law and Fact:** There are predominant common questions
8 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
9 concerning Defendants' policy and practice of: (a) failing to pay employees overtime wages at
10 the correct regular rate of pay that included all non-discretionary remuneration, in violation of
11 Labor Code §§ 510, 558, and 1194; (b) failing to provide off-duty meal periods to employees
12 who worked 5 hours or longer in one shift and/or pay meal period premiums at the correct
13 regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code
14 §§ 226.7, and 512; (c) failing to pay employees sick pay at the correct regular rate of pay that
15 included all non-discretionary remuneration, in violation of Labor Code §§ 201-203 and 246; (d)
16 failing to provide accurate, itemized wage statements, in violation of Labor Code § 226(a); and
17 (e) engaging in Unfair Business Practices in violation of the UCL, the California Labor Code,
18 and the applicable IWC Wage Orders.

19 **25. Typicality:** The claims of Plaintiff are typical of the claims of all members of the
20 Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar and typical
21 manner as the Class members. As with other non-exempt employees, Plaintiff regularly worked
22 shifts of 5 hours or more and was denied the opportunity to take an off-duty meal break of at
23 least 30 minutes, in violation of Labor Code § 512. In lieu of receiving timely, off-duty meal
24 breaks, Plaintiff was not paid meal premium compensation at the correct regular rate of pay, in
25 violation of Labor Code § 226.7. In addition, Plaintiff earned non-discretionary remuneration,
26 including but not limited to referral bonus incentive wages. However, the non-discretionary
27 wages were not calculated into the regular rate of pay for the purposes of paying overtime, meal
28 period premiums, and sick pay. Rather, such wages were paid at the employee's base rate of

1 pay. As such, Plaintiff is owed additional overtime, meal period premium, and sick pay based on
2 the correct, higher regular rate of pay. To date, Plaintiff has yet to receive the underpaid
3 overtime, meal period premium, and sick pay owed to her. Thus, Defendants are liable for
4 waiting time penalties under Labor Code § 203. Furthermore, as a result of the aforementioned
5 meal period violations, overtime rate miscalculation, meal period premium miscalculation, and
6 sick pay rate miscalculation, the wage statements Plaintiff received identified incorrect hourly
7 rates of pay and net and gross wages earned, in violation of Labor Code § 226(a). As such,
8 Plaintiff is a member of the Class and has suffered the alleged violations of California Labor
9 Code §§ 201-203, 226(a), 226.7, 246, 510, 512, 558, and 1194, and the applicable IWC Wage
10 Orders.

11 26. The California Labor Code and upon which Plaintiff bases these claims is broadly
12 remedial in nature. These laws and labor standards serve an important public interest in
13 establishing minimum working conditions and standards in California. These laws and labor
14 standards protect the average working employee from exploitation by employers who may seek
15 to take advantage of superior economic and bargaining power in setting onerous terms and
16 conditions of employment.

17 27. The nature of this action and the format of laws available to Plaintiff and
18 members of the Class identified herein make the class action format a particularly efficient and
19 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
20 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
21 advantage since it would be able to exploit and overwhelm the limited resources of each
22 individual Plaintiff with Defendants' vastly superior financial and legal resources. Requiring
23 each Class member to pursue an individual remedy would also discourage the assertion of lawful
24 claims by employees who would be disinclined to file an action against their former and/or
25 current employer for real and justifiable fear of retaliation and permanent damage to their careers
26 at subsequent employment.

27 28. The prosecution of separate actions by the individual class members, even if
28 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect

1 to individual Class members against Defendants and which would establish potentially
2 incompatible standards of conduct for Defendants, and/or (b) adjudications with respect to
3 individual Class members which would, as a practical matter, be dispositive of the interest of the
4 other Class members not parties to the adjudications or which would substantially impair or
5 impede the ability of the Class members to protect their interests. Further, the claims of the
6 individual members of the Class are not sufficiently large to warrant vigorous individual
7 prosecution considering all of the concomitant costs and expenses.

8 29. Such a pattern, practice and uniform administration of corporate policy regarding
9 illegal employee compensation described herein is unlawful and creates an entitlement to
10 recovery by the Plaintiff and the Class identified herein, in a civil action, for unpaid wages,
11 including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit
12 according to the mandate of California Labor Code §§ 201-203, 218.5, 226, and 1194, the
13 applicable IWC Wage Orders, and Code of Civil Procedure § 1021.5.

14 30. Proof of a common business practice or factual pattern, which the named Plaintiff
15 experienced and is representative of, will establish the right of each of the members of the Class
16 to recovery on the causes of action alleged herein.

17 31. The Class is commonly entitled to a specific fund with respect to the
18 compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to
19 restitution of those funds being improperly withheld by Defendants. This action is brought for
20 the benefit of the entire class and will result in the creation of a common fund.

21 **FIRST CAUSE OF ACTION**

22 **VIOLATION OF LABOR CODE §§ 510, 558, AND 1194**

23 **(BY PLAINTIFF AND THE OVERTIME REGULAR RATE CLASS AGAINST ALL**
24 **DEFENDANTS)**

25 32. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
26 though fully set forth herein.

27 33. This cause of action is brought pursuant to Labor Code § 510, which requires an
28 employer to pay employees overtime at a rate of one and one-half the employee's regular rate of

1 pay for any work in excess of eight hours in a workday or forty hours in a workweek.

2 34. As a pattern and practice, Defendants suffered and permitted employees to work
3 in excess of eight hours in a workday and/or over forty hours in a workweek without proper
4 overtime pay. During workweeks when Plaintiff and Overtime Regular Rate Class Members
5 worked overtime and earned non-discretionary remuneration, such as referral bonus incentive
6 wages during in the same workweek, Defendants failed to properly calculate the regular rate of
7 pay for purposes of paying overtime. Specifically, Defendants failed to factor any non-
8 discretionary remuneration earned into the calculation of the regular rate of pay for purposes of
9 paying overtime wages. As a result of such policy and practice, Defendants underpaid overtime
10 wages to Plaintiff and Overtime Regular Rate Class Members and thus owe additional overtime
11 wages.

12 35. Such a pattern, practice, and uniform administration of corporate policy regarding
13 illegal employee compensation as described herein is unlawful and creates an entitlement to
14 recovery by Plaintiff and Overtime Regular Rate Class Members in a civil action, for the unpaid
15 balance of the full amount of damages owed, including interest thereon, penalties, attorneys'
16 fees, and costs of suit according to the mandate of California Labor Code §§ 218.5, 510, 558, and
17 1194.

18 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
19 willful failure to provide all overtime wages due and owing to Plaintiff and Overtime Regular
20 Rate Class Members upon separation from employment results in a continued payment of wages
21 up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and other members
22 of the Overtime Regular Rate Class who have separated from employment from Defendants are
23 entitled to compensation pursuant to Labor Code § 203.

24 **SECOND CAUSE OF ACTION**

25 **VIOLATION OF LABOR CODE §§ 226.7 AND 512**

26 **(BY PLAINTIFF AND THE MEAL PERIOD CLASS AND THE MEAL PERIOD**
27 **PREMIUM REGULAR RATECLASS AGAINST ALL DEFENDANTS)**

28 37. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as

1 though fully set forth herein.

2 38. At all relevant times, Defendants failed in their affirmative obligation to ensure
3 that Plaintiff and Meal Period Class and Meal Period Premium Regular Rate Class Members had
4 the opportunity to take and were provided with off-duty meal periods in accordance with the
5 mandates of the California Labor Code and the applicable IWC Wage Order. At all relevant
6 times, Plaintiff and Meal Period Class and Meal Period Premium Regular Rate Class Members
7 were suffered and permitted to work through legally required meal breaks and were denied the
8 opportunity to take their off-duty meal breaks. This included, without limitation, Defendants
9 requiring Plaintiff and Meal Period Class and Meal Period Premium Regular Rate Class
10 Members to take meal breaks after the 5th hour of work. As such, Defendants are responsible
11 for paying premium compensation for missed meal periods pursuant to Labor Code § 226.7 and
12 the applicable IWC Wage Order. Defendants, as a matter of corporate policy and procedure,
13 regularly failed to pay such premium compensation to Plaintiff and Meal Period Class Members.
14 And even when it did so, it did so at the incorrect rate of pay as to the Meal Period Premium
15 Regular Rate Class Members.

16 39. Specifically, Labor Code § 226.7(c) states that “the employer shall pay the
17 employee one additional hour of pay at the employee’s regular rate of compensation for each
18 workday that the meal or rest or recovery period is not provided.” Throughout their
19 employment, Plaintiff and Meal Period Premium Regular Rate Class Members earned non-
20 discretionary remuneration, including but not limited to referral bonus incentive wages. Such
21 non-discretionary forms of remuneration, however, were not included in the regular rate of pay
22 for purposes of paying meal period premium pay. Instead, the meal period premium was paid at
23 the base rate of pay. As such, Plaintiff and Meal Period Premium Regular Rate Class Members
24 are owed additional meal period premium pay.

25 40. At all relevant times, Plaintiff, the Meal Period Class, and the Meal Period
26 Premium Regular Rate Class Members regularly worked in excess of five (5) hours per day and
27 accordingly had a right to take a 30-minute meal period each day worked in excess of five (5)
28 hours.

41. Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by Plaintiff the Meal Period Class, and the Meal Period Premium Regular Rate Class Members identified herein, in a civil action, for the unpaid balance of the unpaid premium compensation pursuant to Labor Code §§ 226.7 and 512, and the applicable IWC Wage Order, including interest thereon, penalties, and costs of suit.

42. Plaintiff is informed and believes, and based thereon alleges, that Defendants' willful failure to provide all meal period premium wages due and owing to Plaintiff the Meal Period Class, and the Meal Period Premium Regular Rate Class Members upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and other members of the Meal Period Class, and Meal Period Premium Regular Rate Class who have separated from employment are entitled to compensation pursuant to Labor Code § 203.

THIRD CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 201-203 AND 246

(BY PLAINTIFF AND THE SICK PAY CLASS AGAINST ALL DEFENDANTS)

43. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

44. Labor Code § 203 provides that if an employer willfully fails to pay wages owed in accordance with Labor Code §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid, but the wages shall not continue for more than thirty (30) days.

45. Labor Code § 201 provides if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

46. Labor Code § 202 provides that an employee is entitled to receive all unpaid wages no later than 72 hours after an employee quits his or her employment, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

1 47. Labor Code § 246 provides that an employee is entitled to receive sick time pay.
2 The employer shall calculate paid sick leave by using one of two calculations: (1) “Paid sick
3 time for nonexempt employees shall be calculated in the same manner as the regular rate of pay
4 for the workweek in which the employee uses paid sick time, whether or not the employee
5 actually works overtime in that workweek;” or (2) “Paid sick time for nonexempt employees
6 shall be calculated by dividing the employee’s total wages, not including overtime premium pay,
7 by the employee’s total hours worked in the full pay periods of the prior 90 days of
8 employment.”

9 48. Whenever Defendants paid Plaintiff and Sick Pay Class Members sick time
10 pursuant to California Labor Code § 246, Defendants did so at the incorrect rate of pay.
11 Defendants paid Plaintiff and Sick Pay Class Members at the base hourly rate of pay, as opposed
12 to the regular rate of pay, which would take into account all non-discretionary wages such as
13 referral bonus incentive wages, as required by Labor Code § 246. This resulted in the
14 underpayment of sick time, and resulted in violations of California Labor Code §§ 201, 202, and
15 203, and other derivative Labor Code violations, because Defendants did not pay, or timely pay,
16 Plaintiff and Sick Pay Class Members all owing and unpaid wages for work performed by them
17 during their employment and at the end of their employment.

18 49. Defendants willfully failed to pay Plaintiff and Sick Pay Class Members all their
19 wages due, as alleged hereinabove and hereinafter, upon the termination of their employment
20 within the times prescribed by Labor Code §§ 201 and 202 and are therefore subject to a waiting
21 time penalty. Plaintiff and the Sick Pay Class Members are entitled to recover from Defendants
22 the statutory penalty for each day they were not paid at their regular hourly rate of pay, up to a
23 thirty (30) day maximum pursuant to California Labor Code § 203.

24 **FOURTH CAUSE OF ACTION**

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

26 **(BY PLAINTIFF AND THE CLASSES AGAINST ALL DEFENDANTS)**

27 50. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
28 though fully set forth herein.

51. Defendants failed in their affirmative obligation to provide accurate itemized wage statements. Defendants, as a matter of policy and practice, did not provide accurate records in violation of Labor Code § 226(a) by failing to provide accurate payroll records to employees.

52. Here, Plaintiff and the Classes were paid hourly. As such, the wage statements should have reflected the applicable hourly rates of pay and gross and net wages earned, pursuant to Labor Code section 226(a). However, the wage statements provided to Plaintiff and other employees failed to identify such information. More specifically, as a result of the aforementioned violations of the Labor Code identified incorrect wage rates, net, and gross wages earned, in violation of Labor Code § 226(a).

53. Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Classes in a civil action, for all damages or penalties pursuant to Labor Code § 226, including interest thereon, attorneys' fees, and costs of suit according to the mandate of California Labor Code § 226.

FIFTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, ET SEQ.

(BY PLAINTIFF AND THE CLASSES AGAINST ALL DEFENDANTS)

54. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

55. Defendants have engaged and continue to engage in unfair and unlawful business practices in California by practicing, employing and utilizing the employment practices outlined above, include, to wit, by: (a) failing to pay employees overtime wages at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 510, 558, and 1194; (b) failing to provide off-duty meal periods to employees who worked 5 hours or longer in one shift and/or pay meal period premiums at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 226.7, and 512; and (c) failing to pay employees sick pay at the correct regular rate of pay that included all non-

discretionary remuneration, in violation of Labor Code §§ 201-203 and 246.

56. Defendants' utilization of such unfair and unlawful business practices constitutes unfair, unlawful competition and provides an unfair advantage over Defendants' competitors.

57. Plaintiff seeks, individually and on behalf of other members of the ClassES similarly situated, full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by the Defendants by means of the unfair practices complained of herein.

58. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned Defendants have engaged in unlawful, deceptive, and unfair business practices, as proscribed by California Business and Professions Code § 17200, *et seq.*, including those set forth herein above thereby depriving Plaintiff and other members of the Classes the minimum working condition standards and conditions due to them under the California laws and the applicable IWC Wage Orders as specifically described therein.

SIXTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 2698, *ET SEQ.*

**(BY PLAINTIFF, ON BEHALF OF THE STATE AND AGGRIEVED EMPLOYEES,
AGAINST ALL DEFENDANTS)**

59. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

60. Plaintiff brings this cause of action as a proxy for the State of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees from April 6, 2019, through the present, for Defendants' violations of Labor Code §§ 201-203, 226(a), 226.7, 246, 510, 512, 558, and 1194, arising from Defendants' policy and practice of: (a) failing to pay employees overtime wages at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 510, 558, and 1194; (b) failing to provide off-duty meal periods to employees who worked 5 hours or longer in one shift and/or pay meal period premiums at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 226.7, and 512; (c) failing to pay employees sick pay at the correct

regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203 and 246; and (d) failing to provide accurate, itemized wage statements, in violation of Labor Code § 226(a).

61. On or about September 11, 2020, Plaintiff sent written notice to the California Labor & Workforce Development Agency (“LWDA”) of Defendants’ violations of Labor Code §§ 201-203, 226(a), 226.7, 246, 510, 512, 558, and 1194, pursuant to Labor Code § 2698, *et seq.*, the Private Attorneys General Act (“PAGA”). To date, the LWDA has not responded to Plaintiff’s written notice.

62. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendants’ violation of Labor Code §§ 201-203, 226(a), 226.7, 246, 510, 512, 558, and 1194, for the time period described above, on behalf of herself and other Aggrieved Employees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as an individual and on behalf of all others that this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as the representative of the Classes as described herein;
3. For an order appointing counsel for Plaintiff as Class Counsel;
4. Upon the First Cause of Action, for damages and/or penalties pursuant to statute as set forth in California Labor Code §§ 201-203, 510, 558, and 1194, and for costs and attorneys’ fees;
5. Upon the Second Cause of Action, for damages and/or penalties pursuant to California Labor Code §§ 201-203, 226.7, and 512, and for costs and attorneys’ fees;
6. Upon the Third Cause of Action, for damages and/or penalties pursuant to California Labor Code §§ 201-203, and for costs and attorneys’ fees pursuant to Labor Code § 218.5;
7. Upon the Fourth Cause of Action, for damages or penalties pursuant to statute as

1 set forth in California Labor Code § 226(a), and for costs and attorneys' fees;

2 8. Upon the Fifth Cause of Action, for restitution to Plaintiff and other similarly
3 affected members of the general public of all funds unlawfully acquired by Defendants by means
4 of any acts or practices declared by this Court to be in violation of Business and Professions
5 Code § 17200, *et seq.*, for the time periods described above;

6 9. Upon the Sixth Cause of Action, for civil penalties according to proof pursuant to
7 Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys' fees;

8 10. On all causes of action, for attorneys' fees and costs as provided by California
9 Labor Code §§ 218.5, 226, 1194, and 2699, and Code of Civil Procedure § 1021.5; and

10 11. For such other and further relief as the Court may deem just and proper.
11

12 DATED: September 24, 2020

DIVERSITY LAW GROUP, P.C.

13
14 By: 

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiff and the Class
17
18
19
20
21
22
23
24
25
26
27
28