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*Attorney for Plaintiff Yolanda Sanchez,
Pablo Sanchez, and the Putative Class*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

YOLANDA SANCHEZ, PABLO SANCHEZ,
individually and on behalf of all others similarly
situated,

Plaintiffs,

vs.

HEARST COMMUNICATIONS, INC., and
DOES 1–10, inclusive,

Defendants.

Case No.: 3:20-cv-05147-VC

**FIRST AMENDED CLASS ACTION
& REPRESENTATIVE ACTION
COMPLAINT FOR DAMAGES,
RESTITUTION, AND OTHER RELIEF**

1. Failure to Compensate Piece Rate Employees for Rest and Recovery Periods and Other Non-Productive Time (Cal. Lab. Code §§ 226.2);
2. Failure To Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512 & 1198);
3. Failure To Provide Rest Periods (Cal. Lab. Code §§ 226.7, 512 & 1198);
4. Failure To Pay Minimum and Overtime Wages (Cal. Lab. Code §§ 510, 1194, 1194.2 & 1198);
5. Failure to Maintain Accurate and Complete Employment Records (Cal. Labor Code § 1174.5);
6. Failure To Provide Accurate, Itemized Wage Statements (Cal. Lab. Code § 226);
7. Waiting Time Penalties (Cal. Labor Code §§ 201-203)
8. Failure to Reimburse Business Expenses (Cal. Labor Code § 2802)

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9. Unfair Competition (Cal. Bus. & Prof. Code §17200 *et seq.*)
10. Civil Penalties Under the Private Attorneys General Act of 2004 (Cal. Labor Code § 2698 *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiffs Yolanda Sanchez and Pablo Sanchez, individually and on behalf of all others
2 similarly situated (collectively, “Plaintiffs” or “Class Members”), complain and allege upon
3 personal knowledge and information and belief as follows:

4 **INTRODUCTION**

5 1. Plaintiffs bring this class action against Defendant Hearst Communications, Inc.
6 (“Hearst”) and DOES 1–10 (collectively “Defendants”) and on behalf of other persons similarly
7 situated in California (collectively referred to as the “Class Members”) from the date four years
8 prior to the filing of the Complaint through the date of trial in the action.

9 2. Defendant violated California law by maintaining policies and practices that
10 systematically fail to provide employees with the protections of California’s Labor Code. Due to
11 Defendant’s policies and practices, Defendant has violated numerous provisions of the California
12 Labor Code, including but not limited to, failing to compensate Class Members for all hours
13 worked, failing to compensate piece rate employees for rest and recovery periods and other non-
14 productive time, failure to provide Class Members with meal periods and rest periods, failure to
15 provide Class Members with minimum and overtime wages, failing to maintain accurate and
16 complete employment records, failure to provide Class Members with accurate, itemized wage
17 statements, failure to reimburse Class Members for business expenses, and failure to timely pay all
18 wage earned. Plaintiffs also allege that these acts, which violate the California Labor Code,
19 constitute unlawful and unfair business practices in violation of the California Unfair Competition
20 Laws, and that these acts constitute violations of California’s Private Attorney General Act, Labor
21 Code Sections 2698 *et seq.*

22 **PARTIES**

23 3. Plaintiff Yolanda Sanchez is an adult individual residing in Belmont, CA in San
24 Mateo County, California. Plaintiff was employed by Hearst as a newspaper dealer in and around
25 Burlingame, Hillsborough, and San Mateo, California, from 2012 until October 21, 2018. At all
26 relevant times, Plaintiff met the definition of an “employee” of Hearst under all applicable statutes,
27 despite Hearst’s misclassification of Ms. Sanchez as an independent contractor. At all relevant
28 times, Plaintiff’s employment with Hearst was governed by Title VIII of the California Code of

1 Regulations, § 11010, and related Industrial Welfare Commission (“IWC”) Wage Order No. 1-
2 2001.

3 4. Plaintiff Pablo Sanchez is an adult individual who was employed by Hearst as a
4 newspaper dealer in and around San Mateo, California. Plaintiff Pablo Sanchez was employed by
5 Hearst from the end of August 2009 to September 2019. At all relevant times, Plaintiff met the
6 definition of an “employee” of Hearst under all applicable statutes, despite Hearst’s
7 misclassification of Mr. Sanchez as an independent contractor. At all relevant times, Plaintiff Pablo
8 Sanchez’s employment with Hearst was governed by Title VIII of the California Code of
9 Regulations, § 11010, and related Industrial Welfare Commission (“IWC”) Wage Order No. 1-
10 2001.

11 5. On information and belief, Defendant Hearst Communications, Inc. is incorporated
12 under the laws of the State of Delaware with a principal place of business in the state of New York,
13 New York County, located at 300 West 57th Street, New York, NY 10019, as well as a principal
14 office in California in San Francisco County located at 10 5th Street, San Francisco, CA 94103.

15 6. Hearst Communications Inc. is a media company distributing online and print media
16 throughout the United States, including in the San Francisco Bay Area. At all relevant times herein,
17 Hearst met the definition of “employer” under all applicable statutes.

18 7. On information and belief, Hearst is engaged in the ownership, management, and
19 operation of the *San Francisco Chronicle* newspaper.

20 8. On information and belief, during the liability period, Hearst employed Plaintiffs
21 (and the Class Members) as “Newspaper Dealers” (or other similar titles) but classified them as
22 independent contractors rather than employees.

23 9. On information and belief, Hearst directly or indirectly exercised control over the
24 wages, hours, and working conditions of Plaintiffs and the Class Members.

25 10. On information and belief, Hearst is by far the largest distributor of print news
26 subscription products in the greater Bay Area and Northern California, including in Alameda,
27 Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma Counties.
28 Hearst, through the workers it hires as independent contractors, distributes the San Francisco

Chronicle, as well as the New York Times, the Wall Street Journal, the East Bay Times, the San Jose Mercury News, the Sing Tao Daily, the World Journal, the Korea Times Daily, Barron's, and the Financial Times.

11. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as Does 1 through 10, inclusive, are currently unknown to Plaintiffs who therefore sue Defendants by such fictitious names. When the true names and capacities of Does 1-10 are ascertained, Plaintiffs will amend their Complaint to insert their true names and capacities. Plaintiffs are informed and believe and thereon allege that each of the fictitiously-named Defendants is responsible in some manner for the occurrences herein alleged, and that the damages of Plaintiffs and the Class Members herein alleged were proximately caused by such Defendants.

12. Plaintiffs are informed, believe, and thereon allege that each of the Defendants herein was, at all times relevant to the action, the agent, employee, representing partner, and/or joint venture of the remaining Defendants and was acting within the course and scope of the relationship. Plaintiffs are further informed, believe, and thereon allege that each of the Defendants herein gave consent to, ratified, and authorized the acts alleged herein to the remaining Defendants.

JURISDICTION & VENUE

13. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2), because this is a class action where "any member of a class of plaintiffs is a citizen of a state different from any defendant and the aggregated amount in controversy exceeds \$5,000,000, exclusive of interest and costs."

14. In addition, this is a class action brought in diversity between Plaintiffs and the Class Members and Defendant Hearst, wherein jurisdiction lies under 28 U.S.C. § 1332.

15. This Court has personal jurisdiction over Defendant Hearst, because Hearst has sufficient minimum contacts with the Northern District of California so as to render the exercise of jurisdiction over it by this Court consistent with traditional notions of fair play and substantial justice.

16. Venue is proper in this District under 28 U.S.C. § 1391, because: a substantial part of the events or omissions giving rise to Plaintiffs and the Class Members' claims occurred within this district; Hearst transacts business, committed an act alleged to be unconstitutional, illegal, or tortious, and/or is found within this district.

GENERAL FACTUAL ALLEGATIONS

A. Defendant's Operations

17. Defendant Hearst publishes and distributes a newspaper of general circulation, operating in the San Francisco Bay Area. Most of Hearst's customers receive home delivery of newspapers on a daily basis, which are printed and distributed under the auspices of the Defendant doing business as the San Francisco Chronicle newspaper (hereinafter "the Chronicle").

18. Defendant organizes the distribution of the Chronicle by maintaining distribution facilities in Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, and Sonoma Counties, which are owned and controlled by Hearst.

19. Newspaper delivery is an integral part of the business enterprise of Hearst. Plaintiffs and the Class Members perform an integral part of Hearst's operations, which include distributing newspapers.

20. Hearst has, at all relevant times, had the right to control Plaintiffs and the Class Members' performance of their work as Newspaper Dealers.

B. Defendant's Control over Plaintiffs and the Class Members and Their Work

21. The work performed by Plaintiffs and the Class Members for Hearst did and does not involve any variable scope of independence or choice. Rather, Hearst controlled and controls the duties Plaintiffs and the Class Members perform and the hours Plaintiffs and the Class Members work.

22. Defendant required Plaintiffs to pick up and deliver newspapers by certain specified hours, such as by 6:00 a.m., Monday through Saturday and 7:30 a.m. on Sunday.

23. Upon information and belief, Plaintiffs were paid piece rates for delivering different newspapers that did not vary based on their hours worked. For example, Plaintiff Yolanda Sanchez was paid \$.16 for each delivery of the *NY Times*, *San Francisco Chronicle* and *Financial Times*,

1 and \$.10 for each delivery of *USA Today*. Further, Plaintiff Pablo Sanchez was paid \$.22 for each
2 delivery of the *NY Times*, *San Francisco Chronicle*, *USA Today*, *Financial Times*, and his piece
3 rates ranged from \$.10 to \$.38.

4 24. Plaintiff Yolanda Sanchez worked approximately ninety-one (91) hours per week
5 and, upon information and belief, received less than the applicable minimum wage. For example,
6 Plaintiff Yolanda Sanchez received a 1099 from Defendant in 2017 for \$24,064.75 and in 2018 for
7 \$41,623.52.

8 25. Plaintiff Pablo Sanchez worked approximately seventy-five (75) hours per week
9 and, upon information and belief, received less than the applicable minimum wage. For example,
10 Plaintiff Pablo Sanchez received about \$1,000 to \$2,000 every two weeks, net of expenses.

11 26. Upon information and belief, Defendant also paid newspaper dealers a bonus if they
12 did not receive a certain amount of complaints, which bonus was not properly factored into
13 newspaper dealers' overtime compensation.

14 27. On information and belief, Class members were and are subjected by Defendant
15 Hearst to substantially the same contractual terms with respect to the condition and timing of their
16 delivery of newspapers to Defendant's customers.

17 28. Plaintiffs were required to work with other delivery drivers to assist in executing
18 their job duties. Plaintiffs had a regular schedule or were required to pick up newspapers by a
19 certain hour, which was determined by Defendant. On information and belief, Plaintiffs' contracts
20 stipulate certain hours they were expected to work and how much they would be compensated for
21 said work.

22 29. Defendant instructed Plaintiffs on exactly how, when, and where to deliver
23 newspapers. In addition to contractually designating the geographic scope of Plaintiffs' delivery
24 routes, Defendant generated and controlled Plaintiffs' route lists on a daily basis.

25 30. On information and belief, the Class Members were and are likewise subject to
26 Defendant's control as described in the previous paragraph. Class Members were and are required
27 to work with other drivers, and had regular schedules set by Hearst. Upon information and belief,
28 Class Members had contracts stipulating their schedules and compensation, all dictated by Hearst.

1 31. On a typical workday, Plaintiffs drove to Defendant's warehouse in their own
2 vehicles. Upon arriving at the warehouse, Plaintiffs ensured newspapers were properly folded
3 and/or sorted. Plaintiffs then loaded their personal vehicles and drove to stops on the route assigned
4 to them by Defendant. They then distributed newspapers, house to house. Newspaper dealers
5 received communications about redeliveries from Hearst and then arranged for redelivery as
6 required by Hearst.

7 32. Upon information and belief, aside from the duties expressly included in Plaintiffs'
8 contracts, Hearst demanded additional services outside of the contracts and outside of the delivery
9 hours specified in the contracts for which Plaintiffs were required to remain on-call and subject to
10 Hearst's control. Upon information and belief, for example, Hearst required re-delivery of missing,
11 damaged, or stolen products. Plaintiff Pablo Sanchez, for instance, performed re-deliveries from
12 around 6:30 a.m. or 7:00 a.m. to 10:30 a.m. from Monday to Saturday and from around 7 a.m. to
13 11 a.m. on Sunday. These demands were communicated to Plaintiff Yolanda Sanchez and Pablo
14 Sanchez as newspaper dealers through Hearst's online portals. Plaintiff Yolanda Sanchez and
15 Pablo Sanchez, as newspaper dealers, were required to actively monitor and refresh these online
16 portals each day and respond accordingly to re-delivery requests and other demands for service
17 from Hearst's customers. These other services require accessing an online portal and include
18 directives from Hearst to establish customer contact, perform on-site inspections for property
19 damages, or to address product placement issues and other services required by Hearst to be
20 satisfied by Plaintiffs.

21 33. On information and belief, the Class Members were similarly required by Hearst to
22 engage in the additional extra-contractual duties specified in the previous paragraph and were
23 subject to Hearst's control for hours beyond those specified in their contracts as described in the
24 previous paragraph.

25 34. In performing these duties for Hearst, Plaintiffs drove their own cars, paid for their
26 own gas, paid for their own vehicle maintenance, used their own cell phones, and paid for their
27 own liability insurance.
28

1 35. On information and belief, Class Members likewise drove their own vehicles, paid
2 for their own gas, paid for their own vehicle maintenance, used their own cell phones, and paid for
3 their own liability insurance while working for Hearst.

4 36. Other than as described above, Plaintiffs and the Class Members did and do not
5 invest in equipment with respect to their work for Hearst, and a relatively low degree of skill is
6 required to perform the duties required by Hearst of Plaintiff and the Class Members.

7 **C. Misclassification**

8 37. Plaintiffs reallege each and every fact in all preceding paragraphs, as alleged herein.

9 38. Hearst has always classified Plaintiffs and the Class Members as independent
10 contractors.

11 39. Despite Hearst's classification of Plaintiffs and the Class Members as independent
12 contractors, Plaintiffs and the Class Members have been under the control and direction of Hearst
13 in connection with the work they performed, both under their contracts, and for extra-contractual
14 work performed.

15 40. Hearst controlled and controls Plaintiffs' and the Class Members' hours of work and
16 supervised Plaintiffs and the Class Members.

17 41. Hearst enjoyed and enjoys the right to terminate, at will and without cause, its
18 employment relationship with Plaintiffs and the Class Members.

19 42. Plaintiffs (and, on information and belief, the Class Members) did not perform other
20 work outside of Hearst's line of business.

21 43. Plaintiffs (and, on information and belief, the Class Members) were not customarily
22 engaged in any independently established trade, occupation, or business of the same nature as the
23 work they performed for Hearst.

24 44. Plaintiffs (and on information and belief the Class Members) generally had to work
25 more than forty (40) hours per week, without proper compensation for overtime.

26 45. Under conventional legal and economic tests, Plaintiffs' and the Class Members'
27 relationship with Hearst was that of an employee and not of an independent contractor. Because
28 Plaintiffs and the Class Members were and/or are employees and not independent contractors,

1 numerous California Labor Code violations have occurred and/or are occurring. Accordingly,
 2 Hearst is in violation of the laws of the State of California.

3 CLASS ALLEGATIONS

4 46. Pursuant to Federal Rules of Civil Procedure 23(a) and (b), Plaintiffs bring this
 5 action on behalf of themselves and the following defined group:

6 All persons who are or have been contracted or otherwise engaged for work by Defendants
 7 in the State of California within the four years prior to the filing of this Complaint to the
 8 final disposition of this case to provide for distribution and delivery of print media products,
 including the San Francisco Chronicle, to Hearst's customers in the State of California,
 including, but not limited to individuals referred to as "Newspaper Dealers."

9 47. **Reservation of Rights:** This action is brought as a class action and may properly be
 10 so maintained pursuant to the provisions of Federal Rule of Civil Procedure 23. Plaintiffs reserve
 11 the right to amend or modify the class definition and/or the class period pursuant to discovery that
 12 is conducted hereafter.

13 48. **Numerosity:** The Proposed Class is so numerous that joinder of all members is
 14 impracticable. The precise identities, numbers, and addresses of members of the Class are unknown
 15 to the Plaintiffs but may and should be known with proper and full discovery of Defendant, third
 16 parties, and their respective records.

17 49. **Typicality:** Plaintiffs' claims are typical of all other Class Members as
 18 demonstrated herein. Plaintiffs will fairly and adequately protect the interests of the other Class
 19 Members with whom they have a well-defined community of interest.

20 50. **Adequacy:** Plaintiffs will fairly and adequately protect the interests of each class
 21 member with whom they have a well-defined community of interest and typicality of claims, as
 22 demonstrated herein. Plaintiffs have no interest that is antagonistic to the other Class Members.
 23 Plaintiffs' attorneys, the proposed class counsel, are versed in the rules governing class action
 24 discovery, certification, and settlement. Plaintiffs have incurred, and during the pendency of the
 25 action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily
 26 expended for the prosecution of the action for the substantial benefit of each class member.
 27 Plaintiffs have retained counsel experienced in wage and hour class action litigation.
 28

1 51. **Predominant Common Questions:** This action may be maintained as a class
 2 action under Federal Rule of Civil Procedure 23(b)(3), because questions of fact and law common
 3 to the Class predominate over questions affecting only individual class members, and a class action
 4 is superior to other available means for the fair and efficient adjudication of this dispute. Common
 5 questions of law and fact exist to all members of the Proposed Class and predominate over any
 6 questions solely affecting individual members of the Proposed Class, including but not limited to:

- 7 a. Whether Defendants, as matters of policy or practice, have misclassified Class
 8 Members as independent contractors rather than employees.
- 9 b. Whether Defendants, as a matter of policy or practice, have failed to relieve Class
 10 Members of all duty for first meal periods before the end of the fifth hour of their
 11 shifts?
- 12 c. Whether Defendants, as matters of policy or practice, have failed to relieve Class
 13 Members of all duty for second meal periods before the end of the tenth hour of
 14 their shifts?
- 15 d. Whether Defendants have failed to maintain a policy or practice that reasonably
 16 permits Class Members to take net rest periods of ten minutes for each four-hour
 17 work period, or major portion thereof?
- 18 e. Whether Defendants have, as a matter of policy or practice, failed to make good
 19 faith efforts to provide Class Members with rest periods during the middle of each
 20 four-hour work period?
- 21 f. Whether Defendants lack any mechanism for paying premium wages to Class
 22 Members when they are not provided with timely meal and/or rest periods?
- 23 g. Whether Defendants are liable to Class Members for restitution of overtime and
 24 premium wages?
- 25 h. Whether, by failing to pay premium wages to Class Members, Defendants have
 26 failed to provide them with written wage statements that accurately reflect their
 27 gross and net wages earned?
- 28

- i. Whether Defendants had a corporate policy and practice of failing to pay their hourly-paid or non-exempt employees within the State of California for all missed meal periods and rest breaks in violation of California law?
 - j. Whether Defendants required Plaintiff and the other Class Members to work over eight (8) hours per day and/or over forty (40) hours per week and failed to pay the legally required overtime compensation to Plaintiff and the other Class Members?
 - k. Whether Defendant required Plaintiff and the other Class Members to work seven (7) consecutive days and failed to pay the legally required overtime compensation to Plaintiff and the other Class Members for such work?
 - l. Whether Defendants complied with wage reporting as required by the California Labor Code, including, *inter alia*, section 226?
 - m. Whether Defendants failed to pay timely and complete wages to former employees at termination in violation of California Labor Code, sections 201, 202, and 203?
 - n. Whether Defendants kept complete and accurate payroll records as required by the California Labor Code, including *inter alia*, section 1174(d)?
 - o. Whether Defendants' conduct was willful or reckless?
 - p. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code Section 17200, *et seq.*?
 - q. Whether Defendants are liable to pay the appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law?
 - r. Whether Plaintiff and the other Class Members are entitled to compensatory damages pursuant to the California Labor Code?
 - s. Whether Defendant failed to reimburse Plaintiff and the other Class Members for necessary business-related expenses and costs? and;
 - t. Whether Plaintiff and others are entitled to civil penalties under California Labor Code Section 2699 *et seq.*?
52. **Superiority:** A class action is superior to other available methods for the fair and

efficient adjudication of the controversy, particularly in the context of wage and hour litigation where individual plaintiffs lack the financial resources to vigorously prosecute separate lawsuits against a corporate Defendant. A class action is superior to other available means for fair and efficient adjudication of class members' claims and offers significant benefits to the parties and the court. A class action will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. The monetary amounts due to many class members are likely to be relatively small, thus making it difficult, if not impossible, for individual class members to seek and obtain relief. Moreover, a class action will serve important public interests by enabling the non-waivable statutory rights of class members to be effectively asserted and fundamental public policies to be vindicated in one proceeding. A class action will also provide a means for vindicating the rights of current employees who are less likely to come forward to assert those rights based on fears of employer reprisal. Finally, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation and address the problems inherent in random and fragmentary enforcement.

FIRST CAUSE OF ACTION

Failure to Compensate Piece Rate Employees for Rest and Recovery Periods and Other Non-Productive Time **(Lab. Code §§ 226.2)**

53. Plaintiffs incorporates each of the preceding paragraphs of the Complaint by reference as if fully set forth herein.

54. As alleged herein, Defendant has maintained a policy and/or practice whereby Plaintiff and Class Members have not been compensated for rest and recovery periods and other non-productive time in accordance with Cal. Lab. Code § 226.2.

55. Defendant Hearst, Inc. did not avail itself to the California Labor Code § 226.2 Safe Harbor Provision and is required to compensate Plaintiff and Class Members for meal and rest

breaks not included in their Piece Rates, and nonproductive time based on their average hourly rate, along with interest.

SECOND CAUSE OF ACTION

Failure to Provide Meal Periods

(Lab. Code §§ 226.7, 512, and 1198)

56. Plaintiffs incorporate all of the preceding paragraphs of the Complaint as if fully set forth herein.

57. As alleged herein, Defendant has maintained a policy and/or practice whereby Plaintiffs and Class Members were misclassified as independent contractors. As such, Defendant has systematically failed and/or refused to provide Plaintiff and Class Members with uninterrupted, off-duty meal breaks of at least 30 consecutive minutes in duration for all shifts in excess of 5 hours, as guaranteed to Plaintiff and Class Members as employees under Cal. Labor Code § 226.7 and 512, and Wage Order 1-2001.

58. Labor Code § 226.7(b) and Paragraph 11 of Wage Order 2001-01 require employers to pay non-exempt employees an additional hour of premium wages at the employee's regular rate of compensation on each workday that the employee is not provided with a meal period.

59. Labor Code § 1198 makes it unlawful for an employer to employ any person under conditions of employment that violate the Wage Order.

60. At relevant times during their employment, Defendants failed to relieve Plaintiffs and Class Members of all duty for a first uninterrupted meal period of at least thirty minutes before the end of their fifth hour of work and/or for a second uninterrupted meal period of at least thirty minutes before the end of their tenth hour of work and failed to pay their premium wages on those workdays.

61. Plaintiffs are informed, believe, and thereon allege that, at all relevant times, Defendants have maintained policies and practices with respect to employee scheduling and meal periods that have prevented Plaintiffs and Class Members from being relieved of all duty for a first uninterrupted meal period of at least thirty minutes before the end of their fifth hour of work and/or

1 for a second uninterrupted meal period of at least thirty minutes before the end of their tenth hour
2 of work, and have failed to pay them premium wages on those workdays.

3 62. Pursuant to Labor Code § 226.7, Plaintiffs, on behalf of themselves and Class
4 Members, seeks to recover premium wages in amounts subject to proof.

5 **THIRD CAUSE OF ACTION**

6 ***Failure to Provide Rest Periods***

7 **(Lab. Code §§ 226.7, 512, and 1198)**

8 63. Plaintiffs incorporate all of the preceding paragraphs of the Complaint as if fully
9 set forth herein.

10 64. As alleged herein, Defendant has maintained a policy and/or practice whereby
11 Plaintiffs and Class Members were misclassified as independent contractors. As such, Defendant
12 has systematically failed and/or refused to authorize or permit Plaintiffs and Class Members to
13 take an uninterrupted 10-minute rest break for every 4 hours worked or major fraction thereof, as
14 guaranteed to them as employees under Cal. Labor Code § 226.7 and Wage Order 1-2001.

15 65. Paragraph 12 of Wage Order 4-2001 imposes an affirmative obligation on
16 employers to permit and authorize employees to take required rest periods at a rate of no less than
17 ten minutes of net rest time for each four-hour work period, or major portion thereof, that must be
18 in the middle of each work period insofar as is practicable.

19 66. Labor Code § 226.7 and Section 12 of the Wage Order require employers to pay
20 non-exempt employees an additional hour of premium wages at the employee's regular rate of
21 compensation on each workday that the employee is not provided with a rest period.

22 67. Labor Code § 1198 makes it unlawful for an employer to employ any person under
23 conditions of employment that violate the Wage Order.

24 68. At relevant times during their employment, Defendants failed to authorize and
25 permit Plaintiffs and Class Members to take net rest periods of at least ten minutes for each four-
26 hour work period, or major portion thereof, and failed to pay their premium wages on those
27 workdays.

69. Plaintiffs are informed, believe, and thereon allege that, at all relevant times, Defendants have maintained policies and practices with respect to employee scheduling and rest periods that have failed to authorize and/or reasonably permit Plaintiffs and Class Members to take net rest periods for each four-hour work period, or major portion thereof.

70. Plaintiff, on behalf of herself and Class Members, seek to recover premium wages for missed rest periods, consisting of an additional hour of pay at the regular rate of pay for each day a rest period was not provided, pursuant to Cal. Labor Code § 226.7 and Wage Order 1-2001.

FOURTH CAUSE OF ACTION

Failure to Pay Minimum and Overtime Wages

(Lab. Code § 510, 1194, 1194.2, and 1198)

71. Plaintiffs incorporate all of the preceding paragraphs of the Complaint as if fully set forth herein.

72. At all relevant times, Plaintiffs and Class Members have been non-exempt employees of Defendant entitled to the full protections of the California Labor Code and Wage Order 1-2001.

73. Cal. Labor Code § 1198 makes it unlawful for an employer to employ any person under conditions of employment that violate Wage Order 1-2001.

74. Section 2(K) of Wage Order 1-2001 defines “hours worked” as “the time during which an employee is subject to the control of the employer, [which] includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

75. Cal. Labor Code §§ 510 and 1194 and Section 3 of Wage Order 1-2001 require employers to pay overtime wages to their non-exempt employees at no less than one and one-half times their regular rates of pay for all hours worked in excess of eight hours in one workday, all hours worked in excess of forty hours in one workweek, and for the first eight hours worked on a seventh consecutive day.

76. Cal. Labor Code §§ 510 and 1194 and Section 3 of Wage Order 1-2001 also require employers to pay overtime wages to their non-exempt employees at no less than two times their

regular rates of pay for all hours worked in excess of twelve hours in one workday, and for all hours worked in excess of eight hours on a seventh consecutive workday.

77. During the entirety of the employment period, Defendant had a consistent policy of requiring Plaintiff and Class Members to work on average 10-hour work days every day of the week, 52 weeks a year without compensating Plaintiff and Class Members at a rate of one and one-half of their regular rate of pay for overtime work performed, in violation of Cal. Lab. Code §1194.

78. Pursuant to Cal. Labor Code §§ 1194 (a) and 1194.2 (a), Plaintiff, on behalf of herself and Class Members, seeks to recover earned and unpaid overtime wages, interest thereon, awards of reasonable attorneys' fees and costs, and liquidated damages, all in amounts subject to proof.

FIFTH CAUSE OF ACTION

Failure to Maintain Accurate and Complete Employment Records

(Cal. Labor Code §§ 1174.5)

79. Plaintiffs incorporate all of the preceding paragraphs of the Complaint as if fully set forth herein.

80. Cal. Labor Code § 1174 (d) requires an employer to keep at a central location in California, or at the plant or establishment at which employees are employed, payroll records showing the hours worked daily by, and the wages paid to, each employee, and the number of piece-rate units earned by and any applicable piece rate paid to each employee. Plaintiffs are informed and believe that Defendant willfully failed to make and keep such records for Plaintiffs and Class Members.

81. IWC Wage Order No. 1-2001, paragraph (7)(A), requires that every employer keep accurate employee information, including time records showing when each employee begins and ends each work period and applicable rates of pay. Plaintiffs are informed and believe that Defendant failed to make and keep such records for Plaintiffs and Class Members.

82. Plaintiffs are informed and believe that Defendant's failure to keep payroll records and accurate employee information, as described above, violated Cal. Lab. Code § 1174 (d) and

IWC Wage Order No. 1-2001 (7)(A). Plaintiffs and Class Members are entitled to penalties of \$100 for the initial violation and \$200 for each subsequent violation for every pay period during which these records and information were not kept by Defendant.

83. Plaintiffs, on behalf of herself and Class Members, are informed and believe that Defendant's failure to keep and maintain records and information, as described above, was willful, and Plaintiff and Class Members are entitled to a civil penalty of \$500, pursuant to Cal. Lab. Code § 1174.5.

SIXTH CAUSE OF ACTION

Failure to Provide Accurate, Itemized Wage Statements

(Cal. Labor Code § 226)

84. Plaintiffs incorporate each of the preceding paragraphs of the Complaint by reference as if fully set forth herein.

85. Section 226(a) of the Cal. Labor Code requires Defendant to itemize in wage statements all deductions made from wages earned by Plaintiff and Class Members, and to accurately report total hours worked and wages earned by such employees. Defendant has knowingly and intentionally failed to comply with Cal. Labor Code § 226(a) on each and every wage statement that should have been provided to Plaintiff and Class Members.

86. By failing to keep adequate records, as required by Cal. Labor Code § 226, Defendant has injured Plaintiffs and Class Members and made it confusing and difficult to calculate the unpaid wages earned and expenditures not indemnified by Defendant (including wages, interest, and penalties thereon) due to Plaintiff and Class Members.

87. Plaintiffs, on behalf of themselves and Class Members, seek to recover the statutory penalties provided by Cal. Labor Code § 226 for the wage statement violations committed by Defendant.

SEVENTH CAUSE OF ACTION

Waiting Time Penalties
(Labor Code §§ 201–203)

88. Plaintiffs incorporate all of the preceding paragraphs of this Complaint as if fully set forth herein.

89. Labor Code § 201 provides that all of the earned and unpaid wages of an employee who is discharged become due and payable immediately at the time of discharge.

90. Labor Code § 202 provides that all of the earned and unpaid wages of an employee who quits become due and payable at the time of quitting if the employee gives at least 72-hours' notice before quitting, or within 72 hours of quitting if the employee gives less than 72-hours' notice before quitting.

91. Labor Code § 203 provides that the wages of a terminated employee will continue as a penalty for up to thirty calendar days if the employer willfully fails to timely pay any earned and unpaid wages to the employee in the times set forth in Labor Code §§ 201–202.

92. By failing to pay Plaintiffs and Class Members earned premium wages, minimum wages, and/or overtime wages, Defendants failed to timely pay Plaintiffs and Class Members all earned and unpaid wages in violation of Labor Code § 201 or § 202.

93. Plaintiffs are informed, believe, and thereon allege that by failing to pay former employee Class Members earned premium wages, minimum wages, and/or overtime wages, Defendants have failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

94. Plaintiffs are informed, believe and thereon allege that, at all relevant times, Defendant's failures to pay their current and former employee Class Members earned and unpaid wages in violation of Labor Code §§ 201–202 have been willful in that Defendant has had the ability to fully comply with the requirements set forth in those statutes but has deliberately chosen to maintain policies and practices with respect to payroll that are incompatible with those requirements.

1 95. Pursuant to Labor Code § 203, Plaintiffs, on behalf of themselves and former
2 employee Class Members, seek up to thirty days of wages as waiting time penalties in amounts
3 subject to proof.

4 96. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine,
5 and/or the common fund doctrine, Plaintiffs, on behalf of themselves and former employee Class
6 Members, seek awards of reasonable attorneys' fees and costs in amounts subject to proof.

7 **EIGHTH CAUSE OF ACTION**

8 ***Failure to Reimburse Business Expenses***

9 **(Cal. Labor Code § 2802)**

10 97. Plaintiffs incorporate all of the preceding paragraphs of the Complaint as if fully
11 set forth herein.

12 98. Pursuant to Cal. Labor Code § 2802, Defendant is required to indemnify Plaintiffs
13 and Class Members for the expenses and losses incurred during the performance of their job duties.
14 The purpose of this statute is to prevent employers from passing their operating expenses onto
15 their employees. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal. 4th 554, 562.

16 99. In violation of Cal. Labor Code § 2802, Defendant required Plaintiffs and Class
17 Members to incur the following operational and necessary business expenses; (i) the cost of
18 purchasing equipment for use by Defendant's clients; (ii) the cost of using personal computers and
19 cell phones Defendant required Plaintiffs and Class Members to use for their work; (iii) the cost
20 of cellular and internet service; (iv) the costs of cloud computing services; (v) the cost of parking
21 when conducting site visits for Defendant's customers; (vi) mileage and vehicle maintenance
22 expenses; (vii) and liability insurance. On information and belief, Plaintiff and Class Members
23 were not reimbursed for these necessary business expenses.

24 100. Plaintiff, on behalf of herself and Class Members, seeks to recover monies for these
25 necessary business expenses for which she and the Class Members were not reimbursed, plus
26 interest thereon, and reasonable attorneys' fees and costs, in an amount to be proven at trial.

NINTH CAUSE OF ACTION

Unfair Competition

(Cal. Labor Code § 17200 *et seq.*)

101. Plaintiffs incorporate each of the preceding paragraphs of this Complaint by references as if fully set forth herein.

102. A violation of Cal. Bus. & Prof. Code §§ 17200 *et seq.* may be predicated on the violation of any state or federal law. Defendant's activities, as alleged herein, are violations of California law and constitute unlawful business acts and practices in violation of Cal. Bus. & Prof. Code §§ 17200 *et seq.* California has an important public policy of protection regarding the welfare of employees, and thus provides for necessary meal and rest periods and that statutorily-guaranteed wages be paid for all hours worked and for missed meal and rest periods. Defendant's willful misclassification scheme has denied Plaintiffs and Class Members mandated meal and rest periods, premium wages for missed meal and rest periods, and the legally-mandated minimum wages for all hours worked, has been, and continues to be, unfair, unlawful, and harmful to Plaintiffs, Class Members, and the general public. Over and above these violations, Defendant has failed to provide accurate, itemized wage statements and failed to reimburse Plaintiffs and Class Members for costs associated with performing their jobs. Plaintiff, on behalf of herself and Class Members, seeks to enforce important rights affecting the public interest within the meaning of Cal. Civ. Proc. Code § 1021.5.

103. Defendant's misclassification scheme allows Defendant to strip Plaintiffs and Class Members of their fundamental employment rights, such as the rights to minimum and overtime wages, mandated meal and rest periods, premium wages for missed meal and rest periods, itemized wage statements, and the prompt payment of full wages within time limits set by law, as provided under various provisions of the California Labor Code and Wage Order 1-2001.

104. Within its unlawful scheme, Defendant is able to unjustly keep and appropriate for itself significant amounts of money that otherwise should have been paid to Plaintiffs and Class Members. Defendant is also able to illegally pass on business operational costs like the cost of purchasing equipment for use by Defendant's clients, the cost of using his personal computer and

cell phone, the cost of cellular and internet service, the cost of cloud computing services, parking, mileage and vehicle maintenance expense, and liability insurance, thereby reducing wages due, in violation of Cal. Labor Code § 2802. To the extent that Defendant requires to waive the benefits of said statute, Defendant also violated Cal. Labor Code § 2804. Defendant's actions, left unrectified, will aggregate to the impunity employers thereby enjoy and which California's labor laws are meant to redress, undermining the rights of workers and the desired balance in labor relations in this state.

TENTH CAUSE OF ACTION

Civil Penalties Under the Private Attorneys General Act of 2004

(Cal. Labor Code § 2698 et seq.)

(Brought by Plaintiff Pablo Sanchez)

105. Plaintiff Pablo Sanchez incorporates all of the preceding paragraphs of this Complaint as if fully set forth herein.

106. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of him/herself and other current and former employees, to bring a representative civil action to recover civil penalties pursuant to the procedures specified in Labor Code § 2699.3 that may, but need not, be brought or maintained as a class action pursuant to Code of Civil Procedure § 382.

107. Plaintiff Pablo Sanchez, an employee against whom Defendant has committed one or more alleged violations of the Labor Code during the applicable limitations period, is an "aggrieved employee" within the meaning of Labor Code § 2699(c).

108. During the applicable limitations period, Defendant has violated Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174.5, 1194, 1198, and 2082.

109. Pursuant to Labor Code §§ 2699(a) and (f), Plaintiff, on behalf of himself and other aggrieved employees, seek the following civil penalties for Defendant's violations of Labor Code §§ 201, 202, 203, 226, 226.7, 510, 512, 1174.5, 1194, 1198, and 2802.

110. For violations of Labor Code §§ 201, 202, 203, 226.7, and 1198, \$100 for each employee per pay period for each initial violation and \$200 for each employee per pay period for each subsequent violation (penalties set by Labor Code § 2699(f)(2));

a. For violations of Labor Code § 226(a), if this action is deemed to be an initial citation, \$250 for each employee for each violation; alternatively, if an initial citation or its equivalent occurred before the filing of this action, \$1,000 for each employee for each violation (penalties set by Labor Code § 226.3);

b. For violations of Labor Code §§ 510 and 512, \$50 for each employee for each initial pay period for which the employee was underpaid, and \$100 for each employee for each subsequent pay period for which the employee was underpaid (penalties set by Labor Code § 558).

113. Plaintiff has complied with the procedures for bringing suit set forth in Labor Code §2699.3. By letter dated September 2, 2020, Plaintiff gave written notice via online filing to the Labor and Workforce Development Agency (“LWDA”) and certified mail to Defendant of the specific provisions of the Labor Code that he alleges to have been violated, including the facts and theories to support the alleged violations. More than 65 days have passed since the mailing of Plaintiff’s letter without the LWDA informing him that it intends to investigate the violations of the Labor Code that he has alleged. Pursuant to Labor Code § 2699(g)(1), Plaintiff seeks awards of reasonable costs and attorneys’ fees in connection with their claims for civil penalties on behalf of themselves and other aggrieved employees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for relief and judgment against Defendants as follows:

A. A declaratory judgment that the actions, conduct, and practices of Defendant complained of herein violated the laws of the United States and the State of California;

B. An injunction and order permanently restraining Defendants from engaging in such unlawful conduct;

C. An order that the action be certified as a class action;

D. An order that the named Plaintiffs herein be appointed class representative;

E. An order that counsel for Plaintiffs be appointed class counsel;

F. An award of damages in an amount to be determined at trial, plus prejudgment

1 interest, to compensate Plaintiffs for all monetary and/or economic hardship, including, but not
2 limited to, the loss of past and future income, wages, compensation, and other benefits of
3 employment;

4 G. An award of damages in an amount to be determined at trial, plus prejudgment
5 interest, to compensate Plaintiffs for all non-monetary and compensatory harm;

6 H. An award of damages for any and all other monetary and/or non-monetary losses
7 suffered by Plaintiffs in an amount to be determined at trial, plus prejudgment interest;

8 I. An award of penalties, according to proof, including any applicable Civil Penalties
9 under California's Private Attorney General Act (PAGA);

10 J. For reimbursement of work-related expenses (Cal. Lab. Code §2802);

11 K. That Defendant be found to have engaged in unfair competition in violation of Cal.
12 Bus. & Prof. Code § 17200, *et seq.*;

13 L. That Defendant be ordered and enjoined to make restitution of all losses incurred
14 by the Plaintiff and Class Members, including disgorgement of wrongfully-withheld wages and
15 unreimbursed expenses pursuant to Cal. Bus. & Prof. Code §§ 17203 and 17204;

16 M. For punitive damages, as allowed by law;

17 N. For reasonable attorneys' fees, interests and costs of suit, including expert witness
18 fees;

19 O. For such other and further relief as the Court deems just and proper.

20 **JURY DEMAND**

21 Plaintiffs, on behalf of themselves and all other similarly situated, hereby demand a trial by
22 jury on all issues of fact and damages stated herein.

23
24 * * *

Respectfully submitted,

Dated: April 1, 2021
San Francisco, California

THE OTTINGER FIRM, P.C.

BY: 

ROBERT OTTINGER, ESQ.

Attorney for Plaintiffs and the Putative Class