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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SACRAMENTO**

15 PATRICIA BENTON, an individual, on
16 behalf of herself and all others similarly
17 situated and aggrieved,

18 Plaintiff,

19 vs.

20 NORTHERN CALIFORNIA
21 INALLIANCE, a California domestic non-
22 profit; ANDREA CROOM, an individual;
23 and DOES 1 to 100, inclusive,

24 Defendants.

Case No.: **34-2021-00293036**

**CLASS ACTION AND REPRESENTATIVE
COMPLAINT**

JURY TRIAL DEMANDED

BY FAX

1 Plaintiff PATRICIA BENTON, an individual, on behalf of herself and all others similarly
2 situated and aggrieved, hereby files this Complaint against Defendants NORTHERN
3 CALIFORNIA INALLIANCE, a California domestic non profit; ANDREA CROOM, an
4 individual, and DOES 1 to 100, inclusive (collectively referred to hereinafter as “Defendants”).
5 Plaintiff is informed and believes, and on the basis of that information and belief, alleges as follows:

6 **JURISDICTION AND VENUE**

7 1. This court possesses original subject matter jurisdiction over this matter. Venue is
8 proper in Sacramento County because Defendants maintain a principal place of business in
9 Sacramento County and some of the complained of conduct occurred in this judicial district.

10 **THE PARTIES**

11 2. Plaintiff PATRICIA BENTON is, and at relevant times was, an individual domiciled
12 in the State of California and a citizen of the State of California who worked as a non-exempt
13 caregiver for Defendants in the State of California.

14 3. Defendant NORTHERN CALIFORNIA INALLIANCE is a California non-profit that, at
15 all relevant times, was authorized to do business within the State of California and is doing business
16 in the State of California.

17 4. Defendant ANDREA CROOM is a natural person residing in the State of California and
18 is, and at all relevant times has been, the owner, director, officer, employee, and/or managing agent
19 of Defendant NORTHERN CALIFORNIA INALIANCE, and had direct control and power over
20 the working conditions and the violations at issue in this Complaint and at all relevant times was
21 acting on behalf of Defendant NORTHERN CALIFORNIA INALLIANCE. ANDREA CROOM
22 devised and implemented the policies at issue in this complaint and “caused” these violations to
23 occur and, under Labor code §§ 558.1 and 1197.1, ANDREA CROOM may be held liable as the
24 employer for such violations.

25 5. The true names and capacities of the DOE Defendants sued herein as DOES 1 to
26 100, inclusive, are currently unknown to Plaintiff, who therefore sues each such Defendants by said
27 fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the
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unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Doe Defendants when such identities become known.

6. Plaintiff is further informed and believes that, at all relevant times, each of the Defendants was the principal, agent, partner, joint venturer, joint employer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this complaint. Plaintiff is further informed and believes and thereon alleges that each Defendants acted pursuant to and within the scope of the relationships alleged above, and that at all relevant times, each Defendants knew or should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

7. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts and omissions complained of herein. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of respondent superior. The conduct of Defendants' managers and supervisors was at all relevant times undertaken as employees of Defendants, acting within the scope of their employment or authority in all of the unlawful activities described herein.

CLASS ALLEGATIONS

8. Plaintiff brings this action as a class action under Code of Civil Procedure section 382 on behalf of herself and all others similarly situated. The class Plaintiff seeks to represent is defined as follows: “All non-exempt workers who were employed by Defendant NORTHERN CALIFORNIA INALLIANCE in California at any time within the four years prior to the filing of the initial complaint.”

a. Numerosity: While the exact number of Class Members is unknown to Plaintiff at this time, the class is so numerous that the individual joinder of all members is impractical under the circumstances of this case.

b. **Common Questions of Law and Fact.** This lawsuit is suitable for class treatment

1 because common questions of law and fact predominate over individual issues.
2 Common questions include, but are not limited to, the following: (1) whether
3 Defendants provided Plaintiff and the Class Members with all meal periods or
4 premium payments in lieu thereof in compliance with California law; (2)
5 whether Defendants provided Plaintiff and the Class Members with all rest
6 periods, or premium payments in lieu thereof, in compliance with California
7 law; (3) whether Defendants failed to pay Plaintiff and the Class Members all
8 owed minimum wages; (4) whether Defendants failed to pay Plaintiff and the
9 Class Members all owed overtime wages; (5) whether Defendants failed to pay
10 Plaintiff and the Class Members all sick leave time benefits in compliance with
11 California law; (6) whether Defendants failed to maintain records showing true
12 start and stop times of shifts as well as accurately documenting all owed meal
13 periods; (7) whether Defendants provided Plaintiff and the Class Members with
14 accurate, itemized wage statements in compliance with California law; (8)
15 whether Defendants timely paid Plaintiff and the Class Members all wages due
16 during their employment and upon separation of employment; (9) whether
17 Defendants reimbursed Plaintiff and the Class Members for all business expenses
18 in compliance with California law; and (10) whether Defendants violated
19 California Business and Professions Code sections 17200, et seq.

20 c. Ascertainable Class. The proposed class is ascertainable as its members can be
21 identified and located using information in Defendants' business, payroll and
22 personnel records.

23 d. Numerosity. The plaintiff class is so numerous that the individual joinder of all
24 members is impractical under the circumstances of this case. While the exact
25 number of Class Members is unknown to Plaintiff, Plaintiff is informed and
26 believes the class consists of at least 100 individuals.

27 e. Typicality. Plaintiff's claims are typical of the claims of the Class Members.
28 Plaintiff suffered a similar injury as the other Class Members as a result of

1 Defendants' common practices regarding, *inter alia*, failure to pay all owed
2 minimum and overtime wages, failure to provide proper meal and rest periods or
3 premium compensation in lieu thereof, failure to provide all paid sick leave time,
4 failure to provide accurate wage statements, and failure to pay all wages due upon
5 termination. In addition, Plaintiff will fairly and adequately protect the interests
6 of the Class Members. Plaintiff has no interests adverse to the interests of the
7 other Class Members.

8 f. Superiority. A class action is superior to other available means for the fair and
9 efficient adjudication of this controversy since individual joinder of all members
10 of the class is impractical. Class action treatment will permit a large number of
11 similarly situated persons to prosecute their common claims in a single forum
12 simultaneously, efficiently, and without the unnecessary duplication of effort and
13 expense that numerous individual actions would engender. Furthermore, as the
14 damages suffered by each individual member of the class may be relatively small,
15 the expenses and burden of individual litigation would make it difficult or
16 impossible for individual members of the class to redress the wrongs done to
17 them, while an important public interest will be served by addressing the matter
18 as a class action. The cost to the court system of adjudication of such
19 individualized litigation would be substantial. Individualized litigation would
20 also present the potential for inconsistent or contradictory judgments. Finally,
21 the alternative of filing a claim with the California Labor Commissioner is not
22 superior, given the lack of discovery in such proceedings, the fact that there are
23 fewer available remedies, and the losing party has the right to a trial de novo in
24 the Superior Court.

25 **FACTUAL ALLEGATIONS**

26 9. During the four-year period preceding filing of this complaint, Plaintiff and each of the
27
28

1 Class Members were employed by Defendants in the State of California as non-exempt workers.
2 Defendants at all times exercised control over Plaintiff and each of the Class Members, and suffered
3 and/or permitted them to work.

4 10. Plaintiff was employed by Defendants as a caregiver from in or about 2017 until her date
5 of termination, on May 20, 2020. Plaintiff typically worked more than five (5) hours per day, five
6 (5) days per week. In addition, every other weekend, Plaintiff would be required to stay at the
7 client's home and work a 48 consecutive-hour shift. Defendants' violations of overtime laws with
8 respect to those required weekend stays for which Defendants failed to compensate appropriate sleep
9 time are described below.

10 11. Upon information and belief, Defendants did not properly compensate Plaintiff for the
11 48-hour weekend shifts she regularly worked during the relevant time period. Plaintiff reports she
12 was paid her regular rate of pay for sixteen hours per shift and was not compensated at all for the
13 remaining hours. However, Plaintiff remained under employer's control at all times during these
14 48-hour shifts; she was restricted in her ability to leave the premises, and she was expected to
15 respond immediately to any and all situations that arose on the job, often having to wake up and
16 tend to the patient multiple times during these shifts. Accordingly, Plaintiff should have been paid
17 for all 48 hours at the above-referenced overtime rates. See *Mendiola v. CPS Security Solutions,*
18 *Inc. et al.*, No. S212704 (Cal. Jan. 8, 2015) (finding "sleep time" is compensable hours worked
19 where employer exercises significant control over the employee at all times during the shift by, for
20 example, restricting employee's ability to leave the worksite and requiring employee to constantly
21 monitor communication devices/respond to any and all work situations that arise during his shift).

22 12. Plaintiff was unable to take timely, thirty-minute uninterrupted meal periods, often
23 being forced to take late meal periods and/or work through her meal periods or said meal periods
24 would be interrupted/cut short due to the nature and constraints of the job duties and or commentary
25 from supervisors to the effect that Plaintiff should take non-compliant meal periods or skip meal
26 periods completely. Also, Plaintiff was required to at all times monitor her patients and be available
27 by cell phone to communicate with management, rendering any meal periods on duty. Plaintiff was
28 also prohibited from leaving the premises during any meal periods. Defendants did not execute any

1 valid written on-duty meal period waiver agreement with Plaintiff. Plaintiff did not receive premium
2 pay for these interrupted, cut short, missed and/or late meal periods and/or any meal period premium
3 paid was improper for failure to incorporate all forms of non-discretionary remuneration, including
4 non-discretionary bonus and shift differential pay into the meal period premium. Furthermore,
5 Defendants implemented a policy and practice of failing to record the true start and stop times of all
6 owed meal periods.

7 13. Plaintiff did not receive compliant, timely 10 (ten)- minute rest periods every four
8 hours or major fraction thereof. Plaintiff was typically required to take late rest periods and/or work
9 through her rest periods, or any purported rest periods would be interrupted/cut short due to the
10 nature and constraints of her job duties and commentary from supervisors to take late/shorter breaks
11 than she was entitled to or skip rest breaks completely. Defendants had no policy nor instruction as
12 to timing of the rest periods. As with meal periods, Defendants prohibited Plaintiff from leaving
13 the work site during any purported rest periods. Plaintiff was not paid rest period premiums for
14 these denied/on-duty rest periods.

15 14. Additionally, Defendants failed to properly accrue, or pay at all, sick leave time
16 benefits. Based on information and belief, Defendants failed to correctly calculate the total hours
17 worked to properly determine the owed sick pay and further failed to incorporate all forms of non-
18 discretionary remuneration (e.g., non-discretionary bonuses and shift differential pay) into the
19 regular pay rate(s) for purposes of calculating the owed sick leave pay.

20 15. Plaintiff was regularly required to perform off-the-clock work by virtue of Defendants'
21 time-shaving/time-rounding policy. Upon information and belief, Defendants maintained and
22 continue to maintain a policy and practice of time-shaving/time-rounding requiring its employees,
23 including Plaintiff, to "round" the start and stop times of her hours worked and/or only input her
24 scheduled start and stop time, rather than actual hours worked. Defendants' time-shaving/time-
25 rounding policies and practices as applied worked to detrimentally shave and round time off from
26 Plaintiff's workdays. Plaintiff alleges on information and belief that through the operation of
27 Defendant's time-shaving/time-rounding system, Plaintiff would systematically be deprived of
28 compensable time because the time-recording system implemented by Defendants would almost

1 always, if not always, understate actual compensable work time. Upon information and belief,
2 Defendants had actual or constructive knowledge that its time-shaving/time-rounding policy
3 resulted in underpaying Plaintiff the wages she was owed. This time-shaving system, implemented
4 by and through Defendants, resulted in violations of California's minimum and overtime wage laws.
5 Furthermore, Plaintiff was required to work through meal periods for which she was not
6 compensated resulting in the further underpayment of minimum wages.

7 16. Plaintiff was denied overtime wages, *to wit*: In addition to the effects of Defendants'
8 rounding/time-shaving practice and the off-the-clock work Plaintiff was required to perform during
9 her 48-hour weekend shifts described above, Defendants denied Plaintiff overtime wages for failure
10 to incorporate all forms of non-discretionary remuneration, such as, but not limited to, all non-
11 discretionary bonuses and shift pay differential, into the regular rate of pay for purposes of
12 calculating the owed overtime rate. For those pay periods during which Plaintiff received multiple
13 regular hourly rates, Defendants failed to properly average multiple hourly rates for purposes of
14 calculating overtime, as mandated by the The Division of Labor Standards Enforcement ("DLSE")
15 Manual and California law.

16 17. During her employment, Plaintiff failed to receive accurate wage statements in
17 compliance with Labor Code section 226. Among other things, Plaintiff's wage statements did not
18 accurately reflect, *inter-alia*, all owed minimum and overtime wages, all owed sick leave pay, and
19 all owed meal and rest period premiums for all denied meal and rest periods. In addition to the
20 aforescribed derivative wage statement violations, Defendants committed a standalone wage
21 statement violation by failing to list the accurate overtime rate; instead of multiplying the regular
22 rate of pay by one and one-half, the wage statements list two overtime-rate categories with each
23 providing corresponding rates that are either the same as the regular rate or list no separate rate for
24 the overtime requiring Plaintiff to perform extensive calculations to determine what her pay rate
25 was for each corresponding hour worked. See, e.g., *McKenzie v. Fedex*, 765 F. Supp. 2d 1222 (C.D.
26 Cal. 2011). Accordingly, Defendants have violated Labor Code section 226.

27 18. Defendants failed to reimburse Plaintiff for all business expenses, including but not
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1 limited to, vehicle mileage/gas and cell phone charges. Plaintiff regularly incurred vehicle
2 mileage/gas charges traveling to client appointments and cell phone/data plan charges in
3 communicating with management and clients. She was not reimbursed for these expenses.

4 19. Defendants terminated Plaintiff's employment, on May 20, 2020, and failed to furnish
5 her with a final pay check containing all wages due and owing. Plaintiff's final pay check was
6 devoid of all remuneration owed, including, all minimum and overtime wages, all meal and rest
7 period premiums, and reimbursement for all business expenses.

8 20. Plaintiff is informed and believes and alleges that Defendants engaged in these same
9 herein described unlawful practices with regard to all of the Class Members, and that Defendants
10 applied these same herein described unlawful practices to all of its employees that it applied to
11 Plaintiff.

12 **FIRST CAUSE OF ACTION**

13 **(Recovery of Unpaid Minimum Wages and Liquidated Damages)**

14 21. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

15 22. California law provides employees in California must be paid for all hours worked, up
16 to 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage. As
17 alleged herein, Plaintiff and the Class Members regularly worked hours for which they were not
18 compensated by Defendants as required by California law. They were were required to perform off-
19 the-clock work by virtue of Defendants' requiring them to work through uncompensated meal
20 periods and by virtue of Defendants' time rounding/time shaving system. Upon information and
21 belief, Defendants maintained and continue to maintain a policy and practice of time-shaving/time-
22 rounding requiring its employees, including Plaintiff and the Class Members, to "round" the start
23 and stop times of their hours worked and/or only input her scheduled start and stop time, rather than
24 actual hours worked. Defendants' time-shaving/time-rounding policies and practices as applied
25 worked to detrimentally shave and round time off from Plaintiff's and the Class Members'
26 workdays. Plaintiff alleges on information and belief that through the operation of Defendant's time-
27 shaving/time-rounding system, Plaintiff and the Class Members would systematically be deprived
28 of compensable time because the time-recording system implemented by Defendants would almost

1 always, if not always, understate actual compensable work time. Upon information and belief,
2 Defendants had actual or constructive knowledge that its time-shaving/time-rounding policy
3 resulted in underpaying Plaintiff the wages she was owed. This time-shaving system, implemented
4 by and through Defendants, resulted in violations of California's minimum wage laws. Defendants
5 further violated California's minimum wage laws by virtue of its failure to compensate for "sleep
6 time" for those weekends during which Plaintiff worked 48-hour shifts.

7 23. Pursuant to Labor Code sections 1194 and 1194.2, Plaintiff and the Class Members are
8 entitled to recover all unpaid minimum time wages and liquidated damages thereon, plus attorney's
9 fees and costs, in an amount to be proved at trial.

10 **SECOND CAUSE OF ACTION**

11 **(Recovery of Unpaid Overtime)**

12 24. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

13 25. California law provides employees in California must be paid overtime, equal to 1.5
14 times the employee's regular rate of pay, for all hours worked in excess of 40 per week or eight (8)
15 per day, and must be paid double wages for all hours worked in excess of 12 per day, unless they
16 are exempt. As alleged herein, Plaintiff and the Class Members worked overtime hours for which
17 they were not compensated by Defendants as required by California law. They were required
18 to perform off-the-clock work, *to wit*: Plaintiff and the Class Members would be required to work
19 through all or part of their meal periods while being required to clock out for these non-compliant
20 meal periods, resulting in significant off-the-clock work/unpaid work hours. Given Plaintiff and the
21 Class Members' typical work schedules, this resulted in significant denied overtime wages.
22 Defendants owe Plaintiff and the Class Members overtime wages for this work as the addition of
23 such hours would require payment at an overtime rate. Furthermore, upon information and belief,
24 Defendants maintained and continue to maintain a policy and practice of time-shaving/time-
25 rounding requiring its employees, including Plaintiff and the Class Members, to "round" the start
26 and stop times of her hours worked and/or only input her scheduled start and stop time, rather than
27 actual hours worked. Defendants' time-shaving/time-rounding policies and practices as applied
28 worked to detrimentally shave and round time off from Plaintiff's and the Class Members'

1 workdays. Plaintiff alleges on information and belief that through the operation of Defendant's time-
2 shaving/time-rounding system, Plaintiff and the Class Members would systematically be deprived
3 of compensable time because the time-recording system implemented by Defendants would almost
4 always, if not always, understate actual compensable work time. Upon information and belief,
5 Defendants had actual or constructive knowledge that its time-shaving/time-rounding policy
6 resulted in underpaying Plaintiff the wages she was owed. This time-shaving system, implemented
7 by and through Defendants, resulted in violations of California's overtime wage laws.

8 26. In addition to the effects of Defendants' rounding/time-shaving system described above,
9 Defendants denied Plaintiff and the Class Members overtime wages by failing to incorporate all
10 forms of non-discretionary remuneration, such as, but not limited to, all non-discretionary bonuses
11 and shift pay differential, into the regular rate of pay for purposes of calculating the owed overtime
12 rate. Defendants failed to average multiple hourly rates for purposes of calculating overtime, as
13 mandated by the DLSE Manual and California law. Furthermore, Plaintiff and the Class Members
14 were not paid double overtime when working shifts in excess of twelve hours in a day and were not
15 paid for all hours worked as Plaintiff and the Class Members remained under the control of employer
16 at all times because they would have to monitor their patients throughout the night and tend to them
17 when they awoke consistently throughout the night while nevertheless not being paid for this “sleep
18 time” as described *supra*.

19 27. Moreover, pursuant to the Domestic Workers’ Bill of Rights that took effect on January
20 1, 2014, a domestic work employee who is a personal attendant shall not be employed more than
21 nine hours in any workday or more than 45 hours in any workweek unless the employee receives
22 one and one-half times the employee’s regular rate of pay for all hours worked over nine (9) hours
23 in any workday and for all hours worked more than 45 hours in the workweek. Plaintiff and the
24 Class Members generally worked scheduled shifts lasting well over nine (9) hours. As described
25 above, Defendants paid its employees, including Plaintiff and the Class Members, essentially on a
26 daily-rate basis for the 48-hour shifts Plaintiff and the Class Members were required to work. As a
27 result, assuming the Domestic Workers Bill of Rights applies to Plaintiff and the Class Members,
28 Defendants violated the Domestic Workers Bill of Rights by failing to compensate Plaintiff and the

1 Class Members overtime after nine hours of work and/or 45 hours in a workweek and thus owes
2 said aggrieved employees overtime pay and related penalties.

3 28. In the alternative, Plaintiff hereon alleges that she did not qualify as a personal attendant
4 as she generally performed non-attendant duties, including but not limited to making beds, cleaning,
5 food-related duties, laundry, and other duties related to maintenance of a private household and/or
6 premises, for more than 20 percent of her time spent working for Defendants. As a result, under
7 Wage Order 15, Plaintiff and the Class Members are owed overtime pay for each hour worked
8 beyond eight (8) hours per workday and each hour worked beyond forty hours per workweek, as
9 well as double overtime when working shifts in excess of 12 hours per workday or over 8 hours on
10 the seventh consecutive workday.

11 29. Plaintiff and the Class Members are entitled to recover all unpaid overtime wages, plus
12 attorney's fees and costs, in an amount to be proved at trial.

13 **THIRD CAUSE OF ACTION**

14 **(Failure to Provide Meal Periods or Compensation in Lieu Thereof)**

15 30. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

16 31. Under the Labor Code and IWC Wage Orders, Defendants were required to provide
17 Plaintiff and the Class Members with one 30-minute meal break free from all duties for all shifts
18 longer than 5 hours, and a second 30-minute meal break free from all duties for all shifts longer than
19 10 hours. Meal periods can be waived, but only under the following circumstances: (1) if an
20 employee's total work period in a day is over five (5) hours but no more than six (6) hours, the
21 required meal period may be waived by mutual consent of the employer and employee, and (2) if
22 an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours,
23 the required second meal period may be waived by mutual consent of the employer and employee,
24 but only if the first meal period was not waived. Employers covered by the Wage Orders have an
25 obligation to both (1) relieve their employees for at least one meal period for shifts over five hours
26 (see above), and (2) to record having done so. If the employer fails to properly record a valid meal
27 period, it is presumed no meal period was provided.

28 32. Plaintiff and Class Members regularly worked periods of more than five and ten hours

1 in a workday without being provided proper mandatory thirty-minute, duty-free meal periods. Upon
2 information and belief, Defendants failed to maintain a company meal period policy compliant with
3 California law. Plaintiff and the Class Members were unable to take timely, thirty-minute
4 uninterrupted meal periods, often being forced to take late meal periods and/or work through their
5 meal periods or said meal periods would be interrupted/cut short due to the nature and constraints
6 of the job duties and or commentary from supervisors to the effect that Plaintiff and the Class
7 Members should take non-compliant meal periods or skip meal periods completely. Also, Plaintiff
8 and the Class Members were required to at all times monitor their patients and be available by cell
9 phone to communicate with management, rendering any meal periods on duty. Plaintiff and the
10 Class Members were also prohibited from leaving the premises during any meal periods.
11 Defendants did not execute any valid written on-duty meal period waiver agreement with
12 Plaintiff/the Class Members. Plaintiff and the Class Members did not receive premium pay for
13 these interrupted, cut short, missed and/or late meal periods and/or any meal period premium paid
14 was improper for failure to incorporate all forms of non-discretionary remuneration, including non-
15 discretionary bonus and shift differential pay into the meal period premium. Furthermore,
16 Defendants implemented a policy and practice of failing to record the true start and stop times of all
17 owed meal periods.

18 33. Defendants failed to provide Plaintiff and the Class Members with all required meal
19 periods, or with compensation in lieu thereof. As a result, under Labor Code section 226.7, Plaintiff
20 and the Class Members are entitled to one additional hour's pay for each day a meal period was
21 missed, late or interrupted, all in an amount to be proved at trial.

22 **FOURTH CAUSE OF ACTION**

23 **(Failure to Provide Rest Periods or Compensation in Lieu Thereof)**

24 34. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

25 35. California law requires an employer to authorize or permit an employee to take a rest
26 period of ten minutes for every four hours worked, or major fraction thereof, and such rest periods
27 must be in the middle of the four-hour period insofar as practicable. If the employer fails to provide
28 any required rest periods, or fails to provide a fully compliant rest break of 10 minutes within the

1 employee is fully relieved of all duties and all employer control, the employer must pay the
2 employee one hour of pay at the employee's regular rate of compensation for each workday the
3 employer did not provide a legally required and/or fully compliant rest period.

4 36. Defendants employed policies and procedures that ensured Plaintiff and other Class
5 Members would not receive all legally required rest periods, as Defendants did not authorize nor
6 permit all required rest periods in strict accordance with, and in compliance with, the timing
7 requirements of all applicable Wage Orders. Defendants failed to relieve Plaintiff and Class
8 Members of all duties and all employer control for purposes of taking any rest breaks. Plaintiff and
9 Class Members regularly worked enough hours to be entitled to at least two (2) rest breaks in a shift,
10 which Defendants failed to allow for. Plaintiff and the Class Members were typically required to
11 take late rest periods and/or work through their rest periods, or any purported rest periods would be
12 interrupted/cut short due to the nature and constraints of her job duties and commentary from
13 supervisors to take late/shorter breaks than they were entitled to or no breaks at all. Defendants had
14 no policy nor instruction as to timing of the rest periods. As with meal periods, Defendants
15 prohibited Plaintiff and the Class Members from leaving the work site during any purported rest
16 periods. Plaintiff and the Class Members were not paid rest period premiums for these denied/on-
17 duty rest periods.

18 37. As a result, under Labor Code section 226.7, Plaintiff and the Class Members are entitled
19 to one additional hour's pay for each day a rest break was missed, late or interrupted, all in an
20 amount to be proved at trial.

21 **FIFTH CAUSE OF ACTION**

22 **(Failure To Pay Sick Time Benefits)**

23 38. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

24 39. California Labor Code §246(1)(1) provides that paid sick time for non-exempt
25 employees be "calculated in the same manner as the regular rate of pay for the workweek in which
26 the employee uses paid sick time, whether or not the employee actually works overtime in the
27 workweek."

28 40. California Labor Code §246(1)(2) further provides that paid sick time for non-exempt

1 employees be “calculated by dividing the employee’s total hours worked in the full pay periods of
2 the prior 90 days of employment.

3 41. Defendants violated Labor Code §246 by failing to pay all owed sick leave time. Upon
4 information and belief, Defendants failed to comply with California Sick Leave Laws as to Plaintiff
5 and the Class Members by including but not limited to, failing to correctly calculate total hours
6 worked for purposes of calculating owed sick leave time and failure to incorporate all forms of non-
7 discretionary remuneration into the regular pay rate(s) for purposes of calculating the owed sick
8 time pay.

9 **SIXTH CAUSE OF ACTION**

10 **(Failure to Provide Accurate Wage Statements)**

11 42. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

12 43. Labor Code section 226(a) provides, in relevant part, that “[a]n employer, semimonthly
13 or at the time of each payment of wages, shall furnish to his or him employee, either as a detachable
14 part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid
15 by personal check or cash, an accurate itemized statement in writing showing (1) gross wages
16 earned, (2) total hours worked by the employee . . . , (5) net wages earned, [and] (6) the inclusive
17 dates of the period for which the employee is paid . . . , (8) the name and address of the legal entity
18 that is the employer . . . , (9) all applicable hourly rates in effect during the pay period and the
19 corresponding number of hours worked at each hourly rate by the employee”

20 44. Labor Code section 226(e) provides that “[a]n employee suffering injury as a result of a
21 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover
22 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
23 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
24 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of
25 costs and reasonable attorney’s fees.

26 45. Labor Code section 226.3 provides that “[a]ny employer who violates subdivision (a) of
27 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
28 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each

1 violation in a subsequent citation, for which the employer fails to provide the employee a wage
2 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

3 46. Plaintiff and the Class Members failed to receive accurate wage statements in
4 compliance with Labor Code section 226. Among other things, the wage statements did not
5 accurately reflect, *inter-alia*, all owed minimum and overtime wages, all owed sick leave pay, and
6 all owed meal and rest period premiums for all denied meal and rest periods. In addition to the
7 aforescribed derivative wage statement violations, Defendants committed a standalone wage
8 statement violation for failure to list the accurate overtime rate because instead of multiplying the
9 regular rate of pay by one and one-half, the wage statements provide two overtime rate categories
10 with each providing corresponding rates that are either the same as the regular rate or list no separate
11 rate for the overtime requiring Plaintiff and the Class Members to perform extensive calculations to
12 determine what their pay rate was for each corresponding hour worked. See, e.g., *McKenzie v.*
13 *Fedex*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011). Accordingly, Defendants have violated Labor Code
14 section 226, and thus, Plaintiff and the Class Members are entitled to damages and penalties.

15 **SEVENTH CAUSE OF ACTION**

16 **(Failure to Timely Pay Wages During Employment and Upon Separation of Employment)**

17 47. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

18 48. Labor Code section 204 requires employers to pay all wages (other than those mentioned
19 in Labor Code sections 201 , 201.3 , 202 , 204.1 , or 204.2) earned by any person in any employment
20 twice during each calendar month, on days designated in advance by the employer as the regular
21 paydays. California Labor Code section 201(a) provides, in relevant part, that “[i]f an employer
22 discharges an employee, the wages earned and unpaid at the time of discharge are due and payable
23 immediately.”

24 49. California Labor Code section 202(a) provides, in relevant part, that “[i]f an employee
25 not having a written contract for a definite period quits his or her employment, his or her wages
26 shall become due and payable not later than 72 hours thereafter, unless the employee has given 72
27 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or
28 her wages at the time of quitting.”

50. Defendants failed to pay Plaintiff and the Class Members all wages that were due and owing during their employment; and, failed to Plaintiff and the Class Members who are former employees all wages that were due and owing upon termination or resignation. Among other things, Plaintiff and the Class Members were not paid all owed minimum and overtime wages.

51. Plaintiff and the Class Members therefore seeks damages and penalties.

EIGHTH CAUSE OF ACTION

(Failure to Maintain Accurate Records)

52. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

53. California Labor Code sections 226 and 1174-75 require an employer to keep accurate records of all hour an employee works.

54. California Labor Code section 1174.5 provides that “[a]ny person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174 . . . shall be subject to a civil penalty of five hundred dollars (\$500).”

55. Section 7(A)(3) of the IWC Wage Orders similarly requires an employer to keep accurate records showing when an employee begins and ends each meal period.

56. Plaintiff is informed and believes that Defendants failed to maintain accurate records in compliance with these statutes. Among other things, Defendants failed to record the true start and stop times of all meal periods owed to Plaintiff and the Class Members and failed to record the true start and stop times of shifts for Plaintiff and the Class Members.

57. Plaintiff and the Class Members therefore seek damages and penalites as a result of these violations.

NINTH CAUSE OF ACTION

(Failure to Reimburse Business Expenses)

58. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

59. California Labor Code section 2802 provides an employer shall fully reimburse an employee for all reasonable and necessary expenses incurred in the performance of the employee's job duties. As alleged herein, Plaintiff and the Class Members

1 regularly incurred expenses including, inter alia, automobile mileage and related expenses, in the
2 performance of their job duties, which expenses were not fully reimbursed by Defendants.
3 Defendants required Plaintiff and the Class Members to use personal cell phones on the job and
4 further required them to use their personal vehicles for work-related purposes. Defendants did not
5 reimburse Plaintiffs or the Class Members for using personal cell phones for work.

6 60. Pursuant to Labor Code section 2802, et seq., Plaintiff and the Class Members are
7 entitled to recover their unreimbursed business expenses, plus attorney's fees and costs, in an
8 amount to be proved at trial.

9 **TENTH CAUSE OF ACTION**

10 **(Violation of Unfair Competition Law – Bus. & Prof. Code § 17200, et seq.)**

11 61. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

12 62. Defendants' failure, *inter alia*, to pay all wages earned and failure to pay all overtime
13 and double time wages earned, failure to provide all required meal and rest periods or compensation
14 in lieu thereof, failure to maintain accurate records, failure to timely pay wages, failure to pay all
15 owed sick leave, failure to reimburse business expenses, and failure to provide accurate itemized
16 wage statements, all in violation of the Labor Code and Wage Orders, constitutes an unlawful, unfair
17 or fraudulent business act or practice, in violation of Business & Professions Code sections 17200,
18 et seq.

19 63. Pursuant to Business & Professions Code section 17203, Plaintiff and the Class Members
20 are entitled to restitution of all unpaid wages, unreimbursed expenses, and other sums owed, plus
21 attorney's fees and costs, in an amount to be proved at trial.

22 **ELEVENTH CAUSE OF ACTION**

23 **(Violation of Private Attorneys General Act of 2004 – Labor Code §§ 2698, et seq.)**

24 64. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

25 65. Plaintiff gave timely written notice by certified mail to Defendants of the violations of
26 various provisions of the California Labor Code as alleged in this complaint and filed notice of the
27 violations online with the Labor and Workforce Development Agency ("LWDA").

28 66. The LWDA did not provide notice of its intention to investigate Defendants' violations

1 after expiration of the 65-day waiting time period, or at any time. Defendants also failed to cure
2 within the time allotted by PAGA. Consequently, Plaintiff's right to file the instant lawsuit then duly
3 accrued.

4 67. Plaintiff is an "Aggrieved Employee" under PAGA, as she was employed by Defendants
5 during the applicable statutory limitations period and suffered one or more of the Labor Code
6 violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of himself and all other
7 current and former Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable
8 attorney's fees and costs.

9 68. **THE "AGGRIEVED EMPLOYEES"**: Plaintiff brings this action on behalf of
10 himself and all similarly situated aggrieved employees. **The other Aggrieved Employees shall be**
11 **defined as follows**: "All non-exempt workers employed by Defendants in California at any time
12 within the one year and sixty-five days prior to the filing of this Complaint.

13 69. Plaintiff seeks to recover the PAGA civil penalties through a representative action
14 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th
15 969. Therefore, class certification of the PAGA claims is not required.

16 70. Under the provisions of PAGA and Labor Code sections 201-202, 203, 204, 216, 221-
17 223, 226, 226.7, 245-248.5, 256, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, 1199, 2802, 2810,
18 and 2810.5, and all relevant sections of the applicable Wage Orders, as well as all interpretations of
19 these laws by California Courts and administrative bodies, as well as any other law that is
20 enforceable through PAGA, Defendants are liable for all statutorily-specified penalties recoverable
21 under PAGA as enumerated in the relevant California Labor Code provisions listed herein, or for
22 default PAGA penalties under Labor Code Section 2699(f) for any violation of a Labor Code section
23 without a specified civil penalty.

24 71. Plaintiff complied with the procedures for bringing suit specified in Labor Code
25 sections 2699.3 and 2699.5. Plaintiff gave written notice to the California Labor and Workforce
26 Development Agency ("LWDA") via electronic mail at PAGAfilings@dir.ca.gov and to
27 Defendants via certified mail 65 days prior to this Complaint of the specific provisions of the
28 Labor Code and Wage Orders allegedly violated, including the facts and theories to support the

1 alleged violations.

2 72. Under Labor Code section 2699.3, the LWDA must give written notice by certified
3 mail to the parties it intends to investigate the alleged violations within 65 days of the date of
4 Plaintiff's written notice. As of the expiration of the statutory exhaustion period, the LWDA has
5 not provided the parties any notice of its intention to investigate Plaintiff's claims on behalf of the
6 State of California and the Aggrieved Employees. As of the filing of this Complaint, Defendants
7 have not responded to Plaintiff's PAGA notice in an attempt to cure. Accordingly, Plaintiff has
8 exhausted all administrative remedies required by law.

9 73. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
10 Plaintiff is entitled to recover civil penalties, costs, plus reasonable attorney's fees and costs, all in
11 an amount to be proved.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for relief and judgment as follows on behalf of herself, the
14 Class Members and the Aggrieved Employees:

- 15 1. For an order that the action, be certified as a class action;
- 16 2. For an order that Plaintiff, be appointed class representative;
- 17 3. For an order that counsel for Plaintiff be appointed class counsel;
- 18 4. For compensatory damages according to proof;
- 19 5. For an order requiring Defendants to make restitution of all amounts wrongfully
20 withheld from Plaintiff and the class;
- 21 6. For pre-judgment interest as permitted by law;
- 22 7. For civil penalties according to proof, including PAGA penalties;
- 23 8. Attorney's fees and costs reasonably incurred; and

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9. Such other and further relief that the Court deems just and proper.

Dated: January 25, 2021

CROSNER LEGAL, PC



Michael R. Crosner

Zachary M. Crosner

Blake R. Jones

Attorneys for Plaintiff

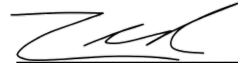
PATRICIA BENTON

DEMAND FOR JURY TRIAL

Plaintiff, PATRICIA BENTON, demands a trial by jury on all claims so triable.

Dated: January 25, 2021

CROSNER LEGAL, P.C.



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Blake R. Jones
Attorneys for Plaintiff
PATRICIA BENTON