

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: CENTRAL INNOVATIONS, LLC, a Wyoming
(AVISO AL DEMANDADO): limited liability company, and DOES
1 through 10, inclusive

YOU ARE BEING SUED BY PLAINTIFF: KRISTA ROBLES, on behalf
(LO ESTÁ DEMANDANDO EL DEMANDANTE): of herself and on
behalf of all similarly situated individuals

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of California, County of Orange
751 West Santa Ana Blvd.
Santa Ana, California 92701

CASE NUMBER:
(Nú) 30-2021-01178892-CU-OE-CXC

Judge James J. Di Cesare

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: Alex P. Katofsky, Esq. #202754
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Gaines & Gaines, APLC
27200 Agoura Road, Suite 101, Calabasas, CA 91301

818-703-8985

DATE: 01/14/2021
(Fecha)

DAVID H. YAMASAKI, Clerk of the Court

Clerk, by
(Secretario)

Georgina Ramirez

Georgina Ramirez

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify)*:

3. ☐ on behalf of *(specify)*:

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other *(specify)*:

4. ☐ by personal delivery on *(date)*:

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Alex P. Katofsky, Esq. SBN: 202754 Gaines & Gaines, APLC 27200 Agoura Road, Suite 101, Calabasas, CA 91301 TELEPHONE NO.: 818-703-8985 FAX NO.: 818-703-8984 ATTORNEY FOR (Name): Plaintiff, Krista Robles		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: XXXXXXXXXXXXXXXXXXXX 700 CIVIC CENTER DR. W. MAILING ADDRESS: XXXXXXXXXXXXXXXXXXXX CITY AND ZIP CODE: Santa Ana, 92701 BRANCH NAME: Civil Complex Center		
CASE NAME: Robles v. Central Innovations, LLC, et al.		
CIVIL CASE COVER SHEET ☒ Unlimited (Amount demanded exceeds \$25,000)	☐ Limited (Amount demanded is \$25,000 or less)	Complex Case Designation ☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		CASE NUMBER: 30-2021-01178892-CU-OE-CXC JUDGE: Judge James J. Di Cesare DEPT: C-11

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort ☐ Auto (22) ☐ Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort ☐ Asbestos (04) ☐ Product liability (24) ☐ Medical malpractice (45) ☐ Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort ☐ Business tort/unfair business practice (07) ☐ Civil rights (08) ☐ Defamation (13) ☐ Fraud (16) ☐ Intellectual property (19) ☐ Professional negligence (25) ☐ Other non-PI/PD/WD tort (35) Employment ☐ Wrongful termination (36) ☒ Other employment (15)	Contract ☐ Breach of contract/warranty (06) ☐ Rule 3.740 collections (09) ☐ Other collections (09) ☐ Insurance coverage (18) ☐ Other contract (37) Real Property ☐ Eminent domain/Inverse condemnation (14) ☐ Wrongful eviction (33) ☐ Other real property (26) Unlawful Detainer ☐ Commercial (31) ☐ Residential (32) ☐ Drugs (38) Judicial Review ☐ Asset forfeiture (05) ☐ Petition re: arbitration award (11) ☐ Writ of mandate (02) ☐ Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) ☐ Antitrust/Trade regulation (03) ☐ Construction defect (10) ☐ Mass tort (40) ☐ Securities litigation (28) ☐ Environmental/Toxic tort (30) ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment ☐ Enforcement of judgment (20) Miscellaneous Civil Complaint ☐ RICO (27) ☐ Other complaint (not specified above) (42) Miscellaneous Civil Petition ☐ Partnership and corporate governance (21) ☐ Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. ☐ Large number of separately represented parties | d. ☐ Large number of witnesses |
| b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. ☐ Substantial amount of documentary evidence | f. ☐ Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): Seven (7)
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 1/14/21

Alex P. Katofsky, Esq.

(TYPE OR PRINT NAME)



Alex P. Katofsky

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

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Assigned for All Purposes

Judge James J. Di Cesare

C-16

Attorneys for Plaintiff Krista Robles, on behalf of herself and on behalf of all similarly situated individuals

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

KRISTA ROBLES, on behalf of herself and
on behalf of all similarly situated individuals,

Plaintiff,

v.

CENTRAL INNOVATIONS, LLC, a
Wyoming limited liability company, and
DOES 1 through 10, inclusive,

Defendants.

CASE NO: 30-2021-01178892-CU-OE-CXC

CLASS ACTION

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT FOR:**

**1. FAILURE TO PAY ALL MINIMUM
AND OVERTIME WAGES (LABOR
CODE §§ 510, 558, 1194 AND 1194.2)**

**2. FAILURE TO PROVIDE REST
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.7 AND
558; IWC WAGE ORDER 4-2001)**

**3. FAILURE TO PROVIDE MEAL
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.7, 512,
AND 558; IWC WAGE ORDER 4-2001)**

**4. KNOWING AND INTENTIONAL
FAILURE TO COMPLY WITH
ITEMIZED EMPLOYEE WAGE
STATEMENT PROVISIONS (LABOR
CODE § 226(a), (e))**

**5. FAILURE TO PAY WAGES DUE AT
SEPARATION OF EMPLOYMENT
(LABOR CODE §§ 201-203)**

**6. VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200**

**7. PENALTIES PURSUANT TO LABOR
CODE § 2699(f) FOR VIOLATIONS OF**

**LABOR CODE §§ 201, 202, 226(a), 226.7,
510, 512, AND 1194 AND PURSUANT TO
LABOR CODE § 2699(a) FOR
VIOLATIONS OF LABOR CODE §§
226.3, 226.8, AND 558**

DEMAND FOR JURY TRIAL

Plaintiff KRISTA ROBLES (“Plaintiff”), individually and on behalf of all similarly situated individuals (the “Class” or “Plaintiff Class”), and on behalf of the general public, and as an “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004, complains of Defendants, and each of them, as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure § 382 and Labor Code § 2698 *et seq.*, on behalf of Plaintiff and all persons who were classified as an independent contractor who work or formerly worked for CENTRAL INNOVATIONS, LLC, a Wyoming limited liability company, and any subsidiaries or affiliated companies (hereinafter collectively referred to as “Defendants”) within the State of California.

2. From the date at least four (4) years prior to the filing of this Action (the “liability period”), Defendants have had a consistent policy of voluntarily and willfully misclassifying Plaintiffs and Class Members (as defined below) as independent contractors and thereby failing to pay all wages due, failing to pay all minimum and overtime wages due and owing to Class Members during the course of their employment; failing to provide legally compliant meal and rest periods or compensation in lieu thereof to Class Members; failing to provide accurately itemized wage statements to Class Members; and failing to timely pay wages upon separation of employment to Class Members.

3. Plaintiff, on behalf of herself and members of the Class, brings this action pursuant to Labor Code §§ 201-203, 226(a), 226.3, 226.7, 226.8, 510, 512, 558, 1194, and 1194.2 seeking compensation for all unpaid wages, liquidated damages, statutory penalties, injunctive and other equitable relief, and reasonable attorneys’ fees and costs.

4. Plaintiff, on behalf of herself and members of the Class and pursuant to Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendants enjoyed from their failure to pay all wages to Class Members.

5. Plaintiff, on behalf of herself and all aggrieved employees pursuant to Labor Code §§ 2698 *et seq.*, seeks penalties for Defendants' various violations of the California Labor Code.

6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395 because Defendants employed Plaintiff and Class Members in Orange County, California.

II.

PARTIES

A. Plaintiff

7. Plaintiff KRISTA ROBLES contracted with Defendants from August 2019 through January 2020 in Orange County, California and was improperly classified as an independent contractor.

8. During her work with Defendants, Plaintiff was:

- a. Willfully misclassified as an independent contractor;
- b. Willfully denied the payment of all minimum and overtime wages;
- c. Willfully denied rest periods or compensation in lieu thereof;
- d. Willfully denied meal periods or compensation in lieu thereof;
- e. Willfully denied accurately itemized wage statements; and
- f. Denied the timely payment of wages upon separation of her employment.

B. Defendants

9. Defendant CENTRAL INNOVATIONS, LLC is a Wyoming limited liability company. Defendant CENTRAL INNOVATIONS, LLC, employed Plaintiff and Class Members throughout the State of California, including Orange County, California.

10. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a

DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants.

12. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more provisions of the California Labor Code as alleged herein.

III.

CLASS ACTION ALLEGATIONS

13. Plaintiff brings this action on behalf of herself and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the following class composed of and defined as follows:

THE CLASS

All persons (current and former) employed by Defendants who were classified as an independent contractor at any time during the four (4) years prior to the filing of this Action.

14. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or modify this class description with greater specificity or further division into subclasses or limitation to particular issues.

15. This action has been brought and may properly be maintained as a class action under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

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A. Numerosity

16. The potential members of the Class as defined are so numerous that joinder of all the members the Class is impracticable. While the precise number of members of the Class has not been ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants currently contracted with, and during the relevant time periods employed, over 75 persons in the State of California who fall within the Class definition.

17. Accounting for turnover during the relevant period necessarily increases this number. Plaintiff alleges Defendants' records would provide information as to the number and location of members of the Class. Joinder of members of the Class is not practicable.

B. Commonality

18. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

- a. Whether Defendants failed to pay Plaintiff and Class Members all minimum and overtime wages, in violation of Labor Code Labor Code §§ 510, 558, 1194 and 1194.2;
- b. Whether Defendants failed to properly provide rest periods or compensation in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§ 226.7 and 558 and IWC Wage Order 4-2001;
- c. Whether Defendants failed to properly provide meal periods or compensation in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§ 226.7, 512 and 558, and IWC Wage Order 4-2001;
- d. Whether Defendants failed to provide Plaintiff and members of the Class with itemized wage statements, in accordance with Labor Code § 226(a) and (e);
- e. Whether Defendants misclassified Plaintiff and Class Members as independent contractors, in violation of Labor Code § 226.8;

- 1 f. Whether Defendants failed to timely pay Plaintiff and members of the Class
2 all wages due and owing at the separation of their employment, in violation of
3 Labor Code §§ 201-203; and
- 4 g. Whether Plaintiff and Class Members are entitled to equitable relief pursuant
5 to Business & Professions Code § 17200 *et seq.*

6 **C. Typicality**

7 19. The claims of the named Plaintiff are typical of the claims of members of the Class.
8 Plaintiff and members of the Class sustained injuries and damages arising out of and caused by
9 Defendants' common course of conduct in violation of laws, regulations that have the force and effect
10 of law, and statutes as alleged herein.

11 **D. Adequacy of Representation**

12 20. Plaintiff will fairly and adequately represent and protect the interests of members of
13 the Class. Counsel who represents Plaintiff are competent and experienced in litigating large
14 employment class actions.

15 **E. Superiority of Class Action**

16 21. A class action is superior to other available means for the fair and efficient adjudication
17 of this controversy. Individual joinder of all proposed members of the Class is not practicable, and
18 questions of law and fact common to the proposed Class predominate over any questions affecting
19 only individual members of the proposed Class. Each member of the proposed Class has been
20 damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

21 22. Class action treatment will allow those similarly situated persons to litigate their
22 claims in the manner that is most efficient and economical for the parties and the judicial system.
23 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
24 action that would preclude its maintenance as a class action.

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1 IV.

2 **CAUSES OF ACTION**

3 **FIRST CAUSE OF ACTION**

4 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

5 **FAILURE TO PAY ALL MINIMUM AND OVERTIME WAGES**

6 **(LABOR CODE §§ 510, 558, 1194, AND 1194.2)**

7 23. Plaintiff incorporates paragraphs 1 through 22 of this Complaint as though fully set
8 forth herein.

9 24. Labor Code § 510 provides that, “any work in excess of eight hours in one workday
10 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
11 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
12 one-half times the regular rate of pay for an employee.” Labor Code § 1194 provides that “any
13 employee receiving less than the legal minimum wage or the legal overtime compensation applicable
14 to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this
15 minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and
16 costs of suit.”

17 25. During the liability period, Plaintiff and Class Members were required to work off-
18 the-clock and without compensation. Plaintiff would typically work 45 to 50 hours per week, but
19 would never be compensated for more than 39 hours per week (for example, Plaintiff would be
20 credited with working 36, 37 or 39 hours, even if she worked more), depriving her of all minimum
21 and overtime wages due. Plaintiff alleges this claim on behalf of herself and Class Members. This
22 violates Labor Code §§ 510, 558, 1194, and 1194.2.

23 26. As a result of the unlawful acts of Defendants in willfully failing to pay all wages,
24 Plaintiff and Class Members have been deprived of wages in amounts to be determined at trial, and
25 are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys’ fees, and
26 costs pursuant to Labor Code § 1194 and liquated damages pursuant to Labor Code § 1194.2.

27 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

28 \\\

V.

SECOND CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF

(LABOR CODE §§ 226.7 AND 558 AND IWC WAGE ORDER 4-2001)

27. Plaintiff incorporates paragraphs 1 through 25 of this Complaint as though fully set forth herein.

28. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more rest periods as set forth in Labor Code §§ 226.7 and 558 and IWC Wage Order 4-2001.

29. Defendants failed to pay premium wages to Plaintiff and Class Members who were denied rest periods, in violation of Labor Code §§ 226.7 and 558 and IWC Wage Order 4-2001. Plaintiff and Class Members were unable and not authorized to take paid ten-minute rest periods for every four hours of work or major fraction thereof due to the busy nature of their work schedule. However, Defendants failed to pay them premium wages for these missed rest periods. Furthermore, Defendants maintained a practice of requiring Plaintiff and Class Members to remain on the company premises during their rest periods, resulting in impermissible on-duty rest periods. When Plaintiff and Class Members did receive a rest period, they were never permitted to leave the premises and always remained under Defendants' control.

30. Pursuant to Labor Code §§ 226.7 and 558 and IWC Wage Order 4-2001, Plaintiff seeks the payment of all rest period compensation which she and Class Members are owed for four years preceding the filing of this Action, according to proof.

Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

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1 VI.

2 THIRD CAUSE OF ACTION

3 PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

4 FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF

5 (LABOR CODE §§ 226.7, 512, AND 558 AND IWC WAGE ORDER 4-2001)

6 31. Plaintiff incorporates paragraphs 1 through 30 of this Complaint as though fully set
7 forth herein.

8 32. Plaintiff and Class Members are entitled to one hour of pay for each day that
9 Defendants failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7,
10 512, and 558 and IWC Wage Order 4-2001.

11 33. Defendants failed to pay premium wages to Plaintiff and Class Members who were
12 denied meal periods, in violation of Labor Code §§ 226.7, 512, and 558 and IWC Wage Order 4-
13 2001. Plaintiff and Class Members were routinely denied, and not authorized to take, an
14 uninterrupted, 30-minute meal period for every shift worked that exceeded five hours in duration, and
15 a second meal period when they worked shifts greater than ten hours, but were not paid premium
16 wages of one hour's pay for each missed meal period. Defendants also maintained a practice of
17 requiring Plaintiff and Class Members to remain on the company premises during their meal period,
18 resulting in impermissible on-duty meal periods, which went uncompensated. This violates Labor
19 Code §§ 226.7, 512, and IWC Wage Order 4-2001.

20 34. Pursuant to Labor Code §§ 226.7, 512, and 558 and IWC Wage Order 4-2001, Plaintiff
21 seeks the payment of all meal period compensation which she and Class Members are owed for four
22 years preceding the filing of this Action, according to proof.

23 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

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VII.
FOURTH CAUSE OF ACTION
PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS
KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED
EMPLOYEE WAGE STATEMENT PROVISIONS
(LABOR CODE § 226(a), (e))

35. Plaintiff incorporates paragraphs 1 through 34 of this Complaint as though fully set forth herein.

36. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must provide an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a).

37. Defendants failed to issue Plaintiff and Class Members with wage statements, in violation of Labor Code § 226(a). Plaintiff and Class Members did not receive wage statements, so they necessarily omitted accurate statements of all gross wages earned, in violation of Labor Code § 226(a)(1), the total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), all deductions, in violation of Labor Code § 226(a)(4), the inclusive dates of the pay period, in violation of Labor Code § 226(a)(6), an employee identification number or the last four digits of employees' social security numbers, in violation of Labor Code § 226(a)(7), the name and an address of the legal entity that is the employer, in violation of Labor Code

§ 226(a)(8), and all hourly rates in effect during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9).

38. As a consequence of Defendants' willful conduct in failing to provide Class Members with itemized wage statements, Plaintiff and members of the Class have been injured because they have not been paid all wages due and were not wage statements which reflect any information required by Labor Code § 226(a). As a result, Plaintiff and members of the Class are entitled to penalties pursuant to Labor Code § 226(e) to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000 per employee, and are entitled to an award of costs and reasonable attorneys' fees pursuant to Labor Code § 226(h).

Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

VIII.

FIFTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO TIMELY PAY WAGES DUE AT

SEPARATION OF EMPLOYMENT (LABOR CODE §§ 201-203)

39. Plaintiff incorporates paragraphs 1 through 38 of this Complaint as though fully set forth herein.

40. California Labor Code § 201 and § 202 require Defendants to pay employees all wages due within 72 hours after resignation of employment or the day of termination of employment. Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

41. Defendants paid Plaintiff and members of the Class their final wages beyond the time frames set forth in Labor Code §§ 201 and 202, in violation of Labor Code § 203. Plaintiff and members of Class were not paid all wages due and owing throughout the course of their employment, including all minimum and overtime wages and premium wages for missed and denied meal and rest

1 periods, as detailed above. Consequently, at the time of their separation from employment with
2 Defendants, they were not paid all final wages due and owing for the entirety of their employment.

3 42. More than 30 days have passed since Plaintiff and certain Class Members have left
4 Defendants' employ.

5 43. As a consequence of Defendants' willful conduct in not paying wages owed timely
6 upon separation of employment, Plaintiff and certain members of the Class are entitled to up to 30
7 days' wages as a penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages
8 at separation of employment.

9 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

10 **IX.**

11 **SIXTH CAUSE OF ACTION**

12 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

13 **UNFAIR COMPETITION PURSUANT TO**

14 **BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

15 44. Plaintiff incorporates paragraphs 1 through 43 of this Complaint as though fully set
16 forth herein.

17 45. This is a Class Action for Unfair Business Practices. Plaintiff, on her own behalf and
18 on behalf of the general public, and on behalf of others similarly situated, bring this claim pursuant
19 to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this
20 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public,
21 and members of the Class. Plaintiff seeks to enforce important rights affecting the public interest
22 within the meaning of Code of Civil Procedure § 1021.5.

23 46. Plaintiff is a "person" within the meaning of Business & Professions Code § 17204,
24 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
25 appropriate equitable relief.

26 47. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business
27 practices.
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1 48. Wage and hour laws express fundamental public policies. Properly providing
2 employees with all wages due are fundamental public policies of this State and of the United States.
3 Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor
4 standards, to ensure that employees are not required or permitted to work under substandard and
5 unlawful conditions, and to protect law-abiding employers and its employees from competitors who
6 lower their costs by failing to comply with minimum labor standards.

7 49. Defendants have violated statutes and public policies. Through the conduct alleged
8 in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have
9 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
10 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,
11 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
12 guaranteed to all employees under law.

13 50. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
14 §17200 *et seq.* of the Business & Professions Code.

15 51. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
16 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
17 17200 *et seq.* of the Business & Professions Code.

18 52. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others
19 similarly situated have been damaged in a sum as may be proven.

20 53. Unless restrained by this Court, Defendants will continue to engage in the unlawful
21 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court
22 should make such orders or judgments, including the appointment of a receiver, as may be necessary
23 to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or
24 deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited
25 to, disgorgement of profits which may be necessary to restore Plaintiff and members of the Class to
26 the money Defendants have unlawfully failed to pay.

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X.

SEVENTH CAUSE OF ACTION

PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS

PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201, 202, 226(a), 226.7, 510, 512, AND 1194 AND PURSUANT TO LABOR
CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3, 226.8, AND 558

54. Plaintiff incorporates paragraphs 1 through 53 of this Complaint as though fully set forth herein.

55. As a result of the acts alleged above, including the Labor Code violations set forth herein, Plaintiff seeks penalties pursuant to Labor Code § 2698 *et seq.* Plaintiff also seeks penalties under PAGA for violations of Labor Code § 226.8 due to Defendants' voluntary and knowing misclassification of Class Members as independent contractors, in violation of Labor Code § 226.8. California uses the ABC Test to determine if an employee is properly classified as an independent contractor: unless the hiring entity establishes (A) that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact, (B) that the worker performs work that is outside the usual course of the hiring entity's business, and (C) that the worker is customarily engaged in an independently established trade, occupation, or business, then the worker should be considered an employee and the hiring business an employer under the suffer or permit to work standard in the applicable wage orders. Defendants cannot establish all three elements of the ABC Test, let alone any single element individually: first, Defendants dictate the hours Plaintiff must work and how she specifically performs her job duties; next, Plaintiff does not perform work that is outside the usual course of Defendants' business— Plaintiff sells Defendants' products; and third, Plaintiff does not work in an independently established trade; rather, she is a review specialist performing sales—the exact business Defendants engage in. Plaintiff and Class Members fail to meet the qualifications of independent contractors under each element of the test and Defendants are, therefore, violating Labor Code § 226.8. Plaintiff also seeks penalties pursuant to PAGA for violations of Labor Code § 226.3 due to Defendants' failure to issue Plaintiff and Class Members with any wage statements.

56. For each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 510, 512, and 1194; and
- b. Pursuant to Labor Code § 2699(a), the penalties as authorized by Labor Code §§ 226.3, 226.8, and 558.

57. Penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

58. On November 3, 2020, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of November 3, 2020. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the aggrieved employees she seeks to represent request relief as described below.

XI.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages pursuant to Labor Code §§ 510 and 1194 in the amount of all unpaid minimum and overtime wages due to Plaintiff and Class Members;
2. For liquidated damages pursuant to Labor Code § 1194.2 in the amount of all unpaid minimum wages due to Plaintiff and Class Members;
3. For compensatory damages in the amount of one hour of wages for each day on which a meal and/or rest period was not properly provided to Plaintiff and Class Members pursuant to Labor Code § 226.7;
4. For penalties pursuant to Labor Code § 226(e) for Plaintiff and members of the Class;

1 5. For penalties pursuant to Labor Code § 203 for Plaintiff and members of the Class
2 who are no longer employed by Defendants;

3 6. An award of prejudgment and post-judgment interest;

4 7. For restitution for unfair competition pursuant to Business & Professions Code §
5 17200 *et seq.* for Plaintiff and Class Members;

6 8. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other
7 aggrieved employees;

8 9. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1)
9 and other applicable law;

10 10. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable
11 law; and

12 11. Such other and further relief as this Court may deem just and proper.

13 Dated: January 14, 2021

Respectfully submitted,

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15 GAINES & GAINES
A Professional Law Corporation

16
17 By: Daniel F. Gaines
DANIEL F. GAINES
18 EVAN S. GAINES
19 Attorney for Plaintiff

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

22 Dated: January 14, 2021

Respectfully submitted,

23
24 GAINES & GAINES
A Professional Law Corporation

25 By: Daniel F. Gaines
DANIEL F. GAINES
26 EVAN S. GAINES
27 Attorney for Plaintiff
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