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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SUTTER
CLERK OF THE COURT
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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SUTTER

LUCI GILLESPIE, on behalf of herself and all
others similarly situated,

Plaintiffs,

vs.

RIVER VALLEY CARE CENTER, an unknown
business entity; FLAX HOLDINGS, LLC, a
California limited liability company; and DOES 1
through 100, inclusive,

Defendants.

Case No. CVCS20-0002128

**CLASS ACTION COMPLAINT FOR
DAMAGES AND DECLARATORY
RELIEF AND DEMAND FOR JURY TRIAL**

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CLASS ACTION COMPLAINT

Plaintiff LUCI GILLESPIE (“Plaintiff”), on behalf of herself and all others similarly situated, complains and alleges as follows:

SUBJECT MATTER JURISDICTION AND VENUE

1. This court has jurisdiction over Plaintiff’s claims pursuant to the California Labor Code and California Business and Professions Code. The Court has jurisdiction over Defendants because they are California companies, do business in California, and because they are registered with the California Secretary of State.

2. Venue is proper in this district pursuant to California Code of Civil Procedure § 393. Defendants conduct business, employ Class members, and have jobsites in this County. Plaintiff is informed, believes, and thereon alleges that events giving rise to these causes of action occurred in this County, and some part of these causes of action arose in this County. Defendants RIVER VALLEY CARE CENTER, and FLAX HOLDINGS, LLC, operate multiple businesses, and employ Class members, in California, including in this judicial district.

INTRODUCTION

3. Plaintiff brings this class action on behalf of herself and other similarly situated individuals who have worked for Defendants RIVER CALLEY CARE CENTER, and FLAX HOLDINGS, LLC (“Defendants”) as hourly, non-exempt employees.

4. Defendants maintain a longstanding policy and practice of failing to properly compensate non-exempt employees for work performed during meal periods, for work performed while “off-the-clock,” and for missed rest and meal periods. These policies denied Plaintiff and other hourly, non-exempt employees payment for all hours worked, including overtime, and deny Plaintiff and Class members meal and rest periods that comply with California law.

5. Defendants violate California law by knowingly and willfully requiring Plaintiff and Class members to perform work and/or remain on duty and/or on work premises during meal and rest breaks, subjecting them to interruptions during those times. While Defendants require Class members to clock in and out for meal periods, these employees remain on duty and/or on work premises and are continuously subject to interruption during that time.

7. Plaintiff also pursues claims under California Labor Code to challenge Defendants' policies and practices of: (1) failing to pay Plaintiff and Class members minimum wage (§ 1194); (2) failing to pay Plaintiff and Class members overtime wages (§ 510); (3) failing to authorize and permit Plaintiff and Class members to take meal and rest breaks to which they are entitled by law (§§ 226.7 and 512); (4) failing to compensate Plaintiff and Class members for all hours worked (§ 204); (5) failing to provide Plaintiff and Class members accurate, itemized wage statements (§ 226); (6) failing to timely pay Plaintiff and Class members full wages upon termination or resignation (§§ 201-203); (7) failing to reimburse Plaintiff and Class members for necessary business expenses (§ 2802), and engaging in unfair and unlawful business practices (California Business and Professions Code § 17200, et seq.).

8. Plaintiff files this action to recover on behalf of herself and Class members all unpaid wages, compensation, penalties, and other damages owed to them under state law as a class action under California Code of Civil Procedure section 382, in order to remedy the sweeping practices which Defendants have integrated into their time tracking and payroll policies and which have deprived Plaintiff and Class members of their lawfully-earned wages.

9. Plaintiff is an individual over the age of eighteen, and at all times relevant to this Complaint was a resident of the State of California. Plaintiff was employed as an hourly paid, non-exempt employee by Defendants from approximately April 2020 until approximately June 2020.

10. The Class members are all people who are or who have been employed by Defendants as hourly, non-exempt employees in California within the four years preceding the filing of this Complaint.

11. Plaintiffs are informed, believe, and thereon allege that at all times mentioned in this Complaint, Defendants RIVER VALLEY CARE CENTER, FLAX HOLDINGS, LLC, and DOES 1

13. Defendants RIVER VALLEY CARE CENTER, FLAX HOLDINGS, LLC and DOES 1 through 100 will hereinafter collectively be referred to as “Defendants.”

15. As employers of Plaintiff and the Class members throughout the relevant time periods, Defendants, and each of them, are solely, jointly, and severally liable for back pay, penalties, and other economic damages owed to Plaintiff and the Class members.

16. At all material times, Defendants have done business under the laws of California, have had places of business in California, including in this judicial district, and have employed Class members in this judicial district. Defendants are a “person” as defined in Labor Code § 18 and Business and Professions Code § 17201. Defendants are also an “employer” as that term is used in the Labor Code and the IWC Wage Orders regulating wages, hours, and working conditions.

17. Defendants operate a chain of businesses throughout the United States and California, including in this judicial district. Defendants employ hundreds of hourly non-exempt workers similarly situated to Plaintiff across these facilities.

1 18. As a matter of policy, Defendants require Plaintiff and Class members to remain on
2 duty and on work premises during their scheduled shifts, including during rest breaks and while
3 clocked out for meal periods. Defendants do not compensate these employees for work performed
4 while clocked out for meal periods.

5 19. As a matter of policy, Defendants deny Plaintiff and Class members meal and rest
6 periods to which they are statutorily entitled, as well as the overtime premiums resulting from the
7 additional off-the-clock work performed during meal breaks.

8 20. Despite these recurring violations, Defendants do not provide Plaintiff and Class
9 members premium pay for missed rest breaks and meal periods.

10 21. Plaintiff and Class members regularly work through their unpaid meal breaks since
11 they are required to clock out for meal breaks, yet remain on-duty and are subject to interruption
12 throughout these “breaks.” They also regularly work through their rest breaks since there were required
13 to stay on the work premises and/or to perform work throughout these “breaks.”

14 22. Defendant has a policy and/or practice that Ms. Gillespie and the other aggrieved
15 employees were continuously on-call. This results in meal and rest breaks that are not compliant with
16 California law, because Ms. Gillespie and other hourly non-exempt employees are not relieved of all
17 duty and their meal and rest breaks were regularly interrupted. Such work includes, but is not limited
18 to, administering medication, checking patient blood sugar levels, inputting information, and
19 responding to work related inquiries.

20 23. Plaintiff and other aggrieved employees do not receive premium pay for all missed
21 meal or rest breaks. In addition, any premium payment paid were not paid at the regular rate of pay
22 and instead were paid at the base rate of pay.

23 24. Plaintiff and Class members are also regularly required to work off-the-clock, time
24 which Defendants neither record nor compensate them for. Plaintiff and Class members were required
25 to arrive before their scheduled start times, in uniform, in order to stand in line to click-in for their
26 shifts.

27 25. Additionally, Plaintiff and Class members were required to assist with patients
28 requiring urgent care after they clocked out from their scheduled shift.

28. Defendants' common course of wage-and-hour abuse includes routinely failing to maintain true and accurate records of the hours worked by Class members. In particular, Defendants have failed to record hours that Plaintiff and Class members worked during missed meal breaks as well as hours worked off the clock.

29. Defendants' failure to record all hours worked also results in a failure to provide Class members, including Plaintiff, accurate itemized wage statements as required by California law. The wage statements Defendants provide are not accurate because they do not reflect the actual hours worked by Plaintiff and Class members. The wage statements do not contain off-the-clock work or time that should be compensable during interruptible meal breaks. Further, the wage statements are inaccurate because they do not include premium pay for missed breaks, overtime, and work that was performed while the timeclock was out of service. Moreover, the wage statements do not contain the name or address of Defendants.

30. Further, Defendants do not provide Class members, including Plaintiff, with full payment of all wages owed at the end of employment. As these workers are owed for off-the-clock work, unpaid overtime, and premium pay when their employment ends, and these amounts remain unpaid under Defendants' policies and practices, Defendants fail to pay all wages due upon termination. As a consequence, Defendants are subject to waiting time penalties.

31. Finally, Defendants do not reimburse or compensate Plaintiff and Class members for business related expenses incurred for Defendants' benefit, including but not limited to the use of their personal cell phones for work related purposes and for personal protective equipment. Defendants do not reimburse or compensate Plaintiff and Class members for these business expenses.

32. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth.

1 herein.

2 33. Plaintiff brings this case as a class action on behalf of herself and all others similarly
3 situated pursuant to California Code of Civil Procedure section 382. The Class that Plaintiff seeks to
4 represent is defined as follows:

5 All current and former non-exempt employees, employed by any of the
6 Defendants in California during the time period four years prior to the filing
7 of original complaint until final judgment.

8 34. This action has been brought and may properly be maintained as a class action under
9 California Code of Civil Procedure section 382 because there is a well-defined community of interest
10 in the litigation and the Class is easily ascertainable.

11 a. **Numerosity:** The potential members of the Class as defined are so numerous that
12 joinder of all the members of the Class is impracticable. Plaintiffs are informed and believe
13 that the number of Class members exceeds five hundred (500) individuals. This volume makes
14 bringing the claims of each individual member of the class before this Court impracticable.
15 Likewise, joining each individual member of the Class as a plaintiff in this action is
16 impracticable. Furthermore, the identities of the Class will be determined from Defendants'
17 records, as will the compensation paid to each of them. As such, a class action is a reasonable
18 and practical means of resolving these claims. To require individual actions would prejudice
19 the Class and Defendants.

20 b. **Commonality:** There are questions of law and fact common to Plaintiff and the
21 Class that predominate over any questions affecting only individual members of the Class.
22 These common questions of law and fact include, but are not limited to:

- 23 i. Whether Defendants fail to compensate putative Class members for all
24 hours worked in violation of the California Labor Code, Wage Orders, and
25 Business and Professions Code §§ 17200 et seq.;
- 26 ii. Whether Defendants fail to compensate putative Class members with at
27 least minimum wage for all compensable work time in violation of the
28 California Labor Code, Wage Orders, and Business and Professions Code

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§§ 17200 et seq.;

- iii. Whether Defendants fail to compensate putative Class members with overtime wages for work performed in excess of eight hours in a day in violation of the California Labor Code, Wage Orders, and Business and Professions Code §§ 17200 et seq.;
- iv. Whether Defendants fail to authorize, permit, make available, and/or provide putative Class members with compliant meal periods to which they are entitled in violation of the California Labor Code, Wage Orders, and Business and Professions Code §§ 17200 et seq.;
- v. Whether Defendants fail to authorize, permit, make available, and/or provide putative Class members with compliant rest periods to which they are entitled in violation of the California Labor Code, Wage Orders, and Business and Professions Code §§ 17200 et seq.;
- vi. Whether Defendants fail to reimburse putative Class members for reasonable business expenses that they incur in violation of the California Labor Code, Wage Orders, and Business and Professions Code §§ 17200 et seq.;
- vii. Whether Defendants fail to provide putative Class members with timely, accurate itemized wage statements in violation of the California Labor Code, Wage Orders, and Business and Professions Code §§ 17200 et seq.;
- viii. Whether Defendants fail to timely pay Class members for all wages owing upon termination of employment in violation of the California Labor Code, Wage Orders, and Business and Professions Code § 17200 et seq.; and
- ix. The proper formula for calculating restitution, damages and penalties owed to Plaintiff and the putative Class alleged herein.

c. **Typicality:** Plaintiff’s claims are typical of the claims of the Class. Defendants’ common course of conduct in violation of law as alleged herein has caused Plaintiff and putative Class members to sustain the same or similar injuries and damages. Plaintiff’s claims

1 are thereby representative of and co-extensive with the claims of the Class.

2 d. **Adequacy of Representation:** Plaintiff is a member of the Class, does not have
3 any conflicts of interest with other Class members, and will prosecute the case vigorously on
4 behalf of the Class. Counsel representing Plaintiff is competent and experienced in litigating
5 large employment class actions, including misclassification and wage and hour class actions.
6 Plaintiff will fairly and adequately represent and protect the interests of the Class members.

7 e. **Superiority of Class Action:** A class action is superior to other available means
8 for the fair and efficient adjudication of this controversy. Individual joinder of all Class
9 members is not practicable, and questions of law and fact common to the Class predominate
10 over any questions affecting only individual members of the Class. Each Class member has
11 been damaged and is entitled to recovery by reason of Defendants' illegal policies and/or
12 practices. Class action treatment will allow those similarly situated persons to litigate their
13 claims in the manner that is most efficient and economical for the parties and the judicial
14 system. The injury suffered by each Class member, while meaningful on an individual basis,
15 is not of such magnitude as to make the prosecution of individual actions against Defendants
16 economically feasible. Individualized litigation increases the delay and expense to all Parties
17 and the Court. By contrast, class action treatment will allow those similarly situated persons
18 to litigate their claims in the manner that is most efficient and economical for the parties and
19 the judicial system.

20 35. In the alternative, the Class may be certified because the prosecution of separate actions
21 by the individual members of the Class would create a risk of inconsistent or varying adjudication
22 with respect to individual members of the Class, and, in turn, would establish incompatible standards
23 of conduct for Defendant.

24 36. If each individual Class member were required to file an individual lawsuit, Defendants
25 would necessarily gain an unconscionable advantage because Defendants would be able to exploit and
26 overwhelm the limited resources of each member of the Class with Defendants' vastly superior
27 financial legal resources.

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38. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

39. Defendants fail to compensate Plaintiff and putative Class members with at least the minimum wage for all hours worked or spent in Defendants' control because Plaintiff and the putative Class members are paid at rates at or just above the applicable California minimum, and when the required premium payments for missed breaks, wages for off-the-clock work, and overtime wages are factored in, the actual rate of pay often drops below the applicable California minimum.

40. Defendants have maintained policies and procedures which created a working environment where Plaintiff and Class members are routinely compensated at a rate that is less than the statutory minimum wage.

41. During the applicable statutory period, Labor Code §§1182.11, 1182.12 and 1197, and the Minimum Wage Order were in full force and effect and required that Defendant's employees receive the minimum wage for all hours worked irrespective of whether nominally paid on a piece rate, or any other bases, at the rate of ten dollars (\$10.00) per hour commencing January 1, 2016.

42. IWC Wage Order 4-2001(2)(K) defines hours worked as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

43. Labor Code § 1194(a) provides as follows:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or

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overtime compensation, including interest thereon, reasonable attorneys’ fees, and costs of suit.

44. Because of Defendants’ policies and practices with regard to compensating Plaintiff and Class members, Defendants have failed to pay minimum wages as required by law. Plaintiff and Class members frequently perform work for which they are compensated below the statutory minimum, as determined by the IWC.

45. Labor Code §1194.2 provides that, in any action under § 1194 to recover wages because of the payment of a wage less than minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

46. California law further requires that employers pay their employees for all hours worked at the statutory or agreed upon rate. No part of the rate may be used as a credit against a minimum wage obligation.

47. By failing to maintain adequate time records as required by Labor Code §1174(d) and IWC Wage Order 4-2001(7), Defendants have made it difficult to calculate the minimum wage compensation due to Plaintiffs and Class members.

48. As a direct and proximate result of the unlawful acts and/or omissions of Defendants, Plaintiff and Class members have been deprived of minimum wages in an amount to be determined at trial, and are entitled to a recovery of such amount, plus liquidated damages, plus interest thereon, attorneys’ fees, and costs of suit pursuant to Labor Code §§ 1194, 1194.2 and 1197.1.

49. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

SECOND CAUSE OF ACTION
Failure to Pay Overtime Wages
Pursuant to California Labor Code § 510
(Against All Defendants – on Behalf of the Class)

50. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

51. Defendants do not compensate Plaintiff and Class members with appropriate overtime, including time and half and double time, as required by California law.

1 52. Labor Code § 510(a) provides as follows:

2 Eight hours of labor constitutes a day's work. Any work in excess of eight
3 hours in one workday and any work in excess of 40 hours in any one
4 workweek and the first eight hours worked on the seventh day of work in
5 any one workweek shall be compensated at the rate of no less than one and
6 one-half times the regular rate of pay for an employee. Any work in excess
7 of 12 hours in one day shall be compensated at the rate of no less than twice
8 the regular rate of pay for an employee. In addition, any work in excess of
9 eight hours on any seventh day of a workweek shall be compensated at the
10 rate of no less than twice the regular rate of pay of an employee.

11 53. The IWC Wage Order 4-2001(3)(A)(1) states:

12 [E]mployees shall not be employed more than eight (8) hours in any
13 workday or more than 40 hours in any workweek unless the employee
14 receives one and one-half (1 ½) times such employee's regular rate of pay
15 for all hours worked over 40 hours in the workweek. Eight (8) hours of
16 labor constitutes a day's work. Employment beyond eight (8) hours in any
17 workday or more than six (6) days in any workweek is permissible provided
18 the employee is compensated for such overtime at not less than:
19 ... One and one-half (1 ½) times the employee's regular rate of pay for all
20 hours worked in excess of eight (8) hours up to and including 12 hours in
21 any workday, and for the first eight (8) hours worked on the seventh (7th)
22 consecutive day of work in a workweek; and ... Double the employee's
23 regular rate of pay for all hours worked in excess of 12 hours in any workday
24 and for all hours worked in excess of eight (8) hours on the seventh (7th)
25 consecutive day of work in a workweek[.] ...

26 54. Labor Code § 1194(a) provides as follows:

27 Notwithstanding any agreement to work for a lesser wage, any employee
28 receiving less than the legal minimum wage or the legal overtime
29 compensation applicable to the employee is entitled to recover in a civil
30 action the unpaid balance of the full amount of this minimum wage or
31 overtime compensation, including interest thereon, reasonable attorney's
32 fees, and costs of suit.

33 55. Labor Code § 200 defines wages as "all amounts for labor performed by employees of
34 every description, whether the amount is fixed or ascertained by the standard of time, task, piece,
35 commission basis or other method of calculation." All such wages are subject to California's overtime
36 requirements, including those set forth above.

37 56. Defendants often require Plaintiff and Class members to work in excess of eight hours
38 per day. Defendants do not compensate Plaintiff and Class members at an overtime rate for hours in
39 excess of eight hours each day or in excess of forty in each week, nor do Defendants compensate

1 Plaintiff and Class members at a double time rate for hours in excess of twelve each day or in excess
2 of eight on the seventh consecutive day.

3 57. Plaintiff and Class members have worked overtime hours for Defendants without being
4 paid overtime premiums in violation of the Labor Code, the applicable IWC Wage Order, and other
5 applicable law.

6 58. Defendants have knowingly and willfully refused to properly compensate Plaintiff and
7 the Class for overtime work. As a proximate result of the aforementioned violations, Defendants have
8 damaged Plaintiff and the Class in amounts to be determined according to proof at time of trial, but in
9 an amount in excess of the jurisdictional requirements of this Court.

10 59. Defendants are liable to Plaintiff and the Class alleged herein for the unpaid overtime
11 and civil penalties, with interest thereon. Furthermore, Plaintiff is entitled to an award of attorneys'
12 fees and costs as set forth below.

13 60. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

14 **THIRD CAUSE OF ACTION**
15 **Failure to Authorize and Permit, Provide and/or Make Available Meal and Rest Periods**
16 **Pursuant to California Labor Code §§ 226.7 and 512**
(Against All Defendants – on Behalf of the Class)

17 61. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
18 herein.

19 62. Defendants require Plaintiff and Class members to respond to calls at all times during
20 their shifts, even if this means cutting breaks short or not being relieved for breaks at all.

21 63. Defendants do not pay Plaintiff and Class members one hour of premium pay for the
22 missed meal and rest breaks.

23 64. Labor Code §§ 226.7 and 512 and the applicable Wage Order requires Defendants to
24 authorize and permit meal and rest periods to its employees. Labor Code §§ 226.7 and 512 and the
25 Wage Order prohibit employers from employing an employee for more than five hours without a meal
26 period of not less than thirty minutes, and from employing an employee more than ten hours per day
27 without providing the employee with a second meal period of not less than thirty minutes. Section
28 226.7 and the applicable Wage Order also require employers to authorize and permit employees to

1 take ten minutes of net rest time per four hours or major fraction thereof of work, and to pay employees
2 their full wages during those rest periods. Unless the employee is relieved of all duty during the thirty-
3 minute meal period and ten-minute rest period, the employee is considered “on duty” and the meal or
4 rest period is counted as time worked under the applicable wage orders.

5 65. Under § 226.7(b) and the applicable Wage Order, an employer who fails to authorize,
6 permit, and/or make available a required meal period must, as compensation, pay the employee one
7 hour of pay at the employee’s regular rate of compensation for each workday that the meal period was
8 not authorized and permitted. Similarly, an employer must pay an employee denied a required rest
9 period one hour of pay at the employee’s regular rate of compensation for each workday that the rest
10 period was not authorized and permitted and/or not made available

11 66. Despite these requirements, Defendants knowingly and willfully refuse to perform their
12 obligations to authorize and permit and/or make available to Plaintiff and the Class the ability to take
13 the off-duty meal and rest periods to which they are entitled. Defendants also fail to pay Plaintiff and
14 the Class one hour of pay for each off-duty meal and/or rest periods that they are denied. Defendants’
15 conduct described herein violates Labor Code §§ 226.7 and 512. Therefore, pursuant to Labor Code
16 § 226.7(b), Plaintiff and the Class are entitled to compensation for the failure to authorize and permit
17 and/or make available meal and rest periods, plus interest, attorneys’ fees, expenses and costs of suit.

18 67. As a proximate result of the aforementioned violations, Plaintiff and the Class have
19 been damaged in an amount according to proof at time of trial.

20 68. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

21 **FOURTH CAUSE OF ACTION**
22 **Failure to Pay for All Hours Worked**
23 **Pursuant to California Labor Code §§ 200, 204, 1194, and 1198**
(Against All Defendants – on Behalf of the Class)

24 69. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
25 herein.

26 70. Plaintiff alleges that Defendants willfully engaged and continue to engage in a policy
27 and practice of not compensating Plaintiff and putative Class members for all hours worked or spent
28 in Defendants’ control.

1 71. Defendants regularly require Plaintiff and putative Class members to perform
2 uncompensated off-the-clock work. Detailed above, Defendants require Plaintiff and putative Class
3 members to clock out for meal breaks but then require, suffer, and/or permit them to work through
4 these meal breaks.

5 72. Labor Code § 200 defines wages as “all amounts for labor performed by employees of
6 every description, whether the amount is fixed or ascertained by the standard of time, task, piece,
7 commission basis or method of calculation.”

8 73. Labor Code § 204(a) provides that “[a]ll wages ... earned by any person in any
9 employment are due and payable twice during each calendar month....”

10 74. Labor Code § 1194(a) provides as follows:

11 Notwithstanding any agreement to work for a lesser wage, any employee
12 receiving less than the legal minimum wage or the legal overtime
13 compensation applicable to the employee is entitled to recover in a civil
14 action the unpaid balance of the full amount of this minimum wage or
overtime compensation, including interest thereon, reasonable attorneys’
fees, and costs of suit.

15 75. Labor Code § 1198 makes it unlawful for employers to employ employees under
16 conditions that violate the Wage Order.

17 76. IWC Wage Order 4-2001(2)(K) defines hours worked as “the time during which an
18 employee is subject to the control of an employer, and includes all the time the employee is suffered
19 or permitted to work, whether or not required to do so....”

20 77. In violation of California law, Defendants knowingly and willfully refuse to perform
21 its obligation to provide Plaintiff and putative Class members with compensation for all time worked.
22 Therefore, Defendants committed, and continue to commit, the acts alleged herein knowingly and
23 willfully, and in conscious disregard of Plaintiff’s and putative Class members’ rights. Plaintiff and
24 putative Class members are thus entitled to recover nominal, actual, and compensatory damages, plus
25 interest, attorneys’ fees, expenses and costs of suit.

26 78. As a proximate result of the aforementioned violations, Plaintiff and the putative Class
27 have been damaged in an amount according to proof at time of trial.

28 79. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

FIFTH CAUSE OF ACTION
Failure to Provide Accurate Itemized Wage Statements
Pursuant to California Labor Code § 226
(Against All Defendants – on Behalf of the Class)

80. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

81. Defendants do not provide Plaintiff and Class members with accurate itemized wage statements as required by California law.

82. Labor Code § 226(a) provides:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (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, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

83. Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

84. Plaintiffs seek to recover actual damages, costs and attorneys' fees under this section.

85. Defendants have failed to provide timely, accurate itemized wage statements to Plaintiff and Class members in accordance with Labor Code § 226(a) and the applicable IWC Wage Orders. The wage statements Defendants provide their employees, including Plaintiff and Class

1 members, do not reflect the actual hours worked, actual gross wages earned, or actual net wages
2 earned. The wage statements do not include the name or address of Defendants.

3 86. Defendants are liable to Plaintiff and the Class alleged herein for the amounts described
4 above in addition to the civil penalties set forth below, with interest thereon. Furthermore, Plaintiff
5 are entitled to an award of attorneys' fees and costs as set forth below.

6 87. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

7 **SIXTH CAUSE OF ACTION**
8 **Waiting Time Penalties**
9 **Pursuant to California Labor Code §§ 201-203**
10 **(Against All Defendants – on Behalf of the Class)**

11 88. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
12 herein.

13 89. Defendants do not provide Class members whose employment with Defendants have
14 ended, including Plaintiff, with their wages due at the time their employment ends as required under
15 California law.

16 90. Labor Code § 201 provides:

17 If an employer discharges an employee, the wages earned and unpaid at the
18 time of discharge are due and payable immediately.

19 91. Labor Code § 202 provides:

20 If an employee not having a written contract for a definite period quits his
21 or her employment, his or her wages shall become due and payable not later
22 than 72 hours thereafter, unless the employee has given 72 hours previous
23 notice of his or her intention to quit, in which case the employee is entitled
24 to his or her wages at the time of quitting.

25 92. Labor Code § 203 provides, in relevant part:

26 If an employer willfully fails to pay, without abatement or reduction, in
27 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
28 employee who is discharged or who quits, the wages of the employee shall
continue as a penalty from the due date thereof at the same rate until paid
or until an action therefor is commenced; but the wages shall not continue
for more than 30 days.

1 93. Class members have left their employment with Defendants during the statutory period,
2 at which time Defendants owed them unpaid wages, including overtime and double time wages.

3 94. Defendants willfully refuse and continue to refuse to pay former Class members all the
4 wages that are due and owing them, in the form of, *inter alia*, overtime and double time pay and meal
5 and rest period premium pay, upon the end of their employment. As a result of Defendants' actions,
6 Plaintiff and Class members have suffered and continue to suffer substantial losses, including lost
7 earnings, and interest.

8 95. Defendants' willful failure to pay Class members the wages due and owing them
9 constitutes a violation of Labor Code §§ 201-202. As a result, Defendants are liable to Class members
10 for all penalties owing pursuant to Labor Code §§ 201-203.

11 96. In addition, § 203 provides that an employee's wages will continue as a penalty up to
12 thirty days from the time the wages were due. Therefore, Plaintiff and Class members are entitled to
13 penalties pursuant to Labor Code § 203, plus interest.

14 97. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

15 **SEVENTH CAUSE OF ACTION**
16 **Failure to Reimburse for Necessary Business Expenses**
17 **Pursuant to California Labor Code § 2802**
 (Against All Defendants – on Behalf of the Class)

18 98. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
19 herein.

20 99. Defendants do not reimburse Plaintiff and Class members for necessary business
21 expenses.

22 100. Labor Code § 2802(a) provides as follows:

23 An employer shall indemnify his or her employee for all necessary
24 expenditures or losses incurred by the employee in direct consequence of
25 the discharge of his or her duties, or of his or her obedience to the directions
of the employer, even though unlawful, unless the employee, at the time of
obeying the direction, believed them to be lawful.

26 101. Defendants require Plaintiff and Class members to use their personal mobile devices
27 for Defendants' benefit. Defendants do not reimburse Plaintiff or Class members for these expenses
28

1 that are necessary to perform their daily work assignments.

2 102. Defendants are liable to Plaintiff and Class members for the unreimbursed expenses
3 and civil penalties, with interest thereon. Furthermore, Plaintiff is entitled to an award of attorneys'
4 fees and costs as set forth below.

5 103. As a direct and proximate result of the aforementioned violations, Plaintiff and Class
6 members have been damaged in an amount according to proof at time of trial.

7 104. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

8 **EIGHTH CAUSE OF ACTION**
9 **Unfair Business Practices**
10 **Pursuant to California Business and Professions Code §§ 17200, *et seq.***
11 **(Against All Defendants – on Behalf of the Class)**

12 105. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
13 herein.

14 106. Business and Professions Code §§17200 *et seq.* prohibits unfair competition in the form
15 of any unlawful, unfair or fraudulent business acts or practices.

16 107. Business and Professions Code § 17204 allows a person injured by the unfair business
17 acts or practices to prosecute a civil action for violation of the UCL.

18 108. Labor Code § 90.5(a) states it is the public policy of California to vigorously enforce
19 minimum labor standards in order to ensure employees are not required to work under substandard
20 and unlawful conditions, and to protect employers who comply with the law from those who attempt
21 to gain competitive advantage at the expense of their workers by failing to comply with minimum
22 labor standards.

23 109. Beginning at an exact date unknown to Plaintiff, but at least since the date four years
24 prior to the filing of this suit, Defendants have committed acts of unfair competition as defined by the
25 Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent business acts and
26 practices described in this Complaint, including, but not limited to:

- 27 a. violations of Labor Code § 1194 and IWC Wage Order pertaining to the payment
28 of wages;

- 1 b. violations of Labor Code § 510 and applicable IWC Wage Orders pertaining to
- 2 overtime;
- 3 c. violations of Labor Code §§ 1182.11, 1182.12, and 1197 and IWC wage orders
- 4 pertaining to minimum wage;
- 5 d. violations of Labor Code §§226.7 and 512 and IWC wage orders pertaining to meal
- 6 and rest breaks;
- 7 e. violations of Labor Code § 226 regarding accurate, timely itemized wage
- 8 statements; and
- 9 f. violations of Labor Code §§ 201-203.
- 10 g. violations of Labor Code § 2802

11 110. The violations of these laws and regulations, as well as of the fundamental California
12 public policies protecting wages and discouraging overtime labor underlying them, serve as unlawful
13 predicate acts and practices for purposes of Business and Professions Code §§17200 *et seq.*

14 111. The acts and practices described above constitute unfair, unlawful and fraudulent
15 business practices, and unfair competition, within the meaning of Business and Professions Code
16 §§17200, *et seq.* Among other things, the acts and practices have taken from Plaintiffs and the Class
17 wages rightfully earned by them, while enabling Defendants to gain an unfair competitive advantage
18 over law-abiding employers and competitors.

19 112. Business and Professions Code § 17203 provides that a court may make such orders or
20 judgments as may be necessary to prevent the use or employment by any person of any practice which
21 constitutes unfair competition. Injunctive relief is necessary and appropriate to prevent Defendants
22 from repeating their unlawful, unfair, and fraudulent business acts and practices alleged above.

23 113. As a direct and proximate result of the aforementioned acts and practices, Plaintiff and
24 the Class members have suffered a loss of money and property, in the form of unpaid wages which
25 are due and payable to them.

26 114. Business and Professions Code §17203 provides that the Court may restore to any
27 person in interest any money or property which may have been acquired by means of such unfair
28 competition. Plaintiff and the Class are entitled to restitution pursuant to Business and Professions

Code §17203 for all wages and payments unlawfully withheld from employees during the four-year period prior to the filing of this Complaint. Plaintiff's success in this action will enforce important rights affecting the public interest and in that regard Plaintiff sues on behalf of themselves as well as others similarly situated. Plaintiff and Class members seek and are entitled to unpaid wages, declaratory and injunctive relief, and all other equitable remedies owing to them.

115. Plaintiff herein takes upon themselves enforcement of these laws and lawful claims. There is a financial burden involved in pursuing this action, the action is seeking to vindicate a public right, and it would be against the interests of justice to penalize Plaintiff by forcing them to pay attorneys' fees from the recovery in this action. Attorneys' fees are appropriate pursuant to Code of Civil Procedure §1021.5 and otherwise.

116. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the putative Class she seeks to represent in this action, requests the following relief:

1. Damages and restitution according to proof at trial for all unpaid wages and other injuries, as provided by the California Labor Code and California Business and Professions Code;
2. For a declaratory judgment that Defendants have violated the California Labor Code, and public policy as alleged herein;
3. For a declaratory judgment that Defendants have violated California Business and Professions Code §§ 17200 et seq., as a result of the aforementioned violations of the California Labor Code and of California public policy protecting wages;
4. For preliminary, permanent, and mandatory injunctive relief prohibiting Defendants, its officers, agents, and all those acting in concert with them from committing in the future those violations of law herein alleged;
5. For an equitable accounting to identify, locate, and restore to all current and former employees the wages they are due, with interest thereon;

- Respectfully submitted,


Carolyn H. Cottrell
Kyle G. Bates
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

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Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to a jury.

Respectfully submitted,

Date: December 14, 2020

Cady. Attall

Carolyn H. Cottrell

Kyle G. Bates

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

Attorneys for Plaintiffs and the Putative Class