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County of Monterey
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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF MONTEREY
10 UNLIMITED JURISDICTION

11 CECILIA ZAMUDIO, on behalf of herself
and all others similarly situated,

12 *Plaintiff,*

13 vs.

14 CYPRESS HEALTHCARE PARTNERS,
15 LLC, a California corporation; SALINAS
VALLEY MEMORIAL HOSPITAL
16 FOUNDATION, a California corporation; and
DOES 1 through 50, inclusive,

17 *Defendants.*
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19
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21

Case No.: 20CV003329

[assigned for all purposed to the Hon. Lydia M.
Villarreal, Dept. 13]

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
3. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
4. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*); and
5. Penalties Pursuant to Cal. Labor Code § 2698, *et seq.*

JURY TRIAL DEMANDED

1 Plaintiff CECILIA ZAMUDIO ("Plaintiff"), on behalf of herself, all others similarly situated,
2 aggrieved employees, the State of California, and the general public, complain and allege as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action against Defendants CYPRESS HEALTHCARE
5 PARTNERS, LLC, a California corporation; SALINAS VALLEY MEMORIAL HOSPITAL
6 FOUNDATION, a California corporation; and DOES 1 through 50, inclusive, (collectively referred
7 to as "Defendants") for alleged violations of the California Labor Code and California Business and
8 Professions Code. As set forth below, Plaintiff alleges that Defendants have:

- 9 (1) failed to provide Plaintiff and similarly situated employees with meal periods;
10 (2) failed to pay them premium wages for missed meal periods;
11 (3) failed to provide them with accurate written wage statements; and
12 (4) failed to pay them all of their final wages following separation of employment.

13 Based on these alleged Labor Code violations, Plaintiff now brings this class and
14 representative action to recover unpaid wages, liquidated damages, statutory penalties, civil penalties,
15 restitution, and related relief on behalf of herself, all others similarly situated, the aggrieved
16 employees, the State of California, and the general public.

17 **2. JURISDICTION AND VENUE**

18 3. This Court has subject matter jurisdiction to hear this case because the monetary
19 damages and restitution sought by Plaintiff from Defendants conduct exceeds the minimal jurisdiction
20 of the Superior Court of the State of California.

21 4. Venue is proper in the County of Monterey pursuant to Code of Civil Procedure
22 sections 395(a) and 395.5 in that liability arose this county because at least some of the transactions
23 that are the subject matter of this Complaint occurred therein and/or each defendant is found,
24 maintains offices, transacts business and/or has an agent therein or that Defendant is either a resident

25 5. Venue is proper in Monterey County because Defendants' have at all times alleged
26 herein, conducted business in Monterey County, and throughout California. As such, venue is proper
27 in any county in California.

28 6. Plaintiff is informed and believes, and thereupon alleges that the individual claims of

1 the classes defined below are under the \$75,000 threshold for federal diversity jurisdiction and the
2 aggregate claim is under the \$5,000,000 threshold for federal jurisdiction under the Class Action
3 Fairness Act of 2005.

4 PARTIES

5 7. Plaintiff CECILIA ZAMUDIO is, and at all relevant times mentioned herein, an
6 individual residing in the State of California.

7 8. Plaintiff is informed and believes, and thereupon alleges that Defendant CYPRESS
8 HEALTHCARE PARTNERS, LLC, is, and at all relevant times mentioned herein, a California
9 corporation doing business in the State of California.

10 9. Plaintiff is informed and believes, and thereupon alleges that Defendant SALINAS
11 VALLEY MEMORIAL HOSPITAL FOUNDATION, is, and at all relevant times mentioned herein,
12 a California corporation doing business in the State of California.

13 10. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
14 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff
15 will amend this Complaint to allege the true names and capacities of the DOE defendants when
16 ascertained. Plaintiff is informed and believes, and thereupon alleges that each of the fictitiously
17 named defendants are responsible in some manner for the occurrences, acts and omissions alleged
18 herein and that Plaintiff's alleged damages were proximately caused by these defendants, and each of
19 them. Plaintiff will amend this complaint to allege both the true names and capacities of the DOE
20 defendants when ascertained.

21 11. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
22 mentioned herein, some or all of the defendants were the representatives, agents, employees, partners,
23 directors, associates, joint venturers, joint employers, principals or co-participants of some or all of
24 the other defendants, and in doing the things alleged herein, were acting within the course and scope
25 of such relationship and with the full knowledge, consent and ratification by such other defendants.

26 12. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
27 mentioned herein, some of the defendants pursued a common course of conduct, acted in concert and
28 conspired with one another, and aided and abetted one another to accomplish the occurrences, acts

1 and omissions alleged herein.

2 13. This action has been brought and may be maintained as a class action pursuant to Code
3 of Civil Procedure section 382 because there is a well-defined community of interest among the
4 persons who comprise the readily ascertainable classes defined below and because Plaintiff is
5 unaware of any difficulties likely to be encountered in managing this case as a class action.

6 14. **Relevant Time Period:** The relevant time period is defined as the time period
7 beginning four years prior to the filing of this action until judgment is entered.

8
9 **Meal Period Sub-Class:** All non-exempt employees in California who worked in a shift in
10 excess of five hours during the four years prior to the filing of this action and ending on the
11 date that final judgment is entered in this action.

12 **Waiting Time Penalties Sub-Class:** All **Meal Period Sub-Class** members who separated
13 from their employment with Defendants during the period beginning three years before the
14 filing of this action and ending when final judgment is entered.

15 **Wage Statement Class:** All persons employed by Defendants in California during the period
16 beginning one year before the filing of this action and ending when final judgment is entered.

17 **UCL Class:** All **Hourly Employee Class** members employed by Defendants in California
18 during the four years prior to the filing of this action and ending on the date that final judgment
19 is entered in this action.

20 15. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right
21 to amend or modify the class definitions with greater specificity, by further division into sub-classes
22 and/or by limitation to particular issues.

23 16. **Numerosity:** The class members are so numerous that the individual joinder of each
24 individual class member is impractical. While Plaintiff does not currently know the exact number of
25 class members, Plaintiff is informed and believes, and thereupon alleges that the actual number
26 exceeds the minimum required for numerosity under California law.

27 17. **Commonality and Predominance:** Common questions of law and fact exist as to all
28 class members and predominate over any questions which affect only individual class members.
These common questions include, but are not limited to:

A. Whether Defendants maintained a policy or practice of failing to provide
employees with their meal periods;

B. Whether Defendants failed to pay premium wages to class members when they

1 have not been provided with required meal periods;

2 C. Whether Defendants failed to provide class members with accurate written
3 wage statements as a result of providing them with written wage statements
4 with inaccurate entries for, among other things, amounts of gross and net
5 wages, and total hours worked;

6 D. Whether Defendants applied policies or practices that result in late and/or
7 incomplete final wage payments;

8 E. Whether Defendants are liable to class members for waiting time penalties
9 under Labor Code section 203; and

10 F. Whether class members are entitled to restitution of money or property that
11 Defendants may have acquired from them through unfair competition;

12 18. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff
13 is informed and believes and thereupon alleges that Defendants have a policy or practice of failing to
14 comply with the California Labor Code and Business and Professions Code as alleged in this
15 Complaint.

16 19. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in
17 that she has no interests that are adverse to, or otherwise conflict with, the interests of absent class
18 members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly
19 and adequately represent and protect the interests of the other class members.

20 20. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
21 they have no known conflicts of interest with Plaintiff or absent class members, are experienced in
22 wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on behalf
23 of Plaintiff and absent class members.

24 21. **Superiority:** A class action is vastly superior to other available means for fair and
25 efficient adjudication of the class members' claims and would be beneficial to the parties and the
26 Court. Class action treatment will allow a number of similarly situated persons to simultaneously and
27 efficiently prosecute their common claims in a single forum without the unnecessary duplication of
28 effort and expense that numerous individual actions would entail. In addition, the monetary amounts

1 due to many individual class members are likely to be relatively small and would thus make it difficult,
2 if not impossible, for individual class members to both seek and obtain relief. Moreover, a class
3 action will serve an important public interest by permitting class members to effectively pursue the
4 recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent
5 or contradictory judgments inherent in individual litigation.

6 GENERAL ALLEGATIONS

7 22. Plaintiff worked for Defendants from May of 2018 through June of 2020 as a non-
8 exempt hourly employee.

9 23. Putative class members were not provided with meal periods of at least thirty (30)
10 minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal
11 period as part of each work shift; (2) no formal written meal policy that encouraged employees to
12 take their meal periods, or that advised putative class members of their meal period rights; and (3)
13 Defendants' practice of requiring putative class members to continue working through their meal
14 periods due to the excessive workloads. Additionally, Plaintiff and putative class members' meal
15 periods were consistently taken after the completion of their fifth hour of work and were less than 30
16 minutes in length.

17 24. Plaintiff and the putative class were not provided with accurate wage statements as
18 mandated by law pursuant to Labor Code section 226. Specifically, Defendants failed to issue wage
19 statements as "a detachable part of the check, draft, or voucher paying the employee's wages, or
20 separately if wages are paid by personal check or cash, an accurate itemized statement in writing."
21 Additionally, the wage statements issued to Plaintiff and class members were not recorded in "ink or
22 other indelible form."

23 25. Defendants failed to comply with Labor Code section 226(a)(1) as "gross wages
24 earned" were not accurately reflected in that: all hours worked, including overtime, were not included.

25 26. Defendants failed to comply with Labor Code section 226(a)(2) as "total hours worked
26 by the employee" were not accurately reflected in that: all hours worked, including overtime, were
27 not included.

28 27. Defendants failed to comply with Labor Code section 226(a)(5) as "net wages earned"

1 were not accurately reflected in that: all hours worked, including overtime, were not included.

2 28. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable
3 hourly rates in effect during the pay period and the corresponding number of hours worked at each
4 hourly rate by the employee” were not accurately reflected in that: all hours worked, including
5 overtime, were not included.

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PROVIDE MEAL PERIODS**

8 **(Lab. Code §§ 204, 223, 226.7, 512, 1174, and 1198)**

9 **(Plaintiff and Meal Period Sub-Class)**

10 29. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if
11 fully alleged herein.

12 30. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been
13 non-exempt employees of Defendant entitled to the full meal period protections of both the Labor
14 Code and the applicable Industrial Welfare Commission Wage Order.

15 31. Labor Code section 512 and Section 11 of the applicable Industrial Welfare
16 Commission Wage Order impose an affirmative obligation on employers to provide non-exempt
17 employees with uninterrupted, duty-free meal periods of at least thirty minutes for each work period
18 of five hours, and to provide them with two uninterrupted, duty-free meal periods of at least thirty
19 minutes for each work period of ten hours.

20 32. Labor Code section 226.7 and Section 11 of the applicable Industrial Welfare
21 Commission Wage Order (“Wage Order”) both prohibit employers from requiring employees to work
22 during required meal periods and require employers to pay non-exempt employees an hour of
23 premium wages on each workday that the employee is not provided with the required meal period.

24 33. Compensation for missed meal periods constitutes wages within the meaning of Labor
25 Code section 200.

26 34. Labor Code section 1198 makes it unlawful to employ a person under conditions that
27 violate the applicable Wage Order.

28 35. Section 11 of the applicable Wage Order states:

1 "No employer shall employ any person for a work period of more than five (5) hours
2 without a meal period of not less than 30 minutes, except that when a work period of
3 not more than six (6) hours will complete the day's work the meal period may be
4 waived by mutual consent of the employer and employee. Unless the employee is
5 relieved of all duty during a 30 minute meal period, the meal period shall be considered
6 an 'on duty' meal period and counted as time worked. An 'on duty' meal period shall
7 be permitted only when the nature of the work prevents an employee from being
8 relieved of all duty and when by written agreement between the parties an on-the-job
9 paid meal period is agreed to. The written agreement shall state that the employee
10 may, in writing, revoke the agreement at any time."

11 36. At all relevant times, Plaintiff was not subject to a valid on-duty meal period
12 agreement. Plaintiff is informed and believes that, at all relevant times, **Meal Period Sub-Class**
13 members were not subject to valid on-duty meal period agreements with Defendants.

14 37. Plaintiff alleges that, at all relevant times during the applicable limitations period,
15 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal Period**
16 **Sub-Class** with uninterrupted, duty-free meal periods for at least thirty (30) minutes for each five (5)
17 hour work period, as required by Labor Code section 512 ad the applicable Wage Order.

18 38. Plaintiff alleges that, at all relevant times during the applicable limitations period,
19 Defendants maintained a policy or practice of failing to pay premium wages to **Meal Period Sub-**
20 **Class** members when they worked five (5) hours without clocking out for any meal period.

21 39. Plaintiff alleges that, at all relevant times during the applicable limitations period,
22 Plaintiff and **Meal Period Sub-Class** members' meal periods were consistently taken after the
23 completion of their fifth hour of work. Moreover, Plaintiff and **Meal Period Sub-Class** members
24 were never afforded the opportunity to take second meal periods when they worked in excess if ten
25 (10) hours a day.

26 40. Moreover, Defendants written policies fail to inform Meal period Class Members of
27 their meal period rights under the Labor Code and applicable Wage Orders.

28 41. At all relevant times, Defendants failed to pay Plaintiff and the **Meal Period Sub-**
Class members additional premium wages, and/or were not paid premium wages at the employees'
regular rates of pay when required meal periods were not provided.

42. Pursuant to Labor Code section 204, 218.6, 226.7 and 512, Plaintiff, on behalf of
herself and the **Meal Period Sub-Class** members, seek to recover unpaid premium wages, interest

thereon, and costs of suit.

43. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and the **Meal Period Sub-Class** members, seek to recover reasonable attorneys' fees.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(Plaintiff and Wage Statement Penalties Sub-Class)

44. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

45. Labor Code section 226(a) states:

"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 and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, 'copy' includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision."

46. The Division of Labor Standards Enforcement ("DLSE") has sought to harmonize the "detachable part of the check" provision and the "accurate itemized statement in writing" provision of Labor Code section 226(a) by allowing for electronic wage statements so long as each employee retains the right to elect to receive a written paper stub or record and that those who are provided with

1 electronic wage statements retain the ability to easily access the information and convert the electronic
2 statements into hard copies at no expense to the employee. (DLSE Opinion Letter July 6, 2006).

3 47. Plaintiff is informed and believes that, at all relevant times during the applicable
4 limitations period, Defendants have failed to provide **Wage Statement Class** members with written
5 wage statements as described above. Additionally, the wage statements issued to class members
6 failed to account for the unpaid premium pay wages described above.

7 48. Plaintiff is informed and believes that Defendants' failure to provide her and **Wage**
8 **Statement Class** members with accurate written wage statements were intentional in that Defendants
9 have the ability to provide them with accurate wage statements but have intentionally provided them
10 with written wage statements that Defendants have known do not comply with Labor Code section
11 226(a).

12 49. Plaintiff and **Wage Statement Class** members have suffered injuries, in that
13 Defendants have violated their legal rights to receive accurate wage statements and have misled them
14 about their actual rates of pay and wages earned. In addition, inaccurate information on their wage
15 statements have prevented immediate challenges to Defendants' unlawful pay practices, has required
16 discovery and mathematical computations to determine the amount of wages owed, has caused
17 difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the
18 submission of inaccurate information about wages and deductions to federal and state government
19 agencies.

20 50. Pursuant to Labor Code section 226(e), Plaintiff, on behalf of herself and **Wage**
21 **Statement Class** members, seek the greater of actual damages or \$50.00 for the initial pay period in
22 which a violation of Labor Code section 226(a) occurred, and \$100.00 for each subsequent pay period
23 in which a violation of Labor Code section 226(a) occurred, not to exceed an aggregate penalty of
24 \$4000.00 per class member, as well as awards of reasonable attorneys' fees and costs.

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28 **THIRD CAUSE OF ACTION**

1 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

2 **(Lab. Code §§ 201-203)**

3 **(Plaintiff and Waiting Time Penalties Sub-Class)**

4 51. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
5 herein.

6 52. At all relevant times, Plaintiff and **Waiting Time Penalties Sub-Class** members have
7 been entitled, upon the end of their employment with Defendants, to timely payment of all wages
8 earned and unpaid before termination or resignation.

9 53. At all relevant times, pursuant to Labor Code section 201, employees who have been
10 discharged have been entitled to payment of all final wages immediately upon termination.

11 54. At all relevant times, pursuant to Labor Code section 202, employees who have
12 resigned after giving at least seventy-two (72) hours notice of resignation have been entitled to
13 payment of all final wages at the time of resignation.

14 55. Plaintiff is informed and believes that, at all relevant time during the applicable
15 limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class**
16 members all of their final wages in accordance with the Labor Code.

17 56. Plaintiff is informed and believes that, at all relevant times during the applicable
18 limitations period, Defendants have maintained a policy or practice of paying **Waiting Time**
19 **Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code
20 sections 201 or 202 by failing to timely pay them all final wages.

21 57. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to
22 timely pay all final wages to her and **Waiting Time Penalties Sub-Class** members have been willful
23 in that Defendants have the ability to pay final wages in accordance with Labor Code sections 201
24 and/or 202 but have intentionally adopted policies or practices that are incompatible with those
25 requirements.

26 58. Pursuant to Labor Code sections 203 and 218.6, Plaintiff, on behalf of herself and
27 **Waiting Time Penalties Sub-Class** members, seek waiting time penalties from the dates that their
28 final wages have first become due until paid, up to a maximum of thirty days, and interest thereon.

59. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine and/or the common fund doctrine, Plaintiff, on behalf of herself and **Waiting Time Penalties Sub-Class** members, seek awards of reasonable attorneys' fees and costs.

FOURTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200 *et seq.*)

(Plaintiff and UCL Class)

60. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

61. Business and Professions Code section 17200 defines "unfair competition" to include any unlawful business practice.

62. Business and Professions Code section 17203-17204 allow a person who has lost money or property as a result of unfair competition to bring a class action in accordance with Code of Civil Procedure section 382 to recover money or property that may have been acquired from similarly situated persons by means of unfair competition.

63. California law requires employers to pay hourly, non-exempt employees for all hours they are permitted or suffered to work, including hours that the employer knows or reasonable should know that employees have worked.

64. Plaintiff and the **UCL Class** members re-alleges and incorporates the FIRST cause of action herein.

65. Plaintiff lost money or property as a result of the aforementioned unfair competition.

66. Defendants have or may have acquired money by means of unfair competition.

67. Plaintiff is informed and believes and thereupon alleges that by committing the Labor Code violations described in this Complaint, Defendants violated Labor Code sections 215, 216, 225, 226.6, 226.7, 354, 408, 512, 510, 553, 1175, 1174, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, which make it a misdemeanor to commit the Labor Code violations alleged herein.

68. Defendants have committed criminal conduct through their policies and practices of, *inter alia*, failing to comport with their affirmative obligations as an employer to provide non-exempt

employees with compliant meal periods.

69. Defendants' unlawful conduct as alleged in this Complaint amounts to and constitutes unfair competition within the meaning of Business and Professions Code section 17200 *et seq.* Business and Professions Code sections 17200 *et seq.* protects against unfair competition and allows a person who has suffered an injury-in-fact and has lost money or property as a result of an unfair, unlawful or fraudulent business practice to seek restitution on her own behalf and on behalf of similarly situated persons in a class action proceeding.

70. As a result of Defendants' violations of the Labor Code during the applicable limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants' conduct.

71. Plaintiff is informed and believes that other similarly situated persons have been subject to the same unlawful policies or practices of Defendants.

72. Due to the unfair and unlawful business practices in violation of the Labor Code, Defendants have gained a competitive advantage over other comparable companies doing business in the State of California that comply with their legal obligations.

73. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive relief for "any unlawful, unfair or fraudulent business act or practice," including if a practice or act violates or is considered unlawful under any other state or federal law.

74. Accordingly, pursuant to Business and Professions Code sections 17200 and 17203, Plaintiffs request the issuance of temporary, preliminary and permanent injunctive relief enjoining Defendants, and each of them, and their agents and employees, from further violations of the Labor Code and applicable Wage Orders.

75. Accordingly, pursuant to Bus. & Prof. Code sections 17200 and 17203, Plaintiffs request the issuance of temporary, preliminary and permanent injunctive relief enjoining Defendants, and each of them, and their agents and employees, from further violations of the Labor Code and applicable Industrial Welfare Commission Wage Orders; and upon a final hearing seek an order permanently enjoining Defendants, and each of them, and their respective agents and employees, from further violations of the Labor Code and applicable Industrial Welfare Commission Wage

1 Orders.

2 76. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
3 herself and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully
4 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
5 and unfair business practices.

* 6 77. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
7 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
8 reasonable attorneys' fees in connection with their unfair competition claims.

9 78. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
10 herself and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully
11 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
12 and unfair business practices.

13 79. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
14 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
15 reasonable attorneys' fees in connection with their unfair competition claims.

16 **FIFTH CAUSE OF ACTION**

* 17 **Civil penalties**

18 **(Lab. Code § 2698, *et seq.*)**

19 80. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
20 herein.

21 81. During the applicable limitations period, Defendants have violated Labor Code
22 sections 201, 202, 203, 204, 210, 223, 226(a), 226.7, 512, 558, 1174, and 1198.

23 82. Labor Code sections 2699(a) and (g) authorize an aggrieved employee, on behalf of
24 herself and other current and former employees, to bring a representative civil action to recover civil
25 penalties pursuant to the procedures set forth in Labor Code section 2699.3 that may, but need not,
26 be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

27 83. Plaintiff, a former employee against who Defendants committed one or more of the
* 28 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee

* 1 within the meaning of Labor Code section 2699(c).

2 84. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
3 section 2699.3.

4 85. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
5 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 210, 223, 226(a),
6 226.7, 512, 558, and 1174:

7 A. For violations of Labor Code sections 201, 202, 203, 204, 210, 223, 226(a),
8 226.7, 512, 558, and 1174, \$100 for each employee per pay period for each
9 initial violation and \$200 for each employee per pay period for each
10 subsequent violation (penalties set by Labor Code section 2699(f)(2));

11 B. For violations of Labor Code section 203, a penalty in an amount not
* 12 exceeding thirty days pay as waiting time (penalties set by Labor Code
13 section 256);

14 C. For violations of Labor Code section 204, \$100 for each employee for each
15 initial violation that was neither willful nor intentional, \$200 for each
16 employee, plus 25% of the amount unlawfully withheld from each employee,
17 for each initial violation that was either willful or intentional, and \$200 for
18 each employee, plus 25% of the amount unlawfully withheld from each
19 employee, for each subsequent violation, regardless of whether the
20 subsequent violation was either willful or intentional (penalties set by Labor
21 Code section 210);

22 D. For violations of Labor Code section 223, \$100 for each employee for each
* 23 initial violation that was neither willful nor intentional, \$200 for each
24 employee, plus 25% of the amount unlawfully withheld from each employee,
25 for each initial violation that was either willful or intentional, and \$200 for
26 each employee, plus 25% of the amount unlawfully withheld from each
27 employee, for each subsequent violation, regardless of whether the
28 subsequent violation was either willful or intentional (penalties set by Labor

Code section 225.5);

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

F. For violation of Labor Code sections 510 and 512, \$50 for each employee for each initial pay period for which the employee was underpaid, and \$100 for each employee for each subsequent pay period for which the employee was underpaid (penalties set by Labor Code section 558);

G. For violations of Labor Code section 1174, \$100 for each aggrieved employee for each initial violation of Labor Code section 1174 that was intentional, and \$250 for each aggrieved employee per pay period for each subsequent violation of Labor Code section 1174, regardless of whether the initial violation was intentional;

H. For violations of Labor Code section 1198, \$100 for each aggrieved employee for each initial violation of Labor Code section 1174 that was intentional, and \$250 for each aggrieved employee per pay period for each subsequent violation of Labor Code section 1198, regardless of whether the initial violation was intentional;

I. Pursuant to Labor Code section 2699(g), Plaintiff seeks award of reasonable attorneys' fees and costs in connection with her claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself, all others similarly situated, and the general public, prays for relief and judgment against Defendants as follows:

- (1) An order that the action be certified as a class action;
- (2) An order that Plaintiff be appointed class representative;
- (3) An order that counsel for Plaintiff be appointed class counsel;

- 1 (4) Unpaid wages;
2 (5) Actual damages;
3 (6) Restitution;
4 (7) Declaratory relief;
5 (8) Pre-judgment interest;
6 (9) Statutory penalties;
7 (10) Civil penalties;
8 (11) Costs of suit;
9 (12) Reasonable attorneys' fees; and
10 (13) Such other relief as the Court deems just and proper.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff, on behalf of herself, all other similarly situated, and the general public, hereby
13 demands a jury trial on all issues so triable.

14
15 Dated: February 23, 2021

SETAREH LAW GROUP

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Shaun Setareh
David Keledjian
Attorneys for Plaintiff
CECILIA ZAMUDIO

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PROOF OF SERVICE

I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 9665 Wilshire Blvd., Suite 430 Beverly Hills, CA 90212

On February 23, 2021, I served the foregoing documents described as:

FIRST AMENDED COMPLAINT

in this action by transmitting a true copy thereof enclosed in a sealed envelope addressed as follows:

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[X] ONLY BY ELECTRONIC TRANSMISSION

Only by e-mailing the document(s) to the persons at the e-mail address(es) listed based on notice provided on January 14, 2021 that, during the Coronavirus (COVID-19) pandemic, this office will be working remotely, not able to send physical mail as usual, and is therefore

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using only electronic mail. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

[X] STATE I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 23, 2021, at Beverly Hills, California.



Lauren Farrington