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Filed by fax

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

JAMIE ELLSWORTH, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

LECLAIR FITNESS II, LLC, a California
limited liability company; LECLAIR
FITNESS III, LLC, a California limited
liability company; LECLAIR FITNESS
IV, LLC, a California limited liability
company; and DOES 1 through 50,
inclusive,

Defendants.

Case No.:

34-2021-DD295114

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR DAMAGES FOR:**

- (1) VIOLATION OF LABOR CODE §§ 226.2
1194, 1197, AND 1197.1;
- (2) VIOLATION OF LABOR CODE §§ 510,
558, AND 1194;
- (3) VIOLATION OF LABOR CODE §§ 226.2
226.7;
- (4) VIOLATION OF LABOR CODE §§ 201-
203
- (5) VIOLATION OF LABOR CODE § 2802;
- (6) VIOLATION OF LABOR CODE § 226;
- (7) VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200, *ET SEQ.*;
AND
- (8) VIOLATION OF LABOR CODE § 2698,
ET SEQ.

DEMAND OVER \$25,000.00

1 Plaintiff Jamie Ellsworth (“Plaintiff”) hereby submits this Class and Representative
2 Action Complaint (“Complaint”) against Defendants LeClair Fitness II, LLC, LeClair Fitness III,
3 LLC, LeClair Fitness IV, LLC, and Does 1 through 50 (collectively, “LeClair” or “Defendants”),
4 on behalf of herself and a class of all other similarly situated current and former employees of
5 Defendants for penalties and/or damages for violation of the California Labor Code, and
6 restitution for unfair business practices in violation of Business and Professions Code section
7 17200, *et seq.*, as follows:

8 **INTRODUCTION**

9 1. This class and representative action is within the Court’s jurisdiction under
10 California Labor Code sections 201, 202, 203, 204, 226, 226.2, 226.7, 246, 510, 558, 1194,
11 1197, 1197.1, 2802 and 2698, *et seq.*, Business and Professions Code § 17200, *et seq.* (the
12 “UCL”), and the applicable Wage Orders of the California Industrial Welfare Commission
13 (“IWC”).

14 2. This Complaint challenges systemic illegal employment practices resulting in
15 violations of the California Labor Code and Business and Professions Code against individuals
16 who worked for Defendants.

17 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
18 jointly and severally, have acted intentionally and with deliberate indifference and conscious
19 disregard to the rights of all employees by failing to: (a) properly pay minimum, regular and
20 overtime wages for all hours worked; (b) properly calculate the regular rate of pay for purposes
21 of paying overtime and sick pay; (c) provide paid rest breaks; (d) pay all wages owed upon
22 separation of employment; (e) provide accurate and itemized wage statements; and (f) reimburse
23 business expenses.

24 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 have engaged in, among other things a system of willful violations of the California Labor Code
26 and the applicable IWC Wage Orders by creating and maintaining policies, practices, and
27 customs that knowingly deny employees the above stated rights and benefits.

28 5. The policies, practices and customs of Defendants described above and below

1 have resulted in unjust enrichment of Defendants and an unfair business advantage over
2 businesses that routinely adhere to the strictures of the California Labor Code and the California
3 Business and Professions Code.

4 **JURISDICTION AND VENUE**

5 6. The Court has jurisdiction over the violations of the California Labor Code
6 sections 201, 202, 203, 204, 226, 226.2, 226.7, 246, 510, 558, 1194, 1197, 1197.1, 2802 and
7 2698, *et seq.*, the UCL, and the applicable Wage Orders.

8 7. Venue is proper in Sacramento County because Plaintiff resides in Folsom,
9 California.

10 **PARTIES**

11 8. Plaintiff was employed by Defendants as a fitness instructor and trainer from
12 about October 2014 to on or about July 25, 2020. Prior to March 2019, Plaintiff was paid on a
13 piece-rate/commission basis. In or around March 2019, Defendant paid Plaintiff on an hourly
14 basis along with a piece-rate/commission basis.

15 9. Plaintiff was and is the victims of the policies, practices, and customs of
16 Defendants complained of in this action in ways that have deprived her of the rights guaranteed
17 by California Labor Code sections 201, 202, 203, 204, 226, 226.2, 226.7, 246, 510, 558, 1194,
18 1197, 1197.1, 2802 and 2698, *et seq.*, the applicable IWC Wage Orders, and the UCL.

19 10. Plaintiff is informed and believes, and based thereon alleges, that LeClair Fitness
20 II, LLC was and is a California limited liability company that owns and operates fitness studios
21 with the Orangetheory Fitness franchise in the State of California.

22 11. Plaintiff is informed and believes, and based thereon alleges, that LeClair Fitness
23 III, LLC was and is a California limited liability company that owns and operates fitness studios
24 with the Orangetheory Fitness franchise in the State of California.

25 12. Plaintiff is informed and believes, and based thereon alleges, that LeClair Fitness
26 IV, LLC was and is a California limited liability company that owns operates fitness studios with
27 the Orangetheory Fitness franchise in the State of California.

28 13. Plaintiff is informed and believes, and based thereon alleges, that at all times

herein mentioned Does 1 through 50, are and were corporations, business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California. As such and based upon all the facts and circumstances incident to Defendants' business, Defendants are subject to the California Labor Code and the UCL.

14. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint when the true names and capacities are known. Plaintiff is informed and believes and based thereon alleges that each of said fictitious defendants was responsible in some way for the matters alleged herein and proximately caused Plaintiff and members of the general public and class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

15. At all times herein mentioned, each defendant participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, Defendants, and each of them, were the agents, servants and employees of each of the other defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting within the course and scope of said agency and employment.

16. Plaintiff is informed and believes, and based thereon alleges, that at all times material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or joint venturer of, or working in concert with each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

17. At all times herein mentioned, Defendants, and each of them, were members of, and engaged in, a joint venture, partnership, and common enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

18. At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the

1 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
2 herein mentioned, Defendants, and each of them, ratified each and every act or omission
3 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
4 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
5 damages as herein alleged.

6 **CLASS ACTION ALLEGATIONS**

7 19. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
8 California Code of Civil Procedure section 382. Plaintiff proposes the following class of all
9 current and former non-exempt employees of Defendants in the State of California, who worked
10 at any time from August 29, 2016, through the present (the “Class” or “Class Members”).

11 Plaintiff further proposes the following subclasses:

- 12 a. All current and former non-exempt employees of Defendants in the State
13 of California, who earned any portion of their wages on a piece rate and/or
14 commission basis at any time from August 29, 2016, through the present
15 (the “Piece Rate Sub-Class” or “Piece Rate Sub-Class Members”);
- 16 b. All current and former non-exempt employees of Defendants in the State
17 of California, who earned non-discretionary remuneration, such as piece-
18 rate/commission wages, and overtime wages during the same workweek,
19 at any time from August 29, 2016, through the present (the “Regular Rate
20 Sub-Class” or “Regular Rate Sub-Class Members”); and
- 21 c. All former non-exempt employees of Defendants in the State of California
22 who earned non-discretionary remuneration, such as piece-
23 rate/commission wages, and sick pay during the same workweek, and
24 whose employment ended at any time from August 29, 2017, through the
25 present (the “Sick Pay Sub-Class” or “Sick Pay Sub-Class Members”).

26 20. **Numerosity and Ascertainability:** The members of the Class are so numerous
27 that joinder of all members would be impractical, if not impossible. The identity of the members
28 of the Class is readily ascertainable by review of Defendants’ records, including payroll records.

Plaintiff is informed and believes, and based thereon alleges, that Defendants: (a) failed to pay all minimum, regular, and overtime wages owed in violation of Labor Code sections 226.2, 510, 558, 1194, 1197, and 1197.1; (b) failed to pay employees overtime wages at the correct regular rate of pay by not including all non-discretionary remuneration in the regular rate, in violation of Labor Code sections 510, 558, and 1194; (c) failed to pay employees sick pay at the correct regular rate of pay by not including all non-discretionary remuneration in the regular rate, in violation of Labor Code sections 201, 202, 203 and 246; (d) failed to provide paid rest periods in violation of Labor Code sections 226.2 and 226.7; (e) failed to pay all wages owed upon separation of employment in violation of Labor Code sections 201, 202 and 203; (f) failed to reimburse all business expenses in violation of Labor Code section 2802; (g) failed to provide accurate, itemized wage statements in violation of Labor Code section 226; and (h) engaged in Unfair Business Practices in violation of the UCL, the California Labor Code, and the applicable IWC Wage Orders.

21. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the Class defined above. Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the Class and the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past and currently have a number of wage-and-hour class actions pending in California state and federal courts.

22. Defendants uniformly administered a corporate policy, practice of: (a) failing to pay all minimum, regular, and overtime wages owed in violation of Labor Code sections 226.2, 510, 558, 1194, 1197, and 1197.1; (b) failing to pay employees overtime wages at the correct regular rate of pay by not including all non-discretionary remuneration in the regular rate, in violation of Labor Code sections 510, 558, and 1194; (c) failing to pay employees sick pay at the correct regular rate of pay in violation of Labor Code sections 201, 202, 203 and 246; (d) failing to provide paid rest periods in violation of Labor Code sections 226.2 and 226.7; (e) failing to pay all wages owed upon separation of employment in violation of Labor Code sections 201, 202 and 203; (f) failing to reimburse all business expenses in violation of Labor Code section 2802;

1 (g) failing to provide accurate, itemized wage statements in violation of Labor Code section 226;
2 and (h) engaging in Unfair Business Practices in violation of the UCL, the California Labor
3 Code, and the applicable IWC Wage Orders.

4 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
5 a consistent and uniform policy, practice, and procedure of willfully failing to comply with
6 Labor Code sections 201, 202, 203, 204, 226, 226.2, 226.7, 246, 510, 558, 1194, 1197, 1197.1
7 and 2802, the applicable IWC Wage Orders, and the UCL.

8 24. **Common Question of Law and Fact:** There are predominant common questions
9 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
10 concerning Defendants' policy and practice of: (a) failing to pay all minimum, regular, and
11 overtime wages owed in violation of Labor Code sections 226.2, 510, 558, 1194, 1197, and
12 1197.1; (b) failing to pay employees overtime wages at the correct regular rate of pay by not
13 including all non-discretionary remuneration in the regular rate, in violation of Labor Code
14 sections 510, 558, and 1194; (c) failing to pay employees sick pay at the correct regular rate of
15 pay in violation of Labor Code sections 201, 202, 203 and 246; (d) failing to provide paid rest
16 periods in violation of Labor Code sections 226.2 and 226.7; (e) failing to pay all wages owed
17 upon separation of employment in violation of Labor Code sections 201, 202 and 203; (f) failing
18 to reimburse all business expenses in violation of Labor Code section 2802; (g) failing to provide
19 accurate, itemized wage statements in violation of Labor Code section 226; and (h) engaging in
20 Unfair Business Practices in violation of the UCL, the California Labor Code, and the applicable
21 IWC Wage Orders.

22 25. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
23 Class in that Plaintiff has suffered the harms alleged in this Complaint in a similar and typical
24 manner as the Class Members. Plaintiff was a non-exempt employee. Prior to March 2019, she
25 was paid on a piece-rate/commission basis based on the number of students who attended her
26 classes. Plaintiff, and other employees paid on a piece-rate/commission basis, did not receive
27 minimum, regular or overtime wages for time spent working for Defendants completing non-
28 productive tasks. In addition, because Plaintiff and other piece-rate/commission employees did

1 not receive an hourly wage, any duty-free rest breaks were not “paid” breaks.

2 26. Furthermore, for the entire duration of Plaintiff’s employment with Defendants,
3 Defendants failed to pay minimum, regular or overtime wages for the time Plaintiff and other
4 employees spent performing work-related tasks before clocking in, after clocking out, or on
5 weekends. The uncompensated work included, but is not limited to, responding to messages and
6 emails during non-shift hours.

7 27. Additionally, Defendants paid overtime wages based on the incorrect regular rate
8 of pay. Specifically, during Plaintiff’s employment with Defendants, she worked overtime and
9 earned non-discretionary remuneration during the same pay period. However, for the purpose of
10 determining the applicable overtime rate, Defendants failed to include all non-discretionary
11 remuneration in the calculation of an employee’s regular rate of pay. Thus, when Plaintiff and
12 other employees worked overtime and earned non-discretionary pay in the same workweek, the
13 employees were paid overtime based on a lower, base rate that did not take into account
14 additional items of non-discretionary remuneration. Similarly, when Plaintiff received sick pay,
15 it was disbursed at the incorrect rate of pay. Defendants paid sick pay at the base rate of pay
16 rather than the regular rate of pay.

17 28. Defendants also required Plaintiff and other employees to use their personal cell
18 phones for work purposes, including but not limited to requiring employees to download various
19 apps. Defendants did not reimburse their employees for such costs.

20 29. To date, Plaintiff has yet to receive the underpaid minimum, regular, and overtime
21 wages, sick pay, rest premium compensation, and business expense reimbursement owed to her.
22 Thus, Defendants are liable for waiting time penalties under Labor Code section 203. Moreover,
23 given the underpayment and/or nonpayment of wages and rest period premiums, the wage
24 statements provided to Plaintiff displayed inaccurate rates of pay and net and gross wages
25 earned. Therefore, Plaintiff is a member of the Class and has suffered the alleged violations of
26 Labor Code sections 201-203, 204, 226, 226.2, 226.7, 246, 510, 558, 1194, 1197, 1197.1, and
27 2802, and the UCL.

28 30. The California Labor Code upon which Plaintiff bases these claims are broadly

remedial in nature. These laws and labor standards serve an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment.

31. The nature of this action and the format of laws available to Plaintiff and members of the Class identified herein make the class action format a particularly efficient and appropriate procedure to redress the wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate defendants would necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Requiring each Class Member to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damage to their careers at subsequent employment.

32. The prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual Class members against the Defendants and which would establish potentially incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to individual Class members which would, as a practical matter, be dispositive of the interest of the other Class members not parties to the adjudications or which would substantially impair or impede the ability of the Class members to protect their interests. Further, the claims of the individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

33. Such a pattern, practice and uniform administration of corporate policy regarding illegal employee compensation described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class identified herein, in a civil action, for unpaid wages, including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit

1 according to the mandate of California Labor Code sections 218.5, 226, and 1194, the applicable
2 IWC Wage Orders, and Code of Civil Procedure section 1021.5.

3 34. Proof of a common business practice or factual pattern, which the named Plaintiff
4 experienced and is representative of, will establish the right of each of the members of the
5 Plaintiff Class to recovery on the causes of action alleged herein.

6 35. The Class is commonly entitled to a specific fund with respect to the
7 compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to
8 restitution of those funds being improperly withheld by Defendants. This action is brought for
9 the benefit of the entire class and will result in the creation of a common fund.

10 **FIRST CAUSE OF ACTION**

11 **VIOLATION OF LABOR CODE §§ 226.2, 510, 558, 1194, 1197, AND 1197.1**
12 **(BY PLAINTIFF, THE CLASS AND PIECE RATE SUB-CLASS MEMBERS, AGAINST**
13 **ALL DEFENDANTS)**

14 36. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
15 though fully set forth herein.

16 37. This cause of action is brought pursuant to Labor Code sections 226.2, 510, 558,
17 1194, 1197, and 1197.1 which require an employer to pay employees for all regular hours
18 worked, including rest and recovery periods and other nonproductive time.

19 38. As a pattern and practice, Defendants suffered and permitted Plaintiff and Class
20 Members to work without payment of minimum, regular and overtime wages for all hours
21 worked in a workday and workweek. Specifically, Defendants' policy required that employees
22 perform work-related tasks before clocking in, after clocking out, and on weekends. The
23 uncompensated work included, but is not limited to, responding to work messages and emails.

24 39. Additionally, Defendants paid Plaintiff and Piece Rate Sub-Class Members on a
25 piece-rate/commission basis, but did not provide paid rest periods. As a result, Plaintiff and Piece
26 Rate Sub-Class Members were consistently underpaid for all hours worked.

27 40. Plaintiff is informed and believes and based thereon alleges that Defendants
28 willfully failed to pay Plaintiff and the Class wages due and owing to them. Plaintiff is informed

1 and believes and based thereon alleges that Defendants' willful and intentional failure to provide
2 wages due and owing to Class Members resulted in continued payment of wages up to thirty (30)
3 days from the time the wages are due. Therefore, all member of the Class who have separated
4 from employment are entitled to compensation as per Labor Code section 203.

5 41. Such a pattern, practice and uniform administration of corporate policy regarding
6 illegal employee compensation as described herein is unlawful and creates an entitlement to
7 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
8 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according
9 to the mandate of California Labor Code sections 218.6, 226.2, 510, 558, 1194, 1197, and
10 1197.1.

11 **SECOND CAUSE OF ACTION**

12 **VIOLATION OF LABOR CODE §§ 510, 558, AND 1194**

13 **(BY PLAINTIFF, THE CLASS AND THE REGULAR RATE SUB-CLASS AGAINST**
14 **ALL DEFENDANTS)**

15 42. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
16 though fully set forth herein.

17 43. This cause of action is brought pursuant to Labor Code sections 510, 558 and
18 1194, which require employers to pay employees overtime at a rate of one and one-half the
19 employee's regular rate of pay for any work in excess of eight hours in a workday or forty hours
20 in a workweek.

21 44. Defendants, as a matter of policy and practice, failed to pay Plaintiff, the Class
22 and the Regular Rate Sub-Class overtime pay at the correct, higher regular rate of pay in
23 violation of Labor Code sections 510, 558 and 1194. Specifically, Defendants did not factor in
24 non-discretionary compensation to the "regular rate" when calculating overtime pay. Instead,
25 Defendants calculated the overtime rate based solely on an employee's base hourly rate of pay.
26 As a result of such policy and practice, Defendants regularly failed to pay Plaintiff and the
27 Regular Rate Sub-Class proper overtime pay.

28 45. Plaintiff is informed and believes and based thereon alleges that Defendants

1 willfully failed to pay Plaintiff, the Class and the Regular Rate Sub-Class overtime wages due
2 and owing to them. Plaintiff is informed and believes and based thereon alleges that Defendants'
3 willful and intentional failure to provide overtime wages due and owing to Class and Regular
4 Rate Sub-Class Members resulted in continued payment of wages up to thirty (30) days from the
5 time the wages are due. Therefore, all members of the Class and Regular Rate Sub-Class who
6 have separated from employment are entitled to compensation as per Labor Code section 203.

7 46. Such a pattern, practice, and uniform administration of corporate policy regarding
8 illegal employee compensation as described herein is unlawful and creates an entitlement to
9 recovery by Plaintiff, the Class and the Regular Rate Sub-Class in a civil action, for the unpaid
10 balance of the full amount of damages owed, including interest thereon, penalties, attorney's
11 fees, and costs of suit according to the mandate of California Labor Code sections 510, 558 and
12 1194.

13 **THIRD CAUSE OF ACTION**

14 **VIOLATION OF LABOR CODE §§ 226.2 AND 226.7**

15 **(BY PLAINTIFF, THE CLASS AND THE PIECE RATE SUB-CLASS ALL**
16 **DEFENDANTS)**

17 47. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
18 though fully set forth herein.

19 48. This cause of action is brought pursuant to Labor Code sections 226.2 and 226.7,
20 which require an employer to provide employees with a ten (10) minute paid rest period for
21 every 3.5 hours worked by an employee. Defendants failed in their affirmative obligation to
22 ensure that Plaintiff, the Class and other Piece Rate Sub-Class Members had the opportunity to
23 take and were provided with paid, duty-free rest periods in accordance with the mandates of the
24 California Labor Code and the applicable IWC Wage Order.

25 49. Defendants paid Plaintiff, the Class and Piece Rate Sub-Class Members on a
26 piece-rate/commission basis, but did not provide paid rest periods. As a result, any duty-free rest
27 breaks Plaintiff, the Class and Piece Rate Sub-Class Members may have taken were not
28 compensated. Plaintiff, the Class and Piece Rate Sub-Class Members were not provided with

1 “paid” rest breaks. Accordingly, Defendants are responsible for paying premium compensation
2 for missed rest periods, as well as the lost wages for the unpaid rest breaks pursuant to Labor
3 Code sections 226.2 and 226.7, and the applicable IWC Wage Order.

4 50. Plaintiff is informed and believes and based thereon alleges that Defendants
5 willfully failed to pay employees who were not provided paid rest breaks, and that Plaintiff, the
6 Class and other Piece Rate Sub-Class Members are owed wages for the rest period violations set
7 forth above. Plaintiff is informed and believes and based thereon alleges Defendants’ willful
8 failure to provide Class and Piece Rate Sub-Class Members the wages due and owing them upon
9 separation from employment results in a continued payment of wages up to thirty (30) days from
10 the time the wages were due. Therefore, members of the class who have separated from
11 employment are entitled to compensation pursuant to Labor Code section 203.

12 51. Such a pattern, practice and uniform administration of corporate policy as
13 described herein is unlawful and creates an entitlement to recovery by Plaintiff, the Class and
14 Piece Rate Sub-Class Members identified herein, in a civil action, for the lost wages and unpaid
15 balance of the premium compensation pursuant to Labor Code sections 226.2, 226.7 and the
16 applicable IWC Wage Order, including interest thereon, penalties, reasonable attorney’s fees,
17 and costs of suit

18 **FOURTH CAUSE OF ACTION**

19 **VIOLATION OF LABOR CODE §§ 201, 202 AND 203**

20 **(BY PLAINTIFF, THE CLASS AND THE SICK PAY SUB-CLASS AGAINST ALL** 21 **DEFENDANTS)**

22 52. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
23 though fully set forth herein.

24 53. Labor Code section 246(l)(1) requires that nonexempt employees be paid sick
25 time in the same manner as the regular rate of pay for the workweek in which the employee uses
26 paid sick time, whether or not the employee actually works overtime in that workweek. Labor
27 Code section 246(l)(2) further requires that paid sick time for nonexempt employees be
28 calculated by dividing the employee’s total wages, not including overtime premium pay, by the

1 employee's total hours worked in the full pay periods of the prior 90 days of employment.

2 54. Defendants violated Labor Code section 246 by failing to pay sick pay at the
3 regular rate of pay. Plaintiff, the Class and Sick Pay Sub-Class Members routinely earned non-
4 discretionary incentive wages, thus increasing their regular rate of pay. However, when sick pay
5 was paid, it was paid at their base rate of pay rather than the regular rate of pay, as required
6 under Labor Code section 246.

7 55. As a pattern and practice, Defendants regularly failed to pay Plaintiff, the Class
8 and other members of the Sick Pay Sub-Class their correct wages and accordingly owe waiting
9 time penalties pursuant to Labor Code section 203. Further, Plaintiff is informed and believes
10 and based thereon alleges that such failure to pay sick pay at regular rate was willful, such that
11 Plaintiff, the Class and Sick Pay Sub-Class Members are entitled to waiting time penalties
12 pursuant to Labor Code sections 201-203.

13 **FIFTH CAUSE OF ACTION**

14 **VIOLATION OF LABOR CODE § 2802**

15 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

16 56. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
17 though fully set forth herein.

18 57. This cause of action is brought pursuant to Labor Code section 2802, which
19 provides that employees are entitled to be indemnified for expenses and losses in discharging the
20 duties of their employers.

21 58. At all relevant times herein, Defendants regularly failed to reimburse and
22 indemnify Plaintiff and Class Members for business expenses necessary for the discharge of their
23 duties. Specifically, Defendants failed to pay Plaintiff and Class Members for work-related
24 expenses, including without limitation, the costs incurred with the use of personal cell phones.
25 Costs that Plaintiff and Class Members incurred in connection with the use of personal cell
26 phones were not reimbursed.

27 59. Defendants had a uniform corporate pattern and practice and procedure regarding
28 the above practice in violation of Labor Code section 2802.

60. Such a pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according to the mandate of California Labor Code section 2802.

SIXTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 226

(BY PLAINTIFF AND ALL CLASSES AGAINST ALL DEFENDANTS)

61. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

62. Defendants failed in their affirmative obligation to provide accurate itemized wage statements. Defendants, as a matter of policy and practice, did not provide accurate records in violation of Labor Code section 226 by failing to provide accurate payroll records to employees.

63. Here, Plaintiff and the Classes were paid hourly. As such, the wage statements should have reflected the applicable hourly rates of pay, number of hours worked at each hourly rate, total hours worked, and gross and net wages earned, pursuant to Labor Code section 226. However, the wage statements provided to Plaintiff and other employees failed to identify such information. More specifically, as a result of the underpayment and/or nonpayment of minimum, regular, and overtime wages, sick pay, and rest period premiums, the wage statements provided to Plaintiff and Class Members displayed inaccurate overtime rates of pay, number of hours worked at each hourly rate, total hours worked, and net and gross wages earned.

64. Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Classes in a civil action, for all damages or penalties pursuant to Labor Code section 226, including interest thereon, attorneys' fees, and costs of suit according to the mandate of California Labor Code section 226.

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1 **SEVENTH CAUSE OF ACTION**

2 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.***

3 **(BY PLAINTIFF AND THE CLASSES AGAINST ALL DEFENDANTS)**

4 65. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
5 though fully set forth herein.

6 66. Defendants, and each of them, have engaged and continue to engage in unfair and
7 unlawful business practices in California by practicing, employing, and utilizing the employment
8 practices outlined above, including by: (a) failing to pay all minimum, regular, and overtime
9 wages owed in violation of Labor Code sections 226.2, 510, 558, 1194, 1197, and 1197.1; (b)
10 failing to pay employees overtime wages at the correct regular rate of pay by not including all
11 non-discretionary remuneration in the regular rate, in violation of Labor Code sections 510, 558,
12 and 1194; (c) failing to provide paid rest periods in violation of Labor Code sections 226.2 and
13 226.7; and (d) failing to reimburse all business expenses in violation of Labor Code section
14 2802;

15 67. Defendants' utilization of such unfair and unlawful business practices constitutes
16 unfair and unlawful competition and provides an unfair advantage over Defendants' competitors.

17 68. Plaintiff seeks, individually and on behalf of other members of the Classes
18 similarly situated, full restitution of monies, as necessary and according to proof, to restore any
19 and all monies withheld, acquired and/or converted by the Defendants by means of the unfair
20 practices complained of herein.

21 69. Plaintiff is informed and believes, and based thereon alleges, that at all times
22 herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices,
23 as proscribed by California Business & Professions Code section 17200, *et seq.*, including those
24 set forth herein above thereby depriving Plaintiff and other members of the Classes the minimum
25 working condition standards and conditions due to them under the California laws as specifically
26 described therein.

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1 **EIGHTH CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

3 **(BY PLAINTIFF, ON BEHALF OF THE STATE AND AGGRIEVED EMPLOYEES,**
4 **AGAINST ALL DEFENDANTS)**

5 70. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
6 though fully set forth herein.

7 71. Plaintiff brings this cause of action as a proxy for the State of California and in
8 this capacity, seeks penalties on behalf of all Aggrieved Employees from August 1, 2019,
9 through the present, for Defendants' violations of Labor Code section 201, 202, 203, 204, 226,
10 226.2, 226.7, 246, 510, 558, 1194, 1197, 1197.1, 2802, arising from Defendants' policy and
11 practice of: (a) failing to pay all minimum, regular, and overtime wages owed in violation of
12 Labor Code sections 226.2, 510, 558, 1194, 1197, and 1197.1; (b) failing to pay employees
13 overtime wages at the correct regular rate of pay by not including all non-discretionary
14 remuneration in the regular rate, in violation of Labor Code sections 510, 558, and 1194; (c)
15 failing to pay employees sick pay at the correct regular rate of pay in violation of Labor Code
16 sections 201, 202, 203 and 246; (d) failing to provide paid rest periods in violation of Labor
17 Code sections 226.2 and 226.7; (e) failing to pay all wages owed upon separation of employment
18 in violation of Labor Code sections 201, 202 and 203; (f) failing to reimburse all business
19 expenses in violation of Labor Code section 2802; and (g) failing to provide accurate, itemized
20 wage statements in violation of Labor Code section 226.

21 72. On or about January 26, 2021, Plaintiff sent written notice to the California Labor
22 & Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code §§ 201-
23 203, 204, 226, 226.2, 226.7, 246, 510, 558, 1194, 1197, 1197.1, and 2802, pursuant to Labor
24 Code § 2698, *et seq.*, the Private Attorneys General Act ("PAGA"). To date, the LWDA has not
25 responded to Plaintiff's written notice.

26 73. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
27 and all applicable civil penalties for Defendants' violation of Labor Code 201, 202, 203, 204,
28 226, 226.2, 226.7, 246, 510, 558, 1194, 1197, 1197.1, 2802, for the time period described above,

on behalf of herself and other Aggrieved Employees.

PRAYER FOR RELIEF

1. WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

2. For an order certifying the proposed Class;

3. For an order appointing Plaintiff as the representative of the Class as described herein;

4. For an order appointing counsel for Plaintiff as class counsel;

5. Upon the First Cause of Action, for damages and/or penalties pursuant to California Labor Code sections 201, 202, 203, 204, 226.2, 510, 558, 1194, 1197, and 1197.1, and for costs and attorneys' fees;

6. Upon the Second Cause of Action, for damages and/or penalties pursuant to California Labor Code sections 201, 202, 203, 204, 510, 558, and 1194, and for costs and attorneys' fees;

7. Upon the Third Cause of Action, for damages and/or penalties pursuant to California Labor Code sections 201, 202, 203, 204, 226.2 and 226.7, and for costs and attorneys' fees;

8. Upon the Fourth Cause of Action, for damages and/or penalties pursuant to California Labor Code sections 201, 202, 203 and 246, and for costs and attorneys' fees;

9. Upon the Fifth Cause of Action, for damages and/or penalties pursuant to California Labor Code section 2802, and for costs and attorneys' fees;

10. Upon the Sixth Cause of Action, for damages or penalties pursuant to California Labor Code section 226, and for costs and attorneys' fees;

11. Upon the Seventh Cause of Action, for restitution to Plaintiff and other similarly affected members of the general public of all funds unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business & Professions Code section 17200, *et seq.*, for the time periods described above;

12. Upon the Eighth Cause of Action, for civil penalties according to proof pursuant

1 to Labor Code sections 226.3 and 2698, *et seq.*, and for costs and attorneys' fees;

2 13. On all causes of action for attorneys' fees and costs as provided by California
3 Labor Code sections 218.5, 226, 1194, and 2699, and Code of Civil Procedure § 1021.5; and

4 14. For such other and further relief the Court may deem just and proper.
5

6 DATED: February 22, 2021

DIVERSITY LAW GROUP, P.C.

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8 By: 

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Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiff and the Class
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