

FAX FILE

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FILED

JAN 25 2021 *CIN*

SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF HUMBOLDT**

LEIGH ANNE LOPEZ, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

vs.

TRI COUNTIES BANK, a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: **CV2100094**

**CLASS ACTION COMPLAINT FOR
DAMAGES FOR:**

- (1) VIOLATION OF LABOR CODE §§ 510,
558, AND 1194;
- (2) VIOLATION OF LABOR CODE §§ 201-
203;
- (3) FAILURE TO PAY WAGES;
- (4) VIOLATION OF LABOR CODE § 226.7;
- (5) VIOLATION OF LABOR CODE § 226;
- (6) VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200, *ET SEQ.*;
AND
- (7) VIOLATION OF LABOR CODE § 2698,
ET SEQ.

DEMAND OVER \$25,000.00

1 Plaintiff Leigh Anne Lopez (“Plaintiff”) hereby submits this Class Action Complaint
2 (“Complaint”) against Defendant Tri Counties Bank and Does 1 through 50 (collectively,
3 “Defendants”), on behalf of herself and a class of all other similarly situated current and former
4 employees of Defendants for penalties and/or damages for failure to properly calculate the
5 regular rate of pay for purposes of paying overtime and sick pay, failure to pay all minimum and
6 overtime wages for hours worked, failure to pay all wages owed upon separation of employment,
7 failure to provide off-duty rest breaks, and failure to provide accurate itemized wage statements
8 under California Labor Code statutes, and restitution for unfair business practices in violation of
9 Business and Professions Code § 17200, *et seq.*, as follows:

10 **INTRODUCTION**

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

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

18 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
19 jointly and severally, have acted intentionally and with deliberate indifference and conscious
20 disregard to the rights of all employees by failing to properly calculate the regular rate of pay for
21 purposes of paying overtime and sick pay, pay all minimum and overtime wages for hours
22 worked, pay all wages owed upon separation of employment, provide off-duty rest breaks, and
23 provide accurate itemized wage statements to Plaintiff and the Class.

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 §§
6 201-203, 204, 226, 226.7, 246, 510, 558, 1194, 1197, 1197.1, and 2698, *et seq.*, the UCL, and the
7 applicable Wage Orders.

8 7. Venue is proper in Humboldt County because Plaintiff worked for Defendants in
9 Eureka, California.

10 **PARTIES**

11 8. Plaintiff was employed by Defendants as an Assistant Branch Manager at
12 Defendants' bank from about December 2017 to about September 2020. Plaintiff worked as an
13 hourly, non-exempt employee.

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

18 10. Plaintiff is informed and believes, and based thereon alleges, that Tri Counties
19 Bank was and is a California corporation that maintains operations in the State of California,
20 including in Humboldt County, California.

21 11. Plaintiff is informed and believes, and based thereon alleges, that at all times
22 herein mentioned Does 1 through 50, are and were corporations, business entities, individuals,
23 and partnerships, licensed to do business and actually doing business in the State of California.
24 As such and based upon all the facts and circumstances incident to Defendants' business,
25 Defendants are subject to the California Labor Code and the UCL.

26 12. Plaintiff does not know the true names or capacities, whether individual, partner
27 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
28 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this

1 complaint when the true names and capacities are known. Plaintiff is informed and believes and
2 based thereon alleges that each of said fictitious defendants was responsible in some way for the
3 matters alleged herein and proximately caused Plaintiff and members of the general public and
4 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

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

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

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

20 16. At all times herein mentioned, the acts and omissions of various Defendants, and
21 each of them, concurred and contributed to the various acts and omissions of each and all of the
22 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
23 herein mentioned, Defendants, and each of them, ratified each and every act or omission
24 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
25 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
26 damages as herein alleged.

27 **CLASS ACTION ALLEGATIONS**

28 17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to

1 California Code of Civil Procedure section 382. Plaintiff proposes the following class of all
2 current and former non-exempt employees of Defendants in the State of California, who worked
3 at any time from July 29, 2016, through the present (the “Class”). Plaintiff further proposes the
4 following subclasses:

- 5 a. All current and former non-exempt employees of Defendants in the State
6 of California, who earned non-discretionary remuneration, including but
7 not limited to incentive pay and bonuses, and overtime wages during the
8 same workweek, at any time from July 29, 2016, through the present (the
9 “Overtime Regular Rate Sub-Class”);
- 10 b. All former non-exempt employees of Defendants in the State of California
11 who earned non-discretionary remuneration, including but not limited to
12 incentive pay and bonuses, and sick pay during the same workweek, and
13 whose employment ended at any time from July 29, 2017, through the
14 present (the “Sick Pay Sub-Class”); and
- 15 c. All current and former non-exempt employees of Defendants in the State
16 of California, who worked more than 3.5 hours in any shift, at any time
17 from July 29, 2016, through the present (the “Rest Period Sub-Class”).

18 18. **Numerosity and Ascertainability:** The members of the Class are so numerous
19 that joinder of all members would be impractical, if not impossible. The identity of the members
20 of the Class is readily ascertainable by review of Defendants’ records, including payroll records.
21 Plaintiff is informed and believes, and based thereon alleges, that Defendants: (a) failed to pay
22 employees overtime wages for all hours worked, or at the correct regular rate of pay that
23 included all non-discretionary remuneration in violation of Labor Code §§ 201-203, 510, 558,
24 and 1194; (b) failed to pay employees sick pay at the correct regular rate of pay that included all
25 non-discretionary remuneration in violation of Labor Code §§ 201-203 and 246; (c) failed to pay
26 all minimum, regular, and overtime wages owed for off-the-clock work in violation of Labor
27 Code §§ 201-204, 510, 558, 1194, 1197, and 1197.1; (d) failed to provide off-duty rest periods to
28 employees who worked 3.5 hours or longer in one shift and/or pay rest period premiums in lieu

thereof in violation of Labor Code §§ 201-203 and 226.7; (e) failed to provide accurate, itemized wage statements in violation of Labor Code § 226; and (f) engaged in Unfair Business Practices in violation of the UCL, the California Labor Code, and the applicable IWC Wage Orders.

19. **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.

20. Defendants uniformly administered a corporate policy, practice of: (a) failing to pay employees overtime wages for all hours worked, or at the correct regular rate of pay that included all non-discretionary remuneration in violation of Labor Code §§ 201-203, 510, 558, and 1194; (b) failing to pay employees sick pay at the correct regular rate of pay that included all non-discretionary remuneration in violation of Labor Code §§ 201-203 and 246; (c) failing to pay all minimum, regular, and overtime wages owed for off-the-clock work in violation of Labor Code §§ 201-204, 510, 558, 1194, 1197, and 1197.1; (d) failing to provide off-duty rest periods to employees who worked 3.5 hours or longer in one shift and/or pay rest period premiums in lieu thereof in violation of Labor Code §§ 201-203 and 226.7; (e) failing to provide accurate, itemized wage statements in violation of Labor Code § 226; and (f) engaging in Unfair Business Practices in violation of the UCL, the California Labor Code, and the applicable IWC Wage Orders.

21. Plaintiff is informed and believes, and based thereon alleges, that Defendants had a consistent and uniform policy, practice, and procedure of willfully failing to comply with Labor Code §§ 201-203, 204, 226, 226.7, 246, 510, 558, 1194, 1197, and 1197.1, the applicable IWC Wage Orders, and the UCL.

22. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst Plaintiff and the claims of the Class concerning Defendants' policy and practice of: (a) failing to pay employees overtime wages for

all hours worked, or at the correct regular rate of pay that included all non-discretionary remuneration in violation of Labor Code §§ 201-203, 510, 558, and 1194; (b) failing to pay employees sick pay at the correct regular rate of pay that included all non-discretionary remuneration in violation of Labor Code §§ 201-203 and 246; (c) failing to pay all minimum, regular, and overtime wages owed for off-the-clock work in violation of Labor Code §§ 201-204, 510, 558, 1194, 1197, and 1197.1; (d) failing to provide off-duty rest periods to employees who worked 3.5 hours or longer in one shift and/or pay rest period premiums in lieu thereof in violation of Labor Code §§ 201-203 and 226.7; (e) failing to provide accurate, itemized wage statements in violation of Labor Code § 226; and (f) engaging in Unfair Business Practices in violation of the UCL, the California Labor Code, and the applicable IWC Wage Orders.

23. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class in that Plaintiff has suffered the harms alleged in this Complaint in a similar and typical manner as the Class Members. As with other non-exempt employees, Plaintiff earned non-discretionary remuneration, including without limitation incentive pay and bonuses. During workweeks when Plaintiff worked in excess of eight hours in a workday and/or forty hours in a workweek and received non-discretionary remuneration during the same workweek, Defendants failed to include any non-discretionary remuneration earned into the calculation of the regular rate. Thus, Plaintiff is owed additional overtime pay based on the correct, higher regular rate of pay. Similarly, when Plaintiff received sick pay, it was disbursed at an incorrect rate of pay. Sick pay was disbursed at the base rate of pay rather than the regular rate, factoring in all non-discretionary remuneration earned during the workweek. Also, like other non-exempt employees, Plaintiff was required to perform pre- and post-shift work off-the-clock. Such off-the-clock work included performing a security sweep of the premises, turning the bank alarm off upon entry and off upon exit, and logging in to work computers. Additionally, Defendants failed to provide proper rest breaks to their employees. As a pattern and practice, Defendants routinely denied off-duty rest breaks to Plaintiff and other employees by requiring them to remain on premises. In lieu of providing proper off-duty rest breaks, however, Defendants did not pay rest period premiums to their employees. To date, Plaintiff has yet to receive the underpaid minimum,

1 regular, and overtime wages, sick pay, and rest premium compensation owed to her. Thus,
2 Defendants are liable for waiting time penalties under Labor Code § 203. Moreover, given the
3 underpayment and/or nonpayment of minimum, regular, and overtime wages, sick pay, and rest
4 period premiums, the wage statements provided to Plaintiff displayed inaccurate overtime rates
5 of pay, number of hours worked at each rate of pay, total hours worked, and net and gross wages
6 earned. Therefore, Plaintiff is a member of the Class and has suffered the alleged violations of
7 Labor Code §§ 201-203, 204, 226, 226.7, 246, 510, 558, 1194, 1197, and 1197.1, and the UCL.

8 24. The California Labor Code upon which Plaintiff bases these claims are broadly
9 remedial in nature. These laws and labor standards serve an important public interest in
10 establishing minimum working conditions and standards in California. These laws and labor
11 standards protect the average working employee from exploitation by employers who may seek
12 to take advantage of superior economic and bargaining power in setting onerous terms and
13 conditions of employment.

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

24 26. The prosecution of separate actions by the individual class members, even if
25 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
26 to individual Class members against the Defendants and which would establish potentially
27 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
28 individual Class members which would, as a practical matter, be dispositive of the interest of the

1 other Class members not parties to the adjudications or which would substantially impair or
2 impede the ability of the Class members to protect their interests. Further, the claims of the
3 individual members of the Class are not sufficiently large to warrant vigorous individual
4 prosecution considering all of the concomitant costs and expenses.

5 27. Such a pattern, practice and uniform administration of corporate policy regarding
6 illegal employee compensation described herein is unlawful and creates an entitlement to
7 recovery by Plaintiff and the Class identified herein, in a civil action, for unpaid wages,
8 including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit
9 according to the mandate of California Labor Code §§ 218.5, 226, and 1194, the applicable IWC
10 Wage Orders, and Code of Civil Procedure § 1021.5.

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

14 29. The Class is commonly entitled to a specific fund with respect to the
15 compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to
16 restitution of those funds being improperly withheld by Defendants. This action is brought for
17 the benefit of the entire class and will result in the creation of a common fund.

18 **FIRST CAUSE OF ACTION**

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

20 **(BY PLAINTIFF, THE CLASS, AND THE OVERTIME REGULAR RATE SUB-CLASS**
21 **AGAINST ALL DEFENDANTS)**

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

24 31. This cause of action is brought pursuant to Labor Code § 510, which requires an
25 employer to pay employees overtime at a rate of one and one-half the employee's regular rate of
26 pay for any work in excess of eight hours in a workday or forty hours in a workweek.

27 32. As a pattern and practice, Defendants suffered and permitted employees to work
28 in excess of eight hours in a workday and/or over forty hours in a workweek without proper

1 overtime pay. Furthermore, during workweeks when Plaintiff and Class Members worked
2 overtime and earned non-discretionary remuneration such as incentive pay and bonuses,
3 Defendants failed to properly calculate the regular rate of pay for purposes of paying overtime.
4 Specifically, Defendants failed to factor any non-discretionary remuneration earned into the
5 calculation of the regular rate of pay for purposes of paying overtime wages. As a result of such
6 policy and practice, Defendants underpaid overtime wages to Plaintiff and the Class and thus
7 owe additional overtime wages.

8 33. Such a pattern, practice, and uniform administration of corporate policy regarding
9 illegal employee compensation as described herein is unlawful and creates an entitlement to
10 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
11 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according
12 to the mandate of California Labor Code §§ 218.5, 510, 558, and 1194.

13 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
14 willful failure to provide all overtime wages due and owing to Plaintiff and Class Members upon
15 separation from employment results in a continued payment of wages up to thirty (30) days from
16 the time the wages were due. Therefore, Plaintiff and other members of the Class who have
17 separated from employment from Defendants are entitled to compensation pursuant to Labor
18 Code § 203.

19 **SECOND CAUSE OF ACTION**

20 **VIOLATION OF LABOR CODE §§ 201-203**

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

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

25 36. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
26 in accordance with Labor Code §§ 201 and 202, then the wages of the employee shall continue
27 as a penalty from the due date, and at the same rate until paid, but the wages shall not continue
28 for more than thirty (30) days.

1 37. Labor Code § 201 provides if an employer discharges an employee, the wages
2 earned and unpaid at the time of discharge are due and payable immediately.

3 38. Labor Code § 202 provides that an employee is entitled to receive all unpaid
4 wages no later than 72 hours after an employee quits his or her employment, unless the employee
5 has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the
6 employee is entitled to his or her wages at the time of quitting.

7 39. Labor Code § 246 provides that an employee is entitled to receive sick time pay.
8 The employer shall calculate paid sick leave by using one of two calculations: (1) “Paid sick time
9 for nonexempt employees shall be calculated in the same manner as the regular rate of pay for
10 the workweek in which the employee uses paid sick time, whether or not the employee actually
11 works overtime in that workweek;” or (2) “Paid sick time for nonexempt employees shall be
12 calculated by dividing the employee’s total wages, not including overtime premium pay, by the
13 employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

14 40. Whenever Defendants paid Plaintiff and the Class Members sick time pursuant to
15 California Labor Code § 246, Defendants did so at the incorrect rate of pay. Defendants paid
16 Plaintiff and the Class Members at the base hourly rate of pay, as opposed to the regular rate of
17 pay, which takes into account all non-discretionary remuneration such as incentive pay and
18 bonuses, or by dividing the employees’ total wages, not including overtime premium pay, by the
19 employees’ total hours worked in the full pay periods of the prior 90 days of employment, as
20 required by Labor Code § 246. This resulted in the employees being underpaid for sick time and
21 violation of California Labor Code §§ 201, 202, and 203, and other derivative Labor Code
22 violations, because Defendants did not pay, or timely pay, Plaintiff and the Class Members all
23 owing and unpaid wages for work performed by them during their employment and at the end of
24 their employment.

25 41. Defendants willfully failed to pay Plaintiff and the Class Members all their wages
26 due, as alleged hereinabove and hereinafter, upon the termination of their employment within the
27 times prescribed by Labor Code §§ 201 and 202 and are therefore subject to a waiting time
28 penalty. Plaintiff and the Class Members are entitled to recover from Defendants the statutory

1 penalty for each day they were not paid at their regular hourly rate of pay, up to a thirty (30) day
2 maximum pursuant to California Labor Code § 203.

3 **THIRD CAUSE OF ACTION**

4 **FAILURE TO PAY WAGES**

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

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

8 43. This cause of action is brought pursuant to California Labor Code §§ 201-203,
9 510, 558, 1194, 1197, and 1197.1, which require an employer to pay employees all earned
10 regular, minimum, and overtime wages.

11 44. At all relevant times herein, Defendants failed to pay all earned regular,
12 minimum, and overtime wages to Plaintiff and Class Members. Defendants failed to pay for time
13 spent by employees while under the control of Defendants, including, without limitation,
14 performing a security sweep of the premises, turning the bank alarm off upon entry and off upon
15 exit, and logging in to work computers, in violation of Labor Code §§ 510, 558, 1194, 1197, and
16 1197.1. Thus, Defendants owe Plaintiff and Class Members unpaid wages.

17 45. Plaintiff is informed and believes and based thereon alleges that Defendants'
18 willful failure to pay Plaintiff and Class Members all regular and overtime wages due and owing
19 to them upon separation of employment results in a continued payment of wages up to thirty (30)
20 days from the time the wages are due. Therefore, Class Members who have separated from
21 employment are entitled to compensation pursuant to Labor Code § 203.

22 46. Such a pattern, practice and uniform administration of corporate policy regarding
23 illegal employee compensation as described herein is unlawful and creates and entitled to
24 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
25 wages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according to
26 the mandate of California Labor Code §§ 201-203, 510, 558, 1194, 1197, and 1197.1.

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1 **FOURTH CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE § 226.7**

3 **(BY PLAINTIFF, THE REST PERIOD SUB-CLASS, AND THE CLASS AGAINST ALL**
4 **DEFENDANTS)**

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

7 48. At all relevant times, Defendants failed in their affirmative obligation to ensure
8 that Plaintiff and the Class had the opportunity to take and were provided with off-duty 10-
9 minute rest periods in accordance with the mandates of the California Labor Code and the
10 applicable IWC Wage Order. Specifically, as a pattern and practice, Defendants routinely
11 required to Plaintiff and other employees to remain on premises during rest breaks. As a result,
12 Plaintiff and Class Members were unable to take off-duty rest breaks.

13 49. Defendants further failed to pay Plaintiff and the Class rest period premium
14 compensation, as mandated by Labor Code § 226.7. For each workday that a rest period is not
15 provided, employees are entitled to one additional hour of pay at the employee's regular rate of
16 pay/compensation. Throughout their employment, Plaintiff and Class Members did not receive
17 said premium compensation. As such, Plaintiff and the Class are owed additional rest period
18 premium pay.

19 50. Such a pattern, practice and uniform administration of corporate policy as
20 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class
21 identified herein, in a civil action, for the unpaid balance of the premium compensation pursuant
22 to Labor Code § 226.7, and the applicable IWC Wage Order, including interest thereon,
23 penalties, reasonable attorneys' fees, and costs of suit.

24 51. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
25 willful failure to provide all rest period premium wages due and owing to Plaintiff and the Class
26 upon separation from employment results in a continued payment of wages up to thirty (30) days
27 from the time the wages were due. Therefore, Plaintiff and members of the Class who have
28 separated from employment are entitled to compensation pursuant to Labor Code § 203.

1 **FIFTH CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE § 226**

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

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

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

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

17 55. Such a pattern, practice and uniform administration of corporate policy as
18 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class
19 in a civil action, for all damages or penalties pursuant to Labor Code § 226, including interest
20 thereon, attorneys' fees, and costs of suit according to the mandate of California Labor Code
21 § 226.

22 **SIXTH CAUSE OF ACTION**

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

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

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

27 57. Defendants, and each of them, have engaged and continue to engage in unfair and
28 unlawful business practices in California by practicing, employing, and utilizing the employment

1 practices outlined above, including by: (a) failing to pay employees overtime wages for all hours
2 worked, or at the correct regular rate of pay that included all non-discretionary remuneration in
3 violation of Labor Code §§ 201-203, 510, 558, and 1194; (b) failing to pay all minimum, regular,
4 and overtime wages owed for off-the-clock work in violation of Labor Code §§ 201-204, 510,
5 558, 1194, 1197, and 1197.1; and (C) failing to provide off-duty rest periods to employees who
6 worked 3.5 hours or longer in one shift and/or pay rest period premiums in lieu thereof in
7 violation of Labor Code §§ 201-203 and 226.7.

8 58. Defendants' utilization of such unfair and unlawful business practices constitutes
9 unfair and unlawful competition and provides an unfair advantage over Defendants' competitors.

10 59. Plaintiff seeks, individually and on behalf of other members of the Class similarly
11 situated, full restitution of monies, as necessary and according to proof, to restore any and all
12 monies withheld, acquired and/or converted by the Defendants by means of the unfair practices
13 complained of herein.

14 60. Plaintiff is informed and believes, and based thereon alleges, that at all times
15 herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices,
16 as proscribed by California Business & Professions Code § 17200, *et seq.*, including those set
17 forth herein above thereby depriving Plaintiff and other members of the Class the minimum
18 working condition standards and conditions due to them under the California laws as specifically
19 described therein.

20 **SEVENTH CAUSE OF ACTION**

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

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

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

26 62. Plaintiff brings this cause of action as a proxy for the State of California and in
27 this capacity, seeks penalties on behalf of all Aggrieved Employees from January 15, 2020,
28 through the present, for Defendants' violations of Labor Code §§ 201-203, 204, 226, 226.7, 246,

510, 558, 1194, 1197, and 1197.1, arising from Defendants’ policy and practice of: (a) failing to pay employees overtime wages for all hours worked, or at the correct regular rate of pay that included all non-discretionary remuneration in violation of Labor Code §§ 201-203, 510, 558, and 1194; (b) failing to pay employees sick pay at the correct regular rate of pay that included all non-discretionary remuneration in violation of Labor Code §§ 201-203 and 246; (c) failing to pay all minimum, regular, and overtime wages owed for off-the-clock work in violation of Labor Code §§ 201-204, 510, 558, 1194, 1197, and 1197.1; (d) failing to provide off-duty rest periods to employees who worked 3.5 hours or longer in one shift and/or pay rest period premiums in lieu thereof in violation of Labor Code §§ 201-203 and 226.7; and (e) failing to provide accurate, itemized wage statements in violation of Labor Code § 226.

63. On or about January 15, 2021, Plaintiff sent written notice to the California Labor & Workforce Development Agency (“LWDA”) of Defendants’ violations of Labor Code §§ 201-203, 204, 226, 226.7, 246, 510, 558, 1194, 1197, and 1197.1, pursuant to Labor Code § 2698, *et seq.*, the Private Attorneys General Act (“PAGA”). To date, the LWDA has not responded to Plaintiff’s written notice.

64. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendants’ violation of Labor Code §§ 201-203, 204, 226, 226.7, 246, 510, 558, 1194, 1197, and 1197.1, 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 §§ 201-203, 510, 558, and 1194, and for costs and attorneys’ fees;

6. Upon the Second Cause of Action, for damages and/or penalties pursuant to California Labor Code §§ 201-203 and 246, and for costs and attorneys' fees;

7. Upon the Third Cause of Action, for damages and/or penalties pursuant to California Labor Code §§ 201-203, 510, 558, 1194, 1197, and 1197.1, and for costs and attorneys' fees;

8. Upon the Fourth Cause of Action, for damages and/or penalties pursuant to California Labor Code §§ 201-203 and 226.7, and for costs and attorneys' fees;

9. Upon the Fifth Cause of Action, for damages or penalties pursuant to California Labor Code § 226, and for costs and attorneys' fees;

10. Upon the Sixth 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 § 17200, *et seq.*, for the time periods described above;

11. Upon the Seventh Cause of Action, for civil penalties according to proof pursuant to Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys' fees;

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

13. For such other and further relief the Court may deem just and proper.

DATED: January 25, 2021

DIVERSITY LAW GROUP, P.C.

By: 

Larry W. Lee

Max W. Gavron

Attorneys for Plaintiff and the Class