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Superior Court of California
County of Los Angeles

MAR 19 2021

Sherri R. Carter, Executive Officer/Clerk of Court
By: Tanya Herrera, Deputy

Attorneys for Plaintiff ERIC HARDIE as an individual and on behalf of all employees similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

THE COUNTY OF LOS ANGELES

ERIC HARDIE as an individual and on behalf
of all employees similarly situated,

Plaintiff,

v.

MATTEL, INC., a Delaware Corporation;
MATTEL HQ, INC., a Delaware Corporation
and DOES 1 through 50, inclusive,

Defendants.

Case No. **21STCV11096**

CLASS ACTION COMPLAINT

1. Violation of Labor Code §§ 510, 1194 (Failure to Pay All Wages Including Overtime);
2. Violation of Labor Code §§ 226.7, 512 (Failure to Provide Meal Periods);
3. Violation of Labor Code § 226.7 (Failure to Provide Rest Periods);
4. Violation of Labor Code § 515 (Willful Misclassification as Exempt Employees);
5. Violation of Labor Code § 2802 (Failure to Reimburse Expenses);
6. Violation of Labor Code §§ 226, 1174 (Failure to Keep Accurate Itemized Wage Statements);
7. Violation of Labor Code §§ 201-203 (Failure to Pay Wages Upon Termination of Employment);
8. Violation of Bus. & Prof. Code § 17200 et seq. (Unfair Business Practices); and

DEMAND FOR JURY TRIAL

1 Plaintiff ERIC HARDIE (hereinafter referred to as “Plaintiff”) on behalf of herself and all
2 others similarly situated, complains and alleges as follows:

3 I.

4 **INTRODUCTION**

5 1. This is a class action brought on behalf of Plaintiff and the class he seeks to
6 represent (“Plaintiff Class” or “Class Members”). Class Members consist of all employees,
7 exempt or non-exempt currently and/or formerly employed by MATTEL, INC. and MATTEL
8 HQ, INC. (collectively, “Defendants”), in various positions in the State of California during the
9 Class Period, including but not limited to those employees such as Plaintiff, who were employed
10 in a copywriter position and misclassified as exempt employees. The term “Class Period” is
11 defined as four (4) years prior to the filing of this Complaint through the date final judgment is
12 entered. Plaintiff reserves the right to amend this Complaint to reflect a different “Class Period”
13 or “Plaintiff Class” as further discovery is conducted.

14 2. Plaintiff, individually and on behalf of the class he seeks to represent, seeks relief
15 against Defendants for failure to reimburse business expenses in violation of Labor Code §2802.
16 With respect to the subclass of putative Class Members such as Plaintiff, who worked in a
17 copywriter position and was misclassified as exempt, Plaintiff also seeks relief individually and
18 on behalf of the class he seeks to represent, against Defendants for: failure to pay all wages due
19 in violation of Labor Code sections 510 and 1194, including both regular and overtime wages;
20 failure to provide meal periods or compensation in lieu thereof pursuant to Labor Code sections
21 226.7 and 512, the applicable Industrial Welfare Commission Wage Orders, and Code of
22 Regulations, Title 8, section 11040; failure to provide rest periods or compensation in lieu thereof
23 pursuant to Labor Code sections 226.7 and 512, the applicable Industrial Welfare Commission
24 Wage Orders, and Code of Regulations, Title 8, section 11040.; willful misclassification as an
25 exempt employee in violation of Labor Code section 515 and Title 8 of the California Code of
26 Regulations section 11040; failure to provide accurate itemized wage statements upon payment
27 of wages pursuant to Labor Code sections 226, subdivision (a), 1174, and 1175; and failure to
28 pay wages of terminated or resigned employees pursuant to Labor Code sections 201-203.

1 3. Plaintiff seeks equitable remedies in the form of declaratory relief and injunctive
2 relief, and relief under Business and Professions Code section 17200 et seq. for unfair business
3 practices.

4 4. Plaintiff further seeks civil penalties in connection with Defendant's Labor Code
5 violations based on Labor Code section 2698 et seq., the Private Attorneys General Act of 2004
6 (hereinafter "PAGA").

7 5. At all relevant times herein, Defendants carried out a joint scheme, business plan
8 or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to
9 the other Defendants. Defendants have consistently maintained and enforced against Plaintiff
10 Class the following unlawful practices and policies:

- 11 (a) willfully refusing to pay Plaintiff and Plaintiff Class for all hours worked,
12 including both regular and overtime;
- 13 (b) willfully refusing to permit Plaintiff and Plaintiff Class from taking meal
14 periods or compensation in lieu thereof;
- 15 (c) willfully refusing to permit Plaintiff and Plaintiff Class from taking rest
16 periods or compensation in lieu thereof;
- 17 (d) willfully misclassifying Plaintiff and Plaintiff Class as exempt employees;
- 18 (e) willfully failing to reimburse Plaintiff and Plaintiff Class necessary
19 business expenditures incurred in the course of their employment;
- 20 (f) willfully refusing to furnish to Plaintiff and Plaintiff Class accurate
21 itemized wage statements upon payment of wages; and
- 22 (g) willfully refusing to compensate Plaintiff and certain members of the
23 Plaintiff Class wages due and owing at the conclusion of Plaintiff and
24 Plaintiff Class' employment with Defendants.

25 II.

26 JURISDICTION AND VENUE

27 6. Venue is proper in this judicial district and in the County of Los Angeles,
28 California because Defendants maintain their locations and/or transact business in this county,

1 the obligations and liability arise in this county, and work was performed by members of the
2 proposed class made the subject of this action in this county.

3 7. The wages, statutory penalties, monetary damages and restitution sought by
4 Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established
5 according to proof at trial. This Court has jurisdiction over this action pursuant to the California
6 Constitution, article VI, section 10. The statutes under which this action is brought do not specify
7 any other basis for jurisdiction.

8 8. The California Superior Court has jurisdiction in the matter because the individual
9 claims are under the seventy-five thousand dollars (\$75,000.00) jurisdictional threshold for
10 Federal Court and the five million dollars (\$5,000,000) aggregate jurisdictional threshold for
11 Federal Court and, upon information and belief, Plaintiff and Defendant are residents of,
12 domiciled in, or otherwise subject to jurisdiction in the State of California. Further, there is no
13 federal question at issue as the issues herein are based solely on California statutes and law
14 including the Labor Code, Industrial Welfare Commission ("IWC") Wage Orders, the Code of
15 Civil Procedure, the Rules of Court, and the Business and Professions Code.

16 **III.**

17 **THE PARTIES**

18 **A. The Plaintiff**

19 9. Plaintiff, at all relevant times herein, was Defendant's employee and was entitled
20 to reimbursement for business expenses pursuant to Labor Code §2802. Additionally, as a
21 member of the subclass of putative Class Members working in a copywriter position and
22 misclassified as an exempt employee, Plaintiff was legally entitled to compensation for all hours
23 worked, including regular time and overtime compensation, and penalties from Defendant.
24 Specifically, Plaintiff worked as a staff copywriter for Defendant during the Class Period at
25 Defendant's El Segundo location. Each of the Class Members are identifiable, current and/or
26 former similarly situated persons who were employed in various positions in California by
27 Defendant during the Class Period, including but not limited to those employees working in
28 copywriter positions and misclassified as exempt, such as Plaintiff.

B. Defendants

10. Plaintiff is informed and believes, and based thereon alleges, that MATTEL INC. is a Delaware Corporation doing business in Los Angeles County. Plaintiff further is informed and believes, and based thereon alleges, that MATTEL INC. is a manufacturer and retailer of toys and electronics, and its principal place of business in this State is located in El Segundo, CA. On information and belief, MATTEL INC. was and/or is the employer of Plaintiff and Plaintiff Class during the Class Period. Plaintiff also alleges that MATTEL INC. is conducting business in good standing in California.

11. Plaintiff is informed and believes, and based thereon alleges, that MATTEL HQ INC. is a Delaware Corporation doing business in Los Angeles County. Plaintiff further is informed and believes, and based thereon alleges, that MATTEL HQ INC. is a manufacturer and retailer of toys and electronics, and its principal place of business in this State is located in El Segundo, CA. On information and belief, MATTEL HQ INC. was and/or is the employer of Plaintiff and Plaintiff Class during the Class Period. Plaintiff also alleges that MATTEL HQ INC. is conducting business in good standing in California.

12. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct herein alleged of the Defendants sued herein as DOES 1 through 50, inclusive, but on information and belief alleges that these Defendants are legally responsible for the payment of overtime compensation, rest and meal period compensation, and wages to Plaintiff and Plaintiff Class by virtue of their unlawful practices, and therefore sues these Defendants by such fictitious names. Plaintiff will amend this complaint to allege the true names and capacities of each DOE defendant when ascertained.

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

14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy, managing agent, and/or principal of the Defendant, and in performing the actions mentioned below was acting, at least in part, within the course and scope of that authority as such agent, proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with permission and consent of the Defendant. Plaintiff also alleges the acts of each Defendant are legally attributable to the other Defendants.

15. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants sued herein was, at all times relevant hereto, the employer, owner, shareholder, principal, joint venture, proxy, agent, employee, supervisor, representative, manager, managing agent, joint employer and/or alter-ego of the remaining Defendants, and was acting, at least in part, within the course and scope of such employment and agency, with the express and implied permission, consent, and knowledge, approval and/or ratification of the other Defendants.

16. The above Defendant, managing agents, and supervisors aided, abetted, condoned, permitted, approved, authorized and/or ratified the unlawful acts described herein.

IV.

ADMINISTRATIVE PREREQUISITES

17. By this Complaint, Plaintiff brings this case as a representative action seeking penalties for the State of California in a representative capacity, as provided by the Private Attorneys General Act (“PAGA”), Labor Code section 2698 et seq., to the extent permitted by law, as an aggrieved employee who was employed by Defendants and did not receive all business reimbursements owed, all wages due, was not paid overtime, was not able to take lawful meal and rest breaks, did not receive all wages due at the termination of employment and did not receive accurate itemized wage statements.

18. Prior to filing this Complaint, on February 08, 2021, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and to Defendant of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violations as required by Labor Code section 2699.3. Thereafter, Plaintiff

submitted and served an amended PAGA notice to LWDA and Defendants on March 19, 2021. True and correct copies of Plaintiff's letter sent to the LWDA, dated February 08, 2021 and March 19, 2021, are attached hereto as "Exhibit A." Upon expiration of the statutory review period granted to LWDA, Plaintiff will seek to amend this Complaint to add a cause(s) of action pursuant to PAGA.

V.

GENERAL ALLEGATIONS

19. Labor Code section 1194 provides that notwithstanding any agreement to work for a lesser wage, an employee receiving less than the legal overtime compensation is entitled to recover in a civil action the unpaid balance of his or her overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

20. Further, Business and Professions Code section 17203 provides that any person who engages in unfair competition may be enjoined in any court of competent jurisdiction. Business and Professions Code section 17204 provides that any person who has suffered actual injury and has lost money or property as a result of the unfair competition may bring an action in a court of competent jurisdiction.

21. During all, or a portion of the Class Period, Plaintiff and each member of the Plaintiff Class was employed by Defendants in the State of California.

22. Plaintiff and Class Members were employees covered under one or more IWC Wage Order(s), and/or Labor Code section 2802, but were not reimbursed by Defendants for all business expenses incurred, including but not limited to expenses arising from working remotely from home, such as the cost of electronic devices and accessories used for work purposes and the prorated cost of Class Members' personal cellular home wi-fi data plans utilized for work purposes.

23. Plaintiff and the subclass of Plaintiff Class, who worked in copywriter positions and were misclassified as exempt, were employees covered under one or more IWC Wage Order(s), and/or Labor Code in addition to the subclass of putative Class members subject to Labor Code sections 203-204, 226, 510, 512 and/or other applicable Wage Orders, regulations

1 and statutes, and each Class Member was not subject to an exemption for executive,
2 administrative or professional employees, which imposed obligations on the part of Defendants
3 to pay Plaintiff and Class Members lawful overtime compensation.

4 24. Plaintiff and the subclass of Plaintiff Class, who worked in copywriter positions
5 and were misclassified as exempt, were covered by one or more IWC Wage Order(s), and Labor
6 Code section 226.7 and other applicable Wage Orders, regulations and statutes which imposed an
7 obligation on the part of Defendants to pay Plaintiff and the subclass of Plaintiff Class, who
8 worked in copywriter positions and were misclassified as exempt, rest and meal period
9 compensation.

10 25. During the Class Period, Defendants were obligated to pay Plaintiff and the
11 subclass of Plaintiff Class, who worked in copywriter positions and were misclassified as exempt,
12 for all hours worked. However, Defendants had a policy and practice of not paying Plaintiff and
13 Class Members for all hours worked as a result of the misclassification because Defendants did
14 not treat Plaintiff and Plaintiff Class as eligible for overtime compensation.

15 26. During the Class Period, Defendants were obligated to pay Plaintiff and the
16 subclass of Plaintiff Class, who worked in copywriter positions and were misclassified as exempt,
17 overtime compensation for all hours worked in excess of eight (8) hours of work in one (1) day
18 or forty (40) hours in one (1) week, and double-time compensation for hours worked in excess of
19 twelve (12) in one (1) day. However, Defendants did not pay Plaintiff and Class Members proper
20 overtime and/or double-time rates for hours worked off-the-clock as required by law because of
21 the misclassification as exempt employees, such that Defendants treated Plaintiff and the Plaintiff
22 Class as ineligible for overtime compensation.

23 27. During the Class Period, Defendants was obligated to provide Plaintiff and the
24 subclass of Plaintiff Class, who worked in copywriter positions and were misclassified as exempt,
25 with a work-free meal period within the first five (5) hours of a shift when the workday was longer
26 than six (6) hours. Because of the misclassification as exempt employees, Defendants treated
27 Plaintiff and the Plaintiff Class as ineligible for meal periods and Defendants routinely denied
28 Plaintiff and Class Members a full, thirty (30) minute, off-duty meal period when they worked in

1 excess of six (6) hours within the first five (5) hours of their shifts because Defendants treated
2 Plaintiff and the Plaintiff Class as ineligible for overtime compensation due to their
3 misclassification as exempt employees.

4 28. Additionally, Defendants were obligated to provide Plaintiff and the subclass of
5 Plaintiff Class, who worked in copywriter positions and were misclassified as exempt, with a ten
6 (10) minute rest break for every four (4) hours, or major fraction thereof, worked each day.
7 Because of the misclassification as exempt employees, Defendants treated Plaintiff and the
8 Plaintiff Class as ineligible for rest periods.

9 29. Furthermore, Defendants failed and/or refused to pay Plaintiff and the subclass of
10 Plaintiff Class, who worked in copywriter positions and were misclassified as exempt, one (1)
11 hour's pay at the employees' regular rate of pay as premium compensation for Defendants' failure
12 to provide lawful thirty (30) minute, off-duty meal periods and failure to provide lawful ten (10)
13 minute rest periods within the statutory time frames.

14 30. Plaintiff and the subclass of Plaintiff Class, who worked in copywriter positions
15 and were misclassified as exempt, primarily performed non-exempt work, often in excess of the
16 maximum regular rate hours set forth in the applicable IWC Wage Order(s), regulations or
17 statutes, and therefore entitled the Plaintiff and Class Members to overtime compensation at the
18 rate of one and a half times their regular rate of pay and, when applicable, double time
19 compensation as set forth by the applicable IWC Wage Order(s), regulations and/or statutes.

20 31. Plaintiff and the subclass of Plaintiff Class, who worked in copywriter positions
21 and were misclassified as exempt, and who ended their employment with Defendants during the
22 Class Period, but were not paid the above due compensation for all hours worked timely upon the
23 termination of their employment as required by Labor Code sections 201-203 are entitled to
24 penalties as provided by Labor Code section 203.

25 32. As a result of Defendants' failure to pay Plaintiff and the subclass of Plaintiff
26 Class, who worked in copywriter positions and were misclassified as exempt, all wages due
27 during the Class Period, and thus Defendants failed to provide Plaintiff and Class Members with
28 accurate itemized wage statements.

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VI.

CLASS ALLEGATIONS

33. Plaintiff brings this action on behalf of himself and all other similarly situated persons as a class action pursuant to Code of Civil Procedure section 382. The Class is composed of and defined as follows:

- (a) All persons who are employed or have been employed by Defendants in the State of California (including but not limited to Plaintiff and the subclass of Plaintiff Class, who worked in copywriter positions and were misclassified as exempt) and who, within the four (4) years of the filing of this Complaint to the present, have worked in various positions and were not reimbursed by Defendants for all business expenses incurred, including but not limited to expenses arising from working remotely from home, such as the cost of electronic devices and accessories used for work purposes and the prorated cost of Class Members' personal cellular home wi-fi data plans utilized for work purposes;
- (b) The subclass of all persons who are employed or have been employed by Defendants in the State of California, and who, within the four (4) years of the filing of this Complaint to the present, in a copywriter or like position and were misclassified as exempt, and have not been provided a meal period for shifts in excess of five (5) hours within the first five (5) hours such shifts due the misclassification, and were not provided one (1) hour's pay for each day during which a lawful meal period was not provided;
- (c) The subclass of all persons who are employed or have been employed by Defendants in the State of California, and who, within the four (4) years of the filing of this Complaint to the present, have worked in a copywriter or like position and were misclassified as exempt, and have not been provided a rest period for every four (4) hours, or major fraction thereof, worked per day due

1 the misclassification, and were not provided compensation of one (1) hour's
2 pay for each day on which such rest period(s) was not provided;

3 (d) The subclass of all persons who are employed or have been employed by
4 Defendants in the State of California, and who, within the four (4) years of the
5 filing of this Complaint to the present, in a copywriter or like position by
6 Defendants in the State of California, and who, within the four (4) years of the
7 filing of this Complaint to the present, have worked as non-exempt employees
8 and have been misclassified as exempt;

9 (e) The subclass of all persons who are employed or have been employed by
10 Defendants in the State of California, and who, within the four (4) years of the
11 filing of this Complaint to the present, have worked in a copywriter or like
12 position and were misclassified as exempt, and who, within the three (3) years
13 of the filing of this Complaint to the present, and have been terminated or
14 resigned, and have not been paid wages pursuant to Labor Code section 203
15 and are owed restitution and waiting time penalties for unpaid wages;

16 (f) The subclass of all persons who are employed or have been employed by
17 Defendants in the State of California, and who, within the four (4) years of the
18 filing of this Complaint to the present, have worked in a copywriter or like
19 position and were misclassified as exempt, and who, within the one (1) year of
20 the filing of this Complaint to the present have worked as non-exempt
21 employees and were not provided an accurate payroll record or wage statement
22 as required under Labor Code sections 226 and 1174;

23 (g) All persons who are employed or have been employed by Defendants in the
24 State of California (including but not limited to Plaintiff and the subclass of
25 Plaintiff Class, who worked in copywriter positions and were misclassified as
26 exempt) and who, within the four (4) years of the filing of this Complaint to
27 the present, have worked in various positions and were subjected to unlawful
28 and unfair business practices within the meaning of California's Unfair

1 Competition Law and who suffered injury, including lost money, as a result of
2 Defendants' unlawful and unfair business practices;

3 34. Plaintiff reserves the right under Rule 1855, subdivision (b) of the California Rules
4 of Court to amend or modify the Class description with greater specificity or further division into
5 subclasses or limitation to particular issues.

6 35. This action has been brought and may be maintained as a class action pursuant to
7 Code of Civil Procedure section 382 because there is a well-defined common interest of many
8 persons and it is impractical to bring them all before the court.

9 36. The Court should permit this action to be maintained as a class action pursuant to
10 Code of Civil Procedure section 382 because:

- 11 (a) The questions of law and fact common to the Plaintiff Class predominate
12 over any question affecting only individual class members;
- 13 (b) A class action is superior to any other available method for the fair and
14 efficient adjudication of the claims of the Class members;
- 15 (c) The Plaintiff Class is so numerous that it is impractical to bring all
16 members of the Plaintiff Class before the Court;
- 17 (d) Plaintiff and Class Members will not be able to obtain effective and
18 economic legal redress unless the action is maintained as a class action;
- 19 (e) There is a community of interest in obtaining appropriate legal and
20 equitable relief for the common law and statutory violations and other
21 improprieties and in obtaining adequate compensation for the damages
22 and injuries which Defendants' actions have inflicted upon the Plaintiff
23 Class;
- 24 (f) There is a community of interest in ensuring that the combined assets and
25 available insurance of the Defendants are sufficient to adequately
26 compensate Class Members for the injuries sustained;
- 27 (g) Without class certification, the prosecution of separate actions by
28 individual members of the Class would create a risk of:

1 (1) Inconsistent or varying adjudications with respect to individual
2 members of the Class which would establish an incompatible
3 standard of conduct for Defendants; and/or

4 (2) Adjudications with respect to the individual members which
5 would, as a practical matter, be dispositive of the interests of other
6 members not parties to the adjudications, or would substantially
7 impair or impede their ability to protect their interests, including
8 but not limited to the potential for exhausting the funds available
9 from those parties who are, or may be, a responsible Defendants;
10 and

11 (h) Defendants have acted or refused to act on grounds generally applicable
12 to the Plaintiff Class, thereby making final injunctive relief appropriate
13 with respect to the Class as a whole.

14 **VII.**

15 **FIRST CAUSE OF ACTION**

16 **Failure to Pay All Wages Including Overtime**

17 **(Against Defendant, DOES 1 through 50, and each of them)**

18 37. Plaintiff and Class Members reallege and incorporate by reference all preceding
19 paragraphs of this complaint as though fully set forth herein.

20 38. Labor Code section 204 establishes the fundamental right of all employees in the
21 State of California to be paid wages, including straight time and overtime, in a timely fashion for
22 their work.

23 39. Labor Code section 520, subdivision (a) provides that “[a]ny work in excess of
24 eight hours in one workday and any work in excess of 40 hours in any one workweek and the first
25 eight hours worked on the seventh day of work in any one workweek shall be compensated at the
26 rate of no less than one and one-half times the regular rate of pay for an employee.”
27
28

1 40. Labor Code section 510, subdivision (a) further provides that “[a]ny work in
2 excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular
3 rate of pay for an employee.”

4 41. Labor Code section 1194 and applicable IWC Wage Orders make it unlawful for
5 employers not to make required overtime and double time payments identified in the preceding
6 paragraphs, and that employees not paid such payments can recover any monies owed through a
7 civil action.

8 42. Plaintiff and the subclass of Plaintiff Class, who worked in copywriter positions
9 and were misclassified as exempt, worked for Defendant and were not paid for all hours worked
10 as a result of the misclassification because Defendants treated them as ineligible for overtime
11 compensation. For the same reasons, Defendants failed to pay Plaintiff and Class Members for
12 all hours worked, in part, because Defendants had a policy and practice of intentionally and
13 improperly denying Plaintiff and Plaintiff class meal and rest periods, and because Defendants
14 had a policy and practice of requiring Plaintiff and Class Members to work off-the-clock.

15 43. Plaintiff and the subclass of Plaintiff Class, who worked in copywriter positions
16 and were misclassified as exempt, regularly worked over eight (8) hours per day and forty (40)
17 hours per week. Defendants failed to pay Plaintiff and Plaintiff Class overtime premiums and/or
18 double-overtime premiums for hours worked in excess of eight (8) hours per day and forty (40)
19 hours per week for work performed for Defendants because the latter treated the former as
20 ineligible for overtime compensation. As such, Plaintiff and Plaintiff Class seek overtime and/or
21 double-overtime in an amount according to proof.

22 44. Pursuant to Labor Code section 1194, Plaintiff and the subclass of Plaintiff Class,
23 who worked in copywriter positions and were misclassified as exempt, seek the payment of all
24 regular time compensation, overtime compensation and/or double-time compensation which they
25 earned and accrued throughout the Class Period, according to proof.

26 45. Defendants have willfully violated the Labor Code by failing to pay Plaintiff and
27 the subclass of Plaintiff Class, who worked in copywriter positions and were misclassified as
28 exempt, all wages. Plaintiff and Plaintiff Class were denied wages as a result the misclassification

1 and thereby resulting in Defendants' policy and practice of failing to compensate Plaintiff and
2 Plaintiff Class for all regular and overtime hours worked. Further, Defendant has regularly
3 violated the Labor Code with respect to meeting the requirements of paying wages earned,
4 including regular time, overtime, double-time and remuneration when calculating the employees'
5 regular rate of pay, as herein alleged. Defendant has intentionally excluded remuneration that
6 must be included in all employees' regular rate of pay in order to avoid payment of wages and
7 other benefits in violation of the Labor Code and the applicable IWC Wage Order(s). Defendant
8 is thereby able to reduce its overhead and operating expenses and gain an unfair advantage over
9 competing restaurants who comply with state law.

10 46. Additionally, Plaintiff and Plaintiff Class are entitled to attorneys' fees and costs,
11 pursuant to Labor Code sections 218.5, 226, 1194 and prejudgment interest.

12 **VIII.**

13 **SECOND CAUSE OF ACTION**

14 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**

15 **(Against Defendant, DOES 1 through 50, and each of them)**

16 47. Plaintiff and Class Members reallege and incorporate by reference all preceding
17 paragraphs of this complaint as though fully set forth herein.

18 48. Labor Code sections 226.7 and 512 provide that no employer shall employ any
19 person for a work period of more than five (5) hours without providing a meal period of not less
20 than thirty (30) minutes within the fifth (5th) hour of work, or employ any person for a work
21 period of more than ten (10) hours without a second (2nd) meal period of not less than thirty (30)
22 minutes.

23 49. Labor Code section 226.7 provides that if an employer fails to provide an
24 employee a meal period in accordance with this section, the employer shall pay the employee one
25 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
26 period is not provided in accordance with this section.

27 50. Defendants failed to schedule Plaintiff and the subclass of Plaintiff Class, who
28 worked in copywriter positions and were misclassified as exempt, in a manner as to reasonably

1 ensure that Plaintiff and Class Members could take such meal periods within the statutory
2 timeframe because due to the misclassification, Defendants did not treat Plaintiff and the Plaintiff
3 Class as eligible for breaks. As a result, Plaintiff and Plaintiff Class were often forced to forego
4 their meal periods, work during their meal periods and/or take meal periods after the fifth (5th)
5 hour of their shifts. In so doing, Defendants have intentionally and improperly denied meal
6 periods to Plaintiff and Class Members in violation of Labor Code sections 226.7 and 512, and
7 other regulations and statutes.

8 51. At all times relevant hereto, Plaintiff and the subclass of Plaintiff Class, who
9 worked in copywriter positions and were misclassified as exempt, have worked more than five
10 (5) hours in a workday.

11 52. At varying times relevant hereto, Plaintiff and the subclass of Plaintiff Class, who
12 worked in copywriter positions and were misclassified as exempt, have worked more than ten
13 (10) hours in a workday.

14 53. At all times relevant hereto, Defendants failed to schedule Plaintiff and the
15 subclass of Plaintiff Class, who worked in copywriter positions and were misclassified as exempt,
16 in a manner so as to reasonably provide work-free meal periods in accordance with Labor Code
17 sections 226.7 and 512.

18 54. By virtue of Defendants' failure to schedule Plaintiff and the subclass of Plaintiff
19 Class, who worked in copywriter positions and were misclassified as exempt, in such a way as to
20 provide a timely and/or work free meal period to Plaintiff and Class Members, Plaintiff and Class
21 Members have suffered, and will continue to suffer, damages in an amount which is presently
22 unknown, but which exceed the jurisdictional limits of this Court and which will be ascertained
23 according to proof at trial.

24 55. Plaintiff, individually and on behalf of Class Members, requests recovery of meal
25 period compensation pursuant to Labor Code section 226.7 for the four (4) years prior to filing
26 this complaint, as well as the assessment of any statutory penalties against Defendants in a sum
27 as provided by the Labor Code and/or other statutes.

28 **IX.**

1 **THIRD CAUSE OF ACTION**

2 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**

3 **(Against Defendant, DOES 1 through 50, and each of them)**

4 56. Plaintiff and Class Members reallege and incorporate by reference all preceding
5 paragraphs of this complaint as though fully set forth herein.

6 57. The IWC Wage Orders and Labor Code section 226.7 provides that employers
7 must authorize and permit all employees to take rest periods at the rate of ten (10) minutes rest
8 time per four (4) work hours or major fraction thereof.

9 58. Labor Code section 226.7, subdivision (b) provides that if an employer fails to
10 provide an employee rest periods in accordance with this section, the employer shall pay the
11 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
12 that the rest period is not provided.

13 59. During the Class Period, Defendant did not provide Plaintiff and the subclass of
14 Plaintiff Class, who worked in copywriter positions and were misclassified as exempt, with a ten-
15 minute rest period for every four (4) work hours or major fraction thereof because, due to the
16 misclassification, Defendants did not treat Plaintiff and the Plaintiff Class as eligible for breaks.
17 Therefore, Plaintiff and Class Members were not provided lawful rest periods.

18 60. Defendants, and each of them, failed and/or refused to implement a relief system
19 by which Plaintiff and the subclass of Plaintiff Class, who worked in copywriter positions and
20 were misclassified as exempt, could receive rest periods and/or work free rest periods. By and
21 through its actions, Defendant intentionally and improperly denied rest periods to Plaintiff and
22 Class Members in violation of Labor Code sections 226.7 and 512.

23 61. At all times relevant hereto, Plaintiff and the subclass of Plaintiff Class, who
24 worked in copywriter positions and were misclassified as exempt, have worked more than four
25 (4) hours in a workday.

26 62. By virtue of the Defendants' unlawful failure to provide rest periods to Plaintiff
27 and the subclass of Plaintiff Class, who worked in copywriter positions and were misclassified as
28 exempt, Plaintiff and Class Members have suffered, and will continue to suffer, damages, in

1 amounts which are presently unknown, but which exceed the jurisdictional limits of this Court
2 and which will be ascertained according to proof at trial.

3 63. Plaintiff, individually and on behalf of employees similarly situated, requests
4 recovery of rest period compensation pursuant to Labor Code section 226.7 for the four (4) years
5 prior to filing this Complaint, as well as the assessment of any statutory penalties against
6 Defendants, and each of them, in a sum as provided by the Labor Code and/or any other statute.

7 **X.**

8 **FOURTH CAUSE OF ACTION**

9 **Willful Misclassification of Employee as Exempt**

10 **(Against Defendant, DOES 1 through 50, and each of them)**

11 64. Plaintiff and Plaintiff Class reallege and incorporate by reference all preceding
12 paragraphs of this complaint as though fully set forth herein.

13 65. Labor Code section 515 and 8 CCR §11040, set forth specific criteria as to which
14 employees may be deemed exempt.

15 66. During the Class Period, Defendants subjected Plaintiff and the subclass of
16 Plaintiff Class, who worked in copywriter positions and were misclassified as exempt, willfully
17 misclassified Plaintiff and Class Members as exempt so as to avoid providing them the benefits
18 of status of non-exempt employees. This includes but is not limited to depriving Plaintiff and
19 Plaintiff Class of overtime compensation and meal/rest periods.

20 67. By virtue of the Defendants' unlawful willful misclassification of Plaintiff and
21 Class Members as exempt, Plaintiff and Class Members have suffered, and will continue to suffer,
22 damages, in amounts which are presently unknown, but which exceed the jurisdictional limits of
23 this Court and which will be ascertained according to proof at trial.

24 **XI.**

25 **FIFTH CAUSE OF ACTION**

26 **Failure to Reimburse Necessary Business Expenses**

27 **(Against Defendant, DOES 1 through 50, and each of them)**

68. Plaintiff and Plaintiff Class reallege and incorporate by reference all preceding paragraphs of this complaint as though fully set forth herein.

69. Labor Code section 2802 provides that Plaintiff and Class Members, including but not limited to Plaintiff and the subclass of Plaintiff Class, who worked in copywriter positions and were misclassified as exempt, are entitled to reimbursement for expenses or losses incurred by them in direct consequence of the discharge or his or her duties, or of his or her obedience to the directions of the employer.

70. Plaintiff and Class Members incurred various expenses in direct consequence of their work for Defendants but were not reimbursed by Defendants for all business expenses incurred, including but not limited to expenses arising from working remotely from home, such as the cost of electronic devices and accessories used for work purposes and the prorated cost of Class Members' personal cellular home wi-fi data plans utilized for work purposes.

71. Because Defendants have failed and/or refused to pay for these expenses as a result of Defendant's policies, practices, and procedures, and because Defendants has willfully failed to pay the earned and unpaid wages described herein, Plaintiff seeks payment of penalties for the reimbursement of these expenses and losses.

72. Additionally, Plaintiff and Class Members are entitled to attorneys' fees and costs, pursuant to Labor Code section 2801, subdivision (d), as well as prejudgment interest.

XII.

SIXTH CAUSE OF ACTION

Failure to Provide Accurate Itemized Wage Statements

(Against Defendant, DOES 1 through 50, and each of them)

73. Plaintiff and Plaintiff Class reallege and incorporate by reference all preceding paragraphs of this complaint as though fully set forth herein.

74. Labor Code section 1174, subdivision (d) requires an employer to keep at a central location in California, or at the plant or establishment at which the employee is employed, payroll records showing the hours worked daily by, and the wages paid to, each employee.

1 75. Labor Code section 226, subdivision (a) requires an employer to provide
2 employees—either as a detachable part of the check, draft, or voucher paying the employee’s
3 wages, or separately when wages are paid by personal check or cash—an accurate itemized wage
4 statement in writing showing

5
6 (1) gross wages earned, (2) total hours worked by the employee . . . , (4) all
7 deductions . . . , (5) net wages, (6) the inclusive dates of the period for which the
8 employee is paid, (7) the name of the employee and only the last four digits of his
9 or her social security number or an employee identification number other than a
10 social security number, (8) the name and address of the legal entity that is the
11 employer . . . , and (9) all applicable hourly rates in effect during the pay period and
12 corresponding number of hours worked at each hourly rate by the employee

13 76. Moreover, the IWC Wage Orders require that every employer shall keep accurate
14 information with respect to each employee, including time records showing when each employee
15 begins and ends each work period, the total daily hours worked by each employee and the total
16 hours worked in each payroll period, and applicable rates of pay.

17 77. Plaintiff is informed and believes that Defendants willfully and intentionally
18 failed to make and/or keep records which accurately reflect the hours worked by Plaintiff and
19 the subclass of Plaintiff Class, who worked in copywriter positions and were misclassified as
20 exempt, as a result of the misclassification. Specifically, Plaintiff believes that Defendants’
21 records fail to reflect hours worked and when Plaintiff and Plaintiff Class worked during their
22 meal and rest periods and/or took meal periods, if any, because Defendants treated Plaintiff and
23 the Plaintiff Class as exempt.

24 78. Labor Code section 226, subdivision (e) provides that if an employer knowingly
25 and intentionally fails to provide a statement itemizing, inter alia, the gross and net wages earned,
26 the total hours worked by the employee and the applicable hourly overtime rates, causing the
27 employee injury, then the employee is entitled to recover the greater of all actual damages or
28 fifty dollars (\$50) for the initial violation and one hundred dollars (\$100) for each subsequent
violation, up to four thousand dollars (\$4,000). Plaintiff is informed and believes that
Defendants willfully failed to make or keep accurate records for Plaintiff and Plaintiff Class.

79. Plaintiff is informed and believes that Defendants' failure to keep accurate payroll records, as described above, violated Labor Code section 1174, subdivision (d) and section 226, subdivision (a), and the applicable IWC Wage Order(s). Pursuant to Labor Code section 2699, subdivision (f)(2), Plaintiff and the Plaintiff Class are entitled to penalties of \$100.00 and for the initial violation and \$200.00 for each subsequent violation for every pay period during which these records and information were not kept by Defendants.

80. Plaintiff is informed and believes that Defendants' failure to keep and maintain accurate records and information, as described above, was willful, and Plaintiff and the Plaintiff Class are entitled to statutory penalties pursuant to Labor Code section 1174.5.

XIII.

SEVENTH CAUSE OF ACTION

Failure to Pay Wages upon Termination of Employment

(Against Defendant, DOES 1 through 50, and each of them)

81. Plaintiff and Plaintiff Class reallege and incorporate by reference all preceding paragraphs of this complaint as though fully set forth herein.

82. Plaintiff's employment with Defendant ended on or about February 01, 2021. Plaintiff and the subclass of Plaintiff Class, who worked in copywriter positions and were misclassified as exempt, and who ended their employment with Defendants during the Class Period, were entitled to be promptly paid for all hours worked, including lawful regular time compensation, overtime compensation, double-time compensation, and other premiums, as required by Labor Code sections 201 through 203. Plaintiff is also entitled to meal period and rest period premium pay in accordance with Labor Code sections 226 and 226.7.

83. Plaintiff and Plaintiff Class were not compensated for their unlawful and/or missed meal periods and/or rest periods, and were not paid proper regular time compensation, overtime compensation or double-time compensation in accordance with law because Defendants refused to properly and promptly compensate Plaintiff and Plaintiff Class for all wages earned.

84. To date, Plaintiff and Plaintiff Class Members who ended their employment with Defendants during the Class Period have not been compensated for all hours worked.

85. Plaintiff and the affected Plaintiff Class Members seek the payment of penalties pursuant to Labor Code section 203, according to proof.

86. Plaintiff is also entitled to attorneys' fees and costs, pursuant to Labor Code section 1194, and prejudgment interest.

XIV.

EIGHTH CAUSE OF ACTION

Unfair Business Practices

(Against Defendant, DOES 1 through 50, and each of them)

87. Plaintiff and Plaintiff Class reallege and incorporate by reference all preceding paragraphs of this complaint as though fully set forth herein.

88. Business and Professions Code section 17200 et seq. (also referred to herein as the “Unfair Business Practices Act” or “Unfair Competition Law”) prohibits unfair competition in the form of any unlawful, unfair or fraudulent business act or practice.

89. Business and Professions Code section 17204 allows “a person who has suffered injury in fact and has lost money or property as a result of the unfair competition” to prosecute a civil action for violation of the Unfair Competition Law (“UCL”).

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

91. Beginning at an exact date unknown to Plaintiff, but at least since the date four (4) years prior to the filing of this lawsuit, Defendant has committed acts of unfair competition as defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent business practices and acts described in this Complaint including but not limited to violations of Labor Code sections 201-204, 226, 226.7, 512, 1174, 1197, and 1198, 2802, as well as other statutes.

1 92. The violations of these laws and regulations, as well as of the fundamental
2 California public policies protecting workers, serve as unlawful predicate acts and practices for
3 purposes of Business and Professions Code section 17200 et seq.

4 93. The acts and practices described above constitute unfair, unlawful and fraudulent
5 business practices, and unfair competition, within the meaning of Business and Professions Code
6 section 17200 et seq. Among other things, the acts and practices have forced Plaintiff and other
7 similarly situated employees to labor for many consecutive hours without receiving the meal and
8 rest periods and overtime compensation to which they are entitled by law, while enabling
9 Defendant to gain an unfair competitive advantage over law-abiding employers and competitors.

10 94. As a result of Defendant's acts, Plaintiff and Plaintiff Class Members have
11 suffered injury in fact in being denied their statutorily entitled meal and rest periods and full
12 compensation for hours worked.

13 95. As a direct and proximate result of the aforementioned acts and practices, Plaintiff
14 and Plaintiff Class have suffered lost wages in an amount to be proven at trial.

15 96. Business and Professions Code section 17203 provides that a court may make such
16 orders or judgments as may be necessary to prevent the use or employment by any person of any
17 practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to
18 prevent Defendant from repeating its unlawful, unfair and fraudulent business acts and business
19 practices alleged above.

20 97. Business and Professions Code section 17203 provides that the Court may restore
21 to any person in interest any money or property that may have been acquired by means of such
22 unfair competition. Plaintiff and Plaintiff Class are entitled to restitution pursuant to Business
23 and Professions Code section 17203 for all wages and payments unlawfully withheld from
24 employees, including the fair value of the meal and rest periods taken away from them during the
25 four-year period prior to the filing of this Complaint, as well as for all expenses or losses incurred
26 by Plaintiff and Plaintiff Class in direct consequence of the discharge of his or her duties, or of
27 his or her obedience to the directions of the employer.

98. Business and Professions Code section 17202 provides, “Notwithstanding section 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty, forfeiture, or penal law in a case of unfair competition.” Plaintiff and Plaintiff Class are entitled to enforce all applicable penalty provisions of the Labor Code pursuant to Business and Professions Code section 17202.

99. Plaintiff's success in this action will enforce important rights affecting public interest, and in that regard Plaintiff sues on behalf of the general public, as well as himself and other similarly situated employees. Plaintiff and Plaintiff Class seek and are entitled to restitution, civil penalties, declaratory and injunctive relief, and all other equitable remedies owing them.

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

XVI.

PRAYER FOR RELIEF

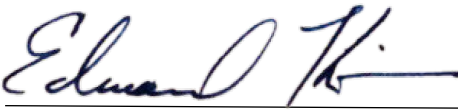
WHEREFORE, Plaintiff prays for judgment as follows:

1. For nominal damages;
2. For compensatory damages;
3. For restitution of all monies due to Plaintiff and Plaintiff Class, and disgorged profits from Defendant's unlawful business practices;
4. For waiting time penalties pursuant to Labor Code section 203, on behalf of the terminated or resigned employees;
5. For penalties pursuant to Labor Code sections 226, 226(e), 226.7, 226.8, 512, and 1194;
6. For interest accrued to date;
7. Injunctive relief, enjoining Defendant from engaging in the unlawful and unfair business practices complained herein;

- 1 8. Declaratory relief, enjoining Defendants' practices as unlawful and unfair
2 business practices within the meaning of Business and Professions Code sections
3 17200, et seq., and declaring Defendant has: (1) unlawfully treated Plaintiff and
4 Plaintiff Class; (2) failed to pay all wages and overtime compensation in violation
5 of California law; (3) failed to pay wages to former employees, including Plaintiff
6 and other Class Members; (4) failed to provide Plaintiff and Plaintiff Class
7 accurate itemized wage statements upon payment of wages; and (5) failed to
8 reimburse Plaintiff and Plaintiff Class for necessary business expenses;
- 9 9. Further declaratory relief, declaring the amounts of damages, penalties, equitable
10 relief, costs, and attorneys' fees to which Plaintiff and Plaintiff Class are entitled;
- 11 10. For costs of suit and expenses incurred herein pursuant to Labor Code sections
12 226 and 1194;
- 13 11. For reasonable attorneys' fees, pursuant to Labor Code sections 201-203, 218.5
14 226, 226.7, 512, 1174, 1194, 2802, and 2698;
- 15 12. For all such other and further relief as the Court may deem just and proper.
- 16

17 Dated: March 19, 2021

WORK LAWYERS, PC

18
19 By: 

20 Justin Lo, Esq.
21 Edward Kim, Esq
22 Attorney for Plaintiff
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Dated: March 19, 2021

By: 
Justin Lo, Esq.
Edward Kim, Esq
Attorney for Plaintiff