

MAYALL HURLEY P.C.
 ROBERT J. WASSERMAN (SBN: 258538)
 rwasserman@mayallaw.com
 JENNY D. BAYSINGER (SBN: 251014)
 jlbaysinger@mayallaw.com
 2453 Grand Canal Boulevard
 Stockton, California 95207-8253
 Telephone: (209) 477-3833
 Facsimile: (209) 473-4818

PER LOCAL RULE, THIS
 CASE IS ASSIGNED TO
 DEPT 39 FOR ALL
 PURPOSES.

FILED

2021 APR 12 A 11:59

CLERK OF SUPERIOR COURT
 COUNTY OF CONTRA COSTA, CA

Attorneys for Plaintiff Samantha Owens and the Putative Class

SUPERIOR COURT OF THE STATE CALIFORNIA

COUNTY OF CONTRA COSTA

SAMANTHA OWENS,

Plaintiff,

vs.

FIDELITY NATIONAL HOME
 WARRANTY COMPANY; and DOES 1-100,
 inclusive,

Defendants.

Case No: 21-00731-

CLASS AND REPRESENTATIVE ACTION COMPLAINT

1. FAILURE TO PAY MINIMUM WGE
2. FAILURE TO PAY OVERTIME
3. FAILURE TO PROVIDE MEAL BREAKS
4. FAILURE TO FURNISH ACCURATE
ITEMIZED WAGE STATEMENTS
5. FAILURE TO TIMELY PAY ALL WAGES
DUE AND OWING
6. UNFAIR BUSINESS PRACTICES
7. VIOLATION OF PRIVATE ATTORNEYS
GENERAL ACT

Plaintiff Samantha Owens brings this class and representative action against Defendant Fidelity National Home Warranty Company and Does 1 through 100, for violations of California Labor Code and Business and Professions Code.

PARTIES

1. Samantha Owens ("Plaintiff" or "Owens") is and at all times relevant herein was employed in Contra Costa County, California, and was an "employee" as defined by the California Labor Code ("Labor Code"), and the applicable California Industrial Wage Commission ("IWC") Order(s).

BY FAX

2. Fidelity National Home Warranty Company (“Defendant” or “FNHWC”) is a California corporation which does business in California and throughout the United States.

3. At all times relevant herein, FNHWC has been an “employer” as defined by Labor Code and the applicable IWC Order(s).

4. FNHWC and Does 1-100 are collectively referred to as Defendants.

5. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sues such Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged and that Plaintiff’s injuries and damages herein alleged were legally caused by such Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

6. Plaintiff is informed and believes and thereupon alleges that at all times mentioned herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant, employee, partner and/or joint venturer of and was acting in concert with each of the remaining Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting within the course and scope of such agency, service, employment partnership, joint venture and/or concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and within the course and scope of such agency and/or employment, with the knowledge and/or consent of the remaining Defendants.

JURISDICTION AND VENUE

7. This Court is the proper Court, and this action is properly filed in the Superior Court of California for the County of Contra Costa because FNHWC conducts business in this County and Plaintiff has performed work for FNHWC in this County. Plaintiff hereby demands a jury trial.

GENERAL ALLEGATIONS

8. Plaintiff worked for FNHWC from September 2016 through December 2020.

1 9. Throughout her employment, Plaintiff was a non-exempt employee. As such, she was
2 entitled to pay for every hour worked and overtime as appropriate.

3 10. Plaintiff worked for FNHWC from September 2016 through December 2020.
4 Throughout her employment, Ms. Owens was a non-exempt employee. As such, she was entitled
5 to pay for every hour worked and overtime as appropriate. Plaintiff and FNHWC's other non-
6 exempt California employees were also eligible for and at times received non-discretionary
7 bonuses, commissions, and other items of compensation. See **Exhibit 1**.

8 11. Throughout her employment, however, Plaintiff and FNHWC's other non-exempt
9 employees were not properly paid for all hours worked, including overtime. Specifically, FNHWC
10 failed to pay or miscalculated their non-exempt California employees' regular rate of pay for
11 purposes of overtime because non-discretionary bonuses, commissions, and other types of
12 compensation/remuneration were not included in the calculation.

13 12. In or around March 2020, FNHWC began mandating that its employees work from
14 home in accordance with California COVID-19 related stay at home orders.

15 13. In or around this same time, FNHWC instituted a meal break policy that punished
16 employees for failing to clock back into work immediately upon completing their 30-minute meal
17 break. Employees who failed to timely clock back into work were reprimanded and even terminated.

18 14. As a result of the draconian policy, FNHWC's non-exempt employees were encouraged
19 to forego, if not expressly prohibited from taking uninterrupted 30-minute lunch breaks in accordance
20 with California law for fear that they would inadvertently forget to clock in immediately upon return
21 and be punished. Alternatively, employees were effectively denied the entire 30-minute meal period
22 because of the requirement to never clock in more than 30 minutes after beginning a meal period.

23 15. Plaintiff was laid off on December 31, 2020. In December 2020, FNHWC instructed its
24 non-exempt California employees not to clock in and out and started paying them based solely upon
25 their assumed schedules. Accordingly, non-exempt California employees like Plaintiff who worked
26 outside of their assumed schedules with FNHWC's express and/or implied knowledge, were not paid
27 for all hours worked and overtime as appropriate.

1 16. Because FNHWC failed to pay minimum wage and overtime, to provide compliant
2 meal periods, and to pay all premiums associated with the same, it also failed to timely pay its
3 employees each pay period and at the end of their employment.

4 17. The wage statements that FNHWC furnishes to its non-exempt California employees
5 violate California Labor Code section 226(a) insofar as they fail to accurately show the total hours
6 worked in violation of section 226(a)(2). Specifically, the wage statements list multiple different
7 categories of earnings including: (i) "Regular Hours," (ii) "Straight Time OT," and (3) "Half Time
8 OT". See **Exhibit 1**¹. With respect to the hours included in the pay period, the wage statements do not
9 provide a separate category accurately calculating the total hours worked by Plaintiff or FNHWC's
10 other non-exempt California employees. *Id.* Rather, the statements appear to list the number of hours
11 worked at the "Regular Hours" rate of pay and state the number of overtime hours under both the
12 "Straight Time OT" and "Half Time OT" categories. *Id.* Inclusion of multiple categories of "hours
13 worked" render the wage statements inaccurate and confusing and impeded the ability of Plaintiff and
14 FNHWC's other non-exempt California employees to promptly and easily determine the total hours
15 worked during the pay period in order to ensure FNHWC was properly compensating its employees.

16 18. For example, during the pay period of November 30, 2020 through December 13, 2020,
17 Owens's wage statement identifies that she worked a total of 64 hours at the "Regular" earnings
18 category, lists .71 hours for the "Straight Time OT" earnings category, .71 hours for the "Half Time
19 OT" earnings category, and 8.00 hours for the "Sick Taken" category. **Exhibit 1**. The number listed
20 under the "Current Hours" column lists Owens' hours as 73.42 hours. *Id.* Owens did not work 73.42
21 hours during the pay period of November 30, 2020 through December 13, 2020.

22 19. Similarly, during the pay period of December 14, 2020 through December 27, 2020,
23 Owens's wage statement identifies that she worked a total of 98 hours at the "Regular" earnings
24 category, lists 3.10 hours for the "Straight Time OT" earnings category, 3.10 hours for the "Half Time
25 OT" earnings category, 8.00 hours for the "Personal Choice Hol" category, 62.62 hours for the
26 "Vacation Payout" category, and 8.00 hours for the "Other Hours". **Exhibit 2**. The number listed
27

28 ¹ Exhibits 1-2 are incorporated by this reference as though fully set forth herein. Some Exhibits have been reduced and/or redacted due to their size and content.

1 under the “Current Hours” column lists Owens’ hours as 182.82 hours. *Id.* Owens did not work
2 182.82 hours during the pay period of December 14, 2020 through December 27, 2020.

3 20. If an employee sought to calculate the total number of hours worked during a pay period
4 and added the hours listed under the "Regular Hours", "Straight Time OT", and “Half Time OT”
5 categories, much less the myriad other categories, the total hours worked would be incorrect. *Id.*; see
6 *McKenzie v. Federal Exp. Corp.* (C.D. Cal. 2011) 275 F.R.D. 290, 292.

7 21. There is no way to determine from the face of the wage statements the total number of
8 hours actually worked. Simply adding all of the numbers under the “Current Hours” column, yields an
9 inaccurate number of hours worked.

10 22. Separate and independent from the foregoing, the wage statements FNHWC furnishes
11 to all of its California employees, regardless of exemption status, violate Labor Code section 226(a)(8)
12 insofar as they fail to accurately show the name and address of the legal entity that is the employer.

13 23. “Fidelity National Management Services, Inc.” and an address of “601 Riverside Ave
14 V-6, Jacksonville, FL 32204” is listed at the top of the wage statements that FNHWC furnishes to
15 Owens and its other California employees. “Fidelity National Management Services, Inc.” and “601
16 Riverside Ave V-6, Jacksonville, FL 32204” are not the name and address of the legal entity that is
17 Owens’ and FNHWC’s California employees’ employer. See **Exhibits 1 and 2.**

18 24. “Fidelity National Financial” and an address of “601 Riverside Ave V-6, Jacksonville,
19 FL 32204” appear on the checks attached the wage statements that FNHWC furnishes to Owens’ and
20 its other California employees. “Fidelity National Financial” and “601 Riverside Ave V-6,
21 Jacksonville, FL 32204” are not the name and address of the legal entity that is Owens and FNHWC’s
22 California employees’ employer. See **Exhibits 1 and 2.**

23 25. In the middle of the wage statements that FNHWC furnishes to Owens and its other
24 California employees appear “Organization: FNT HW PURCHASING DEPT” and “Location: US
25 CA CON 1850 STE 400”. Organization: FNT HW PURCHASING DEPT” and “Location: US CA
26 CON 1850 STE 400” are not the name and address of the legal entity that is Owens and FNHWC’s
27 California employees’ employer. See **Exhibits 1 and 2.**

1 26. The wage statements FNHWC furnishes to its Owens and its other non-exempt
2 California employees also violate Labor Code section 226(a)(9) insofar as they fail to accurately show
3 all applicable hourly rates in effect during the pay period and the corresponding number of hours
4 worked at each hourly rate, specifically the number of hours of overtime worked and their overtime
5 rates. **Exhibits 1 and 2.**

6 27. As evidenced in the samples of Plaintiff's wage statements attached hereto as **Exhibit**
7 **1-2**, the wage statements furnished by FNHWC to its California employees violated California Labor
8 Code section 226(a) insofar as they failed to accurately show:

- 9 a. The gross wages earned in violation of section 226(a)(1);
- 10 b. The total hours worked by the employee in violation of section 226(a)(2);
- 11 c. The new wages earned in violation of section 226(a)(5);
- 12 d. The name and address of the entity that is the employer in violation of section
13 226(a)(8); and
- 14 e. All applicable hourly rates in effect during the pay period and the corresponding
15 number of hours worked at each hourly rate in violation of section 226(a)(9).

16 28. Defendants were, at all times relevant herein, aware of the requirements of California
17 Labor Code section 226.

18 29. Defendants have, at all times relevant herein, furnished wage statements to each of its
19 California employees pursuant to an established set of policies, procedures and practices.

20 30. Plaintiff and Defendants' other California employees, both current and former, have
21 suffered injury as a result of Defendants' knowing and intentional failure to comply with California
22 Labor Code section 226(a).

23 31. Plaintiff and FNHWC's other non-exempt California employees, both current and
24 former, have suffered injury as a result of FNHWC's knowing and intentional failure to furnish wage
25 statements accurately showing the total hours worked by them in violation of California Labor Code
26 section 226(a)(2).

27 32. Plaintiff and FNHWC's other non-exempt California employees, both current and
28 former, were unable to promptly and easily determine their total hours worked from the wage
statements furnished by FNHWC.

 33. Plaintiff and FNHWC's other California employees, both current and former and both
exempt and non-exempt, have suffered injury as a result of FNHWC's knowing and intentional failure

1 to furnish wage statements accurately showing the name and address of the legal entity that was their
2 employer in violation of California Labor Code section 226(a)(8).

3 34. Plaintiff and FNHWC's other California employees, both current and former and both
4 exempt and non-exempt, were unable to promptly and easily determine the name and address of the
5 legal entity that was their employer by reference to the wage statements furnished by FNHWC alone.

6 35. Plaintiff and FNHWC's other non-exempt California employees, both current and
7 former, have suffered injury as a result of FNHWC's knowing and intentional failure to furnish wage
8 statements accurately showing all applicable hourly rates in effect during the pay period and the
9 corresponding number of hours worked at each hourly rate in violation of section 226(a)(9).

10 36. Plaintiff and FNHWC's other non-exempt California employees, both current and
11 former, were unable to promptly and easily determine all applicable hourly rates in effect during the
12 pay period and the corresponding number of hours worked at each hourly rate by reference to the wage
13 statements furnished by FNHWC alone.

14 37. From at least four years prior to the filing of this action, FNHWC has adopted and
15 employed unfair business practices. These unfair business practices include, but are not limited to,
16 failing to pay all minimum and overtime wages due, and failing to provide compliant meal breaks, or to
17 pay the premiums associated therewith.

18 **PRIVATE ATTORNEYS GENERAL ACT ALLEGATIONS**

19 38. The Private Attorney General Act ("PAGA"), as set forth at California Labor Code §
20 2698 et seq., is and at all times relevant herein was applicable to Rodriguez's employment by
21 Defendants.

22 39. Pursuant to Labor Code § 2699(a) any provision of the Labor Code which provides for
23 a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
24 ("LWDA") for violations of the Labor Code may, as an alternative, be recovered through a civil action
25 brought by an aggrieved employee on behalf of himself or herself and other current or former
26 employees pursuant to the procedures outlined in Labor Code § 2699.3. California Labor Code §
27 2699(a).

1 40. Pursuant to PAGA, an “aggrieved employee” is “any person who was employed by the
2 alleged violator and against whom one or more of the alleged violations was committed.” Labor Code
3 § 2699(c).

4 41. Plaintiff was employed by FNHWC and the alleged violations were committed against
5 her during her time of employment. Plaintiff is therefore an aggrieved employee as defined by Labor
6 Code § 2699(c). Other current and former employees are also aggrieved employees in that one or
7 more of the alleged violations were also committed against them during their time of employment with
8 FNHWC.

9 42. As is outlined herein, FNHWC violated the Labor Code as to Plaintiff and other current
10 and former employees it employed and/or employs within California. Specifically, Defendants
11 violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 233, 246, 510, 512, 1182.12 et seq.,
12 1194, 1197, 1198, as well as the applicable IWC Wage Orders.

13 43. Pursuant to Labor Code § 2699(f), the civil penalty recoverable in a PAGA action is
14 that which is provided for by the by the Labor Code. When the Labor Code does not provide a civil
15 penalty, the penalty recoverable shall be \$100 for the initial violation per employee per pay period and
16 \$200 for each subsequent violation per employee per pay period.

17 44. Pursuant to Pursuant to California Labor Code § 2699(g), an aggrieved employee may
18 recover the civil penalty on behalf of himself or herself and other current or former employees against
19 whom one or more of the alleged violations was committed. Furthermore, any employee who prevails
20 in any action shall be entitled to an award of reasonable attorney's fees and costs.

21 45. Pursuant to Labor Code § 2699.3, an aggrieved employee, including Rodriguez, may
22 pursue a civil action arising under PAGA after the following requirements have been met:

23 a. The aggrieved employee shall give written notice by certified mail to the
24 LWDA and the employer (hereinafter “Employee’s Notice”) of the specific provisions of
25 California Labor Code alleged to have been violated, including the facts and theories to support
26 the alleged violations;

27 b. The LWDA shall provide notice (hereinafter “LWDA’s Notice”) to the
28 employer and the aggrieved employee by certified mail that it does not intend to investigate the

1 alleged violation within 60 days of the postmark date of the Employee's Notice. Upon receipt
2 of the LWDA's Notice, or if the LWDA does not provide notice with 65 calendar days of the
3 postmark date of the Employee's Notice, the aggrieved employee may commence a civil action
4 pursuant to California Labor Code § 2699 to recover civil penalties in addition to any other
5 penalties to which the employee may be entitled.

6 c. For all alleged violations not enumerated in Labor Code § 2699.5, the employer
7 is given thirty-three (33) days to cure and notify the aggrieved employee by certified mail that
8 the violation has been cured. If the violation is not cured, the aggrieved employee may
9 commence a civil action pursuant to California Labor Code § 2699 to recover civil penalties in
10 addition to any other penalties to which the employee may be entitled.

11 46. On February 2, 2021, Plaintiff provided written notice by certified mail to FNHWC and
12 by online filing to the LWDA of the specific provisions of the Labor Code alleged to have been
13 violated, including the facts and theories to support the alleged violations.

14 47. As of the filing of this Class and Representative Action Complaint, which is more 65
15 days after February 2, 2021, the LWDA has not responded to Plaintiff's notification or otherwise
16 indicated an intention to investigate his claims. Plaintiff has satisfied the administrative prerequisites
17 under Labor Code § 2699.3 to bring a civil action to recover penalties against FNHWC, in addition to
18 other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 233,
19 246, 510, 512, 1182.12 et seq., 1194, 1197, 1198, as well as the applicable IWC Wage Orders.

20 48. As of the filing of the Class and Representative Action Complaint, which was more
21 than thirty-three (33) days after February 2, 2021, FNHWC has not furnished any notification
22 reflecting that any of the violations alleged in the February 2, 2021 notification letter have been cured
23 pursuant to California Labor Code section 2699.3, subdivision (c).

24 **CLASS ACTION ALLEGATIONS**

25 49. Plaintiff seeks to maintain this action as a class action as to the First through Third
26 Causes of Action. Plaintiff brings this action, on behalf of herself and all others similarly situated, as a
27 class action pursuant to Code of Civil Procedure section 382 and/or Rule 23 of the Federal Rules of
28 Civil Procedure. The putative classes which Plaintiff seeks to represent consist of the following:

- a. All current and former non-exempt California employees of FNHWC who worked from February 3, 2017 through the date of trial (the “Non-Exempt Class”);
- b. All current and former non-exempt California employees of FNHWC who received commissions, non-discretionary bonuses and/or other items of compensation and worked overtime during at least one pay period from February 2, 2017 2015 through the date of trial (the “Regular Rate Class”);
- c. All current and former non-exempt employees of FNHWC who worked one or more shifts of longer than 5 hours and one-half hours from February 3, 2078 and the date of trial (the “Meal Break Class”);
- d. All current and former California employees of FNHWC who received one or more wage statements from February 3, 2020 through the date of trial (the “226(a)(8) Class”);
- e. All current and former non-exempt California employees of FNHWC who received one or more wage statements from February 3, 2020 through the date of trial (the “Non-Exempt Wage Statement Class”); and
- f. All members of the Non-Exempt Class, the Regular Rate Class, and the Meal Break Class whose employment ended between February 3, 2018 and the date of trial (the “Former Employee Class”).

The Non-Exempt Class, the Regular Rate Class, the Meal Break Class, the 226(a)(8) Class, the Non-Exempt Wage Statement Class, and the Former Employee Class are collectively referred to as the Class.

50. The class of persons is so numerous that joinder of all members is impracticable, and the disposition of their claims in a class action is a benefit to the parties and to the Court. Plaintiff is informed and believes, and based thereon alleges, that Defendants employ more than 1,000 employees who satisfy the class definition. Although the exact number and identity of class members is not presently known, they can be identified in Defendants’ records through coordinated discovery pursuant to this class action.

51. This action may be maintained as a class action pursuant to Code of Civil Procedure section 382 and/or Rule 23 of the Federal Rules of Civil Procedure because the questions of law and fact which are common to class members clearly predominate over any questions affecting only

1 individual members and because a class action is superior to other available methods for adjudicating
2 the controversy.

3 52. There are numerous common questions of law and fact arising out of Defendants'
4 conduct. This class action focuses on Defendants' systematic: (a) failure to properly calculate and pay
5 overtime to their non-exempt employees, (b) failure to authorize and permit compliant meal and rest
6 breaks or to pay the premiums associated with the same; (c) failure to provide accurate itemized wage
7 statements; and (d) failure to timely pay all wages due and owing at the cessation of their employment.

8 53. Furthermore, common questions of fact and law predominate over any questions
9 affecting only individual members of the class. The predominating common or class-wide questions
10 of law and fact include the following:

- 11 a. Whether Defendant failed pay its non-exempt California employees for every
12 hour worked and overtime as appropriate;
- 13 b. Whether Defendants failed to include their non-exempt California employees'
14 non-discretionary bonuses, commissions, and other items of compensation when
15 calculating their regular rate of pay for purposes of overtime;
- 16 c. Whether Defendant failed to provide compliant meal breaks to its non-exempt
17 California employees;
- 18 d. Whether Defendant failed to pay premiums to its non-exempt employees as a
19 result of non-compliant meal breaks; Type text here
- 20 e. Whether Defendant timely paid all wages due and owing to its non-exempt
21 California employees during each pay period and at the end of their employment;
- 22 f. Whether the wage statements Defendant furnished to its California employees
23 comply with Labor Code section 226;
- 24 g. Whether the Class is entitled to injunctive relief; and
- 25 h. Whether the Class is entitled to unpaid wages, statutory penalties and/or
26 restitutionary relief, and the amount of the same.

27 54. Plaintiff's claims are typical of the claims of the members of the Class as a whole, all of
28 whom have sustained and/or will sustain damage and injury as a proximate and/or legal result of the

1 alleged violations of Defendant. Plaintiff's claims are typical of those of the Class because Defendant
2 subjected Plaintiff and each member of the Class to the same violations alleged herein.

3 55. The defenses of Defendant, to the extent that such defenses apply, are applicable
4 generally to the whole Class and are not distinguishable as to the proposed class members.

5 56. Plaintiff will fairly and adequately protect the interests of all members of the Class, and
6 has retained attorneys with extensive experience in litigation, including class and representative
7 actions. Plaintiff has no interests that conflict with those of the Class. Plaintiff is able to fairly and
8 adequately protect the interests of all members of the class because it is in his best interest to prosecute
9 the claims alleged herein in order to obtain the full compensation due themselves and the other class
10 members.

11 57. A class action is superior to any other method available for fairly and efficiently
12 adjudicating the controversy because 1) joinder of individual class members is not practicable, 2)
13 litigating the claims of individual class members would be unnecessarily costly and burdensome and
14 would deter individual claims, 3) litigating the claims of individual class members would create a risk
15 of inconsistent or varying adjudications that would establish incompatible standards of conduct for
16 Defendants, 4) class members still working for Defendants may be fearful of retaliation if they were to
17 bring individual claims, 5) class members would be discouraged from pursuing individual claims
18 because the damages available to them are relatively small, and 6) public policy encourages the use of
19 the class actions to enforce employment laws and protect individuals who, by virtue of their
20 subordinate position, are particularly vulnerable.

21 58. Judicial economy will be served by maintenance of this lawsuit as a class action. To
22 process numerous virtually identical individual cases will significantly increase the expense on the
23 Court, the class members, and Defendant, all while unnecessarily delaying the resolution of this
24 matter. There are no obstacles to effective and efficient management of this lawsuit as a class action
25 by this Court and doing so will provide multiple benefits to the litigating parties including, but not
26 limited to, efficiency, economy, and uniform adjudication with consistent results.

1 59. Notice of a certified class action and any result or resolution of the litigation can be
2 provided to class members by mail, email, publication, or such other methods of notice as deemed
3 appropriate by the Court.

4 **FIRST CAUSE OF ACTION**
5 **VIOLATION OF CALIFORNIA LABOR CODE § 1128.12 et seq.**
6 **(Failure to Pay Minimum Wage)**
7 **Against Defendants on behalf of the Non-Exempt Class**

8 60. Plaintiff hereby realleges and incorporates by reference each and every allegation set
9 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
10 allegations of this cause of action.

11 61. California Labor Code section 1182.12 establishes the minimum wage for California
12 employees from July 1, 2014, to present.

13 62. Labor Code Section 1194 provides, in relevant part:

14 Notwithstanding any agreement to work for a lesser wage, any employee
15 receiving less than the legal minimum wage ... applicable to the employee
16 is entitled to recover in a civil action the unpaid balance of the full amount
17 of this minimum wage ... including interest thereon, reasonable attorney's
18 fees, and costs of suit.

19 63. Labor Code section 1194.2 provides, in relevant part:

20 In any action under ... Section 1194 to recover wages because of the
21 payment of a wage less than the minimum wage fixed by an order of the
22 commission, an employee shall be entitled to recover liquidated damages
23 in an amount equal to the wages unlawfully unpaid and interest thereon.

24 64. Labor Code section 1197 provides that the minimum wage for employees fixed by the
25 commission is the minimum wage to be paid to employees, and the payment of a lesser wage is
26 unlawful

27 65. Pursuant to California Labor Code section 1198, the maximum hours of work and
28 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
standard conditions of labor for employees and the employment of any employee for longer hours than
those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

 66. During the relevant time period, Defendants intentionally and willfully failed to pay
Plaintiffs and their other members of the Non-Exempt Class for every hour worked.

1 67. Wherefore, Plaintiff and the other members of the Non-Exempt Class have been injured
2 as set forth above and request relief as hereafter provided.

3 **SECOND CAUSE OF ACTION**
4 **VIOLATION OF CALIFORNIA LABOR CODE §§ 510 & 1198**
5 **(Failure to Pay Overtime)**
6 **Against Defendants on behalf of the Non-Exempt Class and the Regular Rate Class**

7 68. Plaintiff hereby realleges and incorporates by reference each and every allegation set
8 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
9 allegations of this cause of action.

10 69. Pursuant to California Labor Code section 510, any work in excess of eight hours in
11 one workday and any work in excess of 40 hours in any one workweek and the first eight hours
12 worked on the seventh day of work in any one workweek shall be compensated at the rate of no less
13 than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours
14 in one day shall be compensated at the rate of no less than twice the regular rate of pay for an
15 employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be
16 compensated at the rate of no less than twice the regular rate of pay of an employee.

17 70. Pursuant to California Labor Code section 1198, the maximum hours of work and
18 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
19 standard conditions of labor for employees and the employment of any employee for longer hours than
20 those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

21 71. The “regular rate of pay” includes all remuneration for employment paid to the
22 employee and includes, but is not limited to, hourly earnings, salary, piece work earnings,
23 commissions, non-discretionary bonuses, and the value of meals and lodging. See 29 U.S.C. § 207(e);
24 DLSE Enforcement Policies and Interpretations Manual Section 49.

25 72. During the relevant time period, Plaintiff and the other members of the Non-Exempt
26 Class and Regular Rate Class regularly worked overtime.

27 73. During the relevant time period, Defendants intentionally and willfully failed to pay the
28 proper overtime wages due to Plaintiff and the other members of the Non-Exempt Class and Regular
Rate Class.

1 74. Wherefore, Plaintiff and the other members of the Non-Exempt Class and Regular Rate
2 Class have been injured as set forth above and request relief as hereafter provided.

3 **THIRD CAUSE OF ACTION**
4 **VIOLATION OF LABOR CODE §§ 226.7, 512**
5 **(Failure to Furnish Meal Breaks)**
6 **Against Defendants on Behalf of the Meal Break Class**

7 75. Plaintiff hereby realleges and incorporates by reference each and every allegation
8 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
9 allegations of this cause of action.

10 76. Labor Code § 226.7 requires employers to provide employees meal periods as
11 mandated by Order of the Industrial Welfare Commission.

12 77. Labor Code § 512(a) and the applicable IWC Wage Order(s) provide that an
13 employer may not employ a person for a work period of more than 5 hours per day without
14 providing that employee a meal period of not less than 30 minutes, except that if the total work
15 period per day is no more than six hours, the meal period may be waived by mutual consent of both
16 the employer and employee.

17 78. The applicable Wage Order(s) and Labor Code section 226.7 further require an
18 employer who fails to provide a meal period to pay the employee one hour of pay at the
19 employee's "regular rate of compensation" for each day that a meal period is missed.

20 79. As set forth above, Defendants failed to provide Plaintiff and the other members of
21 the Meal Break Class with meal breaks as required by the Labor Code and IWC Wage Orders.

22 80. As a proximate result of Defendants' actions, Plaintiff and the other members of the
23 Meal Break Class have suffered harm.

24 81. Wherefore, Plaintiff and the other members of the Meal Break Class have been
25 injured as set forth above and request relief as hereafter provided.

26 ///

27 ///

28 ///

 ///

FOURTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)
(Failure to Furnish Accurate Itemized Wage Statements)
Against Defendants on behalf of the 226(a)(8) Class and Non-Exempt Wage Statement Class

82. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

83. Pursuant to California Labor Code section 226(a) “every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when the wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee [. . .], (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number, (8) the name and address of the legal entity that is the employer [. . .], (9) all applicable hourly rates in effect during the pay period and corresponding number of hours worked at each hourly rate by the employee and, if the employer is a temporary services employer [. . .], the rate of pay and the total hours worked for each temporary services assignment.”

84. An employee suffering injury as a result of the knowing and intentional failure by an employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees. Labor Code § 226(e)(1).

85. An employee is deemed to suffer injury if the employer fails to provide a wage statement or if the employer fails to provide accurate and complete information as required by any one or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee

1 during the pay period or any of the other information required to be provided pursuant to Labor Code
2 section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the
3 name and address of the employer and iv) the name of the employee and the last four digits of his or
4 her social security number or employee identification number. Labor Code § 226(e)(2)(A) and (B)(i)-
5 (iv). “Promptly and easily determine” means a reasonable person would be able to readily ascertain
6 the information without reference to other documents or information. Labor Code § 226(e)(2)(C).

7 86. As set forth above, Defendants intentionally and willfully failed to furnish accurate
8 itemized wage statements which complied with Labor Code section 226.

9 87. Wherefore, Plaintiff and the other members of the 226(a)(8) Class and Non-Exempt
10 Wage Statement Class have been injured as set forth above and request relief as hereafter provided.

11 **FIFTH CAUSE OF ACTION**
12 **VIOLATION OF LABOR CODE §§ 201, *et seq.***
13 **(Failure to Pay All Wages at Cessation of Employment)**
14 **Against Defendants on Behalf of the Former Employee Class**

15 88. Plaintiff hereby realleges and incorporates by reference each and every paragraph set
16 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
17 allegations of this cause of action.

18 89. California Labor Code section 201 provides that if an employer discharges an
19 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

20 90. California Labor Code section 202 requires an employer to pay an employee all earned
21 wages within 72 hours of the employee quitting his or her employment, or immediately at the time of
22 quitting if the employee has given 72 hours previous notice of his or her intention to quit.

23 91. As set forth above, Plaintiff and the other members of the Former Employee Class were
24 not timely paid all of their earned but unpaid wages when their employment with Defendants ended.

25 92. Wherefore, Plaintiff and the other members of the Former Employee Class have been
26 injured as set forth above and request relief as hereafter provided.

27 ///

1 **SEVENTH CAUSE OF ACTION**
2 **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200 *ET SEQ.***
3 **(Unfair Business Practices)**
4 **Against Defendants on Behalf of the Non-Exempt, Regular Rate and Meal Break Classes**

5 93. Plaintiff hereby realleges and incorporates by reference each and every allegation set
6 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
7 allegations of this cause of action.

8 94. The statutory violations, as alleged above, are unfair business practices within the
9 meaning of the Unfair Competition Law (Business and Professions Code sections 17200 *et seq.*), and
10 include, but are not limited to failing to pay minimum wage and overtime and failing to provide
11 complaint meal breaks or to pay the premiums associated with the same..

12 95. Wherefore, Plaintiff and the other members of the California Regular Rate Class, the
13 California Meal Break Class, and the California Rest Break Class have been damaged as set forth
14 above and request relief as hereafter provided.

15 **SEVENTH CAUSE OF ACTION**
16 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT**
17 **(“PAGA”)**
18 **Against Defendants**

19 96. Plaintiff hereby realleges and incorporates by reference each and every allegation set
20 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
21 allegations of this cause of action.

22 97. Plaintiff is an “aggrieved employee” under the PAGA as he was employed by NCR
23 during the applicable statutory period, from June 25, 2019 through the present, and suffered one or
24 more of the Labor Code violations outlined herein. Other current and former employees are also
25 aggrieved employees in that one or more of the alleged violations were also committed against them
26 during their time of employment with NCR.

27 98. Plaintiff seeks to recover, on behalf of and as a proxy for the Labor and Workforce
28 Development Agency (the “LWDA”), the civil penalties provided by the PAGA through a

1 representative action permitted by the PAGA and *Arias v, Sup. Ct. (2009) 46 Cal.4th 969*. Class
2 certification of the PAGA claims is not required.

3 99. Plaintiff seeks to enforce the California Labor Code and related regulations and
4 Industrial Wage Order(s) on behalf of the LWDA and pursuant to the PAGA for a number of
5 violations which include, but are not limited to, all of the following: Labor Code sections 201, 202,
6 203, 204, 226, 226.7, 233, 246, 510, 512, 1182.12 et seq., 1194, 1197, 1198, as well as the applicable
7 IWC Wage Orders

8 100. Pursuant to Labor Code section 2699(f), the civil penalty recoverable in a PAGA action
9 is that which is provided for by the Labor Code or, where no civil penalty is specifically provided, one
10 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
11 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

12 101. Pursuant to California Labor Code section 2699(g), an aggrieved employee may
13 recover the civil penalty on behalf of himself or herself and other current or former employees against
14 whom one or more of the alleged violations was committed. Furthermore, any employee who prevails
15 in any such action shall be entitled to an award of reasonable attorney's fees and costs

16 102. As a result of the myriad violations of the Labor Code and applicable IWC Order(s) set
17 forth above, Plaintiff seeks recovery of civil penalties, attorneys' fees and costs pursuant to the PAGA
18 as set forth below

19 103. Wherefore, Plaintiff and the other Aggrieved employees have been damaged as set
20 forth above and request relief as hereafter provided

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays judgment against Defendants as follows:

23 **As to the First through Sixth Causes of Action:**

- 24 1. That this Court certify the Classes identified herein;
- 25 2. That this Court appoint Plaintiff as the representative of the Class;
- 26 3. That this Court appoint Mayall Hurley, P.C. as Class Counsel;
- 27 4. That this Court award actual, compensatory, special, and general damages as well as
- 28 restitutionary relief to Plaintiff and the members of the Class;

5. That this Court award injunctive relief, including that available under Labor Code §§ 226(h);
6. That this Court award penalties and liquidated damages including, but not limited to, those available under Labor Code §§ 203, 226, 226.7, and 512;
7. That this Court award statutory attorneys' fees and costs, including those available under Labor Code §§ 218.5, 226(e)(1), and 226(h), as well as Code of Civil Procedure § 1021.5;
8. That this Court award prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law; and
9. That this Court award such other and further relief as the court deems just and proper.

As to the Seventh Cause of Action:

1. For civil penalties, including but not limited to those available under Labor Code §§ 226.3, 256, 558 and 2699(f);
2. For statutory attorneys' fees and costs, including but not limited to those available under Labor Code § 2699(g);
3. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including those available under Civil Code §§ 3287(a) and 3289(b), and Labor Code § 218.6; and
4. For such other and further relief as the court deems just and proper.

DATED: April 9, 2021

MAYALL HURLEY P.C.

By



ROBERT J. WASSERMAN

JENNY D. BAYSINGER

Attorneys for Plaintiff and the Putative Class

EXHIBIT 1

Fidelity National Management Services Inc

601 Riverside Ave V-6 Toll Free 888.934.3354

Jacksonville, FL 32204

Pay Begin Date: 11/30/2020

Advice #:

1617266526

Pay End Date: 12/13/2020

Advice Date:

12/18/2020

Name: Samantha Owens

Organization: FNT HW PURCHASING DEPT

Title:

N.Team Leader..

Employee ID: 6094813

Location: US CA CON 1850 STE 400

Pay Rate:

20.58

Hours and Earnings						Taxes		
Description	Rate	Current Hours	Current Earnings	YTD Hours	YTD Earnings	Description	Amount	YTD
Regular Hours	20.58109	64.00	1317.19	1877.03	38309.46	Federal Tax	144.99	4559.7
Straight Time OT	20.6338	0.71	14.65	78.30	1607.20	Medicare	21.22	638.6
Half Time OT	10.35211	0.71	7.35	111.25	1139.32	Social Security	90.72	2730.8
Vacation Taken		0.00	0.00	76.98	1536.89	CA Disability	14.63	440.3
Sick Taken	20.58	8.00	164.84	33.32	674.41	CA State Tax	33.31	1237.1
Personal Choice Hol		0.00	0.00	8.00	164.64			
Other Hours		0.00	0.00	8.00	164.64			
Holiday		0.00	0.00	72.00	1449.20			
FNF GTL		0.00	0.42	0.00	10.35			
Gift Card		0.00	0.00	0.00	55.79			

Total	73.42	1504.25	2264.88	45111.90	Total	304.87	9606.1
--------------	-------	---------	---------	----------	--------------	--------	--------

Before Tax Deductions			After Tax Deductions			Employer Paid Benefits		
Description	Amount	YTD	Description	Amount	YTD	Description	Amount	YTD
FNF 401K Percent	45.11	1351.37	Gift Card Offset	0.00	35.00			
Aetna	32.21	837.46						
Vision	3.98	103.48						
Dental	4.80	124.80						
Total	86.10	2417.11	Total	0.00	35.00	Total	0	

Benefit Hours Available			Tax Withholding Information				Net Pay Distribution		
Sick Accrued	0.00		Tax	Status	# of Exempts	Addl Amount	Account	Account Number	Amount
Sick Balance	99.79		California	Single/Married	0.00	0.00	Checking		1112.8
Vac Accrued	4.62		Federal	Single	0.00	0.00			
Vac Balance	58.00								
Earnings	Pretax		FIT Taxable	Less Taxes	Less Deductions	Net Pay			
Current	1504.25	86.10	1417.73	304.87	0.00	1112.86			
YTD	45111.90	2417.11	42884.44	9606.71	35.00	33042.73			

REMOVE DOCUMENT ALONG THIS PERFORATION

THE FACE OF THIS DOCUMENT CONTAINS A COLORED BACKGROUND, A VOID PANTOGRAPH AND MICROPRINTING IN THE BORDER. THE REVERSE SIDE CONTAINS AN ARTIFICIAL WATERMARK - HOLD AT AN ANGLE TO VIEW.

Fidelity National Financial

601 Riverside Ave V-6

Jacksonville, FL 32204

Bank of America

275 Valencia Ave

Brea CA 92823

90-4182/1211 CA

Advice No. 1617266526

Date: 12/18/2020

PAY VOID VOID VOID VOID VOID VOID VOID VOID

 TO THE **Samantha Owens**

ORDER

OF

Check Amount
\$1,112.86

Void after 90 days

**DIRECT DEPOSIT ADVICE
NON-NEGOTIABLE**

EXHIBIT 2

Fidelity National Management Services Inc

601 Riverside Ave V-6 Toll Free 888.934.3354

Jacksonville, FL 32204

Pay Begin Date: 12/14/2020

Advice #:

1634067039

Pay End Date: 12/27/2020

Advice Date:

12/31/2020

Name: Samantha Owens

Organization: FNT HW PURCHASING DEPT

Title:

N.Team Leader..

Employee ID: 6094813

Location: US CA CON 1850 STE 400

Pay Rate:

20.58

Hours and Earnings						Taxes	
Description	Rate	Current Hours	Current Earnings	YTD Hours	YTD Earnings	Description	Amount
Bonus Retention		0.00	4281.00	0.00	4281.00	Federal Tax	1519.28
Regular Hours	20.58061	98.00	2016.90	1975.03	40326.36	Medicare	116.17
Straight Time OT	20.5871	3.10	63.82	81.40	1671.02	Social Security	496.73
Half Time OT	10.30645	3.10	31.95	114.35	1171.27	CA Disability	80.11
Vacation Taken		0.00	0.00	76.98	1536.89	CA State Tax	657.35
Sick Taken		0.00	0.00	33.32	674.41		
Personal Choice Hol	20.58	8.00	164.64	16.00	329.28		
Vacation Payout	20.58001	62.62	1288.72	62.62	1288.72		
Other Hours		0.00	0.00	8.00	164.64		
Holiday	20.58	8.00	164.64	80.00	1613.84		
FNF GTL		0.00	0.00	0.00	10.35		
Gift Card		0.00	0.00	0.00	55.79		

Total		182.82	8011.67	2447.70	53123.57	Total	2869.64	12476.35
--------------	--	--------	---------	---------	----------	--------------	---------	----------

Before Tax Deductions			After Tax Deductions			Employer Paid Benefits		
Description	Amount	YTD	Description	Amount	YTD	Description	Amount	YTD
FNF 401K Percent	240.35	1591.72	Gift Card Offset	0.00	35.00			
Aetna	0.00	837.46						
Vision	0.00	103.48						
Dental	0.00	124.80						
Total	240.35	2657.46	Total	0.00	35.00	Total	0	

Benefit Hours Available			Tax Withholding Information				Net Pay Distribution		
Sick Accrued	3.00		Tax	Status	# of Exempts	Addl Amount	Account	Account Number	Amount
Sick Balance	102.79		California	Single/Married	0.00	0.00	Checking		4901.68
Vac Accrued	4.62		Federal	Single	0.00	0.00			
Vac Balance	0.00								
Earnings			FIT Taxable	Less Taxes	Less Deductions	Net Pay			
Current	8011.67	240.35	7771.32	2869.64	0.00	4901.68			
YTD	53123.57	2657.46	50455.76	12476.35	35.00	37944.41			

REMOVE DOCUMENT ALONG THIS PERFORATION

THE FACE OF THIS DOCUMENT CONTAINS A COLORED BACKGROUND, A VOID PANTOGRAPH AND MICROPRINTING IN THE BORDER. THE REVERSE SIDE CONTAINS AN ARTIFICIAL WATERMARK - HOLD AT AN ANGLE TO VIEW.

Fidelity National Financial

601 Riverside Ave V-6

Jacksonville, FL 32204

Bank of America

275 Valencia Ave

Brea CA 92823

90-4182/1211 CA

Advice No. 1634067039

Date: 12/31/2020

PAY VOID VOID VOID VOID VOID VOID VOID VOID

 TO THE **Samantha Owens**
 ORDER OF

Check Amount
\$4,901.68

Void after 90 days

**DIRECT DEPOSIT ADVICE
NON-NEGOTIABLE**