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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

KAITLYN LAMPING and SHERRY MORROW, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

VINCENT G HARRIS INSURANCE AGENCY, a California corporation; and
DOES 1 through 100,

Defendants.

Case No.: 34-2021-00297056

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT:

- (1) **MINIMUM WAGE VIOLATIONS** (LABOR CODE §§ 1182.12, 1194, 1194.2, 1197);
- (2) **FAILURE TO PAY ALL OVERTIME WAGES** (LABOR CODE §§ 204, 510, 1194, 1198);
- (3) **MEAL PERIOD VIOLATIONS** (LABOR CODE §§ 226.7, 512);
- (4) **REST PERIOD VIOLATIONS** (LABOR CODE §§ 226.7, 516);
- (5) **UNLAWFUL DEDUCTIONS FROM WAGES** (LABOR CODE §§ 221-223);
- (6) **WAGE STATEMENT VIOLATIONS** (LABOR CODE § 226);
- (7) **WAITING TIME PENALTIES** (LABOR CODE §§ 201-203); and
- (8) **UNFAIR COMPETITION** (BUS. & PROF. CODE § 17200 *et seq.*)
- (9) **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT** (LABOR CODE § 2698, *et seq.*)

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

BY FAX

1 Plaintiffs Kaitlyn Lamping and Sherry Morrow (“Plaintiffs”), on behalf of themselves and
2 all others similarly situated, bring this First Amended Class and Representative Action Complaint
3 (“Complaint”) against Vincent G Harris Insurance Agency, a California corporation; and DOES
4 1 to 100, inclusive (collectively “Defendants”), and on information and belief allege as follows:

5 **JURISDICTION**

6 1. Plaintiffs, on behalf of themselves and all others similarly situated, hereby bring
7 this Complaint for recovery of unpaid wages and penalties under Labor Code §§ 201-204, 221-
8 223, 226, 226.7, 510, 512, 516, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, Business &
9 Professions Code § 17200, *et. seq.*, and Industrial Welfare Commission Wage Order 4 (“Wage
10 Order 4”), in addition to seeking declaratory relief and restitution. This Complaint is brought
11 pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over
12 Defendants’ violations of the California Labor Code because the amount in controversy exceeds
13 this Court’s jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to California Code of Civil
16 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
17 occurred in the County of Sacramento. Plaintiffs worked for Defendants in Sacramento County,
18 and Defendants own, maintain offices, transact business, have an agent or agents within
19 Sacramento County, and/or otherwise are found within Sacramento County, and Defendants are
20 within the jurisdiction of this Court for purposes of service of process.

21 **PARTIES**

22 3. Plaintiffs are individuals over the age of 18. At all relevant times herein, Plaintiffs
23 were, and currently are, residents of California. Within the statute of limitations periods applicable
24 to each cause of action pled herein, Plaintiffs were employed by Defendants. Plaintiffs were, and
25 are, victims of Defendants’ policies and/or practices complained of herein, lost money and/or
26 property, and have been deprived of the rights guaranteed by Labor Code §§ 201-204, 221-223,
27 226, 226.7, 510, 512, 516, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, Business &
28 Professions Code § 17200, *et. seq.*, and Wage Order 4.

1 4. Plaintiffs are informed and believe, and based thereon allege, that during the four
2 years preceding the filing of this action and continuing to the present, Defendants did (and
3 continue to do) business in California as a provider of insurance coverage policies including, but
4 not limited to, automobile insurance, motorcycle insurance, homeowners insurance, and renters
5 insurance. Defendants employed Plaintiffs and other, similarly-situated employees, within
6 Sacramento County and the state of California and, therefore, were (and are) doing business in
7 Sacramento County and the State of California.

8 5. Plaintiffs do not know the true names or capacities, whether individual, partner, or
9 corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
10 defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to
11 further amend this Complaint when such true names and capacities are discovered. Plaintiffs are
12 informed, believe, and based thereon allege, that each fictitiously named defendant, whether
13 individual, partner, or corporate, was responsible in some manner for the acts and omissions
14 alleged herein, and proximately caused Plaintiffs and the Classes (as defined in Paragraph 19) to
15 be subject to the unlawful employment practices, wrongs, injuries, and damages alleged herein.

16 6. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned
17 herein, Defendants were and are the employers of Plaintiffs and all members of the Classes.

18 7. At all times herein mentioned, each of said Defendants participated in the doing
19 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
20 Defendants, and each of them, were the agents, servants, and employees of each and every one of
21 the other Defendants, as well as the agents of all Defendants, and were acting within the course
22 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
23 and/or otherwise ratified each and every one of the acts or omissions complained of herein.

24 8. At all times mentioned herein, Defendants, and each of them, were members of
25 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
26 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
27 Plaintiffs allege that all Defendants were joint employers for all purposes of Plaintiffs and all
28 members of the Classes.

GENERAL FACTUAL ALLEGATIONS

9. Plaintiff Lamping was employed by Defendants as a non-exempt employee in the position of “customer service and sales representative” (or similar title) from approximately October 2018 until her employment with Defendants ended in or around January 2020.

10. Plaintiff Morrow was employed by Defendants as a non-exempt employee in the position of “dealership program agent” (or similar title) from approximately April 2015 until her employment with Defendants ended in or around June 2020.

11. During the course of Plaintiff Lamping’s employment with Defendants, as a matter of policy and/or practice, Defendants made, and on information and belief, continue to make, unlawful deductions from Plaintiff Lamping’s and other non-exempt employees’ wages. Specifically, and pursuant to Defendants’ written policy titled “Sick Time/Paid Time Off,” if an employee exhausts all of their vacation time, sick time, and personal time, and thereafter misses a day of work, Defendants take a 25% deduction from the employee’s earned bonuses for the month; a second day of missed work will result in a 50% deduction from the employee’s earned bonuses for the month; a third day of missed work will result in a 75% deduction from the employee’s earned bonuses for the month; a fourth day of missed work will result in a 100% deduction from the employee’s earned bonuses for the month; a fifth day of missed work will result in a 100% deduction and a final write up; and a sixth day of missed work will result in the loss of bonuses for the remainder of the year, suspension from work, and the possibility of termination. Such deductions constitute unlawful deductions from employees’ earned wages, pursuant to Labor Code §§ 221-223.

12. During Plaintiffs’ employment with Defendants, Plaintiffs often worked over 8 hours per workday and/or over 40 hours per workweek, but did not receive overtime compensation equal to one and one-half times their regular rate of pay for working overtime hours. Specifically, Defendants paid Plaintiffs bonuses that were calculated based on objective criteria including the amount and type of insurance policies or other products they sold to customers; and/or other forms of non-discretionary incentive pay (“Incentive Pay”). However, Defendants failed to incorporate Incentive Pay in Plaintiffs’ “regular rate” of pay, and instead

1 would pay overtime at one and one-half times their *base* rate of pay rather than their “regular rate”
2 of pay as required under California law. As a result, Plaintiffs were paid less than one and one-
3 half time (or two times in the case of double-time hours) the legal “regular rate” of pay for all
4 overtime hours worked, in pay periods in which they both earned Incentive Pay and worked
5 overtime hours.

6 13. In addition, Defendants utilized a timekeeping system which resulted in Plaintiffs
7 and other non-exempt employees not being compensated for all hours actually worked, whether
8 by rounding, time-shaving, or otherwise. Specifically, upon information and belief, Plaintiffs and
9 other non-exempt employees were required to be at work at least 10 to 15 minutes prior to the
10 start of their scheduled shift in order to boot up their work computers and otherwise prepare for
11 their shift. However, they were instructed not to clock in using the designated ADP program until
12 at least the scheduled start time of their shift, resulting in their not being paid for hours worked
13 prior to the scheduled start of the shift. Furthermore, Defendants would often adjust non-exempt
14 employees’ recorded time such that they were not paid for all hours actually worked. For example,
15 on October 21, 2019, Plaintiff Lamping reported via email to Angelica Quezada, an assistant
16 manager, that she worked until 8:07 p.m. However, Defendants adjusted Plaintiff Lamping’s time
17 records for October 21, 2019 to reflect that she had clocked out for the workday at 5:30 p.m., thus
18 depriving her of more than 2.5 hours of wages. As a result of the unlawful practices described
19 herein, Plaintiffs and other non-exempt employees were deprived of earned wages, including
20 minimum wages and overtime wages.

21 14. Defendants’ meal period policies/practices failed to provide Plaintiffs and other
22 non-exempt employees with all legally compliant meal periods because they failed to provide
23 Plaintiffs and other non-exempt employees with a timely, duty-free, and uninterrupted 30-minute
24 meal period commencing before the end of the fifth hour of work. Specifically, although
25 Plaintiffs’ and other non-exempt employees’ meal periods were ostensibly scheduled, upon
26 information and belief, Plaintiffs and other non-exempt employees were not able to take timely
27 off-duty thirty-minute meal periods because they were required to finish assisting customers
28 before taking their meal period, and/or could not take their meal periods until the prior employee

1 on the schedule had returned from their meal periods. On other occasions, Plaintiffs could not
2 take a meal period at all, or had their meal periods interrupted, due to work demands. Additionally,
3 Plaintiffs and other non-exempt employees were not provided with a second 30-minute meal
4 period when they work shifts of over 10.0 hours. Defendants also failed to compensate Plaintiffs
5 and other non-exempt employees with the required meal period premium for each workday in
6 which they experienced a meal period violation as mandated by Labor Code § 226.7. Upon
7 information and belief, Defendants have maintained no mechanism for the payment of meal
8 period premium payments as required by Labor Code § 226.7, in the event that legally-compliant
9 meal periods are not provided.

10 15. Moreover, Defendants would often manipulate and/or adjust Plaintiff's and/or
11 other non-exempt employees' timekeeping records regarding meal periods in an effort to avoid
12 potential meal period liability. For example, on October 21, 2019, Plaintiff Lamping reported to
13 Ms. Quezada that she was taking lunch at 3:05 pm, but Defendants adjusted her timekeeping
14 records to reflect that she took lunch at 12:30 pm, presumably in order to make it appear as though
15 Plaintiff Lamping was provided with a timely meal period when in fact she was not.

16 16. Plaintiffs and other non-exempt employees were not authorized and permitted to
17 take all required rest periods due to Defendants' unlawful rest period policies/practices, which
18 failed to authorize and permit a net 10-minute duty-free rest period for every four hours worked,
19 or major fraction thereof. As with meal periods, Plaintiffs and other non-exempt employees were
20 frequently prevented from taking rest periods, or were interrupted during rest periods, as a result
21 of work demands. On those occasions when Plaintiffs were not authorized and permitted to take
22 all legally-compliant rest periods to which they were entitled, Defendants failed to compensate
23 Plaintiffs with the required rest period premium(s) for each workday there was a rest period
24 violation as mandated by Labor Code § 226.7. Upon information and belief, Defendants have
25 maintained no mechanism for the payment of rest period premium payments as required by Labor
26 Code § 226.7, in the event that legally-compliant rest period are not authorized and permitted.

27 17. As a result of Defendants' failure to pay all earned wages, including minimum
28 wages and overtime wages, and Defendants' unlawful deductions from wages, Defendants also

failed to provide Plaintiffs with accurate itemized wage statements, and failed to pay all earned wages at termination of employment.

18. Pursuant to California Judicial Council Emergency Rule 9, statutes of limitations of more than 180 days were suspended for 178 days, from April 6, 2020 through October 1, 2020. Accordingly, the relevant time period for each cause of action pled herein has been calculated based on an additional 178 days of tolling under Emergency Rule 9.

CLASS ACTION ALLEGATIONS

19. **Class Definitions:** Plaintiffs bring this action on behalf of themselves and the following Classes pursuant to § 382 of the Code of Civil Procedure:

- a) The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who were subject to Defendants' timekeeping practices during the four years plus 178 days immediately preceding the filing of this action through the present.
- b) The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who (i) were subject to Defendant's timekeeping practices; and/or (ii) worked more than 8.0 hours in a workday and/or 40.0 hours in a workweek, and earned Incentive Pay in a corresponding time period, during the four years plus 178 days immediately preceding the filing of this action through the present.
- c) The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who: (i) worked at least one shift in excess of 5.0 hours; and/or (ii) worked at least one shift in excess of 10.0 hours, during the four years plus 178 days immediately preceding the filing of this action through the present.
- d) The Rest Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift of 3.5 hours or more, during the four years plus 178 days immediately preceding the filing of this action through the present.

e) The Unlawful Deductions Class consists of all of Defendants' current and former employees in California whose wages were reduced pursuant to Defendants' "Sick Time/Paid Time Off" policy, during the four years plus 178 days immediately preceding the filing of this action through the present.

f) The Wage Statement Class consists of all members of the Minimum Wage Class, Overtime Class, Meal Period Class, Rest Period Class, and/or Unlawful Deductions Class who received a wage statement from Defendants at any time during the one year plus 178 days immediately preceding the filing of this action through the present.

g) The Waiting Time Class consists of all members of the Minimum Wage Class, Overtime Class, Meal Period Class, Rest Period Class, and/or Unlawful Deductions Class whose employment with Defendants ended in the three years plus 178 days immediately preceding the filing of this action through the present.

20. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes are unknown to Plaintiffs at this time; however, it is estimated that the members of each of the Classes number greater than fifty (50) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

21. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiffs and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

i. Whether Defendants violated the applicable Labor Code provisions including, but not limited to, §§ 510 and 1194, by: (1) not paying for all overtime hours worked and (2) not paying the appropriate rates of pay for overtime hours worked according to the overtime laws of the State of California;

ii. Whether members of the Minimum Wage Class were compensated for all hours worked;

- 1 iii. Whether Defendants provided all legally compliant meal periods to members of
2 the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- 3 iv. Whether Defendants authorized and permitted all legally compliant rest periods to
4 members of the Rest Period Class pursuant to Labor Code §226.7;
- 5 v. Whether Defendants provided meal and rest period premium payments for all non-
6 compliant meal and rest periods;
- 7 vi. Whether Defendants unlawfully deducted wages from members of the Unlawful
8 Deduction Class;
- 9 vii. Whether Defendants issued accurate itemized wage statements to members of the
10 Wage Statement Class pursuant to Labor Code § 226;
- 11 viii. Whether Defendants’ policies and/or practices for the timing and amount of
12 payment of final wages to members of the Waiting Time Class at the time of their
13 separation of employment were lawful.

14 22. **Predominance of Common Questions:** Common questions of law and fact
15 predominate over questions that affect only individual members of the Classes. The common
16 questions of law set forth above are numerous and substantial and stem from Defendants’ policies
17 and/or practices applicable to each individual class member, such as Defendants’ timekeeping
18 policies and practices, minimum and overtime wage policies and practices, meal and rest period
19 policies and practices, and policies and practices regarding taking deductions from employee
20 wages. As such, common questions predominate over individual questions concerning each
21 individual class member’s showing as to their eligibility for recovery or as to the amount of their
22 damages.

23 23. **Typicality:** Plaintiffs’ claims are typical of the claims of the Classes because
24 Plaintiffs were employed by Defendants as non-exempt employees in California during the
25 statute(s) of limitations period applicable to each cause of action pled herein. As alleged herein,
26 Plaintiffs, like the members of the Classes, were deprived of all earned wages, were not properly
27 paid overtime wages for all hours worked, were subject to Defendants’ unlawful deductions from
28 wages, were not provided all required meal and rest periods, did not receive meal and rest period

premium wages for missed or non-compliant meal and rest periods, were furnished with inaccurate and incomplete wage statements, and were not paid all final wages owed upon separation of employment.

24. **Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiffs' attorneys are ready, willing, and able to fully and adequately represent members of the Classes and Plaintiffs. Plaintiffs' attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

25. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiffs and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be

dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 19 are maintainable as a Class under § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL MINIMUM WAGES

(AGAINST ALL DEFENDANTS)

26. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

27. Wage Order 4, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiffs and members of the Minimum Wage Class for all hours worked, including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 4.

28. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

29. Defendants' policy and practice regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiffs and members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated damages, including

1 interest thereon, statutory penalties, and attorneys' fees and costs of suit according to California
2 Labor Code §§ 204, 218.6, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure § 1021.5.

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PAY ALL OVERTIME WAGES**

5 **(AGAINST ALL DEFENDANTS)**

6 30. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

7 31. This cause of action is brought pursuant to Labor Code §§ 204, 510, 1194, and
8 1198, which provide that non-exempt employees are entitled to all overtime wages and
9 compensation for all overtime hours worked and provide a private right of action for the failure
10 to pay all overtime compensation for overtime work performed.

11 32. At all times relevant herein, Defendants were required to properly compensate
12 non-exempt employees, including Plaintiffs and members of the Overtime Class, for all overtime
13 hours worked pursuant to California Labor Code § 1194 and Wage Order 4. Wage Order 4, § 3
14 requires an employer to pay an employee "one and one-half (1½) times the employee's regular
15 rate of pay" for work in excess of 8 hours per workday and/or in excess of 40 hours of work in a
16 workweek. Wage Order 4, § 3 also requires an employer to pay an employee double the
17 employee's regular rate of work in excess of 12 hours each workday and/or in excess of 8 hours
18 on the seventh consecutive day of work in the workweek. Defendants caused Plaintiffs and
19 members of the Overtime Class to work overtime and/or double-time hours, but did not
20 compensate Plaintiffs or members of the Overtime Pay Class for all overtime hours worked at
21 one and one-half times (or two times, in the case of double-time) their regular rates of pay for
22 such hours. The foregoing policies and practices are unlawful and create entitlement to recovery
23 by Plaintiffs and members of the Overtime Class in a civil action for the unpaid amount of
24 overtime premiums owing, including interest thereon, statutory penalties, attorneys' fees, and
25 costs of suit according to California Labor Code §§ 204, 210, 216, 218.6, 510, 1194, and 1198;
26 and Code of Civil Procedure § 1021.5.

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1 **THIRD CAUSE OF ACTION**

2 **MEAL PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

4 33. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

5 34. Plaintiffs are informed and believe, and based thereon allege, that Defendants
6 failed in their affirmative obligation to provide all of their non-exempt employees in California,
7 including Plaintiffs and members of the Meal Period Class, with all legally compliant meal
8 periods in accordance with the mandates of the California Labor Code and Wage Order 4, § 11.
9 Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiffs and
10 members of the Meal Period Class at their respective regular rates of compensation, in accordance
11 with California Labor Code §§ 226.7 and 512.

12 35. As a result, Defendants are responsible for paying premium compensation for meal
13 period violations pursuant to Labor Code §§ 226.7 and 512, and Wage Order 4, including interest
14 thereon, statutory penalties, civil penalties, and costs of suit according to California Labor Code
15 §§ 226.7, 512, 558, and 1198 and Wage Order 4, and Civil Code §§ 3287(b) and 3289.

16 **FOURTH CAUSE OF ACTION**

17 **REST PERIOD VIOLATIONS**

18 **(AGAINST ALL DEFENDANTS)**

19 36. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

20 37. Wage Order 4, § 12 and California Labor Code §§ 226.7 and 516 establish the
21 right of employees to be provided with a rest period of at least ten (10) minutes for each four (4)
22 hour period worked, or major fraction thereof. Despite Defendants' failure to authorize and permit
23 Plaintiffs and members of the Rest Period Class to take all legally complaint rest periods, as
24 alleged herein, Defendants did not pay these individuals an additional hour of pay at their
25 respective regular rate for the rest periods that they failed to authorize and permit them to take, as
26 required by Labor Code § 226.7 and Wage Order 4, § 12.

27 38. Defendants' policies and practices described herein are unlawful and create an
28 entitlement to recovery by Plaintiffs and members of the Rest Period Class in a civil action for

1 the unpaid amount of rest period premiums owing, including interests thereon, statutory penalties,
2 civil penalties, and costs of suit according to California Labor Code §§ 226.7, 516, 558, and 1198
3 and Wage Order 4, and Civil Code §§ 3287(b) and 3289.

4 **FIFTH CAUSE OF ACTION**

5 **UNLAWFUL DEDUCTIONS FROM WAGES**

6 **(AGAINST ALL DEFENDANTS)**

7 39. Plaintiff Lamping re-alleges and incorporates by reference all previous
8 paragraphs.

9 40. As alleged above, Defendants took unlawful deductions from Plaintiff Lamping's
10 and other non-exempt employees' earned wages pursuant to Defendants' sick time and paid time
11 off policy. As a result, Defendants failed to pay all wages owed to Plaintiff Lamping and members
12 of the Unlawful Deduction Class, in violation of Labor Code §§ 221-223, which prohibit, among
13 other things, deductions from earned wages except in certain enumerated circumstances not
14 applicable here.

15 41. Defendants' failure to pay all earned wages is unlawful and creates an entitlement
16 to recovery by Plaintiff Lamping and the members of the Unlawful Deduction Class for unpaid
17 wages, interest on said wages, and attorneys' fees pursuant to Labor Code §§ 218.5, 218.6, and
18 Code of Civil Procedure § 1021.5.

19 **SIXTH CAUSE OF ACTION**

20 **WAGE STATEMENT VIOLATIONS**

21 **(AGAINST ALL DEFENDANTS)**

22 42. Plaintiff Morrow re-alleges and incorporates by reference all previous paragraphs.

23 43. Plaintiff Morrow is informed and believes, and based thereon alleges, that
24 Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to
25 furnish Plaintiff Morrow and members of the Wage Statement Class with accurate and complete
26 itemized wage statements that included, among other requirements, all wages earned, in violation
27 of Labor Code § 226.

28 ///

1 44. Defendants' failure to furnish Plaintiff Morrow and members of the Wage
2 Statement Class with complete and accurate itemized wage statements resulted in injury, as said
3 failures led to, among other things, the non-payment of all their earned wages and deprived them
4 of the information necessary to identify the discrepancies in Defendants' reported data.

5 45. Defendants' failures create an entitlement to recovery by Plaintiff Morrow and
6 members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant
7 to Labor Code § 226, including statutory penalties, reasonable attorneys' fees, and costs of suit
8 according to California Labor Code §§ 226 and 226.3.

9 **SEVENTH CAUSE OF ACTION**

10 **WAITING TIME PENALTIES**

11 **(AGAINST ALL DEFENDANTS)**

12 46. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

13 47. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
14 an employer to pay all wages immediately at the time of separation if the employer discharges the
15 employee or the employee provides at least 72 hours' notice of their intent to quit. In the event
16 the employee provides less than 72 hours of notice of their intent to quit, said employee's wages
17 become due and payable not later than 72 hours upon said employee's last date of employment.

18 48. Plaintiffs are informed, believe, and based thereon allege, that Defendants failed to
19 timely pay Plaintiffs and Waiting Time Class members all final wages due at their separation of
20 employment, including all earned minimum and overtime wages and unlawfully deducted wages.

21 49. Further, Plaintiffs are informed and believes, and based thereon alleges, that as a
22 matter of uniform policy and practice, Defendants continue to fail to pay Plaintiffs and members
23 of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant
24 to the requirements of Labor Code §§ 201-203.

25 50. Defendants' failure to pay all final wages was willful within the meaning of Labor
26 Code § 203. Defendants' willful failure to timely pay Plaintiffs and the members of the Waiting
27 Time Class their earned wages upon separation from employment results in a continued payment
28 of wages up to thirty days from the time the wages were due.

1 51. Therefore, Plaintiffs and members of the Waiting Time Class are entitled to
2 compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

3 **EIGHTH CAUSE OF ACTION**

4 **UNFAIR COMPETITION**

5 **(AGAINST ALL DEFENDANTS)**

6 52. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

7 53. Defendants have engaged and continue to engage in unfair and/or unlawful
8 business practices in California in violation of California Business & Professions Code § 17200,
9 *et seq.*, by making unlawful deductions from wages, failing to properly pay all earned wages,
10 failing to provide accurate, itemized wage statements, and failing to pay all earned wages at
11 termination of employment.

12 54. Defendants' utilization of these unfair and/or unlawful business practices deprived
13 Plaintiffs, and continues to deprive members of the Classes, of compensation to which they are
14 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
15 over Defendants' competitors who have been and/or are currently employing workers and
16 attempting to do so in honest compliance with applicable wage and hour laws.

17 55. Because Plaintiffs are victims of Defendants' unfair and/or unlawful conduct
18 alleged herein, Plaintiffs on behalf of themselves and members of the Classes, seek full restitution
19 of monies, as necessary and according to proof, to restore any and all monies withheld, acquired
20 and/or converted by Defendants pursuant to Business & Professions Code §§ 17203 and 17208.

21 56. The acts complained of herein occurred within the last four years immediately
22 preceding the filing of this action.

23 57. Plaintiffs were compelled to retain the services of counsel to file this court action
24 to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf
25 of Defendants' current non-exempt employees, and to enforce important rights affecting the
26 public interest. Plaintiffs have thereby incurred the financial burden of attorneys' fees and costs,
27 which he is entitled to recover under Code of Civil Procedure § 1021.5.

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1 **NINTH CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT**

3 **(AGAINST ALL DEFENDANTS)**

4 58. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

5 59. Defendants have committed several Labor Code violations against Plaintiffs,
6 members of the Classes, and other aggrieved employees. Plaintiffs are “aggrieved employees”
7 within the meaning of Labor Code § 2698 *et seq.*, and acting on behalf of themselves and other
8 aggrieved employees, bring this representative action against Defendants to recover the civil
9 penalties due to Plaintiffs, the members of the Classes, other aggrieved employees, and the State
10 of California according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including,
11 but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and
12 \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code
13 § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2)
14 \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor
15 Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for
16 each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4)
17 \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor
18 Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and
19 \$200.00 for each subsequent violation per employee per pay period for those violations of the
20 Labor Code for which no civil penalty is specifically provided, based on the following Labor
Code violations:

21 a) Failing to pay Plaintiffs and other aggrieved employees the statutory minimum
22 wage for all hours worked in violation of Labor Code §§ 1182.12, 1194,
23 1194.2, 1197, 1198;

24 b) Failing to pay Plaintiffs and other aggrieved employees all overtime and/or
25 double-time compensation earned in violation of Labor Code §§ 204, 510,
26 1194, 1198;

27 c) Failing to pay Plaintiffs and other aggrieved employees all final wages owed
28 at the termination of employment in violation of Labor Code §§ 201-203;

- d) Filing to pay Plaintiffs and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code §§204;
- e) Failing to pay Plaintiffs and other aggrieved employees all earned wages in violation of Labor Code §§ 221-223, 510, 1198;
- f) Taking unlawful deductions from Plaintiff Lamping and other aggrieved employees' wages in violation of Labor Code §§ 221-223 and 1198;
- g) Failing to furnish Plaintiffs and other aggrieved employees with accurate itemized wage statements in violation of Labor Code § 226;
- h) Failing to provide meal periods and failing to pay meal period premiums to Plaintiffs and other aggrieved employees at the employees' respective regular rates of compensation for meal period violations in violation of Labor Code §§ 226.7, 512, 1198;
- i) Failing to authorize and permit rest periods and failing to pay rest periods premiums to Plaintiffs and other aggrieved employees at the employees' respective regular rates of compensation in violation of Labor Code §§ 226.7, 516, 1198; and
- j) Failing to maintain accurate records on behalf of Plaintiffs and other aggrieved employees in violation of Labor Code §§ 1174, 1198, and 1199.

60. On or around January 14, 2021 and March 5, 2021, Plaintiffs Lamping and Morrow, respectively, notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants' violations of the California Labor Code and Plaintiffs' intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to the violations of the California Labor Code identified in Paragraph 59 (a)-(j). Now that sixty-five days have passed from Plaintiffs notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiffs have exhausted their administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

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61. Based on the foregoing, Plaintiffs seek to represent themselves and all Aggrieved Employees, as defined by Labor Code § 2699(c), which includes all current and former non-exempt employees who worked for Defendants in California from one year plus 178 days prior to the mailing of Plaintiffs' PAGA notices through the present.

62. Plaintiffs were compelled to retain the services of counsel to file this court action to protect their interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiffs have thereby incurred attorneys' fees and costs, which they are entitled to recover under California Labor Code § 2699.

PRAYER

WHEREFORE, Plaintiffs pray for judgment for themselves and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiffs as representative of the Classes;
3. For an order appointing counsel for Plaintiffs as Counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, 1197;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 1194, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7 and 512;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7 and 516;
8. Upon the Fifth Cause of Action, for recovery of unlawfully deducted wages pursuant to Labor Code §§ 221–223;
9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code § 226;

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1 10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant
2 to Labor Code § 203;

3 11. Upon the Eighth Cause of Action, for restitution to Plaintiffs and Class members
4 of all money and/or property unlawfully acquired by Defendants by means of any acts or practices
5 declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*;

6 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiffs, other
7 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
8 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
9 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
10 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
11 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each
12 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for
13 each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1
14 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each
15 subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5)
16 \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay
17 period for those violations of the Labor Code for which no civil penalty is specifically provided,
18 based on the violations of Labor Code sections identified in Paragraph 59 (a)-(j) above.

19 13. Prejudgment interest on all due and unpaid wages pursuant to California Labor
20 Code §§ 218.6, 1194, 2802, and Civil Code §§ 3287 and 3289;

21 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code
22 §§ 218.5, 226, 1194, 2699(g), and Code of Civil Procedure § 1021.5; and

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

24 Dated: May 10, 2021

Respectfully submitted,

HAINES LAW GROUP, APC

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27 By:



Paul K. Haines
Attorneys for Plaintiffs

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Dated: May 10, 2021

HAINES LAW GROUP, APC

Paul K. Haines
Attorneys for Plaintiffs