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

CASSANDRA NEGRETE, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

WINSUPPLY INC., a Delaware
corporation; ORANGE COUNTY
WINDUSTRIAL CO., a Delaware
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 30-2021-01188066-CU-OE-CXC
Assigned for all purposes to: Judge Randall J. Sherman
Dept: CX105

**CLASS ACTION COMPLAINT FOR
DAMAGES FOR:**

- (1) **VIOLATION OF LABOR CODE § 226.7
AND 512;**
- (2) **VIOLATION OF LABOR CODE § 226.7;**
- (3) **VIOLATION OF LABOR CODE §§ 510,
558, AND 1194;**
- (4) **VIOLATION OF LABOR CODE § 226;**
- (5) **VIOLATION OF LABOR CODE §§ 201-
203;**
- (6) **VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200, *ET SEQ.*;
AND**
- (7) **VIOLATION OF LABOR CODE § 2698,
*ET SEQ.***

DEMAND OVER \$25,000.00

1 Plaintiff Cassandra Negrete (“Plaintiff”) hereby submits this Class Action Complaint
2 (“Complaint”) against Defendants Winsupply Inc., Orange County Windustrial Co., and Does 1
3 through 50 (collectively, “Defendants”), on behalf of herself and a class of all other similarly
4 situated current and former employees of Defendants for penalties and/or damages for failure to
5 provide off-duty meal and rest breaks, failure to pay all overtime wages owed, failure to provide
6 accurate itemized wage statements, and failure to pay all wages owed upon separation of
7 employment under California Labor Code statutes, and restitution for unfair business practices in
8 violation of Business and Professions Code § 17200, *et seq.*, as follows:

9 **INTRODUCTION**

10 1. This class action is within the Court’s jurisdiction under California Labor Code
11 §§ 201-203, 226, 226.7, 510, 512, 558, 1194, and 2698, *et seq.*, Business and Professions Code §
12 17200, *et seq.* (the “UCL”), and the applicable Wage Orders of the California Industrial Welfare
13 Commission (“IWC”).

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

17 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
18 jointly and severally, have acted intentionally and with deliberate indifference and conscious
19 disregard to the rights of all employees by failing to provide off-duty meal and rest breaks, pay
20 all overtime wages owed, provide accurate itemized wage statements, and pay all wages owed
21 upon separation of employment to Plaintiff and the Class.

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

26 5. The policies, practices and customs of Defendants described above and below
27 have resulted in unjust enrichment of Defendants and an unfair business advantage over
28 businesses that routinely adhere to the strictures of the California Labor Code and the California

1 Business and Professions Code.

2 **JURISDICTION AND VENUE**

3 6. The Court has jurisdiction over the violations of the California Labor Code
4 §§ 201-203, 226, 226.7, 510, 512, 558, 1194, and 2698, *et seq.*, the UCL, and the applicable
5 Wage Orders.

6 7. Venue is proper in Orange County because Plaintiff worked for Defendants in
7 Anaheim, California.

8 **PARTIES**

9 8. Plaintiff was employed by Defendants as a Receptionist from about January 2017
10 to about April 1, 2020. Plaintiff worked as an hourly, non-exempt employee.

11 9. Plaintiff was and is the victim of the policies, practices, and customs of Defendant
12 complained of in this action in ways that have deprived her of the rights guaranteed by California
13 Labor Code §§ 201-203, 226, 226.7, 510, 512, 558, 1194, and 2698, *et seq.*, the applicable IWC
14 Wage Orders, and the UCL.

15 10. Plaintiff is informed and believes, and based thereon alleges, that Winsupply Inc.
16 was and is a Delaware corporation that operates as an industrial equipment supplier in the State
17 of California, including in Orange County, California.

18 11. Plaintiff is informed and believes, and based thereon alleges, that Orange County
19 Windustrial Co. was and is a Delaware corporation that operates as an industrial equipment
20 supplier in the State of California, including in Orange County, California.

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

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

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

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

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

17 16. At all times herein mentioned, Defendants, and each of them, were members of,
18 and engaged in, a joint venture, partnership, and common enterprise, and acting within the course
19 and scope of, and in pursuance of, said joint venture, partnership, and common enterprise.
20 Specifically, Defendants operate in a uniform fashion such that the allegedly distinct corporate
21 entities should be disregarded. For example, Winsupply Inc. explains on its website that it
22 provides others the opportunity to be an “equity owner of your own wholesaling location.” For
23 local operations, Winsupply gets to be “the majority owner of your business.” Winsupply Inc
24 further explains that local wholesale operations “put in most of the sweat equity and Winsupply
25 puts in most of the capital....” Winsupply Inc. also provides “oversight from [a] board of
26 directors: three or four people at Winsupply with business and wholesaling experience....”
27 Accordingly, the operations of Winsupply Inc. and Orange County Windustrial Co. are so
28 intertwined such that they are virtually the same business. Recognizing a distinct corporate form

1 of these entities would result in injustice because the Class may not be permitted to pursue its
2 claims against Defendants, which on information and belief, are controlling the working
3 conditions of the Class.

4 17. On information and belief, Defendants operate with the same or similar human
5 resources departments, which rely on the same policy documents, including employee
6 handbooks and the like across all of Defendants' corporate forms. For example, Defendants'
7 personnel policies are entitled, "The Winsupply Family of Cos. Procedure Manual." These
8 policies dictate the working conditions of employees of Defendants, including Plaintiff and the
9 Class. Other documents provided by Defendants to Plaintiff utilize the "Winsupply" family
10 logo, which represents a unified interest amongst whatever corporate forms Defendants chose to
11 incorporate. Email addresses used by Defendants while communicating regarding the hiring of
12 Plaintiff also have a common domain name ("@windustrial.com" or "winwholesale.com"),
13 which further represents the unity of interest between Defendants.

14 18. Documents filed with the Secretary of State also identify a common address
15 between Defendants on Kettering Blvd. in Moraine, OH, which further demonstrates the unity of
16 interests between Defendants. On information and belief, Defendant Winsupply Inc. also
17 employs other individuals within the State of California who may work with other "minority
18 partners." However, Defendant Winsupply Inc. is the true employer of such individuals because
19 it controls the working conditions of such employees within the State of California.

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

27 **CLASS ACTION ALLEGATIONS**

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

1 California Code of Civil Procedure section 382. Plaintiff proposes the following classes
2 (collectively, “Class”):

- 3 a. All current and former non-exempt employees of Defendant Winsupply
4 Inc. in the State of California, who worked more than 5 hours in any shift
5 at any time from September 12, 2017, through the present (the “Meal
6 Period Class”);
- 7 b. All current and former non-exempt employees of Defendant Winsupply
8 Inc. in the State of California, who worked 3.5 hours or more in any shift
9 at any time from September 12, 2017, through the present (the “Rest
10 Period Class”);
- 11 c. All current and former non-exempt employees of Defendant Winsupply
12 Inc. in the State of California, who earned overtime wages and non-
13 discretionary remuneration during the same work week at any time from
14 September 12, 2017, through the present (the “Overtime Class”);
- 15 d. All former non-exempt employees of Defendant Winsupply Inc. in the
16 State of California, who earned wages at any time from September 12,
17 2018, through the present (the “Separated Employee Class”); and
- 18 e. All current and former employees of Defendant Winsupply Inc. in the
19 State of California, who earned wages at any time from September 12,
20 2019, through the present (the “Wage Statement Class”).
- 21 f. All current and former non-exempt employees of Defendants in the State
22 of California, who worked more than 5 hours in any shift at any time from
23 September 12, 2017, through the present (the “Meal Period Sub-Class”);
- 24 g. All current and former non-exempt employees of Defendants in the State
25 of California, who worked 3.5 hours or more in any shift at any time from
26 September 12, 2017, through the present (the “Rest Period Sub-Class”);
- 27 h. All current and former non-exempt employees of Defendants in the State
28 of California, who earned overtime wages and non-discretionary

remuneration during the same work week at any time from September 12, 2017, through the present (the “Overtime Sub-Class”);

i. All former non-exempt employees of Defendants in the State of California, who earned wages at any time from September 12, 2018, through the present (the “Separated Employee Sub-Class”); and

j. All current and former employees of Defendants in the State of California, who earned wages at any time from September 12, 2019, through the present (the “Wage Statement Sub-Class”).

21. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identity of the members of the Class is readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff is informed and believes, and based thereon alleges, that Defendants: (a) failed to provide off-duty meal periods to employees who worked 5 hours or longer in one shift and/or pay meal period premiums in lieu thereof in violation of Labor Code §§ 201-203, 226.7, and 512; (b) failed to provide off-duty rest periods to employees who worked 3.5 hours or longer in one shift and/or pay rest period premiums in lieu thereof in violation of Labor Code §§ 201-203 and 226.7; (c) failed to correctly calculate the regular rate of pay for the purposes of paying overtime wages in violation of Labor Code §§ 201-203, 510, 558, and 1194; (d) failed to provide accurate, itemized wage statements in violation of Labor Code § 226; (e) failed to pay all wages owed upon separation of employment in violation of Labor Code § 201-203; and (f) engaged in Unfair Business Practices in violation of the UCL, the California Labor Code, and the applicable IWC Wage Orders.

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

23. Defendants uniformly administered a corporate policy, practice of: (a) failing to provide off-duty meal periods to employees who worked 5 hours or longer in one shift and/or pay meal period premiums in lieu thereof in violation of Labor Code §§ 201-203, 226.7, and 512; (b) failing to provide off-duty rest periods to employees who worked 3.5 hours or longer in one shift and/or pay rest period premiums in lieu thereof in violation of Labor Code §§ 201-203 and 226.7; (c) failing to correctly calculate the regular rate of pay for the purposes of paying overtime wages in violation of Labor Code §§ 201-203, 510, 558, and 1194; (d) failing to provide accurate, itemized wage statements in violation of Labor Code § 226; (e) failing to pay all wages owed upon separation of employment in violation of Labor Code § 201-203; and (f) engaging in Unfair Business Practices in violation of the UCL, the California Labor Code, and the applicable IWC Wage Orders.

24. Plaintiff is informed and believes, and based thereon alleges, that Defendants had a consistent and uniform policy, practice, and procedure of willfully failing to comply with Labor Code §§ 201-203, 226, 226.7, 510, 512, 558, and 1194, the applicable IWC Wage Orders, and the UCL.

25. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst Plaintiff and the claims of the Class concerning Defendants' policy and practice of: (a) failing to provide off-duty meal periods to employees who worked 5 hours or longer in one shift and/or pay meal period premiums in lieu thereof in violation of Labor Code §§ 201-203, 226.7, and 512; (b) failing to provide off-duty rest periods to employees who worked 3.5 hours or longer in one shift and/or pay rest period premiums in lieu thereof in violation of Labor Code §§ 201-203 and 226.7; (c) failing to correctly calculate the regular rate of pay for the purposes of paying overtime wages in violation of Labor Code §§ 201-203, 510, 558, and 1194; (d) failing to provide accurate, itemized wage statements in violation of Labor Code § 226; (e) failing to pay all wages owed upon separation of employment in violation of Labor Code § 201-203; and (f) engaging in Unfair Business Practices in violation of the UCL, the California Labor Code, and the applicable IWC Wage Orders.

26. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the

1 Class in that Plaintiff has suffered the harms alleged in this Complaint in a similar and typical
2 manner as the Class Members. As a pattern and practice, Defendants routinely denied off-duty
3 meal and rest breaks to Plaintiff and other non-exempt employees. Because of the staffing and
4 other operational needs of the employer, Plaintiff and other employees were not allowed to take
5 off-duty meal breaks of at least 30 minutes for each shift of 5 hours or longer and off-duty rest
6 breaks of at least 10 minutes for each 3.5 hours worked. In lieu of providing proper off-duty
7 meal and rest breaks, Defendants did not pay any meal and/or rest period premium compensation
8 to Plaintiff. Additionally, as with other non-exempt employees, Plaintiff routinely earned non-
9 discretionary remuneration, including without limitation bonuses. During workweeks when
10 Plaintiff worked in excess of eight hours in a workday and/or forty hours in a workweek and
11 received non-discretionary remuneration during the same workweek, Defendants failed to
12 include any non-discretionary remuneration earned into the calculation of the regular rate. Thus,
13 Plaintiff is owed additional overtime pay based on the correct, higher regular rate of pay. To
14 date, Plaintiff has yet to receive the underpaid and/or unpaid overtime wages and meal and rest
15 premium compensation owed to her. Thus, Defendants are liable for waiting time penalties under
16 Labor Code § 203. Furthermore, Defendants failed to pay Plaintiff all regularly earned wages
17 upon termination of employment. Despite Plaintiff's termination on April 1, 2020, she was not
18 paid her final wages until about April 10, 2020. Finally, given the underpayment and/or
19 nonpayment of overtime wages and meal and rest period premiums, the wage statements
20 provided to Plaintiff displayed inaccurate net and gross wages earned and overtime rate of pay.
21 As a separate violation, Plaintiff's wage statements did not identify the pay period start date and
22 correct overtime rate of pay. Rather, Plaintiff's wage statements only identified the "period
23 ending" date and a single rate of pay regardless of what type of wages were earned. Therefore,
24 Plaintiff is a member of the Class and has suffered the alleged violations of Labor Code §§ 201-
25 203, 226, 226.7, 510, 512, 558, and 1194, and the UCL.

26 27. The California Labor Code upon which Plaintiff bases these claims are broadly
27 remedial in nature. These laws and labor standards serve an important public interest in
28 establishing minimum working conditions and standards in California. These laws and labor

standards protect the average working employee from exploitation by employers who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment.

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

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

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

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

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

8 **FIRST CAUSE OF ACTION**

9 **VIOLATION OF LABOR CODE §§ 226.7 AND 512**

10 **(BY PLAINTIFF, THE CLASS, MEAL PERIOD CLASS, AND THE MEAL PERIOD**
11 **SUB-CLASS AGAINST ALL DEFENDANTS)**

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

14 34. This cause of action is brought pursuant to Labor Code §§ 226.7 and 512, which
15 requires an employer to provide a duty-free, 30-minute meal period within the first five (5) hours
16 for shifts in excess of five (5) hours per day. Plaintiff and Class members regularly worked in
17 excess of five (5) hours per day and accordingly had a right to take a 30-minute meal period each
18 day worked in excess of five (5) hours.

19 35. At all relevant times, Defendants failed in their affirmative obligation to ensure
20 that Plaintiff and Class members had the opportunity to take and were provided with off-duty
21 meal periods in accordance with the mandate of the California Labor Code and the applicable
22 IWC Wage Order. At all relevant times, Plaintiff and Class members were suffered and
23 permitted to work through legally required meal breaks and were denied the opportunity to take
24 their off-duty meal breaks. This included, without limitation, Defendants requiring Plaintiff and
25 Class members to work continuously and either forgo their lunch breaks or take them after five
26 hours of work. As such, Plaintiff and Class members were denied legally compliant off-duty
27 meal periods, and thus Defendants are responsible for paying premium compensation pursuant to
28 Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order. Defendants, as a matter of

1 corporate policy and procedure, regularly failed to pay such premium compensation for each 30-
2 minute duty-free meal period Plaintiff and Class members missed.

3 36. As a pattern and practice, Defendants regularly required employees to work
4 through their meal periods without proper compensation and denied Plaintiff and Class members
5 the right to take proper meal periods as required by law.

6 37. Such a pattern, practice and uniform administration of corporate policy as
7 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class in a
8 civil action, for the unpaid balance of the unpaid premium compensation pursuant to California
9 Labor Code §§ 226.7 and 512, and the applicable IWC Wage Order, including interest thereon,
10 penalties, and costs of suit.

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

16 **SECOND CAUSE OF ACTION**

17 **VIOLATION OF LABOR CODE § 226.7**

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

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

22 40. This cause of action is brought pursuant to Labor Code § 226.7, which requires an
23 employer to provide a duty-free, 10-minute rest period for every 4 hours worked, or major
24 fraction thereof. Plaintiff and other Class members regularly worked shifts of three and one-half
25 (3.5) hours or more per day, and accordingly had a right to take a 10-minute rest period each day.

26 41. At all relevant times, Defendants failed in their affirmative obligation to provide
27 Plaintiff and other Class members with the opportunity to take rest periods in accordance with
28 the mandate of the California Labor Code and the applicable IWC Wage Order. As a pattern and

1 practice, Defendants suffered and permitted Plaintiff and Class members to work through legally
2 required rest breaks and denied Plaintiff and Class members the opportunity to take off-duty rest
3 breaks. As a result, Plaintiff and Class members remained on-duty during these purported rest
4 breaks and Defendants are responsible for paying premium compensation for missed rest breaks
5 pursuant to Labor Code § 226.7.

6 42. As a pattern and practice, Defendants regularly required employees to work
7 through their rest periods without proper compensation and denied Plaintiff and Class members
8 the right to take proper rest periods as required by law.

9 43. Such a pattern, practice and uniform administration of corporate policy as
10 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class in a
11 civil action, for the unpaid balance of the unpaid premium compensation pursuant to California
12 Labor Code § 226.7 and the applicable IWC Wage Order, including interest thereon, penalties,
13 and costs of suit.

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

19 **THIRD CAUSE OF ACTION**

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

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

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

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

28 47. As a pattern and practice, Defendants suffered and permitted employees to work

1 in excess of eight hours in a workday and/or over forty hours in a workweek without proper
2 overtime pay. During workweeks when Plaintiff and Class members worked overtime and
3 earned non-discretionary remuneration such as bonuses, Defendants failed to properly calculate
4 the regular rate of pay for purposes of paying overtime. Specifically, Defendants failed to factor
5 any non-discretionary remuneration earned into the calculation of the regular rate of pay for
6 purposes of paying overtime wages. As a result of such policy and practice, Defendants
7 underpaid overtime wages to Plaintiff and the Class and thus owe additional overtime wages.

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

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

19 **FOURTH CAUSE OF ACTION**

20 **VIOLATION OF LABOR CODE § 226**

21 **(BY PLAINTIFF, THE CLASS, THE MEAL PERIOD CLASS, THE MEAL PERIOD**
22 **SUB-CLASS, THE REST PERIOD CLASS, THE REST PERIOD SUB-CLASS, THE**
23 **OVERTIME CLASS, THE OVERTIME SUB-CLASS, THE WAGE STATEMENT**
24 **CLASS, AND THE WAGE STATEMENT SUB-CLASS AGAINST ALL DEFENDANTS)**

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

27 51. Defendants failed in their affirmative obligation to provide accurate itemized
28 wage statements. Defendants, as a matter of policy and practice, did not provide accurate records

1 in violation of Labor Code § 226 by failing to provide accurate payroll records to employees.

2 52. Here, Plaintiff and some of the Class were paid hourly. As such, the wage
3 statements should have reflected the applicable hourly rates of pay, gross and net wages earned,
4 and inclusive payroll period dates, pursuant to Labor Code section 226. However, the wage
5 statements provided to Plaintiff and other employees failed to identify such information. More
6 specifically, as a result of the underpayment and/or nonpayment of overtime wages and meal and
7 rest period premiums, the wage statements provided to Plaintiff displayed inaccurate net and
8 gross wages earned. Moreover, whenever overtime wages were paid, the wage statements failed
9 to identify the correct rates of pay. In addition, for all employees in the Wage Statement Class,
10 the wage statements failed to identify the pay period start date.

11 53. Such a pattern, practice and uniform administration of corporate policy as
12 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class
13 in a civil action, for all damages or penalties pursuant to Labor Code § 226, including interest
14 thereon, attorneys' fees, and costs of suit according to the mandate of California Labor Code
15 § 226.

16 **FIFTH CAUSE OF ACTION**

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

18 **(BY PLAINTIFF, THE CLASS, THE SEPARATED EMPLOYEE CLASS, AND THE**
19 **SEPARATED EMPLOYEE SUB-CLASS AGAINST ALL DEFENDANTS)**

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

22 55. Labor Code § 201 provides that all wages earned and unpaid at the time of an
23 employee's discharge are due and payable immediately. Labor Code § 202 provides that, in the
24 case of an employee who resigns or quits, such wages must be paid not later than 72 hours
25 thereafter, unless the employee has given 72 hours previous notice, in which case the employee
26 must be paid all wages due and earned at the time of quitting. Labor Code § 203 further provides
27 that an employer who willfully fails to pay such wages due to an employee who is discharged or
28 quits must pay that employee waiting-time penalties in the form of a day's wages up to 30 days

1 until all of the wages owed are paid.

2 56. As a pattern and practice, Defendants violated Labor Code §§ 201, 202, and 203
3 by issuing final payment of wages more than 72 hours after termination of employment.

4 57. Such a pattern, practice and uniform administration of corporate policy regarding
5 illegal employee compensation as described herein is unlawful and creates an entitlement to
6 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
7 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according
8 to the mandate of California Labor Code §§ 201, 202, and 203.

9 **SIXTH CAUSE OF ACTION**

10 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.***
11 **(BY PLAINTIFF THE CLASS, THE MEAL PERIOD CLASS, THE MEAL PERIOD**
12 **SUB-CLASS, THE REST PERIOD CLASS, THE REST PERIOD SUB-CLASS, THE**
13 **OVERTIME PERIOD CLASS, AND THE OVERTIME SUB-CLASS AGAINST ALL**
14 **DEFENDANTS)**

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

17 59. Defendants, and each of them, have engaged and continue to engage in unfair and
18 unlawful business practices in California by practicing, employing, and utilizing the employment
19 practices outlined above, including by: (a) failing to provide off-duty meal periods to employees
20 who worked 5 hours or longer in one shift and/or pay meal period premiums in lieu thereof in
21 violation of Labor Code §§ 201-203, 226.7, and 512; (b) failing to provide off-duty rest periods
22 to employees who worked 3.5 hours or longer in one shift and/or pay rest period premiums in
23 lieu thereof in violation of Labor Code §§ 201-203 and 226.7; and (c) failing to correctly
24 calculate the regular rate of pay for the purposes of paying overtime wages in violation of Labor
25 Code §§ 201-203, 510, 558, and 1194.

26 60. Defendants' utilization of such unfair and unlawful business practices constitutes
27 unfair and unlawful competition and provides an unfair advantage over Defendants' competitors.

28 61. Plaintiff seeks, individually and on behalf of other members of the Class similarly

1 situated, full restitution of monies, as necessary and according to proof, to restore any and all
2 monies withheld, acquired and/or converted by the Defendants by means of the unfair practices
3 complained of herein.

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

10 **SEVENTH CAUSE OF ACTION**

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

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

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

16 64. Plaintiff brings this cause of action as a proxy for the State of California and in
17 this capacity, seeks penalties on behalf of all Aggrieved Employees from September 7, 2019,
18 through the present, for Defendants' violations of Labor Code §§ 201-203, 226, 226.7, 510, 512,
19 558, and 1194, arising from Defendants' policy and practice of: (a) failing to provide off-duty
20 meal periods to employees who worked 5 hours or longer in one shift and/or pay meal period
21 premiums in lieu thereof in violation of Labor Code §§ 201-203, 226.7, and 512; (b) failing to
22 provide off-duty rest periods to employees who worked 3.5 hours or longer in one shift and/or
23 pay rest period premiums in lieu thereof in violation of Labor Code §§ 201-203 and 226.7; (c)
24 failing to correctly calculate the regular rate of pay for the purposes of paying overtime wages in
25 violation of Labor Code §§ 201-203, 510, 558, and 1194; (d) failing to provide accurate,
26 itemized wage statements in violation of Labor Code § 226; and (e) failing to pay all wages
27 owed upon separation of employment in violation of Labor Code § 201-203.

28 65. On or about March 4, 2021, Plaintiff sent written notice to the California Labor &

1 Workforce Development Agency (“LWDA”) of Defendants’ violations of Labor Code §§ 201-
2 203, 226, 226.7, 510, 512, 558, and 1194, pursuant to Labor Code § 2698, *et seq.*, the Private
3 Attorneys General Act (“PAGA”). To date, the LWDA has not responded to Plaintiff’s written
4 notice.

5 66. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
6 and all applicable civil penalties for Defendants’ violation of Labor Code §§ 201-203, 226,
7 226.7, 510, 512, 558, and 1194, for the time period described above, on behalf of herself and
8 other Aggrieved Employees.

9 **PRAYER FOR RELIEF**

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

- 12 1. For an order certifying the proposed Classes;
- 13 2. For an order appointing Plaintiff as the representative of the Classes as described
14 herein;
- 15 3. For an order appointing counsel for Plaintiff as class counsel;
- 16 4. Upon the First Cause of Action, for damages and/or penalties pursuant to
17 California Labor Code §§ 201-203, 226.7, and 512, and for costs and attorneys’ fees;
- 18 5. Upon the Second Cause of Action, for damages and/or penalties pursuant to
19 California Labor Code §§ 201-203 and 226.7, and for costs and attorneys’ fees;
- 20 6. Upon the Third Cause of Action, for damages and/or penalties pursuant to
21 California Labor Code §§ 201-203, 510, 558, and 1194, and for costs and attorneys’ fees;
- 22 7. Upon the Fourth Cause of Action, for damages or penalties pursuant to California
23 Labor Code § 226, and for costs and attorneys’ fees;
- 24 8. Upon the Fifth Cause of Action, for damages and/or penalties pursuant to
25 California Labor Code §§ 201-203, and for costs and attorneys’ fees;
- 26 9. Upon the Sixth Cause of Action, for restitution to Plaintiff and other similarly
27 affected members of the general public of all funds unlawfully acquired by Defendants by means
28 of any acts or practices declared by this Court to be in violation of Business & Professions Code

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

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

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

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

DATED: March 9, 2021

DIVERSITY LAW GROUP, P.C.

By: 

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Max W. Gavron

Attorneys for Plaintiff and the Class