

James R. Hawkins (SBN 192925)
Christina M. Lucio (SBN 253677)
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, California 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676
James@Jameshawkinsaplc.com
Christina@Jameshawkinsaplc.com

Attorneys for Plaintiff JESSICA OUK,
on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

JESSICA OUK, individually and on
behalf of herself and all others similarly
situated,

Plaintiff,

v.

SCRIPPS HEALTH, a California
Domestic Nonprofit; and DOES 1-50,
inclusive,

Defendants.

Case No.

COMPLAINT

Assigned for All Purposes To:

Hon.

Dept.:

COMPLAINT FOR DAMAGES FOR:

- 1) **Failure to Pay Minimum Wages;**
- 2) **Failure to Provide Lawful Meal Periods;**
- 3) **Failure To Authorize And Permit Rest Periods;**
- 4) **Failure to Timely Pay Wages During Employment;**
- 5) **Failure to Timely Pay Wages At Termination;**
- 6) **Knowing and Intentional Failure to Comply with Itemized Wage Statement Provisions;**
- 7) **Violation of the Unfair Competition Law**

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff JESSICA OUK (“Plaintiff”), individually and on behalf of others similarly situated, and asserts claims against defendants SCRIPPS HEALTH, a California Domestic Nonprofit; and DOES 1-50, inclusive (collectively “Defendants” or “Scripps”) as follows:

INTRODUCTION

1. This is a Class Action, pursuant to California Code of Civil Procedure section 382, on behalf of Plaintiff and any and all persons who are or were employed by Defendants, either directly or indirectly, in the State of California at any time from four years prior to the filing of this Complaint (as tolled by Emergency Rule 9) through resolution or trial of the matter. (“Class Members” or “Non-Exempt Employees”).)

2. Defendants implemented uniform policies and practices that deprived Plaintiff and Class Members of earned wages, including minimum wages; straight time wages; premium wages; and lawful meal and/or rest breaks.

3. Such actions and policies, as described above and further herein, were and continue to be in violation of the California Labor Code. Plaintiff, on behalf of herself and all Class members, bring this action pursuant to the California Labor Code, including sections 201-203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 512, 516, 558, 1174, 1194, 1194.2, 1197, 1198, applicable IWC California Wage Orders and California Code of Regulations, Title 8, section 11000 *et seq.*, seeking unpaid wages, unpaid meal and rest period compensation, penalties, liquidated damages, and reasonable attorneys’ fees and costs.

4. Plaintiff, on behalf of herself and others similarly situated, pursuant to Business and Professions Code sections 17200-17208, also seek restitution from Defendants for their failure to pay to Plaintiffs and Class Members all of their wages, including premium wages.

JURISDICTION AND VENUE

5. This action is brought as a Class Action on behalf of Plaintiff and similarly situated employees of Defendants pursuant to California Code of Civ. Proc. Section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimum jurisdiction limits of the California Superior Court and will be established according to proof at trial.

1 6. This Court has jurisdiction over this action pursuant to the California Constitution
2 Article VI §10, which grants the California Superior Court original jurisdiction in all causes except
3 those given by statute to other courts. The statutes under which this action is brought do not give
4 jurisdiction to any other court.

5 7. This Court has jurisdiction over this Action pursuant to California Code of Civil
6 Procedure, Section 410.10 and California Business & Professions Code, Section 17203.

7 8. This Court has jurisdiction over Defendants because, upon information and belief,
8 each Defendant is either a resident of California, has sufficient minimum contacts in California, or
9 otherwise intentionally avails itself of the California market so as to render the exercise of
10 jurisdiction over them by the California Courts consistent with traditional notions of fair play and
11 substantial justice. Defendants have done and are doing business throughout California and
12 Alameda County.

13 9. The unlawful acts alleged herein have a direct effect on Plaintiff and the other
14 similarly situated Non-Exempt Employees within San Diego County and it is believed that
15 Defendants have employed hundreds of Class Members as Non-Exempt Employees in San Diego
16 County.

17 10. The California Superior Court also has jurisdiction in this matter because the
18 individual claims of the Class Members described herein are presently believed to be under the
19 seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for Federal Court and the
20 aggregate potential damages and recovery by all of the claims of the Plaintiff's Class, including
21 attorneys' fees, placed in controversy by Plaintiff's class-wide claims, is presently believed to be
22 under the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of 2005.
23 Further, there is no federal question at issue, as the issues herein are based solely on California
24 statutes and law, including the Labor Code, IWC Wage Orders, the California Code of Civil
25 Procedure, the California Civil Code, and the California Business and Professions Code.

26 11. Venue is proper in this Court because one or more of the Defendants reside, transact
27 business, or have offices in this County, Plaintiff is a resident of this County, and the acts or
28 omissions alleged herein took place in this County.

1 **PARTIES**

2 12. Defendant Scripps Health is a California Domestic Nonprofit doing business in the
3 state of California. It is based at 10140 Campus Point Drive, San Diego, California 92121.

4 13. Upon information and belief, Scripps employs Non-Exempt Employees, like
5 Plaintiff, throughout the State of California.

6 14. Plaintiff Jessica Ouk is and during the liability period has been, a resident of
7 California.

8 15. Plaintiff was employed in an hourly, non-exempt position by Defendants during the
9 relevant time period.

10 16. Plaintiff and the members of the putative class were employed as hourly paid
11 employees by employed by Defendants, either directly or indirectly, in the State of California at
12 any time from four years prior to the filing of this Complaint (as tolled by Emergency Rule 9).

13 17. Whenever in this complaint reference is made to any act, deed, or conduct of
14 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through
15 one or more of Defendants' officers, directors, agents, employees, or representatives, who was
16 actively engaged in the management, direction, control, or transaction of the ordinary business and
17 affairs of Defendants.

18 18. The true names and capacities of Defendants, whether individual, corporate,
19 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
20 Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure
21 § 474. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
22 capacities of the Defendants designated hereinafter as DOES when such identities become known.

23 19. Plaintiff is informed and believes, and thereon allege, that the Doe Defendants are
24 the partners, agents, or principals and co-conspirators of Defendants and of each other; that
25 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided
26 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits
27 of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the
28 liability of the Defendants as alleged herein.

20. Plaintiff is further informed and believes, and thereon allege, that at all times material herein, each Defendant was completely dominated and controlled by its co-Defendants and each was the alter ego of the other. Whenever and wherever reference is made in this complaint to any conduct by Defendant or Defendants, such allegations and references shall also be deemed to mean the conduct of each of the Defendants, acting individually, jointly, and severally. Whenever and wherever reference is made to individuals who are not named as Defendants in this complaint, but were employees and/or agents of Defendants, such individuals, at all relevant times acted on behalf of Defendants named in this complaint within the scope of their respective employments.

FACTUAL ALLEGATIONS

21. During the relevant time frame, Defendants compensated Plaintiff and the Non-Exempt Employees based upon an hourly wage.

22. Plaintiff and the Class Members were, and at all times pertinent hereto, have been non-exempt employees within the meaning of the California Labor Code, and the implementing rules and regulations of the IWC California Wage Orders. They are subject to the protections of the IWC Wage Orders and the Labor Code.

23. During the relevant time, Plaintiff was employed by Defendants in an hourly, non-exempt position. She worked as a Registered Nurse in Defendants' facilities approximately 3 days per week, 12 hours per week.

24. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the requirements of California's wage and employment laws.

25. All Class Members are similarly situated in that they are all subject to Defendants' uniform policies and systemic practices as specified herein.

26. Plaintiff and the Class Members were required to clock in at the beginning of their shifts, clock out for lunch, in at the end of their lunch periods and out at the end of their shifts. Plaintiff and the Class Members were not paid for all hours worked because employees were required to work off the clock and because Defendants unlawfully rounded the hours worked by

1 Plaintiff and the Class Members such that they were not paid for all hours worked.

2 27. In addition, upon information and belief, Plaintiff and the Class Members were
3 often delayed in clocking in and out because they had to wait in line to clock in and out. These
4 are hours worked off the clock as Plaintiff and the Class Members were subject to the control of
5 the employer during this time.

6 28. Plaintiff and, upon information and belief, the Class Members were required to
7 work “On-Call” shifts approximately once every two months. Plaintiff and Class Members were
8 not compensated for the time spent “On-Call” and were only compensated if they were called into
9 work. Plaintiff and Class Members had only a short amount of time to appear at the Defendants
10 facilities, therefore requiring them to maintain a constant state of preparation throughout their
11 “on-call” shift.

12 29. Upon information and belief, Defendants failed to incorporate all forms of non-
13 discretionary compensation into the regular rate, including differentials, bonuses, Covid 19 pay,
14 and incentives.

15 30. In addition, Plaintiff and, upon information and belief, the Class Members worked
16 hours off the clock to perform certain functions, including charting off the clock.

17 31. Plaintiff and the Class Members were regularly required to work shifts in excess of
18 five hours without being provided a lawful meal period and, on occasion, over ten hours in a day
19 without being provided a second lawful meal period as required by law.

20 32. Indeed, during the relevant time, as a consequence of Defendants’ scheduling
21 practices, work demands, and Defendants’ policies and practices, Defendants frequently failed to
22 provide Plaintiff and the Class Members timely, legally complaint uninterrupted 30-minute meal
23 periods as required by law. Plaintiff’s and the Class Members’ first meal breaks frequently not
24 provided, untimely or short.

25 33. Moreover, upon information and belief, Defendants rounded meal period clock in
26 and out times in violation of the law.

27 34. Despite the above-mentioned meal period violations, Defendants failed to
28 compensate Plaintiff, and on information and belief, failed to compensate Class Members, one

1 additional hour of pay at their regular rate as required by California law when meal periods were
2 not timely or lawfully provided in a compliant manner.

3 35. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
4 should know, knew, and/or should have known that Plaintiff and the other Class Members were
5 entitled to receive accurate premium wages under Labor Code §226.7 but were not receiving
6 accurately calculated compensation.

7 36. In addition, during the relevant time frame, Plaintiff and the Non-Exempt
8 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
9 period for every four hours worked or major fraction thereof, which is a violation of the Labor
10 Code and IWC wage order.

11 37. Defendants maintained and enforced scheduling practices, policies, patient
12 scheduling practices, and imposed work demands that frequently required Plaintiff and Class
13 Members to forego their lawful, paid rest periods of a net ten minutes for every four hours
14 worked or major fraction thereof. Such requisite rest periods were not timely authorized and
15 permitted.

16 38. Despite the above-mentioned rest period violations, Defendants did not
17 compensate Plaintiff, and on information and belief, did not pay Class Members one additional
18 hour of pay at their regular rate as required by California law, including Labor Code section 226.7
19 and the applicable IWC wage order, for each day on which lawful rest periods were not
20 authorized and permitted.

21 39. Defendants also failed to provide accurate, lawful itemized wage statements to
22 Plaintiff and the Class Members in part because of the above specified violations. In addition,
23 Defendants failed to provide Plaintiff and, upon information and belief, the Class Members with
24 itemized wage statements that failed to provide accurate total hours worked, the hourly rates, and
25 hours worked at each rate.

26 40. Defendants have also made it difficult to determine applicable rates of pay and
27 account with precision for the unlawfully withheld wages and deductions due to be paid to Non-
28 exempt Employees, including Plaintiff, during the liability period because they did not implement

1 and preserve a lawful record-keeping method to record all hours worked, and non-provided rest
2 and meal periods owed to employees as required for non-exempt employees by 29 U.S.C. section
3 211(c), California Labor Code section 226, and applicable California Wage Orders.

4 41. Plaintiff and the Class Members are covered by applicable California IWC Wage
5 Orders and corresponding applicable provisions of the California Code of Regulations, Title 8,
6 section 11000 *et seq.*

7 **CLASS ACTION ALLEGATIONS**

8 42. Plaintiff brings this action on her own behalf, as well as on behalf of each and every
9 other person similarly situated, and thus, seeks class certification under California Code of Civil
10 Procedure §382.

11 43. All claims alleged herein arise under California law for which Plaintiff seeks relief
12 as authorized by California law.

13 44. The proposed class is comprised of and defined as: **all persons who are or were**
14 **employed by the Defendants as hourly paid, non-exempt employees in the State of California**
15 **at any time from four years prior to the filing of this action¹ through resolution or trial of the**
16 **matter.** (hereinafter collectively referred to as the “Class” or “Class Members”).

17 45. Plaintiff also seeks to represent Subclasses included in the Plaintiff’s Class, which
18 are composed of Class Members satisfying the following definitions:

19 a. All Class Members who were not paid at least minimum wage for all hours
20 worked (collectively “**Minimum Wage Subclass**”);

21 b. All Class Members who had their hours worked rounded (collectively
22 “**Rounding Subclass**”);

23 c. All Class Members who worked more than five (5) hours in a workday and
24 were not provided with a timely, uninterrupted lawful meal period of net thirty (30) minutes, and
25 were not paid compensation of one hour premium wages at the employee’s regular rate in lieu
26 thereof (hereinafter collectively referred to as the “**Meal Period Subclass**”);

27 d. All Class Members who worked more than three and a half hours in a

28 ¹ As properly tolled by California Rule of Court App I. R.R. Emergency Rule 9

workday and were not authorized and permitted to take a net 10-minute rest period for every four (4) hours or major fraction thereof worked per day and were not paid compensation of one hour premium wages at the employee's regular rate in lieu thereof (hereinafter collectively referred to as the "**Rest Period Subclass**");

e. All Class Members who were required to work on call shifts (hereinafter collectively referred to as the "**On Call Subclass**");

f. All Class Members who were not provided with accurate and complete itemized wage statements (hereinafter collectively referred to as the "**Inaccurate Wage Statement Subclass**");

g. All Class Members who were employed by Defendants and subject to Defendant's Unfair Business Practices (hereinafter collectively referred to as the "**Unfair Business Practices Subclass**").

46. Plaintiff reserves the right, under Rule 3.765, California Rules of Court, to amend or modify the descriptions of the Class and Subclasses to provide greater specificity as appropriate, or if it should be deemed necessary by the Court or to further divide the Class Members into additional Subclasses or to limit the Subclasses to particular issues. Any reference herein to the Class Members or the Plaintiffs' Class includes the members of each of the Subclasses.

47. As set forth in further detail below, this action has been brought and may properly be maintained as a class action under the provisions of section 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation, and the proposed Class and Subclasses are easily ascertainable through Defendants' records.

a. Numerosity: The members of the Class and Subclasses are so numerous that joinder of all members of the Class and Subclasses would be unfeasible and impractical. The membership of the entire Class and Subclasses is unknown to Plaintiff at this time, however, the Class is estimated to be hundreds of individuals. Accounting for employee turnover during the relevant periods necessarily increases this number substantially. Plaintiff alleges Defendants' employment records would provide information as to the number and location of all Class Members. Joinder of all members of the proposed Class is not practicable.

1 b. The proposed class is easily ascertainable. The number and identity of the
2 class members are determinable from Defendants' payroll records and time records for each class
3 member.

4 c. Commonality: There are common questions of law and fact as to the Class
5 and Subclasses that predominate over questions affecting only individual Class Members. These
6 common questions of law and fact include, without limitation:

- 7 1. Whether Defendants accurately paid Class Members for all hours worked;
- 8 2. Whether Defendants rounding practices were lawful;
- 9 3. Whether Defendants paid the proper regular rate for overtime hours;
- 10 4. Whether Defendants knew or should have known that Class Members were
11 required to perform work off the clock;
- 12 6. Whether Defendants had a policy and practice of providing lawful, timely
13 meal periods in accordance with Labor Code § 512, as well as the applicable
14 Industrial Welfare Commission ("IWC") wage order;
- 15 7. Whether Defendants rounded meal period times;
- 16 8. Whether Defendants had a policy and practice of complying with Labor
17 Code section 226.7 and IWC Wage Order on each instance that a lawful,
18 timely 30-minute uninterrupted meal period was not provided;
- 19 9. Whether Defendants failed to authorize and permit a lawful, net 10-minute
20 rest period to the Class Members for every four (4) hours or major fraction thereof worked;
- 21 10. Whether Defendants required employees to remain on the premises during
22 rest periods;
- 23 11. Whether Defendants had a policy and practice of complying with Labor
24 Code section 226.7 and the IWC Wage Order on each instance that a lawful rest period was not
25 provided;
- 26 12. Whether Defendants omitted required information from itemized wage
27 statements;
- 28

1 13. Whether Defendants failed to maintain accurate records of Class Members'
2 earned wages, work periods, meal periods and deductions;

3 14. Whether Defendants engaged in unfair competition in violation of section
4 17200 et seq. of the Business and Professions Code;

5 15. Whether Defendants' conduct was willful and/or reckless;

6 16. Whether Defendants failed to provide accurate itemized wage statements in
7 violation of Labor Code § 226; and

8 17. The appropriate amount of damages, restitution, and/or monetary penalties
9 resulting from Defendants' violations of California law.

10 d. Typicality: Plaintiff is qualified to, and will fairly and adequately protect
11 the interests of each member of the Class and Subclasses with whom he has a well-defined
12 community of interest. Plaintiff's claims herein alleged are typical of those claims which could be
13 alleged by any member of the Class and/or Subclasses, and the relief sought is typical of the relief
14 which would be sought by each member of the Class and/or Subclasses in separate actions. All
15 members of the Class and/or Subclasses have been similarly harmed by Defendants' failure to
16 provide lawful meal and rest periods, failure to provide accurate wage statements, failure to pay
17 minimum wages, rounding practices, and failure to accurately pay all wages earned including all
18 owed premium wages, all due to Defendants' policies and practices that affected each member of
19 the Class and/or Subclasses similarly. Further, Defendants benefited from the same type of unfair
20 and/or wrongful acts as to each member of the Class and/or Subclasses.

21 e. Adequacy: Plaintiff is qualified to, and will fairly and adequately protect the
22 interests of each member of the Class and/or Subclasses with whom he has a well-defined
23 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that
24 he has an obligation to make known to the Court any relationships, conflicts, or differences with
25 any member of the Class and/or Subclasses, and no such relationships or conflicts are currently
26 known to exist. Plaintiff's attorneys and the proposed counsel for the Class and Subclasses are
27 versed in the rules governing class action discovery, certification, litigation, and settlement and
28 experienced in handling such matters. Other former and current employees of Defendants may also

1 serve as representatives of the Class and Subclasses if needed.

2 f. Superiority: The nature of this action makes the use of class action
3 adjudication superior to other methods. A class action will achieve economies of time, effort,
4 judicial resources, and expense, which would not be achieved with separate lawsuits. The
5 prosecution of separate actions by individual members of the Class and/or Subclasses would create
6 a risk of inconsistent and/or varying adjudications with respect to the individual members of the
7 Class and/or Subclasses, establishing incompatible standards of conduct for the Defendants, and
8 resulting in the impairment of the rights of the members of the Class and/or Subclasses and the
9 disposition of their interests through actions to which they were not parties. Thus, a class action is
10 superior to other available means for the fair and efficient adjudication of this controversy because
11 individual joinder of all Class Members is not practicable, and questions of law and fact common
12 to the Class predominate over any questions affecting only individual Class Members. Each
13 member of the Class has been damaged and is entitled to recovery by reason of Defendants'
14 unlawful policies and practices that affected each member of the Class and/or Subclasses similarly.
15 Class action treatment will allow those similarly situated persons to litigate their claims in the
16 manner that is most efficient and economical for both parties and the judicial system. Plaintiff is
17 unaware of any difficulties that are likely to be encountered in the management of this action that
18 would preclude its maintenance as a class action.

19 g. Public Policy Considerations: Employers in the state of California violate
20 employment and labor laws every day. However, current employees are often afraid to assert their
21 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
22 because they believe their former employers may damage their future endeavors through negative
23 references and/or other means. The nature of this action allows for the protection of current and
24 former employees' rights without fear of retaliation or damage. Additionally, the citizens of
25 California have a significant interest in ensuring employers comply with California's labor laws
26 and in ensuring those employers who do not are prevented from taking further advantage of their
27 employees.

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1 Defendants fully and timely pay its non-exempt, hourly employees all wages earned and due for all
2 hours worked.

3 56. The IWC Wage Orders define “hours worked” as “the time during which an
4 employee is subject to the control of an employer, and includes all the time the employee is suffered
5 or permitted to work, whether or not required to do so.”

6 57. At all times relevant, Plaintiff and Class Members consistently worked hours for
7 which they were not paid because Defendants frequently required Plaintiff and the Class Members
8 to work off the clock.

9 58. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the
10 Class Members were working off the clock and that they should have been paid for this time.

11 59. In addition, Defendants failed to pay at least minimum wage for all hours worked
12 because, upon information and belief, Defendants rounded hours worked against Plaintiff and the
13 Class Members’ interests.

14 60. Defendant’s policy and practice of not paying all minimum wages violates
15 California Labor Code sections 204, 210, 216, 558, 1182.12, 1194, 1197, 1197.1, 1198, and the
16 applicable wage order 5-2001.

17 61. Due to Defendants’ violations of the California Labor Code and wage orders,
18 Plaintiff and the Minimum Wage Subclass members are entitled to recover from Defendant their
19 unpaid wages, statutory penalties, reasonable attorneys’ fees and costs in this action, and pre-
20 judgment and post-judgment interest, as well as liquidated damages.

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PROVIDE LAWFUL MEAL PERIODS**

23 **(By Plaintiff and the Meal Period Subclasses Against All Defendants)**

24 62. Plaintiff incorporates by reference and realleges each and every allegation contained
25 above, as though fully set forth herein.

26 63. Pursuant to Labor Code § 512, no employer shall employ an employee for a work
27 period of more than five (5) hours without providing a meal break of not less than thirty (30)
28 minutes in which the employee is relieved of all of his or her duties, except that when a work period

1 of not more than six (6) hours will complete the day's work the meal period may be waived by
2 mutual consent of the employer and employee.

3 64. For the four (4) years preceding the filing of this lawsuit as properly tolled by
4 Emergency Rule 9, Defendants failed to provide Plaintiff and Class Members timely and
5 uninterrupted first meal periods of not less than thirty (30) minutes within the first five hours of a
6 shift.

7 65. As a consequence of Defendants' policies and practices, requirements, demands,
8 coverage and staffing, Plaintiff and the Class Members were often required to forego such meal
9 periods, take shortened meal periods, and/or commence their meal periods into and beyond the
10 sixth hour of their shifts.

11 66. In addition, Plaintiff and, upon information and belief, the Class Members had
12 meal period clock in and clock out times rounded in violation of the law.

13 67. Upon information and belief, Plaintiff and the Class Members were not paid one
14 hour of pay at their regular rate for each day that a meal period was not lawfully provided.

15 68. As a proximate result of the aforementioned violations, Plaintiff and the Class
16 Members have been damaged in an amount according to proof at time of trial.

17 69. Pursuant to Labor Code § 226.7, Plaintiff and Class Members are entitled to recover
18 one (1) hour of premium pay for each day in which a meal period violation occurred. They are also
19 entitled to recover reasonable attorneys' fees, cost, interest, and penalties as applicable.

20 70. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to
21 represent have been deprived of premium wages in amounts to be determined at trial, and are
22 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
23 under Labor Code sections 218.6, 226.7, 512 and the applicable IWC Wage Orders, and Civil Code
24 section 3287.

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO AUTHORIZE AND PERMIT LAWFUL REST PERIODS**

3 **(By Plaintiff and the Rest Period Subclasses Against All Defendants)**

4 71. Plaintiff incorporates by reference and realleges each and every allegation contained
5 above, as though fully set forth herein.

6 72. Pursuant to the IWC wage orders applicable to Plaintiff's and Class Members'
7 employment by Defendants, "Every employer shall authorize and permit all employees to take rest
8 periods, which insofar as practicable shall be in the middle of each work period.... [The] authorized
9 rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net
10 rest time per four (4) hours worked or major fraction thereof.... Authorized rest period time shall
11 be counted as hours worked, for which there shall be no deduction from wages."

12 73. Labor Code §226.7(a) prohibits an employer from requiring any employee to work
13 during any rest period mandated by an applicable order of the IWC.

14 74. Defendants were required to authorize and permit employees such as Plaintiff and
15 Class Members to take rest periods during shifts in excess of 3.5 hours, based upon the total hours
16 worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major fraction thereof,
17 with no deduction from wages.

18 75. Despite said requirements of the IWC wage orders applicable to Plaintiff's and Class
19 Member's employment with Defendants, Defendants failed and refused to authorize and permit
20 Plaintiff and Class Members to take lawful, net ten (10) minute rest periods for every four (4) hours
21 worked, or major fraction thereof. Such rest breaks, when provided, were frequently untimely or
22 less than net ten minutes because of the work requirements imposed by Defendants, and frequent
23 calls during rest periods.

24 76. Defendants did not pay Plaintiff one additional hour of pay at his regular rate of pay
25 for each day that a rest period violation occurred. On information and belief, the other members of
26 the Class endured similar violations as a result of Defendants' rest period policies and practices and
27 Defendant did not pay said Class Members premium pay as required by law.

77. By their failure to authorize and permit Plaintiff and the Class Members to take a lawful, net ten (10) minute rest period free from work duties every four (4) hours or major fraction thereof worked, including failure to provide two (2) total rest periods on six to ten hour shifts and three (3) total ten (10) minute rest periods on days on which Plaintiff and the other Class Members work(ed) work a third rest period for shifts in excess of ten (10) hours, and by their failure to provide compensation for such unprovided rest periods as alleged herein, Defendants willfully violated the provisions of Labor Code sections 226.7 and the applicable IWC Wage Order(s).

78. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to represent have been deprived of premium wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 218.6, 226.7, the applicable IWC Wage Orders, and Civil Code 3287.

FOURTH CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES DUE AND PAYABLE DURING

EMPLOYMENT

(By Plaintiff and the Class Against All Defendants)

79. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

80. Labor Code section 204 requires that all wages are due and payable twice in each calendar month.

81. The wages required by Labor Code §§ 226.7, 510, 1194, 1198, IWC Wage Order 5-2001 and other sections became due and payable to each employee in each month that he or she was not paid on call pay, provided with a rest period or meal period, paid minimum wage, straight or overtime wages to which he or she was entitled.

82. Defendants violated Labor Code § 204 by systematically refusing to pay wages due under the Labor Code.

83. Labor Code section 210 (a) provides that “In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages

of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follow:

(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

103. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to represent have been deprived of wages in amounts to be determined at trial, and are entitled to recovery of such amounts, penalties, plus interest thereon, attorneys fees, and costs, pursuant to Labor Code § 210, 218.5, 218.6, 510, 1194.

FIFTH CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES OWED AT SEPARATION

(By Plaintiff and the Waiting Time Subclass Against All Defendants)

84. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

85. Labor Code § 201 requires employer to pay all wages earned and unpaid at the time the employer discharges an employee from employment.

86. Labor Code § 202 requires Defendants to pay their employees all wages due within seventy-two (72) hours of separation of employment.

87. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employee's wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

88. Plaintiff and Class Members are entitled to compensation for all forms of wages earned, including but not limited to minimum wages, reporting time wages, overtime, and premium rest period compensation, but to date have not received such compensation, therefore entitling them to Labor Code § 203 penalties.

1 89. More than thirty (30) days have passed since affected Waiting Time Subclass
2 Members have left Defendants' employ, and on information and belief, they have not received
3 payment pursuant to Labor Code § 201-203.

4 90. Plaintiff and Waiting Time Subclass Members are thus entitled to 30 days' wages
5 as a penalty under Labor Code § 203, together with interest thereon and attorneys' fees and costs.

6 **SIXTH CAUSE OF ACTION**

7 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**
8 **EMPLOYEE WAGE STATEMENT PROVISIONS**

9 **By Plaintiff and Wage Statement Subclass Against Defendants**

10 91. Plaintiff repeats and incorporates herein by reference each and every allegation set
11 forth above, as though fully set forth herein.

12 92. Labor Code section 226(a) reads in pertinent part: "Every employer shall,
13 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either
14 as a detachable part of the check, draft, or voucher paying the employee's wages, or separately
15 when wages are paid by personal check or cash, an accurate itemized statement in writing
16 showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions...
17 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
18 name of the employee and only the last four digits of his or her social security number or an
19 employee identification number other than a social security number, (8) the name and address of
20 the legal entity that is the employer, and (9) all applicable hourly rates in effect during each the
21 pay period and the corresponding number of hours worked at each hourly rate by the
22 employee....".

23 93. Further, the IWC Wage Orders require in pertinent part: Every employer shall
24 keep accurate information with respect to each employee including the following: (3) Time
25 records showing when the employee begins and ends each work period. Meal periods, split shift
26 intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the
27 payroll period and applicable rates of pay...."

28 94. Labor Code section 1174 of the California also requires Defendants to maintain

1 and preserve, in a centralized location, among other items, records showing the names and
2 addresses of all employees employed and payroll records showing the hours worked daily by, and
3 the wages paid to, its employees. On information and belief and based thereon, Defendants have
4 knowingly and intentionally failed to comply with Labor Code section 1174, including by
5 implementing the policies and procedures and committing the violations alleged in the preceding
6 causes of action and herein. Defendants' failure to comply with Labor Code section 1174 is
7 unlawful pursuant to Labor Code section 1175.

8 95. Defendants have failed to record many of the items delineated in applicable
9 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section
10 1174, including by virtue of the fact that each wage statement which failed to accurately
11 compensate Plaintiff and Class Members for all hours worked and for missed and non-provided
12 meal and rest periods, or which failed to include compensation for all minimum wages earned or
13 overtime hours worked, was an inaccurate wage statement. In addition, the wage statements
14 omitted total hours worked or inaccurately stated total hours worked and hours worked at each
15 hourly wage rate.

16 96. On information and belief, Defendants failed to implement and preserve a lawful
17 record-keeping method to record all non-provided meal and rest periods owed to employees or all
18 hours worked, as required for Non-Exempt Employees under California Labor Code section 226
19 and applicable California Wage Orders. In order to determine if they had been paid the correct
20 amount and rate for all hours worked, Plaintiff and Class Members have been, would have been,
21 and are compelled to try to discover the required information missing from their wage statements
22 and to perform complex calculations in light of the inaccuracies and incompleteness of the wage
23 statements Defendants provided to them.

24 97. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
25 Wage Orders, Defendants did not and still do not furnish each of the members of the Wage
26 Statement Class with an accurate itemized statement in writing accurately reflecting all of the
27 required information. Here, Plaintiff asserts the Defendant omitted required information, failed to
28 accurately include all applicable hourly rates on the wage statements and the corresponding

1 number of hours worked at such rates or hours paid at such rates. In addition, Defendants have
2 failed to provide accurate itemized wage statements as a consequence of the above-specified
3 violations for failure to accurately pay all wages owed, accurately record all hours worked, and
4 failure to pay meal and rest period premiums as required by law.

5 98. Moreover, upon information and belief, as a pattern and practice, in violation of
6 Labor Code section 226(a) and the IWC Wage Orders, Defendants did not and do not maintain
7 accurate records pertaining to the total hours worked for Defendants by the members of the Wage
8 Statement Class, including but not limited to, beginning and ending of each work period, meal
9 period and split shift interval, the total daily hours worked, and the total hours worked per pay
10 period and applicable rates of pay.

11 99. Plaintiffs and the members of the Wage Statement Class have suffered injury as a
12 result of Defendants' failure to maintain accurate records for the members of the Wage Statement
13 Class in that the members of the Wage Statement Class were not timely provided written accurate
14 itemized statements showing all requisite information, such that the members of the Wage
15 Statement Class were misled by Defendants as to the correct information regarding various items,
16 including but not limited to total hours worked by the employee, net wages earned and all
17 applicable hourly rates in effect during the pay period and the corresponding number of hours
18 worked at each hourly rate.

19 100. Pursuant to Labor Code section 226, and in light of Defendants' violations
20 addressed above, Plaintiff and the Wage Statement Class Members are each entitled to recover up
21 to a maximum of \$4,000.00, along with an award of costs and reasonable attorneys' fees.

22 SEVENTH CAUSE OF ACTION

23 VIOLATION OF THE UNFAIR COMPETITION LAW

24 **By Plaintiff and Class Against All Defendants**

25 101. Plaintiff incorporates by reference and realleges each and every allegation contained
26 above, as though fully set forth herein.

27 102. Defendants' conduct, as alleged in this complaint, has been, and continues to be,
28 unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the

1 general public. Plaintiff also seeks to enforce important rights affecting the public interest within
2 the meaning of the California Code of Civil Procedure § 1021.5.

3 103. Defendants' policies, activities, and actions as alleged herein are violations of
4 California law and constitute unlawful business acts and practices in violation of California
5 Business and Professions Code §§ 17200, *et seq.*

6 104. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be
7 predicated on the violation of any state or federal law.

8 105. The state law violations, including violations of the relevant IWC Wage Order,
9 detailed herein above are the predicate violations for this cause of action. By way of example only,
10 in the instant case Defendants' policy of failing to lawfully provide Plaintiff and the Class with
11 timely meal and rest periods or pay one (1) hour of premium pay when a meal or rest period was
12 not lawfully provided violates Labor Code § 512, and § 226.7, and the IWC Wage Orders.
13 Defendants further violated the law through their policies of failing to fully and accurately
14 compensate Plaintiff and the Class Members for all hours worked, including minimum wages and
15 overtime, on call time, as well as failing to provide accurate itemized wage statement as specified
16 above.

17 106. Plaintiff and the Class Members have been personally aggrieved by Defendants'
18 unlawful and unfair business acts and practices alleged herein by the loss of money and/or property.

19 107. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiff
20 and the Class Members are entitled to restitution of the wages withheld and retained by Defendants
21 during a period that commences four (4) years prior to the filing of this complaint; an award of
22 attorneys' fees pursuant to California Code of Civil Procedure §1021.5; interest; and an award of
23 costs.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff pray judgment against Defendants, jointly and severally, as
26 follows:

27 **Class Certification**

28 1. That this action be certified as a class action;

2. That Plaintiff be appointed as the representative of the Class;
3. That Plaintiff be appointed as the representatives of the Subclasses; and
4. That counsel for Plaintiff be appointed as counsel for the Class and Subclasses.

On the First Cause of Action

(Failure to pay minimum wages)

1. For the unpaid balance of the full amount of any minimum wages, and regular wages owed, as well as interest thereon,
2. Penalties according to statute,
3. Liquidated damages,
4. Reasonable attorneys' fees, and costs of suit;
5. For interest and
6. For such other and further relief as the Court deems proper.

On the Second Cause of Action

(Failure to Provide Lawful Meal Periods)

1. For one (1) hour of premium pay for each day in which a required meal period was not lawfully provided;
2. For reasonable attorneys' fees and costs pursuant to statute; and
3. For such other and further relief as the Court deems proper.

On the Third Cause of Action

(Failure to Authorize and Permit Lawful Rest Periods)

1. For one (1) hour of premium pay for each day in which a required rest period was not lawfully authorized and permitted; and
2. For reasonable attorneys' fees and costs pursuant to statute; and
3. For such other and further relief as the Court deems proper.

On the Fourth Cause of Action

(Failure to Provide Accurate Itemized Wage Statements)

1. For statutory penalties, including penalties pursuant to Labor Code section 226;
2. For reasonable attorneys' fees and costs; and

3. For such other and further relief as the Court deems proper;

On the Fifth Cause of Action

(Failure to Timely Pay Wages Due and Payable During Employment)

1. For unpaid wages;
2. For penalties pursuant to Labor Code § 210 and 25% of the amount of wages unlawfully withheld;
3. For interest;
4. For reasonable attorneys' fees and costs pursuant to statute; and
5. For such other and further relief as the Court deems proper.

On the Sixth Cause of Action

(Failure to Timely Pay Wages At Separation)

1. For unpaid wages;
2. For penalties pursuant to Labor Code § 203;
3. For interest;
4. For reasonable attorneys' fees and costs pursuant to statute; and
5. For such other and further relief as the Court deems proper.

On the Seventh Cause of Action

(Violation of the Unfair Competition Law)

1. That Defendants, jointly and/or severally, pay restitution and/or disgorgement of sums to Plaintiff and Class Members for the Defendants' past failure to pay on call time, minimum, overtime and regular wages, and for premium wages for meal and rest periods that were not provided to Plaintiff and Class Members over the last four (4) years in an amount according to proof;
2. For reasonable attorneys' fees that Plaintiff and Class Members are entitled to recover under California Code of Civil Procedure § 1021.5 and Labor Code section 1194, 1197, 1198;
3. For pre-judgment interest on any unpaid minimum, regular and overtime wages due from the day that such amounts were due;

4. For costs of suit incurred herein that Plaintiff and Class Members are entitled to recover under the Labor Code; and

5. For such other and further relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of the Class and Subclasses, respectfully demand a jury trial in this matter to the fullest extent available under the law.

Respectfully submitted,

Dated: March 26, 2021


JAMES HAWKINS, APLC
James R. Hawkins, Esq.
Christina M. Lucio, Esq.

Attorneys for JESSICA OUK, on behalf of herself and all
others similarly situated