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on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

SHEILA JOHN, on behalf of herself and all
others similarly situated,

Plaintiff,

vs.

UNITED PARCEL SERVICE, INC., an Ohio
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.
ASSIGNED FOR ALL PURPOSES TO:
JUDGE:
DEPT:

CLASS ACTION COMPLAINT

- 1) Failure to pay Lawful Wages Owed,**
- 2) Failure to provide Lawful Meal Periods or Compensation in lieu thereof;**
- 3) Failure to provide Lawful Rest Periods or Compensation in lieu thereof;**
- 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 Employee Wage Statement Provisions;**
- 7) Failure to Indemnify Employee for Expenditures; and**
- 8) Violations of the Unfair Competition Law**

JURY TRIAL DEMANDED

I.

INTRODUCTION

1. Pursuant to Code of Civil Procedure section 382, SHEILA JOHN (hereinafter “Plaintiff”) asserts the following Class Action claim against UNITED PARCEL SERVICE, INC., a Delaware Company (“UPS”), and DOES 1 through 50 (hereinafter collectively “Defendants”) on behalf of herself and all non-exempt employees employed by Defendants in California (hereinafter “Non-Exempt Employees” and/or “Class Members”).

2. During the liability period, defined as the applicable statute of limitations for each and every cause of action contained herein, Defendants enforced shift schedules, employment policies and practices, and/or workload requirements wherein Plaintiff and Non-Exempt Employees were, amongst other statutory violations, not paid all lawful wages; not provided compliant rest and meal periods; not provided accurate itemized wage statements; and not paid timely wages at termination.

3. Plaintiff, on behalf of herself and Non-Exempt Employees, brings this action pursuant to Labor Code §§ 200, 201-203, 204, 210, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1198, 2802, and any other applicable Industrial Welfare Commission (“IWC”) Wage Orders, seeking unpaid wages, unpaid compensation for rest and meal break violations, penalties, attorneys’ fees and costs and other equitable relief.

4. Plaintiff, on behalf of herself and all Non-Exempt Employees, pursuant to Business and Professions Code sections 17200-17208, also seeks restitution from Defendants based on Defendants’ violations of California Labor Code of Regulations, Title 8, section 11000 *et seq.*

II.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to the California Constitution Article VI §10, which grants the California Superior Court original jurisdiction in all causes except those given by statute to other courts. The statutes here do not give jurisdiction to any other court. The monetary damages and restitution sought by Plaintiff exceed the minimum

jurisdiction limits of the California Superior Court and will be established according to proof at trial.

6. Venue is proper to each Defendant pursuant to Code of Civil Procedure section 395 because they conduct substantial and continuous business activities in San Francisco County and are within the jurisdiction of this Court for service of process purposes. Defendants employ numerous Non-Exempt Employees in San Francisco and other Counties throughout California.

III.

PARTIES

7. Plaintiff is, and at all times mentioned was, a resident of California.

8. Upon information and belief, Defendant is a postal service provider headquartered in Atlanta, GA. Plaintiff believes Defendants are qualified to do business in California and continue to do so.

9. The true names and capacities of Defendants, whether individual, corporate, associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes, and based thereon alleges that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

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

IV.

FACTUAL BACKGROUND

11. Plaintiff was employed by Defendants facility located in San Francisco, California. From on or about October 31, 2019 until about April 2020 Plaintiff occupied a non-

1 exempt, hourly position as a driver. From on or about April 2020 until her last day of
2 employment, in or about May 2020, Plaintiff occupied a non-exempt, hourly position as a
3 warehouse employee.

4 12. During the liability period, Defendants did not compensate Plaintiff and all Non-
5 Exempt Employees for the time spent going through Defendant's security procedures. For
6 example, Plaintiff and all Non-Exempt Employees were required to wait in line at the start of the
7 shift to pass through security screening and metal detectors at the entrance prior to clocking in.
8 Further, at the end of the work shift, Plaintiff and all Non-Exempt Employees were required to
9 clock out and then line up to pass through the security screening and metal detectors to exit the
10 facility. Plaintiff estimates that the waiting time at the start of the shift, prior to clocking in, was
11 approximately 15 minutes and the time spent waiting in line to pass through security after
12 clocking out, at the end of the shift, was anywhere from 5 to 10 minutes.

13 13. During the liability period, Plaintiff and Non-Exempt Employees, who were
14 employed by Defendants as drivers, often were required to work in excess of five (5) hours
15 without being provided an uninterrupted thirty (30) minute meal period by the end of the fifth
16 hour. For instance, Plaintiff and Non-Exempt Employees, who were employed by Defendants as
17 drivers, were required to monitor their personal cell phone during their meal breaks in the event
18 that staff members or supervisors needed to communicate with them. Also, Plaintiff and Non-
19 Exempt Employees, who were employed by Defendants as drivers, were not provided a second
20 similar uninterrupted meal period by the end of the tenth hour when they worked over ten hours
21 in a shift.

22 14. During the liability period, due to the demands of work shifts, Plaintiff and
23 Non-Exempt Employees, who were employed by Defendants as drivers, did not receive a lawful
24 minimum ten (10) minute rest period for every four hours worked or major fraction thereof. Nor
25 were they compensated one (1) hour of pay at their regular rate of compensation for each workday
26 that rest periods were not provided. Also, Plaintiff and Non-Exempt Employees, who were
27 employed by Defendants as drivers, were required to monitor their cell phone in the event they
28 were required to communicate with staff and/or supervisors during rest periods.

1 15. Defendants failed to pay Plaintiff and Non-Exempt Employees all earned wages
2 in a timely manner; nor have they paid, upon or after termination, all compensation due, including
3 but not limited to all wages owed and compensation for having failed to properly provide rest
4 periods and meal periods.

5 16. Defendants also failed to maintain accurate itemized records reflecting total hours
6 worked and have failed to provide Plaintiff and Non-Exempt Employees with accurate itemized
7 wage statements reflecting total hours worked and appropriate rates of pay.

8 17. During the liability period, Defendants also failed to accurately compensate
9 Plaintiff and Non-Exempt Employees, who were employed by Defendants as drivers, for
10 reporting time pay for shifts. For instance, Plaintiff and such Non-Exempt Employees were
11 required to report to work, wait to see if work was available, and then were sent home without
12 compensation if no work was available that day.

13 18. During the liability period, Plaintiff and all Non-Exempt Employees were required
14 to use their personal cell phones in the performance of their duties. Plaintiff and Non-Exempt
15 Employees were required to download an App (“UPSERF.com”) in order to access their payroll
16 information. Plaintiff and Non-Exempt Employees were not reimbursed for the requisite use of
17 their phones in the performance of their job duties.

18 19. Similarly, Plaintiff and Non-Exempt Employees, who were employed by
19 Defendants as drivers, were required to use their personal cell phones in the performance of their
20 duties. For instance, Plaintiff and Non- Exempt Employees, who were employed by Defendants
21 as drivers, were required to monitor their cell phone in the event they were required to
22 communicate with staff and/or supervisors throughout their shifts. Plaintiff and Non-Exempt
23 Employees were not reimbursed for the requisite use of their phones in the performance of their
24 job duties.

25 20. Upon information and belief, during the relevant period, Defendants employed
26 over one hundred (100) Non-Exempt employees in California. Plaintiff and Non-Exempt
27 Employees at all times pertinent hereto, have been non-exempt employees within the meaning of
28 the California Labor Code, and the implementing rules and regulations of the IWC California

1 Wage Orders.

2 V.

3 **CLASS ACTION ALLEGATIONS**

4 21. Plaintiff seeks to represent a Class comprised of and defined as: All persons who
5 are or were employed by Defendants in the state of California as Non-Exempt Employees, who
6 occupied positions as drivers and similar positions, within four (4) years prior to the date this
7 lawsuit is filed (“liability period”) until resolution of this lawsuit.

8 22. Plaintiff also seeks to represent Subclasses comprised of and defined as:

9 a. All Non-Exempt Employees employed by Defendants in California
10 within the liability period who were not accurately paid all lawful wages, including overtime for
11 all hours worked;

12 b. All Non-Exempt Employees employed by Defendants in California
13 within the statutory liability period who were not accurately paid all lawful wages, including
14 minimum wages for all hours worked;

15 c. All Non-Exempt Employees employed by Defendants in California as
16 drivers and similar positions within the statutory liability period who were not provided a
17 compliant thirty (30) minute uninterrupted meal period by the end of the fifth hour when they
18 worked over five hours in a shift and who were not provided a second similar uninterrupted meal
19 period by the end of the tenth hour when they worked over ten hours in a shift;

20 d. All Non-Exempt Employees employed by Defendants in California as
21 drivers and similar positions within the statutory liability period who were not provided a
22 minimum ten (10) minute rest period for every four (4) hours, or major fraction thereof, worked
23 per day and not provided compensation in lieu thereof;

24 e. All Non-Exempt Employees employed by Defendants in California
25 within the liability period who were not timely paid all wages owed during their employment;

26 f. All Non-Exempt Employees employed by Defendants in California
27 positions within the liability period who were not timely paid all wages owed upon termination
28 of their employment; and

1 g. All Non-Exempt Employees employed by Defendants in California
2 within the liability period who were not provided with accurate and complete itemized wage
3 statements.

4 23. Plaintiff also seeks to represent a class comprised of and defined as: All persons
5 who are employed or have been employed by Defendants in the state of California during the
6 liability period who were required to use their phones and/or personal devices in the performance
7 of any job-related duties and were not reimbursed by Defendants for the use of said devices
8 (“Expense Reimbursement Class”).

9 24. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend
10 or modify the class description with greater specificity or further division into subclasses or
11 limitation to particular issues.

12 25. This action has been brought and may properly be maintained as a class action
13 under the provisions of section 382 of the Code of Civil Procedure because there is a well-defined
14 community of interest in the litigation and the proposed Class is easily ascertainable.

15 **A. Numerosity**

16 26. The potential members of the Class as defined are so numerous that joinder of all
17 the members of the Class is impracticable. While the precise number of Non-Exempt Employees
18 has not been determined at this time, Plaintiff is informed and believes that Defendants currently
19 employ, and/or during the relevant time period employed, approximately over 100 Non-Exempt
20 Employees in California who are or have been affected by Defendants' unlawful practices as
21 alleged herein.

22 **B. Commonality**

23 27. There are questions of law and fact common to the Class predominating over
24 any questions affecting only individual Class Members. These common questions of law and
25 fact include, without limitation:

- 26 i. Whether Defendants violated Labor Codes sections 200, 1194, and 1197
27 applicable IWC Wage Orders by failing to pay all earned wages, including minimum
28 wages to Non-Exempt Employees for work performed off the clock;

- 1 ii. Whether Defendants violated Labor Codes section 200, 510, and 1194, and
2 applicable IWC Wage Orders by failing to pay all earned wages, including proper
3 overtime compensation to Non-Exempt Employees who worked over eight hours in a
4 work shift and/or over forty hours in a work week and/or over twelve hours in a work
5 shift for worked performed off the clock;
- 6 iii. Whether Defendants violated Labor Codes section 200, 510, and 1194, and
7 applicable IWC Wage Orders by failing to pay all earned wages, including proper
8 overtime compensation to Non-Exempt Employees who worked over eight hours in a
9 work shift and/or over forty hours in a work week and/or over twelve hours in a work
10 shift based on an invalid alternative workweek schedule;
- 11 iv. Whether Defendants violated sections 226.7, 512 of the Labor Code and
12 applicable IWC Wage Order by failing to provide the statutorily compliant thirty (30)
13 minute meal periods to Non-Exempt Employees on days in which they worked in excess
14 of five (5) hours and/or ten (10) hours in a shift and failing to compensate said employees
15 one-hour of their regular rate of pay in lieu of meal periods and failing to provide similar
16 statutory meal period and compensation when they worked in excess of ten (10) hours in
17 a shift;
- 18 v. Whether Defendants violated Labor Code section 226.7 and applicable IWC
19 Wage Orders by failing to authorize and permit minimum ten (10) minute rest periods to
20 Non-Exempt Employees for every four hours or major fraction thereof worked and
21 failing to compensate said employees one (1) hours of their regular rate of pay in lieu of
22 rest periods;
- 23 vi. Whether Defendants violated sections 201-203 of the Labor Code and applicable
24 IWC Wage Orders by failing to pay all earned wages and/or premium wages due and
25 owed at the time that any Non-Exempt Employees' employment with Defendants
26 terminated;
- 27 vii. Whether Defendants violated section 204 of the Labor Code and applicable IWC
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1 Wage Orders by failing to pay all earned wages and/or premium wages due and owed
2 during the Non-Exempt Employees' employment with Defendant;

3 viii. Whether Defendants violated section 2802 of the Labor Code by not indemnifying
4 its employees for expenses incurred in the performance of their job duties;

5 ix. Whether Defendants failed to accurately pay reporting time pay to Plaintiff and
6 Non-Exempt Employees; and

7 x. Whether Defendants violated section 226 of the Labor Code and applicable IWC
8 Wage Orders by failing to, among other violations, maintain accurate records of, among
9 others, Non-Exempt Employees' earned wages, work periods, meal periods and
10 deductions;

11 **C. Typicality**

12 28. The claims of the named Plaintiff are typical of the claims of the Class. Plaintiff
13 and all members of the Class sustained injuries and damages arising out of and caused by
14 Defendants' common course of conduct in violation of California laws, regulations, and statutes
15 as alleged herein.

16 **D. Adequacy of Representation**

17 29. Plaintiff will fairly and adequately represent and protect the interests of the
18 members of the Class. Counsel who represents Plaintiff is competent and experienced in
19 litigating large employment class actions.

20 **E. Superiority of Class Action**

21 30. A class action is superior to other available means for the fair and efficient
22 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
23 questions of law and fact common to the Class predominate over any questions affecting only
24 individual members of the Class. Each member of the Class has been damaged and is entitled
25 to recovery by reason of Defendants' unlawful policy and/or practice herein complained of.

26 31. Class action treatment will allow those similarly situated persons to litigate their
27 claims in the manner that is most efficient and economical for the parties and the judicial system.
28

1 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of
2 this action that would preclude its maintenance as a class action.

3 **VI.**

4 **CAUSES OF ACTION**

5 **First Cause of Action**

6 Failure to Pay Lawful Wages Owed
(Lab. Code §§ 510, 1194, 1197, IWC Wage Orders)
7 (Against All Defendants)

8 32. Plaintiff repeats and incorporates herein by reference every allegation set forth
9 above, as though fully set forth herein.

10 33. As discussed herein, during the liability period Defendants' policies, practices and
11 work shift requirements resulted in Plaintiff and Class Members not receiving compensation for
12 all earned wages including overtime and/or minimum wage in violation of California state wage
13 and hour laws.

14 34. Labor Code § 510, and relevant IWC wage orders applicable to Plaintiff and Class
15 Members, provides that employees working for more than eight (8) hours in a day or forty (40)
16 hours in a work week are entitled to overtime compensation at the rate of one and one-half times
17 the regular rate of pay for all hours worked in excess of eight (8) hours in a day or forty (40) hours
18 in a work week. An employee who works more than twelve (12) hours in a day is entitled to
19 overtime compensation at a rate of twice the regular rate of pay.

20 35. As alleged herein, during the liability period, Defendants' policies and/or practices
21 resulted in Non-Exempt Employees working "off the clock" and in excess of eight hours in a
22 work shift and/or over forty hours in a work week and/or over twelve hours in a work shift for
23 worked performed off the clock without receiving the proper compensation for all hours worked.

24 36. Labor Code §1197, and relevant IWC wage orders applicable to Plaintiff and
25 Class Members, provides that the minimum wage for employees fixed by the IWC is the minimum
26 wage to be paid to employees, and the payment of a lesser wage than the established minimum is
27 unlawful. Further, pursuant to the relevant IWC Wage Order and Labor Code, Plaintiff and Class
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Members are to be paid minimum wage for each hour worked, and cannot be averaged.

37. During the liability period, Defendants' policies and/or practices and work shift requirements resulted in Non-Exempt Employees working "off the clock" and not receiving compensation for all earned wages, including minimum wages, in violation of California state wage and hour laws.

38. In actions for recovery of unpaid wages, California Labor Code § 1194.2 provides for the recovery of liquidated damages equal to wages unlawfully unpaid and interest thereon.

39. As a result of Defendants unlawful acts, Plaintiff and Class Members were deprived of compensation for all earned 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, pursuant to Labor Code section 1194.

39. WHEREFORE, Plaintiff and Class Members request relief as described herein and below.

Second Cause of Action

Failure to Provide Lawful Meal Periods
Or Compensation in Lieu Thereof
(Lab. Code §§512, 226.7, IWC Wage Orders)
(Against All Defendants)

40. Plaintiff repeats and incorporates herein by reference every allegation set forth above, as though fully set forth herein.

41. Pursuant to Labor Code §512, no employer shall employ an employee for a work period of more than five (5) hours without providing a meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

1 42. As alleged herein, Defendants violated the provisions of Labor Code §512 and
2 applicable IWC Wage Order by failing to provide thirty (30) minute uninterrupted meal periods
3 by the end of the fifth hour for days which Plaintiff and Class Members, employed by Defendant
4 as drivers, worked in excess of five (5) hours and/or a second statutorily compliant meal period
5 for days Plaintiff and such Class Members worked in excess of ten (10) hours and failing to
6 provide proper compensation in lieu thereof.

7 43. Pursuant to Labor Code § 226.7, Plaintiff and Class Members, who were employed
8 by Defendant as drivers, are entitled to recover one (1) hour of the employees' regular rate of
9 compensation (premium wage) for each day in which a meal period or rest break violation
10 occurred.

11 44. As a result of Defendants unlawful acts, Plaintiff and Class Members were
12 deprived of premium wages and are entitled to recovery of such amounts, plus interest and
13 penalties thereon under Labor Code §226.7.

14 45. WHEREFORE, Plaintiff and Class Members request relief as described herein and
15 below.

16 **Third Cause of Action**
17 Failure to Provide Rest Periods
18 Or Compensation in Lieu Thereof
19 (Lab. Code §§226.7, IWC Wage Orders)
20 (Against All Defendants)

21 46. Plaintiff repeats and incorporates herein by reference every allegation set forth
22 above, as though fully set forth herein.

23 47. Pursuant to the IWC wage orders applicable to Plaintiff and Class Members,
24 "Every employer shall authorize and permit all employees to take rest periods, which insofar as
25 practicable shall be in the middle of each work period.... [The] authorized rest period time shall
26 be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
27 hours worked or major fraction thereof.... Authorized rest period time shall be counted as hours
28 worked, for which there shall be no deduction from wages." Labor Code §226.7(a) prohibits an
employer from requiring any employee to work during any rest period mandated by an applicable
order of the IWC.

1 48. As alleged herein, Defendants' failure to authorize and permit a minimum ten (10)
2 minute rest period for every four (4) hours or major fraction thereof worked per day by Plaintiff
3 and Class Members, and failing to provide compensation for such non-provided rest periods, they
4 violated Labor Code section 226.7 and IWC applicable Wage Orders.

5 49. As a result of Defendants unlawful acts, Plaintiff and Class Members were
6 deprived of premium wages, and are entitled to recovery of such amounts, plus interest and
7 penalties thereon under Labor Code §226.7.

8 50. WHEREFORE, Plaintiff and Class Members request relief as described herein and
9 below.

10 **Fourth Cause of Action**
11 Failure to Timely Pay Wages During Employment
12 (Lab. Code § 204)
 (Against All Defendants)

13 51. Plaintiff repeats and incorporates herein by reference each and every allegation
14 set forth above, as though fully set forth herein.

15 52. Labor Code section 204 requires that all wages are due and payable twice in each
16 calendar month. The wages required by Labor Code §§ 226.7, 510, 1194, 1197 and other
17 sections became due and payable to Plaintiff and Class Members in each month that he or she
18 was not paid all lawful wages owed or provided with lawful meal period or rest period to which
19 he or she was entitled. Defendants violated Lab. Code §204 by failing to pay said wages when
20 they were due and payable.

21 53. Labor Code section 210 (a) provides that "In addition to, and entirely independent
22 and apart from, any other penalty provided in this article, every person who fails to pay the wages
23 of each employee as provided in Sections 201.3, 204, 204(b), 204.1, 204.2, 204.11, 205, 205.5,
24 and 1197.5, shall be subject to a penalty as follow:

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

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

1 withheld.

2 54. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks
3 to represent have been deprived of wages in amounts to be determined at trial, and are entitled
4 to recovery of such amounts, plus interest and penalties.

5 55. WHEREFORE, Plaintiff and Class Members request relief as described herein
6 and below.

7 **Fifth Cause of Action**

8 Failure to Timely Pay Wages Due at Termination
9 Lab. Code §§ 201-203, IWC Wage Orders)
(Against All Defendants)

10 56. Plaintiff incorporates by reference and realleges every allegation contained above,
11 as though fully set forth herein.

12 57. Sections 201 and 202 of the California Labor Code require Defendants to pay its
13 employees all wages due within 72 hours of termination of employment. Section 203 of the Labor
14 Code provides that if an employer willfully fails to timely pay such wages the employer must, as
15 a penalty, continue to pay the subject employees' wages until the back wages are paid in full or
16 an action is commenced. The penalty cannot exceed 30 days of wages.

17 58. As alleged herein, Plaintiff and Class Members are entitled to compensation for
18 all forms of wages earned, including compensation for all hours worked and for non-compliant
19 and/or non-provided rest and meal periods, but to date have not received such compensation
20 therefore entitling them Labor Code section 203 penalties.

21 59. More than 30 days have passed since Plaintiff and Class Members have left
22 Defendants' employ, and on information and belief, have not received payment pursuant to Labor
23 Code §203. As a consequence of Defendants' willful conduct in not paying all earned wages,
24 Plaintiff and Class Members are entitled to 30 days' wages as a penalty under Labor Code section
25 203 for failure to pay legal wages.

26 60. WHEREFORE, Plaintiff and Class Members request relief as described herein and
27 below.

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Sixth Cause of Action
Knowing and Intentional Failure to Comply with Itemized Employee
Wage Statement Provisions
(Lab. Code § 226, IWC Wage Orders)
(Against All Defendants)

61. Plaintiff repeats and incorporates herein by reference every allegation set forth above, as though fully set forth herein.

62. Section 226(a) of the California Labor Code requires Defendants to furnish Plaintiff and Class Members an accurate itemized statement showing, amongst other information, gross wages, net wages and total hours worked. IWC Wage Orders require Defendants to furnish similar itemized statement indicating deductions, reimbursements, and to accurately report total hours worked by Plaintiff and Class Members.

63. Defendants violated Section 226 by failing to provide Plaintiff and Class Members with wage statements that accurately showed the net wages earned for regular and overtime hours worked. Defendants violated Section 226 by failing to provide Plaintiff and Class Members with wage statements that accurately show the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

64. Defendant's violations prevented Plaintiff and Class Members from the full compensation to which they were entitled under applicable provisions of the California Labor Code and applicable IWC Wage Orders.

65. Pursuant Labor Code §226, Plaintiff and Class Members are entitled up to a maximum of \$4,000.00 each for record-keeping violations.

66. WHEREFORE, Plaintiff and Class Members request relief as described herein and below.

Seventh Cause of Action
Failure to Indemnify Employees for Expenditures
(Lab. Code § 2802)
(Against All Defendants)

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

1 68. As set forth above, Section 2802 of the California Labor Code requires
2 Defendants to indemnify employees for all necessary expenditures incurred in direct consequence
3 of the discharge of his duties.

4 69. Defendants violated Section 2802 by failing to indemnify Plaintiff and Class
5 Members for expenditures incurred for using personal cell phone in the performance of job
6 duties.

7 70. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have
8 incurred expenditures in amounts to be determined at trial.

9 71. WHEREFORE, Plaintiff, and the Class she seeks to represent, request relief as
10 described herein and below.

11 **Eighth Cause of Action**
12 Violation of Unfair Competition Law
13 (Bus. & Prof. Code, §§ 17200-17208)
14 (Against All Defendants)

15 72. Business & Professions Code Section 17200 provides:

16 As used in this chapter, unfair competition shall mean and include any **unlawful**,
17 **unfair** or fraudulent business act or practice and unfair, deceptive, untrue or
18 misleading advertising and any act prohibited by Chapter 1 (commencing with Section
19 17500) of Part 3 of Division 7 of the Business and Professions Code.) (Emphasis
20 added.)

21 Defendants' violations of the Labor Code and Wage Order provisions set forth above
22 constitute unlawful and/or unfair business acts or practices.

23 73. The actions of Defendants, as alleged within this Complaint, constitute false,
24 fraudulent, unlawful, unfair, and deceptive business practices, within the meaning of Business
25 and Professions Code section 17200, *et seq.*

26 74. Plaintiff and Class Members have been personally aggrieved by Defendants'
27 unlawful and unfair business acts and practices alleged herein.

28 75. As a direct and proximate result of the unfair business practices of Defendants,
and each of them, Plaintiff and Class Members are entitled to restitution of all wages which have
been unlawfully withheld as a result of the business acts and practices described herein.

//

76. WHEREFORE, Plaintiff and Class Members request relief as described herein and below.

VII.

P R A Y E R

WHEREFORE, Plaintiff prays for judgment as follows:

1. That the Court determine that this action may be maintained as a class action;
2. For compensatory damages in an amount according to proof with interest thereon;
3. For economic and/or special damages in an amount according to proof with interest thereon;
4. For premium wages pursuant to Labor Code §§226.7 and 512;
5. For premium pay and penalties pursuant to Labor Code §§203, 204, 210, 226, 510, 2802;
6. For attorneys' fees, interests, and costs of suit under Labor Code §§226, 1194, 1197; and
7. For further justifiable relief the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

Dated: April 27, 2021

JAMES HAWKINS, APLC

James R. Hawkins, Esq.
James R. Hawkins, Esq.

James R. Hawkins, Esq.
Isandra Fernandez, Esq.
Attorneys for Plaintiff
SHEILA JOHN