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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF YOLO

Alejandra Hernandez, individually and on
behalf of all similarly situated individuals,

Plaintiff,

vs.

Yolo Federal Credit Union, a Federally
Chartered Credit Union; **Jenee Rawlings**, an
individual; and **Does 1-100**;

Defendants.

CASE NO. CV2021-1000

CLASS ACTION COMPLAINT FOR:

- 1) **Failure to Pay Minimum Wage for All Hours Worked (Lab. Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198);**
- 2) **Failure to Pay Overtime Wages (Lab. Code §§ 510 and 1198);**
- 3) **Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7 and 1198);**
- 4) **Failure to Provide Rest Periods (Cal. Lab. Code §§ 226.7 and 1198);**
- 5) **Failure to Provide and Maintain Accurate Records (Lab. Code §§ 226(a)/(f)/(h), 226.3, and 1174(d));**
- 6) **Failure to Timely Pay Wages During Employment (Lab. Code §§ 204, 210)**
- 7) **Failure to Timely Pay Wages After Employment (Lab. Code §§ 201-203); and**
- 8) **PAGA Penalties (Lab. Code §§ 2699, *et seq.*); and**

1 9) Violation of California Business & Pro-
2 fessions Code §§ 17200, et seq. (Unlaw-
3 ful Business Practices)

4 Jury Trial Requested
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1 Plaintiff hereby brings this action on behalf of herself and all other similarly situated current and
2 former employees, by and through her counsel of record, alleges as follows:

3 **PARTIES**

4 1. At all relevant times for this Complaint, Plaintiff Alejandra Hernandez (“Plaintiff”) has
5 been a resident of Woodland, Yolo County, California. From May 30, 2018 to August 1, 2020, Plaintiff was
6 an hourly, non-exempt employee of Yolo Federal Credit Union.

7 2. Plaintiff was subject to the policies and practices described in this complaint at all times dur-
8 ing her employment at Yolo Federal Credit Union.

9 3. Defendant Yolo Federal Credit Union (“Defendant” or “YFCU”) is a federal chartered
10 credit union that offers bank services to its members. On information and belief, YFCU employs at least 50
11 hourly, non-exempt, employees. YFCU is a federally chartered credit union corporation registered and or-
12 ganized under the laws of California. YFCU’s principal place of business in California is 266 West Main
13 Street, Woodland, CA 95695.

14 4. Defendant Jenee Rawlings (“Rawlings”) is an individual, on information and belief, residing
15 in the County of Yolo. Ms. Rawlings is the President and Chief Executive Officer of YFCU. Since Rawlings
16 is a managing agent, director, and/or officer of YFCU and because she caused or directed the acts described
17 herein, she is personally liable for the Labor Code violations set forth in this Complaint under Labor Code
18 section 558.1.

19 5. Plaintiff is not currently aware of the names and true identities of defendants Does 1-100.
20 Plaintiff reserves the right to amend this complaint to allege their true names and capacities when this in-
21 formation is available. Each Doe defendant is responsible for the damages alleged pursuant to each of the
22 causes of action asserted, either through its own conduct, or vicariously through the conduct of others. All
23 further references in this complaint to any of the named Defendants includes the fictitiously named defend-
24 ants.

25 6. At all times alleged herein, each Defendant was an agent, servant, joint employer, em-
26 ployee, partner, and/or joint venture of every other Defendant and was acting within the scope of the
27 Defendants’ relationship. Moreover, the conduct of every Defendant was ratified by each other Defend-
28 ant.

1 **VENUE AND JURISDICTION**

2 7. The court has jurisdiction over all causes of action in this complaint pursuant to Article VI,
3 § 10 of the California Constitution. No federal question is at issue; Plaintiff relies solely on California stat-
4 utes and law, including the Labor Code and the Business & Professions Code. Because Plaintiff was em-
5 ployed by Defendant and Defendant transacts business within Yolo County, Defendant is within the juris-
6 diction of the court for service of process. Moreover, Business & Professions Code § 17204 provides that
7 any person acting on their own behalf may bring an action in any court of competent jurisdiction.

8 8. Venue as to Defendant is proper in this Superior Court pursuant to California Code of Civil
9 Procedure § 395. The unlawful acts alleged have directly affected Plaintiff in Yolo County, where she was
10 employed by Defendant and earned the wages at issue in this action. Accordingly, this Court maintains
11 appropriate jurisdiction over this dispute.

12 **CLASS ACTION ALLEGATIONS**

13 9. Yolo Federal Credit Union (“YFCU”) is a chartered federal credit union located in Yolo
14 County offering banking and loan services at approximately six locations throughout the County.

15 10. As part of its operational and security practices, YFCU had a companywide policy of requir-
16 ing two employees to remain on premises and on duty at a branch at all times to prevent theft and ensure
17 speedy customer interactions. As a result, when only two employees were scheduled to work—or only two
18 reported to work—for a given shift (which occurred frequently), those employees were unable to take com-
19 pliant meal periods or rest periods because they were required to remain on duty, on-call, or on-premises.
20 This policy and practice also prohibited employees from opening branches by themselves, such that em-
21 ployees were required to wait on the premises until a second employee arrived for their shift before either
22 was allowed to scan their key fob and clock in to work. Thus, if an employee was late, or scheduled to show
23 up after the first employee, the first employee was subject to YFCU direction and control until the second
24 employee showed up, but not paid for that time as the employee could not enter the premises and clock in.

25 11. Additionally, YFCU understaffed its branches to reduce its overhead. This required employ-
26 ees to work through their meal periods and/or rest periods to meet operational needs that could not be
27 timely completed with the level of staffing at YFCU’s branches. As part of this understaffing, YFCU im-
28 plemented a uniform policy and practice whereby employees were required and pressured to work off-the-

1 clock to complete certain closing procedures required by YFCU, including, but not limited to resolving
2 “outages,” or a cash or check imbalance for a teller at the end of a shift.¹

3 12. These various policies and practices resulted in the Class being deprived of meal and rest
4 periods, being deprived of at least minimum wage for all hours worked, and being deprived of earned over-
5 time wages. Plaintiff therefore brings this action on behalf of herself and as a class action on behalf of the
6 following defined Class:

7 **Non-Exempt Employee Class:**

8 *All persons who worked at least one 3.5-hour shift as a non-exempt employee in the State of Cali-*
9 *fornia from the period four years prior to the filing of the Action and the date of trial (“Class”).*

10 13. Common methods of proof exist for determining these issues on a class-wide basis, includ-
11 ing but not limited to, Defendant’s employment records, payroll records, timesheets, policies, and disci-
12 plinary records.

13 14. **Numerosity.** Plaintiff is informed and believes that, during the class period, at least 50
14 Class Members have been employed as non-exempt employees by Defendants within the state of Califor-
15 nia. The number of Class Members is sufficiently numerous such that joinder of all members is impossible
16 or impracticable.

17 15. **Typicality.** Plaintiff’s claims are typical of all Class Members. Plaintiff, like all other Class
18 Members, was subjected to the policies and practices set forth above. Plaintiff’s job duties were typical of
19 Class Members in all relevant respects.

20 16. **Adequacy.** There are no material conflicts between the claims of the representative Plain-
21 tiff and Class Members that would make class certification inappropriate. Plaintiff understands her obliga-
22 tion to inform the Court of any relationship, conflicts, or differences with any Class Member. Plaintiff will
23 fairly and adequately protect the interests of the Class Members. Plaintiff is invested in redressing De-
24 fendant’s illegal practices on behalf of all Class Members. Moreover, Plaintiff has retained competent
25 counsel experienced in both class action and employment litigation. Plaintiff’s attorneys, the proposed
26

27 ¹ YFCU instructed employees that they would be disciplined for cash balance errors but that they
28 had to complete the balancing prior to their next shift without overtime, which was not feasible given their
other tasks. These competing requirements forced employees to work off the clock to avoid discipline.

class counsel, are versed in the rules governing class action discovery, certification, and settlement, and will vigorously assert the claims of all Class Members. Plaintiff has incurred, and will continue to incur, costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each Class Member.

17. **Existence and Predominance of Common Issues.** Common questions of law and fact exist as to all Class Members and predominate over issues affecting individual Class Members, including, but not limited to:

- a. Whether YFCU had a common policy and/or practice of requiring Plaintiff and Class Members to remain under Defendants' control and direction while they were off-the-clock;
- b. Whether YFCU was required to pay Plaintiff and Class Members at least minimum wages for all time spent under its control and direction;
- c. Whether YFCU paid Plaintiff and Class Members all owed minimum wages;
- d. Whether YFCU policies and/or practices required Plaintiff and Class Members to work over eight hours per day or over forty hours per week without being paid all legally-required overtime compensation;
- e. Whether YFCU paid Plaintiff and Class Members all owed overtime wages;
- f. Whether YFCU has a common policy and/or practice of authorizing compliant meal periods to all non-exempt employees;
- g. Whether YFCU has a common policy and/or practice of permitting compliant rest periods to all non-exempt employees;
- h. Whether YFCU unlawfully and/or willfully deprived Plaintiff and Class Members of compliant, off-duty meal periods;
- i. Whether YFCU unlawfully and/or willfully deprived Plaintiff and Class Members of compliant, off-duty rest periods;
- j. Whether YFCU unlawfully and/or willfully deprived Plaintiff and Class Members of premium wages for non-compliant or missed meal periods;
- k. Whether YFCU unlawfully and/or willfully deprived Plaintiff and Class Members of

premium wages for non-compliant or missed rest periods;

- l. Whether YFCU has a common policy and/or practice of failing to maintain accurate payroll records in the State of California;
- m. Whether YFCU unlawfully failed to maintain accurate payroll records;
- n. Whether YFCU has a policy and/or practice of failing to provide accurate wage statements reflecting hours worked and wages earned to Plaintiff and Class Members;
- o. Whether YFCU unlawfully and/or willfully failed to provide accurate wage statements reflecting hours worked and wages earned to Plaintiff and Class Members;
- p. Whether YFCU has a policy and/or practice of failing to pay Plaintiff and Class Members final wages owed upon termination;
- q. Whether YFCU unlawfully and/or willfully failed to promptly pay compensation due to Plaintiff and Class Members upon termination of employment in violation of Labor Code §§ 201, 202, and 203;
- r. Whether Plaintiff and Class Members sustained damages as a result of any of the aforementioned violations, and, if so, the proper measure of those damages, including interest, penalties, costs, attorneys' fees, and equitable relief;
- s. Whether YFCU violated the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, by violating the above provisions of law; and

18. **Superiority.** A class action is superior to other available means for the fair and efficient adjudication of this dispute. The damages suffered by individual Class Members, while substantial, are small compared to the burden and expense of individual prosecution of the complex and expensive litigation necessary to address Defendant's conduct. Even if Class Members themselves could afford individual litigation, the court system would be overwhelmed by individual lawsuits if all Class Members sought redress. In addition, individualized litigation increases the delay and expense to all parties and to the court system resulting from the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. By contrast, the class action device presents far fewer management difficulties; it allows the hearing of claims which might otherwise go unaddressed because of the relative expense of bringing individual lawsuits, and it provides the benefits of single

1 adjudication, economies of scale, and comprehensive supervision by a single court. Plaintiff contemplates
2 providing individual notice to members of the class defined above as identified through Defendant's rec-
3 ords.

4 **CAUSES OF ACTION**

5 **FIRST CAUSE OF ACTION**

6 ***California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198***

7 ***Unpaid Minimum Wages***

8 **(Plaintiff and Class Against Defendants)**

9 19. Plaintiff repeats and incorporates by reference all allegations contained in the preceding
10 paragraphs as if fully set forth herein.

11 20. California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that payment
12 of a wage less than the minimum wage as set by statute, commission, or by the general prevailing rate is
13 unlawful. Compensable work time is defined in Wage Order No. 4 as "the time during which an employee
14 is subject to the control of an employer, and includes all the time the employee is suffered or permitted to
15 work, whether or not required to do so." Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

16 21. Defendants failed to compensate Plaintiff and the Class for all hours worked because De-
17 fendants had a policy and/or practice whereby they required and/or pressured Class Members to work
18 off-the-clock while completing certain "closing procedures," such as correcting for teller outages, at the
19 end of shifts or prior to the start of their next scheduled shift. Defendants also required employees to wait
20 on the premises before they were allowed to clock in at the start of their shifts when locations were not
21 sufficiently staffed with at least two persons.

22 22. Defendants further failed to pay Plaintiff and Class Members any wages for time engaged
23 in this off-the-clock work.

24 23. Defendants' failure to pay Plaintiff and Class Members minimum wages for all hours
25 worked violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

26 24. Pursuant to California Labor Code section 1194.2, Plaintiff and Class Members are entitled
27 to recover the amount of underpaid wages, plus liquidated damages in an amount equal to the wages
28

unlawfully unpaid and interest thereon, along with other applicable penalties.²

SECOND CAUSE OF ACTION

California Labor Code §§ 510 and 1198

Unpaid Overtime

(Plaintiff and Class Against Defendants)

25. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

26. California Labor Code sections 510, 1198, and Industrial Wage Order No. 4 provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

27. Specifically, Industrial Wage Order No. 4 provides that Defendants are required to pay Plaintiff and Class Members working more than eight hours in a day or more than forty hours in a workweek, at the rate of time and one-half (1½) for all hours worked in excess of eight hours in a day or more than forty hours in a workweek.

28. Throughout the Class Period, Plaintiff and other Class Members were not paid overtime premiums for all of the hours they worked in excess of eight hours in a day, in excess of twelve hours in a day, in excess of eight hours on the seventh consecutive day of work in a workweek, and in excess of forty hours in a week, because all hours worked were not recorded as compensable time as a direct consequence of Defendants' policies and practices.

29. Defendants knew or should have known that its policies and practices forced Plaintiff and Class Members to work off the clock. Defendants also knew, or should have known, that they did not compensate Plaintiff and other Class Members for their off-the-clock work. Because Plaintiff and Class Members sometimes worked shifts of eight hours a day or forty hours a week on the clock, some of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and Class Members were not

² Defendants are liable for civil penalties in the amount of \$100 per initial violation and \$250 for each subsequent pay period, plus injunctive relief and reasonable attorney's fees and costs. Lab. Code § 1197.1.

1 paid overtime wages for all of the overtime hours they worked.

2 30. Pursuant to Labor Code section 1194, Plaintiff and Class Members are entitled to recover
3 their unpaid overtime compensation, as well as interest, costs, and attorneys' fees, and applicable civil
4 penalties.

5 **THIRD CAUSE OF ACTION**

6 ***California Labor Code §§ 226.7, 512(a), and 1198***

7 ***Meal Period Violations***

8 **(Plaintiff and Class Against Defendants)**

9 31. Plaintiff repeats and incorporates by reference all allegations contained in the preceding
10 paragraphs as if fully set forth herein.

11 32. Labor Code section 512(a) provides that an employer may not require, cause, or permit an
12 employee to work for a period of more than five hours per day without providing the employee with a meal
13 period of not less than thirty minutes, except that if the total work period per day of the employee is not
14 more than six hours, the meal period may be waived by mutual consent of both the employer and the
15 employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest.*
16 *Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-104 (2012). An employee is also entitled to a second meal
17 period for shifts in which the employee works in excess of ten hours.

18 33. Labor Code section 226.7, 512(a), and 1198 provide that no employer shall require an em-
19 ployee to work during any meal period mandated by an applicable order of the IWC, including Industrial
20 Wage Order No. 16. "An off-duty meal period, therefore, is one in which the employee is relieved of all
21 duty during the 30-minute meal period . . . an employer's obligation is to provide an off-duty meal period:
22 an uninterrupted 30-minute period during which the employee is relieved of all duty." *Brinker Rest. Corp.*
23 *v. Superior Court*, 53 Cal. 4th 1004, 1035 (2012). The employee must also be "free to leave the premises."
24 *Id.* at 1036.

25 34. Defendants failed to relieve Plaintiff and Class Members from all duty when on their meal
26 period by requiring Plaintiff and Class Members to attend "working lunches" that took the place of their
27 regularly scheduled lunch breaks. Additionally, Defendants had a policy and practice of restricting em-
28 ployees from leaving the premises when there were two or fewer employees staffed in the public facing

portions of Defendants' premises during a given break. This policy and/or practice also required that both employees remain on duty to greet customers and maintain security. Numerous Class Members, including Plaintiff, were required to skip their breaks or remain on duty due to the combination of Defendants' scheduling practices and policies.

35. Defendants did not pay Plaintiff and Class Members all meal period premium wages when meal periods were missed, interrupted by work, and taken late, in violation of Wage Order No. 4 and Labor Code sections 226.7 and 512(a).

36. Defendants' conduct violates Wage Order No. 4 and Labor Code sections 512(a), 226.7, and 1198. Plaintiff and Class Members are entitled to one additional hour of pay at their regular rate of compensation for each workday that a compliant meal period was not provided, and interest thereon, along with applicable civil penalties.

FOURTH CAUSE OF ACTION

Labor Code §§ 226.7 and 1198

Failure to Provide Rest Periods or Premium Pay in Lieu Thereof

(Plaintiff and Class Against Defendant)

37. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

38. At all times relevant to this complaint, Defendant knew it was obligated to provide compliant rest breaks to its non-exempt employees pursuant to Labor Code § 226.7.

39. Labor Code § 226.7 provides:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If any employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

40. Labor Code § 226.7, 512(a), and 1198 provide that no employer shall require an employee to work during any rest or meal period mandated by an applicable order of the IWC, including Wage Order No. 1. Employers must authorize and permit employees to be relieved of all duty during their rest and meal

1 periods: “A rest period, in short, must be a period of rest.”³ *Augustus v. ABM Sec. Servs., Inc.*, 385 P.3d
2 823, 834 (2016).

3 41. Employees must also be free to leave the employer’s premises during their rest period. *See*
4 *id.* at 270 (“In the context of a 10-minute break that employers must provide during the work period, a
5 broad and intrusive degree of control exists when an employer requires employees to remain on call and
6 respond during breaks. An employee on call cannot take a brief walk—five minutes out, five minutes
7 back—if at the farthest extent of the walk he or she is not in a position to respond. Employees similarly
8 cannot use their 10 minutes to take care of other personal matters that require truly uninterrupted time.”);
9 *see also* Department of Industrial Relations, “Rest Periods,” *available at*
10 https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm (“Q. Can my employer require that I stay on the work
11 premises during my rest period? A. No, your employer cannot impose any restraints not inherent in the
12 rest period requirement itself.”).

13 42. Defendants failed to implement a lawful rest period policy that relieved Plaintiff and Class
14 Members from all duties and/or allowed them to leave their worksite during rest periods because Defend-
15 ants had a policy and practice of restricting employees from leaving the premises when there were two or
16 fewer employees staffed in the public facing portions of Defendants’ premises during a given break. This
17 policy and/or practice also required that both employees remain on duty to greet customers and maintain
18 security. Plaintiff and the Class were also required by company policy and/or practice to interrupt their
19 rest periods to respond to customer queries, questions, or requests.

20 43. Numerous Class Members, including Plaintiff, were required to skip their breaks or remain
21 on duty due to the combination of Defendants’ scheduling practices and policies.

22 44. As a direct and proximate result of Defendant’s willful and unlawful conduct, Plaintiff and
23 Class Members have sustained damages, including lost compensation resulting from missed or non-com-
24 pliant rest periods, in an amount to be established at trial.

25
26 ³ Employees must also be free to leave the premises. *Augustus*, 2 Cal. 5th at 270; *see also* Depart-
27 ment of Industrial Relations, “Rest Periods/Lactation Accommodations,” *available at*
28 https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm (“Q. Can my employer require that I stay on the work
premises during my rest period? A. No, your employer cannot impose any restraints not inherent in the
rest period requirement itself.”)

45. Pursuant to Wage Order No. 4 and Labor Code § 226.7(b), Plaintiff and Class Members are entitled to recover from Defendants an additional hour of pay at their regular rates of pay for each shift that a compliant rest period was not provided. Defendant was aware that its actions were a violation of applicable law but consistently refused to pay premium pay as required by law.

FIFTH CAUSE OF ACTION

Labor Code §§ 226 and 226.3

Failure to Provide Complete and Accurate Wage Statements

(Plaintiff and Class Against Defendant)

46. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

47. Labor Code § 226 requires employers to furnish employees with an accurate, itemized statement in writing showing, among other things, (1) gross wages earned; (2) total hours worked by the employee (for hourly-paid, non-exempt employees); (3) all deductions; (4) net wages earned; (5) the inclusive dates of the period for which the employee is paid; (6) the name of the employee and the last four digits of his or her social security number; (7) the name and address of the legal entity that is the employer; and (8) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

48. At all times relevant to this complaint, Defendant's failure to pay premium wages for missed rest periods rendered Class Members' wage statements inaccurate by failing to accurately reflect gross and net wages earned.

49. Injury. Defendant knowingly and intentionally failed to comply with Labor Code § 226, causing injury and damages to Plaintiff and Class Members. Plaintiff and all those similarly situated were injured by these failures because, among other things, they were confused about whether they were paid properly and/or they were misinformed about how much compensation was owed.

50. Relief. Labor Code § 226(e)(1) provides that an employee suffering injury as a result of not being provided with an accurate itemized wage statement is entitled to recover the greater of all actual damages suffered or fifty (\$50) dollars for the initial violation and one-hundred (\$100) dollars for each subsequent violation, up to \$4,000. Pursuant to Labor Code §§ 226(e) and (g), Plaintiff and all others

1 similarly situated are entitled to injunctive relief to ensure Defendant's compliance with Labor Code
2 § 226, as well as attorney's fees and costs of suit.

3 **SIXTH CAUSE OF ACTION**

4 ***Labor Code §§ 204, 210***

5 ***Failure to Pay Timely Wages During Employment***

6 **(Plaintiff and Class Against Defendant)**

7 51. Plaintiff incorporates by reference all allegations contained in the preceding paragraphs as
8 if fully set forth herein.

9 52. Labor Code § 204 provides that all wages, other than those mentioned in Section 201 and
10 202, are due and payable twice during each calendar month, on days designated in advance by the employer
11 as regular paydays.

12 53. During the relevant period, Defendant willfully failed to pay Plaintiff and the Class the
13 earned and unpaid minimum and overtime wages set forth above upon Defendants' regularly schedule
14 paydays.

15 54. Defendants' failure to timely pay Plaintiff and the Class their earned overtime wages vio-
16 lates Labor Code § 204. Plaintiff and the Class are therefore entitled to recover from Defendants statutory
17 penalties in the amount of \$100 per initial violation per employee and \$200 per subsequent violation per
18 employee under Labor Code § 210.

19 **SEVENTH CAUSE OF ACTION**

20 ***Labor Code §§ 201, 202, 203, and 204***

21 ***Failure to Pay Wages When Due***

22 **(Plaintiff and Class Against Defendant)**

23 55. Plaintiff incorporates by reference all allegations contained in the preceding paragraphs as
24 if fully set forth herein.

25 56. Labor Code § 201 provides, in relevant part, that:

26 If an employee not having a written contract for a definite period quits his or her
27
28

1 employment, his or her wages⁴ shall become due and payable not later than 72
2 hours thereafter, unless the employee has given 72 hours previous notice of his or
3 her intention to quit, in which case the employee is entitled to his or her wages at
4 the time of quitting. Notwithstanding any other provision of law, an employee who
5 quits without providing a 72-hour notice shall be entitled to receive payment by
6 mail if he or she so requests and designates a mailing address. The date of the
7 mailing shall constitute the date of payment for purposes of the requirement to
8 provide payment within 72 hours of quitting.

9 57. Defendant does not include definite periods of service in their contracts of employment for
10 Class Members employed at their California facility. Plaintiff's contract of employment did not include a
11 definite term.

12 58. Labor Code § 203 provides:

13 If an employer willfully fails to pay, without abatement or reduction, in accordance
14 with § 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or
15 who quits, the wages of the employee shall continue as a penalty from the due date
16 thereof at the same rate until paid or until an action therefor is commenced; but
17 the wages shall not continue for more than 30 days.

18 59. As set forth above, Defendant failed to timely pay all earned and unpaid minimum and
19 overtime wages.

20 60. Plaintiff and Class Members have left Defendant's employ during the Class Period. As
21 discussed above, Defendant knowingly failed to pay Plaintiff and Class Members all earned wages upon
22 termination. Defendant willfully and intentionally refused to pay the earned overtime pay alleged herein
23 to Plaintiff and Class Members in violation of Labor Code §§ 201 and 202.

24 61. Defendant's failure to pay Plaintiff and those Class Members who are no longer employed
25 by Defendant their wages earned and unpaid at the time of discharge or within seventy-two (72) hours of
26 their leaving Defendant's employment violates Labor Code §§ 201; 202. Plaintiff and formerly employed
27 Class Members are therefore entitled to recover from Defendant the statutory penalty wages for each day
28 they were not paid, at their regular rate of pay, up to a 30-day maximum penalty.

⁴ Labor Code § 200 defines "wages" as "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation." "Labor" is defined as "labor, work, or service . . . if the labor to be paid for is performed personally by the person demanding payment."

1 **EIGHTH CAUSE OF ACTION**

2 ***Labor Code §§ 558, 2698, et seq.***

3 ***Private Attorneys General Act (“PAGA”) Penalties***

4 **(Plaintiff and Class Against Defendant)**

5 62. Plaintiff incorporates by reference all the allegations of this Complaint as though fully set
6 forth herein.

7 63. Entitlement to Penalties. Under the California Private Attorneys General Act (“PAGA”),
8 Labor Code § 2698, *et seq.*, an aggrieved employee may bring a representative action as a private attorney
9 general, on behalf of herself and other current or former employees as well as the general public, to recover
10 penalties for an employer’s violations of the Labor Code and IWC Wage Orders. These penalties are in
11 addition to any other relief available under the Labor Code and are allocated seventy-five percent to the
12 Labor and Workforce Development Agency and twenty-five percent to the affected employees.

13 64. These penalties may be “stacked” separately for each of Defendants’ violations of the La-
14 bor Code. *See, e.g., Hernandez v. Towne Park, Ltd.*, No. CV 12-02972, 2012 WL 2373372, at *17 n.77 (C.D.
15 Cal. June 22, 2012) (“[F]ederal courts applying California law have concluded that stacking is appropri-
16 ate.”); *see also O’Connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, 2016 WL 3548370, at *7 (N.D. Cal.
17 June 30, 2016) (“Finally, Plaintiff ignore the potential for stacking of PAGA penalties related to wage-and-
18 hour claims other than the gratuities and expense reimbursement claim, i.e., meal and rest breaks, mini-
19 mum wage and overtime, and workers’ compensation.”).

20 65. Plaintiff is an “aggrieved employee” under PAGA, as she was employed by Defendant dur-
21 ing the applicable statutory period and suffered the Labor Code violations alleged herein. Accordingly, she
22 seeks to recover, on behalf of herself and all other current and former aggrieved employees of Defendant,
23 the civil penalties provided by PAGA, including civil penalties for Defendant’s violations of Labor Code
24 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1182.12, 1401, 1174, 1194, 1198, and Industrial Wage
25 Order No. 1, plus reasonable attorneys’ fees and costs.

26 66. Representative Action. Plaintiff seeks to recover the PAGA civil penalties through a rep-
27 resentative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46
28 Cal. 4th 969 (2009). Therefore, class certification of the PAGA claims is not required, but Plaintiff may

1 choose to seek certification of the PAGA claims.

2 67. Labor Code § 2699(a), which is part of PAGA, provides:

3 Notwithstanding any other provision of law, any provision of this code that pro-
4 vides for a civil penalty to be assessed and collected by the Labor and Workforce
5 Development Agency or any of its departments, divisions, commissions, boards,
6 agencies, or employees, for a violation of this code, may, as an alternative, be re-
7 covered through a civil action brought by an aggrieved employee on behalf of
8 themselves or themselves and other current or former employees pursuant to the
9 procedures specified in § 2699(a).

10 68. Penalties. Labor Code § 2699(f), which is part of PAGA, provides:

11 For all provisions of this code except those for which a civil penalty is specifically
12 provided, there is established a civil penalty for a violation of these provisions, as
13 follows: . . . (2) If, at the time of the alleged violation, the person employs one or
14 more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
15 employee per pay period for the initial violation and two hundred dollars (\$200)
16 for each aggrieved employee per pay period for each subsequent violation.

17 69. Based on the foregoing, Plaintiff and aggrieved employees are entitled to civil penalties, to
18 be paid by Defendant and allocated as required by PAGA in the following formula: (a) in an amount set
19 forth as a civil penalty in the underlying statute; or (b) \$100 per initial violation per employee per pay
20 period, and \$200 for each subsequent violation per employee per pay period.

21 70. Labor Code sections 1194.2 and 1197.1 authorizes employees to recover liquidated damages
22 in an amount equal to the wages unlawfully withheld and interest thereon. Labor Code 1197.1 also author-
23 ized civil penalties as follows: \$100 for any initial violation intentional committed per employee per pay
24 period in which a violation occurs, and \$250 per subsequent violation per employee per pay period in
25 which a violation occurs, regardless of whether the first violation was intentional.

26 71. Plaintiff is also entitled to recover for herself, other aggrieved employees, and the State of
27 California, civil penalties pursuant to Labor Code § 210 (entirely independent and apart from, any other
28 penalty provided in this article) in the amount of \$100 per employee per initial violation of the timely
payment requirements of Labor Code § 240 (semimonthly payments) and \$200 per employee for each
subsequent violation, plus 25% of the amount unlawfully withheld.

72. Labor Code § 558 provides:

(a) Any employer or other person acting on behalf of an employer who violates, or

causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid.

73. Plaintiff, the aggrieved employees, and the State of California are entitled to recover the maximum civil penalties allowed by law for the violations of the Labor Code and IWC Wage Order No. 4 as alleged in this Complaint.

74. Procedural Requirements Met. On April 23, 2021, Plaintiff electronically filed a notice of claims with the LWDA and sent a copy to Defendant by certified mail. Plaintiff has not received notice from the LWDA that it was exercising jurisdiction over the allegations set forth in the notice. As of 65 days from date of electronic filing, *i.e.*, June 28, 2021, all requirements for administrative exhaustion for bringing these PAGA claims will have been met. Labor Code § 2699.3(a)(2).

NINTH CAUSE OF ACTION

Bus. & Prof. Code §§ 17200, et seq.

Unfair Competition

(Plaintiff and Class Against Defendant)

75. Plaintiff repeats and incorporate by reference every allegation in this complaint as if fully set forth herein.

76. Defendant is a “person” as defined by California Business & Professions Code § 17201, as it is a natural person, corporations, firms, partnerships, joint stock companies, and/or associations.

77. Unlawful Business Practices. Defendant’s knowing violations of the Labor Code and IWC Wage Order No. 4 constitutes an unlawful business practice as set forth in Business & Professions Code § 17200, *et seq.*

78. Defendant’s failure to abide by the laws discussed herein provide Defendant an unfair advantage over their competitors at the expense of their workers. Instead, Defendant cuts corners in the name of higher profits and at the expense of employee well-being. Defendant’s action thereby constitutes

1 an unfair, fraudulent, and/or unlawful business practice under Business & Professions Code § 17200, *et*
2 *seq.*

3 79. Relief. Plaintiff brings this cause of action seeking equitable and injunctive relief to stop
4 Defendant's willful and ongoing misconduct, and to seek restitution of the amounts Defendant acquired
5 through the unfair, unlawful, and fraudulent business practices described herein. In addition, Plaintiff
6 seeks an award of costs and attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

7 **DEMAND FOR JURY TRIAL**

8 Pursuant to California Code of Civil Procedure § 631, Plaintiff demands a trial by jury on all issues
9 so triable.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff respectfully prays judgment as follows:

- 12 A. For an Order:
- 13 a. Certifying the Class;
- 14 b. Appointing Plaintiff as representative of the Class;
- 15 c. Appointing Plaintiff's counsel as Class Counsel;
- 16 B. For actual and liquidated damages according to proof at trial;
- 17 C. For statutory and civil penalties and special damages, according to proof at trial;
- 18 D. For pre- and post-judgment interest on monetary damages;
- 19 E. For preliminary and permanent injunctive relief;
- 20 F. For reasonable attorney's fees and costs and expert fees and costs as allowed by law; and
- 21 G. For such other relief as this Court deems just and proper.

22 Dated: June 2, 2021

Respectfully submitted,

24 **KING & SIEGEL LLP**

25 By: Elliot J. Siegel

26 Elliot J. Siegel, Esq.
27 Attorneys for Plaintiffs
28

LAW OFFICE OF XAVIER VILLEGAS

By: _____

Xavier Villegas, Esq.
Attorney for Plaintiffs