

EXHIBIT A

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PRECIOUS MARIE STEWART, individually,
and on behalf of all others similarly situated,

Plaintiff,

vs.

YOH SERVICES, LLC, a limited liability
company; CURATIVE, LLC, a limited liability
company; and DOES 1 through 10, inclusive,

Defendants

Case No.: 21-cv-03767-VC

**FIRST AMENDED CLASS ACTION AND
REPRESENTATIVE ACTION
COMPLAINT:**

1. Failure to Pay Minimum and Regular Rate Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197];
2. Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198];
3. Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512];
4. Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7];
5. Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203];
6. Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226];
7. Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.]; and
8. Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.]

DEMAND FOR JURY TRIAL

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1 Plaintiff Precious Marie Stewart (“Plaintiff”), based upon facts that either have
2 evidentiary support or are likely to have evidentiary support after a reasonable opportunity for
3 further investigation and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendants Yoh Services, LLC and Does 1 through
6 10 (collectively referred to as “Defendants”) for California Labor Code violations and unfair
7 business practices stemming from Defendants’ failure to pay minimum and regular rate wages,
8 failure to pay overtime wages, failure to provide meal periods, failure to authorize and permit
9 rest periods, failure to maintain accurate records of hours worked and meal periods, failure to
10 timely pay all wages to terminated employees, and failure to furnish accurate wage statements.

11 2. Plaintiff brings the First through Seventh Causes of Action individually and as a class
12 action on behalf of herself and certain current and former employees of Defendants (hereinafter
13 collectively referred to as the “Class” or “Class Members” and defined more fully below). The
14 Class consists of Plaintiff and all other persons who have been employed by Defendant Yoh
15 Services, LLC and placed at Defendant Curative, LLC in California and classified as a non-
16 exempt employee during the statute of limitations period applicable to the claims pleaded here.

17 3. Plaintiff brings the Eighth Cause of Action as a representative action under the
18 California Private Attorney General Act (“PAGA”) to recover civil penalties that are owed to
19 Plaintiff, the State of California, and past and present non-exempt, hourly-paid employees of
20 Defendant Yoh Services, LLC who were placed at Defendant Curative, LLC who worked in
21 California during the applicable statute of limitations period (hereinafter referred to as the
22 “Aggrieved Employees”).

23 4. Defendants own/owned and operate/operated an industry, business, and establishment
24 within the State of California, including San Francisco County. As such, and based upon all the
25 facts and circumstances incident to Defendants’ business in California, Defendants are subject to
26 the California Labor Code, Wage Orders issued by the Industrial Welfare Commission (“IWC”),
27 and the California Business & Professions Code.

1 5. Despite these requirements, throughout the statutory period Defendants maintained a
2 systematic, company-wide policy and practice of:

- 3 (a) Failing to pay employees for all hours worked, including all minimum
4 wages, overtime wages, in compliance with the California Labor Code and
5 IWC Wage Orders;
- 6 (b) Failing to maintain accurate records of the hours employees worked;
- 7 (c) Failing to provide employees with timely and duty-free meal periods in
8 compliance with the California Labor Code and IWC Wage Orders, failing
9 to maintain accurate records of all meal periods taken or missed, and
10 failing to pay an additional hour's pay for each workday a meal period
11 violation occurred;
- 12 (d) Failing to authorize and permit employees to take timely and duty-free rest
13 periods in compliance with the California Labor Code and IWC Wage
14 Orders, and failing to pay an additional hour's pay for each workday a rest
15 period violation occurred;
- 16 (e) Willfully failing to pay employees all minimum wages, overtime wages,
17 meal period premium wages, and rest period premium wages due within
18 the time period specified by California law when employment terminates;
19 and
- 20 (f) Failing to provide employees with accurate, itemized wage statements
21 containing all the information required by the California Labor Code and
22 IWC Wage Orders.

23 6. On information and belief, Defendants, and each of them were on actual and
24 constructive notice of the improprieties alleged herein and intentionally refused to rectify their
25 unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were
26 willful and deliberate.

27 7. At all relevant times, Defendants were and are legally responsible for all of the
28 unlawful conduct, policies, practices, acts and omissions as described in each and all of the

foregoing paragraphs as the employer of Plaintiff, the Class, and the Aggrieved Employees. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of “respondeat superior”.

THE PARTIES

A. Plaintiff

8. Plaintiff is a California resident who worked for Defendants in San Francisco County, California as a general staff member from approximately December 2020 to January 2021.

9. Plaintiff reserves the right to seek leave to amend this complaint to add new plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

10. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant Yoh Services, LLC is:

- (a) A Delaware limited liability company with its principal places of business in San Francisco, California.
- (b) A business entity conducting business in numerous counties throughout the State of California, including in San Francisco; and
- (c) The former employer of Plaintiff, and the current and/or former employer of the putative Class. Yoh Services, LLC suffered and permitted Plaintiff, the Class, and the Aggrieved Employees to work, and/or controlled their wages, hours, or working conditions.

11. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant Curative, LLC is:

- (a) A California limited liability company with its principal places of business in San Francisco, California.
- (b) A business entity conducting business in numerous counties throughout the State of California, including in San Francisco; and
- (c) The former employer of Plaintiff, and the current and/or former employer

1 of the putative Class. Curative, LLC suffered and permitted Plaintiff, the
2 Class, and the Aggrieved Employees to work, and/or controlled their
3 wages, hours, or working conditions.

4 12. Plaintiff does not know the true names or capacities of the persons or entities sued
5 herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names.
6 Each of the Doe Defendants was in some manner legally responsible for the damages suffered by
7 Plaintiff, the Class, and the Aggrieved Employees as alleged herein. Plaintiff will amend this
8 complaint to set forth the true names and capacities of these Defendants when they have been
9 ascertained, together with appropriate charging allegations, as may be necessary.

10 13. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and
11 each of them, were residents of, doing business in, availed themselves of the jurisdiction of,
12 and/or injured a significant number of the Plaintiff, the Class, and the Aggrieved Employees in
13 the State of California.

14 14. Plaintiff is informed and believes and thereon alleges that at all relevant times
15 each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
16 the other employees described in the class definitions below, and exercised control over their
17 wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges
18 that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer,
19 director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest
20 and/or predecessor in interest of some or all of the other Defendants, and was engaged with some
21 or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to
22 some or all of the other Defendants so as to be liable for their conduct with respect to the matters
23 alleged below. Plaintiff is informed and believes and thereon alleges that each Defendant acted
24 pursuant to and within the scope of the relationships alleged above, that each Defendant knew or
25 should have known about, and authorized, ratified, adopted, approved, controlled, aided and
26 abetted the conduct of all other Defendants.

27 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**
28

1 15. Plaintiff Precious Marie Stewart worked for Defendants in San Francisco County,
2 California as a general staff member from approximately December 2020 to January 2021. At all
3 times Defendants classified Plaintiff as non-exempt from California's overtime requirements.
4 During the statutory time period, Plaintiff was typically scheduled to work 5 days in a workweek,
5 and typically in excess of 8 hours in a single workday.

6 16. Throughout the statutory period, Defendants failed to pay Plaintiff for all hours
7 worked (including minimum wages and overtime compensation), failed to provide Plaintiff with
8 uninterrupted meal periods, failed to authorize and permit Plaintiff to take uninterrupted rest
9 periods, failed to maintain accurate records of the hours Plaintiff worked, failed to timely pay all
10 final wages to Plaintiff when Defendants terminated Plaintiff's employment, and failed to furnish
11 accurate wage statements to Plaintiff. As discussed below, Plaintiff's experience working for
12 Defendants was typical and illustrative.

13 17. Throughout the statutory period, Defendants maintained a policy and practice of
14 requiring Plaintiff, the Class, and the Aggrieved Employees to perform work "off-the-clock".
15 Instead of inputting the actual work times into their timesheets, Defendants required Plaintiff, the
16 Class, and the Aggrieved Employees to input into the timesheets only their scheduled work
17 times. Plaintiff, the Class, and the Aggrieved Employees were not compensated for any work
18 performed before their scheduled shift time or after the end of their scheduled shift. For
19 example, Plaintiff, the Class, and the Aggrieved Employees were given a scheduled shift.
20 However, Plaintiff, the Class, and the Aggrieved Employees were required to arrive early in
21 order to open their kiosk and to set up tables and signs, as well as pulling up test kits and loading
22 up computers. Plaintiff, the Class, and the Aggrieved Employees performed this work prior to
23 the scheduled start of their shift. Further, Plaintiff, the Class, and the Aggrieved Employees were
24 required to stay later than the end of their scheduled shift in order to complete tasks such as
25 waiting for the carriers to pick up the test kits. Despite knowing that Plaintiff, the Class, and the
26 Aggrieved Employees worked off the clock, Plaintiff, the Class, and the Aggrieved Employees
27 were required to only input their scheduled shift times into their timesheets. Also throughout the
28 statutory period, Plaintiff, the Class, and the Aggrieved Employees earned non-discretionary

1 bonuses, in the form of \$50 gift cards. However, these bonus gift cards were not included in the
2 wage statements, and Defendants failed to include these non-discretionary bonuses earned by
3 Plaintiff, the Class, and the Aggrieved Employees when calculating the regular rate of pay for
4 purposes of paying overtime compensation at the correct rate of pay. In maintaining a practice of
5 not paying all wages owed, Defendants failed to maintain accurate records of the hours Plaintiff,
6 the Class, and the Aggrieved Employees worked.

7 18. Throughout the statutory period, Defendants have wrongfully failed to provide
8 Plaintiff, the Class, and the Aggrieved Employees with legally compliant meal periods.
9 Defendants regularly, but not always, required Plaintiff, the Class, and the Aggrieved Employees
10 to work in excess of five consecutive hours a day without providing a 30-minute, continuous and
11 uninterrupted, duty-free meal period for every five hours of work, or without compensating
12 Plaintiff, the Class, and the Aggrieved Employees for meal periods that were not provided by the
13 end of the fifth hour of work or tenth hour of work. Defendants did not adequately inform
14 Plaintiff, the Class, and the Aggrieved Employees of their right to take a meal period by the end
15 of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of
16 work. Defendants also did not have adequate policies or practices to document and verify
17 whether Plaintiff, the Class, and the Aggrieved Employees were taking their required meal
18 periods. Further, Plaintiff, the Class, and the Aggrieved Employees were prohibited from leaving
19 the premises during their meal periods. Accordingly, Defendants' policy and practice was to not
20 provide meal periods to Plaintiff, the Class, and the Aggrieved Employees in compliance with
21 California law.

22 19. Throughout the statutory period, Defendants have wrongfully failed to authorize
23 and permit Plaintiff, the Class, and the Aggrieved Employees to take timely and duty-free rest
24 periods. Defendants regularly, but not always, required Plaintiff, the Class, and the Aggrieved
25 Employees to work in excess of four consecutive hours a day without Defendants authorizing and
26 permitting them to take a 10-minute, continuous and uninterrupted, rest period for every four
27 hours of work (or major fraction of four hours), or without compensating Plaintiff, the Class, and
28 the Aggrieved Employees for rest periods that were not authorized or permitted. Also, Plaintiff,

1 the Class, and the Aggrieved Employees were prohibited from leaving the premises during their
2 rest periods. Further, Defendants maintained a practice and policy of requiring that Plaintiff, the
3 Class, and the Aggrieved Employees remain on the premises for rest breaks. Accordingly,
4 Defendants' policy and practice was to not authorize and permit Plaintiff, the Class, and the
5 Aggrieved Employees to take rest periods in compliance with California law.

6 20. Throughout the statutory period, Defendants willfully failed and refused to timely
7 pay Plaintiff, the Class, and the Aggrieved Employees at the conclusion of their employment all
8 wages, including overtime wages, meal period premium wages, and rest period premium wages.
9 This included the failure to pay the final paycheck within the statutory time period upon
10 termination.

11 21. Throughout the statutory period, Defendants failed to furnish Plaintiff, the Class,
12 and the Aggrieved Employees with accurate, itemized wage statements showing all applicable
13 hourly rates, and all gross and net wages earned (including correct hours worked, correct wages
14 earned for hours worked, correct overtime hours worked, correct wages for meal periods that
15 were not provided in accordance with California law, and correct wages for rest periods that were
16 not authorized and permitted to take in accordance with California law). As a result of these
17 violations of California Labor Code § 226(a), Plaintiff, the Class, and the Aggrieved Employees
18 suffered injury because, among other things:

- 19 (a) the violations led them to believe that they were not entitled to be paid
20 minimum wages, overtime wages, meal period premium wages, and rest
21 period premium wages to which they were entitled, even though they were
22 entitled;
- 23 (b) the violations led them to believe that they had been paid the minimum,
24 overtime, meal period premium, and rest period premium wages to which
25 they were entitled, even though they had not been;
- 26 (c) the violations led them to believe they were not entitled to be paid
27 minimum, overtime, meal period premium, and rest period premium wages
28 at the correct California rate even though they were;

- (d) the violations led them to believe they had been paid minimum, overtime, meal period premium, and rest period premium wages at the correct California rate even though they had not been;
- (e) the violations hindered them from determining the amounts of minimum, overtime, meal period premium, and rest period premium owed to them;
- (f) in connection with their employment before and during this action, and in connection with prosecuting this action, the violations caused them to have to perform mathematical computations to determine the amounts of wages owed to them, computations they would not have to make if the wage statements contained the required accurate information;
- (g) by understating the wages truly due them, the violations caused them to lose entitlement and/or accrual of the full amount of Social Security, disability, unemployment, and other governmental benefits;
- (h) the wage statements inaccurately understated the wages, hours, and wage rates to which Plaintiff, the Class, and the Aggrieved Employees were entitled, and Plaintiff, the Class, and the Aggrieved Employees were paid less than the wages and wage rates to which they were entitled.

Thus, Plaintiff, the Class, and the Aggrieved Employees are owed the amounts provided for in California Labor Code § 226(e).

CLASS ACTION ALLEGATIONS

22. Plaintiff brings certain claims individually, as well as on behalf of each and all other persons similarly situated, and thus, seeks class certification under California Code of Civil Procedure § 382.

23. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

24. The proposed Class consists of and is defined as:

All persons who worked for Defendant Yoh Services, LLC and was placed at Defendant Curative, LLC in California as an hourly-paid, non-exempt employee

1 at any time during the period beginning four years before the filing of the initial
2 complaint in this action and ending when notice to the Class is sent.

3 25. At all material times, Plaintiff was a member of the Class.

4 26. Plaintiff undertakes this concerted activity to improve the wages and working
5 conditions of all Class Members.

6 27. There is a well-defined community of interest in the litigation and the Class is readily
7 ascertainable:

8 (a) Numerosity: The members of the Class (and each subclass, if any) are so
9 numerous that joinder of all members would be unfeasible and impractical.
10 The membership of the entire Class is unknown to Plaintiff at this time,
11 however, the Class is estimated to be greater than 100 individuals and the
12 identity of such membership is readily ascertainable by inspection of
13 Defendants' records.

14 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect
15 the interests of each Class Member with whom there is a shared, well-
16 defined community of interest, and Plaintiff's claims (or defenses, if any)
17 are typical of all Class Members' claims as demonstrated herein.

18 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect
19 the interests of each Class Member with whom there is a shared, well-
20 defined community of interest and typicality of claims, as demonstrated
21 herein. Plaintiff has no conflicts with or interests antagonistic to any Class
22 Member. Plaintiff's attorneys, the proposed class counsel, are versed in
23 the rules governing class action discovery, certification, and settlement.
24 Plaintiff has incurred, and throughout the duration of this action, will
25 continue to incur costs and attorneys' fees that have been, are, and will be
26 necessarily expended for the prosecution of this action for the substantial
27 benefit of each class member.

28 (d) Superiority: A Class Action is superior to other available methods for the

1 fair and efficient adjudication of the controversy, including consideration
2 of:

- 3 1) The interests of the members of the Class in individually
- 4 controlling the prosecution or defense of separate actions;
- 5 2) The extent and nature of any litigation concerning the controversy
- 6 already commenced by or against members of the Class;
- 7 3) The desirability or undesirability of concentrating the litigation of
- 8 the claims in the particular forum; and
- 9 4) The difficulties likely to be encountered in the management of a
- 10 class action.

11 (e) Public Policy Considerations: The public policy of the State of California
12 is to resolve the California Labor Code claims of many employees through
13 a class action. Indeed, current employees are often afraid to assert their
14 rights out of fear of direct or indirect retaliation. Former employees are
15 also fearful of bringing actions because they believe their former
16 employers might damage their future endeavors through negative
17 references and/or other means. Class actions provide the class members
18 who are not named in the complaint with a type of anonymity that allows
19 for the vindication of their rights at the same time as their privacy is
20 protected.

21 28. There are common questions of law and fact as to the Class (and each subclass, if any)
22 that predominate over questions affecting only individual members, including without limitation,
23 whether, as alleged herein, Defendants have:

- 24 (a) Failed to pay Class Members for all hours worked, including minimum
- 25 wages, and overtime wages;
- 26 (b) Failed to provide meal periods and pay meal period premium wages to
- 27 Class Members;
- 28 (c) Failed to authorize and permit rest periods and pay rest period premium

wages to Class Members;

(d) Failed to promptly pay all wages due to Class Members upon their discharge or resignation;

(e) Failed to provide Class Members with accurate wages statements;

(f) Failed to maintain accurate records of all hours Class Members worked, and all meal periods Class Members took or missed; and

(g) Violated California Business & Professions Code §§ 17200 *et. seq.* as a result of their illegal conduct as described above.

29. This Court should permit this action to be maintained as a class action pursuant to California Code of Civil Procedure § 382 because:

(a) The questions of law and fact common to the Class predominate over any question affecting only individual members;

(b) A class action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the Class;

(c) The members of the Class are so numerous that it is impractical to bring all members of the class before the Court;

(d) Plaintiff, and the other members of the Class, will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;

(e) There is a community of interest in obtaining appropriate legal and equitable relief for the statutory violations, and in obtaining adequate compensation for the damages and injuries for which Defendants are responsible in an amount sufficient to adequately compensate the members of the Class for the injuries sustained;

(f) Without class certification, the prosecution of separate actions by individual members of the class would create a risk of:

1) Inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards

of conduct for Defendants; and/or

- 2) Adjudications with respect to the individual members which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests, including but not limited to the potential for exhausting the funds available from those parties who are, or may be, responsible Defendants; and,

- (g) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the class as a whole.

30. Plaintiff contemplates the eventual issuance of notice to the proposed members of the Class that would set forth the subject and nature of the instant action. The Defendants' own business records may be utilized for assistance in the preparation and issuance of the contemplated notices. To the extent that any further notices may be required, Plaintiff would contemplate the use of additional techniques and forms commonly used in class actions, such as published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by other methods suitable to the Class and deemed necessary and/or appropriate by the Court.

FIRST CAUSE OF ACTION

(Against all Defendants for Failure to Pay Minimum Wages for All Hours Worked)

31. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 21 in this Complaint.

32. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

33. At all relevant times herein mentioned, Defendants knowingly failed to pay to Plaintiff and the Class compensation for all hours they worked. By their failure to pay

1 compensation for each hour worked as alleged above, Defendants willfully violated the
2 provisions of Section 1194 of the California Labor Code, and any additional applicable Wage
3 Orders, which require such compensation to non-exempt employees.

4 34. Accordingly, Plaintiff and the Class are entitled to recover minimum wages for all
5 non-overtime hours worked for Defendants.

6 35. By and through the conduct described above, Plaintiff and the Class have been
7 deprived of their rights to be paid wages earned by virtue of their employment with Defendants.

8 36. By virtue of the Defendants' unlawful failure to pay additional compensation to
9 Plaintiff and the Class for their non-overtime hours worked without pay, Plaintiff and the Class
10 suffered, and will continue to suffer, damages in amounts which are presently unknown to
11 Plaintiff and the Class, but which exceed the jurisdictional minimum of this Court, and which
12 will be ascertained according to proof at trial.

13 37. By failing to keep adequate time records required by California Labor Code §
14 1174(d), Defendants have made it difficult to calculate the full extent of minimum wage
15 compensation due Plaintiff and the Class.

16 38. Pursuant to California Labor Code section 1194.2, Plaintiff and the Class are
17 entitled to recover liquidated damages (double damages) for Defendants' failure to pay minimum
18 wages.

19 39. California Labor Code section 204 requires employers to provide employees with
20 all wages due and payable twice a month. Throughout the statute of limitations period applicable
21 to this cause of action, Plaintiff and the Class were entitled to be paid twice a month at rates
22 required by law, including minimum wages. However, during all such times, Defendants
23 systematically failed and refused to pay Plaintiff and the Class all such wages due, and failed to
24 pay those wages twice a month.

25 40. Plaintiff and the Class are also entitled to seek recovery of all unpaid minimum
26 wages, interest, and reasonable attorneys' fees and costs pursuant to California Labor Code §§
27 218.5, 218.6, and 1194(a).
28

SECOND CAUSE OF ACTION

(Against all Defendants for Failure to Pay Overtime Wages)

41. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 21 in this Complaint.

42. California Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

43. California Labor Code §§ 1194 and 1198 provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, California Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

44. At all times relevant hereto, Plaintiff and the Class have worked more than eight hours in a workday, as employees of Defendants.

45. At all times relevant hereto, Defendants failed to pay Plaintiff and the Class overtime compensation for the hours they have worked in excess of the maximum hours permissible by law as required by California Labor Code § 510 and 1198. Plaintiff and the Class are regularly required to work overtime hours.

46. By virtue of Defendants' unlawful failure to pay additional premium rate compensation to the Plaintiff and the Class for their overtime hours worked, Plaintiff and the Class have suffered, and will continue to suffer, damages in amounts which are presently unknown to them but which exceed the jurisdictional minimum of this Court and which will be ascertained according to proof at trial.

47. By failing to keep adequate time records required by Labor Code § 1174(d), Defendants have made it difficult to calculate the full extent of overtime compensation due to Plaintiff and the Class.

48. Plaintiff and the Class also request recovery of overtime compensation according to proof, interest, attorneys' fees and costs pursuant to California Labor Code § 1194(a), as well

1 as the assessment of any statutory penalties against Defendants, in a sum as provided by the
2 California Labor Code and/or other statutes.

3 49. California Labor Code § 204 requires employers to provide employees with all
4 wages due and payable twice a month. The Wage Orders also provide that every employer shall
5 pay to each employee, on the established payday for the period involved, overtime wages for all
6 overtime hours worked in the payroll period. Defendants failed to provide Plaintiff and the Class
7 with all compensation due, in violation of California Labor Code § 204

8 **THIRD CAUSE OF ACTION**

9 **(Against All Defendants for Failure to Provide Meal Periods)**

10 50. Plaintiff incorporates by reference and re-alleges as if fully stated herein
11 paragraphs 1 through 21 in this Complaint.

12 51. Under California law, Defendants have an affirmative obligation to relieve the
13 Plaintiff and the Class of all duty in order to take their first daily meal periods no later than the
14 start of Plaintiff and the Class' sixth hour of work in a workday, and to take their second meal
15 periods no later than the start of the eleventh hour of work in the workday. Section 512 of the
16 California Labor Code, and Section 11 of the applicable Wage Orders require that an employer
17 provide unpaid meal periods of at least 30 minutes for each five-hour period worked. It is a
18 violation of Section 226.7 of the California Labor Code for an employer to require any employee
19 to work during any meal period mandated under any Wage Order.

20 52. Despite these legal requirements, Defendants regularly failed to provide Plaintiff
21 and the Class with both meal periods as required by California law. By their failure to permit
22 and authorize Plaintiff and the Class to take all meal periods as alleged above (or due to the fact
23 that Defendants made it impossible or impracticable to take these uninterrupted meal periods),
24 Defendants willfully violated the provisions of Section 226.7 of the California Labor Code and
25 the applicable Wage Orders.

26 53. Under California law, Plaintiff and the Class are entitled to be paid one hour of
27 additional wages for each workday he or she was not provided with all required meal period(s),
28 plus interest thereon.

FOURTH CAUSE OF ACTION

(Against All Defendants for Failure to Authorize and Permit Rest Periods)

54. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 21 in this Complaint.

55. Defendants are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Section 512 of the California Labor Code, the applicable Wage Orders require that the employer permit and authorize all employees to take paid rest periods of 10 minutes each for each 4-hour period worked. Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws. It is a violation of Section 226.7 of the California Labor Code for an employer to require any employee to work during any rest period mandated under any Wage Order.

56. Despite these legal requirements, Defendants failed to authorize Plaintiff and the Class to take rest breaks, regardless of whether employees worked more than 4 hours in a workday. By their failure to permit and authorize Plaintiff and the Class to take rest periods as alleged above (or due to the fact that Defendants made it impossible or impracticable to take these uninterrupted rest periods), Defendants willfully violated the provisions of Section 226.7 of the California Labor Code and the applicable Wage Orders.

57. Under California law, Plaintiff and the Class are entitled to be paid one hour of premium wages rate for each workday he or she was not provided with all required rest break(s), plus interest thereon.

FIFTH CAUSE OF ACTION

(Against all Defendants for Failure to Pay Wages of Discharged Employees – Waiting Time Penalties)

58. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 21 in this Complaint.

59. At all times herein set forth, California Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

60. Within the applicable statute of limitations, the employment of Plaintiff and many other members of the Class ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendants failed, and continue to fail to pay terminated Class Members, without abatement, all wages required to be paid by California Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

61. Defendants' failure to pay Plaintiff and those Class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code §§ 201 and 202.

62. California Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

63. Plaintiff and the Class are entitled to recover from Defendants their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to California Labor Code § 203.

64. Pursuant to California Labor Code §§ 218.5, 218.6 and 1194, Plaintiff and the Class are also entitled to an award of reasonable attorneys' fees, interest, expenses, and costs incurred in this action.

SIXTH CAUSE OF ACTION

(Against all Defendants for Failure to Provide and Maintain Accurate and

Compliant Wage Records)

65. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 21 in this Complaint.

66. At all material times set forth herein, California Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

67. Defendants have intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify the gross wages earned by Plaintiff and the Class, the failure to list the true “total hours worked by the employee,” and the failure to list the true net wages earned.

68. As a result of Defendants’ violation of California Labor Code § 226(a), Plaintiff and the Class have suffered injury and damage to their statutorily-protected rights.

69. Specifically, Plaintiff and the members of the Class have been injured by Defendants’ intentional violation of California Labor Code § 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate, itemized wage statements under California Labor Code § 226(a).

70. Calculation of the true wage entitlement for Plaintiff and the Class is difficult and time consuming. As a result of this unlawful burden, Plaintiff and the Class were also injured as a result of having to bring this action to attempt to obtain correct wage information following

Defendants' refusal to comply with many of the mandates of California's Labor Code and related laws and regulations.

71. Plaintiff and the Class are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

72. Plaintiff and the Class are also entitled to injunctive relief, as well as an award of attorney's fees and costs to ensure compliance with this section, pursuant to California Labor Code § 226(h).

SEVENTH CAUSE OF ACTION

(Against all Defendants for Violation of California Business & Professions Code §§ 17200, et seq.)

73. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 21 in this Complaint.

74. Defendants, and each of them, are "persons" as defined under California Business & Professions Code § 17201.

75. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff, other Class members, and to the general public. Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

76. Defendants' activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code §§ 17200, *et seq.*

77. A violation of California Business & Professions Code §§ 17200, *et seq.* may be predicated on the violation of any state or federal law. All of the acts described herein as violations of, among other things, the California Labor Code, are unlawful and in violation of public policy; and in addition are immoral, unethical, oppressive, fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business practices in violation of California Business & Professions Code §§ 17200, *et seq.*

Failure to Pay Minimum Wages

78. Defendants' failure to pay minimum wages, and other benefits in violation of the California Labor Code constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Pay Overtime Wages

79. Defendants' failure to pay overtime compensation and other benefits in violation of California Labor Code §§ 510, 1194, and 1198 constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Maintain Accurate Records of All Hours Worked

80. Defendants' failure to maintain accurate records of all hours worked in accordance with California Labor Code § 1174.5 and the IWC Wage Orders constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Provide Meal Periods

81. Defendants' failure to provide meal periods in accordance with California Labor Code §§ 226.7 and 512, and the IWC Wage Orders, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Maintain Accurate Records of Meal Periods

82. Defendants' failure to maintain accurate records of employee meal periods in accordance with California Labor Code § 226.7 and the IWC Wage Orders, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Authorize and Permit Rest Periods

83. Defendants' failure to authorize and permit rest periods in accordance with California Labor Code § 226.7 and the IWC Wage Orders, as alleged above, constitutes unlawful and/or unfair activity prohibited by Business and Professions Code §§ 17200, *et seq.*

Failure to Provide Accurate Itemized Wage Statements

1 84. Defendants' failure to provide accurate itemized wage statements in accordance
2 with California Labor Code § 226, as alleged above, constitutes unlawful and/or unfair activity
3 prohibited by California Business & Professions Code §§ 17200, *et seq.*

4 85. By and through their unfair, unlawful and/or fraudulent business practices
5 described herein, the Defendants, have obtained valuable property, money and services from
6 Plaintiff, and all persons similarly situated, and have deprived Plaintiff, and all persons similarly
7 situated, of valuable rights and benefits guaranteed by law, all to their detriment.

8 86. Plaintiff and the Class Members suffered monetary injury as a direct result of
9 Defendants' wrongful conduct.

10 87. Plaintiff, individually, and on behalf of members of the putative Class, are entitled
11 to, and do, seek such relief as may be necessary to disgorge money and/or property which the
12 Defendants have wrongfully acquired, or of which Plaintiff and the Class have been deprived, by
13 means of the above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and
14 the Class are not obligated to establish individual knowledge of the wrongful practices of
15 Defendants in order to recover restitution.

16 88. Plaintiff, individually, and on behalf of members of the putative class, are further
17 entitled to and do seek a declaration that the above described business practices are unfair,
18 unlawful and/or fraudulent, and injunctive relief restraining the Defendants, and each of them,
19 from engaging in any of the above-described unfair, unlawful and/or fraudulent business
20 practices in the future.

21 89. Plaintiff, individually, and on behalf of members of the putative class, have no
22 plain, speedy, and/or adequate remedy at law to redress the injuries which the Class Members
23 suffered as a consequence of the Defendants' unfair, unlawful and/or fraudulent business
24 practices. As a result of the unfair, unlawful and/or fraudulent business practices described
25 above, Plaintiff, individually, and on behalf of members of the putative Class, suffered and will
26 continue to suffer irreparable harm unless the Defendants, and each of them, are restrained from
27 continuing to engage in said unfair, unlawful and/or fraudulent business practices.

1 90. Plaintiff also alleges that if Defendants are not enjoined from the conduct set forth
2 herein above, they will continue to avoid paying the appropriate taxes, insurance and other
3 withholdings.

4 91. Pursuant to California Business & Professions Code §§ 17200, *et seq.*, Plaintiff
5 and putative Class Members are entitled to restitution of the wages withheld and retained by
6 Defendants during a period that commences four years prior to the filing of this complaint; a
7 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
8 Class Members; an award of attorneys' fees pursuant to California Code of Civil Procedure §
9 1021.5 and other applicable laws; and an award of costs.

10 **EIGHTH CAUSE OF ACTION**

11 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of**
12 **2004, Cal. Lab. Code § 2698 et seq.)**

13 92. Plaintiff incorporates by reference and re-alleges as if fully stated herein
14 paragraphs 1 through 21 in this Complaint.

15 93. At all times herein mentioned, Defendants were subject to the Labor Code of the
16 State of California and the applicable Industrial Welfare Commission Orders.

17 94. California Labor Code § 2699(a) specifically provides for a private right of action
18 to recover penalties for violations of the Labor Code: "Notwithstanding any other provision of
19 law, any provision of this code that provides for a civil penalty to be assessed and collected by
20 the Labor and Workforce Development Agency or any of its departments, divisions,
21 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,
22 be recovered through a civil action brought by an aggrieved employee on behalf of herself or
23 herself and other current or former employees pursuant to the procedures specified in Section
24 2699.3."

25 95. Plaintiff has exhausted her administrative remedies pursuant to California Labor
26 Code § 2699.3. On April 13, 2021, she gave written notice by online filing to the Labor and
27 Workforce Development Agency and by certified mail to Defendants of the specific provisions
28 of the Labor Code that Defendants have violated against Plaintiff and current and former

1 aggrieved employees, including the facts and theories to support the violations. Plaintiff also
2 paid the filing fee shortly after April 13, 2021. Plaintiff's PAGA case number is LWDA-CM-
3 829219-21.

4 96. The statute of limitations is tolled while a plaintiff exhausts his/her administrative
5 remedies with California's Labor and Workforce Development Agency (LWDA) prior to suit,
6 which is required by the statute. (See Cal. Lab. Code § 2699.3(d).)

7 97. More than 65 days has elapsed since Plaintiff provided notice, but the Labor and
8 Workforce Development Agency has not indicated that it intends to investigate Defendants'
9 Labor Code violations discussed in the notice. Accordingly, Plaintiff may commence a civil
10 action to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of
11 the Labor Code described in this Complaint. These penalties include, but are not limited to,
12 penalties under California Labor Code §§ 210, 226.3, 1197.1, and 2699(f)(2).

13 98. In addition, Plaintiff seeks penalties for Defendants' violation of California Labor
14 Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity,
15 employing labor who willfully fails to maintain accurate and complete records required by
16 California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable
17 IWC Order § 7(A)(3), every employer shall keep time records showing when the employee
18 begins and ends each work period. Meal periods, and total hours worked daily shall also be
19 recorded. Additionally, pursuant to the applicable IWC Order § 7(A)(5), every employer shall
20 keep total hours worked in the payroll period and applicable rates of pay.

21 99. During the time period of employment for Plaintiff and the Aggrieved Employees,
22 Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to
23 maintain accurate records showing meal periods, and accurate records showing when employees
24 begin and end each work period. Defendants' failure to provide and maintain records required by
25 the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to
26 know, understand and question the accuracy and frequency of meal periods, and the accuracy of
27 their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved
28 Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an

1 unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved
 2 Employees have suffered and continue to suffer, substantial losses related to the use and
 3 enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking
 4 to compel Defendants to fully perform its obligation under state law, all to their respective
 5 damage in amounts according to proof at trial. Because of Defendants' knowing failure to
 6 comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved
 7 Employees have also suffered an injury in that they were prevented from knowing,
 8 understanding, and disputing the wage payments paid to them.

9 100. Based on the conduct described in this Complaint, Plaintiff is entitled to an award
 10 of civil penalties on behalf of herself, the State of California, and similarly Aggrieved Employees
 11 of Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown
 12 according to proof at trial. These penalties are in addition to all other remedies permitted by law.

13 101. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs
 14 pursuant to Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action
 15 shall be entitled to an award of reasonable attorney's fees and costs."
 16

17 **PRAYER FOR RELIEF**

18 Plaintiff, individually, and on behalf of all others similarly situated only with respect to
 19 the class claims, pray for relief and judgment against Defendants, jointly and severally, as
 20 follows:

21 **Class Certification**

- 22 1. That this action be certified as a class action with respect to the First, Second,
 23 Third, Fourth, Fifth, Sixth, and Eighth Causes of Action;
- 24 2. That Plaintiff be appointed as the representative of the Class; and
- 25 3. That counsel for Plaintiff be appointed as Class Counsel.

26 **As to the First Cause of Action**

- 27 4. That the Court declare, adjudge and decree that Defendants violated California Labor
 28 Code §§ 204 and 1194 and applicable IWC Wage Orders by willfully failing to pay all minimum

wages due;

5. For general unpaid wages as may be appropriate;

6. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;

7. For liquidated damages;

8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code § 1194(a); and,

9. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due;

11. For general unpaid wages at overtime wage rates as may be appropriate;

12. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code § 1194(a); and,

14. For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

15. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

16. For unpaid meal period premium wages as may be appropriate;

17. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;

18. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, and for costs of suit incurred herein; and

19. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

1 20. That the Court declare, adjudge and decree that Defendants violated California Labor
2 Code §§ 226.7 and 512, and the IWC Wage Orders;

3 21. For unpaid rest period premium wages as may be appropriate;

4 22. For pre-judgment interest on any unpaid compensation commencing from the date
5 such amounts were due;

6 23. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, and
7 for costs of suit incurred herein; and

8 24. For such other and further relief as the Court may deem equitable and appropriate.

9 As to the Fifth Cause of Action

10 25. That the Court declare, adjudge and decree that Defendants violated California Labor
11 Code §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the time of
12 termination of the employment;

13 26. For statutory wage penalties pursuant to California Labor Code § 203 for former
14 employees who have left Defendants' employ;

15 27. For pre-judgment interest on any unpaid wages from the date such amounts were due;

16 28. For reasonable attorneys' fees and for costs of suit incurred herein; and

17 29. For such other and further relief as the Court may deem equitable and appropriate.

18 As to the Sixth Cause of Action

19 30. That the Court declare, adjudge and decree that Defendants violated the record
20 keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders, and
21 willfully failed to provide accurate itemized wage statements thereto;

22 31. For statutory penalties and actual damages pursuant to California Labor Code §
23 226(e);

24 32. For injunctive relief to ensure compliance with this section, pursuant to California
25 Labor Code § 226(h);

26 33. For reasonable attorneys' fees and for costs of suit incurred herein; and

27 34. For such other and further relief as the Court may deem equitable and appropriate.
28

As to the Seventh Cause of Action

35. That the Court declare, adjudge and decree that Defendants violated California Business & Professions Code §§ 17200, *et seq.* by failing to pay wages for all hours worked (including minimum and overtime wages), failing to provide meal periods, failing to maintain accurate records of meal periods, failing to authorize and permit rest periods, failing to maintain accurate records of all hours worked and meal periods, and failing to furnish accurate wage statements;

36. For restitution of unpaid wages to Plaintiff and all Class Members and prejudgment interest from the day such amounts were due and payable;

37. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code §§ 17200 *et seq.*;

38. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure § 1021.5;

39. For injunctive relief to ensure compliance with this section, pursuant to California Business & Professions Code §§ 17200, *et seq.*; and,

40. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eighth Cause of Action

41. That the Court declare, adjudge and decree that Defendants violated the California Labor Code by failing to pay all wages owed, including overtime, failure to provide meal periods, failing to maintain accurate records of meal periods, failing to authorize and permit rest periods, failing to pay final wages at termination, and failing to furnish accurate wage statements;

42. For all actual, consequential and incidental losses and damages, according to proof;

43. For all civil penalties pursuant to California Labor Code § 2699, *et seq.*, and all other applicable Labor Code provisions;

44. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code § 2699; and,

45. For such other and further relief as the Court may deem equitable and appropriate.

As to all Causes of Action

46. For any additional relief that the Court deems just and proper.

Dated:

Respectfully submitted,

MOON & YANG, APC

By: _____

Kane Moon
Allen Feghali
Enzo Nabiev
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury as to all causes of action triable by jury.

Dated:

MOON & YANG, APC

By: _____

Kane Moon
Allen Feghali
Enzo Nabiev
Attorneys for Plaintiff