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12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF ALAMEDA**

15 LARHONDA RIVERA, individually, and on
16 behalf of other members of the general public
17 similarly situated;

18 Plaintiff,

19 vs.

20 CFS NORCAL, INC., a California
21 corporation; CHOICELUNCH, an unknown
22 business entity; CHOICE FOODSERVICES,
23 INC., an unknown business entity; CFS
24 SOCAL, INC., a California corporation and
25 DOES 1 through 100, inclusive,

26 Defendants.

Case No.: RG19027558

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment);
- (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records);
- (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (10) Violation of California Business & Professions Code §§ 17200, et seq.
- (11) Violation of Cal. Labor Code § 2699, (PAGA)

COMES NOW, Plaintiff LARHONDA RIVERA ("Plaintiff"), individually, and on behalf of other members of the general public similarly situated, and as a private attorney general alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The "amount in controversy" for the named Plaintiff, including but not limited to claims for compensatory damages, restitution, penalties, wages, premium pay, and pro rata share of attorneys' fees, is less than seventy-five thousand dollars (\$75,000).

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court "original jurisdiction in all other causes" except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, employ individuals, and/or transact business in the State of California, County of Alameda. The majority of acts and omissions alleged herein relating to Plaintiff and the other class members took place in the State of California, including the County of Alameda.

PARTIES

5. Plaintiff LARHONDA RIVERA is an individual residing in the State of California, County of Alameda.

6. Defendant CFS NORCAL, INC., at all times herein mentioned, was and is, upon

1 information and belief, a California corporation and, at all times herein mentioned, an employer
2 whose employees are engaged throughout the State of California, including the County of
3 Alameda.

4 7. Defendant CFS SOCAL, INC., at all times herein mentioned, was and is, upon
5 information and belief, a California corporation and, at all times herein mentioned, an employer
6 whose employees are engaged throughout the State of California.

7 8. Defendant CHOICELUNCH, at all times herein mentioned, was and is, upon
8 information and belief, an employer whose employees are engaged throughout the State of
9 California, including the County of Alameda.

10 9. Defendant CHOICE FOODSERVICES INC., at all times herein mentioned, was
11 and is, upon information and belief, an employer whose employees are engaged throughout the
12 State of California, including the County of Alameda.

13 10. At all relevant times, Defendants CFS NORCAL, INC., CFS SOCAL, INC.,
14 CHOICELUNCH, and CHOICE FOODSERVICES INC. were the "employer" of Plaintiff within
15 the meaning of all applicable California laws and statutes.

16 11. At all times herein relevant, Defendants CFS NORCAL, INC., CFS SOCAL, INC.,
17 CHOICELUNCH, CHOICE FOODSERVICES INC., and DOES 1 through 100, and each of
18 them, were the agents, partners, joint venturers, joint employers, representatives, servants,
19 employees, successors-in-interest, co-conspirators and/or assigns, each of the other, and at all
20 times relevant hereto were acting within the course and scope of their authority as such agents,
21 partners, joint venturers, joint employers, representatives, servants, employees, successors, co-
22 conspirators and/or assigns, and all acts or omissions alleged herein were duly committed with
23 the ratification, knowledge, permission, encouragement, authorization and/or consent of each
24 defendant designated as a DOE herein.

25 12. The true names and capacities, whether corporate, associate, individual or
26 otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sue said
27 defendants by such fictitious names. Plaintiff is informed and believes, and based on that
28 information and belief alleges, that each of the defendants designated as a DOE is legally

1 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
2 the injuries and damages to Plaintiff and the other class members as alleged in this Complaint.
3 Plaintiff will seek leave of court to amend this Complaint to show the true names and capacities
4 when the same have been ascertained.

5 13. Defendant CFS NORCAL, INC., CFS SOCAL, INC, CHOICELUNCH, CHOICE
6 FOODSERVICES INC., and DOES 1 through 100 will hereinafter collectively be referred to as
7 "Defendants."

8 14. Plaintiff further alleges that Defendants directly or indirectly controlled or
9 affected the working conditions, wages, working hours, and conditions of employment of
10 Plaintiff and the other class members and Aggrieved Employees so as to make each of said
11 Defendants employers liable under the statutory provisions set forth herein.

12 **CLASS ACTION ALLEGATIONS**

13 15. Plaintiff bring this action on her own behalf and on behalf of all other members
14 of the general public similarly situated, and, thus, seeks class certification under California Code
15 of Civil Procedure section 382.

16 16. The proposed class is defined as follows:

17 All current and former hourly-paid or non-exempt employees who worked for any
18 of the Defendants within the State of California at any time during the period from
19 four years preceding the filing of this Complaint to final judgment and who reside
20 in California.

21 17. Plaintiff reserves the right to establish subclasses as appropriate.

22 18. The class is ascertainable and there is a well-defined community of interest in the
23 litigation:

24 a. Numerosity: The class members are so numerous that joinder of all class
25 members is impracticable. The membership of the entire class is unknown
26 to Plaintiff at this time; however, the class is estimated to be greater than
27 fifty (50) individuals and the identity of such membership is readily
28 ascertainable by inspection of Defendants' employment records.

- 1 b. Typicality: Plaintiff's claims are typical of all other class members' as
2 demonstrated herein. Plaintiff will fairly and adequately protect the
3 interests of the other class members with whom she has a well-defined
4 community of interest.
- 5 c. Adequacy: Plaintiff will fairly and adequately protect the interests of each
6 class member, with whom she has a well-defined community of interest
7 and typicality of claims, as demonstrated herein. Plaintiff has no interest
8 that is antagonistic to the other class members. Plaintiff's attorneys, the
9 proposed class counsel, are versed in the rules governing class action
10 discovery, certification, and settlement. Plaintiff has incurred, and during
11 the pendency of this action will continue to incur, costs and attorneys'
12 fees, that have been, are, and will be necessarily expended for the
13 prosecution of this action for the substantial benefit of each class member.
- 14 d. Superiority: A class action is superior to other available methods for the
15 fair and efficient adjudication of this litigation because individual joinder
16 of all class members is impractical.
- 17 e. Public Policy Considerations: Certification of this lawsuit as a class action
18 will advance public policy objectives. Employers of this great state violate
19 employment and labor laws every day. Current employees are often afraid
20 to assert their rights out of fear of direct or indirect retaliation. However,
21 class actions provide the class members who are not named in the
22 complaint anonymity that allows for the vindication of their rights.

23 19. There are common questions of law and fact as to the class members that
24 predominate over questions affecting only individual members. The following common
25 questions of law or fact, among others, exist as to the members of the class:

- 26 a. Whether Defendants' failure to pay wages, without abatement or
27 reduction, in accordance with the California Labor Code, was willful;
28 b. Whether Defendants' had a corporate policy and practice of failing to pay

- 1 their hourly-paid or non-exempt employees within the State of California
2 for all hours worked and missed (short, late, interrupted, and/or missed
3 altogether) meal periods and rest breaks in violation of California law;
- 4 c. Whether Defendants required Plaintiff and the other class members to
5 work over eight (8) hours per day and/or over forty (40) hours per week
6 and failed to pay the legally required overtime compensation to Plaintiff
7 and the other class members;
- 8 d. Whether Defendants deprived Plaintiff and the other class members of
9 meal and/or rest periods or required Plaintiff and the other class members
10 to work during meal and/or rest periods without compensation;
- 11 e. Whether Defendants failed to pay minimum wages to Plaintiff and the
12 other class members for all hours worked;
- 13 f. Whether Defendants failed to pay all wages due to Plaintiff and the other
14 class members within the required time upon their discharge or
15 resignation;
- 16 g. Whether Defendants failed to timely pay all wages due to Plaintiff and the
17 other class members during their employment;
- 18 h. Whether Defendants complied with wage reporting as required by the
19 California Labor Code; including, *inter alia*, section 226;
- 20 i. Whether Defendants kept complete and accurate payroll records as
21 required by the California Labor Code, including, *inter alia*, section
22 1174(d);
- 23 j. Whether Defendants failed to reimburse Plaintiff and the other class
24 members for necessary business-related expenses and costs;
- 25 k. Whether Defendants' conduct was willful or reckless;
- 26 l. Whether Defendants engaged in unfair business practices in violation of
27 California Business & Professions Code section 17200, et seq.;
- 28 m. The appropriate amount of damages, restitution, and/or monetary penalties

1 resulting from Defendants' violation of California law; and

2 n. Whether Plaintiff and the other class members are entitled to
3 compensatory damages pursuant to the California Labor Code.

4 **GENERAL ALLEGATIONS**

5 20. At all relevant times set forth herein, Defendants employed Plaintiff and other
6 persons as hourly-paid or non-exempt employees within the State of California, including the
7 County of Alameda.

8 21. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-
9 exempt employee, from approximately October 2015 to approximately June 2017, in the State
10 of California, County of Alameda.

11 22. Defendants hired Plaintiff and the other class members and Aggrieved
12 Employees, and classified them as hourly-paid or non-exempt employees, and failed to
13 compensate them for all hours worked and missed meal periods and/or rest breaks.

14 23. Defendants had the authority to hire and terminate Plaintiff and the other class
15 members and Aggrieved Employees, to set work rules and conditions governing Plaintiff's and
16 the other class members' employment, and to supervise their daily employment activities.

17 24. Defendants exercised sufficient authority over the terms and conditions of
18 Plaintiff's and the other class members' and Aggrieved Employees' employment for them to be
19 joint employers of Plaintiff and the other class members and Aggrieved Employees.

20 25. Defendants directly hired and paid wages and benefits to Plaintiff and the other
21 class members and Aggrieved Employees.

22 26. Defendants continue to employ hourly-paid or non-exempt employees within the
23 State of California.

24 27. Plaintiff and the other class members and Aggrieved Employees worked over
25 eight (8) hours in a day, and/or forty (40) hours in a week during their employment with
26 Defendants.

27 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
28 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt

1 employees within the State of California. This pattern and practice involved, *inter alia*, failing
2 to pay them for all regular and/or overtime wages earned and for missed meal periods and rest
3 breaks in violation of California law.

4 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
5 knew or should have known that Plaintiff and the other class members and Aggrieved Employees
6 were entitled to receive certain wages for overtime compensation and that they were not
7 receiving accurate overtime compensation for all overtime hours worked.

8 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 failed to provide Plaintiff and the other class members and Aggrieved Employees all required
10 rest and meal periods during the relevant time period as required under the Industrial Welfare
11 Commission Wage Orders and thus they are entitled to any and all applicable penalties.

12 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants
13 knew or should have known that Plaintiff and the other class members and Aggrieved Employees
14 were entitled to receive all meal periods or payment of one additional hour of pay at Plaintiff's
15 and the other class members' and Aggrieved Employees' regular rate of pay when a meal period
16 was missed, and they did not receive all meal periods or payment of one additional hour of pay
17 at Plaintiff's and the other class members' and Aggrieved Employees' regular rate of pay when
18 a meal period was missed.

19 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 knew or should have known that Plaintiff and the other class members and Aggrieved Employees
21 were entitled to receive all rest periods or payment of one additional hour of pay at Plaintiff's
22 and the other class member's regular rate of pay when a rest period was missed, and they did not
23 receive all rest periods or payment of one additional hour of pay at Plaintiff's and the other class
24 members' and Aggrieved Employees' regular rate of pay when a rest period was missed.

25 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
26 knew or should have known that Plaintiff and the other class members and Aggrieved Employees
27 were entitled to receive at least minimum wages for compensation and that they were not
28 receiving at least minimum wages for all hours worked.

1 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that Plaintiff and the other class members and Aggrieved Employees
3 were entitled to receive all wages owed to them upon discharge or resignation, including
4 overtime and minimum wages and meal and rest period premiums, and they did not, in fact,
5 receive all such wages owed to them at the time of their discharge or resignation.

6 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
7 knew or should have known that Plaintiff and the other class members and Aggrieved Employees
8 were entitled to receive all wages owed to them during their employment. Plaintiff and the other
9 class members and Aggrieved Employees did not receive payment of all wages, including
10 overtime and minimum wages and meal and rest period premiums, within any time permissible
11 under California Labor Code section 204.

12 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
13 knew or should have known that Plaintiff and the other class members and Aggrieved Employees
14 were entitled to receive complete and accurate wage statements in accordance with California
15 law, but, in fact, they did not receive complete and accurate wage statements from Defendants.
16 The deficiencies included, *inter alia*, the failure to include the total number of hours worked by
17 Plaintiff and the other class members and Aggrieved Employees.

18 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants
19 knew or should have known that Defendants had to keep complete and accurate payroll records
20 for Plaintiff and the other class members and Aggrieved Employees in accordance with
21 California law, but, in fact, did not keep complete and accurate payroll records.

22 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
23 knew or should have known that Plaintiff and the other class members and Aggrieved Employees
24 were entitled to reimbursement for necessary business-related expenses.

25 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants
26 knew or should have known that they had a duty to compensate Plaintiff and the other class
27 members and Aggrieved Employees pursuant to California law, and that Defendants had the
28 financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to

1 do so, and falsely represented to Plaintiff and the other class members and Aggrieved Employees
2 that they were properly denied wages, all in order to increase Defendants' profits.

3 40. During the relevant time period, Defendants failed to pay overtime wages to
4 Plaintiff and the other class members for all overtime hours worked. Plaintiff and the other class
5 members and Aggrieved Employees were required to work more than eight (8) hours per day
6 and/or forty (40) hours per week without overtime compensation for all overtime hours worked.

7 41. During the relevant time period, Defendants failed to provide all requisite
8 uninterrupted meal and rest periods to Plaintiff and the other class members and Aggrieved
9 Employees.

10 42. During the relevant time period, Defendants failed to pay Plaintiff and the other
11 class members and Aggrieved Employees at least minimum wages for all hours worked.

12 43. During the relevant time period, Defendants failed to pay Plaintiff and the other
13 class members and Aggrieved Employees all wages owed to them upon discharge or resignation.

14 44. During the relevant time period, Defendants failed to pay Plaintiff and the other
15 class members and Aggrieved Employees all wages within any time permissible under California
16 law, including, *inter alia*, California Labor Code section 204.

17 45. During the relevant time period, Defendants failed to provide complete or
18 accurate wage statements to Plaintiff and the other class members and Aggrieved Employees.

19 46. During the relevant time period, Defendants failed to keep complete or accurate
20 payroll records for Plaintiff and the other class members and Aggrieved Employees.

21 47. During the relevant time period, Defendants failed to reimburse Plaintiff and the
22 other class members and Aggrieved Employees for all necessary business-related expenses and
23 costs.

24 48. During the relevant time period, Defendants failed to properly compensate
25 Plaintiff and the other class members and Aggrieved Employees pursuant to California law in
26 order to increase Defendants' profits.

27 49. California Labor Code section 218 states that nothing in Article 1 of the Labor
28 Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty due

1 to him [or her] under this article.”

2 **FIRST CAUSE OF ACTION**

3 **(Violation of California Labor Code §§ 510 and 1198)**

4 **(Against All Defendants)**

5 50. Plaintiff incorporates by reference the allegations above with the same force and
6 effect as though fully set forth herein.

7 51. California Labor Code section 1198 and the applicable Industrial Welfare
8 Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without
9 compensating them at a rate of pay either time-and-one-half or two-times that person’s regular
10 rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

11 52. Specifically, the applicable IWC Wage Order provides that Defendants are and
12 were required to pay Plaintiff and the other class members employed by Defendants, and
13 working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the
14 rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than
15 forty (40) hours in a workweek.

16 53. The applicable IWC Wage Order further provides that Defendants are and were
17 required to pay Plaintiff and the other class members overtime compensation at a rate of two
18 times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

19 54. California Labor Code section 510 codifies the right to overtime compensation at
20 one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a
21 day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of
22 work, and to overtime compensation at twice the regular hourly rate for hours worked in excess
23 of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

24 55. During the relevant time period, Plaintiff and the other class members worked in
25 excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

26 56. During the relevant time period, Defendants intentionally and willfully failed to
27 pay overtime wages owed to Plaintiff and the other class members.

28 57. Defendants’ failure to pay Plaintiff and the other class members the unpaid

1 balance of overtime compensation, as required by California laws, violates the provisions of
2 California Labor Code sections 510 and 1198, and is therefore unlawful.

3 58. Pursuant to California Labor Code section 1194, Plaintiff and the other class
4 members are entitled to recover unpaid overtime compensation, as well as interest, costs, and
5 attorneys' fees.

6 **SECOND CAUSE OF ACTION**

7 **(Violation of California Labor Code §§ 226.7 and 512(a))**

8 **(Against All Defendants)**

9 59. Plaintiff incorporates by reference the allegations above with the same force and
10 effect as though fully set forth herein.

11 60. At all relevant times, the IWC Order and California Labor Code sections 226.7
12 and 512(a) were applicable to Plaintiff's and the other class members' employment by
13 Defendants.

14 61. At all relevant times, California Labor Code section 226.7 provides that no
15 employer shall require an employee to work during any meal or rest period mandated by an
16 applicable order of the California IWC.

17 62. At all relevant times, the applicable IWC Wage Order and California Labor Code
18 section 512(a) provide that an employer may not require, cause or permit an employee to work
19 for a work period of more than five (5) hours per day without providing the employee with a
20 meal period of not less than thirty (30) minutes, except that if the total work period per day of the
21 employee is no more than six (6) hours, the meal period may be waived by mutual consent of
22 both the employer and employee.

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24 63. At all relevant times, the applicable IWC Wage Order and California Labor Code
25 section 512(a) further provide that an employer may not require, cause or permit an employee to
26 work for a work period of more than ten (10) hours per day without providing the employee with
27 a second uninterrupted meal period of not less than thirty (30) minutes, except that if the total
28 hours worked is no more than twelve (12) hours, the second meal period may be waived by

1 mutual consent of the employer and the employee only if the first meal period was not waived.

2 64. During the relevant time period, Plaintiff and the other class members who were
3 scheduled to work for a period of time no longer than six (6) hours, and who did not waive their
4 legally-mandated meal periods by mutual consent, were required to work for periods longer than
5 five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or
6 rest period.

7 65. During the relevant time period, Plaintiff and the other class members who were
8 scheduled to work for a period of time in excess of six (6) hours were required to work for
9 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty
10 (30) minutes and/or rest period.

11 66. During the relevant time period, Defendants intentionally and willfully required
12 Plaintiff and the other class members to work during meal periods and failed to compensate
13 Plaintiff and the other class members the full meal period premium for work performed during
14 meal periods.

15 67. During the relevant time period, Defendants failed to pay Plaintiff and the other
16 class members the full meal period premium due pursuant to California Labor Code section
17 226.7.

18 68. Defendants' conduct violates applicable IWC Wage Order and California Labor
19 Code sections 226.7 and 512(a).

20 69. Pursuant to applicable IWC Wage Order and California Labor Code section
21 226.7(c), Plaintiff and the other class members are entitled to recover from Defendants one

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23 additional hour of pay at the employee's regular rate of compensation for each work day that the
24 meal or rest period is not provided.

25 **THIRD CAUSE OF ACTION**

26 **(Violation of California Labor Code § 226.7)**

27 **(Against All Defendants)**

28 70. Plaintiff incorporates by reference the allegations above with the same force and

1 effect as though fully set forth herein.

2 71. At all times herein set forth, the applicable IWC Wage Order and California Labor
3 Code section 226.7 were applicable to Plaintiff's and the other class members' employment by
4 Defendants.

5 72. At all relevant times, California Labor Code section 226.7 provides that no
6 employer shall require an employee to work during any rest period mandated by an applicable
7 order of the California IWC.

8 73. At all relevant times, the applicable IWC Wage Order provides that "[e]very
9 employer shall authorize and permit all employees to take rest periods, which insofar as
10 practicable shall be in the middle of each work period" and that the "rest period time shall be
11 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
12 hours or major fraction thereof" unless the total daily work time is less than three and one-half
13 (3 ½) hours.

14 74. During the relevant time period, Defendants required Plaintiff and other class
15 members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest
16 period per each four (4) hour period worked.

17 75. During the relevant time period, Defendants willfully required Plaintiff and the
18 other class members to work during rest periods and failed to pay Plaintiff and the other class
19 members the full rest period premium for work performed during rest periods.

20 76. During the relevant time period, Defendants failed to pay Plaintiff and the other
21 class members the full rest period premium due pursuant to California Labor Code section 226.7

22 77. Defendants' conduct violates applicable IWC Wage Orders and California Labor
23 Code section 226.7.

24 78. Pursuant to the applicable IWC Wage Orders and California Labor Code section
25 226.7(c), Plaintiff and the other class members are entitled to recover from Defendants one
26 additional hour of pay at the employees' regular hourly rate of compensation for each work day
27 that the rest period was not provided.

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1 **FOURTH CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 1194, 1197, and 1197.1)**

3 **(Against All Defendants)**

4 79. Plaintiff incorporates by reference the allegations above with the same force and
5 effect as though fully set forth herein.

6 80. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1
7 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than
8 the minimum so fixed is unlawful.

9 81. During the relevant time period, Defendants failed to pay minimum wage to
10 Plaintiff and the other class members as required, pursuant to California Labor Code sections
11 1194, 1197, and 1197.1.

12 82. Defendants' failure to pay Plaintiff and the other class members the minimum
13 wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to
14 those sections Plaintiff and the other class members are entitled to recover the unpaid balance of
15 their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated
16 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

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18 83. Pursuant to California Labor Code section 1197.1, Plaintiff and the other class
19 members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each
20 employee minimum wages, and \$250.00 for each subsequent failure to pay each employee
21 minimum wages.

22 84. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class
23 members are entitled to recover liquidated damages in an amount equal to the wages unlawfully
24 unpaid and interest thereon.

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1 **FIFTH CAUSE OF ACTION**

2 (Violation of California Labor Code §§ 201 and 202)

3 (Against All Defendants)

4 85. Plaintiff incorporates by reference the allegations above with the same force and
5 effect as though fully set forth herein.

6 86. At all relevant times herein set forth, California Labor Code sections 201 and 202
7 provide that if an employer discharges an employee, the wages earned and unpaid at the time of
8 discharge are due and payable immediately, and if an employee quits his or her employment, his
9 or her wages shall become due and payable not later than seventy-two (72) hours thereafter,
10 unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in
11 which case the employee is entitled to his or her wages at the time of quitting.

12 87. During the relevant time period, Defendants intentionally and willfully failed to
13 pay Plaintiff and the other class members who are no longer employed by Defendants their
14 wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.

15 88. Defendants' failure to pay Plaintiff and the other class members who are no longer
16 employed by Defendants' their wages, earned and unpaid, within seventy-two (72) hours of their
17 leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

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

22 90. Plaintiff and the other class members are entitled to recover from Defendants the
23 statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum
24 pursuant to California Labor Code section 203.

25 **SIXTH CAUSE OF ACTION**

26 (Violation of California Labor Code § 204)

27 (Against All Defendants)

28 91. Plaintiff incorporates by reference the allegations above with the same force and

1 effect as though fully set forth herein.

2 92. At all times herein set forth, California Labor Code section 204 provides that all
3 wages earned by any person in any employment between the 1st and 15th days, inclusive, of any
4 calendar month, other than those wages due upon termination of an employee, are due and
5 payable between the 16th and the 26th day of the month during which the labor was performed.

6 93. At all times herein set forth, California Labor Code section 204 provides that all
7 wages earned by any person in any employment between the 16th and the last day, inclusive, of
8 any calendar month, other than those wages due upon termination of an employee, are due and
9 payable between the 1st and the 10th day of the following month.

10 94. At all times herein set forth, California Labor Code section 204 provides that all
11 wages earned for labor in excess of the normal work period shall be paid no later than the payday
12 for the next regular payroll period.

13 95. During the relevant time period, Defendants intentionally and willfully failed to
14 pay Plaintiff and the other class members all wages due to them, within any time period
15 permissible under California Labor Code section 204.

16 96. Plaintiff and the other class members are entitled to recover all remedies available
17 for violations of California Labor Code section 204.

18 **SEVENTH CAUSE OF ACTION**

19 **(Violation of California Labor Code § 226(a))**

20 **(Against All Defendants)**

21 97. Plaintiff incorporates by reference the allegations above with the same force and
22 effect as though fully set forth herein.

23 98. At all material times set forth herein, California Labor Code section 226(a)
24 provides that every employer shall furnish each of his or her employees an accurate itemized
25 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
26 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid
27 on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of
28 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive

1 dates of the period for which the employee is paid, (7) the name of the employee and his or her
2 social security number, (8) the name and address of the legal entity that is the employer, and (9)
3 all applicable hourly rates in effect during the pay period and the corresponding number of hours
4 worked at each hourly rate by the employee. The deductions made from payments of wages
5 shall be recorded in ink or other indelible form, properly dated, showing the month, day, and
6 year, and a copy of the statement or a record of the deductions shall be kept on file by the
7 employer for at least three years at the place of employment or at a central location within the
8 State of California.

9 99. Defendants have intentionally and willfully failed to provide Plaintiff and the
10 other class members with complete and accurate wage statements. The deficiencies include, but
11 are not limited to: the failure to include the total number of hours worked by Plaintiff and the
12 other class members.

13 100. As a result of Defendants' violation of California Labor Code section 226(a),
14 Plaintiff and the other class members have suffered injury and damage to their statutorily-
15 protected rights.

16 101. More specifically, Plaintiff and the other class members have been injured by
17 Defendants' intentional and willful violation of California Labor Code section 226(a) because
18 they were denied both their legal right to receive, and their protected interest in receiving,
19 accurate and itemized wage statements pursuant to California Labor Code section 226(a).

20 102. Plaintiff and the other class members are entitled to recover from Defendants the
21 greater of their actual damages caused by Defendants' failure to comply with California Labor
22 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

23 103. Plaintiff and the other class members are also entitled to injunctive relief to ensure
24 compliance with this section, pursuant to California Labor Code section 226(h).

25 **EIGHTH CAUSE OF ACTION**

26 **(Violation of California Labor Code § 1174(d))**

27 **(Against All Defendants)**

28 104. Plaintiff incorporates by reference the allegations above with the same force and

1 effect as though fully set forth herein.

2 105. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a
3 central location in the state or at the plants or establishments at which employees are employed,
4 payroll records showing the hours worked daily by and the wages paid to, and the number of
5 piece-rate units earned by and any applicable piece rate paid to, employees employed at the
6 respective plants or establishments. These records shall be kept in accordance
7 ///
8 with rules established for this purpose by the commission, but in any case shall be kept on file
9 for not less than two years.

10 106. Defendants have intentionally and willfully failed to keep accurate and complete
11 payroll records showing the hours worked daily and the wages paid, to Plaintiff and the other
12 class members.

13 107. As a result of Defendants' violation of California Labor Code section 1174(d),
14 Plaintiff and the other class members have suffered injury and damage to their statutorily-
15 protected rights.

16 108. More specifically, Plaintiff and the other class members have been injured by
17 Defendants' intentional and willful violation of California Labor Code section 1174(d) because
18 they were denied both their legal right and protected interest, in having available, accurate and
19 complete payroll records pursuant to California Labor Code section 1174(d).

20 **NINTH CAUSE OF ACTION**

21 **(Violation of California Labor Code §§ 2800 and 2802)**

22 **(Against All Defendants)**

23 109. Plaintiff incorporates by reference the allegations above with the same force and
24 effect as though fully set forth herein.

25 110. Pursuant to California Labor Code sections 2800 and 2802, an employer must
26 reimburse its employee for all necessary expenditures incurred by the employee in direct
27 consequence of the discharge of his or her job duties or in direct consequence of his or her
28 obedience to the directions of the employer.

111. Plaintiff and the other class members incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants.

112. Defendants have intentionally and willfully failed to reimburse Plaintiff and the other class members for all necessary business-related expenses and costs.

///

113. Plaintiff and the other class members are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

TENTH CAUSE OF ACTION

(Violation of California Business & Professions Code §§ 17200, et seq.)

(Against All Defendants)

114. Plaintiff incorporates by reference the allegations above with the same force and effect as though fully set forth herein.

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

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

117. A violation of California Business & Professions Code section 17200, et seq. may be predicated on the violation of any state or federal law. In this instant case, Defendants' policies and practices of requiring employees, including Plaintiff and the other class members, to work overtime without paying them proper compensation violate California Labor Code sections 510 and 1198. Additionally, Defendants' policies and practices of requiring employees, including Plaintiff and the other class members, to work through their meal and rest periods without paying them proper compensation violate California Labor Code sections 226.7 and

1 512(a). Defendants' policies and practices of failing to pay minimum wages violate California
2 Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendants' policies and practices of
3 failing to timely pay wages to Plaintiff and the other class members violate California Labor
4 Code sections 201, 202 and 204. Defendants also violated California Labor Code sections
5 226(a), 1174(d), 2800 and 2802.

6 118. As a result of the herein described violations of California law, Defendants
7 unlawfully gained an unfair advantage over other businesses.

8 119. Plaintiff and the other class members have been personally injured by Defendants'
9 unlawful business acts and practices as alleged herein, including but not necessarily limited to
10 the loss of money and/or property.

11 120. Pursuant to California Business & Professions Code sections 17200, et seq.,
12 Plaintiff and the other class members are entitled to restitution of the wages withheld and retained
13 by Defendants during a period that commences four years preceding the filing of this Complaint;
14 an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and
15 other applicable laws; and an award of costs.

16 **ELEVENTH CAUSE OF ACTION**

17 **(Violation of California Labor Code § 2699, Et Seq.)**

18 **(Against All Defendants)**

19 121. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
20 every allegation set forth above.

21 122. Plaintiff brings her eleventh cause of action as a representative action on behalf of
22 herself and similarly Aggrieved Employees in the capacity as a private attorney general pursuant
23 to the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.*
24 ("PAGA").

25 123. PAGA specifically provides for a private right of action to recover civil penalties
26 for violations of the Labor Code as follows: "Notwithstanding any other provision of law, any
27 provision of this code that provides for a civil penalty to be assessed and collected by the Labor
28 and Workforce Development Agency or any of its departments, divisions, commissions, boards,

1 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through
2 a civil action brought by an aggrieved employee on behalf of himself or herself and other current
3 or former employees pursuant to the procedures specified in Section 2699.3.” Cal. Lab. Code §
4 2699(a).

5 124. Plaintiff was employed by Defendants and the Labor Code violations alleged above
6 were committed against her during her time of employment. Plaintiff is therefore, an “aggrieved
7 employee” under PAGA.

8 125. As set forth in detail above, during all times relevant to this Action, Defendants
9 have routinely subjected Plaintiff and the Aggrieved Employees to violations of California Labor
10 Codes by:

- 11 a. Failing to pay Plaintiff and the Aggrieved Employees all earned minimum wage
12 compensation in violation of Labor Code §§ 1194 and 1198 *et seq.*
- 13 b. Failing to pay Plaintiff and the Aggrieved Employees all earned overtime
14 compensation in violation of Labor Code §§ 204, 510, 1194, and 1198 *et seq.*
- 15 c. Failing to provide legally required meal periods to Plaintiff and the Aggrieved
16 Employees, and failing to pay Plaintiff and the Aggrieved Employees an additional
17 hour of premium pay for meal period violations in violation of Labor Code §§
18 226.7 and 512.
- 19 d. Failing to provide authorize and permit Plaintiff and the Aggrieved Employees to
20 take duty-free rest periods, and failing to pay Plaintiff and the Aggrieved
21 Employees an additional hour of premium pay for rest period violations in
22 violation of Labor Code §§ 226.7 and 512.
- 23 e. Failing to timely pay Plaintiff and the Aggrieved Employees all wages at the end
24 of their employment in violation of Labor Code § 203.
- 25 f. Failing to timely pay Plaintiff and the Aggrieved Employees all wages owed
26 during employment in violation of Labor Code § 204.
- 27 g. Failing to furnish Plaintiff and the Aggrieved Employees with complete, accurate,
28 itemized wage statements in violation of Labor Code § 226.

1 h. Failing to maintain accurate records relating to Plaintiff and the Aggrieved
2 Employees' work periods, meal periods, total daily hours, hours per pay period,
3 total wages and compensation, in violation of Labor Code § 1174(d) and the
4 applicable IWC Wage Order.

5 i. Failing to reimburse Plaintiff and the Aggrieved Employees for necessary
6 business-related expenses in violation of Labor Code §§ 2800 and 2802.

7 126. Pursuant to California Labor Code sections 2699 and 2699.5, Plaintiff,
8 individually and on behalf of the Aggrieved Employees and the State of California, requests and
9 is entitled to recover penalties against Defendants for the Labor Code violations described above,
10 including but not limited to penalties under California Code of Regulations Title section 11010,
11 penalties under California Labor Code sections 2699, 558, 210, 1197.1, 226, 226.3 and 1174.5,
12 , and 1197.1, and any and all additional penalties and sums as provided by the California Labor
13 Code and/or other statutes. The exact amount of the applicable penalties, in all, is in an amount
14 to be shown according to proof at trial.

15 127. Plaintiff has exhausted her administrative remedies pursuant to Labor Code §
16 2699.3. On June 2, 2021, Plaintiff, through her counsel of record, by online filing with the Labor
17 and Workforce Development Agency ("LWDA") and by certified mail to the Defendants,
18 notified Defendants and the LWDA of the specific provisions of the Labor Code and IWC Wage
19 Orders that Defendants have violated, including the facts and theories to support the violations,
20 and of Plaintiff's intent to bring a claim for civil penalties under PAGA. Plaintiff also paid the
21 filing fee required under Labor Code § 2699.3. As of the filing of this Complaint, more than
22 sixty-five (65) days have elapsed since the mailing of Plaintiff's June 2, 2021, notice, and the
23 Labor and Workforce Development Agency has not indicated that it intends to investigate the
24 violations discussed in the notice. Accordingly, Plaintiff may commence a civil action to recover
25 penalties for herself and other Aggrieved Employees pursuant to Labor Code § 2699.3.

26 128. Plaintiff was compelled to retain the services of counsel to file this court action
27 to protect her interests and the Aggrieved Employees, and to assess and collect the civil penalties
28 owed by Defendants. Plaintiff therefore seeks an award of reasonable attorneys' fees and costs

1 pursuant to Labor Code § 2699(g)(1), and any other applicable statute.

2 129. Plaintiff may amend this complaint as a matter of right pursuant to California
3 Labor Code § 2699.3 as this complaint has been filed within sixty days of the time periods
4 specified in Labor Code §2699.3.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff, individually, and on behalf of other members of the general
7 public similarly situated, and as a private attorney general, prays for relief and judgment against
8 Defendants, jointly and severally, as follows:

9 **Class Certification**

- 10 1. That this action be certified as a class action;
11 2. That Plaintiff be appointed as the representative of the Class;
12 3. That counsel for Plaintiff be appointed as Class Counsel; and
13 4. That Defendants provide to Class Counsel immediately the names and most
14 current/last known contact information (address, e-mail and telephone numbers) of all class
15 members.

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

17 5. That the Court declare, adjudge and decree that Defendants violated California
18 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay
19 all overtime wages due to Plaintiff and the other class members;

20 6. For general unpaid wages at overtime wage rates and such general and special
21 damages as may be appropriate;

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

24 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
25 California Labor Code section 1194; and

26 9. For such other and further relief as the Court may deem just and proper.

27 **As to the Second Cause of Action**

28 10. That the Court declare, adjudge and decree that Defendants violated California

1 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to
2 provide all meal periods (including second meal periods) to Plaintiff and the other class
3 members;

4 11. That the Court make an award to Plaintiff and the other class members of one (1)
5 hour of pay at each employee's regular rate of compensation for each workday that a meal period
6 was not provided;

7 12. For all actual, consequential, and incidental losses and damages, according to
8 proof;

9 13. For premium wages pursuant to California Labor Code section 226.7(c);

10 14. For pre-judgment interest on any unpaid wages from the date such amounts were
11 due;

12 15. For reasonable attorneys' fees and costs of suit incurred herein; and

13 16. For such other and further relief as the Court may deem just and proper.

14 **As to the Third Cause of Action**

15 17. That the Court declare, adjudge and decree that Defendants violated California
16 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all
17 rest periods to Plaintiff and the other class members;

18 18. That the Court make an award to Plaintiff and the other class members of one (1)
19 hour of pay at each employee's regular rate of compensation for each workday that a rest period
20 was not provided;

21 19. For all actual, consequential, and incidental losses and damages, according to
22 proof;

23 20. For premium wages pursuant to California Labor Code section 226.7(c);

24 21. For pre-judgment interest on any unpaid wages from the date such amounts were
25 due; and

26 22. For such other and further relief as the Court may deem just and proper.

27 **As to the Fourth Cause of Action**

28 23. That the Court declare, adjudge and decree that Defendants violated California

1 Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to
2 Plaintiff and the other class members;

3 24. For general unpaid wages and such general and special damages as may be
4 appropriate;

5 25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for
6 Plaintiff and the other class members in the amount as may be established according to proof at
7 trial;

8 26. For pre-judgment interest on any unpaid compensation from the date such
9 amounts were due;

10 27. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
11 California Labor Code section 1194(a);

12 28. For liquidated damages pursuant to California Labor Code section 1194.2; and

13 29. For such other and further relief as the Court may deem just and proper.

14 **As to the Fifth Cause of Action**

15 30. That the Court declare, adjudge and decree that Defendants violated California
16 Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the
17 time of termination of the employment of Plaintiff and the other class members no longer
18 employed by Defendants;

19 31. For all actual, consequential, and incidental losses and damages, according to
20 proof;

21 32. For statutory wage penalties pursuant to California Labor Code section 203 for
22 Plaintiff and the other class members who have left Defendants' employ;

23 33. For pre-judgment interest on any unpaid compensation from the date such
24 amounts were due; and

25 34. For such other and further relief as the Court may deem just and proper.

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

27 35. That the Court declare, adjudge and decree that Defendants violated California
28 Labor Code section 204 by willfully failing to pay all compensation owed at the time required

1 by California Labor Code section 204 to Plaintiff and the other class members;

2 36. For all actual, consequential, and incidental losses and damages, according to
3 proof;

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

6 38. For such other and further relief as the Court may deem just and proper.

7 **As to the Seventh Cause of Action**

8 39. That the Court declare, adjudge and decree that Defendants violated the record
9 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders
10 as to Plaintiff and the other class members, and willfully failed to provide accurate itemized
11 wage statements thereto;

12 40. For actual, consequential and incidental losses and damages, according to proof;

13 41. For statutory penalties pursuant to California Labor Code section 226(e);

14 42. For injunctive relief to ensure compliance with this section, pursuant to California
15 Labor Code section 226(h); and

16 43. For such other and further relief as the Court may deem just and proper.

17 **As to the Eighth Cause of Action**

18 44. That the Court declare, adjudge and decree that Defendants violated California
19 Labor Code section 1174(d) by willfully failing to keep accurate and complete payroll records
20 for Plaintiff and the other class members as required by California Labor Code section 1174(d);

21 45. For actual, consequential and incidental losses and damages, according to proof;

22 46. For statutory penalties pursuant to California Labor Code section 1174.5; and

23 47. For such other and further relief as the Court may deem just and proper.

24 **As to the Ninth Cause of Action**

25 48. That the Court declare, adjudge and decree that Defendants violated California
26 Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other class
27 members for all necessary business-related expenses as required by California Labor Code
28 sections 2800 and 2802;

- 1 49. For actual, consequential and incidental losses and damages, according to proof;
2 50. For the imposition of civil penalties and/or statutory penalties;
3 51. For reasonable attorneys' fees and costs of suit incurred herein; and
4 52. For such other and further relief as the Court may deem just and proper.

5 **As to the Tenth Cause of Action**

6 53. That the Court decree, adjudge and decree that Defendants violated California
7 Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff and the
8 other class members all overtime compensation due to them, failing to provide all meal and rest
9 periods to Plaintiff and the other class members, failing to pay at least minimum wages to
10 Plaintiff and the other class members, failing to pay Plaintiff's and the other class members'
11 wages timely as required by California Labor Code section 201, 202 and 204 and by violating
12 California Labor Code sections 226(a), 1174(d), 2800 and 2802.

13 54. For restitution of unpaid wages to Plaintiff and all the other class members and
14 all pre-judgment interest from the day such amounts were due and payable;

15 55. For the appointment of a receiver to receive, manage and distribute any and all
16 funds disgorged from Defendants and determined to have been wrongfully acquired by
17 Defendants as a result of violation of California Business and Professions Code sections 17200,
18 et seq.;

19 56. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
20 California Code of Civil Procedure section 1021.5;

21 57. For injunctive relief to ensure compliance with this section, pursuant to California
22 Business and Professions Code sections 17200, et seq.; and

23 58. For such other and further relief as the Court may deem just and proper.

24 **As to the Eleventh Cause of Action**

25 59. For statutory attorneys' fees and costs pursuant to 2699(g)(1) of California Labor
26 Code;

27 60. For the imposition of civil penalties pursuant to California Labor Code §§ 2699,
28 210, 558, 226, 226.3, 1174.5, 1197.1, and all other penalties allowed by the California Labor

1 Code and/or other applicable statutes; and

2 61. For such other relief as the Court deems just and proper.

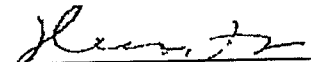
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4 Dated: September 2, 2021

PROTECTION LAW GROUP, LLP

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By: 
Heather Davis
Attorneys for Plaintiff

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