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12 Attorneys for Plaintiff Theresa Mitchell,
13 on behalf of herself and all others similarly situated

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **FOR THE COUNTY OF SAN FRANCISCO**

16 THERESA MITCHELL, individually and on
17 behalf of all others similarly situated,

18 Plaintiffs,

19 v.

20 OPTUM SERVICES, INC, a Delaware
21 Corporation; UNITEDHEALTH GROUP, a
22 Delaware Corporation, and DOES 1-10,
23 inclusive,

24 Defendants.

Case No.:

Assigned For All Purposes To:

Judge:

Dept.:

CLASS ACTION COMPLAINT
FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods as Required;
4. Failure to Provide Rest Periods as Required;
5. Failure to Reimburse of Business Expenses;
6. Failure to Pay Timely Wages;
7. Failure to Provide Accurate Itemized Wage Statements; and
8. Violation of Business & Professions Code § 17200, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff Theresa Mitchell ("Plaintiff"), individually and on behalf of all others similarly
2 situated (hereinafter collectively referred to as the "Class" or "Class Members"), hereby files this
3 Complaint against Defendant Optum Services, Inc.; and UnitedHealth Group; and DOES 1-10,
4 inclusive (collectively "Defendants") and alleges on information and belief as follows:

5 **I. JURISDICTION AND VENUE**

6 1. This class action is brought pursuant to California Code of Civil Procedure §382.
7 The monetary damages and restitution sought by Plaintiff exceeds the minimum jurisdiction limits
8 of the California Superior Court and will be established according to proof at trial.

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

13 3. This Court has jurisdiction over Defendants because, upon information and belief,
14 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
15 avails itself of the California market so as to render the exercise of jurisdiction over it by the
16 California Courts consistent with traditional notions of fair play and substantial justice.

17 4. Venue is proper in this Court because upon information and belief, one or more of
18 the Defendants, reside, transact business, or have offices in this County and/or the acts or
19 omissions alleged herein took place in this County.

20 **II. PARTIES**

21 5. Defendant Optum Services, Inc. is a health information technology and services
22 firm that is part of UnitedHealth Group. Defendant Optum Services, Inc. has offices throughout
23 the United States and the State of California. UnitedHealth Group is a health care company,
24 offering health care coverage and benefits services through UnitedHealthcare, and information and
25 technology-enabled health services through Optum Services, Inc.

26 6. Plaintiff Theresa Mitchell was, at all times relevant to this action, a resident of
27 California. Plaintiff was employed by Defendants from approximately January 2016 through
28 March 26, 2021 as a non-exempt employee. Plaintiff worked for Defendants as an Intake

1 Counselor. Plaintiff's job duties included, but were not limited to, providing mental health and
2 substance abuse referrals and consulting clients regarding their benefits.

3 7. Other than identified herein, Plaintiff is unaware of the true names, capacities,
4 relationships, and extent of participation in the conduct alleged herein, of the Defendants sued as
5 DOES 1 through 10, but are informed and believe and thereon alleges that said defendants are
6 legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by
7 such fictitious names. Plaintiff will amend this complaint when their true names and capabilities
8 are ascertained.

9 8. Plaintiff is informed and believes and thereon alleges that each defendant, directly
10 or indirectly, or through agents or other persons, employed Plaintiff and other members of the
11 Class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed
12 and believe and thereon allege that each Defendant acted in all respects pertinent to this action as
13 the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects
14 pertinent hereto, and the acts of each Defendant are legally attributable to the other defendants.

15 **III. CLASS ACTION ALLEGATION**

16 9. Plaintiff brings this action individually and on behalf of all others similarly
17 situated as a class action pursuant to Code of Civil Procedure § 382. The members of the Class are
18 defined as follows:

19 All persons who are or have been employed by Defendants as non-exempt employees or
20 equivalent positions, however titled, in the state of California within four (4) years from
21 the filing of the Complaint in this action until its resolution. (collectively referred to as the
"Class" or "Class Members").

22 10. Plaintiff also seeks to represent the subclass(es) composed of and defined as
23 follows:

24 Waiting Time Subclass

25 All Class members who separated their employment from Defendants within three years
26 prior to the filing of this action to the present and continuing.

27 11. Plaintiff reserves the right under California Rule of Court 3.765(b) and other
28 applicable laws to amend or modify the class definition with respect to issues or in any other

1 ways. Plaintiff is a member of the Class as well the Subclass.

2 12. The term “Class” includes Plaintiff and all members of the Class and the Subclass,
3 if applicable. Plaintiff seeks class-wide recovery based on the allegations set forth in this
4 complaint.

5 13. There is a well-defined community of interest in the litigation and the proposed
6 Class is easily ascertainable through the records Defendants are required to keep.

7 14. Numerosity. The members of the Class are so numerous that individual joinder of
8 all of them as plaintiffs is impracticable. While the exact number of the Class Members is
9 unknown to Plaintiff at this time, Plaintiff is informed and believe and thereon alleges that there
10 are at least 100 (one hundred) Class Members.

11 15. Commonality. Common questions of law and fact exist as to all Class Members
12 and predominate over any questions that affect only individual members of the Class. These
13 common questions include, but are not limited to:

- 14 i. Whether Defendants failed to pay all lawful earned wages to
15 Plaintiff and Class Members;
- 16 ii. Whether Defendants deprived Plaintiff and Class Members of lawful
17 meal periods without compensation;
- 18 iii. Whether Defendants deprived Plaintiff and Class Members of lawful
19 rest breaks without compensation;
- 20 iv. Whether Defendants failed to reimburse for necessary business
21 expenses incurred;
- 22 v. Whether Defendants failed to timely pay all wages due to Plaintiff
23 and Subclass members upon termination or within 72 hours of
24 resignation;
- 25 vi. Whether Defendants provided accurate itemized wage statements
26 pursuant to Labor Code section 226;
- 27 vii. Whether Plaintiff and Class Members are entitled to equitable relief
28 pursuant to Business and Professions Code section 17200, *et. seq.*

1 16. Typicality. Plaintiff's claims herein alleged are typical of those claims which could
2 be alleged by any member of the Class and/or Subclass, and the relief sought is typical of the relief
3 which would be sought by each member of the Class and/or Subclass in separate actions. Plaintiff
4 and all members of the Class and or Subclass sustained injuries and damages arising out of and
5 caused by Defendants' common course of conduct in violation of California laws, regulations, and
6 statutes as alleged herein.

7 17. Adequacy. Plaintiff is qualified to, and will fairly and adequately, protect the
8 interests of each member of the Class and/or Subclass with whom she has a well-defined
9 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges an
10 obligation to make known to the Court any relationships, conflicts, or differences with any
11 member of the Class and/or Subclass. Plaintiff's attorneys and the proposed Counsel for the Class
12 and Subclass are versed in the rules governing class action discovery, certification, litigation, and
13 settlement and experienced in handling such matters. Other former and current employees of
14 Defendants may also serve as representatives of the Class and Subclass if needed.

15 18. Superiority. A class action is superior to other available means for the fair and
16 efficient adjudication of the claims of the Class and would be beneficial for the parties and the
17 court. Class action treatment will allow a large number of similarly situated persons to prosecute
18 their common claims in a single forum, simultaneously, efficiently, and without the unnecessary
19 duplication of effort and expense that numerous individual actions would require. The damages
20 suffered by each Class member are relatively small in the sense pertinent to class action analysis,
21 and the expense and burden of individual litigation would make it extremely difficult or
22 impossible for the individual Class Members to seek and obtain individual relief. A class action
23 will serve an important public interest by permitting such individuals to effectively pursue
24 recovery of the sums owed to them. Further, class litigation prevents the potential for inconsistent
25 or contradictory judgments raised by individual litigation.

26 19. Public Policy Considerations: Employers in the state of California violate
27 employment and labor laws everyday. Current employees are often afraid to assert their rights out
28 of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because

1 they believe their former employers may damage their future endeavors through negative
2 references and/or other means. The nature of this action allows for the protection of current and
3 former employees' rights without fear of retaliation or damage.

4 **IV. FACTUAL ALLEGATIONS**

5 20. At all times set forth herein, Defendants employed Plaintiff and other persons in the
6 capacity of exempt hourly positions, however titled, throughout the state of California. Plaintiff
7 worked remotely from home since the beginning of her employment with Defendants; however,
8 Defendant maintains multiple office locations throughout California where other employees are
9 based. Plaintiff is informed and believes and thereon alleges that all Class Members are citizens of
10 the State of California.

11 21. Plaintiff was employed by Defendants from approximately January 2016 through
12 March 26, 2021. During the relevant statutory period, Plaintiff worked for Defendants as a full-
13 time, hourly non-exempt employee based out San Francisco, California.

14 22. Defendants continue to employ non-exempt employees, however titled, in
15 California and implement a uniform set of policies and practices to all non-exempt employees, as
16 they were all engaged in the generic job duties of healthcare administration.

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

20 24. Plaintiff is informed and believes, and thereon alleges, that Defendants employed
21 and exercised control over the wages, hours, and working conditions. Among other elements of
22 control, Defendants provided Plaintiff and Class Members with specific work duties to complete
23 daily and how those duties were to be performed.

24 25. Plaintiff is informed and believes, and thereon alleges, in violation of the Labor
25 Code and IWC Wage Orders, Plaintiff and Class Members were not paid all lawful wages
26 (including minimum and overtime wages) and that they were not receiving all wages earned for
27 work that was required to be performed. Plaintiff is informed and believes, and thereon alleges,
28 Defendants also failed to implement a proper alternative workweek and thus owe Plaintiff and

1 Class Members unpaid overtime. In violation of the Labor Code and IWC Wage Orders, Plaintiff
2 and Class Members were not paid all wages (including minimum and overtime wages) for all
3 hours worked at the proper rates of pay.

4 26. Upon information and belief, Defendants required Plaintiff and Class Members to
5 frequently work off the clock while under Defendant's control. Upon information and belief,
6 Plaintiff and Class Members were required to perform several job-related tasks prior to clocking in
7 for their shifts. These job-related tasks included, but were not limited to, starting up several
8 programs on her computer and loading several documents on her computer. Likewise, Plaintiff
9 and Class Members would have to shut down and close the various programs after their shifts
10 ended.

11 27. Moreover, Defendant did not provide proper means or mechanism to track and
12 record off the clock time and hours worked by Plaintiff and Class Members. As a consequence,
13 Defendant failed to accurately record and maintain records of all actual hours worked and wages
14 earned by Plaintiff and Class Members.

15 28. Plaintiff is informed and believes, and thereon alleges, that Defendants also
16 inaccurately calculated the "regular rate of pay" by failing to include shift differentials in its
17 calculation, effectively underpaying wages owed on overtime rates and the rates of pay for paid
18 time off. Defendants knew or should have known that shift differentials and other non-
19 discretionary wages, including, but not limited to, bonuses and incentive pay were included in the
20 computation of Plaintiff's and Class Members' regular rate of pay for purposes of calculating
21 overtime rate of pay and the rate of pay for paid time off. As a result, Plaintiff and Class Members
22 were uniformly underpaid for overtime wages and paid time off.

23 29. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and Class
24 Members were regularly required to work shifts more than five hours without being provided a
25 lawful meal period and over ten hours in a day without being provided a second lawful meal
26 period as required by law. Plaintiff is informed and believes, and thereon alleges, that Defendants
27 knew or should have known that Plaintiff and Class Members were entitled to receive all meal
28 periods or payment of one additional hour of pay at Plaintiff's and Class Members' regular rate of
pay when they did not receive one timely, uninterrupted meal period when working more than five

1 hours and a second timely, uninterrupted meal period when working more than ten hours.

2 30. Indeed, during the relevant time, as a consequence of Defendants' staffing and
3 scheduling practices, work demands, and Defendants' policies and practices, Defendants
4 frequently failed to provide Plaintiff and Class Members timely, legally compliant uninterrupted
5 30-minute meal periods on shifts over five hours as required by law.

6 31. Despite the above-mentioned meal period violations, Defendants failed to
7 compensate Plaintiff, and on information and belief, failed to compensate Class Members, one
8 additional hour of pay at their regular rate as required by California law when meal periods were
9 not timely or lawfully provided in a compliant manner.

10 32. Plaintiff is informed and believe, and thereon alleges, that Defendants know, and/or
11 should have known that Plaintiff and Class Members were entitled to receive premium wages
12 based on their regular rate of pay under Labor Code §226.7 but were not receiving such
13 compensation.

14 33. In addition, during the relevant time frame, Plaintiff and Class Members were
15 systematically not authorized and permitted to take one net ten-minute paid, rest period for every
16 four hours worked or major fraction thereof, which is a violation of the Labor Code and IWC
17 wage order. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and Class Members were entitled to receive all rest breaks or
19 payment of one additional hour of pay at Plaintiff and Class Members' regular rate of pay when a
20 rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class
21 Members did not receive all rest breaks or payment of one additional hour of pay at Plaintiff and
22 Class Members' regular rate of pay when a rest break was missed.

23 34. Plaintiff is informed and believe, and thereon alleges, that Defendants maintained
24 and enforced scheduling practices, policies, and imposed work demands that frequently required
25 Plaintiff and Class Members to forego their lawful, paid rest periods of a net ten minutes for every
26 four hours worked or major fraction thereof. Such requisite rest periods were not timely authorized
27 and permitted. Plaintiff and Class Members would often work through their rest periods due to a
28 lack of relief to take a rest period. Plaintiff and Class Members were also prohibited from leaving
the premises during their rest breaks.

1 35. Despite the above-mentioned rest period violations, Defendants did not compensate
2 Plaintiff, and on information and belief, did not pay Class Members one additional hour of pay at
3 their regular rate as required by California law, including Labor Code § 226.7 and the applicable
4 IWC wage order, for each day on which lawful rest periods were not authorized and permitted. As
5 a result, Plaintiff and Class Members were not paid all wages owed (including overtime wages).
6 Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have
7 known that Plaintiff and Class Members were entitled to receive all wages owed yet failed to do
8 so.

9 36. Moreover, Plaintiff and the Class Members were required to incur necessary
10 expenses in the discharge of their duties, including for the use of their cellphones. Plaintiff is
11 informed and believe, and thereon alleges, that Defendant expected that Plaintiff and Class
12 Members use their personal cell phones for work related purposes during and outside of work
13 hours. Furthermore, Plaintiff and other Class Members were required to work from home
14 throughout their employment and had to provide their own supplies and materials such as a
15 headset for taking calls, paper and pens. Defendant did not reimburse Plaintiff and Class Members
16 for these expenses in accordance with Labor Code § 2802.

17 37. Plaintiff is informed and believes, and thereon alleges, that at all times herein
18 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
19 thereof for resignations without prior notice as the case may be) they had a duty to accurately
20 compensate Plaintiff and Waiting Time Subclass Members for all wages owed including unpaid
21 wages, meal and rest period premiums, and Defendants had the financial ability to pay such
22 compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part
23 because of the above-specified violations.

24 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that the Class Members were entitled to receive itemized wage statements that
26 accurately showed the gross and net wages earned, total hours worked, all applicable hourly rates
27 in effect, and the number of hours worked at each hourly rate in accordance with California law.
28 In violation of the Labor Code, the Class Members were not provided with accurate itemized wage
statements.

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

3 **(Against All Defendants)**

4 39. Plaintiff incorporates and re-allege each and every allegation contained above as
5 though fully set forth herein.

6 40. At all times relevant, the IWC wage orders applicable to Plaintiff's and the Class
7 require employers to pay its employees for each hour worked at least minimum wage. "Hours
8 worked" means the time during which an employee is subject to the control of an employer and
9 includes all the time the employee is suffered or permitted to work, whether or not required to do
10 so, and in the case of an employee who is required to reside on the employment premises, that
11 time spent carrying out assigned duties shall be counted as hours worked.

12 41. At all relevant times, Labor Code §1197.1 states "[a]ny employer or other persons
13 acting individually as an officer, agent, or employee of another person, who pays or causes to be
14 paid to any employee a wage less than the minimum fixed by an applicable state or local law, or
15 by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
16 damages payable to the employee, and any applicable penalties pursuant to Section 203..."

17 42. At all times relevant, Plaintiff and Class Members regularly performed non-exempt
18 work and thus were subject to the overtime requirements of the IWC Wage Orders, CCR § 11000,
19 *et. seq.* and the Labor Code.

20 43. As discussed herein, Defendants did not compensate Plaintiff and Class Members
21 one additional hour of pay at their regular rate as required by California law, including Labor
22 Code section 226.7 and the applicable IWC wage order, for each day on which lawful meal
23 periods and rest breaks were not authorized and permitted. As a result, Plaintiff and Class
24 Members were not paid all lawful wages, including minimum wages and overtime wages.

25 44. Defendants also did not include shift differentials and/or non-discretionary pay
26 when calculating the regular rate of pay for purposes of paying Plaintiff and Class Members for
27 overtime wages and paid time off. Consequently, Plaintiff and Class Members were not paid all
28 wages owed.

45. Furthermore, during the relevant period, Defendant failed to pay Plaintiff and Class Members at least minimum wages when it required Plaintiff and Class Members to work off-the-clock as alleged above. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and Class Members were entitled to receive all wages owed yet failed to do so.

46. Pursuant to Labor Code §§ 510, 558 and 1194, Plaintiff and Class Members are entitled to recover their unpaid wages and overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

47. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

48. Labor Code § 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either one and one-half or two times the person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

49. Pursuant to California Labor Code §§ 510 and 1194, during the relevant time period, Defendants were required to compensate Plaintiff and class members for all overtime hours worked, calculated at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8) hours of the seventh consecutive work day, with double time after eight (8) hours on the seventh day of any work week, or after twelve (12) hours in any work day.

50. Plaintiff and Class Members were non-exempt employees entitled to the protections of California Labor Code §§ 510 and 1194.

51. During the relevant time period, Defendants failed to pay Plaintiff overtime wages when they failed to pay compensation for all hours worked, such as for work duties performed off the clock, as required by Defendants, in excess of eight (8) hours per day and/or

1 forty (40) hours per week and for the first eight (8) hours of the seventh consecutive work day,
2 with double time after eight (8) hours on the seventh day of any work week, or after twelve (12)
3 hours in any work day.

4 52. During the relevant time period, Defendants failed to pay Plaintiff and Class
5 Members all wages owed when Defendants failed to properly implement an alternative
6 workweek election.

7 53. In violation of state law, Defendants have knowingly and willfully refused to
8 perform their obligations and compensate Plaintiff and Class Members for all wages earned as
9 alleged above.

10 54. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of
11 overtime compensation, as required by California law, violates the provisions of Labor Code §§
12 510 and 1198, and is therefore unlawful.

13 55. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to
14 recover their unpaid overtime compensation as well as interest, costs and attorneys' fees.

15 **THIRD CAUSE OF ACTION**

16 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

17 **(Against All Defendants)**

18 56. Plaintiff incorporates and re-alleges each and every allegation contained above as
19 though fully set forth herein.

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

27 58. Pursuant to the IWC wage orders applicable to Plaintiff and Class Members'
28 employment by Defendants, for an "on duty" meal period to be permissible, the nature of the work

1 of the employee must prevent an employee from being relieved of all duties relating to his or her
2 work for the employer and the employees must consent in writing to the “on duty” meal period.
3 On information and belief, Plaintiff and Class Members did not consent in writing to an “on duty”
4 meal period. Further, the nature of the work of Plaintiff and Class Members was not such that they
5 were prevented from being relieved of all duties. Despite the requirements of the IWC wage orders
6 applicable to Plaintiff’s and Class Members’ employment by Defendants and Labor Code §§
7 226.7 and 512, Defendants did not provide Plaintiff and Class Members with all their statutorily
8 authorized meal periods.

9 59. For the four (4) years preceding the filing of this lawsuit, Defendants failed to
10 provide Plaintiff and Class Members, timely and uninterrupted meal periods of not less than thirty
11 (30) minutes pursuant to the IWC wage orders applicable to Plaintiff and Class Members’
12 employment by Defendants. As a proximate result of the aforementioned violations, Plaintiff and
13 Class Members have been damaged in an amount according to proof at time of trial.

14 60. By their failure to provide a compliant meal period for each shift worked over five
15 (5) hours and their failure to provide a compliant second meal period for any shift worked over ten
16 (10) hours per day by Plaintiff and the Class Members, and by failing to provide compensation in
17 lieu of such legally complaint meal periods, as alleged above, Defendants violated the provisions
18 of Labor Code §§ 226.7 and 512 and applicable IWC Wage Orders.

19 61. Plaintiff and the Class Members she seeks to represent did not voluntarily or
20 willfully waive meal periods and were regularly required to work shifts without being provided all
21 of her legally required meal periods. Defendants created a working environment in which Plaintiff
22 and Class Members were not provided all of their meal periods due to shift scheduling and/or
23 work-related demands placed upon them by Defendants as well as a lack of sufficient staffing to
24 meet the needs of Defendants’ business as discussed above. On information and belief,
25 Defendants’ implemented a policy and practice which resulted in systematic and class-wide
26 violations of the Labor Code. On information and belief, Defendants’ violations have been
27 widespread throughout the relevant period and will be evidenced by Defendants’ time records for
28 the Class Members.

62. As a result of the unlawful acts of Defendants described herein, Plaintiff and the Class Members she seeks to represent have been deprived of premium wages in amounts to be determined at trial. Pursuant to Labor Code §226.7, Plaintiff and Class Members are entitled to recover one (1) hour of premium pay for each day in which a meal period was not provided, along with interest and penalties thereon, attorneys' fees, and costs.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF

(Against All Defendants)

63. Plaintiff incorporates and re-alleges each and every allegation contained above as though fully set forth herein.

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

65. Defendants were required to authorize and permit employees such as Plaintiff and Class Members to take rest periods, based upon the total hours worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major fraction thereof, with no deduction from wages. Despite said requirements of the IWC wage orders applicable to Plaintiff's and Class Members' employment by Defendants, Defendants failed and refused to authorize and permit Plaintiff and Class Members to take ten (10) minute rest periods for every four (4) hours worked, or major fraction thereof.

66. On information and belief Defendants created a working environment in which Plaintiff and Class Members were not provided all of their rest periods due to shift scheduling and/or work-related demands placed upon them by Defendants as well as a lack of sufficient

1 staffing to meet the needs of Defendants' business as discussed above. Moreover, Plaintiff and
2 Class Members were required to stay on premises during their rest breaks. On information and
3 belief, Defendants implemented a policy and practice which resulted in systematic and class-wide
4 violations of the Labor Code. On information and belief, Defendants' violations have been
5 widespread throughout the relevant period.

6 **67.** As a proximate result of the aforementioned violations, Plaintiff and Class
7 Members have been damaged in an amount according to proof at time of trial. Pursuant to Labor
8 Code §226.7, Plaintiff and Class Members are entitled to recover one (1) hour of premium pay for
9 each day in which Defendants failed to provide a rest period to Plaintiff and the Class, plus
10 interest and penalties thereon, attorneys' fees, and costs.

11 **FIFTH CAUSE OF ACTION**

12 **FAILURE TO REMIBURSE FOR BUSINESS EXPENSES**

13 **(Against All Defendants)**

14 **68.** Plaintiff incorporates and re-alleges each and every allegation contained above as
15 though fully set forth herein.

16 **69.** Labor Code § 2802 requires employers to indemnify their employees for all
17 necessary expenditures or losses incurred by employees in direct consequence of the discharge
18 of their duties.

19 **70.** During the relevant time period, Plaintiff and Class Members incurred necessary
20 business-related expenses that were not fully reimbursed by Defendants, including, but not
21 limited to, costs associated with use of their personal cell phone and supplies for maintaining a
22 home office, including pens, paper, and a headset to take calls.

23 **71.** In violation of Labor Code § 2802, Defendants failed to indemnify Plaintiff and
24 Class Members for business-related expenses (described above).

25 **72.** In committing the violations as herein alleged, Defendants have intentionally and
26 willfully failed to fully reimburse Plaintiff and Class Members for necessary business-related
27 costs and expenses. As a direct result, Plaintiff and Class Members have suffered (and in the
28 case of those still employed by Defendant, continue to suffer) substantial losses.

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO PAY TIMELY PAY WAGES**

3 **(Against All Defendants)**

4 73. Plaintiff incorporates and re-alleges each and every allegation contained above as
5 though fully set forth herein.

6 74. Labor Code §§201-202 requires an employer who discharges an employee to pay
7 compensation due and owing to said employee immediately upon discharge and that if an
8 employee voluntarily leaves his or her employment, his or her wages shall become due and
9 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
10 two (72) hours previous notice of his or her intention to quit, in which case the employee is
11 entitled to his or her wages on their last day of work.

12 75. Labor Code §203 provides that if an employer willfully fails to pay compensation
13 promptly upon discharge, as required by Labor Code §§201-202, the employer is liable for
14 waiting time penalties in the form of continued compensation for up to thirty (30) workdays.

15 76. During the relevant time period, Defendants willfully failed and refused, and
16 continue to willfully fail and refuse, to pay Plaintiff and Waiting Time Subclass Members their
17 wages, earned and unpaid, either at the time of discharge, or within seventy-two (72) hours of
18 their voluntarily leaving Defendants' employ. These wages include regular and overtime.

19 77. As a result, Defendants are liable to Plaintiff and members of the Waiting Time
20 Subclass for waiting time penalties pursuant to Labor Code §203, in an amount according to
21 proof at the time of trial.

22 **SEVENTH CAUSE OF ACTION**

23 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

24 **(Against All Defendants)**

25 78. Plaintiff incorporates and re-alleges each and every allegation contained above as
26 though fully set forth herein.

27 79. Section 226(a) of the California Labor Code requires Defendants to itemize in wage
28 statements all deductions from payment of wages and to accurately report total hours worked by

1 Plaintiff and the Class including applicable hourly rates and reimbursement expenses among
2 other things. Defendants have knowingly and intentionally failed to comply with Labor Code
3 section 226 and 204 on wage statements that have been provided to Plaintiff and the Class.

4 80. IWC Wage Orders require Defendants to maintain time records showing, among
5 others, when the employee begins and ends each work period, meal periods, split shift intervals
6 and total daily hours worked in an itemized wage statement, and must show all deductions and
7 reimbursements from payment of wages, and accurately report total hours worked by Plaintiffs
8 and the Class. On information and belief, Defendants have failed to record all or some of the
9 items delineated in Industrial Wage Orders and Labor Code §226.

10 81. As a result of Defendants' knowing and intentional failure to comply with Labor
11 Code § 226(a), Plaintiff and Class Members have suffered injury and damage to their statutorily-
12 protected rights. Specifically, Plaintiff and Class Members have been injured by Defendants'
13 intentional violation of Labor Code § 226(a) because they were denied both their legal right to
14 receive, and their protected interest in receiving, accurate itemized wage statements under Labor
15 Code § 226(a). In addition, Defendants have made it difficult to calculate the amount of wages
16 and compensation owed to Plaintiff and Class Members. Plaintiff has had to file this lawsuit and
17 will be required to conduct discovery and perform computations in order to analyze whether in
18 fact Plaintiff was paid correctly and the extent of the underpayment, thereby causing Plaintiff to
19 incur expenses and lost time. Plaintiff would not have had to engage in these efforts and incur
20 these costs had Defendants provided wage statements accurately showing her regular and
21 overtime rates of pay, among other things. This has also delayed Plaintiff's ability to demand and
22 recover the underpayment of wages from Defendants.

23 82. Plaintiff and Class Members are entitled to recover from Defendants the greater of
24 their actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or an
25 aggregate penalty not exceeding \$4,000 dollars per employee.
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1 **EIGHTH CAUSE OF ACTION**

2 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200, et.seq.**

3 **(Against All Defendants)**

4 83. Plaintiff incorporates and re-alleges each and every allegation contained above as
5 though fully set forth herein.

6 84. Defendants' conduct, as alleged in this complaint, has been, and continues to be,
7 unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the
8 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
9 meaning of the California Code of Civil Procedure §1021.5.

10 85. Defendants' policies, activities, and actions as alleged herein, are violations of
11 California law and constitute unlawful business acts and practices in violation of California
12 Business and Professions Code §§17200, *et seq.*

13 86. A violation of California Business and Professions Code §§17200, *et seq.*, may be
14 predicated on the violation of any state or federal law. Defendants' policies and practices have
15 violated state law in at least the following respects:

16 (a) Failing to pay all lawful wages owed to Plaintiff and Class
17 Members in violation of Labor Code §§ 510, 511, 1182.12, 1194, 1197 and
18 1198;

19 (b) Failing to provide lawful uninterrupted meal periods
20 without paying Plaintiff and Class Members premium wages for every day
21 said meal periods were not provided in violation of Labor Code §§ 226.7
22 and 512;

23 (c) Failing to authorize or permit lawful rest breaks without
24 paying Plaintiff and Class Members premium wages for every day said rest
25 breaks were not authorized or permitted in violation of Labor Code § 226.7;

26 (d) Failing to properly reimburse employees for business
27 expenses in violation of Labor Code §§ 2800 and 2802;
28

1 (e) Failing to provide Plaintiff and Class Members with
2 accurate itemized wage statements in violation of Labor Code § 226; and

3 (f) Failing to timely pay all earned wages to Plaintiff and
4 Class Members upon separation of employment in violation of Labor Code
5 §§ 201, 202 and 203.

6 87. Defendants intentionally avoided paying Plaintiff and Class Members' wages and
7 monies, thereby creating for Defendants an artificially lower cost of doing business in order to
8 undercut their competitors and establish and gain a greater foothold in the marketplace.

9 88. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiff and Class
10 Members are entitled to restitution of the wages unlawfully withheld and retained by Defendants
11 during a period that commences four years prior to the filing of the Complaint; an award of
12 attorney's fees pursuant to Code of Civil Procedure § 1021.5 and other applicable laws; and an
13 award of costs.

14 **PRAYER FOR RELIEF**

15 Plaintiff, on her own behalf and on behalf of all others similarly situated, prays for relief
16 and judgment against Defendants and DOES 1 through 10, jointly and severally, as follows:

17 1. For certification of the proposed Class and Subclass and any other appropriate
18 subclasses under California Code of Civil Procedure § 382;

19 2. For appointment of Theresa Mitchell as the class representative;

20 3. For appointment of James Hawkins, APLC as class counsel for all purposes;

21 4. For general damages;

22 5. For special damages;

23 6. For statutory penalties to the extent permitted by law, including those pursuant to
24 the Labor Code and IWC Wage Orders;

25 7. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

26 8. For an order requiring Defendants to restore and disgorge all funds to each
27 employee acquired by means of any act or practice declared by this Court to be unlawful, unfair
28

1 or fraudulent and, therefore, constituting unfair competition under Business and Professions
2 Code §§ 17200, *et seq.*;

3 9. For an award of damages in the amount of unpaid compensation including, but
4 not limited to, unpaid wages, benefits and penalties;

5 10. For pre-judgment interest;

6 11. For reasonable attorney's fees, costs of suit and interest to the extent permitted
7 by law, including pursuant to Code of Civil Procedure § 1021.5 and Labor Code § 1194; and

8 12. For such other relief as the Court deems just and proper.

9
10 Dated: July 12, 2021

JAMES HAWKINS APLC

11
12
13 By: 

James R. Hawkins
Samantha A. Smith
Erica T. Khaine
Attorneys for Plaintiff

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16 **DEMAND FOR JURY TRIAL**

17 Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

18
19 Dated: July 12, 2021

JAMES HAWKINS APLC

20
21 By: 

James R. Hawkins
Samantha A. Smith
Erica T. Khaine
Attorneys for Plaintiff