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Superior Court of California,  
County of Monterey  
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF MONTEREY

10 MARIA GONZALEZ, on behalf of herself  
and all others similarly situated,

11 *Plaintiff,*

12  
13 vs.

14 BESTNEST MANAGEMENT, LLC, a  
California corporation; BESTNEST  
15 STAFFING, LLC, a California corporation;  
and DOES 1 through 50, inclusive,

16 *Defendants.*  
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Case No. 21CV002228

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:**

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
3. Failure to Pay Hourly Wages and Overtime (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
4. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
5. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203); and
6. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);
7. Civil Penalties (Lab. Code §§ 2698, *et seq.*)

**JURY TRIAL DEMANDED**

1 Plaintiff MARIA GONZALEZ (“Plaintiff”), on behalf of herself, all others similarly situated,  
2 and the general public, complain and allege as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action against Defendants BESTNEST MANAGEMENT,  
5 LLC, a California corporation; BESTNEST STAFFING, LLC, a California corporation; and DOES  
6 1 through 50, inclusive, (collectively referred to as “Defendants”) for alleged violations of the  
7 California Labor Code and California Business and Professions Code. As set forth below, Plaintiff  
8 alleges that Defendants have:

- 9 (1) failed to pay them overtime wages at the correct rate;
- 10 (2) failed to pay them double time wages at the correct rate;
- 11 (3) failed to pay them overtime and/or double time wages by failing to include all  
12 applicable remuneration in calculating the regular rate of pay;
- 13 (4) failed to provide them with meal periods;
- 14 (5) failed to provide them with rest periods;
- 15 (6) failed to pay them premium wages for missed meal and rest periods;
- 16 (7) failed to provide them with accurate written wage statements; and
- 17 (8) failed to pay them all of their final wages following separation of employment.

18 Based on these alleged Labor Code violations, Plaintiff now brings this class action to recover  
19 unpaid wages, liquidated damages, penalties, restitution and related relief on behalf of herself, all  
20 others similarly situated, and the general public.

21 **2. JURISDICTION AND VENUE**

22 3. This Court has subject matter jurisdiction to hear this case because the monetary  
23 damages and restitution sought by Plaintiff from Defendants conduct exceeds the minimal jurisdiction  
24 of the Superior Court of the State of California.

25 4. Venue is proper in the County of Monterey pursuant to Code of Civil Procedure  
26 sections 395(a) and 395.5 in that liability arose this county because at least some of the transactions  
27 that are the subject matter of this Complaint occurred therein and/or each defendant is found,  
28 maintains offices, transacts business and/or has an agent therein.

5. Venue is proper in Monterey County because Defendants' have at all times alleged herein, conducted business in Monterey County, and throughout California. As such, venue is proper in any county in California.

## PARTIES

6. Plaintiff MARIA GONZALEZ is, and at all relevant times mentioned herein, an individual residing in the State of California.

7. Plaintiff is informed and believes, and thereupon alleges that Defendant BESTNEST MANAGEMENT, LLC is, and at all relevant times mentioned herein, a California corporation doing business in the State of California.

8. Plaintiff is informed and believes, and thereupon alleges that Defendant BESTNEST STAFFING, LLC is, and at all relevant times mentioned herein, a California corporation doing business in the State of California.

9. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants when ascertained. Plaintiff is informed and believes, and thereupon alleges that each of the fictitiously named defendants are responsible in some manner for the occurrences, acts and omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and capacities of the DOE defendants when ascertained.

10. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times mentioned herein, some or all of the defendants were the representatives, agents, employees, partners, directors, associates, joint venturers, joint employers, owners, principals or co-participants of some or all of the other defendants, and in doing the things alleged herein, were acting within the course and scope of such relationship and with the full knowledge, consent and ratification by such other defendants.

11. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times mentioned herein, some of the defendants pursued a common course of conduct, acted in concert and

1 conspired with one another, and aided and abetted one another to accomplish the occurrences, acts  
2 and omissions alleged herein.

3 12. Plaintiff is informed and believes, and thereupon alleges, that Defendants, each of  
4 them, had control over the payment of Plaintiff's and the other aggrieved employees' compensation,  
5 owned the equipment used by Plaintiff and the other aggrieved employees, operated out of the same  
6 locations where Plaintiff and the other aggrieved employees worked, were each responsible for  
7 training Plaintiff and the other aggrieved employees, had authority to promote or discharge Plaintiff  
8 and the other aggrieved employees, had the power to determine Plaintiff and the other aggrieved  
9 employees' schedules, assignments, and amount of work, and had the right to control the means and  
10 manner of Plaintiff's and the other aggrieved employees' performance.

11 13. This action has been brought and may be maintained as a class action pursuant to Code  
12 of Civil Procedure section 382 because there is a well-defined community of interest among the  
13 persons who comprise the readily ascertainable classes defined below and because Plaintiff is  
14 unaware of any difficulties likely to be encountered in managing this case as a class action.

15 14. **Relevant Time Period:** The relevant time period is defined as the time period  
16 beginning four years prior to the filing of this action until judgment is entered.

17 **Hourly Employee Class:** All persons employed by Defendants, collectively or  
18 separately, and/or any staffing agencies, onsite employers, and/or any other third  
19 parties in hourly or non-exempt positions in California four years prior to the filing of  
this action and ending on the date that final judgment is entered in this action ("Hourly  
Employee Class").

20 **Meal Period Sub-Class:** All **Hourly Employee Class** members who worked  
21 in a shift in excess of five hours during the four years prior to the filing of this  
action and ending on the date that final judgment is entered in this action

22 **Rest Period Sub-Class:** All **Hourly Employee Class** members who worked  
23 a shift of at least three and one-half (3.5) hours the four years prior to the filing  
of this action and ending on the date that final judgment is entered in this  
24 action.

25 **Waiting Time Penalties Sub-Class:** All **Hourly Employee Class** members  
26 who separated from their employment with Defendants during the period  
beginning three years before the filing of this action and ending when final  
judgment is entered.

27 **Wage Statement Class:** All persons employed by Defendants in California during  
28 the period beginning one year before the filing of this action and ending when final  
judgment is entered.

1       **UCL Class:** All **Hourly Employee Class** members employed by Defendants in  
2 California during the four years prior to the filing of this action and ending on the date  
that final judgment is entered in this action.

3       15.     **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right  
4 to amend or modify the class definitions with greater specificity, by further division into sub-classes  
5 and/or by limitation to particular issues.

6       16.     **Numerosity:** The class members are so numerous that the individual joinder of each  
7 individual class member is impractical. While Plaintiff does not currently know the exact number of  
8 class members, Plaintiff is informed and believes, and thereupon alleges that the actual number  
9 exceeds the minimum required for numerosity under California law.

10       17.     **Commonality and Predominance:** Common questions of law and fact exist as to all  
11 class members and predominate over any questions which affect only individual class members.  
12 These common questions include, but are not limited to:

- 13             A.     Whether Defendants maintained a policy or practice of failing to provide  
14                     employees with their rest periods;
- 15             B.     Whether Defendants maintained a policy or practice of failing to provide  
16                     employees with their meal periods;
- 17             C.     Whether Defendants failed to pay premium wages to class members when they  
18                     have not been provided with meal and rest periods at the appropriate rates of  
19                     pay;
- 20             D.     Whether Defendants failed to pay minimum and/or overtime wages to class  
21                     members for all time worked;
- 22             E.     Whether Defendants failed to provide class members with accurate written  
23                     wage statements as a result of providing them with written wage statements  
24                     with inaccurate entries for, among other things, amounts of gross and net  
25                     wages, and total hours worked;
- 26             F.     Whether Defendants applied policies or practices that result in late and/or  
27                     incomplete final wage payments;

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1 G. Whether Defendants are liable to class members for waiting time penalties  
2 under Labor Code section 203; and

3 H. Whether class members are entitled to restitution of money or property that  
4 Defendants may have acquired from them through unfair competition;

5 18. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff  
6 is informed and believes and thereupon alleges that Defendants have a policy or practice of failing to  
7 comply with the California Labor Code and Business and Professions Code as alleged in this  
8 Complaint.

9 19. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in  
10 that she has no interests that are adverse to, or otherwise conflict with, the interests of absent class  
11 members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly  
12 and adequately represent and protect the interests of the other class members.

13 20. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that  
14 they have no known conflicts of interest with Plaintiff or absent class members, are experienced in  
15 wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on behalf  
16 of Plaintiff and absent class members.

17 21. **Superiority:** A class action is vastly superior to other available means for fair and  
18 efficient adjudication of the class members' claims and would be beneficial to the parties and the  
19 Court. Class action treatment will allow a number of similarly situated persons to simultaneously and  
20 efficiently prosecute their common claims in a single forum without the unnecessary duplication of  
21 effort and expense that numerous individual actions would entail. In addition, the monetary amounts  
22 due to many individual class members are likely to be relatively small and would thus make it difficult,  
23 if not impossible, for individual class members to both seek and obtain relief. Moreover, a class  
24 action will serve an important public interest by permitting class members to effectively pursue the  
25 recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent  
26 or contradictory judgments inherent in individual litigation.

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**GENERAL ALLEGATIONS**

22. Plaintiff worked for Defendants as a non-exempt employee during the relevant and statutory periods.

23. Plaintiff is informed and believes that she and putative class members were non-exempt hourly employees, who were misclassified as independent contractors.

24. Plaintiff and Class members were not paid proper wages and overtime for all hours worked, at the proper rates of pay. Plaintiff and class members were consistently required to undergo security checks, off-the-clock both prior to clocking in for work and after clocking out for the day, and for which they were not paid wages. This uncompensated time caused Plaintiff and class members to work in excess of eight (8) hours a day and/or forty (40) hours a week, entitling Plaintiff and Class Members to minimum and overtime wages, which they were systemically denied.

25. Putative class members were not provided with meal periods of at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal period as part of each work shift; (2) no formal written meal policy that encouraged employees to take their meal periods, or that advised putative class members of their meal and rest period rights; and (3) Defendants' practice of requiring putative class members to continue working through their meal and rest periods due to the excessive workload.

26. Additionally, the uncompensated time spent having to undergo mandatory security checks denied Plaintiff and class members the opportunity to take their full, duty free, 30-minute meal periods and prior to the completion of their fifth hour of work.

27. Putative class members were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest period as part of each work shift, including second rest breaks for shifts of six (6) hours or more; (2) no formal compliant written rest period policy that encouraged employees to take their rest periods, or that properly advised putative class members of their rest period rights; (3) Defendants' policy and practice of requiring putative class members to remain on the premises during their rest breaks; (4) Defendants' policy and practice of requiring putative class members to continue working through their rest breaks due to the excessive workload.

1           28.     Additionally, the uncompensated time spent undergoing mandatory security checks  
2 denied Plaintiff and class members the opportunity to take their full, duty free, 10-minute rest periods,  
3 as required by law.

4           29.     Furthermore, and as discussed above, Defendants failed to pay Plaintiff and class  
5 members premium pay wages at their appropriate regular rates of pay for each meal and rest period  
6 denied.

7           30.     Plaintiff and the putative class were not provided with accurate wage statements as  
8 mandated by law pursuant to Labor Code section 226. Specifically, Defendants failed to issue wage  
9 statements as “a detachable part of the check, draft, or voucher paying the employee’s wages, or  
10 separately if wages are paid by personal check or cash, an accurate itemized statement in writing.”  
11 Additionally, the wage statements issued to Plaintiff and class members were not recorded in “ink or  
12 other indelible form.”

13           31.     Defendants failed to comply with Labor Code section 226(a)(1) as “gross wages  
14 earned” were not accurately reflected in that: all hours worked, including overtime, were not included.

15           32.     Defendants failed to comply with Labor Code section 226(a)(2) as “total hours worked  
16 by the employee” were not accurately reflected in that: all hours worked, including overtime, were  
17 not included.

18           33.     Defendants failed to comply with Labor Code section 226(a)(5) as “net wages earned”  
19 were not accurately reflected in that: all hours worked, including overtime, were not included.

20           34.     Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable  
21 hourly rates in effect during the pay period and the corresponding number of hours worked at each  
22 hourly rate by the employee” were not accurately reflected in that: all hours worked, including  
23 overtime, were not included.

24           35.     Furthermore, Defendants failed to provide Plaintiff and Class Members with paper pay  
25 stubs as required by Labor Code § 226, applicable Wage Orders, and DLSE Opinion Letters.  
26 Plaintiff’s and Class Members’ wage statement were only provided in electronic format in violation  
27 of Labor Code § 226.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL PERIODS**

3 **(Lab. Code §§ 226.7, 512, 1174, and 1198)**

4 **(Plaintiff and Meal Period Sub-Class)**

5 36. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if  
6 fully alleged herein.

7 37. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been  
8 non-exempt employees of Defendant entitled to the full meal period protections of both the Labor  
9 Code and the applicable Industrial Welfare Commission Wage Order.

10 38. Labor Code section 512 and Section 11 of the applicable Industrial Welfare  
11 Commission Wage Order impose an affirmative obligation on employers to provide non-exempt  
12 employees with uninterrupted, duty-free meal periods of at least thirty minutes for each work period  
13 of five hours, and to provide them with two uninterrupted, duty-free meal periods of at least thirty  
14 minutes for each work period of ten hours.

15 39. Labor Code section 226.7 and Section 11 of the applicable Industrial Welfare  
16 Commission Wage Order (“Wage Order”) both prohibit employers from requiring employees to work  
17 during required meal periods and require employers to pay non-exempt employees an hour of  
18 premium wages on each workday that the employee is not provided with the required meal period.

19 40. Compensation for missed meal periods constitutes wages within the meaning of Labor  
20 Code section 200.

21 41. Labor Code section 1198 makes it unlawful to employ a person under conditions that  
22 violate the applicable Wage Order.

23 42. Section 11 of the applicable Wage Order states:

24 “No employer shall employ any person for a work period of more than  
25 five (5) hours without a meal period of not less than 30 minutes, except  
26 that when a work period of not more than six (6) hours will complete  
27 the day’s work the meal period may be waived by mutual consent of  
28 the employer and employee. Unless the employee is relieved of all  
duty during a 30 minute meal period, the meal period shall be  
considered an ‘on duty’ meal period and counted as time worked. An  
‘on duty’ meal period shall be permitted only when the nature of the  
work prevents an employee from being relieved of all duty and when

1 by written agreement between the parties an on-the-job paid meal  
2 period is agreed to. The written agreement shall state that the employee  
may, in writing, revoke the agreement at any time.”

3 43. At all relevant times, Plaintiff was not subject to a valid on-duty meal period  
4 agreement. Plaintiff is informed and believes that, at all relevant times, **Meal Period Sub-Class**  
5 members were not subject to valid on-duty meal period agreements with Defendants.

6 44. Plaintiff alleges that, at all relevant times during the applicable limitations period,  
7 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal Period**  
8 **Sub-Class** with uninterrupted, duty-free meal periods for at least thirty (30) minutes for each five (5)  
9 hour work period, as required by Labor Code section 512 ad the applicable Wage Order.

10 45. Plaintiff alleges that, at all relevant times during the applicable limitations period,  
11 Defendants maintained a policy or practice of failing to pay premium wages to **Meal Period Sub-**  
12 **Class** members when they worked five (5) hours without clocking out for any meal period.

13 46. Plaintiff alleges that, at all relevant times during the applicable limitations period,  
14 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal Period**  
15 **Sub-Class** with a second meal period when they worked shifts of ten or more hours and failed to pay  
16 them premium wages as required by Labor Code 512 and the applicable Wage Order.

17 47. Moreover, Defendants written policies fail to inform Meal period Class Members of  
18 their meal period rights under the Labor Code and applicable Wage Orders.

19 48. At all relevant times, Defendants failed to pay Plaintiff and the **Meal Period Sub-**  
20 **Class** members additional premium wages, and/or were not paid premium wages at the employees’  
21 regular rates of pay when required meal periods were not provided.

22 49. Pursuant to Labor Code section 204, 218.6, 226.7 and 512, Plaintiff, on behalf of  
23 herself and the **Meal Period Sub-Class** members, seek to recover unpaid premium wages, interest  
24 thereon, and costs of suit.

25 50. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the  
26 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and the  
27 **Meal Period Sub-Class** members, seek to recover reasonable attorneys’ fees.

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1 rest breaks for shifts of six (6) hours or more; (2) no formal compliant written rest period policy that  
2 encouraged employees to take their rest periods, or that properly advised **Rest Period Sub-Class**  
3 members of their rest period rights; (3) Defendants' policy and practice of requiring **Rest Period**  
4 **Sub-Class** members to remain on the premises during their rest breaks; (4) Defendants' policy and  
5 practice of requiring **Rest Period Sub-Class** members to continue working through their rest breaks  
6 due to the excessive workload

7 59. At all relevant times, Defendants failed to pay Plaintiff and the **Rest Period Sub-Class**  
8 members additional premium wages when required rest periods were not provided.

9 60. Pursuant to Labor Code section 204, 218.6 and 226.7, Plaintiff, on behalf of herself  
10 and **Rest Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon, and  
11 costs of suit.

12 61. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the  
13 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and **Rest**  
14 **Period Sub-Class** members, seek to recover reasonable attorneys' fees.

15 **THIRD CAUSE OF ACTION**

16 **FAILURE TO PAY HOURLY AND OVERTIME WAGES**

17 **(Lab. Code §§ 223, 510, 1194, 1197 and 1198)**

18 **(Plaintiff and Hourly Employee Class)**

19 62. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged  
20 herein.

21 63. At all relevant times, Plaintiff and **Hourly Employee Class** members are or have been  
22 non-exempt employees of Defendants entitled to the full protections of the Labor Code and the  
23 applicable Wage Order.

24 64. Section 2 of the applicable Wage Order defines "hours worked" as "the time during  
25 which an employee is subject to the control of the employer, and includes all the time the employee  
26 is suffered or permitted to work, whether or not required to do so."

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1           65.     Section 4 of the applicable Wage Order requires an employer to pay non-exempt  
2 employees at least the minimum wage set forth therein for all hours worked, which consist of all hours  
3 that an employer has actual or constructive knowledge that employees are working.

4           66.     Labor Code section 1194 invalidates any agreement between an employer and an  
5 employee to work for less than the minimum or overtime wage required under the applicable Wage  
6 Order.

7           67.     Labor Code section 1194.2 entitles non-exempt employees to recover liquidated  
8 damages in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition  
9 to the underlying unpaid minimum wages and interest thereon.

10          68.     Labor Code section 1197 makes it unlawful for an employer to pay an employee less  
11 than the minimum wage required under the applicable Wage Order for all hours worked during a  
12 payroll period.

13          69.     Labor Code section 1197.1 provides that it is unlawful for any employer or any other  
14 person acting either individually or as an officer, agent or employee of another person, to pay an  
15 employee, or cause an employee to be paid, less than the applicable minimum wage.

16          70.     Labor Code section 1198 makes it unlawful for employers to employ employees under  
17 conditions that violate the applicable Wage Order.

18          71.     Labor Code section 204 requires employers to pay non-exempt employees their earned  
19 wages for the normal work period at least twice during each calendar month on days the employer  
20 designates in advance and to pay non-exempt employees their earned wages for labor performed in  
21 excess of the normal work period by no later than the next regular payday.

22          72.     Labor Code section 223 makes it unlawful for employers to pay their employees lower  
23 wages than required by contract or statute while purporting to pay them legal wages.

24          73.     Labor Code section 510 and Section 3 of the applicable Wage Order require employees  
25 to pay non-exempt employees overtime wages of no less than one and one-half times their respective  
26 regular rates of pay for all hours worked in excess of eight hours in one workday, all hours worked in  
27 excess of forty hours in one workweek, and/or for the first eight hours worked on the seventh  
28 consecutive day of one workweek.

1           74. Labor Code section 510 and Section 3 of the applicable Wage Order also require  
2 employers to pay non-exempt employees overtime wages of no less than two times their respective  
3 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours  
4 worked in excess of eight hours on a seventh consecutive workday during the workweek.

5           75. Plaintiff is informed and believes that, at all relevant times, Defendants have applied  
6 centrally devised policies and practices to her and **Hourly Employee Class** members with respect to  
7 working conditions and compensation arrangements.

8           76. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**  
9 **Employee Class** members for all time worked, including but not limited to, overtime hours at  
10 statutory and/or agreed rates.

11           77. Plaintiff and **Hourly Employee Class** members were not paid proper wages and  
12 overtime for all hours worked, at the proper rates of pay. Plaintiff and **Hourly Employee Class**  
13 members were consistently required to perform work, off-the-clock for which they were not paid  
14 wages. Specifically, Plaintiff and **Hourly Employee Class** members were required to undergo  
15 mandatory security checks prior to clocking in for work and after clocking out for the day, and for  
16 which they were not paid wages. This uncompensated time caused Plaintiff and **Hourly Employee**  
17 **Class** members to work in excess of eight (8) hours a day and/or forty (40) hours a week, entitling  
18 Plaintiff and **Hourly Employee Class** members to minimum and overtime wages, which they were  
19 systemically denied.

20           78. Plaintiff and **Hourly Employee Class** members were consistently required to work in  
21 excess of eight (8) hours a day and/or forty (40) hours a week, entitling Plaintiff and **Hourly**  
22 **Employee Class** members to overtime wages.

23           79. As a result of Defendants' unlawful conduct, Plaintiff and **Hourly Employee Class**  
24 members have suffered damages in an amount, subject to proof, to the extent they were not paid the  
25 full amount of wages earned during each pay period during the applicable limitations period,  
26 including overtime wages.

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80. Pursuant to Labor Code sections 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiff, on behalf of herself and **Hourly Employee Class** members, seek to recover unpaid straight time and overtime wages, interest thereon and costs of suit.

81. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and **Hourly Employee Class** members, seek to recover reasonable attorneys' fees.

#### **FOURTH CAUSE OF ACTION**

## FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

**(Lab. Code § 226)**

**(Plaintiff and Wage Statement Penalties Sub-Class)**

82. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

83. Labor Code section 226(a) states:

“An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, ‘copy’ includes a duplicate of the itemized statement provided to an employee or a computer-generated record that

1 accurately shows all of the information required by this subdivision.”

2 84. The Division of Labor Standards Enforcement (“DLSE”) has sought to harmonize the  
3 “detachable part of the check” provision and the “accurate itemized statement in writing” provision  
4 of Labor Code section 226(a) by allowing for electronic wage statements so long as each employee  
5 retains the right to elect to receive a written paper stub or record and that those who are provided with  
6 electronic wage statements retain the ability to easily access the information and convert the electronic  
7 statements into hard copies at no expense to the employee. (DLSE Opinion Letter July 6, 2006).

8 85. Plaintiff is informed and believes that, at all relevant times during the applicable  
9 limitations period, Defendants have failed to provide **Wage Statement Class** members with written  
10 wage statements as described above. Additionally, the wage statements issued to class members  
11 failed to account for the unpaid minimum wages, overtime, and premium pay wages described  
12 above.

13 86. Furthermore, Defendants failed to provide Plaintiff and **Wage Statement Class**  
14 Members with paper pay stubs as required by Labor Code § 226, applicable Wage Orders, and DLSE  
15 Opinion Letters. Plaintiff’s and **Wage Statement Class** members’ wage statement were only  
16 provided in electronic format in violation of Labor Code § 226.

17 87. Plaintiff is informed and believes that Defendants’ failure to provide her and **Wage**  
18 **Statement Class** members with accurate written wage statements were intentional in that Defendants  
19 have the ability to provide them with accurate wage statements but have intentionally provided them  
20 with written wage statements that Defendants have known do not comply with Labor Code section  
21 226(a).

22 88. Plaintiff and **Wage Statement Class** members have suffered injuries, in that  
23 Defendants have violated their legal rights to receive accurate wage statements and have misled them  
24 about their actual rates of pay and wages earned. In addition, inaccurate information on their wage  
25 statements have prevented immediate challenges to Defendants’ unlawful pay practices, has required  
26 discovery and mathematical computations to determine the amount of wages owed, has caused  
27 difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the

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1 submission of inaccurate information about wages and deductions to federal and state government  
2 agencies.

3 89. Pursuant to Labor Code section 226(e), Plaintiff, on behalf of herself and **Wage**  
4 **Statement Class** members, seek the greater of actual damages or \$50.00 for the initial pay period in  
5 which a violation of Labor Code section 226(a) occurred, and \$100.00 for each subsequent pay period  
6 in which a violation of Labor Code section 226(a) occurred, not to exceed an aggregate penalty of  
7 \$4000.00 per class member, as well as awards of reasonable attorneys' fees and costs.

8 **FIFTH CAUSE OF ACTION**

9 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

10 **(Lab. Code §§ 201-203)**

11 **(Plaintiff and Waiting Time Penalties Sub-Class)**

12 90. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged  
13 herein.

14 91. At all relevant times, Plaintiff and **Waiting Time Penalties Sub-Class** members have  
15 been entitled, upon the end of their employment with Defendants, to timely payment of all wages  
16 earned and unpaid before termination or resignation.

17 92. At all relevant times, pursuant to Labor Code section 201, employees who have been  
18 discharged have been entitled to payment of all final wages immediately upon termination.

19 93. At all relevant times, pursuant to Labor Code section 202, employees who have  
20 resigned after giving at least seventy-two (72) hours notice of resignation have been entitled to  
21 payment of all final wages at the time of resignation.

22 94. Plaintiff is informed and believes that, at all relevant time during the applicable  
23 limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class**  
24 members all of their final wages in accordance with the Labor Code.

25 95. Plaintiff is informed and believes that, at all relevant times during the applicable  
26 limitations period, Defendants have maintained a policy or practice of paying **Waiting Time**  
27 **Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code  
28 sections 201 or 202 by failing to timely pay them all final wages.

96. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to timely pay all final wages to her and **Waiting Time Penalties Sub-Class** members have been willful in that Defendants have the ability to pay final wages in accordance with Labor Code sections 201 and/or 202 but have intentionally adopted policies or practices that are incompatible with those requirements.

97. Pursuant to Labor Code sections 203 and 218.6, Plaintiff, on behalf of herself and **Waiting Time Penalties Sub-Class** members, seek waiting time penalties from the dates that their final wages have first become due until paid, up to a maximum of thirty days, and interest thereon.

98. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine and/or the common fund doctrine, Plaintiff, on behalf of herself and **Waiting Time Penalties Sub-Class** members, seek awards of reasonable attorneys' fees and costs.

## SIXTH CAUSE OF ACTION

## UNFAIR COMPETITION

**(Bus. & Prof. Code §§ 17200 *et seq.*)**

**(Plaintiff and UCL Class)**

99. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

100. Business and Professions Code section 17200 defines “unfair competition” to include any unlawful business practice.

101. Business and Professions Code section 17203-17204 allow a person who has lost money or property as a result of unfair competition to bring a class action in accordance with Code of Civil Procedure section 382 to recover money or property that may have been acquired from similarly situated persons by means of unfair competition.

102. California law requires employers to pay hourly, non-exempt employees for all hours they are permitted or suffered to work, including hours that the employer knows or reasonable should know that employees have worked.

103. Plaintiff and the **UCL Class** members re-alleges and incorporates the FIRST, SECOND, and THIRD causes of action herein.

1           104. Plaintiff lost money or property as a result of the aforementioned unfair competition.  
2           105. Defendants have or may have acquired money by means of unfair competition.  
3           106. Plaintiff is informed and believes and thereupon alleges that by committing the Labor  
4 Code violations described in this Complaint, Defendants violated Labor Code sections 215, 216, 225,  
5 226.6, 226.7, 354, 408, 512, 510, 553, 1175, 1174, 1194, 1194.2, 1197, 1197.1, 1198, and 1199  
6 which make it a misdemeanor to commit the Labor Code violations alleged herein.

7           107. Defendants have committed criminal conduct through their policies and practices of,  
8 *inter alia*, failing to comport with their affirmative obligations as an employer to: provide non-exempt  
9 employees with compliant meal and rest periods and pay non-exempt employees for all hours worked  
10 at the proper rates of pay.

11           108. Defendants' unlawful conduct as alleged in this Complaint amounts to and constitutes  
12 unfair competition within the meaning of Business and Professions Code section 17200 *et seq.*  
13 Business and Professions Code sections 17200 *et seq.* protects against unfair competition and allows  
14 a person who has suffered an injury-in-fact and has lost money or property as a result of an unfair,  
15 unlawful or fraudulent business practice to seek restitution on his own behalf and on behalf of  
16 similarly situated persons in a class action proceeding.

17           109. As a result of Defendants' violations of the Labor Code during the applicable  
18 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form  
19 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants' conduct.

20           110. Plaintiff is informed and believes that other similarly situated persons have been  
21 subject to the same unlawful policies or practices of Defendants.

22           111. Due to the unfair and unlawful business practices in violation of the Labor Code,  
23 Defendants have gained a competitive advantage over other comparable companies doing business in  
24 the State of California that comply with their legal obligations.

25           112. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive  
26 for "any unlawful, unfair or fraudulent business act or practice," including if a practice or act violates  
27 or is considered unlawful under any other state or federal law.

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1           113.   Accordingly, pursuant to Business and Professions Code sections 17200 and 17203,  
2 Plaintiffs request the issuance of temporary, preliminary and permanent injunctive relief enjoining  
3 Defendants, and each of them, and their agents and employees, from further violations of the Labor  
4 Code and applicable Wage Orders.

5           114.   Accordingly, pursuant to Bus. & Prof. Code sections 17200 and 17203, Plaintiff  
6 requests the issuance of temporary, preliminary and permanent injunctive relief enjoining  
7 Defendants, and each of them, and their agents and employees, from further violations of the Labor  
8 Code and applicable Industrial Welfare Commission Wage Orders; and upon a final hearing seek an  
9 order permanently enjoining Defendants, and each of them, and their respective agents and  
10 employees, from further violations of the Labor Code and applicable Industrial Welfare Commission  
11 Wage Orders.

12           115.   Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of  
13 herself and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully  
14 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful  
15 and unfair business practices.

16           116.   Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine  
17 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover  
18 reasonable attorneys' fees in connection with their unfair competition claims.

19           117.   Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of  
20 herself and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully  
21 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful  
22 and unfair business practices.

23           118.   Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine  
24 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover  
25 reasonable attorneys' fees in connection with their unfair competition claims.

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1 **SEVENTH CAUSE OF ACTION**

2 **CIVIL PENALTIES**

3 **(Lab. Code §§ 2698 *et seq.*)**

4 119. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

5 120. During the applicable limitations period, Defendants have violated Labor Code  
6 §§ 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1194, 1197, and 1198.

7 121. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of  
8 herself and other current and former employees, to bring a representative civil action to recover  
9 civil penalties pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not,  
10 be brought or maintained as a class action pursuant to Code of Civil Procedure § 382.

11 122. Plaintiff, an employee against whom Defendants committed one or more of the  
12 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee  
13 within the meaning of Labor Code § 2699(c).

14 123. Plaintiff has complied with the procedures for bringing suit specified in Labor Code  
15 § 2699.3 by submitting written notice to the Labor and Workforce Development Agency  
16 (“LWDA”) via online submission and to Defendants via certified mail on July, 2, 2021.

17 124. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil  
18 penalties for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 510,  
19 512, 1194, 1197, and 1198:

- 20 i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 1194, and 1198,  
21 one hundred dollars (\$100) for each employee per pay period for each initial  
22 violation and two hundred dollars (\$200) for each employee per pay period  
23 for each subsequent violation (penalties set by Labor Code § 2699(f)(2));
- 24 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding  
25 thirty (30) days’ pay as waiting time (penalties set by Labor Code § 256);
- 26 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each  
27 employee for each initial violation that was neither willful nor intentional,  
28 two hundred dollars (\$200) for each employee, plus 25% of the amount

1 unlawfully withheld from each employee, for each initial violation that was  
2 either willful or intentional, and two hundred dollars (\$200) for each  
3 employee, plus twenty-five percent (25%) of the amount unlawfully withheld  
4 from each employee, for each subsequent violation, regardless of whether the  
5 subsequent violation was either willful or intentional (penalties set by Labor  
6 Code § 210);

7 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each  
8 employee for each initial violation that was neither willful nor intentional,  
9 two hundred dollars (\$200) for each employee, plus twenty-five percent  
10 (25%) of the amount unlawfully withheld from each employee, for each  
11 initial violation that was either willful or intentional, and two hundred dollars  
12 (\$200) for each employee, plus twenty-five percent (25%) of the amount  
13 unlawfully withheld from each employee, for each subsequent violation,  
14 regardless of whether the subsequent violation was either willful or  
15 intentional (penalties set by Labor Code § 225.5);

16 v. For violations of Labor Code § 226(a), if this action is deemed to be an initial  
17 citation, two hundred and fifty dollars (\$250) for each employee for each  
18 violation. Alternatively, if an initial citation or its equivalent occurred before  
19 the filing of this action, one thousand dollars (\$1,000) for each employee for  
20 each violation (penalties set by Labor Code § 226.3);

21 vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each  
22 employee for each initial pay period for which the employee was underpaid,  
23 and one hundred dollars (\$100) for each employee for each subsequent pay  
24 period for which the employee was underpaid (penalties set by Labor Code §  
25 558);

26 vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each  
27 aggrieved employee for each initial violation of Labor Code § 1197 that was  
28 intentional and two hundred and fifty dollars (\$250) for each aggrieved

1 employee per pay period for each subsequent violation of Labor Code §  
2 1197, regardless of whether the initial violation was intentional (penalties set  
3 by Labor Code § 1197.1);

4 viii. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable  
5 attorneys' fees and costs in connection with Plaintiff's claims for civil  
6 penalties.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, on behalf of herself, all others similarly situated, and the general  
9 public, prays for relief and judgment against Defendants as follows:

- 10 (1) An order that the action be certified as a class action;  
11 (2) An order that Plaintiff be appointed class representative;  
12 (3) An order that counsel for Plaintiff be appointed class counsel;  
13 (4) Unpaid wages;  
14 (5) Actual damages;  
15 (6) Liquidated damages;  
16 (7) Restitution;  
17 (8) Declaratory relief;  
18 (9) Pre-judgment interest;  
19 (10) Statutory penalties;  
20 (11) Costs of suit;  
21 (12) Reasonable attorneys' fees; and  
22 (13) Such other relief as the Court deems just and proper.

23 **DEMAND FOR JURY TRIAL**

24 Plaintiff, on behalf of herself, all other similarly situated, and the general public, hereby  
25 demands a jury trial on all issues so triable.

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Dated: September 22, 2021

SETAREH LAW GROUP



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SHAUN SETAREH  
DAVID KELEDJIAN  
Attorneys for Plaintiff  
MARIA GONZALEZ

1 **PROOF OF SERVICE**

2 I am a citizen of the United States and am employed in the County of Los Angeles, State  
3 of California. I am over the age of 18 and not a party to the within action. My business address  
4 is 9665 Wilshire Blvd., Suite 430 Beverly Hills, CA 90212

5 On September 22, 2021, I served the foregoing documents described as:

6 **FIRST AMENDED COMPLAINT**

7 in this action by transmitting a true copy thereof enclosed in a sealed envelope addressed as  
8 follows:

9 Christine H. Long  
Christine.Long@berliner.com  
10 Ghazaleh Modarresi  
Ghazaleh.Modarresi@berliner.com  
11 BERLINER COHEN, LLP  
12 Ten Almaden Boulevard  
Eleventh Floor  
13 San Jose, CA 95113  
14 **Counsel for Defendants BESTNEST**  
15 **MANAGEMENT, LLC and BESTNEST**  
**STAFFING, LLC**

16 **[X] ONLY BY ELECTRONIC TRANSMISSION**

17 Only by e-mailing the document(s) to the persons at the e-mail address(es) listed based  
18 on notice provided on September 10, 2021 that, during the Coronavirus (COVID-19) pandemic,  
19 this office will be working remotely, not able to send physical mail as usual, and is therefore  
20 using only electronic mail. No electronic message or other indication that the transmission was  
unsuccessful was received within a reasonable time after the transmission.

21 **[X] STATE** I declare under penalty of perjury under the laws of the State of California that  
22 the above is true and correct.

23 Executed on September 22, 2021, at Beverly Hills, California.

24  
25 

26 Lauren Farrington  
27  
28