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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

DIVA ALFARO on behalf of herself and all
aggrieved employees

Case No.: CVRI2103949

Plaintiff,

THIRD AMENDED COMPLAINT

vs.

PARAMOUNT RESIDENTIAL MORTGAGE
GROUP, INC.; and DOES 1 through 25,
inclusive,

Defendants.

1 Plaintiff DIVA ALFARO ("Plaintiff") hereby submits her complaint ("Complaint") against
2 Defendants PARAMOUNT RESIDENTIAL MORTGAGE GROUP, INC. ("PRMG") and DOES 1
3 through 25, inclusive (collectively, "Defendants"), on behalf of herself and other current and former
4 aggrieved employees of Defendants for penalties as follows:

5 **INTRODUCTION**

6 1. This class action is brought pursuant to Labor Code §§ 201, 202, 203, 204, 221, 223, 224,
7 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2698 et seq., 2800 et
8 seq. and 2810.5, , and Industrial Welfare Commission Wage order 4-2001, §3(A), Industrial Welfare
9 Commission Wage order 4-2001, § 11.

10 2. This Complaint challenges Defendants' systemic illegal employment practices resulting
11 in violations of the stated provisions of the Labor Code against the identified group of employees.

12 3. Plaintiff is informed and believes and thereon alleges Defendants jointly and severally
13 acted intentionally and with deliberate indifference and conscious disregard to the rights of all
14 employees in (1) failing to pay all meal period wages and rest break wages, (2) failing to properly
15 calculate and pay all minimum and overtime wages, (3) failing to provide accurate wage statements,
16 (4) failing to pay all wages due and owing upon termination of employment, (5) failing to timely pay
17 wages, (6) unlawful deductions, (7), failing to reimburse expenses, and (8) committing violations of
18 the Private Attorneys General Act.

19 **JURISDICTION AND VENUE**

20 4. Pursuant to Code of Civil Procedure section 410.10, this Court has jurisdiction over the
21 defendant, because each defendant is a person or business entity that is a resident or business entity that
22 is established, incorporated and/or has sufficient minimum contacts with the State of California so far
23 as to render exercise of jurisdiction over the defendants consistent with traditional notions of fair play
24 and substantial justice.

25 5. Venue is proper in this Court, pursuant to Code of Civil Procedure section 395.5,
26 because Defendant's obligations and liabilities to Plaintiff arose in Riverside County, California, the
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1 proposed class is a California class and the issues giving rise to the within complaint occurred in
2 Riverside County, California.

3 **6.** There is no federal jurisdiction in this case for the following reasons:

4 **a.** Plaintiff alleges, pursuant to 28 U.S.C. § 1332(d)(4) a district court shall decline to
5 exercise jurisdiction over a class action where two-thirds or more of the members of
6 all proposed Plaintiff classes are in the aggregate located within the state.

7 **PARTIES**

8 **7.** Plaintiff DIVA ALFARO was hired an exempt employee who worked one (1) day in
9 that position before being employed by Defendant as a non-exempt employee for the remainder of her
10 employment with PRMG.

11 **8.** Defendants employed Plaintiff DIVA ALFARO (“Plaintiff”) from September 2019 to
12 December 2020.

13 **9.** Plaintiff is informed and believes and thereon alleges that Defendant Paramount
14 Residential Mortgage Group, Inc. (“Defendant” or “PRMG”) is a California corporation licensed to do
15 business and actually doing business in the State of California, including the County of Corona.

16 **10.** Plaintiff does not know the true names or capacities, whether individual, partner or
17 corporate, of Defendants sued herein as DOES 1 through 25, inclusive, and for that reason, said
18 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint
19 when the true names and capacities are known. Plaintiff is informed and believes and thereon alleges
20 that each of Defendants designated as a DOE was responsible in some way for the matters alleged
21 herein and proximately caused Plaintiff and other current and former aggrieved employees to be
22 subject to the illegal employment practices, wrongs and injuries complained of herein.

23 **11.** At all times herein mentioned, Defendants, and each of them, were agents, partners,
24 joint venturers, representatives, servants, employees, successors-in-interest, co-conspirators and
25 assigns, each of the other, and at all times relevant hereto were acting within the course and scope of
26 their authority as such agents, partners, joint venturers, representatives, servants, employees,
27 successors, co-conspirators and assigns, and that all acts or omissions alleged herein were duly
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committed with ratification, knowledge, permission, encouragement, authorization and consent of each Defendant designated herein.

INTRODUCTION

12. Plaintiff, upon information and belief and based upon such basis, allege that Defendant PRMG employed more than 1,000 non-exempt employees including loan officers.

13. Plaintiff alleges Class Members are non-exempt employees, who were not compensated for minimum wage, overtime wages, were not afforded meal and rest breaks (or compensation in lieu thereof), did not receive accurate wage statements, did not receive wages upon separation, were subjected to illegal deductions, and were not reimbursed for expenses.

14. Upon information and belief, to date, the Defendant's illegal practices set forth herein this Complaint is present and continuing.

15. Plaintiff, upon information and belief and based upon such basis, alleges that Defendant did not regularly provide its account executive, account manager, or underwriter with all overtime wages owed, proper meal periods and proper rest periods that Defendant's non-exempt employees were legally entitled to.

FACTUAL ALLEGATIONS

17. Plaintiff and all other similarly situated employees were employed by Defendant in non-exempt positions including as loan officers as related to Defendant's mortgage/loan business.

18. At all times set for herein, Defendant employed Plaintiff and all other similarly situated non-exempt employees, including, but not limited to, all loan officers throughout the state of California.

19. On information and belief, Plaintiff is informed and believes, and thereon alleges, that Defendant is and was advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the requirements of California's wage and employment laws. Defendants had the authority to hire and terminate Plaintiff and the other class members; to set work rules and conditions governing Plaintiff and the other class members' employment; and to supervise their daily employment activities.

1 20. During the relevant time frame, Defendant compensated Plaintiff and all other
2 similarly situated employees with a hourly pay and often times with a commission and/or bonus.

3 21. During the relevant time frame, Plaintiff and all other similarly situated employees
4 worked well over eight (8) hours in a day and forty (40) hours in a workweek, and were frequently
5 compelled to work on weekends in addition to the workweek. Plaintiff and all similarly situated
6 persons worked in excess of eight (8) hours in a day or forty (40) hours per workweek. Defendant
7 required Plaintiff and the class to work but did not pay Plaintiff and the class for all hours worked
8 on any given day or in any given workweek.

9 22. During the relevant time frame, Plaintiff and other similarly situated employees
10 frequently worked a minimum of ten (10) hours in a single day and often times worked over twelve
11 (12) or more hours in a single day.

12 23. Upon information and belief, during the relevant time frame, Defendant maintained a
13 series of policies and practices that effectively coerced and pressured its non-exempt employees to
14 work of-the-clock, have their wages deducted, have their wages miscalculated, to shorten (tantamount
15 to a missed meal period) or forego meal and rest periods (or not be paid for their rest breaks), which
16 also occurred on weekends and to otherwise work beyond the hours that they were properly
17 compensated for by Defendants as a result of a complicated device used to calculate the overtime rate
18 which was incorrect. These policies and practices give rise to violations due to failure to pay overtime
19 wages owed and failure to pay premium wages, including, but not limited to failure to compensate for
20 missed meal and rest breaks.

21 24. Upon information and belief, Plaintiff and all similarly situated persons worked in
22 excess of eight (8) hours in a day or forty (40) hours per workweek. On information and belief,
23 Plaintiff did not receive minimum wage when deductions and mandatory reimbursements were not
24 made by or taken into account by Defendant. Defendant required Plaintiff and the Class Members to
25 work, but did not pay Plaintiff and the Class Members for all hours worked on any given day or in
26 any given workweek. On information and belief, Plaintiff and Class Members were regularly
27 compelled to work off the clock and Defendant created a policy to account for less hours than the total
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1 amount of hours actually worked by Plaintiff and Class Members in order to meet certain goals, to
2 generate more sales. This failure to properly compensate Plaintiff and Class Members for overtime
3 hours worked. Defendant's failure to pay Plaintiff and other similarly situated employees the unpaid
4 balance of premium overtime compensation violates the provisions of California Labor Code sections
5 510 and 1194, as well as IWC wage order 4-2001.

6 25. Upon information and belief, during the relevant time frame, Defendants maintained
7 and enforced an aggressive set of demands for these non-exempt employees with respect to the goals
8 thereby requiring Plaintiff and Class Members to interrupt or shorten their lawful meal periods of
9 thirty (30) uninterrupted minutes while being relieved of all duty. Plaintiff and Class Members were
10 forced to work in excess of five (5) hours per day on a regular basis without being provided a daily
11 thirty (30) minute restrictive-free meal period. During all relevant periods, Defendants illegally and
12 unlawfully required Plaintiff and Class Members to work through meal periods. Wage orders required
13 that Plaintiff and Class Members be compensated for the meal periods for which Defendant required
14 Plaintiff and Class Members to work. Defendant failed to compensate Plaintiff and Class Members for
15 these meal periods worked on any given day or during any given workweek.

16 26. Upon information and belief, during the relevant time frame, Plaintiff and Class
17 Members did not receive meal periods; in addition, Defendant's work demands and pressure from
18 Defendant's management, with specific knowledge and/or at the instruction of Defendant, as a result of
19 an implemented policy, regularly required Plaintiff and Class Members to return to work before
20 completing (constitutes a missed meal period) an uninterrupted meal period of thirty (30) minutes.

21 27. Upon information and belief, during the relevant time frame, Plaintiff and Class
22 Members often worked shifts in excess of then (10) hours, yet were never provided a second,
23 uninterrupted meal period of thirty (30) minutes for those shifts.

24 28. Despite the above-mentioned meal period violations, Defendants never compensated
25 Plaintiff and Class Members on additional hour of pay at their regular rate as required by California
26 law when meal and rest periods were not provided.

27 29. Upon information and belief, during the relevant time frame, Defendants maintained
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1 and enforced a schedule and policies that due to business demands often required Plaintiff and Class
2 Members to shorten (constitutes a missed rest break) or forego their lawful rest periods of ten (10)
3 minutes for every four (4) hours worked or major fraction thereof. During all relevant periods,
4 Defendants illegally and unlawfully required Plaintiff and Class Members to work through rest
5 periods. Wage orders required that Plaintiff and Class Members be compensated for the rest periods
6 for which Defendant required Plaintiff and Class Members to work. Defendant failed to compensate
7 Plaintiff and Class Members for these rest periods worked on any given day or in any given
8 workweek.

9 30. Despite the above-mentioned rest period violations, Defendants never compensated
10 Plaintiff and Class Members one additional hour of pay at their regular rate as required by California
11 law for each day on which rest periods were not authorized or permitted.

12 31. Defendant failed to pay when due and on time, Plaintiff and Class Members the legal
13 wages they earned or that were due, failed to provide all authorized meal and rest periods (or failed to
14 pay an hour at the regular rate for meal and rest breaks) owed to Plaintiff and Class Members and
15 failed to pay one (1) hour wages in lieu of Defendant's failure to provide a meal and rest period,
16 including at such time when employee quit or was discharged. Defendant has made it difficult to
17 account with precision for the unlawfully deducted and/or withheld wages owed to Plaintiff and all
18 other similarly situated employees without an examination of all records during the liability period and
19 failed to implement and on information and belief failed to preserve a lawful record-keeping method to
20 record all non-provided meal and rest breaks owed to employees, as required for non-exempt
21 employees by California Labor Code section 226 and applicable California Wage Orders.

22 32. Plaintiff are informed and believe, and thereon allege, that Defendant knows, should
23 know, knew, and/or should have known that Plaintiff and Class Members entitled to receive accurate
24 wages for regular and overtime work, and premium wages under Labor Code §226.7(b), but were not
25 receiving accurately calculated compensation.

26 33. Plaintiff are informed and believe, and thereon allege, that at all times herein
27 mentioned, Defendant knew that they had a duty to accurately compensate Plaintiff and Class
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Members for all hours worked including regular and overtime wages as well as meal and rest period premiums, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so.

34. Defendant set up and enforced schedules, policies, and workload requirements whereby Plaintiff and all other similarly situated Class Members reach certain sales quotas.

35. Defendants also set up and enforced schedules, policies, and workload requirements wherein Plaintiff and Class Members were regularly not provided with a first uninterrupted meal period of at least thirty (30) minutes during shifts of greater than five (5) hours, or a second uninterrupted meal period of at least thirty (30) minutes during shifts greater than ten (10) hours. Plaintiff and all other similarly situated employees were also regularly required to take an untimely first meal period, which often commenced after the start of the sixth hour of a shift, which was also shortened (tantamount to a missed meal period). Defendants also did not authorize and/or failed to pay Plaintiff and class members the regular rate for ten (10) minute rest periods for every four (4) hours worked or major fraction thereof.

36. Plaintiff are informed and believes, and based thereon alleges, that Defendant knew or should have known that Defendants had to keep complete and accurate payroll records for Plaintiff and Class Members in accordance with California law, but, in fact, did not keep complete and accurate payroll records. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and Class Members were entitled to reimbursement for necessary business-related expenses. At all material times set forth herein, Defendants failed to reimburse Plaintiff and Class Members for necessary business-related expenses and costs. At all material times set forth herein, Defendants failed to properly reimburse Plaintiff and Class Members pursuant to California law in order to increase Defendants' profits.

37. Plaintiff and Class Members bring a PAGA action and seek penalties for violations of the California Labor Code section 2699, et seq., including without limitation to sections 201, 202, 203, 204, 226, 226.2, 226.3, 226.7, 510, 512(a), 558, 1174, 1194, 2800, et seq., 2810.5, 2698 et seq.,

CLASS ACTION ALLEGATIONS

38. Plaintiff bring this action on their own behalf, as well as on behalf of each and all other persons similarly situated and thus, seek class certification.

39. All claims alleged herein arise under California law for which Plaintiff seek relief authorized by California law.

40. Plaintiff propose the following class (hereinafter “Class”) be created:

All individuals who have been employed or are currently employed by Defendant, as non-exempt employees, including all loan officers, in the State of California, at any time from March 1, 2020 through the date of preliminary approval.

Excluded from the Class are the defendants in this action, any entity in which the defendants have a controlling interest, any officers, directors, and shareholders of the defendants, and any legal representatives, heirs, successors, and assigns of the defendants.

41. There is a well-defined community of interest in this litigation and the Class is easily ascertainable:

- a. Numerosity: The members of the Class are so numerous that joinder of all members would be unfeasible and impractical. The membership of the Class is unknown to Plaintiff at this time. However, the Class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendant’s employment records.
- b. Typicality: Plaintiff are qualified to and will fairly and adequately protect the interests of each Class Member with whom they has a well-defined community of interest, and Plaintiff’ claims (or defenses, if any), are typical of all Class Members as demonstrated herein.
- c. Adequacy: Plaintiff are qualified to, and will fairly and adequately protect the interests of each Class Member with whom they have a well-defined community of interest and typicality of claims, as alleged herein. Plaintiff acknowledge that they have an obligation to the Court to make known any

relationship, conflict, or differences with any Class Member. Plaintiff attorneys and proposed Class counsel are well-versed in the rules governing class action discovery, certification, and settlement. Plaintiff have incurred, and, throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each Class Member.

- d. Superiority: The nature of this action makes the use of class action adjudication superior to other methods. Class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

42. There are common questions of law and fact as to the Class that predominate over questions affecting only individual members, including but not limited to:

- a. Whether Defendant failed to pay Plaintiff and Class overtime and double overtime;
- b. Whether Defendant failed to pay minimum wage;
- c. Whether Defendant's failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;
- d. Whether Defendant complied with wage reporting as required by the California Labor Code; including but not limited to Section 226;
- e. Whether Defendant had a policy or practice of not providing meal periods to its non-exempt employees or providing compensation for missed meal periods;
- f. Whether Defendant had a policy or practice of not providing meal periods to its account executives or providing compensation for missed meal periods;
- g. Whether Defendant engaged in unlawful wage deductions;

- 1 h. Whether Defendant had a policy or practice of not paying or providing rest
2 periods to its non-exempt employees compensation for missed rest periods;
3 i. Whether Defendant had a policy or practice of not providing rest periods to its
4 account executives compensation for missed rest periods;
5 j. Whether Defendant violated Labor Code section 2698, et seq.; and
6 k. The appropriate amount of damages, restitution, or monetary penalties
7 resulting from Defendant's violations of California law.

8 **FIRST CAUSE OF ACTION**

9 **Violation of Labor Code sections 1194, 1197, and 1197.1 – Minimum Wage**
10 *(Plaintiff and Class Members against all Defendants)*

11 43. Plaintiff incorporate by reference and re-allege, as if fully stated herein, the material
12 allegations, as set forth in paragraphs 1 through 42 of this Complaint.

13 44. California Labor Code sections 1194, 1197, and 1197.1 provide that minimum wage
14 must be paid to employees in the state of California and the any lesser wage is a violation.

15 45. Defendants failed to pay Plaintiff and Class Members minimum wage at the rates
16 required by the state of California.

17 46. Defendants failure to pay Plaintiff and Class Members the minimum wage required
18 violates California Labor Code sections 1194, 1197, and 1197.1. Plaintiff and Class Members are
19 entitled to recover the balance of any minimum wage compensation.

20 47. Plaintiff and class members are entitled to penalties in the amount \$100 and \$250 for
21 failure to pay minimum wage, and interest, costs, attorneys' fees, and liquidated damages.

22 **SECOND CAUSE OF ACTION**

23 **Violation of Labor Code sections 510, 1198 & Industrial Welfare Commission Wage Order 4-**
24 **2001, §3(A) – Unpaid Overtime and Double Time**
25 *(Plaintiff and Class Members against all Defendants)*

26 48. Plaintiff incorporate by reference and re-allege, as if fully stated herein, the material
27 allegations, as set forth in paragraphs 1 through 47 of this Complaint.

1 49. At all times herein set forth, California Labor Code section 218 authorizes employees to
2 sue directly for any wages or penalties due to them under this article of the California Labor Code.

3 50. At all times herein set forth, California Labor Code section 1198 provides that it is
4 unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission
5 (hereinafter "IWC").

6 51. At all times herein set forth, IWC Wage Order section 4-2001(3)(A), which is applicable
7 to Plaintiff and Class Members employment by Defendants, has provided that employees working for
8 more than eight (8) hours in one (1) day, and/or more than forty (40) hours in one (1) workweek, are
9 entitled to payment at the rate of one-and-one-half (1 ½) his or her regular rate of pay for all hours
10 worked in excess of eight (8) hours in one (1) day or more than forty (40) hours in one (1) work week.
11 An employee who works more than twelve (12) hours in one (1) day is entitled to overtime
12 compensation at a rate of twice his or her regular rate of pay. During this liability period, Plaintiff and
13 other similarly situated employees Plaintiff received commissions as well as an hourly rate. Plaintiff
14 and Class Members worked in excess of forty (40) hours per workweek for each workweek while
15 employed by Defendant throughout the course of employment with Defendant, subject to any
16 workweeks wherein Plaintiff and Class Members missed workdays as a result of sick days, personal
17 emergencies, or anything else that would otherwise interfere with workweek schedules. Defendant
18 required Plaintiff and the class to work but did not pay Plaintiff and Class Members for all hours
19 worked on any given day or in any of the given workweeks herein mentioned through commissions,
20 off the clock or as a result of Defendant manipulating its time records. Defendant failed to
21 compensate Plaintiff and Class Members for work performed in excess of eight (8) hours a day or forty
22 (40) hours per workweek while employed by Defendant, which occurred throughout Plaintiff and Class
23 Members course of employment with Defendant.
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1 52. California Labor Code section 510 codifies the right to overtime compensation at one-
2 and-one-half (1 ½) the regular hourly rate for hours worked in excess of eight (8) hours in one (1) day or
3 forty (40) hours in one (1) week or for the first eight (8) hours worked on the seventh day of work, and
4 at twice the regular hourly rate for hours worked in excess of twelve (12) hours in one (1) day or in
5 excess of eight (8) hours on the seventh day of work.

6 53. During the relevant time period, more specifically, three years dating back from the filing
7 of the original Complaint, Plaintiff and Class Members worked in excess of eight (8) hours in one (1)
8 work day and forty (40) hours in one (1) work week. During the relevant time period, more specifically,
9 dating back three years from the filing of this Complaint, Plaintiff and Class Members frequently
10 worked in excess of ten (10) hours and often times worked in excess of twelve (12) hours in one (1)
11 work day.
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13 54. During the relevant time period, Defendants failed to pay all premium overtime wages.
14 Defendant failed to pay double time wages owed to Plaintiff and Class Members for worked performed
15 in excess of twelve (12) hours.
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17 55. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of premium
18 overtime compensation, as required by California state law, violates the provisions of Labor Code
19 section 510 and is therefore unlawful.

20 56. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of premium
21 overtime compensation, as required by California state law, violates the provisions of Labor Code
22 section 510 and 1198 and is therefore unlawful.
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24 57. Pursuant to Labor Code section 1194, Plaintiff and Class Members are entitled to recover
25 unpaid overtime compensation, as well as interest, costs, and attorney's fees.

26 58. Pursuant to Labor Code section 558, Plaintiff and Class Members are entitled to fifty
27 dollars (\$50.00) for each pay period for which the employee was underpaid.
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59. This is in addition to an amount sufficient to recover underpaid wages and for each subsequent violation, one hundred dollars (\$100.00) for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

THIRD CAUSE OF ACTION

Violation of Labor Code sections 226.7, 512(a), and Industrial Welfare Commission Wage Order 4-2001, § 11 – Improper Meal Periods

(Plaintiff and Class Members against all Defendants)

60. Plaintiff incorporate by reference and re-allege, as if fully stated herein, the material allegations, as set forth in paragraphs 1 through 59 of this Complaint.

60. At all times herein, Labor Code section 226.7(a) provides that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC.

61. At all times herein, Labor Code section 512(a) provides that an employer may not employ an employee for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

62. The language of IWC Order No. 4-2001 § 11(B) relating to meal periods tracks the language of the California Labor Code.

63. During the relevant time period, Plaintiff and all other similarly situated employees, who were scheduled to work in excess of five (5) hours, but not longer than six (6) hours, and who did not waive their legally-mandated meal periods by mutual consent, were required to work in excess of five (5) hours without receiving a meal period of not less than thirty (30) minutes. During the relevant time period, Plaintiff and all other similarly situated employees, who were scheduled to work for a period of time in excess of six (6) hours, were required to work in excess of five (5) hours, without receiving a meal period of not less than thirty (30) minutes. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period

1 of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12)
2 hours, the second meal period may be waived by mutual consent of the employer and the employee
3 only if the first meal period was not waived.

4 64. Plaintiff and Class Members were forced to work in excess of five (5) hours per day on a
5 regular basis without being provided a daily thirty (30) minute restrictive-free meal period. Plaintiff and
6 Class Members did not receive meal periods; in addition, Defendant's work demands and pressure from
7 Defendant's management, with specific knowledge and/or at the instruction of Defendant, as a result of
8 an implemented policy, regularly required Plaintiff and Class Members to return to work before
9 completing (constitutes a missed meal period) an uninterrupted meal period of thirty (30) minutes.
10 Upon information and belief, during the relevant time frame, Plaintiff and Class Members often worked
11 shifts in excess of then (10) hours, yet were never provided a second, uninterrupted meal period of
12 thirty (30) minutes for those shifts. During all relevant periods, Defendants illegally and unlawfully
13 required Plaintiff and Class Members to work through meal periods. Wage orders required that
14 Plaintiff and Class Members be compensated for the meal periods for which Defendant required
15 Plaintiff and Class Members to work. Defendant did not provide Plaintiff and Class Members with a
16 meal break(s) during each workweek throughout the course of employment with Defendant. Defendant
17 failed to compensate Plaintiff and Class Members for these meal periods worked on any given day or
18 during any given workweek. Despite the above-mentioned meal period violations, Defendants never
19 compensated Plaintiff and Class Members on additional hour of pay at their regular rate as required by
20 California law when meal periods were not provided.
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23 65. Pursuant to Labor Code section 226.7(b) and Industrial Welfare Commission Wage
24 Order 4-2001, section 11(B), Plaintiff and Class Members are entitled to recover from Defendant one
25 (1) additional hour of pay at the employee's regular rate of compensation for each work day that a meal
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1 period was not provided, for a three-year statutory period dating back from the date of the
2 commencement of this action.

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5 **FOURTH CAUSE OF ACTION**
6 **Violation of Labor Code section 226.7(a) – Improper Rest Periods**

7 *(Plaintiff and Class Members against all Defendants)*

8 66. Plaintiff incorporate by reference and re-allege, as if fully stated herein, the material
9 allegations, as set forth in paragraphs 1 through 65 of this Complaint.

10 67. At all times herein, Labor Code section 218 authorizes employees to sue directly for any
11 wages or penalty due to them under this article of the California Labor Code. Labor Code section
12 226.7(a) provides that no employer shall require an employee to work during any rest period mandated
13 by an applicable order of the IWC.

14 68. IWC Order No. 4-2001 § 12, which covers rest periods, provides “[e]very employer
15 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
16 middle of each work period. The authorized rest period time shall be based on the total hours worked
17 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However,
18 a rest period need not be authorized for employees whose total daily work time is less than three and
19 one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which there
20 shall be no deduction from wages.” Plaintiff allege that Defendants did not provide Plaintiff and Class
21 Members proper uninterrupted rest periods that they were legally entitled to. Upon information and
22 belief, during the relevant time frame, Defendants maintained and enforced a schedule and policies that
23 due to business demands often required Plaintiff and Class Members to shorten (constitutes a missed
24 rest break) or forego their lawful rest periods of ten (10) minutes for every four (4) hours worked or
25 major fraction thereof. Defendants instituted a company-wide policy that demanded Plaintiff and Class
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1 Members to work through their rest periods. Defendants illegally and unlawfully required Plaintiff and
2 members of the Class to work through rest periods. Wage orders required that Plaintiff and Class
3 Members be compensated for the rest periods for which Defendants required Plaintiff and Class
4 Members to work. Defendants did not provide Plaintiff and Class Members with a rest break(s) during
5 each workweek throughout the course of employment with Defendants. Defendants failed to
6 compensate Plaintiff and Class Members for these rest periods worked on any given day or in any
7 given workweek by either forcing them to miss their rest breaks or failing to pay Plaintiff and Class
8 Members the time during their rest breaks.
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10 69. “[A]ll hours must be paid at the statutory or agreed rate and no part of this rate may be
11 used as a credit against a minimum wage obligation.” (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th
12 314, 324.) “Under the California minimum wage law, employees must be compensated for each hour
13 worked at either the legal minimum wage or the contractual hourly rate, and *compliance cannot be*
14 *determined by averaging hourly compensation.*” (*Bluford v. Safeway Stores, Inc.* (2013) 216
15 Cal.App.4th 864, 872 (emphasis added); *see also Sheppard v. North Orange County Regional*
16 *Occupational Program* (2010) 191 Cal.App.4th 289, 297 n.5 (“Compliance with the minimum wage law
17 is determined by analyzing the compensation paid for each hour worked; *averaging hourly*
18 *compensation is not permitted under California law.*”) (emphasis added).) “[A]ny employee receiving
19 less than the legal minimum wage ... is entitled to recover in a civil action the unpaid balance of the full
20 amount of this minimum wage” (*Cal. Lab. Code* § 1194(a).) “[A]ll hours must be paid at the
21 statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage
22 obligation.” (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.) “An employer is required to
23 authorize and permit the amount of rest break time called for under the wage order for its industry.”
24 (*Brinker*, 53 Cal.4th at 1033; *see also Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th
25 220, 236 (“An employer has a duty to authorize and permit rest breaks.”).) “No employer shall require
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1 any employee to work during any ... rest period mandated by an applicable order of the Industrial
2 Welfare Commission.” (*Cal. Labor Code* § 226.7(a).) “Under Industrial Welfare Commission wage
3 orders, employers are required to ‘authorize and permit all employees to take rest periods’ at the rate of
4 at least 10 minutes for every four hours worked.” (*Bluford*, 216 Cal.App.4th at 871 (*quoting* 8 C.C.R. §
5 11070, § 12); *see also* *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1104
6 (Employees are entitled to “a paid 10–minute rest period per four hours of work.”).) “The wage order’s
7 requirement not to deduct wages for rest periods presumes [employees] are paid for their rest periods.”
8 (*Bluford*, 216 Cal.App.4th at 871.) “Rest periods are considered hours worked and must be
9 compensated.” (*Id.* at 872.). Also see, *Vaquero v. Stoneledge Furniture LLC* (2017) 9 Cal.App.5th 98;
10 also see, LC 226.7.

12 70. Defendants’ compensation plan is in direct violation of rule established above,
13 including as enunciated in *Vaquero v. Stoneledge Furniture LLC* (2017) 9 Cal.App.5th 98; also see,
14 LC 226.7, regarding compensation for rest breaks pursuant to California law. Defendants’
15 compensation plan pays zero wages for time spent on off duty rest breaks. Pursuant to Labor Code
16 section 226.7(b) and Code of Civil Procedure section 338, Plaintiff and Class Members are entitled to
17 recover from Defendants one (1) additional hour of pay at the employee’s ‘regular rate’ of
18 compensation for each rest period (a) that was not authorized and permitted, and/or (b) that was not
19 paid time for a three-year statutory period dating back from the date of the commencement of this
20 action. Plaintiff and Class Members, were systematically not permitted and/or authorized and/or paid
21 to take one (1) ten (10) minute rest period (off duty for ten consecutive minutes) for every four (4)
22 hours worked or major fraction thereof, which is a violation of the Labor Code and IWC wage order 4-
23 2001, section 12. Plaintiff and Class Members were not compensated for rest breaks and were not paid
24 for rest break time. Defendants willfully violated the provisions of Labor Code sections 226.7, 512 and
25 IWC Wage Order No. 4-2001.
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1 71. Defendants' conduct, as alleged herein, violates Labor Code section 226.7(a) and 226.2,
2 which authorizes that no employer shall require any employee to work during any meal or rest period
3 mandated by an applicable order of the IWC.

4 72. Pursuant to Labor Code section 226.7(b) and Code of Civil Procedure section 338,
5 Plaintiff and Class Members are entitled to recover from Defendants one (1) additional hour of pay at
6 the employee's regular rate of compensation for each work day that a rest period was not provided, for
7 a three-year statutory period dating back from the date of the commencement of this action. Plaintiff,
8 and Class Members were systematically not permitted or authorized to take one (1) ten (10) minute rest
9 period for every four (4) hours worked or major fraction thereof, which is a violation of the Labor
10 Code and IWC wage order 4-2001, section 12. On shifts where Plaintiff worked in excess of three and
11 half hours, they were routinely not permitted and authorized to take lawful rest periods. Plaintiff and
12 Class Members were not compensated with one hour of wages for every day in which a rest period was
13 missed or untimely as a result of Defendants' policies, practices, or work demands. By failing to
14 authorize and permit a ten-minute rest period for every four (4) hours or major fraction thereof worked
15 per day by its non-exempt employees, and by failing to provide compensation for such non-provided or
16 shortened rest periods, as alleged above, Defendants willfully violated the provisions of Labor Code
17 sections 226.7, 512 and IWC Wage Order No. 4-2001.

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20 **FIFTH CAUSE OF ACTION**

21 **Violation of Labor Code section 226(a) – Improper Wage Statements**

22 *(Plaintiff and Class Members against all Defendants)*

23 73. Plaintiff incorporate by reference and re-allege, as if fully stated herein, the material
24 allegations set forth in paragraphs 1 through 72 of this Complaint.

25 74. Labor Code section 226(a) mandates that employers provide their employees, along with
26 the employees' paychecks, "an accurate itemized statement in writing showing (1) gross wages earned,
27 (2) total hours worked by the employee, except for any employee whose compensation is solely based
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1 on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any
2 applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and
3 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that
4 all deductions made on written orders of the employee may be aggregated and shown as one item, (5)
5 net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
6 the employee and his or her social security number, except that by January 1, 2008, only the last four
7 digits of his or her social security number or an employee identification number other than a social
8 security number may be shown on the itemized statement, (8) the name and address of the legal entity
9 that is the employer, and (9) all applicable hourly rates in effect during the pay period and the
10 corresponding number of hours worked at each hourly rate by the employee.”

12 75. Plaintiff, on information and belief and based upon such basis, allege that Plaintiff and
13 the other Class Members were intentionally not provided accurate wage statements, pursuant to Labor
14 Code section 226(a) by Defendant, because it was Defendant’s intent to avoid paying Plaintiff and all
15 other similarly situated employees, the correct wages that Plaintiff and all other similarly situated
16 employees were legally entitled to in order for Defendant to generate greater profits at the expenses of
17 Plaintiff and all similarly situated employees.

19 76. Defendant also violated California Labor Code section 226, which requires wage
20 statements to list “all applicable hourly rates in effect during the pay period and the corresponding
21 number of hours worked at each hourly rate by the employee.” Defendant has knowingly and
22 intentionally failed to comply with Labor Code § 226(a) on wage statements which should have been
23 properly provided to Plaintiff and all other similarly situated employees, and such violations flow from
24 Defendant’s improperly policies and practices, their implementation and enforcement by Defendant,
25 and the violations alleged in the preceding causes of action and herein. More specifically, the
26 miscalculation of the overtime rate based on the commission rate and hourly rate, off-the-clock hours
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1 worked, and premium wage payments for missed meal and rest breaks should have been itemized on
2 the wage statements issued by Defendant to Plaintiff and all similarly situated employees an constitutes
3 a violation of California Labor Code section 226. Defendant's intentional conduct by failing to provide
4 Plaintiff and all similarly situated employees with accurate wage statements have caused Plaintiff and
5 all similarly situated employees to suffer injury in fact by depriving them of their wage records. In
6 order to determine if they had been paid the correct amount and rate for all hours worked, Plaintiff and
7 all other similarly situated employees have been, would have been, and are compelled to discover for
8 accuracy, the required information missing from their wage statements and to perform calculations in
9 light of the inaccuracies and incompleteness of the wage statements Defendants provided to them.
10 Given the violations addressed above and the resulting inaccuracies in the wage statements provided by
11 Defendant to Plaintiff and all other similarly situated employees, Defendants have made it very
12 difficult, to determine from the wage statements themselves such important items of information as the
13 appropriate pay rate to apply to their hours worked. Defendants' Labor Code section 226 violations
14 further injured aggrieved employees by rendering them unaware of the full compensation to which
15 there were entitled under applicable provisions of the California Labor Code and applicable IWC Wage
16 Orders, and Defendants' aggrieved employees have been accordingly rendered unaware of how to
17 calculate such compensation. Pursuant to California Labor Code §226(c), Plaintiff issued a written
18 request to copy, inspect, and/or receive copies of Plaintiff employment file, including, but not limited to
19 all documents supporting employment with Defendant, however Defendant intentionally failed to
20 respond to the request.
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24 77. Plaintiff, on information and belief and based upon such basis, allege that Plaintiff and
25 all other similarly situated employees are entitled to recover from Defendant the greater of their actual
26 damages caused by Defendant's failure to comply with Labor Code Section 226(a) or an aggregate
27 penalty not exceeding \$4,000, and an award of costs and reasonable attorneys' fees pursuant to Labor
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Code Section 226(e).

SIXTH CAUSE OF ACTION

Violation of Labor Code sections 201-203 – Wages Not Paid Upon Separation

(Plaintiff and Class Members, against all Defendants)

78. Plaintiff incorporate by reference and re-allege, as if fully stated herein, the material allegations set forth in paragraphs 1 through 77 of this Complaint.

79. At all times herein set forth, Labor Code section 218 authorizes employees to sue directly for any wages or penalties due to them under this article of the California Labor Code.

80. At all times herein set forth, Labor Code sections 201-203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter; unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

81. During the relevant time period, Defendant failed to pay Plaintiff and Class Members who are no longer employed by Defendant, all their wages, earned and unpaid, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ.

82. Defendants also willfully violated Labor Code sections 201-203 by failing to provide all owed wages at separation from employment. Labor Code sections 201 and 202 require Defendants to pay their employees all wages due either at time of firing, or within seventy-two (72) hours of voluntary separation, if not sooner. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject employee's wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed thirty (30) days of wages. Plaintiff and Class Members who were separated from employment are entitled to compensation for all forms of wages earned, including but not limited to unpaid

1 overtime compensation and premium payments for non-provided meal and rest periods, but to date
2 have not received such compensation, therefore entitling to wages.

3 83. Defendant's failure to pay Plaintiff and Class Members, who are no longer employed by
4 Defendant, all wages earned at the time of their discharge, or within seventy-two (72) hours of their
5 leaving Defendant's employ, is in violation of Labor Code sections 201-203.

6 84. Labor Code section 203 provides that if an employer willfully fails to pay wages owed,
7 in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty
8 from the due date, and at the same rate until paid or until an action is commenced; but the wages shall
9 not continue for more than thirty (30) days. Plaintiff and Class Members who are no longer employed
10 by Defendant, are entitled to recover from Defendant the statutory penalty for each day they were not
11 paid at their regular hourly rate of pay, up to a thirty (30) day maximum, pursuant to Labor Code
12 section 203.
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14 **SEVENTH CAUSE OF ACTION**

15 **Violation of California Labor Code section 2800, et seq.**

16 *(Plaintiff and Class Members against all Defendants)*

17 85. Plaintiff incorporate by reference and re-allege, as if fully stated herein, the material
18 allegations set forth in paragraphs 1 through 84.

19 86. Plaintiff and Class Members allege this cause of action against Defendants.

20 87. "An employer shall in all cases indemnify his employee for losses caused by the
21 employer's want of ordinary care." (Cal. Labor Code § 2800.)

22 88. "An employer shall indemnify his or her employee for all necessary expenditures or
23 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or
24 her obedience to the directions of the employer, even though unlawful, unless the employee, at the time
25 of obeying the directions, believed them to be unlawful." (Cal. Labor Code § 2802(a).)

26 89. "All awards made by a court or by the Division of Labor Standards Enforcement for
27 reimbursement of necessary expenditures under this section shall carry interest at the same rate as
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1 judgments in civil actions. Interest shall accrue from the date on which the employee incurred the
2 necessary expenditure or loss.” (Cal. Labor Code § 2802(b).)

3 90. California Labor Code section 2802(c) provides: “For purposes of this section, the term
4 “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to,
5 attorney’s fees incurred by the employee enforcing the rights granted by this section.”

6 91. Defendants owe a duty to Plaintiff and Class Members to indemnify them for all
7 necessary expenditures, losses, and damages suffered and incurred in direct consequence of the
8 discharge of their duties, or of their obedience to the directions of their employer. Defendants continue to
9 refuse to reimburse and indemnify Plaintiff and Class Members for all necessary expenditures and losses
10 incurred by them, including but not limited cell phones, utilities, and computers while performing work
11 for Defendant.

12 92. Plaintiff and Class Members have incurred, and are continuing to incur, necessary
13 expenditures and losses in direct consequence of the discharge of duties, or of obedience to Defendant’s
14 directions as an employer, which at the time of obeying the directions, Plaintiff and Class Members
15 believed to be lawful.

16 93. The acts and omissions herein violated California Labor Code section 2802(a) and
17 violates California Labor Code sections 221 through 224. Plaintiff and Class Members are entitled to
18 attorney’s fees under to California Labor Code section 2802(c).

19 94. Plaintiff seek reimbursement and indemnification for her and all other class members
20 similarly situated for all necessary expenditures or losses incurred by them in direct consequence of the
21 discharge of their duties, or obedience to the directions of the defendants as an employer.

22 95. During the relevant time period, Defendants intentionally and improperly failed to
23 reimburse necessary expenditures Plaintiff and Class Members incurred.

24 96. Under the California Labor Code sections cited herein, Plaintiff and Class Members are
25 entitled to recover the necessary expenditures they incurred for the March 1, 2020 through preliminary
26 approval, plus reasonable attorney’s fees and costs under California Labor Code section 2802.

27 97. By virtue of Defendants’ unlawful failure to reimburse necessary expenditures Plaintiff
28 and Class Members incurred, Plaintiff and Class Members have incurred damages in amounts presently

1 unknown to Plaintiff and Class Members.

2 98. Plaintiff are informed and believe, and based upon that information and belief allege, that
3 Defendants, and each of them, knew or should have known Plaintiff and Class Members were not being
4 reimbursed for all necessary business expenditures they incurred.

5 99. As a direct and legal (proximate) result of Defendants' violation of the California Labor
6 Code, Plaintiff and Class Members have been damaged. Under California Labor Code section 2802,
7 Plaintiff and Class Members are entitled to, and request reimbursement of all necessary expenditures
8 they incurred, interest, penalties, reasonable attorney's fees, and costs, incurred in this action in an
9 amount to be proven at or following trial of this matter.

10 **EIGHTH CAUSE OF ACTION**
11 **Penalties Pursuant To Labor Code section 2698, et seq.**

12 *(Plaintiff and Class Members Defendants)*

13 100. Plaintiff incorporate by reference and re-allege, as if fully stated herein, the material
14 allegations set forth in paragraphs 1 through 99.

15 101. PAGA expressly establishes that any provision of the California Labor Code which
16 provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments,
17 divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may
18 be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and
19 other current or former employees.

20 102. On September 10, 2021¹ and October 5, 2021, Plaintiff provided written notice to the
21 LWDA and Defendants of the specific provisions of the Labor Code she contends were violated, and
22 the theories supporting her contentions. Plaintiff believes that on or about November 15, 2021 and
23 December 9, 2021, the sixty-five (65) days notice period expired and the LWDA did not take any
24 action to investigate or prosecute this matter. Therefore, Plaintiff has exhausted the statutory time
25 period to bring this action.

26 103. Plaintiff and the other non-exempt and exempt employees are "aggrieved employees"

27 _____
28 ¹ Plaintiff served notice on the LWDA and Defendant on August 27, 2021, which was undeliverable on Defendant. Plaintiff served an amended notice on the LWDA and Defendant on September 10, 2021.

as defined by California Labor Code § 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

Failure to Pay Minimum and Overtime Wages

104. At all times relevant herein, Defendants were required to compensate their non-exempt employees minimum wages for all hours worked and overtime wages for all hours worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the mandate of Labor Code §§ 510, 1194, 1197, and 1198.

105. As a pattern and practice, Defendants failed to compensate Plaintiff and other aggrieved current and former employees for all hours worked, including for work performed off-the-clock, and improperly excluded bonuses and commissions from its calculation of Plaintiff's and other aggrieved current and former employees' regular rate of pay for overtime compensation purposes, resulting in a failure to pay all minimum wages and overtime wages, where applicable.

Failure to Provide Meal Periods and Authorize and Permit Rest Breaks

106. In accordance with the mandates of Labor Code §§ 226.7 and 512, Defendants were required to authorize and permit their non-exempt employees to take a paid off duty 10-minute rest break for every four (4) hours worked or major fraction thereof, and were further required to provide their non-exempt employees with an off duty 30-minute meal period for every five (5) hours worked.

107. As a pattern and practice, Defendants failed to provide Plaintiff and other aggrieved current and former employees with legally-mandated meal periods and failed to authorize and permit legally-mandated rest breaks, and failed to compensate them premium wages. Defendants required Plaintiff and other aggrieved current and former employees to work through, interrupt, or cut short their meal periods and/or rest breaks to complete their daily workload and satisfy the company's expectations, without compensation. Additionally, Defendants required Plaintiff and other aggrieved current and former employees to record they received meal periods despite the fact Defendants were not providing them with legally mandated meal periods. Further, Defendants failed to provide Plaintiff and other aggrieved current and former employees with the requisite number of meal periods and rest

breaks when working shifts exceeding greater than 10 hours in length.

Failure to Timely Pay Wages During Employment

108. At all times relevant herein, Defendants were required to pay their employees within a specified time period pursuant to the mandate of Labor Code § 204.

109. As a pattern and practice, Defendants regularly failed to timely pay Plaintiff and other aggrieved current and former employees all wages due and owing them within the required time period.

Failure to Timely Pay Wages Upon Separation

110. At all times relevant herein, Defendants were required to pay their employees all wages owed in a timely fashion at the end of employment pursuant to California Labor Code §§ 201 to 204.

111. As a result of Defendants' Labor Code violations alleged above, Defendants failed to pay Plaintiff and the other aggrieved former employees their final wages pursuant to Labor Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to Labor Code § 203.

Failure to Provide Complete and Accurate Wage Statements

112. Defendants do not comply with the requirements of Labor Code Section 226 which requires that "every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when 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 for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,

(3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,

1 (4) all deductions, provided that all deductions made on written orders of the employee
2 may be aggregated and shown as one item,

3 (5) net wages earned,

4 (6) the inclusive dates of the period for which the employee is paid,

5 (7) the name of the employee (and the last four digits of his or her social security number
6 or an employee identification number other than a social security number *may* be shown on the
7 itemized statement),

8 (8) the name and address of the legal entity that is the employer, and

9 (9) all applicable hourly rates in effect during the pay period and the corresponding
10 number of hours worked at each hourly rate by the employee.

11 Defendants fail to provide accurate and complete information, as specified in items above as set forth in
12 section 226(a).

13 113. California Labor Code Section 226(e) provides: "An employee suffering injury as a
14 result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be
15 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in
16 which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
17 pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and shall be entitled to
18 an award of costs and reasonable attorney's fees." Plaintiff and the other aggrieved employees suffered
19 injuries as defined and set forth in California Labor Code Section 226(e) because, in addition to
20 Defendants' failure to provide accurate and complete information, as specified in items above (as set
21 forth in section 226(a)), Plaintiff and the other aggrieved employees could not "promptly and easily
22 determine" from the wage statements alone the correct hourly rate in effect during the pay period (i.e.,
23 without reference to other documents or information), nor was the overtime rate or the hours worked
24 provided in the statements accurate.

25 114. During the applicable time period, Defendants failed to provide Plaintiff and the other
26 aggrieved employees with timely and accurate wage and hour statements showing gross wages earned,
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1 net wages earned, overtime pay, and all applicable hourly rates in effect during each pay period with the
2 corresponding number of hours worked at each hourly rate by that individual.

3 115. As alleged herein, Plaintiff and the other aggrieved employees are/were not exempt from
4 the requirements of California's labor laws and regulations. Plaintiff and the California class members
5 were and will be injured by Defendants' failure to comply with the aforementioned requirements for
6 time records and wage statements.

7 116. At all times relevant herein, Defendants were required to both provide and keep
8 *accurate* records regarding their California employees pursuant to the mandate of Labor Code §§ 226
9 and 1174.

10 117. As a result of Defendants' various Labor Code violations, Defendants failed to keep
11 accurate records regarding Plaintiff and other aggrieved current and former employees. For example,
12 Defendants failed in their affirmative obligation to keep accurate records regarding Plaintiff and other
13 aggrieved current and former employees' gross wages earned, total hours worked, all deductions, net
14 wages earned, and all applicable hourly rates and the number of hours worked at each hourly rate.

15 **Failure to Maintain Accurate Employment Records**

16 118. Pursuant to Labor Code §§ 1174, 1174.5, and 2810.5, Defendants were required to
17 maintain accurate employment records for Plaintiff and Aggrieved Employees of including but not
18 limited to time records, pay stubs, clock in and clock out, meal break periods, rest break periods, and
19 the employment file itself.

20 119. As a pattern and practice, Defendants failed to maintain accurate employment records
21 regarding employment for Plaintiff and Aggrieved Employees and as a result, Defendants have violated
22 Labor Code §§ 1174, 1174.5, and 2810.5.

23 **Unlawful Deduction of Wages**

24 120. Labor Code §221 provides that it shall be unlawful for any employer to collect or
25 receive from an employee any part of wages theretofore paid by said employer to said employee.
26 Defendants unlawfully deducted wages from Plaintiff and Aggrieved Employees. Defendants created a
27 system whereby Plaintiff and Aggrieved Employees would be deducted wages and were in fact
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1 deducted wages. Labor Code §223 provides that where a contract requires an employer to maintain the
2 designated scale, it is unlawful to pay a lower wage while purporting to pay the wage designed by the
3 contract. Labor Code §224 prohibits employers from making deductions from an employee's wages
4 not authorized by the employee in writing or permitted by law. Labor Code §2751 provides that:
5 Whenever an employer enters into a contract of employment with an employee for services to be
6 rendered within this state and the contemplated method of payment of the employee involves
7 commissions, the contract shall be in writing and shall set forth the method by which the commissions
8 shall be computed and paid.

9 121. Under California law, an employer can lawfully withhold amounts from an employee's
10 wages only in the following circumstances:

- 11 a) When required or empowered to do so by state or federal law;
- 12 b) When a deduction is expressly authorized in writing by the employee to cover insurance
13 premiums, benefit plan contributions or other deductions not amounting to a rebate on the employee's
14 wages; and
- 15 c) When a deduction to cover health, welfare or pension contributions is expressly
16 authorized by a wage or collective bargaining agreement (Labor Code Sections 221 and 224).

17 122. None of the exceptions and outlined by the Labor Code apply to Plaintiff and
18 Aggrieved Employees and therefore the deductions including that of wages and commission by
19 Defendants are deemed illegal. Defendants have maintained a policy of failing to inform Plaintiff and
20 Aggrieved Employees of the illegal deductions and have willfully failed to compensate Plaintiff and
21 Aggrieved Employees for wages earned as a result of the illegal deductions.

22 123. Plaintiff and Aggrieved Employees are entitled to the wages deducted by Defendants
23 and/or civil penalties pursuant to (including penalties pursuant to Labor Code section 225.5), and
24 waiting time penalties associated with the deductions and according to proof at trial.

25 **Failure to Provide Written Notice Pursuant to California's Wage Theft Prevention Act**

26 124. Defendants did not comply with California's Wage Theft Prevention Act, codified in
27 part in Labor Code § 2810.5, provided in pertinent part: (a) (1) At the time of hiring, an employer shall
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1 provide to each employee a written notice, in the language the employer normally uses to communicate
2 employment-related information to the employee, containing the following information: (A) The rate or
3 rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or
4 otherwise, including any rates for overtime, as applicable. (B) Allowances, if any, claimed as part of the
5 minimum wage, including meal or lodging allowances. (C) The regular payday designated by the
6 employer in accordance with the requirements of this code. (D) The name of the employer, including
7 any “doing business as” names used by the employer. (E) The physical address of the employer’s main
8 office or principal place of business, and a mailing address, if different. (F) The telephone number of
9 the employer. (G) The name, address, and telephone number of the employer’s workers’ compensation
10 insurance carrier. (H) That an employee: may accrue and use sick leave; has a right to request and use
11 accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of
12 accrued paid sick leave; and has the right to file a complaint against an employer who retaliates. (I) Any
13 other information the Labor Commissioner deems material and necessary[...](b) An employer shall
14 notify his or her employees in writing of any changes to the information set forth in the notice within
15 seven calendar days after the time of the changes, unless one of the following applies: (1) All changes
16 are reflected on a timely wage statement furnished in accordance with Section 226. (2) Notice of all
17 changes is provided in another writing required by law within seven days of the changes.

18 125. Defendants failed to provide Plaintiff and aggrieved Employees with the written notice
19 required pursuant to the California’s Wage Theft Prevention Act, codified in part in Labor Code
20 §2810.5.

21 **Failure to Reimburse Expenses**

22 126. Under California Labor Code section 2802, Defendants must reimburse and indemnify
23 Plaintiff and other aggrieved employees for all necessary expenditures Plaintiff and all other aggrieved
24 employees incurred. At all times relevant herein, Defendants were required to reimburse its employees
25 for any and all necessary expenditures or losses incurred by the employees in direct consequences of
26 the discharge or his or her duties pursuant to the mandate of California Labor Code sections 2800 and
27 2802. As a pattern and practice, Defendants failed to pay Plaintiff and other aggrieved employees all
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business expenses incurred and owing them within the required time period, including for cell phone, internet, electronics, supplies, and other related expenses.

127. Defendants violated Labor Code Section 2800, et seq. by failing to reimburse Plaintiff and aggrieved employees for expenses incurred on behalf of Defendants while performing work on behalf of Defendants. Plaintiff and aggrieved employees incurred cell phone, internet, electronics, supplies, and other related expenses while performing work for Defendants. Defendants failed to reimburse Plaintiff and all aggrieved employees for any of the expenses they incurred while working on behalf of Defendants.

Penalties

128. Pursuant to California Labor Code § 2699, Plaintiff, individually, and on behalf of other current and former aggrieved employees, requests and is entitled to recover from Defendants, and each of them, civil penalties, interest, attorneys' fees and costs pursuant, as well as all statutory penalties against Defendants, and each of them, including but not limited to:

129. Penalties under California Labor Code § 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

130. Penalties under California Code of Regulations Title 8 § 11040 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;

131. Penalties under California Labor Code § 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

132. Penalties under Labor Code § 1197.1 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;

133. Any and all additional penalties as provided by the Labor Code and/or other statutes;

1 and

2 134. Attorneys' fees and costs pursuant to Labor Code §§ 210, 1194, and 2699, and any
3 other applicable statute.

4
5 **REQUEST FOR JURY TRIAL**

6 Plaintiff hereby request a trial by jury for all issues so triable.

7 **PRAYER FOR RELIEF**

8 Plaintiff, on behalf of themselves and all other Class Members, pray for relief and judgment
9 against Defendants, as follows:

- 10 1. That this action be certified as a class action;
- 11 2. That Plaintiff be appointed as the representatives of the Class;
- 12 3. That counsel for Plaintiff be appointed as Class Counsel;
- 13 4. Enter a declaratory judgment declaring that the Defendants have willfully and wrongfully
14 violated their statutory and legal obligations and deprived Plaintiff and all other who are
15 similarly situated of their rights, privileges, protections, compensation, benefits and
16 entitlements under the law, as alleged herein;
- 17 5. Order a complete and accurate accounting of all the compensation to which the Plaintiff
18 and all others who are similarly situated are entitled;
- 19 6. For an order requiring Defendants to pay restitution for its unlawful conduct in the State
20 of California; and
- 21 7. For injunctive relief including, but not limited to, an Order enjoining Defendants from
22 continuing to engage in the State of California in the unlawful business practices alleged
23 herein;
- 24 8. Wages and commissions that were unlawfully deducted;
- 25 9. For general and special damages;
- 26 10. Restitution and disgorgement;
- 27 11. Statutory damages, civil penalties, and PAGA penalties;
- 28 12. Pre-judgment interest;

1 13. For reasonable attorneys' fees and costs; and

2 14. For such other and further relief as the Court deems proper.

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5 DATED: April 11, 2023

NATHAN & ASSOCIATES, APC

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7 BY: /s/ Reuben D. Nathan
8 Reuben D. Nathan, Esq.
9 Attorneys for Plaintiff,
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PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is: 2901 W. Coast Hwy., Ste. 200, Newport Beach, CA 92663.

On April 11, 2023, I served the document(s) described as:

THIRD AMENDED COMPLAINT

to the following parties:

Tyler J. Woods, Esq.
twoods@fisherphillips.com
Usama Kahf
ukahf@fisherphillips.com
Andrew S. Wellman
awellman@fisherphillips.com
FISHER & PHILLIPS, LLP
2050 Main St, Ste 1000
Irvine, CA 92614

Attorneys for Defendant

[] (MAIL) I deposited the above-referenced documents in a sealed envelope in the mail in United States mail at Orange County, California with the postage thereon fully prepaid.

[] (PERSONAL SERVICE) I caused such envelope to be delivered by hand via messenger.

[] (OVERNIGHT COURIER) By depositing the document(s) listed hereinabove in a sealed envelope with shipping pre-paid, and depositing the same in a collection box for next day delivery to the person(s) at the address (or addresses) set forth below via courier such as FEDERAL EXPRESS, DHL, or other overnight delivery.

[XX] (ELECTRONIC MAIL/ELECTRONIC TRANSMISSION) – I caused the documents listed above to be sent via email/electronic transmission to the persons at the email addresses listed above. I did not receive, any electronic message after the time of transmission indicating that the transmission was unsuccessful or failed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 11, 2023, in the City of Newport Beach, County of Orange, State of California.



Christa Roberson