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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF LOS ANGELES

11 UNLIMITED JURISDICTION
12

13 AUNDREA PLUMMER, on behalf of herself,
14 all others similarly situated, and the general
public,

15 *Plaintiff,*

16 v.

17 PROCEL TEMPORARY SERVICES, INC., a
California corporation; MEDIPRO MEDICAL
18 STAFFING LLC, an Arizona limited liability
company; CORONA REGIONAL MEDICAL
19 CENTER LLC, a California limited liability
20 company; and DOES 1 through 50, inclusive,

21 *Defendants.*
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Case No. **21STCV39950**

CLASS AND REPRESENTATIVE 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 (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
4. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
5. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);
6. Civil Penalties (Lab. Code § 2698, *et seq.*)

1 Plaintiff AUNDREA PLUMMER (“Plaintiff”), on behalf of herself, all others similarly
2 situated, and the general public, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against defendant PROCEL
5 TEMPORARY SERVICES, INC., a California corporation; MEDIPRO MEDICAL STAFFING
6 LLC, an Arizona limited liability company; CORONA REGIONAL MEDICAL CENTER LLC, a
7 California limited liability company; and DOES 1 through 50, inclusive, (collectively referred to as
8 “Defendants”) for alleged violations of the Labor Code. As set forth below, Plaintiff alleges that
9 Defendants have

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

23 Based on these alleged violations, Plaintiff now brings this class and representative action to
24 recover unpaid wages, restitution, civil and statutory penalties, and related relief on behalf of
25 herself, all others similarly situated, all other aggrieved employees, and the State of California.

26 **JURISDICTION AND VENUE**

27 2. This Court has subject matter jurisdiction to hear this case because the penalties sought
28 by Plaintiff from Defendants exceeds the minimal jurisdictional limits of the Superior Court of the

1 State of California.

2 3. Venue is proper in Los Angeles County pursuant to Code of Civil Procedure
3 §§395(a) and 395.5 in that liability arose there, because at least some of the transactions that are the
4 subject matter of this Complaint occurred therein and/or each defendant is found, maintains offices,
5 transacts business, and/or has an agent therein.

6 **PARTIES**

7 4. Plaintiff is and was at all relevant times mentioned herein, an individual residing in
8 the State of California.

9 5. Plaintiff is informed and believes, and thereupon alleges, that Defendant PROCEL
10 TEMPORARY SERVICES, INC. is, and at all relevant times mentioned herein was, a California
11 corporation doing business in the State of California.

12 6. Plaintiff is informed and believes, and thereupon alleges, that Defendant MEDIPRO
13 MEDICAL STAFFING LLC is, and at all relevant times mentioned herein was, an Arizona limited
14 liability company doing business in the State of California.

15 7. Plaintiff is informed and believes, and thereupon alleges, that Defendant CORONA
16 REGIONAL MEDICAL CENTER LLC is, and at all relevant times mentioned herein was, a
17 California limited liability company doing business in the State of California.

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

26 9. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
27 mentioned herein, some or all of the defendants were the representatives, agents, employees,
28 partners, directors, associates, joint venturers, joint employers, principals, or co-participants of some

1 or all of the other defendants, and, in doing the things alleged herein, were acting within the course
2 and scope of such relationship and with the full knowledge, consent, and ratification by such other
3 defendants.

4 **CLASS ALLEGATIONS**

5 10. This action has been brought and may be maintained as a class action pursuant to
6 Code of Civil Procedure § 382, because there is a well-defined community of interest among the
7 persons who comprise the readily ascertainable classes defined below and because Plaintiff is
8 unaware of any difficulties likely to be encountered in managing this case as a class action.

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

11 **Hourly Employee Class:** All persons employed by Defendants and/or any staffing
12 agencies and/or any other third parties in hourly or non-exempt positions in California
during the **Relevant Time Period**.

13 **Meal Period Sub-Class:** All **Hourly Employee Class** members who worked
14 in a shift in excess of five hours during the **Relevant Time Period**.

15 **Rest Period Sub-Class:** All **Hourly Employee Class** members who worked
16 a shift of at least three and one-half (3.5) hours during the **Relevant Time**
Period.

17 **Waiting Time Penalties Sub-Class:** All **Hourly Employee Class** members
18 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.

19 **UCL Class:** All **Hourly Employee Class** members employed by Defendants in
20 California during the **Relevant Time Period**.

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

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

28 14. **Commonality and Predominance:** Common questions of law and fact exist as to all

1 class members and predominate over any questions that affect only individual class members. These
2 common questions include, but are not limited to:

- 3 i. Whether Defendants maintained a policy or practice of failing to provide employees
4 with their meal periods;
- 5 ii. Whether Defendants maintained a policy or practice of failing to provide employees
6 with their rest periods;
- 7 iii. Whether Defendants failed to pay premium wages to class members when they have
8 not been provided with required meal and/or rest periods;
- 9 iv. Whether Defendants failed to pay minimum and/or overtime wages to class members
10 as a result of policies that fail to provide meal periods in accordance with California
11 law;
- 12 v. Whether Defendants failed to pay minimum and/or overtime wages to class members
13 for all time worked;
- 14 vi. Whether Defendants used payroll formulas that systematically fail to account for
15 non-discretionary bonuses and/or other applicable remuneration when calculating
16 regular rates of pay for class members;
- 17 vii. Whether Defendants failed to pay overtime wages to class members as a result of
18 incorrectly calculating their regular rates of pay;
- 19 viii. Whether Defendants failed to pay premium wages to class members based on their
20 respective “regular rates of compensation” by not including commissions and/or per
21 diem rates and/or other applicable remuneration in calculating the rates at which
22 those wages are paid;
- 23 ix. Whether Defendants applied policies or practices that result in late and/or incomplete
24 final wage payments;
- 25 x. Whether Defendants are liable to class members for waiting time penalties under
26 Labor Code section 203;
- 27 xi. Whether class members are entitled to restitution of money or property that
28 Defendants may have acquired from them through unfair competition;

1 15. **Typicality**: Plaintiff's claims are typical of the other class members' claims. Plaintiff
2 is informed and believes, and thereupon alleges, that Defendants have a policy or practice of failing
3 to comply with the Labor Code and Business and Professions Code as alleged in this Complaint.

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

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

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

22 **GENERAL ALLEGATIONS**

23 19. Plaintiff worked for Defendants as an hourly, non-exempt employee from
24 approximately August 27, 2020 through October 8, 2020.

25 **Improper Rounding**

26 20. During the applicable limitations period, Plaintiff and the putative class were not
27 paid for all hours worked due to improper rounding practices. Defendants had a practice and/or
28 policy of automatically deducting one half hour from Plaintiff and the putative class' time sheets

1 regardless of whether they actually took their meal period. Additionally, Defendants recorded
2 exactly 8.00 hours of standard time and 4.00 hours of overtime for every shift that Plaintiff and the
3 putative class worked, regardless of the actual time they spent working.

4 21. Defendants utilized at all relevant times herein, a rounding practice that is not and
5 was not “fair and neutral” and that results and resulted in a failure to pay Plaintiff and the putative
6 class over a period of time. Defendants have not, did not, and do not keep records of actual hours
7 worked by Plaintiff and the putative class. In the absence of records showing actual hours worked,
8 Plaintiff and the putative class are unable to ascertain whether (1) Defendants’ rounding practices
9 comply with California law; (2) whether Defendants’ rounding practices resulted over a period of
10 time in failure to compensate Plaintiff and the putative class properly for all the time they actually
11 worked; and (3) whether Plaintiff and the putative class were properly paid for all hours worked.
12 Every single paycheck simply recorded 8.00 hours of standard time and 4.00 hours of overtime,
13 regardless of the actual working time recorded by Plaintiff and the putative class.

14 **Off-the-Clock Work**

15 22. Plaintiff and the putative class were not paid all wages earned as Defendants
16 directed, permitted, or otherwise encouraged Plaintiff and the putative class to perform off-the-
17 clock work.

18 23. Plaintiff and the putative class were paid for exactly 8.00 hours of standard time and
19 4.00 hours of overtime, regardless of the actual working time recorded by Plaintiff and the putative
20 class.

21 24. Plaintiff and the putative class would automatically have one half-hour deducted
22 from their timesheets for a meal period regardless of whether they were able to take a meal period
23 or take a full half-hour.

24 25. As a result of Defendants’ policies and practices, Plaintiff and the putative class were
25 not paid for all hours worked.

26 **Missed Meal Periods and Auto-Deduct**

27 26. Plaintiff and the putative class were not provided with meal periods of at least thirty
28 (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) chronically understaffing each work shift with not enough workers; (3) imposing so much work on each employee such that it made it unlikely that an employee would be able to take their breaks if they wanted to finish their work on time; and (4) no formal written meal and rest period policy that encouraged employees to take their meal and rest periods.

27. Defendants have a policy and/or practice of requiring Plaintiff and the putative class to take their meal periods after the fifth hour of work. Specifically, Plaintiff and the putative class frequently started their shifts at 7:00 p.m. and did not take their meal period until 3 a.m. Plaintiff and the putative class were required to continue working through their shift until 3 a.m. Also, Defendants had a policy and/or practice of automatically deducting 30 minutes from Plaintiff and the putative class' timesheets on every workday for a meal period, regardless of whether they were permitted to take such a meal period. As a result of this "auto-deduct" policy, the aggrieved employees routinely performed off-the-clock work that Defendants either knew or should have known they were performing. As a result of Defendants' policy, Plaintiff and the putative class were regularly not provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours worked due to complying with Defendants' productivity requirements that required Plaintiff and the putative class to work through their meal periods in order to complete their assignments on time.

Missed Rest Periods

28. Plaintiff and the putative class 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; (2) chronically understaffing each work shift with not enough workers; (3) imposing so much work on each employee such that it made it unlikely that an employee would be able to take their breaks; and (4) no formal written meal and rest period policy that encouraged employees to take their meal and rest periods.

29. Defendants had a policy and/or practice of not adequately staffing their workplace such that Plaintiff and the putative class were forced to continue working through their rest breaks because they could not be relieved of their duties. Accordingly, Plaintiff and the putative class

1 were not provided with legally mandated rest periods of at least ten minutes for every four hours
2 worked or major fraction thereof.

3 30. As a result of Defendants' policy, Plaintiff and the putative class were regularly not
4 provided with uninterrupted rest periods of at least ten (10) minutes for each four (4) hours worked
5 due to complying with Defendants' productivity requirements that required Plaintiff and the
6 putative class to work through their rest periods in order to complete their assignments on time.

7 **Regular Rate of Pay**

8 31. The regular rate of pay under California law includes all remuneration for
9 employment paid, on behalf of the employer, to the employee. This requirement includes, but is
10 not limited, to, per diem benefits and non-discretionary bonuses.

11 32. At all relevant times, Defendants failed to pay Plaintiff and the putative class for all
12 hours worked, including, but not limited to, overtime hours and premiums paid for meal and/or rest
13 break violations. While employed by Defendants, Plaintiff and the putative class received hourly
14 wages and other remuneration, including, but not limited to, per diem benefits and/or non-
15 discretionary bonuses and/or other applicable remuneration that must be included when calculated
16 their regular rates of pay. However, Defendants consistently failed to include all applicable forms
17 of remuneration when calculating their regular rates of pay. As a result, any overtime wages and/or
18 premiums paid for meal and/or rest break violations paid to Plaintiff and the putative class were not
19 paid at the regular rate of pay.

20 **Wage Statements**

21 33. Plaintiff and aggrieved employees were not provided with accurate wage statements
22 as mandated by law pursuant to Labor Code § 226.

23 34. Defendants failed to comply with Labor Code section 226(a)(1) as "gross wages
24 earned" were not accurately reflected in that all hours worked, including overtime and "off-the-
25 clock" work, were not included.

26 35. Defendants failed to comply with Labor Code section 226(a)(2) as "total hours
27 worked by the employee" were not accurately reflected in that all hours worked, including overtime
28 and "off-the-clock" work, were not included.

36. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages earned” were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work, were not included.

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

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Lab. Code §§ 204, 223, 226.7, 512 and 1198)

(Plaintiff and Meal Period Sub-Class)

38. Plaintiff incorporates by reference the preceding paragraphs as if fully alleged herein.

39. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been non-exempt employees of Defendants entitled to the full meal period protections of both the Labor Code and the applicable Industrial Welfare Commission Wage Order (“Wage Order”).

40. Labor Code § 512 and § 11 of the applicable Wage Order impose an affirmative obligation on employers to provide non-exempt employees with uninterrupted, duty-free meal periods of at least thirty minutes for each work period of five hours, and to provide them with two uninterrupted, duty-free meal periods of at least thirty minutes for each work period of ten hours.

41. Labor Code § 226.7 and § 11 of the applicable Wage Order both prohibit employers from requiring employees to work during required meal periods and require employers to pay non-exempt employees an hour of premium wages on each workday that the employee is not provided with the required meal period.

42. Compensation for missed meal periods constitutes wages within the meaning of Labor Code § 200.

43. Labor Code § 1198 makes it unlawful to employ a person under conditions that violate the applicable Wage Order.

1 44. Section 11 of the applicable Wage Order states:

2 “No employer shall employ any person for a work period of more than five (5)
3 hours without a meal period of not less than 30 minutes, except that when a
4 work period of not more than six (6) hours will complete the day’s work the
5 meal period may be waived by mutual consent of the employer and employee.
6 Unless the employee is relieved of all duty during a 30 minute meal period, the
7 meal period shall be considered an ‘on duty’ meal period and counted as time
8 worked. An ‘on duty’ meal period shall be permitted only when the nature of
9 the work prevents an employee from being relieved of all duty and when by
10 written agreement between the parties an on-the-job paid meal period is agreed
11 to. The written agreement shall state that the employee may, in writing, revoke
12 the agreement at any time.”

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

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

19 47. Plaintiff alleges that, at all relevant times during the applicable limitations period,
20 Defendants maintained a policy or practice of automatically deducting one-half hour for a meal
21 period from the paychecks of **Meal Period Sub-Class** members on each day they worked,
22 regardless of whether or not they were able to take an uninterrupted, duty-free meal period.

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

28 49. Moreover, Defendants’ written policies do not provide that employees must take
 their first meal period before the end of the fifth hour of work, that employees are entitled to a
 second meal period if they work a shift of over ten hours, or that the second meal period must
 commence before the end of the tenth hour of work, unless waived.

 50. At all relevant times, Defendants failed to pay Plaintiff and the **Meal Period Sub-**
Class members additional premium wages, and/or were not paid premium wages at the employees’

1 regular rates of pay when required meal periods were not provided.

2 51. Pursuant to Labor Code §§ 204, 218.6 and 226.7, Plaintiff, on behalf of herself and
3 the **Meal Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon, and
4 costs of suit.

5 52. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial
6 benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and the **Meal**
7 **Period Sub-Class** members, seeks to recover reasonable attorneys' fees.

8 SECOND CAUSE OF ACTION

9 **FAILURE TO PROVIDE REST PERIODS**

10 **(Lab. Code §§ 204, 223, 226.7 and 1198)**

11 **(Plaintiff and Rest Period Sub-Class)**

12 53. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

13 54. At all relevant times, Plaintiff and the **Rest Period Sub-Class** members have been
14 non-exempt employees of Defendants entitled to the full rest period protections of both the Labor
15 Code and the applicable Wage Order.

16 55. Section 12 of the applicable Wage Order imposes an affirmative obligation on
17 employers to permit and authorize employees to take required rest periods at a rate of no less than
18 ten minutes of net rest time for each four-hour work period, or major fraction thereof, that must be
19 in the middle of each work period insofar as practicable.

20 56. Labor Code § 226.7 and § 12 of the applicable Wage Order both prohibit employers
21 from requiring employees to work during required rest periods and require employers to pay non-
22 exempt employees an hour of premium wages at the employees' regular rates of pay, on each
23 workday that the employee is not provided with the required rest period(s).

24 57. Compensation for missed rest periods constitutes wages within the meaning of Labor
25 Code § 200.

26 58. Labor Code § 1198 makes it unlawful to employ a person under conditions that
27 violate the Wage Order.

28 59. Plaintiff alleges that, at all relevant times during the applicable limitations period,

1 Defendants maintained a policy or practice of not providing members of the **Rest Period Sub-Class**
2 with net rest period of at least ten minutes for each four-hour work period, or major fraction thereof,
3 as required by the applicable Wage Order.

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

6 61. Specifically, Defendants written policies do not provide that employees may take a
7 rest period for each four hours worked, or major fraction thereof, nor that rest periods should be
8 taken in the middle of each work period insofar as practicable.

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

12 63. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial
13 benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and **Rest Period**
14 **Sub-Class** members, seeks 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 64. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

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

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

26 67. Section 4 of the applicable Wage Order requires an employer to pay non-exempt
27 employees at least the minimum wage set forth therein for all hours worked, which consists of all
28 hours that an employer has actual or constructive knowledge that employees are working.

1 68. Labor Code § 1194 invalidates any agreement between an employer and an
2 employee to work for less than the minimum or overtime wage required under the applicable Wage
3 Order.

4 69. Labor Code § 1194.2 entitles non-exempt employees to recover liquidated damages
5 in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition to the
6 underlying unpaid minimum wages and interest thereon.

7 70. Labor Code § 1197 makes it unlawful for an employer to pay an employee less than
8 the minimum wage required under the applicable Wage Order for all hours worked during a payroll
9 period.

10 71. Labor Code § 1197.1 provides that it is unlawful for any employer or any other
11 person acting either individually or as an officer, agent, or employee of another person to pay an
12 employee, or cause an employee to be paid, less than the applicable minimum wage.

13 72. Labor Code § 1198 makes it unlawful for employers to employ employees under
14 conditions that violate the applicable Wage Order.

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

19 74. Labor Code § 223 makes it unlawful for employers to pay their employees lower
20 wages than required by contract or statute while purporting to pay them legal wages.

21 75. Labor Code § 510 and § 3 of the applicable Wage Order require employers to pay
22 non-exempt employees overtime wages of no less than one and one-half times the employees'
23 respective regular rates of pay for all hours worked in excess of eight hours in one workday, all
24 hours worked in excess of forty hours in one workweek, and for the first eight hours worked on the
25 seventh consecutive day of one workweek.

26 76. Labor Code § 510 and § 3 of the applicable Wage Order also require employers to
27 pay non-exempt employees overtime wages of no less than two times the employees' respective
28 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours

1 worked in excess of eight hours on a seventh consecutive workday during the workweek.

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

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

8 79. At all relevant times during the applicable limitations period, Defendants maintained
9 a policy or practice of automatically deducting one-half hour from Plaintiff's timesheet on every
10 workday for a meal period, regardless of whether or not Plaintiff was provided with a meal period.

11 80. Plaintiff is informed and believes that, at all relevant times during the applicable
12 limitations period, Defendants maintained a policy or practice of automatically deducting one-half
13 hour from **Hourly Employee Class** members' timecard on every workday for a meal period,
14 regardless of whether or not **Hourly Employee Class** members were provided with a meal period.

15 81. As a result of Defendants' policy or practice of automatically deducting one-half
16 hour from employees' timecards for every workday for a meal period, Plaintiff and **Hourly**
17 **Employee Class** members were not paid for all hours worked.

18 82. At all relevant times, Defendants failed to pay hourly wages to Plaintiff for all time
19 worked, including but not limited to, overtime wages at statutory and/or agreed rates by suffering or
20 permitting her to work during unpaid meal periods and/or failing to properly pay Plaintiff for all
21 overtime hours worked.

22 83. Plaintiff is informed and believes that, at all relevant times during the applicable
23 limitations period, Defendants maintained a policy or practice of not paying hourly wages to
24 **Hourly Employee Class** members for all time worked, including but not limited to, overtime hours
25 at statutory and/or agreed rates by suffering or permitting them to work during unpaid meal periods.

26 84. The regular rate of pay under California law includes all remuneration for
27 employment paid, on behalf of the employer, to the employee. This requirement includes but is not
28 limited to, commissions, non-discretionary bonuses, per diem pay, etc.

1 85. During the applicable limitations period, Defendants violated the rights of Plaintiff
2 and **Hourly Employee Class** members under the above-referenced Labor Code sections by failing
3 to pay them overtime wages for all overtime hours worked in violation of Labor Code §§ 510, 1194
4 and 1198 by not correctly calculating their regular rate of pay to include all applicable
5 remuneration, including but not limited to, commissions, non-discretionary bonuses, per diem pay,
6 etc.

7 86. California law uses the terms “compensation” and “pay” interchangeably and
8 requires that all applicable remuneration, including but not limited to, commissions, non-
9 discretionary bonuses, per diem pay, etc., be included when calculating an employee’s regular rate
10 of pay.

11 87. At all relevant times, Defendants paid Plaintiff and the putative class premium wages
12 based on a rate of compensation that did not reflect, among other things, commissions, non-
13 discretionary bonuses, per diem pay, etc. as required by Labor Code § 226.7(b) and §§ 11 and 12 of
14 the applicable Wage Order on the occasions when Defendants paid her premium wages in lieu of
15 meal and/or rest periods.

16 88. Plaintiff is informed and believes, and thereupon alleges, that, at all relevant times
17 during the applicable limitations period, Defendants maintained a policy or practice of paying
18 **Hourly Employee Class** members premium wages based on rates of compensation that have not
19 reflected commissions, non-discretionary bonuses, per diem pay, etc. as required by Labor Code §
20 226.7(b) and §§ 11 and 12 of the applicable Wage Order on the occasions when Defendants paid
21 them premium wages in lieu of meal and/or rest periods.

22 89. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial
23 benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and **Hourly**
24 **Employee Class** members, seeks to recover reasonable attorneys’ fees.

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1 **FOURTH CAUSE OF ACTION**

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

3 **(Lab. Code §§ 201–203)**

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

5 90. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

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

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

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

14 94. At all relevant times, pursuant to Labor Code § 202, employees who have resigned
15 after giving less than seventy-two (72) hours' notice of resignation have been entitled to payment of
16 all final wages within seventy-two (72) hours' of giving notice of resignation.

17 95. During the applicable limitations period, Defendants failed to pay Plaintiff all of her
18 final wages in accordance with the Labor Code by failing to timely pay her all of her final wages.

19 96. Plaintiff is informed and believes that, at all relevant times during the applicable
20 limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class**
21 members all of their final wages in accordance with the Labor Code.

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

26 98. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to
27 timely pay all final wages to her and **Waiting Time Penalties Sub-Class** members have been
28 willful in that Defendants have the ability to pay final wages in accordance with Labor Code §§ 201

1 and/or 202 but have intentionally adopted policies or practices that are incompatible with those
2 requirements.

3 99. Pursuant to Labor Code §§ 203 and 218.6, Plaintiff, on behalf of herself and **Waiting**
4 **Time Penalties Sub-Class** members, seeks waiting time penalties from the respective dates that
5 their final wages had first become due until paid, up to a maximum of thirty days, and interest
6 thereon.

7 100. Pursuant to Labor Code § 226, Code of Civil Procedure § 1021.5, the substantial
8 benefit doctrine and/or the common fund doctrine, Plaintiff, on behalf of herself and **Waiting Time**
9 **Penalties Sub-Class** members, seek awards of reasonable attorneys' fees and costs.

10 101. Plaintiff was not given an itemized wage statement when paid with a pay card.

11 **FIFTH CAUSE OF ACTION**

12 **UNFAIR COMPETITION**

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

14 **(Plaintiff and UCL Class)**

15 102. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

16 103. Business and Professions Code § 17200 defines “unfair competition” to include any
17 unlawful business practice.

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

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

25 106. Plaintiff, on behalf of herself and the **UCL Class** members, re-alleges and
26 incorporates the FIRST, SECOND, and THIRD causes of action herein.

27 107. Plaintiff lost money and/or property as a result of the aforementioned unfair
28 competition.

1 108. Defendants have or may have acquired money by means of unfair competition.

2 109. Plaintiff is informed and believes and thereupon alleges that, by committing the
3 Labor Code violations described in this Complaint, Defendants violated Labor Code §§ 215, 216,
4 225, 226.6, 354, 408, 553, 1175, and 1199. Defendants thus committed misdemeanors by violating
5 the Labor Code as alleged herein.

6 110. Defendants have committed criminal conduct through their policies and practices of,
7 *inter alia*, failing to comport with their affirmative obligations as an employer to provide non-
8 exempt employees with uninterrupted, duty-free meal periods of at least thirty minutes for each
9 work period of five or more hours, and by failing to pay non-exempt employees for all hours
10 worked.

11 111. At all relevant times, Plaintiff and **UCL Class** members have been non-exempt
12 employees and entitled to the full protections of both the Labor Code and the applicable Wage
13 Order.

14 112. Defendants' unlawful conduct as alleged in this Complaint amounts to and
15 constitutes unfair competition within the meaning of Business and Professions Code section 17200
16 *et sequitur*. Business and Professions Code §§ 17200 *et sequitur* protect against unfair competition
17 and allow a person who has suffered an injury-in-fact and has lost money or property as a result of
18 an unfair, unlawful, or fraudulent business practice to seek restitution on behalf of herself and on
19 behalf of similarly situated persons in a class-action proceeding.

20 113. As a result of Defendants' violations of the Labor Code during the applicable
21 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
22 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants'
23 conduct.

24 114. Plaintiff is informed and believes that other similarly situated persons have been
25 subject to the same unlawful policies or practices of Defendants.

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

116. California’s Unfair Competition Law (“UCL”) permits civil recovery and injunctive relief for “any unlawful, unfair or fraudulent business act or practice,” including a practice or act that violates, or is considered unlawful under, any other state or federal law.

117. Accordingly, pursuant to Business & Professions Code §§ 17200 and 17203, Plaintiff requests the issuance of temporary, preliminary, and permanent injunctive relief enjoining Defendants, and each of them, and their agents and employees, from further violations of the Labor Code and applicable Industrial Welfare Commission Wage Orders, and upon a final hearing, an order permanently enjoining Defendants, and each of them, and their respective agents and employees, from further violations of the Labor Code and applicable Industrial Welfare Commission Wage Orders.

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

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

SIXTH CAUSE OF ACTION

CIVIL PENALTIES

(Lab. Code §§ 2698 *et seq.*)

120. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

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

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

123. Plaintiff, a former employee against whom Defendants committed one or more of the

1 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
2 within the meaning of Labor Code § 2699(c).

3 124. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
4 § 2699.3. Notice was provided to the California Labor & Workforce Development Agency
5 (“LWDA”) and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an
6 intent to intervene.

7 125. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
8 penalties for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 510,
9 512, 1194, 1197, and 1198:

- 10 i. For violations of Labor Code §§ 201, 202, 203, 226.7, 1194, and 1198, one
11 hundred dollars (\$100) for each employee per pay period for each initial
12 violation and two hundred dollars (\$200) for each employee per pay period
13 for each subsequent violation (penalties set by Labor Code § 2699(f)(2));
- 14 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding
15 thirty (30) days’ pay as waiting time (penalties set by Labor Code § 256);
- 16 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each
17 employee for each initial violation that was neither willful nor intentional,
18 two hundred dollars (\$200) for each employee, plus 25% of the amount
19 unlawfully withheld from each employee, for each initial violation that was
20 either willful or intentional, and two hundred dollars (\$200) for each
21 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
22 from each employee, for each subsequent violation, regardless of whether the
23 subsequent violation was either willful or intentional (penalties set by Labor
24 Code § 210);
- 25 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
26 employee for each initial violation that was neither willful nor intentional,
27 two hundred dollars (\$200) for each employee, plus twenty-five percent
28 (25%) of the amount unlawfully withheld from each employee, for each

1 initial violation that was either willful or intentional, and two hundred dollars
2 (\$200) for each employee, plus twenty-five percent (25%) of the amount
3 unlawfully withheld from each employee, for each subsequent violation,
4 regardless of whether the subsequent violation was either willful or
5 intentional (penalties set by Labor Code § 225.5);

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

11 vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each
12 employee for each initial pay period for which the employee was underpaid,
13 and one hundred dollars (\$100) for each employee for each subsequent pay
14 period for which the employee was underpaid (penalties set by Labor Code §
15 558);

16 vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each
17 aggrieved employee for each initial violation of Labor Code § 1197 that was
18 intentional and two hundred and fifty dollars (\$250) for each aggrieved
19 employee per pay period for each subsequent violation of Labor Code §
20 1197, regardless of whether the initial violation was intentional (penalties set
21 by Labor Code § 1197.1);

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

25 **PRAYER FOR RELIEF**

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

28 (1) An order that the action be certified as a class action;

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

15 **DEMAND FOR JURY TRIAL**

16 Plaintiff, on behalf of herself and all other similarly situated, and the general public, hereby
17 demands a jury trial on all issues so triable.
18

19 Dated: October 29, 2021

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22 SHAUN SETAREH
23 WILLIAM M. PAO
24 NOLAN DILTS
25 Attorneys for Plaintiff
26 AUNDREA PLUMMER
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