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on behalf of herself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF BUTTE

JENNIFER DORMANY, on behalf of herself
and others similarly situated,

Plaintiff,

vs.

WINN MANAGEMENT GROUP, LLC, a
Massachusetts limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.

CLASS ACTION

Assigned for All Purposes To:
Hon.
Dept.:

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime
Under Labor Code § 510;
3. Meal-Period Liability Under Labor Code §
226.7;
4. Rest-Break Liability Under Labor Code §
226.7;
5. Failure to Pay Vacation Wages
6. Failure to Comply with Labor Code § 245 *et*
seq. and 246
7. Reimbursement of Necessary Expenditures
Under Labor Code § 2802;
8. Violation of Labor Code § 226(a);
9. Failure to Keep Required Payroll
Records Under Labor Code §§ 1174 and
1174.5
10. Penalties Pursuant to Labor Code § 203;
11. Violation of Business & Professions Code §
17200 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff JENNIFER DORMANY, (hereinafter “Plaintiff”) on behalf of herself and all
2 others similarly situated (collectively, “Employees”; individually, “Employee”) complains of
3 Defendants, and each of them, as follows:

4 INTRODUCTION

5 1. Plaintiff brings this action on behalf of herself and all current and former
6 Employees within the State of California who, at any time four (4) years prior to the filing of this
7 lawsuit, are or were employed as non-exempt, hourly employees by Defendants WINN
8 MANAGEMENT GROUP, LLC, and DOES 1 through 50 (all defendants being collectively
9 referred to herein as “Defendants”). Plaintiff alleges that Defendants, and each of them, violated
10 various provisions of the California Labor Code, relevant orders of the Industrial Welfare
11 Commission (IWC) and California Business & Professions Code, and seeks redress therefore.

12 2. Plaintiff is a resident of California and during the time period relevant to this
13 Complaint was employed by Defendants as a non-exempt hourly employee within the State of
14 California at Defendants’ facilities and offices in Chico, California. Plaintiff and the other Class
15 members worked for Defendants in Butte County, and in other nonexempt positions, throughout
16 California and, and consistently worked at Defendants’ behest without being paid all wages due.
17 More specifically, Plaintiff and the other similarly situated Class members were employed by
18 Defendants and worked at Defendants’ offices and other facilities where the conduct giving rise to
19 the allegations in this Class Action Complaint occurred. Upon information and belief, Plaintiff
20 was employed by Defendants and (1) shared similar job duties and responsibilities, (2) was
21 subjected to the same policies and practices, and (3) endured similar violations at the hands of
22 Defendants as the other Employee Class members who served in similar and related positions.

23 3. Defendants required Plaintiff and the Employees in the Class to perform work
24 while remaining under Defendants’ control before and after being on the clock for their daily work
25 shift. Defendants thus failed to pay Plaintiff and the Class members for all hours worked, and
26 provided them with inaccurate wage statements that prevented Plaintiff and the Class from
27 learning of these unlawful pay practices. Defendants also failed to provide Plaintiff and the Class
28 with lawful meal and rest periods, as employees were not provided with the opportunity to take

1 timely, uninterrupted, and duty-free meal and rest periods as required by the Labor Code.

2 **THE PARTIES**

3 **A. The Plaintiff**

4 4. Plaintiff JENNIFER DORMANY has resided in California and during the time
5 period relevant to this Complaint was employed by Defendants as a non-exempt hourly employee
6 within the State of California at Defendants' facilities and offices in Chico, California.

7 **B. The Defendants**

8 5. Defendant WINN MANAGEMENT GROUP, LLC ("WMG") is a Massachusetts
9 limited liability corporation with its principle executive office in Boston, Massachusetts, and has
10 been listed as the employer on the wage statements issued to Plaintiff during the relevant time
11 period. WMG lists a Massachusetts address in Boston, Massachusetts with the California
12 Secretary of State, and employs Plaintiff and the Class members in Butte County, including at
13 Defendants' offices and facilities in Chico, California, and throughout California and conducts
14 business throughout California.

15 6. The true names and capacities, whether individual, corporate, associate, or
16 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
17 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of
18 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
19 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
20 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
21 this Complaint to reflect the true names and capacities of the Defendants designated herein as
22 Does 1 through 50 when their identities become known.

23 7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
24 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
25 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
26 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
27 all respects as the employers or joint employers of Employees. Defendants, and each of them,
28 exercised control over the wages, hours or working conditions of Employees, or suffered or

1 permitted Employees to work, or engaged, thereby creating a common law employment
2 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly
3 employed Employees.

4 **JURISDICTION AND VENUE**

5 8. This Court has jurisdiction over this Action pursuant to California Code of Civil
6 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
7 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
8 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
9 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
10 obligations and liabilities giving rise to this lawsuit occurred at least in part in Butte County and
11 Defendants maintain and operate company offices and facilities in Butte County, and employ
12 Plaintiff and other Class members in Butte County and throughout California.

13 **FACTUAL BACKGROUND**

14 9. The Employees who comprise the Class and Collective, including Plaintiff, are
15 nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire
16 Employees who work in nonexempt positions at the direction of Defendants in the State of
17 California. Plaintiff and the Class members were either not paid by Defendants for all hours
18 worked or were not paid at the appropriate minimum, regular and overtime rates. Specifically,
19 Plaintiff and Employees were not paid for the time that they were required to answer phone calls
20 from Defendants' residents, employees, and supervisors when they were clocked out, participating
21 in Defendants' training, and opening any facilities for clients on Defendants' premises. Plaintiff
22 also contends that Defendants failed to pay Plaintiff and the Class members all wages due and
23 owing, failed to provide meal and rest breaks, and failed to furnish accurate wage statements, all in
24 violation of various provisions of the California Labor Code and applicable Wage Orders.
25 Additionally, Defendants paid Plaintiffs and Employees nondiscretionary commissions, incentive
26 pay, and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to
27 incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or
28 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating

1 the overtime wage rate. Therefore, during times when Plaintiffs and Employees worked overtime
2 and received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses,
3 Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

4 10. From at least four (4) years prior to the filing of this lawsuit and continuing to the
5 present, Defendants paid Plaintiffs and Employees nondiscretionary commissions, incentive pay,
6 and/or nondiscretionary bonuses. However, upon information and belief, Defendants failed to
7 incorporate all remunerations, including nondiscretionary commissions, incentive pay, and/or
8 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating
9 sick pay. Therefore, during times when Plaintiffs and Employees worked overtime and received
10 nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed
11 to pay all sick pay by paying a lower overtime rate than required.

12 11. From at least four (4) years prior to the filing of this lawsuit and continuing
13 to the present, Defendants paid Plaintiffs and Employees nondiscretionary commissions,
14 incentive pay, and/or nondiscretionary bonuses. However, upon information and belief,
15 Defendants failed to incorporate all remunerations, including nondiscretionary
16 commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the
17 regular rate of pay for purposes of calculating vacation pay. Therefore, during times when
18 Plaintiffs and Employees worked overtime and received nondiscretionary commissions,
19 incentive pay, and/or nondiscretionary bonuses, Defendants failed to pay all vacation pay
20 by paying a lower overtime rate than required.

21 12. During the course of Plaintiff and the Class members' employment with
22 Defendants, they were not paid all wages they were owed, including for all work performed and
23 for all overtime hours worked and were forced to work during their meal and rest breaks to keep
24 labor budgets low.

25 13. As a matter of uniform Company policy, Plaintiff and the Class members were
26 required to work during their meal and rest breaks which were not compensated by Defendants in
27 violation of the California Labor Code. Plaintiff and the Class members were also not paid
28 regular wages and overtime for the time they were required to comply with other requirements

1 imposed upon them, which they had to complete while working through their meal and rest
2 breaks and without compensation. As a result Plaintiff and the Class members worked shifts over
3 eight (8) hours in a day and over forty (40) hours in a work week, but they were not paid at the
4 appropriate overtime rate for all such hours, including by being required to perform work duties
5 and tasks without pay and while off-the-clock. As a result, Plaintiff and the Class members
6 worked substantial overtime hours during their employment with Defendants for which they were
7 not compensated, in violation of the California Labor Code, applicable IWC Wage Orders.

8 14. As a result of the above described the daily work demands and pressures to work
9 through breaks, and the other wage violations they endured at Defendants' hands, Plaintiff and the
10 Class members were not properly paid for all wages earned and for all wages owed to them by
11 Defendants, including when working more than eight (8) hours in any given day and/or more than
12 forty (40) hours in any given week. As a result of Defendants' unlawful policies and practices,
13 Plaintiff and Class members incurred overtime hours worked for which they were not adequately
14 and completely compensated. To the extent applicable, Defendants also failed to pay Plaintiff and
15 the Class members at an overtime rate of 1.5 times the regular rate for the first eight hours of the
16 seventh consecutive work day in a week and overtime payments at the rate of 2 times the regular
17 rate for hours worked over eight (8) on the seventh consecutive work day, as required under the
18 Labor Code, applicable IWC Wage Orders.

19 15. Therefore, from at least four (4) years prior to the filing of this lawsuit and
20 continuing to the present, Defendants had a consistent policy or practice of failing to pay
21 Employees for all hours worked, and failing to pay minimum wage for all time worked as required
22 by California Law.

23 16. Additionally from at least four (4) years prior to the filing of this lawsuit and
24 continuing to the present, Defendants had a consistent policy or practice of failing to pay
25 Employees overtime compensation at premium overtime rates for all hours worked in excess of
26 eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in
27 excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding
28 sections of IWC Wage Orders.

1 17. Additionally from at least four (4) years prior to the filing of this lawsuit and
2 continuing to the present, Defendants have regularly required Employees to work shifts in excess
3 of five (5) hours without providing them with uninterrupted meal periods of not less than thirty
4 (30) minutes and shifts in excess of ten (10) hours without providing them with second meal
5 periods of not less than thirty minutes; nor did Defendants pay Employees “premium pay,” i.e. one
6 hour of wages at each Employee’s effective regular rate of pay, for each meal period that
7 Defendants failed to provide or deficiently provided.

8 18. From at least four (4) years prior to the filing of this lawsuit and continuing to the
9 present, Defendants have consistently failed to provide Employees with paid rest breaks of not less
10 than ten (10) minutes for every work period of four (4) or more consecutive hours; nor did
11 Defendant pay Employees premium pay for each day on which requisite rest breaks were not
12 provided or were deficiently provided at one hour of wages at each Employee’s effective regular
13 rate of pay, for each rest period that Defendants failed to provide or deficiently provided.

14 19. Additionally from at least four (4) years prior to the filing of this lawsuit, and
15 continuing to the present, Defendants have consistently failed to provide Employees with timely,
16 accurate, and itemized wage statements as required by California wage-and-hour laws.
17 Specifically, Defendants failed in their affirmative obligation to keep accurate records of the
18 correct overtime wages based on proper regular rate calculations that included nondiscretionary
19 commissions, incentive pay, and/or nondiscretionary bonuses earned, and the total amount of
20 compensation of their Employees. Moreover, the wage statements given to Employees by
21 Defendants failed to accurately account for wages, overtime, and premium pay for deficient meal
22 periods and rest breaks, and automatically deducted wages for alleged meal periods, all of which
23 Defendants knew or reasonably should have known were owed to Employees, as alleged
24 hereinabove. The wage statements provided to Employees were confusing and required
25 Employees to engage in discovery and refer to outside sources to verify whether their pay was
26 correct and potentially resulting in a miscalculation by the Employees.

27 20. Additionally from at least four (4) years prior to the filing of this lawsuit, and
28 continuing to the present, Defendants have consistently failed to provide Employees with timely,

accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

21. From at least four (4) years prior to the filing of this lawsuit and continuing to the present, Defendants have failed to reimburse Employees for expenses necessarily incurred in the performance of their job duties for Defendants including, but not limited to, the cost of cellphone usage, vehicle maintenance, mileage, and fuel which were necessary to perform their duties under Defendants' employ which was used throughout the course of Employees' duties under Defendants' employ in violation of Labor Code § 2802.

22. Additionally from at least three (3) years prior to the filing of this lawsuit, and continuing to the present, Defendants have consistently failed to keep accurate time and wage records as required by California wage-and-hour laws.

23. Additionally from at least four (4) years prior to filing this lawsuit and continuing to the present, Defendants have had a consistent policy of failing to pay all wages fur and owed to Employees at the time of their termination of within seventy-two (72) hours of their resignation, as required by California wage-and-hour laws.

24. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor Code §§ 201, 202, 203, 204, 226, 226.7, 227.3, 245 et seq., 246, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2 1197, 1199 and 2802.

25. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have enjoyed from their violations of Labor Code.

CLASS ALLEGATIONS

26. Plaintiff brings this class action on behalf of herself an all others similarly situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as follows: all individuals employed by Defendants, at any time within four (4) years of the filing of this lawsuit, and have been employed by Defendants within the State of California.

27. Further, plaintiff seeks to represent the following Subclasses composed of and defined as follows:

a. Subclass 1. Minimum Wages Subclass. All Class members who were not

1 compensated for all hours worked for Defendants at the applicable minimum wage.

2 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
3 compensated for all hours worked for Defendants at the required rates of pay, including for all
4 hours worked in excess of eight in a day and/or forty in a week.

5 c. Subclass 3. Vacation Wages Subclass. All Class members who were not
6 compensated at the Employee's regular rate of pay for their vacation wages.

7 d. Subclass 4. Sick Pay Subclass. All Class members who were not compensated at
8 the Employee's regular rate of pay for their sick pay wages.

9 e. Subclass 5. Meal Period Subclass. All Class members who were subject to
10 Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty
11 free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

12 f. Subclass 6. Rest Break Subclass. All Class members who were subject to
13 Defendants' policy and/or practice of failing to authorize and permit Employees to take
14 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
15 thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

16 g. Subclass 7. Payroll Records Subclass. All Class members who were subject to
17 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
18 by California wage-and-hour laws.

19 h. Subclass 8. Wage Statement Subclass. All Class members who, within the
20 applicable limitations period, were not provided with accurate itemized wage statements.

21 i. Subclass 9. Failure to Reimburse for Necessary Business Expenditures. All Class
22 members who were subject to Defendants failing to reimburse for expenses necessarily incurred
23 in the performance of Employees job duties for Defendants which were necessary to perform their
24 duties under Defendants' employ.

25 j. Subclass 10. Termination Pay Subclass. All Class members who, within the
26 applicable limitations period, either voluntarily or involuntarily separated from their employment
27 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
28 termination.

1 k. Subclass 11. UCL Subclass. All Class members who are owed restitution as a
2 result of Defendants' business acts and practices, to the extent such acts and practices are found to
3 be unlawful, deceptive, and/or unfair.

4 28. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
5 modify the class description with greater particularity or further division into subclasses or
6 limitation to particular issues.

7 29. This action has been brought and may properly be maintained as a class action
8 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
9 of interest in litigation and proposed class is easily ascertainable.

10 **A. Numerosity**

11 30. The potential members of the class as defined are so numerous that joinder of all
12 the member of the class is impracticable. While the precise number of class member has not been
13 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
14 time period relevant to this lawsuit, employed more than 100 individuals were employed by
15 Defendant's within the State of California.

16 31. Accounting for employee turnover during the relevant time period increases this
17 number substantially. Plaintiff alleges that Defendants' employment records will provide
18 information as to the number and location of all class members.

19 **B. Commonality**

20 32. There are questions of law and fact common to the class that predominate over any
21 questions affecting only individual class members. These common questions of law and fact
22 include:

- 23 a. Whether Defendants failed to pay Employees minimum wages;
- 24 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 25 c. Whether Defendants failed to pay Employees overtime as required under Labor
26 Code § 510;
- 27 d. Whether Defendants failed to pay Employees vacation wages as required under
28 Labor Code § 227.3;

- 1 e. Whether Defendants failed to pay Employees sick pay as required under Labor
2 Code § 245;
- 3 f. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
4 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
5 premium pay in lieu thereof;
- 6 g. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
7 Orders, by failing to provide Employees with requisite rest breaks or premium pay
8 in lieu thereof;
- 9 h. Whether Defendants violated Labor Code § 226(a);
- 10 i. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- 11 j. Whether Defendants failed to reimburse Employees for necessary business
12 expenses;
- 13 k. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
14 wages and compensation due and owing at the time of termination of employment;
- 15 l. Whether Defendants violated Business and Professions Code § 17200 et seq.; and
- 16 m. Whether Employees are entitled to equitable relief pursuant to Business and
17 Professions Code § 17200 et seq.

18 **C. Typicality**

19 33. The claims of the named plaintiff are typical of those of the other Employees.
20 Employees all sustained injuries and damages arising out of and caused by Defendant's common
21 course of conducts in violation of statutes, as well as regulations that have the force and effect of
22 law, as alleged herein.

23 **D. Adequacy of Representation**

24 34. Plaintiff will fairly and adequately represent and protect the interest of Employees.
25 Counsel who represents Employees are experienced and competent in litigating employment class
26 actions.

27 **E. Superiority of Class Action**

28 35. A class action is superior to other available means for the fair and efficient

1 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
2 questions of law and fact common to all Employees predominate over any questions affecting only
3 individual Employees. Each Employee has been damaged and is entitled to recovery by reason of
4 Defendants' illegal policies or practices of failing to compensate Employees properly.

5 36. Class action treatment will allow those persons similarly situated to litigate their
6 claims in the manner that is most efficient and economical for the parties and the judicial system.
7 Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

8 **FIRST CAUSE OF ACTION**

9 **FAILURE TO PAY MINIMUM WAGES**

10 **(Against All Defendants)**

11 37. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
12 full herein.

13 38. Defendants failed to pay Employees minimum wages for all hours worked.
14 Defendants had a consistent policy of misstating Employees time records and failing to pay
15 Employees for all hours worked. Employees would work hours and not receive wages, including
16 as alleged above in connection with working during meal breaks, time off the clock Employees
17 answering phone calls from Defendants' residents, employees, and supervisors, participating in
18 Defendants' training, and opening any facilities for clients on Defendants' premises in excess of
19 their eight-hour shift in a given work day. Additionally, Defendants had a consistent policy of
20 failing to pay Employees for hours worked during alleged meal periods for which Employees
21 were consistently denied, as also addressed herein. Defendants' uniform pattern of unlawful
22 wage and hour practices manifested, without limitation, applicable to the Class as a whole, as a
23 result of implementing a uniform policy and practice that denied accurate compensation to
24 Plaintiff and the other members of the Class as to minimum wage pay.

25 39. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
26 states:

27 The minimum wage for employees fixed by the commission is the
28 minimum wage to be paid to employees, and the payment of a less
wage than the minimum so fixed is unlawful.

1 40. The applicable minimum wages fixed by the commission for work during the
2 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are
3 therefore entitled to double the minimum wage during the relevant period.

4 41. The minimum wage provisions of California Labor Code are enforceable by private
5 civil action pursuant to California Labor Code § 1194(a) which states:

6 Notwithstanding any agreement to work for a lesser wage, any
7 employee receiving less than the legal minimum wage or the legal
8 overtime compensation applicable to the employee is entitled to
9 recover in a civil action the unpaid balance of the full amount of
this minimum wage or overtime compensation, including interest
thereon, reasonable attorney's fees and costs of suit.

10 42. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
11 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

12 43. California Labor Code § 1194.2 also provides for the following remedies:

13 In any action under Section 1194 . . . to recover wages because of
14 the payment of a wage less than the minimum wages fixed by an
15 order of the commission, an employee shall be entitled to recover
liquidated damages in an amount equal to the wages unlawfully
unpaid and interest thereon.

16 44. Defendants have the ability to pay minimum wages for all time worked and have
17 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
18 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

19 45. Wherefore, Employees are entitled to recover the unpaid minimum wages
20 (including double minimum wages), liquidated damages in an amount equal to the minimum
21 wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant
22 to California Labor Code § 1194(a).

23 **SECOND CAUSE OF ACTION**

24 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

25 **(Against All Defendants)**

26 46. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
27 full herein.

28 47. By their conduct, as set forth herein, Defendants violated California Labor Code §

1 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:
2 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
3 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
4 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
5 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
6 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not
7 paying Employees wages for all hours worked including time off the clock Employees spent
8 answering phone calls from Defendants' residents, employees, and supervisors, participating in
9 Defendants' training, and opening any facilities for clients on Defendants' premises, in excess of
10 their eight-hour shift in a given work day. Employees regularly worked over 8 hours on a given
11 day without receiving overtime compensation.

12 48. Furthermore, on information and belief, Defendants did not pay Plaintiffs and
13 Employees the correct overtime rate for the recorded overtime hours that they generated. In
14 addition to an hourly wage, Defendants paid Plaintiffs and Employees nondiscretionary
15 commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and
16 belief, Defendants failed to incorporate all remunerations, including nondiscretionary
17 commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular
18 rate of pay for purposes of calculating the overtime wage rate.

19 49. Therefore, during times when Plaintiffs and Employees worked overtime and
20 received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses,
21 Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

22 50. Defendants' failure to pay compensation in a timely fashion also constituted a
23 violation of California Labor Code § 204, which requires that all wages shall be paid
24 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
25 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
26 and overtime compensation earned by Employees. Each such failure to make a timely payment of
27 compensation to Employees constitutes a separate violation of California Labor Code § 204.

28 51. Employees have been damaged by these violations of California Labor Code §§

1 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

2 52. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the
3 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for
4 the full amount of all their unpaid wages and overtime compensation, with interest, plus their
5 reasonable attorneys' fees and costs.

6 **THIRD CAUSE OF ACTION**

7 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

8 **(Against All Defendants)**

9 53. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
10 full herein.

11 54. Employees regularly worked shifts greater than five (5) hours and greater than ten
12 (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of
13 more than five (5) hours without providing him or her with a meal period of not less than thirty
14 (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second
15 meal period of not less than thirty (30) minutes.

16 55. Defendants failed to provide Employees with meal periods as required under the
17 Labor Code. Employees were consistently required to work through their meal periods which they
18 were consistently denied. Employees were also required to take meal periods after working well
19 beyond the five (5) hour shifts. Furthermore, Employees were regularly required to work for more
20 than 10 hours in a given shift without receiving a second uninterrupted thirty (30) minute meal
21 period as required by law.

22 56. Moreover, Defendants failed to compensate Employees for each meal period not
23 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
24 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
25 employee a meal period in accordance with this section, the employer shall pay the employee one
26 hour of pay at the employee's regular rate of compensation for each workday that the meal period
27 is not provided. Defendants failed to compensate the Employees in the Class for each meal period
28 not provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11

1 and 20 of the applicable IWC Wage Order. Additionally, as detailed above, when Defendants did
2 pay meal period premiums, they did so at the normal regular rate of pay without factoring in all
3 forms or remuneration/compensation or by otherwise incorrectly calculating the regular rate.

4 57. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
5 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal
6 period not provided or deficiently provided, a sum to be proven at trial.

7 **FOURTH CAUSE OF ACTION**

8 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

9 **(Against All Defendants)**

10 58. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
11 full herein.

12 59. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the
13 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of
14 not less than ten (10) minutes for each consecutive four (4) hour shift.

15 60. Defendants failed to provide Employees with timely rest breaks of not less than ten
16 (10) minutes for each consecutive four (4) hour shift.

17 61. Moreover, Defendants failed to compensate Employees for each rest period not
18 provided or inadequately provided, as required under Labor Code § 226.7 and the applicable IWC
19 Wage Orders, which provide that, if an employer fails to provide an employee a rest period in
20 accordance with this section, the employer shall pay the employee one hour of pay at the
21 employee's regular rate of compensation for each workday that the rest period is not provided.
22 Defendants failed to compensate the Employees in the Class for each rest period not provided or
23 inadequately provided, as required under Labor Code § 226.7 and the applicable IWC Wage
24 Order. Additionally, as detailed above, when Defendants did pay rest period premiums, they did
25 so at the normal regular rate of pay without factoring in all forms or remuneration/compensation
26 or by otherwise incorrectly calculating the regular rate.

27 62. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in
28 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day

1 worked without the required rest breaks, a sum to be proven at trial.

2 **FIFTH CAUSE OF ACTION**

3 **FAILURE TO PAY VACATION WAGES**

4 **(Against All Defendants)**

5 63. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
6 full herein.

7 64. Pursuant to California Labor Code § 227.3, whenever a contract of employment or
8 employment policy provides for paid vacation and an employee is terminated without having
9 taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate
10 in accordance with said contract of employment or policy respecting eligibility or time served.

11 65. Defendants paid nondiscretionary commissions, incentive pay, and/or
12 nondiscretionary bonuses to Employees but Defendants failed to include these forms of
13 remuneration in the regular rate of pay upon which vacation wages were calculated and paid.

14 66. Therefore, pursuant to, Plaintiff and Employees seek to recover penalties pursuant
15 to Labor Code § 227.3.

16 **SIXTH CAUSE OF ACTION**

17 **FAILURE TO COMPLY WITH LABOR CODE § 245 ET SEQ. AND 246**

18 **(Against All Defendants)**

19 67. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
20 full herein.

21 68. California Labor Code § 245 et seq. requires that Defendants provide paid sick time
22 to Aggrieved Employees, including at the amount, terms, and rate of compensation set forth in
23 said law. At times relevant, Defendants have failed compute the amount due for paid sick time in
24 conformance with the pay calculation under California Labor Code § 246(l).

25 69. Defendants paid nondiscretionary commissions, incentive pay, and/or
26 nondiscretionary bonuses to Aggrieved Employees but Defendants failed to include these forms of
27 remuneration in the regular rate of pay upon which sick pay was calculated and paid. Rather than
28 calculating the amount of paid sick time due when sick time is used according to the requirements

1 set forth in California Labor Code § 246(1), Defendants paid sick leave to Aggrieved Employees
2 at a lower rate, in violation of the law.

3 70. Therefore, Plaintiff and Employees seek to recover penalties pursuant to Labor
4 Code § 245 *et seq.* and §§ 245 *et seq.* and 246.

5 **SEVENTH CAUSE OF ACTION**
6 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENDITURES**
7 **IN VIOLATION OF LABOR CODE § 2802**

8 **(Against All Defendants)**

9 71. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
10 full herein.

11 72. Under Labor Code § 2802(a) an employer must indemnify its employees for all
12 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
13 of his or her duties, or of his or her obedience to the directions of the employer.

14 73. Employees incurred necessary expenditures in the performance of their job duties
15 for Defendants, namely the cost of cell phone usage, vehicle maintenance, mileage, and fuel,
16 which were necessary to perform their duties under Defendants' employ. From four (4) years prior
17 to the original filing of this lawsuit and continuing to the present, Defendants consistently failed to
18 reimburse Employees for these necessarily incurred business expenses.

19 74. As a result of the unlawful acts of Defendants, Employees have been deprived of
20 reimbursement in amounts to be determined at trial; they are entitled to recovery of such amounts,
21 plus interest and penalties thereon, attorneys' fees, and costs.

22 **EIGHTH CAUSE OF ACTION**
23 **VIOLATION OF LABOR CODE § 226(a)**

24 **(Against All Defendants)**

25 75. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
26 full herein.

27 76. California Labor Code § 226(a) requires an employer to furnish each of his or her
28 employees with an accurate, itemized statement in writing showing the gross and net earnings,

1 total hours worked, and the corresponding number of hours worked at each hourly rate; these
2 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
3 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
4 statements may be given to the employee separately from the payment of wages; in either case the
5 employer must give the employee these statements twice a month or each time wages are paid.

6 77. Defendants failed to provide Employees with accurate itemized wage statements in
7 writing, as required by the Labor Code. Specifically, the wage statements given to Employees, by
8 Defendants, failed to include the above requirements enumerated above. Employees' wage
9 statements did not include: the total hours worked in violation of Labor Code § 226(a)(2) and
10 failed to accurately set forth all applicable hourly rates in effect during the pay period and the
11 corresponding number of hours worked at each such rate in violation of Labor Code § 226 (a)(9).
12 The wage statements provided to Employees were confusing and required Employees to engage in
13 discovery and refer to outside sources to verify whether their pay was correct and potentially
14 resulting in a miscalculation by the Employees. Additionally, Specifically, Defendants failed in
15 their affirmative obligation to keep accurate records of the correct overtime wages based on proper
16 regular rate calculations that included nondiscretionary commissions, incentive pay, and/or
17 nondiscretionary bonuses earned, and the total amount of compensation of their Employees.
18 Moreover, the wage statements given to Employees by Defendants failed to accurately account for
19 wages, overtime, and premium pay for deficient meal periods and rest breaks, and automatically
20 deducted wages for alleged meal periods, all of which Defendants knew or reasonably should have
21 known were owed to Employees, as alleged hereinabove. The wage statements provided to
22 Employees were confusing and required Employees to engage in discovery and refer to outside
23 sources to verify whether their pay was correct and potentially resulting in a miscalculation by the
24 Employees.

25 78. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),
26 Employees suffered injuries, including among other things confusion over whether they received
27 all wages owed them, the difficulty and expense involved in reconstructing pay records, and
28 forcing them to make mathematical computations to analyze whether the wages paid in fact

1 compensated them correctly for all hours worked.

2 79. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover
3 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
4 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
5 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an
6 award of costs and reasonable attorneys' fees.

7 **NINTH CAUSE OF ACTION**

8 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174**
9 **AND 1174.5**

10 **(Against All Defendants)**

11 80. Plaintiffs re-allege and incorporate all preceding paragraphs, as though set forth in
12 full herein.

13 81. California Labor Code § 1174 requires that all employers shall keep accurate time
14 and wage records for all employees. California Labor Code § 1174.5 further requires that any
15 employee suffering injury due to a willful violation of the aforementioned obligations may seek
16 damages, including civil penalties, from the employer.

17 82. During the course of Plaintiff's and Employees' employment, Defendants
18 consistently failed to maintain accurate time and wage records for Plaintiff and Employees as
19 required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages,
20 overtime, and premium pay as discussed above.

21 83. Accordingly, Defendants are liable for civil penalties pursuant to the California
22 Labor Code §§ 1174.5, for the three (3) years prior to the filing of this Complaint.

23 **TENTH CAUSE OF ACTION**

24 **VIOLATION OF LABOR CODE § 203**

25 **(Against All Defendants)**

26 84. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
27 full herein.

28 85. Numerous Employees are no longer employed by Defendants; they either quit

Defendants' employ or were fired therefrom.

86. Defendants failed to pay these Employees all wages due and certain at the time of termination or within seventy-two (72) hours of resignation.

87. The wages withheld from these Employees by Defendants remained due and owing for more than thirty (30) days from the date of separation of employment.

88. Defendants' failure to pay wages, as alleged above, was willful in that Defendants knew wages to be due but failed to pay them; this violation entitles these Employees to penalties under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

ELEVENTH CAUSE OF ACTION

VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

(Against All Defendants)

89. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

90. Plaintiff, on behalf of herself, Employees, and the general public, brings this claim pursuant to Business & Professions Code § 17200 et seq. The conduct of Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

91. Plaintiff is a "person" within the meaning of Business & Professions Code § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

92. Business & Professions Code § 17200 et seq. prohibits unlawful and unfair business practices.

93. Wage-and-hour laws express fundamental public policies. Paying employees their wages and overtime, providing them with meal and rest periods, etc., are fundamental public policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously

1 to enforce minimum labor standards, to ensure that employees are not required or permitted to
2 work under substandard and unlawful conditions, and to protect law-abiding employers and their
3 employees from competitors who lower costs to themselves by failing to comply with minimum
4 labor standards.

5 94. Defendants have violated statutes and public policies. Through the conduct alleged
6 in this Complaint Defendants have acted contrary to these public policies, have violated specific
7 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
8 violation of Business & Professions Code § 17200 et seq.; which conduct has deprived Plaintiff,
9 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
10 guaranteed to all employees under the law.

11 95. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
12 violation of the Business & Professions Code § 17200 et seq.

13 96. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
14 overtime, failing to provide meal and rest periods, etc., either knew or in the exercise of reasonable
15 care should have known that their conduct was unlawful; therefore their conduct violates the
16 Business & Professions Code § 17200 et seq.

17 97. As a proximate result of the above-mentioned acts of Defendants, Employees have
18 been damaged, in a sum to be proven at trial.

19 98. Unless restrained by this Court Defendants will continue to engage in such
20 unlawful conduct as alleged above. Pursuant to the Business & Professions Code this Court should
21 make such orders or judgments, including the appointment of a receiver, as may be necessary to
22 prevent the use by Defendants or their agents or employees of any unlawful or deceptive practice
23 prohibited by the Business & Professions Code, including but not limited to the disgorgement of
24 such profits as may be necessary to restore Employees to the money Defendants have unlawfully
25 failed to pay.

26 **RELIEF REQUESTED**

27 WHEREFORE, Plaintiff prays for the following relief:

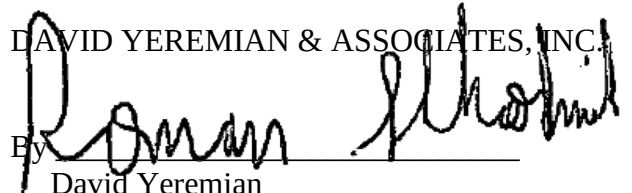
- 28 1. For an order certifying this action as a class action;

2. For compensatory damages in the amount of the unpaid minimum wages for work performed by Employees and unpaid overtime compensation from at least four (4) years prior to the filing of this action, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
4. For compensatory damages in the amount of the hourly wage made by Employees for each missed or deficient meal period where no premium pay was paid therefor from four (4) years prior to the filing of this action, as may be proven;
5. For compensatory damages in the amount of the hourly wage made by Employees for each day requisite rest breaks were not provided or were deficiently provided where no premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may be proven;
6. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
7. For penalties pursuant to Labor Code § 203 for all Employees who quit or were fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
8. For penalties pursuant to Labor Code § 227.3, as may be proven;
9. For penalties pursuant to Labor Code §§ 245 and 246, as may be proven;
10. For penalties pursuant to Labor Code § 1174.5, as may be proven;
11. For restitution for unfair competition pursuant to Business & Professions Code § 17200 et seq., including disgorgement or profits, as may be proven;
12. For compensatory damages in the amount of all previously unreimbursed business expenditures necessarily incurred by Employees in the discharge of their job duties for Defendants from four (4) years prior to the original filing of this action, as may be proven;
13. For an order enjoining Defendants and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this Complaint;
14. For all general, special, and incidental damages as may be proven;
15. For an award of pre-judgment and post-judgment interest;

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- 16. For an award providing for the payment of the costs of this suit;
- 17. For an award of attorneys' fees; and
- 18. For such other and further relief as this Court may deem proper and just.

DATED: September 17, 2021

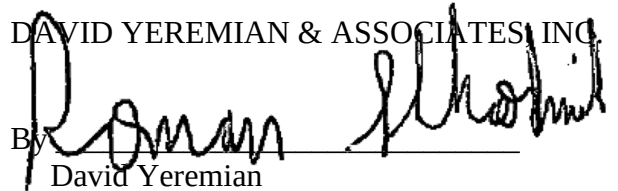
DAVID YEREMIAN & ASSOCIATES, INC.

By _____
David Yeremian
Roman Shkodnik
Attorneys for Plaintiff
JENNIFER DORMANY
and the putative class

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

DATED: September 17, 2021

DAVID YEREMIAN & ASSOCIATES, INC.

By 

David Yeremian
Roman Shkodnik
Attorneys for Plaintiff
JENNIFER DORMANY
and the putative class