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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SYDNEE FIGUEROA, individually and on
 behalf of all similarly situated current and
 former non-exempt employees of
 DEFENDANTS in the State of California,

Plaintiff,

v.

INDIGO SKY INC., and DOES 1 through 50,
 Inclusive,

Defendants.

Case No.: **21STCV42069**

Unlimited Civil
Amount Demanded exceeds \$25,000.00

CLASS ACTION COMPLAINT

[Cal. Code Civ. Proc. § 382]

1. Failure to Provide Meal Periods or Required Premiums;
2. Failure to Provide Rest Periods or Required Premiums;
3. Failure to Pay All Overtime Wages;
4. Failure to Provide Accurate Itemized Wage Statements;
5. Failure to Timely Pay All Wages Due Upon Separation of Employment;
6. Violation of Business & Professions Code §17200, *et seq.*;

– JURY TRIAL DEMANDED –

Plaintiff SYDNEE FIGUEROA (“Plaintiff”), individually and on behalf of herself and all other similarly situated current and former non-exempt employees of Defendant INDIGO SKY INC., and DOES 1 through 50, inclusive, (collectively “Defendants”), alleges as follows:

I. INTRODUCTION

1
2 1. Plaintiff brings this action pursuant to California Code of Civil Procedure section 382
3 against Defendant INDIGO SKY INC. and DOES 1 through 50 for engaging in a pattern of wage and
4 hour violations under the California Labor Code and the applicable Industrial Welfare Commission
5 (“IWC”) Wage Order, 2-2001. Plaintiff brings this action on behalf of all similarly situated current and
6 former non-exempt employees of Defendant in the State of California.

7 2. Plaintiff brings this action on behalf of all current and former non-exempt employees who
8 were employed by Defendants in the State of California during the applicable relevant time period
9 (hereinafter “similarly situated employees”).

10 3. Plaintiff is informed and believes, and on that basis alleges, that Defendants decreased their
11 employment-related costs by systematically violating California wage and hour laws and engaging in
12 unlawful and unfair business practices.

13 4. Defendant’ systematic pattern of Labor Code and IWC Wage Order violations toward
14 Plaintiff and other similarly situated employees in California include, but are not limited to:

- 15 a. Failure to provide meal periods;
- 16 b. Failure to provide rest periods;
- 17 c. Failure to pay meal and rest premium wages;
- 18 d. Failure to pay overtime wages;
- 19 e. Failure to provide accurate itemized wage statements; and
- 20 f. Failure to timely pay all wages due upon separation of employment.

21 5. Plaintiff brings this lawsuit seeking restitution, injunctive and monetary relief against
22 Defendants, on behalf of themselves and all other similarly situated employees in California, to recover,
23 among other things, unpaid wages, benefits, expenses, interest, attorney’s fees, damages, and costs
24 pursuant to Labor Code §§ 201, 202, 203, 218.5, 218.6, 226, 226.7, 510, 512, 1194, 1198, the Business
25 and Professions Code §§17200, *et seq.*, and the provisions of the applicable IWC Wage Order.

26 6. Plaintiff reserve the right to name additional class representatives throughout the State of
27 California.

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II. PARTIES

A. Plaintiff

7. Plaintiff SYDNEE FIGUEROA is a former employee of INDIGO SKY INC., who, at all relevant times, was employed as a non-exempt wax specialist and worked out of Defendant's European Wax Specialist franchises in Redondo Beach and Santa Monica, California.

8. Plaintiff is a resident of the State of California and currently reside in Los Angeles, California.

9. At all relevant times, Plaintiff and other similarly situated employees of Defendants in California were subject to the same policies, practices, and procedures governing their employment and their payment of wages and hours worked.

B. Defendants

10. Defendant INDIGO SKY INC., owns and operates several European Wax Center Franchises which provides wax services to customers.

11. Defendants' wrongful conduct, as alleged herein, occurred in the County of Los Angeles.

12. Plaintiff is informed and believes, and thereon allege, that each Defendant is, and at all relevant times was, authorized to do business and did business in the State of California, and was Plaintiff's and other similarly situated employees' "employer" as defined in and subject to the California Labor Code and Industrial Welfare Commission Wage Orders.

13. Each of the fictitiously named Defendants participated in the acts alleged in this Complaint. The true names and capacities of the Defendants named as DOES 1 through 50, inclusive, are presently unknown to Plaintiff. Plaintiff will amend this Complaint, setting forth the true names and capacities of the fictitious Defendants, if and when their true names and capacities are ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitious Defendant participated in the acts alleged in this Complaint.

14. Plaintiff and all other similarly situated employees are, and at all relevant times were, employees of each Defendants, including DOES 1 through 50, within the meanings set forth in the California Labor Code and applicable Industrial Welfare Commission Wage Order.

15. Plaintiff is informed and believes that at all relevant times, each Defendant, whether named

1 or fictitious, was the agent, employee or other person acting on behalf of every other Defendant, and, in
2 participating in the acts alleged in this Complaint, acted within the scope of such agency or employment
3 and ratified the acts of each other Defendant.

4 16. Plaintiff is informed and believes that at all relevant times, each Defendant, whether named
5 or fictitious, exercised control over Plaintiff's and other similarly situated employees' wages, hours and/or
6 working conditions.

7 17. Plaintiff is further informed and believes that at all relevant times, each Defendant, whether
8 named or fictitious, acted as the agent for the other Defendants, carried out a joint scheme, business plan
9 or policy, and the acts of each Defendant are legally attributable to the other Defendants.

10 18. Each Defendant, whether named or fictitious, was the alter ego of each of the other
11 Defendants at all relevant times herein.

12 19. A unity of interest and ownership between each Defendant, whether named or fictitious,
13 exists such that all Defendants acted as a single employer of Plaintiff and all other similarly situated.

14 20. Defendants, including DOES 1 through 50, were Plaintiff's employers or persons acting
15 on behalf of Plaintiff's employer, within the meaning of California Labor Code § 558, who violated or
16 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
17 regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are
18 subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant
19 times.

20 21. Defendants, including DOES 1 through 50, were Plaintiff's employers or persons acting
21 on behalf of Plaintiff's employer either individually or as an officer, agent, or employee of another person,
22 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee a
23 wage less than the minimum fixed by California state law, and as such, are subject to civil penalties for
24 each underpaid employee.

25 **III. JURISDICTION AND VENUE**

26 22. This Court has subject-matter jurisdiction to hear this case because Plaintiff is informed
27 and believes that the monetary damages and restitution sought herein for Defendant's conduct exceed the
28 minimum jurisdictional limits of the Superior Court.

23. Venue is proper in Los Angeles County Superior Court pursuant to Code of Civil Procedure sections 395(a) and 395.5 because Defendant maintains offices, transact business, and/or has an agent in Los Angeles County and Defendant is otherwise within this Court's jurisdiction for purposes of service of process. Defendant employs Class Members in Los Angeles County and the unlawful acts alleged herein arose in Los Angeles County have a direct effect on Plaintiff and other similarly situated employees within Los Angeles County.

IV. GENERAL ALLEGATIONS

24. Plaintiff SYDNEE FIGUEROA is a former non-exempt employee of Defendants who worked as a wax specialist at its Santa Monica and Redondo Beach locations from June 2021 to September 2021.

25. For each workday, Defendants provided Plaintiff a schedule that stated the times of her appointments, times she was assigned to perform specific tasks, and the time was permitted to take meal and rest periods.

26. As a wax specialist at both European Wax Center locations, Plaintiff's duties included, waxing the clients, interacting with customers, cleaning her station, selling product, and other services.

27. Defendants denied Plaintiff and other similarly situated employees of Defendants certain rights afforded to them under the California Labor Code and Industrial Welfare Commission Wage Orders. Specifically, Defendants did not properly compensate Plaintiff and other similarly situated employees for all hours worked, failed to provide compliant meal and rest periods, failed to maintain accurate records, failed to provide accurate itemized wage statements, failed to reimburse for all necessary expenses, and did not pay all wages due and owing by the times set forth by law.

28. Nonetheless, Defendants had a pattern and practice of not providing Plaintiff and other similarly situated employees with legally compliant off-duty meal periods, even though Plaintiff and other similarly situated employees typically worked more than six (6) hours during their workday.

29. Pursuant to Defendants' policies and procedures, Plaintiff and other similarly situated employees of Defendants were required to finish appointments and cleaning duties before going on their meal or rest periods. However, due to the schedules provided by Defendants, with which Plaintiff and similarly situated current and former employees were required to strictly comply, Plaintiff and other

1 similarly situated employees were not provided meal periods of a full 30-minutes or authorized or
2 permitted rest periods of a full 10-minutes. For example, there were often incidences when, for reasons
3 outside the control of Plaintiff and other similarly situated employees, their appointments would run longer
4 or their cleaning duties would exceed the allotted amount of time on their schedules provided by
5 Defendants. If Plaintiff's and other similarly situated employees' appointments and cleaning duties caused
6 them to start their meal or rest periods later than the time identified on their schedule, they would still be
7 expected to return to work in accordance with the time identified by Defendants on their schedule.

8 30. In addition, Defendants' schedule failed to include all of the rest periods to which Plaintiff
9 and similarly situated current and former employees were entitled to under California law. For example,
10 Plaintiff and similarly situated current and former employees would often work shifts that exceeded six
11 hours in a work day, yet the schedules provided by Defendants only allowed for a single rest period during
12 said shifts.

13 31. Thus, as a result of Defendants' illegal policies, Plaintiff and other similarly situated
14 employees were denied the opportunity to take legally compliant meal periods, in violation of the
15 applicable Wage Order.

16 32. Defendants similarly had a pattern and practice of failing to authorize and permit Plaintiff
17 and other similarly situated employees to take legally compliant rest periods of at least 10 minutes for
18 every four-hour work period, or major fraction thereof.

19 33. As a result of Defendants' illegal policies, Plaintiff and other similarly situated employees
20 were not authorized or permitted to take legally compliant rest periods, in violation of the applicable Wage
21 Order.

22 34. Although Plaintiff's and other similarly situated employees' meal and rest periods regularly
23 performing tasks during their lunch break, Defendants did not compensate Plaintiff and other similarly
24 situated employees an additional hour of pay at their regular rate of pay for the times that Plaintiff and
25 other similarly situated employees were not authorized or permitted to take a compliant and timely meal
26 or rest periods, in violation of Labor Code section 226.7.

27 35. Further, Defendants paid Plaintiff and other similarly situated employees nondiscretionary
28 compensation, which should have been included in determining the regular rate of pay and regular rate of

1 compensation for purposes of determining the correct payment amount for meal and rest period premiums
2 and overtime compensation. However, Defendants failed to include all of Plaintiff's and other similarly
3 situated employees' nondiscretionary compensation when determining the regular rate of pay and regular
4 rate of compensation for purposes of determining the payments for meal and rest period premiums and
5 overtime compensation.

6 36. As a result, Defendants failed to pay Plaintiff and other similarly situated employees
7 overtime compensation at the correct regular rate of pay of one and one-half times the regular rate of pay
8 for all hours worked over eight hours in one workday and any work in excess of forty hours in any one
9 workweek. Further, Defendants failed to pay Plaintiff and other similarly situated employees at the correct
10 regular rate of compensation when they were not authorized or permitted to take a compliant and timely
11 meal or rest periods.

12 37. Defendants failed to provide Plaintiff other similarly situated employees with accurate
13 itemized wage statements as required under Labor Code Sec. 226. Defendants compensated employees
14 both an hourly wage and piece rate compensation based on the value of the services they provided.
15 However, in spite of compensating Plaintiff and similarly situated employees on a piece rate basis,
16 Defendants failed to identify the number of piece-rate units earned and any applicable piece rate on
17 Plaintiff's and similarly situated employees' wage statements. Further, during the applicable statutory
18 period, Defendants failed to furnish Plaintiff and other similarly situated employees with itemized wage
19 statements correctly identifying, among other things, the total overtime hours worked during the pay
20 period, as well as the corresponding gross and net wages earned, and all applicable hourly rates and the
21 corresponding number of hours worked at each hourly rate.

22 38. The wage statement omissions and inaccuracies were not a result of an isolated and
23 unintentional payroll error due to an inadvertent mistake, but rather a result of knowing and intentional
24 omissions by Defendant. In addition, and as a result of these omissions and inaccuracies, Plaintiff and
25 other similarly situated employees were not promptly and easily able to determine the correct hours
26 worked and/or determine the accurate wages due and owing without reference to other documents and
27 information.

28 39. To this date, Defendants have not paid Plaintiff and other similarly situated employees all

1 wages owed, including all overtime wages as well as all meal and rest period premium wages.

2 40. Defendants similarly maintained a pattern and practice of failing to pay Plaintiff and other
3 similarly situated employees all wages due and owing at the time of their separation of employment within
4 the time specified by Labor Code sections 201 and 202 because Defendant failed to pay Plaintiff and other
5 similarly situated employees all wages due and owing at the time of termination of their employment.

6 41. Based on the foregoing violations of the Labor Code and IWC Wage Order, Defendants
7 engaged in unfair business practices in California and willingly and knowingly engaged in employment
8 patterns and practices that violated Business & Professions Code section 17200 *et seq.*, and Plaintiff and
9 other similarly situated employees suffered damages due to Defendants' unfair, unlawful and/or fraudulent
10 actions.

11 **V. CLASS ACTION DESIGNATION**

12 42. Plaintiff incorporates by reference the preceding paragraphs as though fully set forth
13 herein.

14 43. Plaintiff brings Causes of Action One through Eight as a class action pursuant to California
15 Code of Civil Procedure § 382 on behalf of all herself and all current and former non-exempt employees
16 of Defendants who worked as a wax specialist and who were affected by Defendant's Labor Code,
17 Business and Professions Code § 17200, *et seq.*, and IWC Wage Order violations, as alleged herein.

18 44. Plaintiff seeks to represent the following Class, which is defined as:

19 **The Wax Specialist Class:**

20 "All current and former non-exempt employees who worked for Defendants in the
21 State of California as wax specialists at any time from four years preceding the
22 filing of this action through the present."

23 45. Plaintiff also seeks to represent the following Subclass, which is defined as:

24 **The Waiting Time Penalties Subclass:**

25 "All members of the Wax Specialist Class, whose employment with Defendants
26 ended at any time from three years preceding the filing of this action through the
27 present."
28

1 46. Reservation of Rights: Pursuant to California Rule of Court 3.765(b), Plaintiff reserves the
2 right to amend or modify the Class and Subclass definitions with greater specificity, by further division
3 into subclasses, and/or limitation to particular issues.

4 47. As to Causes of Action One through Six, Plaintiff seeks to recover on behalf of the Classes
5 all remedies available to the extent permitted by law including, but not limited to, wages, damages,
6 penalties, liquidated damages, interest, attorney's fees, costs, other monies due and owing and injunctive
7 relief.

8 48. Causes of Action One through Six are appropriately suited for a class action pursuant to §
9 382 of the California Code of Civil Procedure because the following requirements are met:

10 **A. Numerosity**

11 49. The members of the Class are sufficiently numerous to render the joinder of all their
12 members impracticable. While Plaintiff have not yet determined the precise number of members of the
13 Class, Plaintiff is informed and believes that the Class likely consists of over 100 individuals. Although
14 the exact number is currently unknown to Plaintiff, this information is easily ascertainable from
15 Defendants' time and payroll records and other personnel records.

16 **B. Commonality and Predominance**

17 50. Common questions of law and fact exist as to all class members and predominate over any
18 questions affecting only individual members of the Class or Subclass. The common questions of law and
19 fact that predominate include, but are not limited to:

- 20 a. Whether Defendants failed to permit class members to take a duty-free, thirty-
21 minute meal period before the commencement of the sixth hour of work;
22 b. Whether Defendants failed to permit class members to take a second duty-free,
23 thirty-minute meal period before the commencement of the eleventh hour of work;
24 c. Whether Defendants failed to permit class members to take off-duty rest periods of
25 at least 10 minutes for every four hours worked, or major fraction thereof;
26 d. Whether Defendants failed to pay one additional hour of pay at the employees'
27 regular rate of compensation to class members when class members were not
28

provided with compliant and timely meal and rest periods;

e. Whether Defendants failed to pay class members all overtime wages for all hours at the correct rate of pay for all hour worked and under the control of Defendants;

f. Whether Defendants failed to provide class members with accurate itemized wage statements showing, among other things, the correct number of piece units and the correct amount of gross and net wages earned; and

g. Whether Defendants failed to pay class members all of their wages owed within the required time frames upon separation of employment.

C. Typicality

51. Plaintiff's claims are typical of the claims of all class members because Plaintiff and all class members' claims arise from the same event, practice and/or course of conduct of Defendants. Plaintiff and all class members sustained injuries and damages as a result of Defendants' illegal policies, practices and/or common course of conduct in violation of California wage and hour laws and/or illegal, unfair, or fraudulent business practices.

52. Furthermore, Plaintiff's claims under the Labor Code and the applicable IWC Wage Order are typical of the Class and Subclass because Defendants' failure to comply with the provisions of California's wage and hour laws entitles Plaintiff and each class member to similar pay, benefits, and other relief. Accordingly, the legal theories underlying each cause of action are the same and the remedies sought by Plaintiff and all class members are the same.

D. Adequacy of Representation

53. Plaintiff has no fundamental conflict of interest with the Class or Subclass she seeks to represent. Plaintiff will adequately protect the interests of all class members because it is in Plaintiff's best interest to prosecute the claims alleged herein to obtain full compensation and penalties due to her and putative class members.

54. Plaintiff retained attorneys who are experienced employment law litigators with significant wage and hour and class action experience.

E. Superiority of Class Action

55. Plaintiff believes a class action is a superior method of litigation for the fair and efficient

1 adjudication of this controversy. Individual joinder of all class members is not practicable. Class action
2 treatment will allow similarly situated employees to litigate their claims in the manner that is most efficient
3 and economical for the parties and the judicial system.

4 56. Plaintiff knows of no difficulty that might be encountered in the management of this suit,
5 which would preclude maintenance as a class action.

6 **VI. CAUSES OF ACTION**

7 **FIRST CAUSE OF ACTION**

8 **FAILURE TO PROVIDE MEAL PERIODS**

9 (Violation of Labor Code sections 226.7, 512, and 1198 and the “Meal Periods” section of the
10 Applicable IWC Wage Order)

11 (Alleged By Plaintiff Individually and On Behalf of the Wax Specialist Class Against All Defendants)

12 57. Plaintiff re-alleges and incorporates by reference the allegations contained in the
13 paragraphs above, as though fully set forth herein.

14 58. Plaintiff and Wax Specialist Class members were and are non-exempt employees of
15 Defendants in California within the meaning of the Labor Code and the applicable IWC Wage Order.

16 59. Labor Code section 512(a) provides, in part, that employers, including Defendants, “may
17 not employ an employee for a work period of more than five hours per day without providing an employee
18 with a meal period of not less than 30 minutes” and “may not employ an employee for a work period of
19 more than 10 hours per day without providing the employee with a second meal period of not less than 30
20 minutes.”

21 60. Labor Code section 226.7 requires that employers, including Defendants, provide their
22 non-exempt employees with meal periods as mandated by the applicable Wage Order of the Industrial
23 Welfare Commission, and prohibits employers from requiring any employee “to work during any meal ...
24 period mandated by an applicable order of the Industrial Welfare Commission.” Labor Code section
25 226.7(c) states, “[i]f an employer fails to provide an employee a meal ... period in accordance with a state
26 law... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of
27 compensation for each workday that the meal ... period is not provided.”

28 61. Labor Code section 1198 states that the “maximum hours of work and standard conditions

1 of labor fixed by the commission shall be the maximum hours of work and the standard conditions of
2 labor for employees. The employment of any employee for longer hours than those fixed by the order or
3 under conditions of labor prohibited by the order is unlawful.”

4 62. The “Meal Periods” section of the applicable IWC Wage Order states, “[n]o employer shall
5 employ any person for a work period of more than five (5) hours without a meal period of not less than
6 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work
7 the meal period may be waived by mutual consent of the employer and the employee.” It further states,
8 “[a]n employer may not employ an employee for a work period of more than ten (10) hours per day without
9 providing the employee with a second meal period of not less than 30 minutes, except that if the total
10 hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of
11 employer and employee only if the first meal period was not waived.”

12 63. The “Meal Periods” section of the applicable IWC Wage Order also states, “[u]nless the
13 employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an
14 “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only
15 when the nature of the work prevents an employee from being relieved of all duty and when by written
16 agreement between the parties an on-the-job meal period is agreed to and complies with Labor Code
17 section 512.

18 64. The “Meal Periods” section of the applicable IWC Wage Order also states, “[i]f an
19 employer fails to provide an employee a meal period in accordance with the applicable provisions of this
20 order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
21 compensation for each workday that the meal period is not provided.”

22 65. On information and belief, Plaintiff and the Wax Specialist Class were subject to the same
23 policies, practices, and procedures governing the provision and scheduling of meal periods.

24 66. On information and belief, Defendants have a pattern and practice of not providing Plaintiff
25 and the Wax Specialist Class with legally compliant 30-minute off-duty meal periods during their shifts,
26 even though they worked more than six (6) hours during their workday.

27 67. As described above, Plaintiff and the Wax Specialist Class were not provided compliant
28 meal periods as a result of Defendants’ common policies and procedures.

68. Plaintiff and the Wax Specialist Class members did not sign valid on-duty meal period agreements at any point during their employment with Defendants.

69. Plaintiff and the Wax Specialist Class typically worked more than five (5) or ten (10) hours per workday and did not properly waive their meal periods.

70. Therefore, as a result of Defendants' conduct, including the conduct alleged herein, Defendants violated Labor Code sections 226.7, 512, and 1198, as well as the applicable IWC Wage Order when Defendants failed to provide Plaintiff and the Wax Specialist Class members a 30-minute, duty-free meal period before the commencement of their sixth hour of work, and a second 30-minute, duty-free meal period before the commencement of their eleventh hour of work.

71. Consequently, pursuant to Labor Code section 226.7(b) and the "Meal Periods" section of the applicable Wage Order, Defendants was required to pay Plaintiff and the Wax Specialist Class one additional hour of pay at their regular rate of compensation for each day that Defendants did not provide Plaintiff and the Wax Specialist Class with a 30-minute, duty-free meal period before the commencement of their sixth hour of work or a second 30-minute, duty-free meal period before the commencement of their eleventh hour of work.

72. Despite this obligation, Defendants did not pay Plaintiff and the Wax Specialist Class one additional hour of pay at each employee's regular rate of compensation for each day that Defendants did not provide Plaintiff and the Wax Specialist Class with a 30-minute, duty-free meal period before the commencement of their sixth hour of work or a second 30-minute, duty-free meal period before the commencement of their eleventh hour of work.

73. Instead Defendants had a common policy and practice of failing to compensate Plaintiff and the Wax Specialist Class with an hour of pay at their regular rate of pay for the times that Defendants did not provide Plaintiff and the Wax Specialist Class with a 30-minute, duty-free meal period before the commencement of their sixth hour of work or a second 30-minute, duty-free meal period before the commencement of their eleventh hour of work, as required by Labor Code section 226.7(b) and the applicable IWC Wage Order.

74. Thus, Defendants intentionally refused to perform its obligations to provide meal periods and further failed to compensate Plaintiff and the Wax Specialist Class with all owed meal premium wages

1 as set forth by Labor Code section 226.7(b) and the applicable IWC Wage Order.

2 75. Plaintiff and the Wax Specialist Class suffered and continue to suffer losses related to
3 Defendants' failure to pay an additional hour of pay for each day a legally compliant meal period was not
4 provided and the associated use and enjoyment of compensation due and owing to them as a direct result
5 of Defendants' Labor Code and applicable IWC Wage Order violations.

6 76. Plaintiff seeks all available remedies for Defendants' violations, including, but not limited
7 to, all wages due, monies, and interest to the extent permitted by law.

8 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO PROVIDE REST PERIODS**

11 (Violation of Labor Code sections 226.7 and 1198 and the "Rest Periods" section of the Applicable IWC
12 Wage Order)

13 (Alleged By Plaintiff Individually and On Behalf of the Wax Specialist Class Against All Defendants)

14 77. Plaintiff re-alleges and incorporates by reference the allegations contained in the
15 paragraphs above, as though fully set forth herein.

16 78. Plaintiff and Wax Specialist Class members were and are non-exempt employees of
17 Defendants in California within the meaning of the Labor Code and the applicable IWC Wage Order.

18 79. Labor Code section 226.7 requires employers, including Defendants, to provide to their
19 non-exempt employees, including Plaintiff, paid rest periods as mandated by the applicable IWC Wage
20 Orders.

21 80. Labor Code section 1198 states that the "maximum hours of work and standard conditions
22 of labor fixed by the commission shall be the maximum hours of work and the standard conditions of
23 labor for employees. The employment of any employee for longer hours than those fixed by the order or
24 under conditions of labor prohibited by the order is unlawful."

25 81. The "Rest Periods" section of the applicable IWC Wage Order states, "[e]very employer
26 shall authorize and permit employees to take rest periods, which insofar as practicable shall be in the
27 middle of each work period. ... The authorized rest period time shall be based on the total hours worked
28 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof." It further

1 states, “[r]est periods need not be authorized in limited circumstances when the disruption of continuous
2 operations would jeopardize the product or process of the work. However, the employer shall make up
3 the missed rest period within the same workday or compensate the employee for the missed ten (10)
4 minutes of rest time at his/her regular rate of pay within the same pay period.” Furthermore, “[i]f an
5 employer fails to provide an employee a rest period in accordance with the applicable provisions of this
6 order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
7 compensation for each workday that the rest period is not provided.”

8 82. On information and belief, Plaintiff and the Wax Specialist Class were subject to the same
9 policies, practices, and procedures governing the provision and scheduling of rest periods.

10 83. Plaintiff and the Wax Specialist Class were not authorized and permitted to take compliant
11 rest periods because of the strict schedule that they had to follow. Thus, as a result of Defendants’ policies,
12 Plaintiff’s and Wax Specialist Class members’ rest periods were on duty.

13 84. Labor Code section 226.7(c) states, “[i]f an employer fails to provide an employee a ...
14 rest ... period in accordance with a state law... the employer shall pay the employee one additional hour
15 of pay at the employee’s regular rate of compensation for each workday that the rest ... period is not
16 provided.”

17 85. Even though Plaintiff and Wax Specialist Class members were not authorized and
18 permitted to take off-duty rest periods, Defendants did not pay Plaintiff and the Wax Specialist Class
19 appropriate rest period premium wages for each day in which Defendants did not authorize and permit
20 Plaintiff and the Wax Specialist Class to take compliant rest periods, in violation of Labor Code section
21 226.7 and the applicable IWC Wage Order.

22 86. On information and belief, Defendants have a common policy, pattern, and practice of
23 failing to compensate Plaintiff and the Wax Specialist Class with an hour of pay at their regular rate of
24 pay for the times that Plaintiff and the Wax Specialist Class were not authorized to take rest periods of at
25 least 10 minutes for each four-hour work period, or major fraction thereof.

26 87. Plaintiff and the Wax Specialist Class suffered and continue to suffer losses related to
27 Defendants’ failure to pay an additional hour of pay for each day a rest period was not provided and the
28 associated use and enjoyment of compensation due and owing to them as a direct result of Defendants’

1 Labor Code and applicable IWC Wage Order violations.

2 88. Plaintiff seeks all available remedies for Defendants' violations including, but not limited
3 to any and all wages due, monies, and interest, to the extent permitted by law.

4 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

5 **THIRD CAUSE OF ACTION**

6 **FAILURE TO PAY ALL OVERTIME WAGES**

7 (Violation of Labor Code sections 510, 1194, and 1198 and the "Hours and Days of Work" section of
8 the Applicable IWC Wage Order)

9 (Alleged By Plaintiff Individually and On Behalf of the Wax Specialist Class Against All Defendants)

10 89. Plaintiff re-alleges and incorporates by reference the allegations contained in the
11 paragraphs above, as though fully set forth herein.

12 90. Plaintiff and Wax Specialist Class members were and are non-exempt employees of
13 Defendants in California within the meaning of the Labor Code and the applicable IWC Wage Order.

14 91. Labor Code section 510 provides, "[a]ny work in excess of eight hours in one workday and
15 any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day
16 of work in any one workweek shall be compensated at the rate of no less than one and one-half times the
17 regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at
18 the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of
19 eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the
20 regular rate of pay of an employee." The "Hours and Days of Work" sections of the applicable IWC Wage
21 Order mandate the same requirements.

22 92. Labor Code section 1194 provides that any employee receiving less than the legal overtime
23 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the
24 full amount of this overtime compensation, including interest thereon, reasonable attorney's fees, and
25 costs of suit.

26 93. Furthermore, pursuant to Labor Code section 1198, "[t]he maximum hours of work and the
27 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
28 standard conditions of labor for employees. The employment of any employee for longer hours than those

1 fixed by the order or under conditions of labor prohibited by the order is unlawful.”

2 94. The applicable IWC Wage Order defines the term “hours worked” as “the time during
3 which an employee is subject to the control of an employer, and includes all the time the employee is
4 suffered or permitted to work, whether or not required to do so.”

5 95. In California, overtime is computed based on the regular rate of pay. The regular rate of
6 pay includes all different types of remuneration, including hourly earnings, salary, piecework earnings,
7 commissions, and non-discretionary bonuses, and the value of meals and lodging.

8 96. Plaintiff and the Wax Specialist Class regularly worked over 8 hours per day and 40 hours
9 per week while employed by Defendants. Plaintiff and the Wax Specialist Class did not receive all
10 overtime compensation owed for all overtime hours worked over 8 hours per day and/or 40 hours per
11 week during their employment with Defendants.

12 97. As set forth above, Defendants failed to pay Plaintiff and Wax Specialist Class members
13 at the proper overtime rate of one and one-half times the regular rate of pay for all the time spent working
14 and under the control of Defendants.

15 98. Plaintiff and the Wax Specialist Class suffered and continue to suffer losses related to the
16 use and enjoyment of compensation due and owing to them as a direct result of Defendants’ unlawful acts
17 and Labor Code violations in an amount to be shown according to proof at trial and within the
18 jurisdictional limitations of this Court.

19 99. Plaintiff seeks all available remedies for Defendants’ violations including, but not limited
20 to any and all wages due, monies, interest, attorney’s fees, and costs to the extent permitted by law.

21 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

22 **FOURTH CAUSE OF ACTION**

23 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

24 (Violation of Labor Code sections 226 and 1198 and

25 the “Records” section of the Applicable IWC Wage Order)

26 (Alleged By Plaintiff Individually and On Behalf of the Wax Specialist Class Against All Defendants)

27 100. Plaintiff re-alleges and incorporates by reference the allegations contained in the
28 paragraphs above, as though fully set forth herein.

101. Plaintiff and Wax Specialist Class members were and are non-exempt employees of Defendants in California within the meaning of the Labor Code and the applicable IWC Wage Order.

102. Labor Code section 226(a) requires that employers, including Defendants, furnish their employees with each wage payment an accurate and itemized writing that shows gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the period for which the employee is paid, the name of the employee and the portion of his or her social security number, the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

103. Labor Code section 226(e), in part, permits employees suffering injury to collect the greater of all actual damages or the amount specified in Labor Code section 226 per violation.

104. Labor Code section 226(e)(2)(B) states, in pertinent part, “an employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following: (i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).”

105. Labor Code section 226(h) states, “An employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees.”

106. Defendants knowingly and intentionally failed to provide Plaintiff and Wax Specialist Class members an accurate itemized wage statement with each wage payment as required by Labor Code section 226(a). Defendants knowingly and intentionally failed to provide Plaintiff and members of the Wax Specialist Class with each wage payment an accurate wage statement showing, among other things, the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, the total regular and overtime hours worked during the pay period, as well as the corresponding gross and net wages earned, all applicable hourly rates and the corresponding number of hours worked at each hourly rate.

107. Defendants' failure to provide accurate wage statements deprived Plaintiff and members of the Wax Specialist Class of the ability to promptly and easily understand and question the calculation and rate of pay and hours used to calculate the wages paid by Defendants. Plaintiff and members of the Wax Specialist Class, therefore, had no way to dispute any error in the payment or calculation of their wages, all of which resulted in an unjustified economic enrichment to Defendants, and Plaintiff and members of the Wax Specialist Class suffered actual damages as a result.

108. Defendants' failure to provide accurate itemized wage statements constitutes an injury as defined under Labor Code section 226(e)(2)(B). Therefore, Plaintiff and members of the Wax Specialist Class have suffered an injury for purposes of Labor Code section 226 and are entitled to recover the greater of all actual damages or the amount specified in section 226 per violation.

109. Plaintiff and Wax Specialist Class members suffered and continue to suffer injuries, losses and actual damages as a direct result of Defendants' Labor Code violations, including lost interest on such wages, and expenses and attorney's fees in seeking to compel Defendants to fully perform its obligations, in an amount to be shown according to proof at trial.

110. Plaintiff seeks to recover all available remedies including, but not limited to damages, penalties, attorney's fees, costs, and injunctive relief to the fullest extent permitted by law.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

FIFTH CAUSE OF ACTION

FAILURE TO TIMELY PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT

(Violations of Labor Code sections 201, 202, 203)

(Alleged By Plaintiff Individually and On Behalf of the Waiting Time Penalties Subclass

Against All Defendants)

111. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

112. Plaintiff and Waiting Time Penalties Subclass members were and are non-exempt employees of Defendants in California within the meaning of the Labor Code and the applicable IWC Wage Order.

113. Labor Code section 201 requires Defendants to immediately pay any wages, without

1 abatement or reduction, to any employee who is discharged. Labor Code section 202 requires Defendants
2 to pay any and all wages due and owing to an employee not having a written contract for a definite period,
3 who quits his or her employment, within 72 hours of the employee quitting his or her employment, unless
4 the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee
5 is entitled to his or her wages at the time of quitting.

6 114. For violation of Labor Code sections 201 and 202, Labor Code section 203 causes the
7 unpaid wages of an employee to continue as a penalty from the due date thereof, at the same rate until
8 paid or until an action is commenced, but the wages shall not continue for more than 30 days.

9 115. As a result of Defendants' conduct during the applicable statutory period, Defendants
10 willfully failed to pay Plaintiff and the Waiting Time Penalties Subclass all wages due and owing to them,
11 including overtime wages for all the time they were suffered or permitted to work or were engaged in
12 work under Defendants' control, as well as all meal period premiums and rest period premiums owed
13 within the time required by Labor Code sections 201 and 202, as applicable.

14 116. To date, Plaintiff has not yet received all wages due and payable, including but not limited
15 to, overtime wages and meal and rest period premium wages owing to her. On information and belief,
16 members of the Waiting Time Penalties Subclass have not yet received all overtime wages and meal and
17 rest premium wages due and owing to them.

18 117. As a direct result of Defendants' violations alleged herein, Plaintiff and the Waiting Time
19 Penalties Subclass members suffered and continue to suffer losses related to the use and enjoyment of
20 wages due and owing to them, all to their respective damage in an amount to be shown according to proof
21 at trial and within the jurisdictional limitations of this Court.

22 118. Plaintiff seeks all available remedies for Defendants' violations to the fullest extent
23 permissible.

24 WHEREFORE, Plaintiff prays for relief as hereinafter requested.

25 **SIXTH CAUSE OF ACTION**

26 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200, ET SEQ.**

27 (Alleged By Plaintiff Individually and On Behalf of the Wax Specialist Class Against All Defendants)

28 119. Plaintiff re-alleges and incorporates by reference the allegations contained in the

1 paragraphs above, as though fully set forth herein.

2 120. California Business & Professions Code section 17200, *et seq.*, prohibits acts of unfair
3 competition, which includes any “unlawful, unfair or fraudulent business act or practice...”

4 121. Defendants’ Labor Code and IWC Wage Order violations alleged herein constitute
5 “unlawful, unfair or fraudulent business act or practices,” which are prohibited by Business and
6 Professions Code sections 17200-17208 and include, but are not limited to: (i) failure to provide proper
7 meal and rest periods and pay Plaintiff and the Wax Specialist Class premium wages for failure to provide
8 compliant meal and rest periods; (ii) failure to pay Plaintiff and the Wax Specialist Class all regular,
9 minimum, and overtime wages for all hours suffered or permitted to work and under the control of
10 Defendants; (iii) failure to indemnify Plaintiff and the Wax Specialist Class for necessary business
11 expenses incurred in direct consequence of the discharge of their duties and under the direction of
12 Defendants; (iv) failure to maintain accurate records of the hours that Plaintiff and the Wax Specialist
13 Class worked while employed by Defendants; (v) failure to provide Plaintiff and the Wax Specialist Class
14 with accurate itemized wage statements; and (vi) failure to timely pay Plaintiff and members of the
15 Waiting Time Penalties Subclass all wages owed upon separation of their employment with Defendants.

16 122. Defendants intentionally avoided paying Plaintiff and the Wax Specialist Class all wages
17 and/or monies, and other financial obligations attached thereto, to create for Defendants an artificially
18 lower cost of doing business, and thus, undercut its competitors.

19 123. Defendants lowered its costs of doing business by paying Plaintiff and the Wax Specialist
20 Class an amount less than what is required by the California Labor Code and the applicable Wage Order
21 of the Industrial Welfare Commission, thereby unfairly forcing Plaintiff and other similarly situated
22 employees to perform work without fair compensation and benefits.

23 124. Defendants held themselves out to Plaintiff and the Wax Specialist Class as being
24 knowledgeable about, and adhering to, the employment laws of California at all times relevant herein.
25 Plaintiff and the Wax Specialist Class relied on and believed in Defendants’ representation concerning
26 Defendants’ adherence to the California laws, all to their detriment.

27 125. Defendants’ scheme to lower its payroll and operation costs and thus profit, by withholding
28 money owed to the class and withholding wages, compensation and benefits, which are all the property

1 of Plaintiff and the Wax Specialist Class, in violation of the California Labor Code and the IWC Wage
2 Orders, as alleged herein, constitutes an “unlawful, unfair or fraudulent business act or practice,” under
3 California Business and Professions Code section 17200, *et seq.* As a result of Defendants’ unfair
4 competition, Plaintiff and the Wax Specialist Class suffered injury in fact by losing money and/or
5 property.

6 126. Business and Professions Code section 17204, states, in relevant part, “[a]ctions
7 for relief pursuant to this chapter shall be prosecuted...by...a person who has suffered injury in fact and
8 has lost money or property as a result of the unfair competition.”

9 127. Defendants acquired money and property owed to Plaintiff and the Wax Specialist Class
10 by means of an unlawful practice that constitutes unfair competition as defined by Business and
11 Professions Code section 17200, *et seq.*

12 128. Plaintiff and the Wax Specialist Class are persons in interest under Business and
13 Professions Code section 17203 to whom money and property should be restored. Business and
14 Professions Code section 17203 states, in relevant part, that “any person may pursue representative claims
15 or relief on behalf of others only if the claimant meets the standing requirements of Section 17204.”

16 129. Plaintiff are people who suffered injury in fact and lost money, wages, compensation, and
17 benefits, as a result of Defendants’ unfair competition. Thus, pursuant to Business and Professions Code
18 sections 17203 and 17204, Plaintiff may pursue representative claims and relief on behalf of herself and
19 the putative classes.

20 130. Pursuant to Business and Professions Code section 17203, “[t]he court may make such
21 orders or judgments, as may be necessary to restore to any person in interest any money or property, real
22 or personal, which may have been acquired by means of such unfair competition.”

23 131. Defendants reaped unfair benefits and illegal profits at the expense of Plaintiff and the Wax
24 Specialist Class by committing the unlawful acts alleged herein. Thus, Defendants must make restitution
25 and/or be subject to other equitable relief pursuant to Business & Professions Code section 17203, and
26 restore all unpaid wages to Plaintiff and the Wax Specialist Class.

27 132. Plaintiff and the Wax Specialist Class suffered and continue to suffer loss of wages and
28 monies, all in an amount to be shown according to proof at trial and within the jurisdiction of this Court.

133. Plaintiff seeks all available remedies on behalf of themselves and on behalf of the Wax Specialist Class, including, but not limited to, restitution of all wages and all monies owed, all in an amount to be shown according to proof at trial. All such remedies are cumulative of relief available under other laws, pursuant to Business & Professions Code section 17205.

WHEREFORE, Plaintiff prays for relief as hereinafter requested.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- a. For general damages;
- b. For special damages;
- c. For the greater of actual damages or statutory penalties as provided under Labor Code § 226(e);
- d. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including pursuant to Code of Civil Procedure § 1021.5, Labor Code §§ 218.5, 218.6, 226, and 1194;
- e. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and the Orders of the Industrial Welfare Commission;
- f. For waiting time penalties under Labor Code § 203;
- g. For restitution as provided by Business and Professions Code §17200 *et seq.*;
- h. For an order requiring Defendants to restore and disgorge all funds to Plaintiff acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and, therefore, constituting unfair competition under Business and Professions Code §17200 *et seq.*;
- i. For an award of damages in the amount of unpaid compensation and monies including, but not limited to actual damages, unpaid wages, overtime wages, waiting time penalties and other penalties according to proof, including interest thereon;
- j. For an award of an additional hour of pay at the regular rate of compensation pursuant to Labor Code §226.7(b) for each meal and rest period not in accordance with an

applicable Order of the Industrial Welfare Commission;

- k. For an order imposing a constructive trust upon the Defendants to compel them to transfer wages that have been wrongfully obtained and held by Defendants to unpaid employees;
- l. For an accounting to determine all money wrongfully obtained and held by Defendants;
- m. For a declaratory judgment that Defendants have violated Labor Code §§ 201, 202, 226, 226.7, 510, 512, 1194, 1198, and the “Hours and Days of Work,” “Records” and “Meal Periods” sections of the Wage Order of the Industrial Welfare Commission;
- n. For pre and post-judgment interest; and
- o. For such other relief as the Court deems just and proper.

JURY TRIAL DEMAND

Please take notice that Plaintiff demands trial by jury on all Causes of Action.

Dated: November 15, 2021

GRAHAMHOLLIS APC

By: 

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