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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

DEC 20 2021

BY

Daisy Sallon
DAISY SALLON, DEPUTY

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN BERNARDINO

13 ELIZABETH MORENO, individually, and on
14 behalf of all others similarly situated,

15 Plaintiff,

16 v.

17 A.H. RESTAURANTS, a California
18 corporation; and DOES 1 through 50,
19 inclusive,

20 Defendants.

CASE NO.: CIV SB 2134700

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Breaks
3. Failure to Pay Overtime Wages
4. Failure to Pay Minimum Wages
5. Failure to Pay Timely Wages
6. Failure to Pay All Wages Due to Discharged and Quitting Employees
7. Failure to Maintain Required Records
8. Failure to Furnish Accurate Itemized Statements
9. Failure to Provide and Properly Calculate Sick Leave
10. Unfair and Unlawful Business Practices

REPRESENTATIVE ACTION

11. Penalties Under the Labor Code Private Attorneys General Act

DEMAND FOR JURY TRIAL

By Fax

[illegible]

6. Plaintiff and other non-exempt employees similarly do not receive reimbursements

1 for the expenses they incur in the discharge of their job duties. These expenses include the
2 purchase and maintenance of uniforms and cellular phone usage.

3 7. Plaintiff seeks declaratory, compensatory and other statutorily available relief for
4 herself and a Class of all current and former non-exempt employees of Defendant during the
5 applicable limitations period to compensate these workers for the wages Defendant has stolen
6 from them and to protect current and future workers from being subjected to similar unlawful
7 working conditions perpetrated by Defendant.

8 **JURISDICTION AND VENUE**

9 8. The Superior Court of the State of California has jurisdiction in this matter because
10 Plaintiff is a resident and citizen of California and Defendant is a California corporation. All
11 Class members are residents and citizens of California. No federal question is at issue because
12 Plaintiff's claims are based solely on California law.

13 9. Venue is proper in this judicial district and the County of San Bernardino because
14 Plaintiff, and other persons similarly situated, performed work for Defendant in the County of San
15 Bernardino, and Defendant's illegal payroll policies and practices, which are the subject of this
16 action were applied, at least in part, to Plaintiff, and other persons similarly situated, in the County
17 of San Bernardino.

18 **THE PARTIES**

19 10. Plaintiff is a resident and citizen of the State of California and a former employee
20 of Defendant. Plaintiff was employed by Defendant as an assistant manager from approximately
21 2019 through October 12, 2021 at Defendant's restaurant located in the City of Redlands,
22 California 92373. Redlands is a city located in the County of San Bernardino.

23 11. Plaintiff, on behalf of herself and all other similarly situated individuals, brings this
24 class action to recover, among other things, wages and penalties from unpaid wages earned and
25 due, including but not limited to, Defendant's failure to provide legally compliant meal and rest
26 breaks and failure to provide proper compensation for missed and otherwise unlawful meal and
27 rest breaks, Defendant's failure to pay all wages due to discharged or quitting non-exempt
28 employees, Defendant's failure to pay overtime and minimum wages to non-exempt employees,

1 Defendant's failure to pay the regular rate of pay for overtime wages based upon the payment of
2 "incentives", Defendant's failure to maintain required records and failure to provide accurate
3 itemized wage statements, and related violations of the California Labor Code.

4 12. A.H. Restaurants is, and at all times relevant herein was, a corporation organized
5 and existing under the laws of the State of California.

6 13. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
7 Plaintiff at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff
8 is informed and believes, and thereon alleges, that each defendant designated as a DOE is in some
9 manner highly responsible for the occurrences alleged herein, and that Plaintiff and other
10 aggrieved employees' injuries and damages, as alleged herein, were proximately caused by the
11 conduct of such DOE defendants. Plaintiff will seek leave of the Court to amend this Complaint to
12 allege the true names and capacities of such DOE defendants when ascertained.

13 14. Plaintiff is informed and believes, and based thereon alleges, in all respects
14 pertinent to this action, Defendant and the DOE Defendants jointly employed Plaintiff and the
15 other Class members, and as the agent of the other defendants, carried out a joint scheme, business
16 plan or policy in all respects pertinent hereto, and as joint employers are jointly liable for the
17 violations as alleged herein.

18 15. Plaintiff is informed and believe, and based thereon alleges, that each defendant
19 sued in this action, including each defendant sued by the fictitious names DOES 1 through 50,
20 inclusive, is directly or indirectly responsible in some manner for the occurrences, controversies
21 and damages alleged herein, in various capacities, including but not limited to serving as joint
22 employer, joint tortfeasor, single enterprise, alter ego, or agents of the other defendants. Each
23 defendant approved, participated in, controlled, or ratified the acts of all other defendants.

24 16. As a direct and proximate result of the unlawful actions of Defendant and the DOE
25 defendants, and each of them, Plaintiff and Class members have suffered, and continue to suffer,
26 from loss of earnings in amounts as yet unascertained, but subject to proof at trial, and within the
27 jurisdiction of this Court.

CLASS ACTION ALLEGATIONS

17. Pursuant to Cal. Code of Civ. P. § 382, Plaintiff brings this action on behalf of herself and the following Class:

All current and former non-exempt employees of Defendant who performed work for Defendant in the State of California during the relevant statute of limitations period.

18. Plaintiff reserves the right to name additional Class representatives as may be necessary and appropriate. Plaintiff also reserves the right to modify or amend the definition of the proposed Class and/or add subclasses before the Court determines whether certification is appropriate.

19. This action is appropriately suited for a class action because:

A. The proposed Class is a significant number. Plaintiff is informed and believes that the proposed Class consists of at least three (300) hundred current and former non-exempt employees, rendering joinder impractical.

B. This action involves common questions of law and fact to the proposed Class because the action focuses on Defendant's systematic course of illegal payroll practices and policies, which was applied to all non-exempt employees in uniform violation of the California Labor Code, IWC Wage Orders, and the California Business and Professions Code, which prohibits unfair business practices arising from such violations. Here are a few common questions of law and fact that will drive resolution of this action:

1. Whether Defendant failed to provide non-exempt employees with legally compliant meal periods and rest breaks, and whether Defendant properly paid premium pay as a result of missed and non-compliant meal periods and rest breaks;
2. Whether Defendant failed to pay overtime and minimum wages non-exempt employees in compliance with California law;
3. Whether Defendant miscalculated the regular rate of pay for all non-exempt employees in compliance with California law;

4. Whether Defendant failed to maintain required records and accurate wage statements for non-exempt employees;
5. Whether Defendant paid all wages due at the time of separation to the non-exempt employees;
6. Whether Defendant paid and properly calculated the correct rate of pay for sick leave, COVID-19 sick leave and supplemental COVID-19 sick leave; and
7. Whether Defendant engaged in unfair and/or unlawful business practices.

C. Plaintiff's claims are typical of the proposed Class because Defendant subjected all of its non-exempt employees to the similar and overlapping violations of the California Labor Code, the applicable IWC wage order, and the California Business and Professions Code.

D. Plaintiff is able to fairly and adequately protect the interests of all members of the proposed Class because it is in her best interests to prosecute the claims alleged herein to obtain full compensation due to the proposed Class for all services rendered and hours worked. Plaintiff has also retained counsel that is experienced in wage and hour class action litigation.

FIRST CAUSE OF ACTION

Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7, 510, 512; IWC Wage Order No. 5-2001, § 10]

(On Behalf of Plaintiff and the Class against Defendants)

20. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 19 (A) – (D).

21. During the statute of limitations period, as part of Defendant's unlawful policies and practices to deprive their non-exempt employees of all wages earned and due, Defendant required, permitted or otherwise suffered Plaintiff and Class members to perform work during their meal periods, to completely skip their meal periods, to take late and short meal periods, and Defendant has otherwise failed to provide the required meal periods to Plaintiff and Class members as required under California Labor Code §§ 226.7, 512, and § 10 of the applicable IWC

1 Order.

2 22. Defendant has implemented several common policies and practices that have
3 caused Plaintiff and Class members to systematically miss and otherwise take non-compliant meal
4 periods. For example, Defendant understaffs each restaurant such that there is an insufficient
5 number of employees to perform the work required to meet customer needs. As a direct
6 consequence of this policy and practice, Plaintiff and Class members have so much work to
7 complete within their scheduled shifts that they are forced to skip their meal periods altogether, to
8 take them after working longer than five (5) hours, to perform work during their meal periods, or
9 return to work after taking less than a thirty (30) minute meal period. Further, Defendant
10 systemically deprived Plaintiff and Class members of the opportunity to take second meal periods
11 even though they regularly work shifts in excess of ten (10) hours.

12 23. Defendant routinely scheduled Plaintiff and Class members to take late meal
13 periods (i.e., after the fifth hour of work). Defendant also systemically deprived Plaintiff and
14 Class members of the opportunity to take second meal periods even though they work shifts in
15 excess of ten hours.

16 24. Despite work conditions that systematically result in missed and non-compliant
17 meal periods, and in order to keep labor costs down, Defendant has implemented a policy and
18 practice of failing to pay meal period premium payments. In short, Defendant has violated
19 California Labor Code §§ 226.7, § 10 of the applicable IWC Wage Order, and the California
20 Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by failing to compensate
21 Plaintiff and Class members who were not authorized and permitted to take a complete, timely,
22 uninterrupted meal period, one additional hour of compensation at the proper regular rate of pay
23 for each workday that such a meal period was not authorized or permitted. Defendant further
24 violated California Labor Code sections 226.7, 510, 1194, 1197, and § 10 of the applicable IWC
25 Wage Order by failing to compensate Plaintiff and Class members for all hours worked during
26 their meal periods.

1 25. As a proximate result of the aforementioned violations, Plaintiff and Class
2 members have been damaged in an amount according to proof at trial, and seek all wages earned
3 and due, interest, penalties, expenses, and costs of suit.

4 **SECOND CAUSE OF ACTION**

5 **Failure to Provide Required Rest Breaks**

6 **[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 5-2001, § 11]**

7 ***(On Behalf of Plaintiff and the Class against Defendants)***

8 26. Plaintiff incorporates herein by specific reference, as though fully set forth, the
9 allegations in paragraphs 1 through 25.

10 27. At all times relevant herein, as part of Defendant's illegal policies and practices to
11 deprive their non-exempt employees of all wages earned and due, Defendant failed to permit
12 Plaintiff and Class members to take rest breaks as required under California Labor Code §§ 226.7
13 and 512, and § 11 of the applicable IWC Wage Order.

14 28. The same common policies and practices that deprive Plaintiff and Class members
15 from taking their meal periods, as alleged herein, similarly deprive them of the ability to take their
16 first and second rest breaks. As alleged herein, Defendant grossly understaffs each restaurant
17 location and set unrealistic work goals, which creates so much work for Plaintiff and Class
18 members that they are frequently unable to take both their first and second rest breaks.

19 29. Moreover, California law requires employers to provide employees with the
20 opportunity to take a third rest break during shifts that are 10 hours or longer. However,
21 Defendant has implemented a policy of not permitting Plaintiff and Class members from taking
22 third rest breaks, even when they work shifts in excess of 10 hours.

23 30. Defendant further violated California Labor Code § 226.7, § 11 of the applicable
24 IWC Wage Order, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200
25 *et. seq.*, by failing to pay Plaintiff and Class members who were not provided with a rest break, in
26 accordance with the applicable wage order, one additional hour of compensation at the proper
27 regular rate of pay for each workday that a rest break was not provided.
28

1 31. As a proximate result of the aforementioned violations, Plaintiff and Class
2 members have been damaged in an amount according to proof at trial, and seek all wages earned
3 and due, interest, penalties, expenses, and costs of suit.

4 **THIRD CAUSE OF ACTION**

5 **Failure to Pay Overtime Wages**

6 **[Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 5-2001, § 3]**

7 ***(On Behalf of Plaintiff and the Class against Defendants)***

8 32. Plaintiff incorporates herein by specific reference, as though fully set forth, the
9 allegations in paragraphs 1 through 31.

10 33. Pursuant to Cal. Lab. Code §§ 510 and 1194 and § 3 of IWC Wage Order No. 5,
11 Defendant is required to compensate Plaintiff and Class members for all overtime, which is
12 calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of
13 eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8)
14 hours worked on the seventh (7th) consecutive day of work in a workweek, with double time for
15 all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess
16 of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

17 34. Plaintiff and Class members are current and former non-exempt employees of
18 Defendant are entitled to the protections of Cal. Lab. Code §§ 510 and 1194 and § 3 of the
19 applicable IWC Wage Order.

20 35. Defendant has failed to compensate Plaintiff and Class members for all overtime
21 hours by requiring, permitting or suffering Plaintiff and Class members to work off the clock and
22 requiring, permitting or suffering Plaintiff and Class members to work through meal and rest
23 breaks but not compensating them for this time and failing to include this time in all hours
24 worked. During any shift that is eight hours or longer, overtime pay is owed when Plaintiff and
25 Class members work off-the-clock and/or during their breaks without compensation. Defendant
26 also failed to compensate Plaintiff and the other Class members at the applicable rate of pay for
27 overtime wages based upon the incentives paid during the applicable statute of limitations period.

28 36. In violation of California law, Defendant has knowingly and willfully refused to
perform their obligations to compensate Plaintiff and Class members for all wages earned and all

1 hours worked at the legally required rates of pay. As a proximate result, Plaintiff and Class
2 members have suffered, and continue to suffer, substantial losses related to the use and enjoyment
3 of such wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel
4 Defendant to fully perform their obligations under state law, all to their respective damages in
5 amounts according to proof at time of trial, and within the jurisdiction of this Court.

6 37. Defendant's conduct described herein violates Cal. Lab. Code §§ 510, 1194, 1198
7 and § 3 of IWC Wage Order No. 5. Therefore, pursuant to Cal. Lab. Code §§ 200, 203, 226, 558,
8 1194, 1197.1, and any other applicable law, Plaintiff and Class members are entitled to recover the
9 unpaid balance of wages owed to them by Defendant, plus interest, penalties, attorneys' fees,
10 expenses, and costs of suit.

11 **FOURTH CAUSE OF ACTION**
12 **Failure to Provide Minimum Wages**
13 **[Cal. Lab. Code §§ 1194, 1197; IWC Wage Order No. 5-2001, § 4]**
14 ***(On Behalf of Plaintiff and the Class against Defendants)***

15 38. Plaintiff incorporates herein by specific reference, as though fully set forth, the
16 allegations in paragraphs 1 through 37.

17 39. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of IWC Wage Order No. 5,
18 payment to an employee of less than the applicable minimum wage for all hours worked in a
19 payroll period is unlawful.

20 40. During the statute of limitations period, the hourly rates for Plaintiff and Class
21 members were precisely at minimum wage. Based on this common practice, Defendant failed to
22 actually pay Plaintiff and Class members minimum wages for all hours worked by requiring,
23 permitting or suffering Plaintiff and Class members to work off-the-clock, such as requiring them
24 to work through meal and rest breaks, but not compensating them for this time, and failing to
25 include this time in all hours worked, and other methods to be discovered.

26 41. Defendant's conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and §
27 4 of IWC Wage Order No. 5. As a proximate result of the aforementioned violations, Plaintiff and
28 Class members have been damaged in an amount according to proof at trial. Therefore, pursuant
to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and any other applicable law,

1 Plaintiff and Class members are entitled to recover the unpaid balance of wages owed to them by
2 Defendant, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

3 **FIFTH CAUSE OF ACTION**
4 **Failure to Pay Timely Wages**
5 **[Cal. Lab. Code §§ 204, 210]**
6 ***(On Behalf of Plaintiff and the Class against Defendants)***

7 42. Plaintiff incorporates herein by specific reference, as though fully set forth, the
8 allegations in paragraphs 1 through 41.

9 43. California Labor Code § 204 provides that all wages earned by any person in any
10 employment between the 1st and 15th days, inclusive, of any calendar month, other than those
11 wages due upon termination of an employee, are due and payable between the 16th and 26th day
12 of the month during which the labor was performed. California Labor Code § 204 further
13 provides that all wages earned by any person in any employment between the 16th and the last
14 day, inclusive, of any calendar month, other than those wages due upon termination of an
15 employee, are due and payable between the 1st and the 10th day of the following month.
16 California Labor Code § 204 further provides that all wages earned for labor in excess of the
17 normal work period shall be paid no later than the payday for the next regular payroll period.

18 44. During the statute of limitations period, Defendant, among other things, willfully
19 failed to pay Plaintiff and Class members all wages earned and due to them, including but not
20 limited to, meal and rest break premiums, overtime and minimum wages, and payment for work
21 performed off-the-clock, within any time period permissible under Labor Code § 204.

22 45. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
23 Class members are entitled to all available statutory penalties, including but not limited to, civil
24 penalties pursuant to California Labor Code §§ 200, 210, 558, 1194, 1197.1, 2699(a), and other
25 applicable provisions under the California Labor Code and IWC Wage Orders, and an award of
26 costs, expenses, and reasonable attorneys' fees.

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SIXTH CAUSE OF ACTION
Failure to Pay All Wages Due to Discharged and Quitting Employees
[Cal. Lab. Code §§ 201-203]
(On Behalf of Plaintiff and the Class against Defendants)

46. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 45.

47. Pursuant to California Labor Code §§ 201, 202, and 203, Defendant are required to pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately.

48. Furthermore, pursuant to California Labor Code § 202, Defendant is required to pay all accrued wages due to an employee no later than seventy-two (72) hours after the employee quits his or her employment, unless the employee provided seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or wages at the time of quitting.

49. California Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to thirty (30) workdays.

50. During the statute of limitations period, Defendant has willfully failed to pay accrued wages and other compensation to Plaintiff and Class members in accordance with California Labor Code §§ 201 and 202. Because Defendant has failed to properly compensate Plaintiff and Class members for all hours worked when due, failing to compensate Plaintiff and Class members at their regular rate of pay based upon incentives and compensation for non-compliant meal and rest breaks, Defendant has also willfully failed and continue to fail to pay accrued wages and other compensation to Plaintiff and Class members in accordance with California Labor Code §§ 201 and 202.

1 51. As a result, Plaintiff and Class members are entitled to all available statutory
2 penalties, including the waiting time penalties provided in California Labor Code § 203, together
3 with interest thereon, as well as other available remedies.

4 **SEVENTH CAUSE OF ACTION**

5 **Failure to Maintain Required Records**

6 **[Cal. Lab. Code §§ 226, 1174; IWC Wage Order No. 5-2001, § 6]**

7 ***(On Behalf of Plaintiff and the Class against Defendants)***

8 52. Plaintiff incorporates herein by specific reference, as though fully set forth, the
9 allegations in paragraphs 1 through 51.

10 53. During the statute of limitations period, as part of Defendant's illegal payroll
11 policies and practices to deprive Plaintiff and Class members of all wages earned and due,
12 Defendant knowingly and intentionally failed to maintain records as required under California
13 Labor Code §§ 226, 1174, and § 6 of the applicable IWC Wage Order, including but not limited
14 to, the following records: total daily hours worked by each non-exempt employee; applicable rates
15 of pay; all deductions; meal periods; time records showing when each non-exempt employee
16 begins and ends each workday; and accurate itemized wage statements.

17 54. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
18 Class members have been damaged in an amount according to proof at trial, and are entitled to all
19 wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are
20 entitled to all available penalties, including but not limited to, penalties pursuant to California
21 Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable
22 attorneys' fees, including but not limited to those provided in California Labor Code § 226(e), as
23 well as other available remedies.

24 **EIGHTH CAUSE OF ACTION**

25 **Failure to Furnish Accurate Itemized Wage Statements**

26 **[Cal. Lab. Code §§ 226; IWC Wage Order No. 5-2001, § 6]**

27 ***(On Behalf of Plaintiff and the Class against Defendant)***

28 55. Plaintiff incorporates herein by specific reference, as though fully set forth, the
allegations in paragraphs 1 through 54.

1 56. During the statute of limitations period, Defendant routinely failed to provide
2 Plaintiff and Class members with timely, accurate, and itemized wage statements in writing
3 showing each employee's gross wages earned, total hours worked, all deductions made, net wages
4 earned, and all applicable hourly rates in effect during each pay period and the corresponding
5 number of hours worked at each hourly rate, in violation of California Labor Code § 226 and § 6
6 of the applicable IWC Wage Order.

7 57. Defendant's pay stubs violate Labor Code § 226 because they routinely and
8 intentionally fail to provide Plaintiff and Class members with proper meal and rest breaks but fail
9 to include in their wage statements one (1) additional hour of compensation at their regular rates of
10 pay for each non-compliant meal or rest break. In addition, Defendant required Plaintiff and Class
11 members to work off-the-clock without compensation and compensate Plaintiff and the Class
12 members the accurate rate of pay for overtime and sick leave/PTO based upon incentive payments,
13 and failing to accurately state all applicable COVID-19 and COVID-19 supplemental sick leave
14 hours available and amounts taken on its wage statements. Further, Defendant failed to pay
15 Plaintiff and Class members the legally-mandated overtime and minimum wages, rendering the
16 pay stubs incorrect as to rates of pay and remuneration. As a result of these violations,
17 Defendant's pay stubs fail to accurately list the compensation owed and due to Plaintiff and Class
18 members.

19 58. Defendant knowingly and intentionally failed to provide Plaintiff and Class
20 members with timely, accurate, and itemized wage statements in accordance with California Labor
21 Code § 226(a) so as to prevent Plaintiff and Class members from being able to determine whether
22 they were being paid for, among other things, all of the hours they worked and at the proper rates
23 of pay.

24 59. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff and
25 Class members have been damaged in an amount according to proof at trial, and seek all wages
26 earned and due, plus interest thereon. Additionally, Plaintiff and Class members are entitled to all
27 available penalties, including but not limited to penalties pursuant to California Labor Code §§
28 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees,

1 including but not limited to those provided in California Labor Code § 226(e), as well as other
2 available remedies.

3 **NINTH CAUSE OF ACTION**
4 **Failure To Provide And Properly Calculate Mandatory California Sick Leave**
5 **[Cal. Labor Code §246]**
(On Behalf of Plaintiff and the Class against Defendants)

6 60. Plaintiff incorporates herein by specific reference, as though fully set forth, the
7 allegations in paragraphs 1 through 59.

8 61. Pursuant to California Labor Code §246, any employee who works in the State of
9 California and who works more than “30 or more days within a year ... is entitled to be paid sick
10 days ...” Labor Code §246(1) provides an employer shall calculate sick pay under the following
11 methods: (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the
12 regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the
13 employee actually works overtime in that workweek.” Alternatively, pursuant to Labor Code
14 §246(1)(2), states, “Paid sick time for nonexempt employees shall be calculated by dividing the
15 employee’s total wages, including overtime premium pay, by the employee’s total hours worked in
16 the full pay periods of the prior 90 days of employment.”

17 62. During the applicable statute of limitations period, Defendant fails to comply with
18 Labor Code Section §246 by not providing Plaintiff and the other aggrieved employees with sick
19 pay pursuant to the two (2) methods as set forth in Labor Code §246(1)(1) or (2). Additionally,
20 Plaintiff is informed and believes, during the applicable statute of limitations period, Defendant
21 violates California Labor Code § 246(1)(1) by failing to pay sick leave to the aggrieved employees
22 at their regular rate of pay taking into consideration non-discretionary bonus payments and other
23 methods to be discovered. Alternatively, Plaintiff is informed and believes, during the applicable
24 statute of limitations period, Defendant violates Labor Code § 246(1)(2) by failing to divide the
25 aggrieved employees total wages by their total hours worked in the “full pay periods of the prior 90
26 days of employment”.

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TENTH CAUSE OF ACTION
Unfair and Unlawful Business Practices
[Cal. Bus. & Prof. Code § 17200 *et. seq.*]
(On Behalf of Plaintiff and the Class against all Defendants)

63. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 62.

64. Each and every one of Defendant's acts and omissions in violation of the California Labor Code and/or the applicable IWC Wage Orders as alleged herein, including but not limited to, Defendant's failure to provide required meal and rest breaks, unlawful rounding and requiring off-the-clock work, failure to pay all wages due to discharged or quitting employees or to pay timely wages, failure pay the accurate rate of pay, failure to provide sick leave pursuant to Labor Code §246, failure to provide supplemental COVID-19 sick leave pursuant to Labor Code §248, *et seq.*, and failure to furnish accurate itemized wage statements or to maintain required records, constitute an unfair and unlawful business practice under California Business and Professions Code § 17200 *et seq.*

65. Defendant's violations of California wage and hour laws constitute a business practice because the aforementioned acts and omissions were done repeatedly over a significant period of time, and in a systematic manner, to the detriment of Plaintiff and Class members.

66. Defendant has avoided payment of wages, the provision of meal and rest breaks, and other benefits as required by the California Labor Code, the California Code of Regulations, and the applicable IWC Wage Orders. Further, Defendant has failed to record, report, and pay the correct sums of assessment to the state authorities under the California Labor Code and other applicable regulations.

67. As a result of these unfair and unlawful business practices, Defendant has reaped unfair and illegal profits during the Class period at the expense of Plaintiff and Class members, and members of the public. Defendant should be made to disgorge its ill-gotten gains and to restore them to Plaintiff and Class members.

68. Defendant's unfair and unlawful business practices entitle Plaintiff and Class members to seek preliminary and permanent injunctive relief, including but not limited to orders

1 that Defendant account for, disgorge, and restore to Plaintiff and Class members the wages and
2 other compensation unlawfully withheld from them. Plaintiff and Class members are entitled to
3 restitution of all monies to be disgorged from Defendant in an amount according to proof at the
4 time of trial.

5 **ELEVENTH CAUSE OF ACTION**
6 **Representative Action for Civil Penalties**
7 **[Cal. Lab. Code §§ 2698- 2699.5]**
8 ***(On Behalf of Plaintiff and Other Aggrieved Employees against Defendants)***

9 69. Plaintiff incorporates herein by specific reference as though fully set forth the
10 allegations in paragraphs 1 through 68, with exception of the allegations in Paragraphs 17 through
11 19 (A)-(D).

12 70. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code
13 § 2699(c), and is a proper representative to bring a civil action on behalf of herself, and other non-
14 exempt employees of Defendant who are California citizens, pursuant to the procedures specified
15 in California Labor Code § 2699.3, because Plaintiff is employed by Defendant and the alleged
16 violations of the California Labor Code were committed against Plaintiff.

17 71. In addition to the foregoing allegations, Defendant has violated at least two other
18 sections of the California Labor Code that gives rise to liability under the California Private
19 Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code §§ 2698-2699.5.

20 72. Specifically, Defendant has violated Cal. Lab. Code § 2810.5, which requires
21 employers to provide notice to their employees of fundamental information relating to their
22 employment, including their rate(s) of pay, designated pay day, the employer’s intent to claim
23 allowances (meal or lodging allowances) as part of the minimum wage, and the basis of wage
24 payment (whether paying by hour, shift, day, week, piece, etc.), including any applicable rates for
25 overtime. The law requires that the notice contain the employer’s “doing business as” names, and
26 that it be provided at the time of hiring and within 7 days of a change if the change is not listed on
27 the employee’s pay stub for the following pay period. The notice must be provided in the language
28 the employer normally uses to communicate employment-related information to the employee,
through translated notices provided by the Department of Labor.

1 73. Defendant has failed to comply with Cal. Lab. Code § 2810.5 by simply not
2 providing the required notice to Plaintiff and other aggrieved employees at any time during their
3 employment.

4 74. In addition, Defendant has violated Cal. Lab. Code § 246, which provides that an
5 employee who works in California for more than “30 or more days within a year ... is entitled to
6 be paid sick days ...” Further, Cal. Lab. Code § 246(i) requires an employer to provide an
7 employee with “written notice” that sets forth the “amount of sick leave available” on the
8 employee’s wage statement pursuant to Labor Code § 226 or “... in a separate writing provided on
9 the designated pay date with the employee’s payment of wages.”

10 75. Defendant has willfully violated Cal. Lab. Code § 246 by failing to provide
11 Plaintiff and other aggrieved employees who have worked for Defendant for 30 or more days
12 within one year from the commencement of their employment with any sick leave, or calculate the
13 accurate rate of pay for sick leave provided to Plaintiff and the other Class Members. Defendant
14 has also necessarily then violated Cal. Lab. Code § 246 by not listing the available amount of sick
15 Plaintiff and other aggrieved employees’ wage statements or on a separate written notice.

16 76. Pursuant to the PAGA, Plaintiff seeks to recover civil penalties, including but not
17 limited to penalties under California Labor Code §§ 2699, 210, 225.5, 226.3, 248.5, 558, 1174.5,
18 1197.1, 1775, 1199, and IWC Wage Order No. 5-2001, § 20, from Defendant in a representative
19 action for the violations set forth above, including but not limited to violations of California Labor
20 Code §§ 201, 202, 203, 226, 226.7, 246, 248.2, 510, 512, 1174, 1194, 1197, 1198, 1774, and
21 2810.5. Plaintiff is also entitled to an award of reasonable attorneys’ fees and costs pursuant to
22 California Labor Code § 2699(g)(1).

23 77. Pursuant to California Labor Code §§ 2699.3, on October 13, 2021, Plaintiff gave
24 written notice by certified mail to the California Labor and Workforce Development Agency
25 (“LWDA”) and Defendant of the specific provisions of the California Labor Code and IWC Wage
26 Orders alleged to have been violated, including the facts and theories to support the alleged
27 violations. Within sixty-five (65) calendar of the postmark date of Plaintiff’s notice letter, the
28 LWDA did not provide notice to Plaintiff that it intends to investigate the alleged violations.

1 Therefore, Plaintiff has complied with all of the requirements set forth in California Labor Code §
2 2699.3 to commence a representative action under PAGA.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiff, individually and on behalf of all other persons similarly
5 situated, respectfully prays for relief against Defendant and DOES 1 through 50, inclusive, and
6 each of them, as follows:

- 7 1. For compensatory damages in an amount to be ascertained at trial;
- 8 2. For restitution of all monies due to Plaintiff and Class members, as well as
9 disgorged profits from the unfair and unlawful business practices of Defendant;
- 10 3. For meal and rest break compensation and premium payments pursuant to
11 California Labor Code § 226.7 and IWC Wage Order No. 5-2001;
- 12 4. For liquidated damages pursuant to California Labor Code § 1194.2;
- 13 5. For preliminary and permanent injunctive relief enjoining Defendant from violating
14 the relevant provisions of the California Labor Code and the IWC Wager Orders, and from
15 engaging in the unlawful business practices complained of herein;
- 16 6. For waiting time penalties pursuant to California Labor Code § 203;
- 17 7. For statutory civil penalties according to proof, including but not limited to all
18 penalties authorized by the California Labor Code §§ 210, 225.5, 226(e), 226.3, 354, 1174.5,
19 1775, and 1197.1;
- 20 8. An award of actual and statutory damages to Plaintiff and the Class pursuant to
21 California Civil Code §§ 1785.31 and 1786.50, in an amount subject to proof at trial;
- 22 9. For interest on the unpaid wages at 10 percent per annum pursuant to California
23 Labor Code §§ 218.6, 1194, California Civil Code §§ 3287, 3288, and/or any other applicable
24 provision providing for pre-judgment interest;
- 25 10. For reasonable attorneys' fees and costs pursuant to California Labor Code §§
26 218.5, 226, 1194, 2699, California Code of Civil Procedure § 1021.5, California Civil Code §
27 1786.50(a)(2), California Civil Code § 1785.31(a), and/or any other applicable provisions
28 providing for attorneys' fees and costs;

- 1 11. For declaratory relief;
- 2 12. For an order requiring and certifying the First through Tenth Causes of Action as a
- 3 class action;
- 4 13. For an order appointing Plaintiff as Class representative and Plaintiff's counsel as
- 5 Class counsel; and
- 6 14. For such further relief that the Court may deem just and proper.

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff, on behalf of herself and all others similarly situated, hereby demands a jury trial

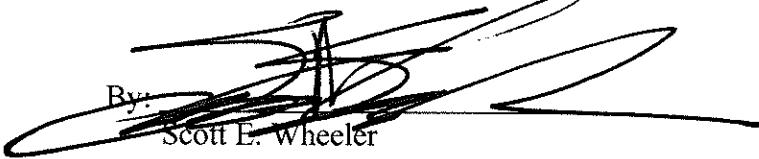
9 with respect to all issues triable of right by jury.

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11 DATED: December ~~20~~ 2021

THE LAW OFFICE OF SCOTT E. WHEELER

12

13 By: 

Scott E. Wheeler

14 *Attorney for Plaintiff and the Putative Class*

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