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Attorneys for Plaintiff and the Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES**

BERNADINE SMALLEY, as an individual and
 on behalf of all others similarly situated, and as a
 private attorney general,

Plaintiff,

vs.

BRIGHTON COLLECTIBLES, a California
 employer; and DOES 1 through 50, inclusive,

Defendants.

Case No. 21STCV43898

[Assigned for all purposes to the Hon. Amy D.
 Hogue, Department 7]

**FIRST AMENDED CLASS AND
 REPRESENTATIVE ACTION COMPLAINT**

- (1) Failure to Pay Overtime
 (Lab. Code §§ 510, 1194);**
- (2) Failure to Provide Meal Periods
 (Lab. Code §§ 226.7, 512);**
- (3) Inaccurate Itemized Wage Statements
 (Lab. Code § 226(a));**
- (4) Unfair or Unlawful Business Practices
 (Bus. & Prof. Code §§ 17200 et seq.); and**
- (5) Violations of the California Labor Code
 (Lab. Code §§ 2698 et seq.)**

DEMAND OVER \$25,000.00

On behalf of herself and other similarly situated current and former employees of Defendants, and as a proxy for the State of California, Plaintiff, Bernadine Smalley, submits this First Amended Class and Representative Action Complaint (the “Complaint”) against Defendant, Brighton Collectibles, and Does 1 through 50 (collectively, “Defendants”).

INTRODUCTION

1. This class and representative action challenges systemic employment practices resulting in violations of the California Labor Code against individuals who worked for Defendants. Plaintiff is informed and believes that Defendants have jointly and severally acted intentionally and with deliberate indifference and conscious disregard to the rights of employees by failing to pay all overtime wages due and failing to provide meal periods. The Complaint seeks penalties, damages, and other relief pursuant to, among other provisions, Labor Code sections 201-204, 210, 218.5, 218.6, 226, 226.7, 510, 512, 1194, 1198, and 2698 et seq., and the Unfair Competition Law, codified at Business and Professions Code sections 17200 et seq. (the “UCL”).¹

2. First, in addition to their base hourly wages, Plaintiff and other non-exempt employees also earn non-base hourly wages or other non-hourly, non-discretionary remuneration. Defendants fail to consider such earnings when calculating the rate for overtime wages. Rather than pay overtime wages at the regular rate, Defendants routinely underpay overtime wages to Plaintiff and other non-exempt employees at their base hourly rates of pay or rates excluding for example bonus incentives.

3. Second, on shifts exceeding five hours of work, Defendants routinely fail to provide Plaintiff and other non-exempt employees with duty-free 30-minute meal periods within the first five hours of work. Specifically, due to a lack of staffing, Plaintiff and other non-exempt employees are denied their opportunity to take timely, duty-free meal periods of at least 30 minutes. Instead, when Plaintiff and other non-exempt employees are allowed to take meal periods, the meal periods are not provided until after the fifth hour of work. The meal periods also are often less than 30 minutes in length or interrupted. Nonetheless, Defendants also routinely fail to pay Plaintiff and other non-exempt employees an additional hour of regular rate wages for such missed, late, or interrupted meal periods.

¹ Except as otherwise noted, all “Section” references are to the Labor Code.

4. Because Plaintiff and other non-exempt employees are not paid all of their overtime wages and are not provided either duty-free 30-minute meal periods within the first five hours of work or additional hours of regular rate wages, Defendants routinely fail to timely pay Plaintiff and other non-exempt employees all wages during employment or upon separation of employment. Moreover, Defendants also routinely fail to wage statements that accurately show and itemize all applicable hourly rates in effect during the pay period, gross wages earned, and net wages earned.

5. Plaintiff is informed and believes that Defendants have engaged in, among other things, a system of willful violations of the Labor Code by creating and maintaining policies, practices, and customs that knowingly deny its employees the above stated rights and benefits.

6. The policies, practices, and customs of Defendants result in unjust enrichment of Defendants and an unfair business advantage over businesses that comply with the Labor Code.

JURISDICTION AND VENUE

7. The Complaint seeks relief exceeding \$25,000.00. The Court has jurisdiction of Defendants' violations of Sections 201-204, 210, 226, 226.7, 510, 512, 1198, and 2698 et seq., and the UCL.

8. Venue is proper in the County of Los Angeles. Plaintiff worked for Defendants in Valencia, California.

PARTIES

9. Plaintiff began working for Defendants in 2021. Until her employment as an assistant store manager ended in or about November of 2021, Plaintiff was paid on an hourly basis as a non-exempt employee and also earned non-base hourly wages or other non-hourly, non-discretionary remuneration, including for example bonus incentives. Plaintiff worked more than five hours in a workday, but she regularly was not provided either a duty-free 30-minute meal period within the first five hours of work or an additional hour of regular rate wages for a missed, late, or interrupted meal period. Plaintiff also worked more than eight hours in a workday or 40 hours in a workweek, but she was not paid all due overtime wages. Plaintiff also was not provided with accurate itemized wage statements and was not timely paid all due wages during employment or at the end of employment.

1 Plaintiff thus is a victim of the policies, practices, and customs of Defendants complained of in this
2 action in ways that have deprived her of the rights guaranteed by the Labor Code and the UCL.

3 10. Plaintiff is informed and believes that Brighton Collectibles was and is a California
4 employer. Plaintiff is informed and believes that at all times herein mentioned named defendants and
5 Does 1 through 50, were and are corporations, business entities, individuals, or partnerships that are and
6 were licensed to do business and actually doing business in the State of California. Based upon all the
7 facts and circumstances incident to Defendants' business, Defendants are subject to Sections 201-204,
8 210, 226, 226.7, 510, 512, and 1198, and the UCL.

9 11. Plaintiff does not know the true names or capacities of the defendants sued herein as
10 Does 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are
11 sued under such fictitious names. Plaintiff prays for leave to amend this Complaint when the true names
12 and capacities are known. Plaintiff is informed and believes that each of said fictitious defendants was
13 responsible in some way for the matters alleged herein and proximately caused the illegal employment
14 practices, wrongs, and injuries complained of herein.

15 12. At all times herein mentioned, each of said Defendants participated in the doing of the
16 acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of
17 the other Defendants, as well as the agents of all Defendants, and were acting within the course and
18 scope of said agency and employment.

19 13. Plaintiff is informed and believes that at all times material hereto, each of said
20 Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with,
21 each of the other Defendants and was acting within the course and scope of such agency, employment,
22 joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by
23 certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or
24 omissions of the acting Defendants.

25 14. Plaintiff is informed and believes that at all times material hereto each of the Defendants
26 (i) aided and abetted the acts and omissions of each of the other Defendants in proximately causing the
27 alleged harms, or (ii) were members of, engaged in, and acting within the course and scope of, and in
28 pursuance of, a joint venture, partnership, or common enterprise.

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CLASS ACTION ALLEGATIONS

15. **Definition:** Pursuant to Code of Civil Procedure section 382, Plaintiff seeks class certification of the following classes: (i) all current and former non-exempt employees of Defendants in the State of California who were paid overtime wages in any workweek since November 30, 2017, in which they also earned non-base hourly wages or other non-hourly, non-discretionary remuneration (the “Overtime Class”), and (ii) all current and former employees of Defendants in the State of California who worked more than 5.0 hours in a work period since November 30, 2017 (the “Meal Period Class”). The Overtime Class and Meal Period Class are collectively referred to as the “Class.”

16. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identities of the members of the Class are readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff is informed and believes that Defendants violated Sections 201-204, 210, 226, 226.7, 510, 512, and 1198 and the UCL against Plaintiff and the Class by failing to pay and failing to timely pay all sick pay wages due and all wages without discount.

17. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the Class defined above. Plaintiff’s attorneys are ready, willing, and fully and adequately able to represent Plaintiff and the Class. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class actions in the past and continue to litigate numerous wage-and-hour class actions currently pending in California state and federal courts.

18. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst the claims of Plaintiff and of the Class. Plaintiff is informed and believes that Defendants uniformly administer a corporate policy and practice of routinely failing to properly calculate the overtime rate of pay, provide meal periods, pay an additional hour of pay for missed, late, or interrupted meal periods, provide accurate itemized wage statements, or timely pay all wages.

19. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the Class suffered. As with other members of the Class, Plaintiff was paid on an hourly basis as a non-exempt

1 employee and also earned non-base hourly wages or other non-hourly, non-discretionary remuneration.
2 Plaintiff was not provided either a duty-free 30-minute meal period within the first five hours of work or
3 an additional hour of regular rate wages for a missed, late, or interrupted meal period. Plaintiff worked
4 more than eight hours in a workday or 40 hours in a workweek but was not paid all due overtime wages.
5 Plaintiff also was not provided with accurate itemized wage statements and was not timely paid all due
6 wages during employment or at the end of employment. Plaintiff thus is a member of the Class and has
7 suffered the alleged violations of the Labor Code.

8 20. The Labor Code is broadly remedial in nature. Its laws serve an important public interest
9 in establishing minimum working conditions and requirements in California. These labor standards
10 protect employees from onerous terms and conditions of employment or exploitation by employers who
11 have superior economic and bargaining power.

12 21. The nature of this action and the format of laws available to Plaintiff and members of the
13 Class make the class action format a particularly efficient and appropriate procedure to redress the
14 wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate
15 Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and
16 overwhelm the limited resources of each individual plaintiff with their vastly superior financial and
17 legal resources. Requiring each member of the Class to pursue an individual remedy would also
18 discourage the assertion of lawful claims by employees who would be disinclined to file an action
19 against their former or current employer for real and justifiable fear of retaliation and permanent
20 damage to their careers at their current or subsequent employment.

21 22. The prosecution of separate actions by individual members of the Class, even if possible,
22 would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual
23 members of the Class that would establish potentially incompatible standards of conduct for
24 Defendants, or (b) adjudications with respect to individual members of the Class that would, as a
25 practical matter, be dispositive of, or substantially impair or impede the ability to protect, the interests
26 of other members of the Class not parties to the adjudications. Further, the claims of the individual
27 members of the Class are not sufficiently large to warrant vigorous individual prosecution considering
28 the concomitant costs and expenses.

23. Defendants' pattern, practice, and uniform administration of corporate policy in violation of the Labor Code is unlawful. Proof of a common business practice or factual pattern will establish the rights of Plaintiff and the Class under Sections 201-204, 210, 218.5, 218.6, 226, 226.7, 510, 512, 1194, and 1198, applicable IWC Wage Orders, the UCL, and Code of Civil Procedure section 1021.5 to recover damages and restitution, including unpaid wages and interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit.

24. This action is brought for the benefit of the Class, which is commonly entitled to a specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to restitution of those funds being improperly withheld by Defendant.

FIRST CAUSE OF ACTION

Failure to Pay Overtime (Lab. Code §§ 510, 1198)

(By Plaintiff and the Overtime Class Against All Defendants)

25. The preceding paragraphs are re-alleged and incorporated by this reference.

26. Section 510 and the applicable IWC Wage Order provide that "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee" and that "[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee." Section 1198 makes unlawful conditions of labor that are prohibited by the applicable IWC Wage Order.

27. As discussed above and as a matter of policy and practice, Defendants fail to pay all overtime wages owing to Plaintiff and the Overtime Class. Plaintiff and the Overtime Class regularly work more than eight hours of work in a workday or 40 hours of work in a workweek. As a matter of policy and practice, Plaintiff and the Overtime Class earn non-base hourly wages or other non-hourly, non-discretionary remuneration, including for example bonus incentives, that Defendants either fail to consider or improperly consider when calculating the regular rate of pay for purposes of paying overtime wages. As such, Plaintiff and the Overtime Class are owed overtime wages.

28. Moreover, all owing wages must be paid timely. Section 204 provides that wages are generally due and payable no later than seven days after the end of a pay period or at least twice during each calendar month, on days designated in advance as the regular paydays. Section 201 provides if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Section 202 provides that an employee is entitled to receive all unpaid wages no later than 72 hours after an employee quits his or her employment, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Section 203 provides that if an employer willfully fails to pay wages owed in accordance with Sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid, but the wages shall not continue for more than thirty (30) days.

29. Based on Defendants' failure to pay overtime to Plaintiff and the Overtime Class and as a matter of policy and practice, Defendants also fail to timely pay Plaintiff and the Overtime Class all due wages. On information and belief, Defendants were advised by skilled lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiff's allegations. Because Defendants willfully fail to timely pay Plaintiff and the Overtime Class all overtime wages due, Defendants are subject to applicable penalties pursuant to Sections 203 and 210, among other Labor Code provisions.

30. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff and the Overtime Class to recover underpaid overtime wages, including interest thereon, applicable penalties, attorneys' fees, and costs of suit.

SECOND CAUSE OF ACTION

Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512)

(By Plaintiff and the Meal Period Class Against All Defendants)

31. The preceding paragraphs are re-alleged and incorporated by this reference.

32. Because Plaintiff and the Meal Period Class were non-exempt employees, Defendants were required to comply with Sections 226.7 and 512 and the applicable IWC Wage Order. Section 512(a) generally prohibits employment of an individual for a work period of more than five hours per

1 day without providing the employee with an uninterrupted, duty-free meal period of at least 30 minutes.
2 Section 226.7(b) provides that an employer shall not require an employee to work during a meal period.
3 Section 226.7(c) states that “the employer shall pay the employee one additional hour of pay at the
4 employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not
5 provided.”

6 33. As a matter of policy and practice on work periods exceeding five hours, Defendants fail
7 to provide Plaintiffs and the Meal Period Class with a duty-free 30-minute meal period within the first
8 five hours of work. Specifically, due to a lack of staffing, Plaintiff and the Meal Period Class are denied
9 their opportunity to take timely, duty-free meal periods of at least 30 minutes. Instead, when Plaintiff
10 and the Meal Period Class are allowed to take meal periods, the meal periods are not provided until after
11 the fifth hour of work.

12 34. As a matter of policy and practice, Defendants also do not pay Plaintiff and the Meal
13 Period Class an additional hour of regular rate wages for missed, late, or interrupted meal periods.
14 Specifically, Defendants either do not pay an additional hour of wages at all or do not pay an additional
15 hour of regular rate wages by failing to consider non-base hourly wages or other non-hourly, non-
16 discretionary remuneration when calculating the additional hour of wages.

17 35. Based on the above and as a matter of policy and practice, Defendants fail to timely pay
18 Plaintiff and the Meal Period Class all due wages during employment or upon the separation of
19 employment. On information and belief, Defendants were advised by skilled lawyers and knew, or
20 should have known, of the mandates of the Labor Code as it relates to Plaintiff’s allegations. Because
21 Defendants willfully fail to timely pay Plaintiff and the Meal Period Class all wages due, Defendants are
22 subject to applicable penalties pursuant to Sections 203 and 210, among other Labor Code provisions.

23 36. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
24 entitles Plaintiff and the Meal Period Class to recover unpaid wages, including interest thereon,
25 applicable penalties, attorneys’ fees, and costs of suit.
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1 **THIRD CAUSE OF ACTION**

2 **Inaccurate Itemized Wage Statements (Lab. Code § 226(a))**

3 **(By Plaintiff and the Class Against All Defendants)**

4 37. The preceding paragraphs are re-alleged and incorporated by this reference.

5 38. Section 226(a) requires an employer to furnish to its employees itemized wage
6 statements that show accurate information, including without limitation, all applicable hourly rates in
7 effect during the pay period, gross wages earned, and net wages earned.

8 39. As a matter of policy and practice, Defendants fail to provide accurate itemized wage
9 statements to Plaintiff and the Class. Specifically, because of the above violations, Defendants fail to
10 furnish Plaintiff and the Class with wage statements that accurately show the applicable hourly rates in
11 effect during the pay period, gross wages earned, and net wages earned.

12 40. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
13 entitles Plaintiff and the Class to recover applicable penalties, attorneys' fees, and costs of suit.

14 **FOURTH CAUSE OF ACTION**

15 **Unfair or Unlawful Business Practices (Bus. & Prof. Code §§ 17200 et seq.)**

16 **(By Plaintiff and the Class Against All Defendants)**

17 41. The preceding paragraphs are re-alleged and incorporated by this reference.

18 42. Plaintiff is informed and believes that at Defendants have engaged and continue to
19 engage in unfair and unlawful business practices in California by utilizing the employment policies and
20 practices alleged herein, including the failure to pay all overtime wages due and the failure to provide
21 meal periods.

22 43. Defendants' utilization of such unfair and unlawful business practices constitutes unfair
23 and unlawful competition and provides an unfair advantage over Defendants' competitors, as proscribed
24 by the UCL. Defendants have deprived Plaintiff and the Class the minimum working condition
25 standards and conditions due to them under the Labor Code and applicable IWC Wage Orders.

26 44. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
27 entitles Plaintiff and the Class to full restitution of all monies withheld, acquired, or converted by means
28 of the unfair practices complained of herein, including interest thereon, attorneys' fees, and costs of suit.

1 **FIFTH CAUSE OF ACTION**

2 **Violation of the California Labor Code (Lab Code. §§ 2698 Et Seq.)**

3 **(By Plaintiff as a Proxy for the State Against All Defendants)**

4 45. The preceding paragraphs are re-alleged and incorporated by this reference.

5 46. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698
6 et seq. (“PAGA”), Plaintiff brings this cause of action as a proxy for the State of California. In this
7 capacity, Plaintiff seeks penalties for Defendants’ violations of Sections 201-204, 210, 226, 226.7, 510,
8 512, and 1198 committed since November 22, 2020, against Plaintiff and other current and former
9 employees. Under Section 2699(c), Plaintiff is an “aggrieved employee,” as one or more of the alleged
10 violations was committed against Plaintiff as an employee of Defendants.

11 47. As stated herein, Defendants fail to (i) pay overtime wages, (ii) provide duty-free meal
12 periods, (iii) pay all additional hours of regular rate wages for missed, late, or interrupted meal periods,
13 (iv) timely pay all wages, and (v) provide accurate itemized wage statements.

14 48. On or about November 22, 2021, Plaintiff sent written notice to the Labor & Workforce
15 Development Agency (“LWDA”) of facts and theories for Defendants’ violations of Sections 201-204,
16 210, 226, 226.7, 510, 512, and 1198. Plaintiff simultaneously sent written notice to Defendants via
17 certified mail. As of the date of the filing of this Complaint, the LWDA has neither responded nor
18 indicated that it intends to investigate the allegations in the written notice.

19 49. As such, pursuant to Section 2699(a), (f), and (g), Plaintiff seeks recovery of all
20 applicable penalties for Defendants’ violations against Plaintiff and other current and former employees
21 for the period described above.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf this suit
24 is brought against Defendants, jointly and severally, as follows:

- 25 1. For an order certifying the proposed Classes;
- 26 2. For an order appointing Plaintiff as the representative of the Classes;
- 27 3. For an order appointing Counsel for Plaintiff as Class Counsel;
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4. Upon the First Cause of Action for damages, including overtime wages and interest thereon, penalties, and attorneys' fees and costs;

5. Upon the Second Cause of Action for damages, including unpaid wages and interest thereon, penalties, and attorneys' fees and costs;

6. Upon the Third Cause of Action for penalties, actual damages, and attorneys' fees and costs;

7. Upon the Fourth Cause of Action for restitution of all funds unlawfully acquired by Defendants by any acts or practices declared to be in violation of the UCL, including interest thereon, and for attorneys' fees and costs;

8. Upon the Fifth Cause of Action for penalties pursuant to Section 2699(a), (f), and (g),
and for attorneys' fees and costs;

9. Upon each cause of action for attorneys' fees and costs as provided by the Labor Code, UCL, and Code of Civil Procedure section 1021.5; and

10. For such other and further relief that the Court may deem just and proper.

DATED: January 26, 2022

DIVERSITY LAW GROUP, P.C.

By: _____

Larry W. Lee
Simon L. Yang
Attorneys for Plaintiff

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STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071.

On January 28, 2022, I served the following document(s) described as: **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action as follows:

Brighton Collectibles
c/o Gary Freedman
1149 Third Street, Suite 200
Santa Monica, CA 90403
Defendant

 X BY MAIL: by placing the original or X a true and correct copy thereof enclosed, in (a) sealed envelope(s) addressed to the party(ies) listed above or on the attached mailing list. I am readily familiar with the firm's practice for collection and processing of correspondence and other materials for mailing with the United States Postal Service. On this date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for collection and mailing on this date at the address above following our office's ordinary business practices. The envelope(s) will be deposited with the United States Postal Service on this date, in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 28, 2022, at Los Angeles, California.


Olympia Tril