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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Emily Schilawski, Deputy Clerk

Attorneys for Plaintiff, BRITTANI BENNETT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

**BRITTANI BENNETT, Individually and
On Behalf of All Others Similarly Situated,**

Plaintiffs,

v.

**WYNDHAM VACATION OWNERSHIP,
INC., a Delaware Corporation;
WYNDHAM DESTINATIONS, INC., a
Delaware Corporation; and Does 1 through
20, inclusive,**

Defendants.

Case No. 37-2022-00015196-CU-OE-CTL

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
COMPENSATORY DAMAGES,
PENALTIES, RESTITUTION &
INJUNCTIVE RELIEF:**

- 1. Failure to Pay Overtime in Violation of
Cal. Labor Code §§ 510 & 1194;**
- 2. Failure to Pay Meal Period Compensation
in Violation of Cal. Labor Code § 226.7;**
- 3. Failure to Pay Rest Period Compensation
in Violation of Cal. Labor Code § 226.7;**
- 4. Failure to Provide Accurate Itemized
Wage Statements in Violation of Cal.
Labor Code §§ 226 and 226.3;**
- 5. Failure to Pay Compensation When Due
at Time of Separation of Employment in
Violation of Cal. Labor Code §§ 201-203;**
- 6. Unlawful and Unfair Business Practices
(Cal. Bus. & Prof. Code § 17200 et seq.);**

) and
) 7. Labor Code Private Attorneys General
) Act of 2004 (Labor Code § 2698 *et seq.*)
)
)

) JURY TRIAL DEMANDED
) [Unlimited Civil Action]
)
)

Plaintiff, BRITTANI BENNETT, on her own behalf, all others similarly situated, and on behalf of the general public, allege causes of action against defendants, and each of them, as follows:

GENERAL ALLEGATIONS

1. This is a class action and state enforcement action brought by Plaintiff BRITTANI BENNETT ("Plaintiff") individually and on behalf of current and former non-exempt employees of Defendants WYNDHAM VACATION OWNERSHIP, INC. and WYNDHAM DESTINATIONS, INC. ("Defendants") who received commissions and/or non-discretionary bonus compensation payments during the same pay period in which they worked overtime hours (the "CALIFORNIA OVERTIME RATE CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD").

2. This class action is also brought on behalf of Defendants' non-exempt employees who received commissions and/or non-discretionary bonus compensation payments during the same pay period in which they received a meal period premium payment (the "CALIFORNIA MEAL PERIOD RATE CLASS") at any time during the CALIFORNIA CLASS PERIOD.

3. This class action is also brought on behalf of Defendants' non-exempt employees who received commissions and/or non-discretionary bonus compensation payments during the same pay period in which they received a rest period premium payment (the "CALIFORNIA REST PERIOD RATE CLASS") at any time during the CALIFORNIA CLASS PERIOD.

4. This class action is also brought on behalf of Defendants' non-exempt employees who received commissions and/or non-discretionary bonus compensation payments during the

1 same pay period in which they earned sick pay (the "CALIFORNIA SICK PAY RATE CLASS")
2 at any time during the CALIFORNIA CLASS PERIOD.

3 5. California and Federal law provide that employees must be paid overtime at one-
4 and-one-half times their "regular rate of pay." Similarly, California Labor Code Section 226.7
5 provides that employees who are not provided a meal or rest period in accordance with California
6 law shall be paid an additional hour of pay "at the employee's regular rate of compensation."
7 California Labor Code Section 246(l)(i) provides that paid sick time for non-exempt employees
8 shall be calculated at the employee's "the regular rate of pay."

9 6. Plaintiff and other members of the Classes have been compensated at an hourly rate
10 plus Defendants' non-discretionary commission and bonus program, that provides employees paid
11 on an hourly basis with commission and bonus compensation when the employees meet various
12 sales or performance goals. However, when calculating the regular rate of pay in order to pay
13 overtime, meal and rest period premiums, and/or sick pay to Plaintiff and other members of the
14 Classes, Defendants not include the non-discretionary commission and bonus monies earned by
15 Plaintiff and other members of the Classes. Management and supervisors described the
16 commission and bonus program to potential and new employees as part of the compensation
17 package. As a matter of law, the commission and bonus compensation received by Plaintiff and
18 other members of the Classes must be included in the "regular rate of pay" and/or "regular rate of
19 compensation." The failure to do so has resulted in Defendants' systematic underpayment of
20 overtime compensation, meal and rest period premium pay, and sick pay to Plaintiff and other
21 members of the Classes.

22 7. The policies and practices of Defendants, as alleged herein, are unlawful, unfair and
23 deceptive business practices whereby Defendants' deceptive employment and wage practices cheat
24 Plaintiff and other members of the proposed Classes out of their lawful compensation due, as
25 required by California law. Plaintiff therefore seeks an injunction enjoining such conduct by
26 Defendants in the future, restitution for the named Plaintiff and all members of the proposed
27 Classes, and all other appropriate equitable relief.

1 8. Defendants' unlawful failure to calculate the proper regular rates of pay, and failure
2 to compensate employees at the proper overtime rate, proper meal and rest premium pay rate, and
3 proper sick pay rate have also resulted in Defendants' intentional issuance of inaccurate wage
4 statements to Plaintiff and other similarly situated employees, and willful failure to pay all wages
5 due and owing to such employees at the time of their separation of employment with
6 DEFENDANTS.

7 **IDENTIFICATION OF THE PARTIES**

8 9. Plaintiff BRITTANI BENNETT is a competent adult who resides in the City and
9 County of San Diego, State of California. During the time period of October 2020 to January
10 2022, Plaintiff was employed by Defendants in the County of San Diego, State of California as an
11 hourly, non-exempt sales representative. Plaintiff was paid in whole or in part on an hourly basis
12 and received additional compensation from Defendants in the form of sales commissions and non-
13 discretionary bonuses.

14 10. Defendants WYNDHAM VACATION OWNERSHIP, INC. and WYNDHAM
15 DESTINATIONS, INC. are Delaware corporations with their principal offices in Orlando, Florida.
16 Defendants are a brand of Wyndham Hotels and Resorts, Inc. (NYSE: WH) and are the largest
17 developer and marketer of vacation timeshare products in the world.

18 11. The unlawful acts alleged in this Complaint were committed by Defendants and/or
19 Defendants' officers, agents, employees, or representatives, while actively engaged in the
20 management of Defendants' businesses or affairs and with the authorization of the Defendants.

21 12. Plaintiff does not know the true names and capacities of Defendants sued herein as
22 DOES 1 through 20, inclusive, and will amend this Complaint to set forth the true names and
23 capacities of said Defendants, along with the appropriate charging allegations when the same have
24 been ascertained.

25 13. Plaintiff is informed and believes, and on that basis alleges, that each of the
26 fictitiously named Defendants was in some manner legally responsible for the actionable and
27 unlawful actions, policies and practices as alleged herein. Plaintiff will amend this Complaint to
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1 set forth the true names and capacities of said Defendants, along with the appropriate charging
2 allegations, when the same have been ascertained.

3 14. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
4 herein, all Defendants, and each of them, were acting as the agent and/or employee of each
5 remaining co-defendant, and were acting with permission and consent of each other, and within the
6 course and scope of said agency and/or employment. Plaintiff is further informed and believes that
7 each co-defendant, by and through its officers, directors or managing agents, ratified, authorized
8 and approved, expressly or implicitly, all of the conduct alleged herein.

9 15. When in this Complaint reference is made to any act of the "Defendants," such shall
10 be deemed to mean that officers, directors, agents, employees, or representatives of the Defendants
11 named in this lawsuit committed or authorized such acts, or failed and omitted to adequately
12 supervise or properly control or direct their employees while engaged in the management,
13 direction, operation or control of the affairs of the Defendants and did so while acting within the
14 scope of their employment or agency.

15 JURISDICTION AND VENUE

16 16. Plaintiff realleges by reference, as if fully set forth herein, all of the above
17 Paragraphs

18 17. This Court has jurisdiction over all causes of action asserted herein pursuant to
19 California Constitution, Article VI, Sec. 10, because this case is a cause not given by statute to
20 other trial courts.

21 18. This Court has jurisdiction over Defendants because each co-defendant is a
22 corporation authorized to do business in the State of California and registered with the California
23 Secretary of State to do sufficient business with sufficient minimum contacts in California, and/or
24 otherwise intentionally avail itself of the California market to render the exercise of jurisdiction by
25 the California courts consistent with traditional notions of fair play and substantial justice.

26 19. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
27 Civil Procedure § 395. Defendants' actionable and unlawful employment practices as to Plaintiff
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1 and numerous other employees occurred throughout the County of San Diego, State of California.

2 20. This class action is brought pursuant to California Code of Civil Procedure section
3 382. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction
4 limits of the Superior Court and will be established according to proof at trial.

5 **CLASS ACTION ALLEGATIONS**

6 21. Plaintiff realleges by reference, as if fully set forth herein, all of the above
7 Paragraphs.

8 22. Plaintiff brings this suit as a class action pursuant to California Code of Civil
9 Procedure § 382 on behalf of herself and the following putative classes and subclass Plaintiff will
10 seek to certify are currently composed of and defined as follows:

- 11 a. **All current and former non-exempt employees of Defendants**
12 **WYNDHAM VACATION OWNERSHIP, INC. and WYNDHAM**
13 **DESTINATIONS, INC. who received commissions and/or non-**
14 **discretionary bonus compensation payments during the same pay**
15 **period in which they worked overtime hours at any time during**
16 **the period beginning four (4) years prior to the filing of this**
17 **Complaint and ending on the date as determined by the Court (the**
18 **“CALIFORNIA OVERTIME RATE CLASS”).**
- 19 b. **All current and former non-exempt employees of Defendants**
20 **WYNDHAM VACATION OWNERSHIP, INC. and WYNDHAM**
21 **DESTINATIONS, INC. who received commissions and/or non-**
22 **discretionary bonus compensation payments during the same pay**
23 **period in which they received meal period premium payments at**
24 **any time during the period beginning four (4) years prior to the**
25 **filing of this Complaint and ending on the date as determined by**
26 **the Court (the “CALIFORNIA MEAL PERIOD RATE CLASS”).**
- 27 c. **All current and former non-exempt employees of Defendants**
28 **WYNDHAM VACATION OWNERSHIP, INC. and WYNDHAM**
DESTINATIONS, INC. who received commissions and/or non-
discretionary bonus compensation payments during the same pay
period in which they received rest period premium payments at
any time during the period beginning four (4) years prior to the
filing of this Complaint and ending on the date as determined by
the Court (the “CALIFORNIA REST PERIOD RATE CLASS”).
- d. **All current and former non-exempt employees of Defendants**
WYNDHAM VACATION OWNERSHIP, INC. and WYNDHAM
DESTINATIONS, INC. who received commissions and/or non-

discretionary bonus compensation payments during the same pay period in which they earned sick pay at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA SICK PAY RATE CLASS").

- e. All individuals who were previously employed by Defendants WYNDHAM VACATION OWNERSHIP, INC. and WYNDHAM DESTINATIONS, INC. in California as non-exempt employees who received commission and/or bonus compensation payments during the same pay period in which they worked overtime hours, received meal or rest period premium payments, and/or earned sick pay at any time during the period beginning three (3) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "FORMER EMPLOYEE SUBCLASS").

23. Numerosity: The potential number of members of the CALIFORNIA OVERTIME RATE CLASS, CALIFORNIA MEAL PERIOD RATE CLASS, CALIFORNIA REST PERIOD RATE CLASS, CALIFORNIA SICK PAY RATE CLASS, and FORMER EMPLOYEE SUBCLASS as defined are so numerous that joinder of all members would be unfeasible and impractical. The disposition of their claims through this class action will benefit both the parties and this Court. The quantity of members of the CALIFORNIA OVERTIME RATE CLASS, CALIFORNIA MEAL PERIOD RATE CLASS, CALIFORNIA REST PERIOD RATE CLASS, CALIFORNIA SICK PAY RATE CLASS, and FORMER EMPLOYEE SUBCLASS is currently unknown to Plaintiff; however, it is estimated that there are at least 500 members each in the CALIFORNIA OVERTIME RATE CLASS, CALIFORNIA MEAL PERIOD RATE CLASS, CALIFORNIA REST PERIOD RATE CLASS and CALIFORNIA SICK PAY RATE CLASS; and at least 250 members in the FORMER EMPLOYEE SUBCLASS. The quantity and identity of such membership is readily ascertainable via inspection of Defendants' employment records, which Defendants are required to maintain under California law.

24. Typicality: The claims of Plaintiff are typical of the claims of all members of the CLASSES mentioned herein because all members of the CALIFORNIA OVERTIME RATE CLASS, CALIFORNIA MEAL PERIOD RATE CLASS, CALIFORNIA REST PERIOD RATE CLASS, CALIFORNIA SICK PAY RATE CLASS, and FORMER EMPLOYEE SUBCLASS

1 sustained injuries and damages arising out of Defendants' common course of conduct in violation
2 of California wage and hour law, and the injuries and damages of all members of the
3 CALIFORNIA OVERTIME RATE CLASS, CALIFORNIA MEAL PERIOD RATE CLASS,
4 CALIFORNIA REST PERIOD RATE CLASS, CALIFORNIA SICK PAY RATE CLASS, and
5 FORMER EMPLOYEE SUBCLASS were caused by Defendants' wrongful conduct in violation of
6 California statutory and regulatory law, as alleged herein.

7 25. Adequacy: Plaintiff is an adequate representative of the CALIFORNIA
8 OVERTIME RATE CLASS, CALIFORNIA MEAL PERIOD RATE CLASS, CALIFORNIA
9 REST PERIOD RATE CLASS, CALIFORNIA SICK PAY RATE CLASS, and FORMER
10 EMPLOYEE SUBCLASS and will fairly protect the interests of the members of the alleged
11 CLASSES, and has no interests antagonistic to the members of the alleged CLASSES and will
12 vigorously pursue this suit via attorneys who are competent, skilled and experienced in litigating
13 matters of this type.

14 26. Superiority. The nature of this action and the nature of the laws available to
15 Plaintiff make the use of the class action format a particularly effective and appropriate procedure
16 to afford relief to Plaintiff for the wrongs alleged herein:

17 27. There are common questions of fact and law as to the members of the
18 CALIFORNIA OVERTIME RATE CLASS, CALIFORNIA MEAL PERIOD RATE CLASS,
19 CALIFORNIA REST PERIOD RATE CLASS, CALIFORNIA SICK PAY RATE CLASS, and
20 FORMER EMPLOYEE SUBCLASS, which predominate over questions affecting only individual
21 members of the alleged CLASS including, without limitation:

- 22 a. Whether DEFENDANTS have unlawfully failed to correctly calculate and pay
23 overtime compensation to members of the CALIFORNIA OVERTIME RATE
24 CLASS in violation of the California Labor Code and California regulations and the
25 applicable California Wage Order;
- 26 b. Whether the members of the CALIFORNIA OVERTIME RATE CLASS are
27 entitled to overtime compensation for overtime hours worked under the overtime

1 pay requirements of California law;

2 c. Whether DEFENDANTS have unlawfully failed to correctly calculate and pay meal
3 period premiums to members of the CALIFORNIA MEAL PERIOD RATE CLASS
4 in violation of the California Labor Code and California regulations and the
5 applicable California Wage Order;

6 d. Whether the members of the CALIFORNIA MEAL PERIOD RATE CLASS are
7 entitled to extra compensation for Defendants' failure to pay the regular rate of
8 compensation, as required by California Labor Code Section 226.7;

9 e. Whether DEFENDANTS have unlawfully failed to correctly calculate and pay rest
10 period premiums to members of the CALIFORNIA REST PERIOD RATE CLASS
11 in violation of the California Labor Code and California regulations and the
12 applicable California Wage Order;

13 f. Whether the members of the CALIFORNIA REST PERIOD RATE CLASS are
14 entitled to extra compensation for Defendants' failure to pay the regular rate of
15 compensation, as required by California Labor Code Section 226.7;

16 g. Whether DEFENDANTS have unlawfully failed to correctly calculate and pay sick
17 pay to members of the CALIFORNIA SICK PAY RATE CLASS in violation of the
18 California Labor Code and California regulations and the applicable California
19 Wage Order;

20 h. Whether DEFENDANTS failed to accurately record the applicable overtime rates of
21 pay, meal and rest period rates of compensation, and sick pay rates of pay earned by
22 Plaintiff and the other members of the alleged CLASSES;

23 i. Whether Defendants knowingly and intentionally failed to furnish accurate,
24 itemized wage statements to members of the CLASS;

25 j. Whether Defendants paid all wages due and owing to members of the FORMER
26 EMPLOYEE SUBCLASS at the time of separation of employment, in accordance
27 with Labor Code §§ 201-203;

- 1 k. Whether Defendants' conduct constituted unfair or unlawful business practices
2 within the meaning of Business & Professions Code § 17200 *et seq.*;
- 3 l. Whether the members of the alleged CLASSES are entitled to compensatory
4 damages, and if so, the means of measuring such damages;
- 5 m. Whether the members of the alleged CLASSES are entitled to injunctive relief;
- 6 n. Whether the members of the alleged CLASSES are entitled to restitution;
- 7 o. Whether the members of the alleged CLASSES are entitled to disgorgement of
8 profits;
- 9 p. Whether the members of the FORMER EMPLOYEE SUBCLASS are entitled to
10 "waiting time penalties;"
- 11 q. Whether Defendants are liable for pre-judgment interest; and
- 12 r. Whether Defendants are liable for attorneys' fees and costs.

13 **FIRST CAUSE OF ACTION**

14 (Failure to Pay Overtime Compensation)

15 (On Behalf of Plaintiff and the CALIFORNIA OVERTIME RATE CLASS)

16 28. Plaintiff realleges by reference, as if fully set forth herein, all of the above
17 Paragraphs.

18 29. Plaintiff and the other members of the CALIFORNIA OVERTIME RATE CLASS
19 bring a claim for Defendants' failure to accurately calculate the applicable rates for all overtime
20 hours worked by Plaintiff and other member of the CALIFORNIA OVERTIME RATE CLASS

21 30. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
22 policy, an employer must timely pay its employees for all hours worked.

23 31. Cal. Lab. Code § 510 further provides that employees in California shall not be
24 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
25 unless they receive additional compensation beyond their regular wages in amounts specified by
26 law.

27 32. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
28 including overtime compensation and interest thereon, together with attorneys' fees and costs of

1 suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours
2 than those fixed by the Industrial Welfare Commission is unlawful.

3 33. Defendants maintained a uniform wage practice of paying Plaintiff and the other
4 members of the CALIFORNIA OVERTIME RATE CLASS without regard to the correct
5 applicable overtime rate for the number of overtime hours they worked. As set forth herein,
6 Defendants' uniform policy and practice is to unlawfully and intentionally deny timely payment of
7 wages due for the overtime hours worked by the Plaintiff and the other members of the
8 CALIFORNIA OVERTIME RATE CLASS, and Defendants have failed to pay these California
9 employees the correct applicable overtime wages for all overtime hours worked.

10 34. In committing these violations of the California Labor Code, Defendants
11 inaccurately calculated the applicable overtime rates and consequently underpaid the actual hours
12 worked. Defendants acted in an illegal attempt to avoid the payment of all earned wages, and other
13 benefits in violation of the California Labor Code, the Industrial Welfare Commission
14 requirements and other applicable laws and regulations.

15 35. As a direct result of Defendants' unlawful wage practices as alleged herein, Plaintiff
16 and the other members of the CALIFORNIA OVERTIME RATE CLASS did not receive full
17 compensation for all overtime hours worked.

18 36. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
19 the overtime requirements of the law. None of these exemptions are applicable to Plaintiff and the
20 other members of the CALIFORNIA OVERTIME RATE CLASS. Further, Plaintiff and the other
21 members of the CALIFORNIA OVERTIME RATE CLASS are not subject to a valid collective
22 bargaining agreement that would preclude the causes of action contained herein this Complaint.
23 Rather, Plaintiff brings this Action on behalf of herself and the CALIFORNIA OVERTIME RATE
24 CLASS based on Defendants' violations of non-negotiable, non-waiveable rights provided by the
25 State of California.

26 37. During the CALIFORNIA CLASS PERIOD, Plaintiff and the other members of the
27 CALIFORNIA OVERTIME RATE CLASS were paid less per hour worked than they were
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1 entitled to, constituting a failure to pay all earned wages.

2 38. By virtue of Defendants' unlawful failure to accurately pay all earned compensation
3 to Plaintiff and the other members of the CALIFORNIA OVERTIME RATE CLASS for the true
4 number of hours they worked, the Plaintiff and the other members of the CALIFORNIA
5 OVERTIME RATE CLASS have suffered and will continue to suffer an economic injury in
6 amounts which are presently unknown to them and which will be ascertained according to proof at
7 trial.

8 39. Plaintiff and the other members of the CALIFORNIA OVERTIME RATE CLASS
9 therefore request recovery of all unpaid wages, including overtime wages, according to proof,
10 interest, attorneys' fees and costs of suit, as well as the assessment of any statutory penalties against
11 Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes.

12 **SECOND CAUSE OF ACTION**

(Failure to Pay Meal Period Compensation)

13 (On Behalf of Plaintiff and the CALIFORNIA MEAL PERIOD RATE CLASS)

14 40. Plaintiff realleges by reference, as if fully set forth herein, all of the above
15 Paragraphs.

16 41. At all relevant times, it is undisputed that Defendants failed in their affirmative
17 obligation to ensure that Plaintiff and the other members of the CALIFORNIA MEAL PERIOD
18 RATE CLASS had the opportunity to take and were provided with off-duty meal periods in
19 accordance with the mandates of the California Labor Code and the applicable IWC Wage Order.
20 As such, Defendants are responsible for paying premium compensation for missed meal periods
21 pursuant to Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order. Specifically, Labor
22 Code § 226.7(c) provides that "the employer shall pay the employee one additional hour of pay at
23 the employee's regular rate of compensation for each workday the meal or rest or recovery period
24 is not provided." Defendants, as a matter of corporate policy and procedure, regularly failed to pay
25 the meal period premium at the correct rate of pay. Plaintiff and the other members of the
26 CALIFORNIA MEAL PERIOD RATE CLASS earned commissions and non-discretionary bonus
27 or incentive pay, which was not factored into the regular rate of pay for purposes of paying meal
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1 period premium pay. Instead, during pay periods in which Plaintiff and the other members of the
2 CALIFORNIA MEAL PERIOD RATE CLASS earned commissions and non-discretionary
3 remuneration, Defendants improperly paid the meal premium pay at the base rate of pay.

4 42. Plaintiff is informed and believe and based thereon alleges that Defendants willfully
5 failed to include all remuneration, including commissions and non-discretionary remuneration, in
6 the regular rate of pay for purposes of calculating meal period premium pay, as required by Labor
7 Code §§ 226.7 and 512, and the applicable IWC Wage Order. Plaintiff further alleges that Plaintiff
8 and similarly situated employees are owed wages for the undisputed meal period violations, as set
9 forth in Defendants' own records.

10 43. Such a pattern, practice and uniform administration of corporate policy as described
11 herein is unlawful and creates an entitlement to recovery by the Plaintiff and the members of the
12 CALIFORNIA MEAL PERIOD RATE CLASS identified herein, in a civil action, for the unpaid
13 balance of the unpaid premium compensation pursuant to Labor Code §§ 226.7 and 512.

14 **THIRD CAUSE OF ACTION**

15 (Failure to Pay Rest Period Compensation)

16 (On Behalf of Plaintiff and the CALIFORNIA REST PERIOD RATE CLASS)

17 44. Plaintiff realleges by reference, as if fully set forth herein, all of the above
18 Paragraphs.

19 45. At all relevant times, it is undisputed that Defendants failed in their affirmative
20 obligation to ensure that Plaintiff and the other members of the CALIFORNIA REST PERIOD
21 RATE CLASS were authorized and permitted to take off-duty rest periods in accordance with the
22 mandates of the California Labor Code and the applicable IWC Wage Order. As such, Defendants
23 are responsible for paying premium compensation for missed rest periods pursuant to Labor Code
24 §§ 226.7 and 512 and the applicable IWC Wage Order. Specifically, Labor Code § 226.7(c)
25 provides that "the employer shall pay the employee one additional hour of pay at the employee's
26 regular rate of compensation for each workday the meal or rest or recovery period is not provided."
27 Defendants, as a matter of corporate policy and procedure, regularly failed to pay the rest period
28 premium at the correct rate of pay. Plaintiff and the other members of the CALIFORNIA REST

1 PERIOD RATE CLASS earned commissions and non-discretionary bonus or incentive pay, which
2 was not factored into the regular rate of pay for purposes of paying rest period premium pay.
3 Instead, during pay periods in which Plaintiff and the other members of the CALIFORNIA REST
4 PERIOD RATE CLASS earned commissions and non- discretionary remuneration, Defendants
5 improperly paid the meal premium pay at the base rate of pay.

6 46. Plaintiff is informed and believe and based thereon alleges that Defendants willfully
7 failed to include all remuneration, including commissions and non-discretionary remuneration, in
8 the regular rate of pay for purposes of calculating rest period premium pay, as required by Labor
9 Code §§ 226.7 and 512, and the applicable IWC Wage Order. Plaintiff further alleges that Plaintiff
10 and similarly situated employees are owed wages for the undisputed rest period violations, as set
11 forth in Defendants' own records.

12 47. Such a pattern, practice and uniform administration of corporate policy as described
13 herein is unlawful and creates an entitlement to recovery by the Plaintiff and the members of the
14 CALIFORNIA REST PERIOD RATE CLASS identified herein, in a civil action, for the unpaid
15 balance of the unpaid premium compensation pursuant to Labor Code §§ 226.7 and 512.

16 **FOURTH CAUSE OF ACTION**

17 (Failure to Provide Accurate Itemized Wage Statements)
18 (On Behalf of Plaintiff and the alleged CLASSES)

19 48. Plaintiff realleges by reference, as if fully set forth herein, all of the above
20 Paragraphs.

21 49. Labor Code Section 226 requires an employer to keep accurate, itemized pay
22 statements. Under California law, gross wages earned, the precise, actual number of hours and
23 minutes worked by a non-exempt employee, all deductions, net wages earned, inclusive dates of
24 the pay period, the name of the employee, the name and address of the legal entity that is the
25 employer, and all applicable hourly rates in effect during the pay period must be accurately
26 itemized on each pay statement.

27 50. At all times relevant herein, Defendant violated Cal. Lab. Code § 226 in that
28 Defendant failed to provide an accurate wage statement in writing that properly and accurately

1 itemized the effective overtime rates of pay for overtime hours worked by Plaintiff and the other
2 members of the CALIFORNIA OVERTIME RATE CLASS and thereby also failed to set forth the
3 correct overtime wages earned by the employees.

4 51. At all times relevant herein, Defendant further violated Cal. Lab. Code § 226 in that
5 Defendant failed to provide an accurate wage statement in writing that properly and accurately
6 itemized the effective meal period premium rates of compensation paid by Defendants to Plaintiff
7 and the other members of the CALIFORNIA MEAL PERIOD RATE CLASS for missed meal
8 breaks and thereby also failed to set forth the correct wages earned by the employees.

9 52. At all times relevant herein, Defendant further violated Cal. Lab. Code § 226 in that
10 Defendant failed to provide an accurate wage statement in writing that properly and accurately
11 itemized the effective rest period premium rates of compensation paid by Defendants to Plaintiff
12 and the other members of the CALIFORNIA REST PERIOD RATE CLASS for missed rest breaks
13 and thereby also failed to set forth the correct wages earned by the employees.

14 53. At all times relevant herein, Defendant further violated Cal. Lab. Code § 226 in that
15 Defendant failed to provide an accurate wage statement in writing that properly and accurately
16 itemized the effective sick pay compensation earned by Plaintiff and the other members of the
17 CALIFORNIA SICK PAY RATE CLASS.

18 54. Defendant knowingly and intentionally failed to comply with Cal. Lab. Code § 226,
19 causing injury and damages to Plaintiff and the other members of the alleged CLASSES. These
20 damages include, but are not limited to, costs expended calculating the correct rates for earned
21 overtime hours, meal and rest period premiums, and sick pay, as well as the amount of
22 employment taxes which were not properly paid to state and federal tax authorities. Therefore,
23 Plaintiff and the other members of the alleged CLASSES may elect to recover liquidated damages
24 of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred
25 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226,
26 in an amount according to proof at the time of trial (but in no event more than four thousand
27 dollars (\$4,000.00) for the Plaintiff and each respective member of the alleged CLASSES).

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1 61. Labor Code §246(l)(2) requires that paid sick time for nonexempt employees be
2 calculated by dividing the employee's total wages, not including overtime premium pay, by the
3 employee's total hours worked in the full pay periods of the prior 90 days of employment.

4 62. Defendants violated Labor Code § 246 by failing to pay sick pay at the regular rate
5 of pay. Plaintiffs and the other members of the CALIFORNIA SICK PAY RATE CLASS routinely
6 earned commissions and non-discretionary bonus and incentive wages, which increased their
7 regular rate of pay. However, when sick pay was paid, it was paid at the base rate of pay for
8 Plaintiffs and the other members of the CALIFORNIA SICK PAY RATE CLASS, as opposed to
9 the correct, higher regular rate of pay, as required under Labor Code §246.

10 63. The alleged pattern, practice and uniform administration of corporate policy as
11 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the
12 members of the CALIFORNIA SICK PAY RATE CLASS identified herein, in a civil action, for
13 the unpaid balance of the unpaid sick pay pursuant to Labor Code § 246.

14 64. Each named Defendant is a "person" as that term is defined under Cal. Bus. and
15 Prof. Code § 17021.

16 65. California Business & Professions Code §§ 17200, *et seq.* (the "UCL") defines
17 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
18 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition
19 as follows:

20 Any person who engages, has engaged, or proposes to engage in unfair
21 competition may be enjoined in any court of competent jurisdiction. The court
22 may make such orders or judgments, including the appointment of a receiver, as
23 may be necessary to prevent the use or employment by any person of any practice
24 which constitutes unfair competition, as defined in this chapter, or as may be
25 necessary to restore to any person in interest any money or property, real or
26 personal, which may have been acquired by means of such unfair competition.
27 Cal. Bus. & Prof. Code § 17203.

28 66. By the conduct alleged herein, Defendant has engaged and continues to engage in a
business practice which violates California law, including but not limited to, Wage Order 4-2001,
the California Code of Regulations and the California Labor Code, including Sections 226.7, 246,

1 510 and 1194, for which this Court should issue declaratory and other equitable relief pursuant to
2 Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
3 constitute unfair competition, including restitution of wages wrongfully withheld.

4 67. By the conduct alleged herein, Defendants' practices were unlawful and unfair in
5 that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous or
6 substantially injurious to employees, and were without valid justification or utility for which this
7 Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
8 Business & Professions Code, including restitution of wages wrongfully withheld.

9 68. By the conduct alleged herein, Defendants' practices were deceptive and fraudulent
10 in that Defendants' uniform policy and practice failed to pay Plaintiff, and other members of the
11 CALIFORNIA OVERTIME RATE CLASS, wages due for overtime hours worked, failed
12 accurately to record the applicable rate of all overtime hours worked, and failed to provide the
13 required amount of overtime compensation due to a systematic miscalculation of the overtime rate
14 that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
15 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
16 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
17 including restitution of wages wrongfully withheld.

18 69. By the conduct alleged herein, Defendants' practices were also unlawful, unfair and
19 deceptive in that Defendants' employment policies and practices failed to pay Plaintiff, and other
20 members of the CALIFORNIA MEAL AND REST PERIOD CLASSES, wages due for missed
21 meal and rest breaks, failed accurately to record the applicable rate of compensation for all missed
22 meal and rest breaks, and failed to provide the required amount of meal and rest period premium
23 pay due to a systematic miscalculation of the regular rate of compensation that cannot be justified.

24 70. By and through the unlawful and unfair business practices described herein,
25 Defendant has obtained valuable property, money and services from Plaintiff and the other
26 members of the alleged CLASSES, including earned wages for all overtime hours worked and for
27 all missed meal and rest breaks, and has deprived them of valuable rights and benefits guaranteed

1 by law and contract, all to the detriment of these employees and to the benefit of Defendant so as to
2 allow Defendant to unfairly compete against competitors who comply with the law.

3 71. Plaintiff and the other members of the alleged CLASSES are entitled to, and do,
4 seek such relief as may be necessary to restore to them the money and property which Defendant
5 has acquired, or of which Plaintiff the other members of the alleged CLASSES have been
6 deprived, by means of the above described unlawful and unfair business practices

7 72. Plaintiff is informed and believes, and thereon alleges, that unless restrained and
8 ordered to pay restitution and disgorge profits derived from these unlawful and unfair employment
9 practices, Defendant will continue to engage in the unlawful and unfair acts and/or omissions
10 described in this Complaint.

11 **SEVENTH CAUSE OF ACTION**
12 **(Labor Code Private Attorneys General Act of 2004: Labor Code § 2698 *et seq.*)**
13 **(On Behalf of Plaintiff, All Aggrieved Employees and the State of California)**

14 73. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
15 Defendants have violated, and continue to violate, several provisions of the California Labor Code,
including but not limited to:

- 16 a. Sections 201 – 203 (Failure to Pay All Compensation Owed at Separation);
17 b. Section 204 (Failure to Timely Pay All Wages Earned);
18 c. Section 226 (Failure to Provide Accurate Itemized Wage Statements);
19 d. Section 226.3 (Penalties for Failure to Provide Accurate Wage Statements);
20 e. Section 246 (Failure to Pay Sick Pay at the Proper Rate of Pay);
21 f. Section 510 (Unlawful Overtime Policies and Procedures);
22 g. Section 558 (Penalties for Violations in IWC Wage Orders);
23 h. Section 1174 (Failure to Maintain Accurate Time Records); and
24 i. Section 1194 (Failure to Pay Overtime Compensation);

25 74. Pursuant to Labor Code § 2699, Plaintiff bring this cause of action on behalf of
26 herself and all other current or former employees of Defendants against whom one or more of the
27 alleged violations was committed and/or is being committed (“aggrieved employees,” as defined
28

1 by Section 2699(c)).

2 75. Pursuant to Labor Code Section 2699, Plaintiff seeks to recover from Defendants
3 civil penalties for *each* Labor Code violation. The civil penalties are to be calculated at the rate at
4 which the civil penalty is to be assessed and collected by the Labor and Workforce Development
5 Agency or any of its departments, divisions, commissions, boards, agencies, or employees.

6 76. Pursuant to Labor Code Section 2699, for all provisions of the California Labor
7 Code that do not specifically provide for a civil penalty to be assessed and collected by the Labor
8 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
9 agencies, or employees, Plaintiff seeks to recover from Defendants civil penalties for *each* Labor
10 Code violation at the following rate: one hundred dollar (\$100) for each aggrieved employee per
11 pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per
12 pay period for each subsequent violation.

13 77. Pursuant to Labor Code Section 2699, Plaintiff seeks an award of reasonable
14 attorney's fees and costs for bringing this cause of action on behalf of herself, the State of
15 California and Defendants' other current and former aggrieved employees against whom one or
16 more of the alleged violations was committed.

17 78. In compliance with Labor Code Section 2699.3, on April 22, 2022, Plaintiff
18 provided Defendants and the California Labor & Workforce Development Agency ("LWDA")
19 with written notice, via online filing and via certified mail, of the specific provisions of the Labor
20 Code alleged to have been violated by Defendants, and the facts and theories to support the
21 allegations. The LWDA assigned this matter Case No. LWDA-CM-880120-22.

22 79. More than 65 days have elapsed since Plaintiff notified the LWDA of the specific
23 provisions of the Labor Code alleged to have been violated by Defendants. To date, the LWDA has
24 not notified Plaintiff nor Defendants that it intends to investigate the alleged violations contained in
25 Plaintiff's April 22, 2022 notice.

1 80. Pursuant to California Labor Code § 2699.3, Plaintiff may commence a civil action
2 against Defendants for civil penalties on behalf of herself, the State of California and Defendants'
3 other current and former aggrieved employees.

4 81. Plaintiff may maintain this cause of action against Defendants for civil penalties
5 under Labor Code Section 2698 *et seq.* regardless of whether Plaintiff's allegations contained
6 herein are certified for class treatment.

7 82. Plaintiff has not alleged any violation of Division 5 (commencing with Section
8 6300) of the Labor Code.

9 83. In compliance with Labor Code Section 2699.3, Plaintiff's April 22, 2022 notice
10 also provided Defendants and the LWDA, with written notice, via online filing and via certified
11 mail, of the specific provisions of the Labor Code—not specified in Labor Code Section 2699.5—
12 alleged to have been violated by Defendants, including Labor Code Sections 226.3, 246 and 558,
13 as well as the facts and theories to support the allegations.

14 84. To date, Defendants have not cured any of the alleged violations, and Defendants
15 have not abated any of the violations alleged by Plaintiff in his April 22, 2022 notice. At all
16 relevant times, Defendants have not been in compliance with the underlying statutes as specified in
17 Plaintiff's April 22, 2022 notice. At all relevant times, no aggrieved employee has been made
18 whole for the Labor Code violations described in Plaintiff's April 22, 2022 notice.

19 85. To date, Defendants have not given written notice to Plaintiff nor the LWDA that
20 any Labor Code violation alleged by Plaintiff in her April 22, 2022 notice has been cured.

21 86. Pursuant to California Labor Code § 2699.3(c)(2)(A), Plaintiff may commence a
22 civil action against Defendants for civil penalties on behalf of herself, the State of California and
23 Defendants' other current and former aggrieved employees with respect to the specific provisions
24 of the Labor Code—not specified in Labor Code Section 2699.5—alleged to have been violated by
25 Defendants, including Labor Code Sections 226.3, 246 and 558.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on her own behalf, and on behalf of all others similarly situated, prays for judgment as follows:

1. That the Court issue an Order certifying the alleged CLASSES and FORMER EMPLOYEE SUBCLASS, appointing the named Plaintiff as representatives of all others similarly situated and appointing the law firms representing the named Plaintiff, Blanchard, Krasner and French, Matcha Law, and the Law Office of David A. Huch, as counsel for members of the alleged CLASSES and FORMER EMPLOYEE SUBCLASS;

2. For compensatory damages according to proof to Plaintiff and the members of the alleged CLASSES;

3. For prejudgment interest at the legal rate pursuant to Civil Code §§ 3287, 3288 & 3289, and any other legal rate that may be applicable to Plaintiff's causes of action;

4. For waiting time penalties pursuant to Labor Code sections 201-203 according to proof to Plaintiff and the members of the FORMER EMPLOYEE SUBCLASS;

5. For an Order compelling Defendants to restore unpaid wages, expenditures, losses, income and other related benefits (in the form of restitution) to each of the members of the alleged CLASSES SUBCLASS who have suffered as a result of Defendants' unlawful and unfair employment practices alleged herein;

6. For an order compelling Defendants to disgorge and pay over to Plaintiff and the members of the alleged CLASSES all profits and savings resulting from Defendants' unlawful and unfair business practices alleged herein;

7. For issuance of a permanent injunction enjoining Defendants, and each of them, from continuing to engage in the unlawful and unfair business practices alleged herein;

8. For attorneys' fees and litigation expenses pursuant to all applicable statutes, including Labor Code sections 218.5, 226 and 1194, and as otherwise permitted by law;

9. For civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004; and

10. For such other and further relief as the court deems just and proper;

DATED: June 29, 2022

BLANCHARD, KRASNER & FRENCH

/s/ David Hawkes

DAVID C. HAWKES

Attorneys for Plaintiff, BRITTANI BENNETT,
Individually, on behalf of all others similarly situated,
and on behalf of the general public.

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