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12 and the Aggrieved Employees

ENDORSED
FILED
ALAMEDA COUNTY

OCT 19 2016

CLERK OF THE SUPERIOR COURT
By MICHELLE BANKS Deputy

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

12 PATRICIA MCDONALD, individually,)
13 and on behalf of all other similarly)
14 situated aggrieved employees,)
15 Plaintiff,)
16 vs.)
17 CHECK 'N GO OF CALIFORNIA,)
18 INC., and DOES 1 through 100,)
19 inclusive,)
20 Defendants.)

Case No. RG16810746

**SECOND AMENDED PRIVATE
ATTORNEYS GENERAL ACT COMPLAINT
FOR CIVIL PENALTIES; INDIVIDUAL
COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF AND RESTITUTION**

[DEMAND FOR JURY TRIAL]

Representative Plaintiff alleges as follows:

PRELIMINARY STATEMENT

1. This is a representative action seeking unpaid civil penalties under the California Labor Code Private Attorneys General Act of 2004, codified as California Labor Code section 2698, *et seq.* ("PAGA"). Plaintiff Patricia McDonald ("Plaintiff") brings this action on behalf of herself as an aggrieved employee and on behalf of all other persons similarly situated ("Aggrieved Employees") who are or have been employed by Check 'n Go of California, Inc. and/or Does 1 through 100, inclusive (collectively "Defendant" and/or "Check 'n Go") as non-exempt store employees, including as non-exempt managerial employees, within the State of

1 California at any time after May 11, 2015. Plaintiff also brings claims for violations of the Labor
2 Code and Business & Professions Code in her individual capacity.

3 2. The "Relevant Time Period" is designated as the time from May 11, 2015 through
4 the date of trial and is based upon the allegation that Defendant's violations of California's wage
5 and hour laws, as described more fully below, have been ongoing during that time.

6 3. During the Relevant Time Period, Defendant has had a consistent policy of, *inter*
7 *alia*, (1) willfully failing to provide meal periods and/or rest periods to Plaintiff and/or
8 Aggrieved Employees, (2) requiring its non-exempt store employees, including Plaintiff and/or
9 Aggrieved Employees, to conduct duties for and/or under the direction of Check 'n Go without
10 paying these employees wages (including overtime wages) for all compensable time, (3) failing
11 to adequately reimburse Plaintiff and/or Aggrieved Employees for business expenses related to
12 the operations of Defendant, (4) willfully failing to pay compensation owing in a prompt and
13 timely manner to Plaintiff and/or Aggrieved Employees whose employment with Check 'n Go
14 was terminated, and (5) willfully failing to provide Plaintiff and Aggrieved Employees with
15 accurate semimonthly itemized statements of the total numbers of hours each of them worked,
16 the applicable deductions, and the applicable hourly rates in effect during the applicable pay
17 period.

18 INTRODUCTION

19 4. Plaintiff is informed and believes and, based thereon, alleges that within the
20 Relevant Time Period, Defendant operated at least approximately 215 loan and check cashing
21 stores across the State of California. In doing so, Defendant has employed hundreds of
22 individuals as non-exempt store employees, positions which are entitled to full, uninterrupted
23 and statutorily-mandated meal and rest periods, as well as other benefits of employment as set
24 forth herein.

25 5. Despite actual knowledge of these facts and legal mandates, Check 'n Go has and
26 continues to enjoy an advantage over its competition and a resultant disadvantage to its workers
27 by electing not to sufficiently offer meal and rest periods to its California non-exempt store
28 employees, by not providing duty-free and uninterrupted meal and rest periods to its California

1 non-exempt store employees, by failing to adequately reimburse its employees for all business
2 expenses related to Check 'n Go's operations, by not providing all regular and/or overtime pay
3 when due and/or when certain Aggrieved Employees' employment with Check 'n Go terminated,
4 and by willfully failing to provide Plaintiff and Aggrieved Employees with accurate
5 semimonthly itemized wage statements.

6 6. Plaintiff is informed and believes and, based thereon, alleges that officers of
7 Check 'n Go knew of these facts and legal mandates yet, nonetheless, repeatedly authorized
8 and/or ratified the violation of the laws cited herein.

9 7. Despite Check 'n Go's knowledge of Plaintiff's and Aggrieved Employees'
10 entitlement to these benefits of employment, Check 'n Go failed to provide same, for all
11 applicable work periods, in violation of California state statutes and California Industrial Welfare
12 Commission Wage Order No. 4 and Title 8 of the California Code of Regulations. This action is
13 brought to redress and end this long-time pattern of unlawful conduct once and for all.

14 **JURISDICTION AND VENUE**

15 8. This Court has jurisdiction over the Representative Plaintiff's and Aggrieved
16 Employees' claims for civil penalties sought herein under the California Labor Code.

17 9. Venue as to Defendant is proper in this Court pursuant to California Code of Civil
18 Procedure section 395(a). Defendant maintains facilities and offices in the County of Alameda,
19 transacts business, has agents, and is otherwise within this Court's jurisdiction for purposes of
20 service of process. The unlawful acts alleged herein have a direct effect on the Representative
21 Plaintiff and those similarly situated within the State of California and within the County of
22 Alameda. Defendant operates facilities and has employed numerous Aggrieved Employees in the
23 County of Alameda as well as in other counties within the State of California.

24 **PLAINTIFF**

25 10. Representative Plaintiff Patricia McDonald is a natural person and was, during the
26 relevant time period identified herein, employed by Defendant Check 'n Go as a non-exempt
27 store employee at one or more of Defendant's California stores.

28

1 11. At all times herein relevant, Representative Plaintiff Patricia McDonald was and
2 is now an individual within the category of Aggrieved Employees further described and defined
3 herein.

4 12. As used throughout this Complaint, the term "Aggrieved Employees" refers to the
5 named Plaintiff herein as well as each and every person employed as a non-exempt store
6 employee at one or more of Defendant's California stores.

7 13. Plaintiff brings this action on behalf of herself and as a representative action,
8 pursuant to California Labor section 2699, and on behalf of Aggrieved Employees similarly
9 situated and proximately damaged by the unlawful conduct described herein.

10 **DEFENDANT**

11 14. At all times herein relevant, Defendant Check 'n Go of California, Inc. was/is an
12 Ohio corporation and/or other form of business entity, duly licensed, located and doing business
13 in, but not limited to, the County of Alameda, in the State of California.

14 15. Plaintiff is informed and believes and, based thereon, alleges that Defendant
15 Check 'n Go directly or indirectly employs and has employed and/or exercised control over the
16 wages, hours, and working conditions of Plaintiff and Aggrieved Employees within various
17 California counties, including, but not limited to, the County of Alameda.

18 16. Those defendants identified as Does 1 through 100, inclusive, are and were at all
19 relevant times herein-mentioned, business affiliates, successors- and/or predecessors-in-interest,
20 officers, directors, partners, and/or managing agents of some or each of the remaining
21 defendants. Plaintiff is informed and believes and, on that basis, alleges that, at all relevant times
22 herein-mentioned, each of the defendants identified as Does 1 through 100, inclusive, employed
23 and/or exercised control over the wages, hours, and/or working conditions of Plaintiff and
24 Aggrieved Employees at various California locations, as identified in the preceding paragraph.

25 17. Plaintiff is unaware of the true names and capacities of the defendants sued herein
26 as Does 1 through 100, inclusive, and therefore sues these defendants by such fictitious names.
27 Plaintiff will seek leave to amend this Complaint when such names are ascertained. Plaintiff is
28 informed and believes and, on that basis, alleges that each of the fictitiously-named defendants

1 is/was responsible in some manner for, gave consent to, ratified and/or authorized the conduct
2 herein-alleged and that liability for civil penalties as to Plaintiff and Aggrieved Employees, as
3 herein-alleged, was proximately caused thereby.

4 18. Plaintiff is informed and believes and, on that basis, alleges that, at all relevant
5 times herein-mentioned, each of the defendants was the agent and/or employee of each of the
6 remaining defendants and, in doing the acts herein alleged, was acting within the course and
7 scope of such agency and/or employment.

8 **REPRESENTATIVE ACTION ALLEGATIONS**

9 19. Plaintiff brings this action on behalf of herself and as a representative action on
10 behalf of the following category of Aggrieved Employees:

11 *All persons who are and/or were employed as non-exempt store employees by*
12 *Check 'n Go in one or more California Check 'n Go stores between April 8, 2015*
and the present.

13 20. Defendant and its officers and directors are excluded from the category of
14 Aggrieved Employees defined in the preceding paragraph.

15 **COMMON FACTUAL ALLEGATIONS**

16 21. Defendant Check 'n Go has, for years, knowingly failed to properly compensate
17 Plaintiff and the Aggrieved Employees for all wages earned and due (including, but not
18 necessarily limited to, overtime wages and/or compensation for missed meal and/or rest periods).
19 Defendant has declined to pay these wages, even upon an Aggrieved Employee's termination or
20 resignation from employment, in blatant violation of California Labor Code sections 201-204,
21 inclusive. More than 30 days have passed since certain Aggrieved Employees have left
22 Defendant's employ.

23 22. Moreover, Defendant has failed to provide Plaintiff and Aggrieved Employees
24 with net ten minute rest periods for work shifts exceeding four hours or a major fraction thereof
25 and has failed to provide uninterrupted, unrestricted meal periods of at least 30 minutes for work
26 shifts exceeding five hours.

27 23. Defendant's customer service policies combined with, *inter alia*, the understaffing
28 of its stores frequently required Plaintiff and Aggrieved Employees to work through their meal

1 periods while clocked out and to often forego taking rest breaks altogether. Further, Defendant
2 failed to reimburse Plaintiff and Aggrieved Employees for business expenses by, without
3 limitation, requiring Plaintiff and Aggrieved Employees to use their personal vehicles to make
4 bank deposits and/or other business trips.

5 24. Plaintiff is informed and believes, and on that basis alleges, that the working
6 conditions and policies at her location were typical of those of Defendant's other locations
7 throughout the state of California. Plaintiff's experience working for Defendant indicates that
8 most, if not all, of Defendant's policies and procedures, including without limitation those
9 governing the work hours, timekeeping, customer service, and payment of wages for non-exempt
10 employees were uniform and set at the corporate level.

11 25. Defendant also failed to provide Plaintiff and Aggrieved Employees with accurate
12 semimonthly itemized statements of the total number of hours worked by each, and all applicable
13 hourly rates in effect during each pay period, in violation of California Labor Code section 226.
14 In doing so, Defendant has not only failed to pay its workers the full amount of compensation
15 due, it has until now, effectively shielded itself from its employees' scrutiny for its unlawful
16 conduct by concealing the magnitude (e.g., the full numbers of hours worked) and financial
17 impact of its wrongdoing.

18 26. As a direct and proximate result of Defendant's Labor Code violations, as set
19 forth herein, Plaintiff and Aggrieved Employees are entitled to recover civil penalties (pursuant
20 to California Labor Code section 2699(a)) in an amount to be established at trial. Twenty-five
21 percent of such penalties recovered shall be paid to Plaintiff and the Aggrieved Employees and
22 the remaining seventy-five percent shall be paid to the California Labor and Workforce
23 Development Agency ("LWDA"), pursuant to California Labor Code section 2699(i). As a
24 further direct and proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiff
25 and Aggrieved Employees are also entitled to recover attorneys' fees and litigation costs
26 pursuant to California Labor Code section 2699(g) and/or California Code of Civil Procedure
27 section 1021.5.
28

1 27. Plaintiff has complied with the procedures for bringing suit specified in California
2 Labor Code section 2699.3. By letter dated April 8, 2016, Plaintiff gave written notice, by
3 certified mail, to the LWDA and Defendant of the specific provisions of the California Labor
4 Code alleged to have been violated, including the facts and theories to support those violations.
5 Moreover, the LWDA has not responded within the statutory time period and has elected not to
6 pursue any action against Defendant based on the allegations contained herein. The information
7 contained in the April 8, 2016, letter was augmented by a letter dated August 10, 2016, sent to
8 the LWDA via on-line submission and to Defendant by certified mail.

9
10 **FIRST CAUSE OF ACTION**
11 **PRIVATE ATTORNEYS GENERAL ACT CLAIM**
 (California Labor Code §§ 2699)

12 28. Plaintiff incorporates in this cause of action each and every allegation of the
13 preceding paragraphs, with the same force and effect as though fully set forth herein.

14 29. California Labor Code section 2699(a) states:

15 Notwithstanding any other provision of the law, any provision of this code
16 that provides for a civil penalty to be assessed and collected by the Labor
17 and Workforce Development Agency or any of its departments, divisions,
18 commissions, boards, agencies, or employees, for a violation of this code,
19 may, as an alternative, be recovered through a civil action brought by an
 aggrieved employee on behalf of himself or herself and other current or
 former employees...

20 30. Plaintiff (and each and every other Aggrieved Employee defined herein) is an
21 “aggrieved employee,” as defined by California Labor Code section 2699(c), because they were
22 employed by Defendant and were among the many employees against whom violations of law
23 were committed.

24 31. Plaintiff has met all of the requirements set forth in California Labor Code section
25 2699.3 necessary to maintain a civil action against Defendant for violations of (and/or recovery
26 under) California Labor Code sections 200-204, inclusive, 226, 226.7, 510, 512, 1174, 1194,
27 1194.2, 1197, 1198, and/or 2802.

1 32. Plaintiff brings this action on behalf of herself and all Aggrieved Employees
2 alleging violations of the California Labor Code sections cited in the preceding paragraph.

3 33. As a direct and proximate result of Defendant's unlawful conduct, as set forth
4 herein, Plaintiff and Aggrieved Employees are entitled to recover various penalties as provided
5 by California Labor Code section 2699, in an amount to be established at trial, as well as costs
6 and attorneys' fees, pursuant to statute.

7
8 **SECOND CAUSE OF ACTION**
9 **FAILURE TO PROVIDE MEAL AND REST PERIODS**
10 **(California Labor Code §§ 226.7 and 512)**

11 34. Plaintiff incorporates in this cause of action each and every allegation of the
12 preceding paragraphs, with the same force and effect as though fully set forth herein.

13 35. At all relevant times, Defendant was aware of and was under a duty to comply
14 with California Labor Code §§ 226.7 and 512.

15 36. California Labor Code §226.7 provides:

- 16 (a) No employer shall require any employee to work during
17 any meal or rest period mandated by an applicable order of
18 the Industrial Welfare Commission.
19 (b) If an employer fails to provide an employee a meal period
20 or rest period in accordance with an applicable order of the
21 Industrial Welfare Commission, the employer shall pay the
22 employee one additional hour of pay at the employee's
23 regular rate of compensation for each work day that the
24 meal or rest period is not provided.

25 37. Moreover, California Labor Code § 512 provides:

26 An employer may not employ an employee for a work period of more than five
27 hours per day without providing the employee with a meal period of not less than
28 30 minutes, except that if the total work period per day of the employee is no
more than six hours, the meal period may be waived by mutual consent of both
the employer and employee. An employer may not employ an employee for a
work period of more than 10 hours per day without providing the employee with a
second meal period of not less than 30 minutes, except that if the total hours
worked is no more than 12 hours, the second meal period may be waived by
mutual consent of the employer and the employee only if the first meal period was
not waived.

29 38. Due to, *inter alia*, Defendant's customer service requirements and its failure to
adequately staff its retail locations, Plaintiff was often required to work through her meal

1 periods. For these same reasons, Plaintiff was regularly required to forego taking rest breaks
2 altogether.

3 39. By failing to consistently provide uninterrupted and unrestricted meal and rest
4 periods to Plaintiff, Defendant violated California Labor Code §§ 226.7 and/or 512, and §§ 11
5 and 12 of the IWC Wage Order No. 7.

6 40. Section 11 of this Wage Order provides:

7 (A) No employer shall employ any person for a work period of more
8 than five (5) hours without a meal period of not less than 30 minutes

9 (B) An employer may not employ an employee for a work period of
10 more than ten (10) hours per day without providing the employee with a
11 second meal period of not less than 30 minutes

12 (C) If an employer fails to provide an employee a meal period in
13 accordance with the applicable provisions of this order, the employer shall
14 pay the employee one (1) hour of pay at the employee's regular rate of
15 compensation for each workday that the meal period is not provided.

16 41. Moreover, Section 12 of this Wage Order provides:

17 (A) Every employer shall authorize and permit all employees to take
18 rest periods, which insofar as practicable shall be in the middle of each
19 work period. The authorized rest period time shall be based on the total
20 hours worked daily at the rate of ten (10) minutes net rest time per four (4)
21 hours or major fraction thereof

22 (B) If an employer fails to provide an employee a rest period in
23 accordance with the applicable provisions of this order, the employer shall
24 pay the employee one (1) hour of pay at the employee's regular rate of
25 compensation for each workday that the rest period is not provided.

26 42. By failing to consistently provide full, uninterrupted and duty-free meal breaks of
27 no less than thirty-minutes, and/or ten-minute rest periods to Plaintiff, Defendant violated
28 California Labor Code and IWC Wage Order provisions.

43. Plaintiff is informed and believes and, on that basis, alleges that Defendant has
never paid the one hour of compensation to Plaintiff due to its violations of the California Labor
Code and applicable IWC Wage Order provisions.

44. As a direct and proximate result of Defendant's unlawful conduct, as set forth
herein, Plaintiff has sustained damages, including lost compensation resulting from missed meal
and/or rest periods, in an amount to be established at trial. As a further direct and proximate

1 result of Defendant's unlawful conduct, as set forth herein, Plaintiff is entitled to recover
2 "waiting time" and other penalties, in amounts to be established at trial, as well as attorneys' fees
3 and costs, and restitution, pursuant to statute.

4
5 **THIRD CAUSE OF ACTION**
6 **UNLAWFUL FAILURE TO PAY WAGES**
7 **(Violation of IWC Wage Order and Labor Code §§ 200-204, 510, 1194, and 1198)**

8 45. Plaintiff incorporates in this cause of action each and every allegation of the
9 preceding paragraphs, with the same force and effect as though fully set forth herein.

10 46. During the four years preceding the filing of this pleading, Plaintiff performed
11 work for Defendant, oftentimes in excess of eight hours in a workday and/or forty hours in a
12 workweek. The precise number of hours will be proven at trial.

13 47. During the four years preceding the filing of this pleading, Defendant refused to
14 compensate Plaintiff for all of the wages earned, in violation of the applicable IWC Wage Order
15 and provisions of the California Labor Code.

16 48. Defendant refused to compensate employees for time spent working through meal
17 periods. To date, Plaintiff has never been compensated for time spent working through meal
18 periods.

19 49. Similarly, Defendant refused to compensate employees for missed breaks when,
20 among other factors, Defendant's customer service requirements and its failure to adequately
21 staff its retail locations caused Plaintiff to receive less than 30 uninterrupted and duty-free
22 minutes for meal breaks or 10 uninterrupted and duty-free minutes for rest breaks.

23 50. Moreover, during the four years preceding the filing of this pleading, Plaintiff's
24 employment with Defendant terminated, yet she was not paid all wages due upon said
25 termination or within 72 hours of said resignation of employment therefrom. Said non-payment
26 of all wages due was the direct and proximate result of a willful refusal to do so by Defendant.

27 51. At all relevant times, Defendant was aware of, and was under a duty to comply
28 with, the wage (including overtime wage) provisions of the California Labor Code including, but
not limited to, California Labor Code §§ 200-204, 510, 1194 and 1198.

1 52. California Labor Code § 510, in pertinent part, provides:

2 Any work in excess of eight hours in one workday and any work in excess
3 of 40 hours in any one workweek and the first eight hours worked on the
4 seventh day of work in any one workweek shall be compensated at the rate
5 of no less than one and one-half times the regular rate of pay for an
6 employee ...

7 53. California Labor Code § 1194, in pertinent part, provides:

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

14 54. Finally, California Labor Code § 1198, in pertinent part, provides:

15 The maximum hours of work and the standard conditions of labor fixed by
16 the commission shall be the maximum hours of work and the standard
17 conditions of labor for employees. The employment of any employee for
18 longer hours than those fixed by the order or under conditions of labor
19 prohibited by the order is unlawful.

20 55. Plaintiff was employed by Defendant during the four years preceding the filing of
21 this pleading and was thereafter terminated from her position, yet she was not paid all premium
22 (overtime) wages due upon said termination or within 72 hours thereof. Said non-payment was
23 the direct and proximate result of a wilful refusal to do so by Defendant.

24 56. More than thirty days have elapsed since Plaintiff was terminated from
25 Defendant's employ.

26 57. As a direct and proximate result of Defendant's unlawful conduct, as set forth
27 herein, Plaintiff has sustained damages, including loss of earnings for hours (including overtime
28 hours) worked on behalf of Defendant, in an amount to be established at trial. As a further direct
and proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiff is entitled to
recover penalties (including "waiting time" penalties of up to thirty days' wages, pursuant to
California Labor Code § 203) in amounts to be established at trial, as well as attorneys' fees and
costs, and restitution, pursuant to statute.

FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(California Labor Code §§ 226 and 1174)

58. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

59. California Labor Code § 226(a) provides:

Each employer shall semi-monthly, or at the time of each payment of wages, furnish each of his or her employees either as a detachable part of the check, draft or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized wage statement in writing showing: (1) gross wages earned; (2) total number of hours worked by each employee whose compensation is based on an hourly wage; (3) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (4) net wages earned; (5) the inclusive date of the period for which the employee is paid; (6) the name of the employee and his or her social security number; and (7) the name and address of the legal entity which is the employer.

60. Moreover, California Labor Code § 226(e) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

61. Finally, California Labor Code § 1174(d) provides:

Every person employing labor in this state shall ... [k]eep, at a central location in the state ... payroll records showing the hours worked daily by and the wages paid to ... employees These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

62. Defendant has failed to provide timely, accurate itemized wage statements to Plaintiff in accordance with California Labor Code § 226. Plaintiff is informed and believes and, on that basis, alleges that none of the statements provided by Defendant accurately reflected actual gross wages earned, net wages earned, or the appropriate deductions for Plaintiff.

63. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiff is entitled to recover penalties, in amounts to be established at trial, as well as attorneys' fees and costs, pursuant to statute.

FIFTH CAUSE OF ACTION
FAILURE TO REIMBURSE EXPENSES AND/OR PROHIBITED CASH BOND
(California Labor Code §§ 406 and 2802)

61. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

62. During the four years preceding the filing of this pleading, Defendant required Plaintiff to incur expenses related to the business operations of Defendant. These expenses included, without limitation, mileage for making trips to deposit cash at bank(s). These expenditures were incurred in direct consequence of the discharge of the duties of Plaintiff, or of her obedience to the directions of the employer and have not yet been reimbursed by Defendant.

63. At all relevant times, Defendant was aware of and was under a duty to comply with various provisions of the California Labor Code, including, but not necessarily limited to §§ 406 and 2802(a).

64. California Labor Code § 406 provides:

Any property put up by an employee, or applicant as a part of the contract of employment, directly or indirectly, shall be deemed to be put up as a bond and is subject to the provisions of this article whether the property is put up on a note or as a loan or an investment and regardless of the wording of the agreement under which it is put up.

65. California Labor Code § 2802(a) provides:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

66. By requiring Plaintiff to incur uncompensated expenses in direct consequence of the discharge of her duties, Plaintiff was forced and/or brought to contribute to the capital and expenses of Defendant's business which is legally a cash bond and which must be refunded by Defendant to Plaintiff.

1 67. California Labor Code § 2802 (b) and (c) provides for interest at the statutory post
2 judgment rate of ten percent simple interest per annum from the date of the expenditure, plus
3 attorneys' fees to collect reimbursement.

4 68. Therefore, Plaintiff demands reimbursement for expenditures or losses incurred in
5 direct consequence of the discharge of her duties, or of her obedience to the directions of the
6 employer, plus return of all cash bonds or other coerced investments in the business of
7 Defendant, with interest, at the statutory rate, plus attorneys' fees.

8
9 **SIXTH CAUSE OF ACTION**
10 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
11 **(California Business & Professions Code §§ 17200-17208)**

12 69. Plaintiff incorporates in this cause of action each and every allegation of the
13 preceding paragraphs, with the same force and effect as though fully set forth herein.

14 70. Plaintiff further brings this cause of action seeking equitable and injunctive relief
15 to stop Defendant's misconduct, as complained of herein, and to seek restitution of the amounts
16 Defendant acquired through the unfair, unlawful, and fraudulent business practices described
17 herein.

18 71. Defendant's knowing conduct, as alleged herein, constitutes an unlawful and/or
19 fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-
20 17208. Specifically, Defendant conducted business activities while failing to comply with the
21 legal mandates cited herein.

22 72. Defendant's knowing failure to adopt policies in accordance with and/or adhere to
23 these laws, all of which are binding upon and burdensome to its competitors, engenders an unfair
24 competitive advantage for Defendant, thereby constituting an unfair business practice under
25 California Business & Professions Code §§ 17200-17208.

26 73. Defendant has clearly established a policy of accepting a certain amount of
27 collateral damage, as represented by the damages to Plaintiff herein alleged, as incidental to its
28 business operations, rather than accept the alternative costs of full compliance with fair, lawful,

1 and honest business practices, ordinarily borne by its responsible competitors and as set forth in
2 legislation and the judicial record.

3
4
5 **RELIEF SOUGHT**

6 **WHEREFORE**, the Representative Plaintiff, on behalf of herself and the Aggrieved
7 Employees, prays for judgment and the following specific relief against Defendants, and each of
8 them, jointly and separately, as follows:

9 1. That the Court declare, adjudge, and decree that this action is a proper
10 representative action pursuant to California Labor Code section 2699;

11 2. That the Court make an award to Plaintiff and Aggrieved Employees of civil
12 penalties for violations of the California Labor Code, pursuant to California Labor Code section
13 2699;

14 3. That the Court make an award to Plaintiff of one hour of wages for each duty-
15 free, uninterrupted meal period that was not provided;

16 4. That the Court make an award to Plaintiff of one hour of wages for each workday
17 that a duty-free, uninterrupted rest period was not provided;

18 5. That the Court declare, adjudge, and decree that Defendant violated California
19 Labor Code §§ 406 and 2802(a) by, *inter alia*, willfully failing to reimburse Plaintiff for
20 expenses incurred on behalf of Defendant;

21 6. That the Court declare, adjudge, and decree that Defendant violated the wage
22 provisions of the California Labor Code and the applicable California Industrial Welfare
23 Commission Wage Order as to Plaintiff;

24 7. That the Court declare, adjudge, and decree that Plaintiff was, at all times relevant
25 herein, entitled to be paid overtime for work beyond eight hours in a day and forty hours in a
26 week;

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1 8. That the Court make an award to Plaintiff of damages and/or restitution for the
2 amount of unpaid overtime compensation, including interest thereon, and penalties in an amount
3 to be proven at trial;

4 9. That the Court order Defendant to pay restitution to Plaintiff due to Defendant's
5 unlawful activities, pursuant to California Business and Professions Code §§ 17200-17208;

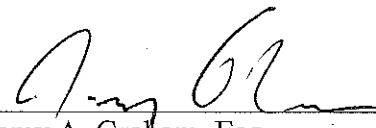
6 10. That the Court further enjoin Defendant, ordering it to cease and desist from
7 unlawful activities in violation of California Business and Professions Code §§ 17200, *et seq.*;

8 11. For reasonable attorneys' fees, pursuant to California Labor Code section 2699(g)
9 and/or California Code of Civil Procedure section 1021.5; and

10 12. For costs of suit and any and all other such relief as the Court deems just and
11 proper.

12
13 Dated: October 17, 2016

SCOTT COLE & ASSOCIATES, APC

14
15 By: 

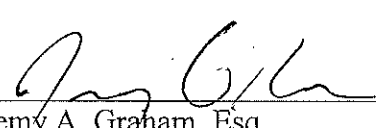
16 Jeremy A. Graham, Esq.
17 Attorneys for Representative Plaintiff and
18 the Aggrieved Employees
19

20 **JURY DEMAND**

21 Plaintiff and the Aggrieved Employees hereby demand trial by jury of all issues triable as
22 of right by jury.

23
24 Dated: October 17, 2016

SCOTT COLE & ASSOCIATES, APC

25
26 By: 

27 Jeremy A. Graham, Esq.
28 Attorneys for Representative Plaintiff and
the Aggrieved Employees