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ELECTRONICALLY FILED

Superior Court of California,
 County of Solano

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By: E. DeRogatis, Deputy Clerk

**ASSIGNED TO
 JUDGE CHRISTINE N DONOVAN
 FOR ALL PURPOSES**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SOLANO

Montserrat Baez-Anzorena,
 individually and on behalf of all similarly
 situated individuals,

Plaintiff,

vs.

R. & P. Properties, Inc., a California
 Corporation; and **Does 1-10,** inclusive;

Defendants.

CASE NO. CU25-00903

CLASS ACTION COMPLAINT FOR:

- 1) Failure to Pay Minimum and Regular Rate Wages;**
- 2) Failure to Pay Overtime Wages;**
- 3) Failure to Provide Compliant Meal Periods;**
- 4) Failure to Provide Compliant Rest Periods;**
- 5) Failure to Reimburse Necessary Business Expenses;**
- 6) Failure to Maintain and Provide Complete and Accurate Wage Statements;**
- 7) Failures to Pay Wages When Due; and**
- 8) Violation of California Business & Professions Code §§ 17200, et seq.**

Jury Trial Requested

1 Plaintiff, by and through her counsel of record, hereby brings this action on behalf of her-
2 self and all other similarly situated current and former employees and alleges as follows:

3 **PARTIES**

4 1. At all relevant times for this Complaint, Plaintiff **Montserrat Baez-Anzorena**,
5 (“Plaintiff”) was a resident of California. Plaintiff was employed by Defendant as an hourly, non-
6 exempt employee from approximately August 2018 to June 24, 2024, when she was construc-
7 tively discharged. Unless otherwise specified, Plaintiff was subject to the policies and practices
8 described in this complaint at all times during her employment with Defendant.

9 2. Defendant **R. & P. Properties, Inc.** (“R&P”) is a California corporation with a
10 principal place of business of 9249 Sierra College Blvd., Roseville, CA 95661. **R. & P. Proper-**
11 **ties, Inc.** operates and does business as a Best Western Heritage Inn in Vacaville, CA, where
12 Plaintiff was employed. On information and belief, R&P operates numerous other hotels
13 throughout California and employs at least 50 hourly, non-exempt employees.

14 3. Plaintiff is not currently aware of the names and true identities of defendants Does
15 1-10. Plaintiff reserves the right to amend this complaint to allege their true names and capacities
16 when this information is available. Each Doe defendant is responsible for the damages alleged
17 pursuant to each of the causes of action asserted, either through its own conduct, or vicariously
18 through the conduct of others. All further references in this complaint to any of the named De-
19 fendants include the fictitiously named defendants.

20 4. At all times alleged herein, each Defendant was an agent, servant, joint employer,
21 employee, partner, and/or joint venture of every other Defendant and was acting within the
22 scope of their relationship with each other. Moreover, the conduct of every Defendant was rati-
23 fied by each other Defendant.

24 **VENUE AND JURISDICTION**

25 5. The court has jurisdiction over all causes of action in this complaint pursuant to
26 Article VI, § 10 of the California Constitution. No federal question is at issue; Plaintiff relies
27 solely on California statutes and law, including the Labor Code and the Business & Professions
28 Code. Because putative class members were employed by Defendant, the policies and practices

complained of herein were implemented in Solano County, and Defendant transacts business within Solano County, Defendant is within the jurisdiction of the court for service of process. Moreover, Business & Professions Code § 17204 provides that any person acting on their own behalf may bring an action in any court of competent jurisdiction.

6. Venue as to each Defendant is proper in this Superior Court pursuant to California Code of Civil Procedure § 395. Defendant transacts business and/or has offices in this county, employs putative class members in this County, and the acts and omissions alleged herein took place in this county.

CLASS ACTION ALLEGATIONS

7. As a matter of uniform and systemic policy, Defendant required Plaintiff and Class Members to work additional hours off the clock while failing to pay them at their applicable regular or overtime rates of pay, or even at minimum wage rates, for this off-the-clock work as required by Labor Code §§ 223, 510, 1182.12, 1194, 1194.2, 1197.1, and 1198.

8. Defendant has consistently required its non-exempt employees to clock out at scheduled shift-ends but continue working after that – either until tasks were completed or their replacements showed up. Plaintiff and Class Members were not permitted to record this time as “hours worked,” thus were not compensated for this time. Plaintiff was told by her manager that this policy was the result of the owners’ unwillingness to pay overtime wages to employees.

9. Further, throughout a portion of the class period, Plaintiff and Class Members were required to clock out for but continue working through meal periods because Defendant did not permit them to leave their working areas without coverage and failed to provide them with such coverage, resulting in yet more unpaid off-the-clock work.

10. As a matter of uniform and systemic policy, Defendant has consistently denied its non-exempt employees opportunities to take compliant 30-minute meal periods and 10-minute rest periods in accordance with Labor Code § 226.7.

11. Early during her employment, Defendant required Plaintiff and Class Members to sign On Duty Meal Period waivers, which stated that if they worked a shift without coverage, then they would work 8 hours without clocking out for a meal period and could eat a meal while

1 performing their regular work duties. In reality, Plaintiff and Class Members were required to
2 take on-duty meal periods every day, regardless of whether coverage was available. Further,
3 Plaintiff was told by her manager at the time that the owners said if she did not sign this waiver
4 then her hours would be cut.

5 12. Moreover, these on-duty meal period waivers were not valid. On-duty meal periods
6 are only allowed when the “nature of the work” prevents the employee from being relieved from
7 all duties. The “nature of the work” exception applies in very narrow situations (namely, where
8 there is an external force requiring employee to be on duty at all times and where the employee
9 is the sole employee). *See Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 266 (2016), *as mod-*
10 *ified on denial of reh’g* (Mar. 15, 2017) (on duty exception is “exceedingly narrow”); *Abdullah v.*
11 *U.S. Sec. Assocs., Inc.*, 731 F.3d 952, 959 (9th Cir. 2013). Upon information and belief, these
12 elements were not met here.

13 13. In or about 2023, a new manager named Alfonso Escalante came onboard. Some-
14 time after this, Plaintiff and Class Members were told to start clocking out for their meal periods.
15 However, in practice, they still were not permitted to leave during meal periods unless they had
16 coverage, and their meal periods were regularly interrupted by directions from managers to per-
17 form work duties.

18 14. Further, Mr. Escalante required Plaintiff and Class Members to sign blanket first
19 and second meal period waivers for whenever they worked no more than 6 hours and 12 hours
20 in a workday respectively. Mr. Escalante told Plaintiff that if she did not sign the waiver then she
21 would be fired. As these waivers were compulsory, they were invalid.

22 15. With respect to rest periods, Plaintiff and Class Members were instructed by man-
23 agers to not take them. When Plaintiff or other Class Members attempted to take rest breaks,
24 they were told by managers things like “we don’t pay you sit around and do nothing.”

25 16. Further, in December 2020, Defendant required Plaintiff to sign a page of a new
26 employee handbook containing a written policy stating that employees could not leave the hotel
27 premises without notifying and obtaining permission from their manager, that they must clock
28 out when leaving and clock back in when returning, that they then must also check in with their

1 manager upon returning, and that failing to do so could result in discipline including discharge.
2 This written policy was located on the same page as and directly below a written policy on rest
3 periods and included an exception for meal periods only (as written, but not in practice), clearly
4 indicating that Defendant's non-exempt employees were not allowed to leave the premises dur-
5 ing rest periods without permission, and even if they were permitted they would not be paid for
6 that time.

7 17. In failing to authorize and/or permit meal and rest periods, Defendant has also
8 implemented a uniform policy of denying premium pay in lieu of meal and rest periods to its
9 non-exempt employees, notwithstanding its actual knowledge that such employees were uni-
10 formly denied compliant meal and rest periods.

11 18. As a matter of uniform and systemic policy, Defendant failed to reimburse their
12 non-exempt employees for necessary business expenditures pursuant to Labor Code section
13 2802.

14 19. Plaintiff's and Class Members' managers communicated with them about work-
15 related matters through phone calls, individual text messages, and group text messages sent to
16 their personal cell phones before, during, and after their shifts. Plaintiff and Class Members were
17 expected to respond regardless of whether they were on-the-clock or off-the-clock, for example
18 about scheduling matters.

19 20. However, Defendant failed to reimburse Plaintiff and Class Members for reasona-
20 ble costs associated with utilizing their personal cell phones for these work-related purposes.

21 21. As a matter of uniform and systemic policy, Defendant failed to provide its non-
22 exempt employees with accurate itemized wage statements in accordance with California's Labor
23 Code. Upon information and belief, Defendant failed to furnish Plaintiff and Class Members,
24 either semimonthly or at the time of each payment of wages, either as a detachable part of the
25 check or separately, an accurate, itemized statement in writing showing actual gross and net
26 wages earned, the correct number of hours worked, and the applicable hourly rates in effect for
27 those missing hours, among other things.

28 22. As a matter of uniform and systemic policy, Defendant willfully failed to pay

1 Plaintiff and Class Members all the above-described wages, including, but not limited to, regular
2 and overtime wages for off-the-clock hours worked and meal and rest period premium wages,
3 either at the time they became due, at the time of discharge, or within seventy-two (72) hours of
4 leaving Defendant's employ.

5 23. Plaintiff, therefore, brings this action on behalf of herself and as a class action on
6 behalf of the following defined Class:

7 **Non-Exempt Employee Class:**

8 *All persons who worked at least one 3.5-hour shift as a non-exempt employee for*
9 *Defendant in the State of California from the period four years prior to the filing*
of this Action and until the date of trial ("Class").

10 24. Common methods of proof exist for determining these issues on a class-wide basis,
11 including but not limited to, Defendant's employment records, payroll records, timesheets, work
12 activity logs, written policies, disciplinary records, and witness declarations, among other things.

13 25. **Numerosity.** Plaintiff is informed and believes that, during the class period, at
14 least 50 Class Members have been employed as non-exempt employees by Defendant within the
15 state of California. The number of Class Members is sufficiently numerous such that joinder of
16 all members is impossible or impracticable.

17 26. **Typicality.** Plaintiff's claims are typical of all Class Members. Plaintiff, like all
18 other Class Members, was subjected to the policies and practices set forth above. Plaintiff's job
19 duties were typical of Class Members in all relevant respects.

20 27. **Adequacy.** There are no material conflicts between the claims of the representa-
21 tive Plaintiff and Class Members that would make class certification inappropriate. Plaintiff un-
22 derstands her obligation to inform the Court of any relationship, conflicts, or differences with
23 any Class Member. Plaintiff will fairly and adequately protect the interests of the Class Members.
24 Plaintiff is invested in redressing Defendant's illegal practices on behalf of all Class Members.
25 Moreover, Plaintiff has retained competent counsel experienced in both class action and em-
26 ployment litigation. Plaintiff's attorneys, the proposed class counsel, are well versed in the rules
27 governing class action discovery, certification, and settlement, and will vigorously assert the
28 claims of all Class Members. Plaintiff has incurred, and will continue to incur, costs and

attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each Class Member.

28. **Existence and Predominance of Common Issues.** Common questions of law and fact exist as to all Class Members, which predominate over issues affecting individual Class Members, including, but not limited to:

- a. Whether Defendant had a common policy and/or practice of requiring Plaintiff and Class Members to work off-the-clock;
- b. Whether Defendant unlawfully and/or willfully required Plaintiff and Class Members to work off-the-clock;
- c. Whether Defendant had a common policy and/or practice of failing to compensate Plaintiff and Class Members with required minimum, regular, and/or overtime wages while working off-the-clock
- d. Whether Defendant unlawfully and/or willfully failed to compensate Plaintiff and Class Members with required minimum, regular, and/or overtime wages while working off-the-clock;
- e. Whether Defendant had a common policy and/or practice of depriving Plaintiff and Class Members of compliant, off-duty meal and/or rest periods;
- f. Whether Defendant unlawfully and/or willfully deprived Plaintiff and Class Members of compliant, off-duty meal and/or rest periods;
- g. Whether Defendant had a common policy and/or practice of depriving Plaintiff and Class Members of premium pay in lieu of compliant, off-duty meal and/or rest periods;
- h. Whether Defendant unlawfully and/or willfully deprived Plaintiff and Class Members of premium pay in lieu of compliant, off-duty meal and/or rest periods;
- i. Whether Defendant have a common policy and/or practice of failing to reimburse Plaintiff and Class Members for reasonable business expenses;

- j. Whether Defendant unlawfully and/or willfully failed to reimburse Plaintiff and Class Members for reasonable business expenses;
- k. Whether Defendant have a common policy and/or practice of failing to maintain complete or accurate payroll records in the State of California;
- l. Whether Defendant unlawfully and/or willfully failed to maintain complete or accurate payroll records in the State of California;
- m. Whether Defendant have a common policy and/or practice of failing to provide complete or accurate wage statements reflecting all hours worked, applicable rates of pay, and wages earned to Plaintiff and Class Members;
- n. Whether Defendant unlawfully and/or willfully failed to provide complete and accurate wage statements reflecting all hours worked, applicable rates of pay, and wages earned to Plaintiff and Class Members;
- o. Whether Defendant have a common policy and/or practice of failing to pay Plaintiff and Class Members all wages at the time they became due, at the time of discharge, or within seventy-two (72) hours of leaving Defendant's employ;
- p. Whether Defendant unlawfully and/or willfully failed to pay Plaintiff and Class Members all wages at the time they became due, at the time of discharge, or within seventy-two (72) hours of leaving Defendant's employ;
- q. Whether Plaintiff and Class Members sustained damages as a result of any of the aforementioned violations, and, if so, the proper measure of those damages, including interest, penalties, costs, attorneys' fees, and equitable relief; and
- r. Whether Defendant violated the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, by violating the above provisions of law.

29. **Superiority.** A class action is superior to other available means for the fair and efficient adjudication of this dispute. The damages suffered by individual Class Members, while substantial, are small compared to the burden and expense of individual prosecution of the

1 complex and expensive litigation necessary to address Defendant’s conduct. Even if Class Mem-
2 bers themselves could afford individual litigation, the court system would be overwhelmed by
3 individual lawsuits if all Class Members sought redress. In addition, individualized litigation in-
4 creases the delay and expense to all parties and to the court system resulting from the complex
5 legal and factual issues of this case. Individualized litigation also presents a potential for incon-
6 sistent or contradictory judgments. By contrast, the class action device presents far fewer man-
7 agement difficulties; it allows the hearing of claims that might otherwise go unaddressed because
8 of the relative expense of bringing individual lawsuits, and it provides the benefits of single ad-
9 judication, economies of scale, and comprehensive supervision by a single court. Plaintiff con-
10 templates providing notice to members of the Class identified through Defendant’s records.

11 **CAUSES OF ACTION**

12 **FIRST CAUSE OF ACTION**

13 ***California Labor Code §§ 223, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198***

14 ***Failure to Pay Minimum and Regular Rate Wages***

15 **(Plaintiff and Class Against Defendant)**

16 30. Plaintiff repeats and incorporates by reference all allegations contained in the pre-
17 ceding paragraphs as if fully set forth herein.

18 31. California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that
19 payment of a wage less than the minimum wage as set by statute, commission, or by the general
20 prevailing rate is unlawful.

21 32. Further, Labor Code section 223 provides that where a contract requires an em-
22 ployer to maintain the designated wage scale, it is unlawful to pay a lower wage while purporting
23 to pay the wage designated by contract. *See, e.g., Armenta v. Osmose, Inc.*, 135 Cal.App.4th 314,
24 323 (Cal. Ct. App. 2005) (“Sections 221, 222, and 223 articulate the principal that all hours must
25 be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a
26 minimum wage obligation.”).

27 33. California law requires employers to compensate employees for all time that an
28 employee is “suffered or permitted to work,” which includes all time “when any employer

1 ‘directs, commands or restrains’ an employee.” *See, e.g., Morillion v. Royal Packing Co.*, 22 Cal.
2 4th 575, 583 (2000), as modified (May 10, 2000); *see also* Code Regs. tit. 8, § 11040(2)(L)
3 (“‘Hours worked’ means the time during which an employee is subject to the control of an em-
4 ployer and includes all the time the employee is suffered or permitted to work, whether or not
5 required to do so.”).

6 34. Defendant failed to compensate Plaintiff and the Class for all hours worked be-
7 cause they were regularly required to continue working past their scheduled shift-end times to
8 complete tasks or until their replacements arrived but were not permitted to record this addi-
9 tional time as hours worked.

10 35. Fruther, Plaintiff and Class Members were regularly required to clock out for, but
11 continue working through, meal periods and were not paid for this time.

12 36. As a result, Plaintiff and Class Members were not permitted to record these addi-
13 tional working hours on their time sheets, and Defendants failed to pay them for all hours during
14 which they were suffered or permitted to work under the control of Defendant.

15 37. Defendant’s failure to pay Plaintiff and Class Members wages at their regular rates
16 of pay, let alone at any rate of pay, violates California Labor Code sections 223, 1182.12, 1194,
17 1197, 1197.1, and 1198.

18 38. Pursuant to California Labor Code section 1194.2, Plaintiff and Class Members are
19 entitled to recover the amounts of underpaid wages, plus liquidated damages equal to the mini-
20 mum wages unlawfully withheld and interest thereon, along with other applicable penalties.¹

21 **SECOND CAUSE OF ACTION**

22 ***Labor Code §§ 510 and 1198***

23 ***Failure to Pay Overtime Wages***

24 **(Plaintiff and Class Against Defendant)**

25 39. Plaintiff repeats and incorporates by reference every allegation in this complaint
26

27 ¹ Defendants are liable for civil penalties in the amount of \$100 per initial violation and \$250 for
28 each subsequent pay period, plus injunctive relief and reasonable attorney’s fees and costs. Lab.
Code § 1197.1.

as if fully set forth herein.

40. California Labor Code sections 510, 1198, and Industrial Wage Order No. 5-2001 provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis. Specifically, Industrial Wage Order No. 7-2001, section 3 provides that Defendants were required to pay Plaintiff and Class Members working more than eight hours in a day or more than forty hours in a workweek, at the rate of time and one-half (1½) for all hours worked in excess of eight hours in a day or more than forty hours in a workweek.

41. Throughout the Class Period, Plaintiff and the Class were not paid overtime premiums for all of the hours they worked in excess of eight hours in a day, in excess of twelve hours in a day, in excess of eight hours on the seventh consecutive day of work in a workweek, and/or in excess of forty hours in a week.

42. Defendant's failure to pay overtime premium wages was a direct consequence of its uniform policy and/or practice of requiring non-exempt employees to clock out but continue working past scheduled-shift ends and to clock out but continue working through meal periods, resulting in additional unrecorded hours worked above and beyond various overtime premium thresholds.

43. Defendant knew or should have known that its policies and practices forced its non-exempt employees to work in excess of eight hours per workday, over 40 hours per workweek, and/or seven consecutive days in a row without being compensated for all hours worked. Therefore, Plaintiff and Class Members were not paid overtime premium wages for all overtime hours worked by them.

44. Pursuant to Labor Code section 1194, Plaintiff and Class Members are entitled to recover their unpaid overtime compensation, as well as interest, costs, attorneys' fees, and applicable civil penalties.

1 **THIRD CAUSE OF ACTION**

2 ***California Labor Code §§ 226.7, 512(a), and 1198***

3 ***Failure to Provide Complaint Meal Periods or Premium Pay in Lieu Thereof***

4 **(Plaintiff and Class Against Defendant)**

5 45. Plaintiff repeats and incorporates by reference every allegation in this complaint
6 as if fully set forth herein.

7 46. At all times relevant to this complaint, Defendant knew they were obligated to pro-
8 vide legally compliant meal periods to its non-exempt employees pursuant to Labor Code §§ 512
9 and 226.7. Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an em-
10 ployee for a work period of more than five hours per day without providing the employee with a
11 meal period of not less than 30 minutes, except that if the total work period per day of the em-
12 ployee is no more than six hours, the meal period may be waived by mutual consent of both the
13 employer and employee. An employer may not employ an employee for a work period of more
14 than 10 hours per day without providing the employee with a second meal period of not less than
15 30 minutes.”

16 47. Further, Labor Code sections 226.7, 512(a), and 1198 provide that no employer
17 shall require an employee to work during any meal period mandated by an applicable order of
18 the IWC. “An off-duty meal period, therefore, is one in which the employee is relieved of all duty
19 during the 30-minute meal period [...] an employer’s obligation is to provide an off-duty meal
20 period: an uninterrupted 30–minute period during which the employee is relieved of all duty.”
21 *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1035 (2012).

22 48. However, Defendants’ policies and practices served to deprive Plaintiff and Class
23 Members of full 30-minute meal periods in which they were relieved of all duties and free of
24 employer control. Upon information and belief, non-exempt employees were required at various
25 points throughout the Class Period to sign “on duty” meal period waivers, first meal period waiv-
26 ers, and second meal period waivers and threatened with reduced hours or termination if they
27 did not. Thus, meal period waivers were not voluntary. *See Seckler v. Kindred Healthcare Op-*
28 *erating Grp., Inc.*, No. SACV 10-01188 DDP (Rzx), at *22-23 (C.D. Cal. Mar. 5, 2013) (“[T]he

1 apparently universal signing of the second meal waiver lends itself to the inference that signing
2 the waiver is a condition of employment and gives rise to a class question [...], the pressure may
3 have been implicit but nonetheless strong enough for Plaintiffs to believe that if they did not sign
4 the meal waiver, they would not be hired.”).

5 49. The “on duty” meal period waivers were additionally not permitted by law because
6 it was not the nature of the work that prevented employees from being relieved of all duty, but
7 rather Defendant’s policies, practices, and/or failure to hire a sufficient number of employees to
8 provide Plaintiff and Class Members with coverage during their meal periods. *See* Cal. Code
9 Regs. Tit. 8, § 11150, subd. (11)(C); *See Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 266
10 (2016), *as modified on denial of reh’g* (Mar. 15, 2017) (on duty exception is “exceedingly nar-
11 row”); *Abdullah v. U.S. Sec. Assocs., Inc.*, 731 F.3d 952, 959 (9th Cir. 2013). Upon information
12 and belief, these elements were not met here.

13 50. Even when Plaintiff and Class Member were ostensibly provided with meal peri-
14 ods, those meal periods were not compliant because they were not permitted to leave the prem-
15 ises during meal periods unless they had coverage, and they were rarely provided coverage. Fur-
16 ther, their meal periods were regularly interrupted by managers who directed them to continue
17 performing work duties.

18 51. Finally, Defendant has also implemented a uniform policy of denying compensa-
19 tion in lieu of meal periods to its non-exempt employees, notwithstanding its actual knowledge
20 that such employees were uniformly denied compliant meal periods.

21 52. Accordingly, Plaintiff and Class Members were uniformly denied meal periods due
22 to Defendant’s formal policies and practices. By failing to consistently provide uninterrupted,
23 off-duty 30-minute meal periods when required, or premium pay in lieu thereof, Defendant vi-
24 olated the Labor Code as to Plaintiff and Class Members. Defendant was aware that its actions
25 were a violation of applicable law but consistently refused to pay these premiums as required by
26 law.

27 53. Pursuant to Labor Code § 226.7(b), Plaintiff and Class Members are entitled to re-
28 cover from Defendant an additional hour of pay at their regular rates of pay for each shift in

1 which a required meal period was not provided.

2 **FOURTH CAUSE OF ACTION**

3 ***Labor Code §§ 226.7, 512(a), and 1198***

4 ***Failure to Provide Compliant Rest Periods or Premium Pay in Lieu Thereof***
5 ***(Plaintiff and Class Against Defendant)***

6 54. Plaintiff repeats and incorporates by reference every allegation in this complaint
7 as if fully set forth herein.

8 55. At all times relevant to this complaint, Defendants knew they were obligated to
9 provide compliant rest periods to their non-exempt employees pursuant to Labor Code § 226.7.

10 56. Labor Code § 226.7 provides:

11 (a) No employer shall require any employee to work during any meal
12 or rest period mandated by an applicable order of the Industrial Welfare
13 Commission.

14 (b) If any employer fails to provide an employee a meal period or rest
15 period in accordance with an applicable order of the Industrial Welfare
16 Commission, the employer shall pay the employee one additional hour of
pay at the employee's regular rate of compensation for each work day that
the meal or rest period is not provided.

17 57. Labor Code § 226.7, 512(a), and 1198 provide that no employer shall require an
18 employee to work during any rest or meal period mandated by an applicable order of the IWC,
19 including Wage Order No. 5-2001. Employers must authorize and permit employees to be re-
20 lieved of all duty during their rest and meal periods: "A rest period, in short, must be a period of
21 rest."² *Augustus v. ABM Sec. Servs., Inc.*, 385 P.3d 823, 834 (2016).

22 58. However, as a matter of practice, Defendant's managers instructed Plaintiff and
23 Class Members to not take rest periods, telling them things like "we don't pay you sit around and
24 do nothing."

25 _____
26 ² Employees must also be free to leave the premises. *Augustus*, 2 Cal. 5th at 270; see also
27 Department of Industrial Relations, "Rest Periods/Lactation Accommodations," available at
28 https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm ("Q. Can my employer require that I stay on the work premises during my rest period? A. No, your employer cannot impose any restraints not inherent in the rest period requirement itself.")

59. Defendant also implemented a written policy clearly indicating that its non-exempt employees that they were not allowed to leave the premises during rest periods without permission, and even if they were permitted, they were required to clock out and back in for the duration so would not be paid for that time.

60. Finally, Defendant has also implemented a uniform policy of denying compensation in lieu of rest periods to its non-exempt employees, notwithstanding its actual knowledge that such employees were uniformly denied compliant rest periods.

61. By failing to provide compliant rest periods when required, or premium pay in lieu thereof, Defendant violated the Labor Code as to Plaintiff and Class Members. Defendant was aware that its actions were a violation of applicable law but consistently refused to pay these premiums as required by law

62. Pursuant to Wage Order No. 5 and Labor Code § 226.7(b), Plaintiff and Class Members are entitled to recover from Defendant one additional hour of pay at their regular rates of pay for each shift that a compliant rest period was not provided. Defendant was aware that its actions were a violation of applicable law but consistently refused to pay these premiums as required by law.

FIFTH CAUSE OF ACTION

California Labor Code § 2802

Failure to Reimburse Necessary Business Expenses

(Plaintiff and Class Against Defendant)

63. Plaintiff repeats and incorporates by reference every allegation in this complaint as if fully set forth herein.

64. Labor Code section 2802 provides that “[a]n employer shall indemnify his or his employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or his duties, or of his or his obedience to the directions of the employer.” Lab. Code § 2802. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014).

65. Defendant required Plaintiff and Class Members, who were non-exempt employees, to utilize their personal cell phones for work-related purposes, including receiving and viewing communications from managers about through phone calls, individual text messages, and group text messages sent to their personal cell phones before, during, and after their shifts. Plaintiff and Class Members were expected to respond to these communications regardless of whether they were on-the-clock or off-the-clock, for example about scheduling matters.

66. However, Defendant failed to reimburse Plaintiff and Class Members for reasonable costs associated with utilizing their personal cell phones for these work-related purposes. *See Cochran, supra*, 228 Cal. App. 4th at 1144 (“We hold that when employees must use their personal cell phones for work related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.”).

67. By unlawfully failing to reimburse Plaintiff and Class Members, Defendant is liable for a reasonable portion of their incurred expenses, to be determined upon trial, plus reasonable attorneys’ fees and costs. Lab. Code § 2802.

SIXTH CAUSE OF ACTION

Labor Code §§ 226, 226.3, and 1174

Failure to Maintain and Provide Complete and Accurate Wage Statements **(Plaintiff and Class Against Defendant)**

68. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

69. Labor Code § 226 requires employers to furnish employees with an accurate, itemized statement in writing showing, among other things, (1) gross wages earned; (2) total hours worked by the employee (for hourly-paid, non-exempt employees); (3) all deductions; (4) net wages earned; (5) the inclusive dates of the period for which the employee is paid; (6) the name of the employee and the last four digits of his or his social security number; (7) the name and address of the legal entity that is the employer; and (8) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the

1 employee.

2 70. At all times relevant to this complaint, Defendant's failure to pay minimum, regu-
3 lar, and overtime rate wages for all hours worked, and premium wages for missed meal and/or
4 rest periods, ensured that Class Members' wage statements inaccurately reflected their gross and
5 net wages earned, the correct number of hours worked, and the applicable hourly rates in effect
6 for those missing hours.

7 71. For the same reasons, Defendant has also failed to keep accurate payroll records
8 for Plaintiff and Class Members in accordance with Labor Code § 1174.

9 72. Defendant's failure to keep and maintain payroll records accurately reflecting their
10 gross and net wages earned, number of hours worked, and applicable hourly rates has impeded
11 Plaintiff's and Class Members' ability to determine whether they were paid properly.

12 73. Injury. Defendant knowingly and intentionally failed to comply with Labor Code
13 § 226, causing injury and damages to Plaintiff and Class Members. Plaintiff and all those simi-
14 larly situated were injured by these failures because, among other things, they were confused
15 about whether they were paid properly and/or misinformed about how much compensation was
16 owed to them. These damages include, but are not limited to, costs incurred in calculating the
17 correct gross and net wages earned for each pay period and the amount of employment taxes
18 that were not paid to state and federal tax authorities.

19 74. Relief. Labor Code § 226(e)(1) provides that an employee suffering injury as a re-
20 sult of not being provided with a complete and accurate itemized wage statement is entitled to
21 recover the greater of all actual damages suffered or fifty (\$50) dollars for the initial violation
22 and one hundred (\$100) dollars for each subsequent violation, up to \$4,000. Pursuant to Labor
23 Code §§ 226(e) and (g), Class Members are further entitled to injunctive relief to ensure Defend-
24 ant's compliance with Labor Code § 226, as well as attorneys' fees and costs of suit.

25 75. Separately, California Labor Code Section 1198.5(a) states, "Every current and for-
26 mer employee, or his or her representative, has the right to inspect and receive a copy of the
27 personnel records that the employer maintains relating to the employee's performance or to any
28 grievance concerning the employee."

1 76. California Labor Code Section 1198.5(b)(1) states, in pertinent part, “The employer
2 shall make the contents of those personnel records available for inspection to the current or for-
3 mer employee, or his or her representative...not later than 30 calendar days from the date the
4 employer receives a written request[.]”

5 77. “If an employer fails to permit a current or former employee, or his or her repre-
6 sentative, to inspect or copy personnel records within the times specified in this section, or times
7 agreed to by mutual agreement as provided in this section, the current or former employee or
8 the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the
9 employer.” California Labor Code § 1198.5(k).

10 78. Defendant failed to provide Plaintiff’s within 30 calendar days of her request.

11 79. Upon information and belief, Defendant has a pattern and practice of failing to
12 timely response to records request.

13 80. Defendants’ policies and practices are in violation of Labor Code 1198.5(a) and
14 (b)(1). Plaintiffs and similarly situated Class Members are entitled to a \$750.00 penalty plus
15 reasonable attorney’s fees and costs, and injunctive relief, from Defendants for this violation per
16 Labor Code 1198.5(k) and (l).

17 **SEVENTH CAUSE OF ACTION**

18 ***Labor Code §§ 202, 203, 204, and 210***

19 ***Failure to Pay Wages When Due***

20 **(Plaintiff and Class Against Defendant)**

21 81. Plaintiff repeats and incorporates by reference all the allegations of this Complaint
22 as though fully set forth herein.

23 82. Labor Code § 202 provides, in relevant part, that:

24 If an employee not having a written contract for a definite period quits his
25 or her employment, his or her wages³ shall become due and payable not

26 ³ Labor Code § 200 defines “wages” as “all amounts for labor performed by employees of every
27
28

1 later than 72 hours thereafter, unless the employee has given 72 hours pre-
2 vious notice of his or her intention to quit, in which case the employee is
3 entitled to his or her wages at the time of quitting. Notwithstanding any
4 other provision of law, an employee who quits without providing a 72-hour
5 notice shall be entitled to receive payment by mail if he or she so requests
6 and designates a mailing address. The date of the mailing shall constitute
7 the date of payment for purposes of the requirement to provide payment
8 within 72 hours of quitting.

9
10 83. Labor Code § 203 provides:

11 If an employer willfully fails to pay, without abatement or reduction, in ac-
12 cordance with § 201, 201.5, 202, and 205.5, any wages of an employee who
13 is discharged or who quits, the wages of the employee shall continue as a
14 penalty from the due date thereof at the same rate until paid or until an
15 action therefor is commenced; but the wages shall not continue for more
16 than 30 days.

17 84. Labor Code § 204 provides that all wages, other than those mentioned in Section
18 201 and 202, are due and payable twice during each calendar month, on days designated in ad-
19 vance by the employer as regular paydays.

20 85. Failure to Timely Pay Wages Due. As set forth above, as a result of deficient time-
21 keeping practices and meal and rest period policies, Defendant failed to timely pay minimum,
22 regular, and overtime rate wages, as well as meal and rest period premiums, upon regularly
23 scheduled paydays.

24 86. Relief. Defendant's failure to pay Plaintiff and those Class Members wages on their
25 regularly scheduled paydays subjects Defendant to civil penalties in the amount of \$100 per em-
26 ployee per initial violation and \$200 per employee for every subsequent violation of Labor Code
27 § 204 pursuant to Labor Code § 210.

28 87. Failure to Pay Upon Termination. Plaintiff and many Class Members have left De-
29 fendant's employ during the class period. As discussed above, Defendant knowingly failed to pay
30 Plaintiff and Class Members all their earned wages upon termination. Instead, Defendant will-
31 fully and intentionally refused to pay meal and/or rest period premiums and earned minimum,

32 description, whether the amount is fixed or ascertained by the standard of time, task, piece, com-
33 mission basis, or other method of calculation." "Labor" is defined as "labor, work, or service . . .
34 if the labor to be paid for is performed personally by the person demanding payment." Addition-
35 ally, in *Naranjo v. Spectrum Security Services, Inc.*, 13 Cal. 5th 93 (2022), the California Su-
36 preme Court recently held that failure to pay premiums for violating the California Labor Code's
37 meal and rest break provisions constitutes "wages" for purposes of waiting time penalties.

regular, and overtime rate wages as alleged herein to Plaintiff and Class Members in violation of Labor Code §§ 201 and 202.

88. Relief. Defendant's failure to pay Plaintiff and those Class Members who are no longer employed by Defendant their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employment, violates Labor Code §§ 201 and 202. Plaintiff and Class Members are therefore entitled to recover from Defendant the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a 30-day maximum penalty under Labor Code § 203.

EIGHTH CAUSE OF ACTION

California Business & Professions Code §§ 17200, et seq.

Unlawful Business Practices

(Plaintiff and Class Against Defendant)

89. Plaintiff repeats and incorporates by reference all the allegations of this Complaint as though fully set forth herein.

90. Defendant is a "person" as defined by California Business & Professions Code § 17201, as it is a natural person, corporation, firm, partnership, joint stock company, and/or association.

91. Unlawful Business Practices. Defendant's knowing violations of provisions of the Labor Code and IWC Wage Order No. 5-2001 constitute unlawful business practices as set forth in Business & Professions Code § 17200, *et seq.*

92. Defendant's failure to abide by the laws discussed herein provided Defendant an unfair advantage over its competitors at the expense of their workers. Instead, Defendant cuts corners in the name of higher profits and at the expense of employee well-being. Defendant's actions thereby constitute an unfair, fraudulent, and/or unlawful business practice under Business & Professions Code § 17200, *et seq.*

93. Relief. Plaintiff brings this cause of action seeking equitable and injunctive relief to stop Defendant's willful and ongoing misconduct, and to seek restitution of the amounts Defendant acquired through the unfair, unlawful, and fraudulent business practices described

herein. In addition, Plaintiff seeks an award of costs and attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

DEMAND FOR JURY TRIAL

Pursuant to California Code of Civil Procedure § 631, Plaintiff demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays judgment as follows:

- A. For an Order:
 - a. Certifying the Class;
 - b. Appointing Plaintiff as representative of the Class;
 - c. Appointing Plaintiff's counsel as Class Counsel;
- B. For actual and liquidated damages according to proof at trial;
- C. For statutory and civil penalties and special damages, according to proof at trial;
- D. For pre- and post-judgment interest on monetary damages;
- E. For preliminary and permanent injunctive relief;
- F. For reasonable attorneys' fees and costs and expert fees and costs as allowed by law; and
- G. For such other relief as this Court deems just and proper.

Dated: January 24, 2025

Respectfully submitted,

KING & SIEGEL LLP

By: Elliot J. Siegel
Elliot J. Siegel, Esq.
Attorneys for Plaintiff and the Putative Class