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

TING CHEN, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

WAVE PLASTIC SURGERY CENTER
INC., a California corporation; WAVE
PLASTIC SURGERY CENTER
ARCADIA, INC., a California
corporation; WAVE PLASTIC
SURGERY CENTER COSTA MESA,
INC., a California corporation; WAVE
PLASTIC SURGERY CENTER R. H.,
INC., a California corporation; and DOES
1 through 50, inclusive,

Defendants.

Case No.: 25STCV10358

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR DAMAGES FOR:**

- (1) **VIOLATION OF LABOR CODE §§ 510,
558, AND 1194;**
- (2) **VIOLATION OF LABOR CODE §§ 226.7
AND 512;**
- (3) **VIOLATION OF LABOR CODE § 226.7;**
- (4) **VIOLATION OF LABOR CODE §§ 201-
203;**
- (5) **VIOLATION OF LABOR CODE § 226;**
- (6) **VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200, *ET SEQ.*;
AND**
- (7) **VIOLATION OF LABOR CODE § 2698,
ET SEQ., THE PRIVATE ATTORNEYS
GENERAL ACT**

DEMAND OVER \$25,000

FILED
Superior Court of California
County of Los Angeles

05/19/2025

David W. Styrba, Executive Officer / Clerk of Court

By: M. Arellanes Deputy

1 Plaintiff Ting Cheng (“Plaintiff”) hereby submits this First Amended Class and
2 Representative Action complaint (“Complaint”) against Defendants Wave Plastic Surgery Center
3 Inc., Wave Plastic Surgery Center Arcadia, Inc., Wave Plastic Surgery Center Costa Mesa, Inc.,
4 Wave Plastic Surgery Center R. H., Inc., and Does 1-50 (hereinafter collectively referred to as
5 “Defendants”), individually and on behalf of all other similarly situated current and former
6 employees of Defendants for penalties and/or damages for failure to pay all overtime wages
7 owed, failure to provide off-duty meal and rest breaks or pay premium compensation in lieu
8 thereof, failing to pay sick pay wages at the regular rate of pay, and failure to provide accurate
9 itemized wage statements as follows:

10 **INTRODUCTION**

11 1. This class and representative action is within the Court’s jurisdiction under
12 California Labor Code §§ 201-204, 210, 226, 226.7, 246, 510, 512, 558, 1194 and 2698, *et seq.*,
13 the California Industrial Welfare Commission’s (“IWC”) Wage Orders, and the California Unfair
14 Competition Law (the “UCL”), codified at California Business and Professions Code § 17200, *et*
15 *seq.*

16 2. This Complaint challenges systemic illegal employment practices resulting in
17 violations of the California Labor Code and Business and Professions Code against employees of
18 Defendants.

19 3. Plaintiff is informed and believes and based thereon alleges that Defendants
20 jointly and severally have acted intentionally and with deliberate indifference and conscious
21 disregard to the rights of all employees by failing to pay overtime wages at the regular rate of
22 pay, failing to provide off-duty meal and rest breaks or pay premium compensation in lieu
23 thereof, failing to pay sick pay wages at the regular rate of pay, and failing to provide accurate
24 itemized wage statements to Plaintiff and employees.

25 4. Plaintiff is informed and believes and based thereon alleges that Defendants have
26 engaged in, among other things, a system of willful violations of the California Labor Code,
27 Business and Professions Code, and applicable IWC Wage Orders by creating and maintaining
28 policies, practices, and customs that knowingly deny employees the above stated rights and

benefits.

5. The policies, practices, and customs of Defendants described above and below have resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that routinely adhere to the strictures of the California Labor Code and the California Business and Professions Code.

JURISDICTION AND VENUE

6. The Court has jurisdiction over the violations of the California Labor Code §§ 201-204, 210, 226, 226.7, 246, 510, 512, 558, 1194, and 2698, *et seq.*, and the UCL.

7. Venue is proper in Los Angeles County because Plaintiff worked for Defendants in Los Angeles County.

PARTIES

8. Plaintiff was employed by Defendants as a Consultant Assistant from in or about August 2024, until on or about December 10, 2024. Throughout her employment, Plaintiff worked as a non-exempt, hourly employee.

9. Plaintiff was and is the victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived Plaintiff of the rights guaranteed to her by California Labor Code §§ 201-204, 210, 226, 226.7, 246, 510, 512, 558, 1194, and 2698, *et seq.*, the applicable IWC Wage Orders, and the UCL.

10. Plaintiff is informed and believes and based thereon alleges that Defendant Wave Plastic Surgery Center Inc. was and is a California corporation doing business in the State of California providing cosmetic surgery services.

11. Plaintiff is informed and believes and based thereon alleges that Defendant Wave Plastic Surgery Center Arcadia, Inc. was and is a California corporation doing business in the State of California providing cosmetic surgery services.

12. Plaintiff is informed and believes and based thereon alleges that Defendant Wave Plastic Surgery Center Costa Mesa, Inc. was and is a California corporation doing business in the State of California providing cosmetic surgery services.

13. Plaintiff is informed and believes and based thereon alleges that Defendant Wave

1 Plastic Surgery Center R. H., Inc. was and is a California corporation doing business in the State
2 of California providing cosmetic surgery services.

3 14. Plaintiff is informed and believes and based thereon alleges that at all times herein
4 mentioned Defendants and Does 1 through 50 are and were business entities, individuals, and
5 partnerships, licensed to do business and actually doing business in the State of California. As
6 such, and based upon all the facts and circumstances incident to Defendants' business in
7 California, Defendants are subject to California Labor Code §§ 201-204, 210, 226, 226.7, 246,
8 510, 512, 558, 1194 and 2698, *et seq.*, IWC Wage Orders, and the UCL.

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

17 16. At all times herein mentioned, each of said Defendants participated in the doing
18 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
19 Defendants, and each of them, were the agents, servants, and employees of each of the other
20 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
21 acting within the course and scope of said agency and employment.

22 17. Plaintiff is informed and believes and based thereon alleges that at all times
23 material hereto, each of the Defendants named herein was the agent, employee, alter ego, and/or
24 joint venturer of, or working in concert with each of the other co-Defendants and was acting
25 within the course and scope of such agency, employment, joint venture, or concerted activity. To
26 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
27 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
28 Defendants.

1 18. At all times herein mentioned, Defendants, and each of them, were members of,
2 and engaged in, a joint venture, partnership, and common enterprise, and acting within the course
3 and scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

4 19. At all times herein mentioned, the acts and omissions of various Defendants, and
5 each of them, concurred and contributed to the various acts and omissions of each and all of the
6 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
7 herein mentioned, Defendants, and each of them, ratified each and every act or omission
8 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
9 and abetted the acts and omissions of each and all of the other Defendants in proximately causing
10 the damages as herein alleged.

11 **CLASS ACTION ALLEGATIONS**

12 20. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
13 California Code of Civil Procedure § 382, of the following classes (together, the “Class” or
14 “Class Members”):

15 a. All current and former non-exempt employees of Defendants in the State
16 of California who worked overtime and earned any non-discretionary remuneration, including
17 without limitation, commissions, during the same period, at any time from April 7, 2021, through
18 the present (the “Overtime Regular Rate Class”);

19 b. All current and former non-exempt employees of Defendants in the State
20 of California who worked more than five (5) hours during any shift, at any time from April 7,
21 2021, through the present (the “Meal Break Class”);

22 c. All current and former non-exempt employees of Defendants in the State
23 of California who worked three and one-half (3.5) hours or more during any shift, at any time
24 from April 7, 2021, through the present (the “Rest Break Class”); and

25 d. All non-exempt employees of Defendants in the State of California who
26 earned any non-discretionary remuneration, including without limitation, commissions, during
27 the same period in which the employee was also paid sick pay, and whose employment ended
28 (either voluntarily or involuntarily) at any time from April 7, 2022, through the present (the

1 “Sick Pay Regular Rate Class”).

2 21. **Numerosity and Ascertainability:** The members of the Class are so numerous
3 that joinder of all members would be impractical, if not impossible. The identity of the members
4 of the Class is readily ascertainable by review of Defendants’ records, including payroll records.
5 Plaintiff is informed and believes and based thereon alleges that Defendants: (a) failed to pay
6 overtime wages at the regular rate of pay, in violation of Labor Code §§ 510, 558, and 1194; (b)
7 failed to provide proper meal breaks and/or pay meal break premium wages based on the regular
8 rate of pay, in violation of Labor Code §§ 226.7 and 512; (c) failed to provide proper rest breaks
9 and/or pay rest break premium wages based on the regular rate of pay, in violation of Labor
10 Code § 226.7; (d) failed to pay sick pay at the regular rate of pay, in violation of Labor Code §§
11 201-203 and 246; (e) failed to provide accurate itemized wage statements, in violation of Labor
12 Code § 226; and (f) engaged in Unfair Business Practices in violation of the UCL, the California
13 Labor Code, including without limitation, California Labor Code §§ 201-204, 226, 226.7, 246,
14 510, 512, 558, and 1194, and the applicable IWC Wage Orders.

15 22. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
16 necessary steps to represent fairly and adequately the interests of the Class defined above.
17 Plaintiff’s attorneys are ready, willing, and able to fully and adequately represent the Class and
18 individual Plaintiff. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class actions
19 in the past and currently have a number of wage-and-hour class actions pending in California
20 courts.

21 23. Defendants uniformly administered a corporate policy, practice of: (a) failing to
22 pay overtime wages at the regular rate of pay, in violation of Labor Code §§ 510, 558, and 1194;
23 (b) failing to provide proper meal breaks and/or pay meal break premium wages based on the
24 regular rate of pay, in violation of Labor Code §§ 226.7 and 512; (c) failing to provide proper
25 rest breaks and/or pay rest break premium wages based on the regular rate of pay, in violation of
26 Labor Code § 226.7; (d) failing to pay sick pay at the regular rate of pay, in violation of Labor
27 Code §§ 201-203 and 246; (e) failing to provide accurate itemized wage statements, in violation
28 of Labor Code § 226; and (f) engaging in Unfair Business Practices in violation of the UCL, the

California Labor Code, including without limitation, California Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 558, and 1194, and the applicable IWC Wage Orders.

24. Plaintiff is informed and believes, and based thereon alleges, that Defendants had a consistent and uniform policy, practice and procedure of willfully failing to comply with California Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 558, and 1194, the applicable Wage Orders of the IWC, and the UCL.

25. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst Plaintiff and the claims of the Class concerning Defendants: (a) failing to pay overtime wages at the regular rate of pay, in violation of Labor Code §§ 510, 558, and 1194; (b) failing to provide proper meal breaks and/or pay meal break premium wages based on the regular rate of pay, in violation of Labor Code §§ 226.7 and 512; (c) failing to provide proper rest breaks and/or pay rest break premium wages based on the regular rate of pay, in violation of Labor Code § 226.7; (d) failing to pay sick pay at the regular rate of pay, in violation of Labor Code §§ 201-203 and 246; (e) failing to provide accurate itemized wage statements, in violation of Labor Code § 226; and (f) engaging in Unfair Business Practices in violation of the UCL, the California Labor Code, including without limitation, California Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 558, and 1194, and the applicable IWC Wage Orders.

26. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar and typical manner as Class Members. Like other non-exempt employees of Defendants, Plaintiff regularly earned non-discretionary remuneration, including without limitation, commissions. Said non-discretionary remuneration should have been included in the regular rate of pay for the purposes of paying overtime wages, any meal and rest break premiums, and sick pay to employees. However, whenever Defendants paid Plaintiff and Class Members their overtime wages during periods in which they earned such non-discretionary remuneration, overtime wages were paid based on the base rate of pay, rather than the correct, higher rate based on the regular rate of pay. Similarly, whenever Defendants paid Plaintiff and Class Members sick pay wages during periods

1 in which they earned such non-discretionary remuneration, such wages were paid at the base rate
2 of pay instead of the regular rate of pay that factored in the non-discretionary remuneration.
3 Additionally, like other Class Members, Plaintiff regularly worked shifts in excess of five hours
4 without being provided with proper meal breaks. Plaintiff and other employees were required to
5 remain on duty and perform work during meal break times. On occasions when Plaintiff and
6 other employees were able to take a meal break, said breaks were untimely as they did not occur
7 until after the 5th hour of work. Relatedly, Plaintiff regularly worked shifts of 3.5 hours or more
8 without being provided with proper rest breaks. Plaintiff and other employees were required to
9 remain on duty and continue working through her rest breaks. On occasions when Plaintiff and
10 other employees were able to take a rest break, said breaks were often interrupted or shortened.
11 If Defendants did pay meal and/or rest break premiums, Defendants also underpaid said
12 premiums. In this regard, whenever Defendants paid Plaintiff and other employees their meal
13 and rest break premiums during periods in which they also earned any non-discretionary
14 remuneration, the meal and rest break premiums were paid at the base rate of pay instead of the
15 regular rate of pay. To date, Plaintiff has yet to receive the underpaid and/or unpaid wages owed
16 to her. As such, Defendants are liable for waiting time penalties pursuant to Labor Code §§ 201-
17 203. Finally, the wage statements issued by Defendants violate Labor Code § 226. As a result
18 of the violations above, the wage statements displayed inaccurate hourly rates of pay, number of
19 hours worked, total hours worked, and gross and net wages earned. As such, Plaintiff is a
20 member of the Class and has suffered the alleged violations of California Labor Code §§ 201-
21 204, 226, 226.7, 246, 510, 512, 558, and 1194, and the applicable IWC Wage Orders.

22 27. The California Labor Code and upon which Plaintiff bases these claims is broadly
23 remedial in nature. These laws and labor standards serve an important public interest in
24 establishing minimum working conditions and standards in California. These laws and labor
25 standards protect the average working employee from exploitation by employers who may seek
26 to take advantage of superior economic and bargaining power in setting onerous terms and
27 conditions of employment.

28 28. The nature of this action and the format of laws available to Plaintiff and

1 members of the Class identified herein make the class action format a particularly efficient and
2 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
3 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
4 advantage since it would be able to exploit and overwhelm the limited resources of each
5 individual plaintiff with their vastly superior financial and legal resources. Requiring each Class
6 Member to pursue an individual remedy would also discourage the assertion of lawful claims by
7 employees who would be disinclined to file an action against their former and/or current
8 employer for real and justifiable fear of retaliation and permanent damage to their careers at
9 subsequent employment.

10 29. The prosecution of separate actions by the individual Class Members, even if
11 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
12 to individual Class Members against the Defendants and which would establish potentially
13 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
14 individual Class Members which would, as a practical matter, be dispositive of the interest of the
15 other Class Members not parties to the adjudications or which would substantially impair or
16 impede the ability of the Class Members to protect their interests. Further, the claims of the
17 individual members of the Class are not sufficiently large to warrant vigorous individual
18 prosecution considering all of the concomitant costs and expenses.

19 30. Such a pattern, practice, and uniform administration of corporate policy regarding
20 illegal employee compensation described herein is unlawful and creates an entitlement to
21 recovery by the Plaintiff and the Class identified herein, in a civil action, for underpaid/unpaid
22 overtime wages, meal and rest break premium compensation, and sick pay wages, including
23 interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit according to
24 the mandate of California Labor Code §§ 203, 218.5, 226, 226.7, 558, and 1194, the applicable
25 IWC Wage Orders and Code of Civil Procedure § 1021.5.

26 31. Proof of a common business practice or factual pattern, which the named Plaintiff
27 experienced and is a representative of, will establish the right of each of the members of the
28 Class to recovery on the causes of action alleged herein.

1 32. The Class is commonly entitled to a specific fund with respect to the
2 compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to
3 restitution of those funds being improperly withheld by Defendants. This action is brought for
4 the benefit of the entire Class and will result in the creation of a common fund.

5 **FIRST CAUSE OF ACTION**

6 **VIOLATION OF LABOR CODE §§ 510, 558, AND 1194**

7 **(BY PLAINTIFF AND THE OVERTIME REGULAR RATE CLASS AGAINST ALL**
8 **DEFENDANTS)**

9 33. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
10 though fully set forth herein.

11 34. At all relevant times, Defendants were required to compensate their employees
12 proper overtime wages for overtime hours worked pursuant to California Labor Code §§ 510,
13 558, and 1194. Plaintiff and the Class are and were employed by Defendants as non-exempt
14 employees and, thus, Plaintiff and the Class are entitled to overtime wages. During their
15 employment with Defendants, Plaintiff and the Class worked overtime hours. Specifically,
16 Plaintiff and the Class worked more than 8 hours in a workday and/or 40 hours in a workweek,
17 without being paid the proper amount of overtime pay. During pay periods wherein Plaintiff and
18 the Class worked overtime, Plaintiff and Class Members also earned additional non-discretionary
19 incentives, including without limitation, commissions. Defendants, as a corporate-wide practice
20 and policy, did not calculate and/or factor such remuneration into the regular rate of pay for
21 purposes of calculating and paying overtime wages, and as such, owe Plaintiff and the Class
22 additional overtime wages.

23 35. Plaintiff is informed and believes and based thereon alleges that Defendants'
24 policy and practice of requiring overtime work and not paying for said work according to the
25 overtime mandates of California law is, and at all times herein mentioned was in violation of
26 California Labor Code §§ 510, 558, and 1194 and the IWC Wage Order(s). Defendants'
27 employment policies and practices wrongfully and illegally failed to compensate Plaintiff the
28 Class for overtime compensation earned as required by California law.

1 36. Plaintiff is informed and believes and based thereon alleges that Defendants
2 willfully failed to pay employees proper compensation for all hours worked. Plaintiff is informed
3 and believes and based thereon alleges that Defendants' willful failure to provide all wages due
4 and owing upon separation from employment results in a continued payment of wages up to
5 thirty (30) days from the time the wages were due. Therefore, Plaintiff and other members of the
6 Class who have separated from employment are entitled to compensation pursuant to Labor
7 Code §§ 201-203.

8 37. Such a pattern, practice, and uniform administration of corporate policy regarding
9 illegal employee compensation as described herein is unlawful and creates an entitlement to
10 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
11 overtime premiums owing, including interest thereon, penalties, attorneys' fees, and costs of suit
12 according to the mandate of California Labor Code §§ 201-204, 510, 558, and 1194.

13 **SECOND CAUSE OF ACTION**

14 **VIOLATION OF LABOR CODE §§ 226.7 AND 512**

15 **(BY PLAINTIFF AND THE MEAL BREAK CLASS AGAINST ALL DEFENDANTS)**

16 38. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
17 though fully set forth herein.

18 39. Pursuant to Labor Code § 512, an employer shall not require an employee to work
19 more than five hours in a shift without providing the employee with a meal period of not less
20 than thirty (30) minutes. Additionally, an employer shall not require an employee to work more
21 than ten (10) hours in a shift without providing the employee with a second meal period of not
22 less than thirty (30) minutes.

23 40. At all relevant times, Defendants failed in their affirmative obligation to ensure
24 that Plaintiff and Class Members had the opportunity to take and were provided with off-duty
25 meals periods in accordance with the mandates of the California Labor Code and the applicable
26 IWC Wage Order. More specifically, Defendants required that Plaintiff and Class Members
27 remain on duty and perform work during meal break times, leading to interrupted, shortened,
28 and/or missed meal periods.

41. Moreover, Defendants failed in their affirmative obligation to pay meal break premium wages at the regular rate of pay. Specifically, on occasion when meal break premium wages were paid, the premium wages were paid at the base hourly rate of pay, which did not include any non-discretionary remuneration Plaintiff and Class Members earned during the same period. Thus, the meal break premium wages were not paid at the regular rate of pay.

42. Plaintiff is informed and believes, and based thereon allege, that Defendants' willful failure to pay all meal break premium wages due and owing upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and other members of the Class who have separated from employment are entitled to compensation pursuant to Labor Code §§ 201-203.

43. Such a pattern, practice, and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class identified herein, in a civil action, for the unpaid balance of the unpaid premium compensation pursuant to Labor Code §§ 201-203, 226.7, and 512, and the applicable IWC Wage Order, including interest thereon, penalties, and costs of suit.

THIRD CAUSE OF ACTION

VIOLATION OF LABOR CODE § 226.7

(BY PLAINTIFF AND THE REST BREAK CLASS AGAINST ALL DEFENDANTS)

44. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

45. Pursuant to Labor Code § 226.7, an employer shall provide employees with a ten (10) minute paid rest period for every 3.5 hours worked by an employee.

46. At all relevant times, Defendants failed in their affirmative obligation to ensure that Plaintiff and Class Members had the opportunity to take and were provided with off-duty rest periods in accordance with the mandates of the California Labor Code and the applicable IWC Wage Order. More specifically, Defendants required Plaintiff and Class Members to remain on duty and perform work throughout their rest breaks, leading to interrupted, shortened, and/or missed rest periods.

47. Moreover, Defendants failed in their affirmative obligation to pay rest break premium wages at the regular rate of pay. Specifically, on occasion when rest break premium wages were paid, the premium wages were paid at the base hourly rate of pay, which did not include any non-discretionary remuneration Plaintiff and Class Members earned during the same period. Thus, the rest break premium wages were not paid at the regular rate of pay.

48. Plaintiff is informed and believes, and based thereon allege, that Defendants' willful failure to pay all rest break premium wages due and owing upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and other members of the Class who have separated from employment are entitled to compensation pursuant to Labor Code §§ 201-203.

49. Such a pattern, practice, and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class identified herein, in a civil action, for the unpaid balance of the unpaid premium compensation pursuant to Labor Code §§ 201-203 and 226.7, and the applicable IWC Wage Order, including interest thereon, penalties, and costs of suit.

FOURTH CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 201-203

**(BY PLAINTIFF AND THE SICK PAY REGULAR RATE CLASS AGAINST ALL
DEFENDANTS)**

50. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

51. Labor Code § 233 provides that an employer must permit an employee to use accrued sick leave in accordance with Labor Code § 246.5 at the employee's then current rate of entitlement.

52. Labor Code § 246 provides that an employee is entitled to sick pay wages for use of accrued sick leave. An employer must calculate paid sick leave by using one of two calculations: (i) “Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether

1 or not the employee actually works overtime in that workweek,” or (ii) “Paid sick time for
2 nonexempt employees shall be calculated by dividing the employee’s total wages, not including
3 overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior
4 90 days of employment.”

5 53. As a policy and practice, Defendants unlawfully failed to pay sick pay at the
6 regular rate of pay. Plaintiff and Class Members routinely earned non-discretionary
7 remuneration, such as commissions, which increased their regular rates of pay to amounts that
8 were higher than their base rates of pay. However, when sick pay was paid to Plaintiff and Class
9 Members, it was paid at the base rates of pay, as opposed to the correct, higher regular rates of
10 pay, as required under Labor Code § 246.

11 54. Labor Code § 246 also provides that an employer shall provide payment for sick
12 leave taken by an employee no later than the payday for the next regular payroll period after the
13 sick leave was taken. Labor Code § 201 provides if an employer discharges an employee, the
14 wages earned and unpaid at the time of discharge are due and payable immediately. Labor Code
15 § 202 provides that an employee is entitled to receive all unpaid wages no later than 72 hours
16 after an employee quits his or her employment, unless the employee has given seventy-two (72)
17 hours previous notice of his or her intention to quit, in which case the employee is entitled to his
18 or her wages at the time of quitting. Labor Code § 203 provides that if an employer willfully
19 fails to pay wages owed in accordance with Labor Code §§ 201 and 202, then the wages of the
20 employee shall continue as a penalty from the due date, and at the same rate until paid, but the
21 wages shall not continue for more than thirty (30) days.

22 55. Based on Defendants’ failure to pay all sick pay owed to Plaintiff and Class
23 Members, and as a matter of policy and practice, Defendants failed to timely pay Plaintiff and
24 Class Members all due wages or timely pay all due wages upon separation of employment. On
25 information and belief, Defendants were advised by skilled lawyers and knew, or should have
26 known, of the mandates of the Labor Code as it relates to Plaintiff’s allegations. Defendants thus
27 violated Sections 201-203 by not timely paying all due wages and not timely paying all due
28 wages upon the separation of employment.

1 56. As a pattern and practice, Defendants regularly and willfully failed to pay
2 Plaintiff and other members of the Class their correct wages and accordingly owe damages,
3 restitution, and applicable penalties, including waiting time penalties.

4 **FIFTH CAUSE OF ACTION**

5 **VIOLATION OF LABOR CODE § 226**

6 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

7 57. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
8 though fully set forth herein.

9 58. Defendants failed in their affirmative obligation to provide accurate itemized
10 wage statements. Labor Code § 226(a) requires that an employer provide an itemized wage
11 statement every time wages are paid to an employee. As a result of the violations alleged above,
12 the wage statements provided to Plaintiff and the Class did not accurately identify the correct
13 applicable hours worked at each hourly rate, the total hours worked, and gross and net wages
14 earned, in violation of Labor Code § 226.

15 59. Such a pattern, practice, and uniform administration of corporate policy as
16 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class
17 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226,
18 including interest thereon, attorneys' fees, and costs of suit according to the mandate of
19 California Labor Code § 226.

20 **SXITH CAUSE OF ACTION**

21 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.***

22 **(BY PLAINTIFF AND THE OVERTIME REGULAR RATE CLASS, MEAL BREAK**
23 **CLASS, AND REST BREAK CLASS AGAINST ALL DEFENDANTS)**

24 60. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
25 though fully set forth herein.

26 61. Defendants, and each of them, have engaged and continue to engage in unfair and
27 unlawful business practices in California by practicing, employing and utilizing the employment
28 practices outlined above, include, to wit, by: (a) failing to pay overtime wages based on the

1 correct regular rate of pay, in violation of Labor Code §§ 510, 558, and 1194; (b) failing to
2 provide proper meal breaks and/or pay meal break premiums, in violation of Labor Code §§
3 226.7, and 512; and (c) failing to provide proper rest breaks and/or pay rest break premiums, in
4 violation of Labor Code § 226.7.

5 62. Defendants' utilization of such unfair and unlawful business practices constitutes
6 unfair, unlawful competition and provides an unfair advantage over Defendants' competitors.

7 63. Plaintiff seeks individually and on behalf of other members of the Class similarly
8 situated, full restitution of monies, as necessary and according to proof, to restore any and all
9 monies withheld, acquired and/or converted by the Defendants by means of the unfair practices
10 complained of herein.

11 64. Plaintiff is informed and believes and based thereon alleges that at all times herein
12 mentioned Defendants have engaged in unlawful, deceptive, and unfair business practices, as
13 proscribed by California Business and Professions Code § 17200, *et seq.*, including those set
14 forth herein above thereby depriving Plaintiff and other members of the Class the minimum
15 working condition standards and conditions due to them under the California laws and the
16 applicable IWC Wage Orders as specifically described therein.

17 **SEVENTH CAUSE OF ACTION**

18 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

19 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

20 65. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
21 though fully set forth herein.

22 66. Plaintiff brings this cause of action as a proxy for the State of California and in
23 this capacity, seeks penalties on behalf of all Aggrieved Employees in the State of California
24 from March 20, 2024, through the present, for Defendants' violations of Labor Code §§ 201-204,
25 210, 226, 226.7, 246, 510, 512, 558, 1194, arising from Defendants' failure to pay overtime
26 wages at the regular rate of pay, failure to provide off-duty meal breaks or pay premium
27 compensation in lieu thereof, failure to provide off-duty rest breaks or pay premium
28 compensation in lieu thereof, failing to pay sick pay wages at the regular rate of pay, failure to

1 pay all wages owed at separation of employment, and failing to provide accurate itemized wage
2 statements to Plaintiff and Aggrieved Employees, as alleged above.

3 67. On or about March 20, 2025, Plaintiff sent written notice to the California Labor
4 & Workforce Development Agency (“LWDA”) of Defendants’ violations of Labor Code §§ 201-
5 204, 210, 226, 226.7, 246, 510, 512, 558, and 1194, pursuant to the PAGA. In addition to the
6 LWDA, Plaintiff also sent her notice to Defendants via certified mail pursuant to Labor Code §
7 2699.3.

8 68. As of the date of the filing of this Complaint, the LWDA has not responded to
9 Plaintiff’s written notice nor indicated that it intends to investigate the Labor Code violations
10 provided for in the written notice. Therefore, Plaintiff may seek applicable penalties under the
11 PAGA.

12 69. Such a pattern, practice and uniform administration of corporate policy as
13 described herein is unlawful and creates an entitlement to recovery by the Plaintiff on behalf of
14 the State of California, in a civil action, for penalties pursuant to the PAGA Labor Code §§ 201-
15 204, 210, 226, 226.7, 246, 510, 512, 558, and 1194, including interest thereon, attorneys’ fees,
16 and costs of suit according to the mandate of PAGA.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff prays for judgment individually and all others on whose behalf
19 this suit is brought against Defendants, jointly and severally, as follows:

- 20 1. For an order certifying the proposed Class;
- 21 2. For an order appointing Plaintiff as the representative of the Class as described
22 herein;
- 23 3. For an order appointing counsel for Plaintiff as Class counsel;
- 24 4. Upon the First Cause of Action, for all unpaid overtime wages and penalties
25 pursuant to statute as set forth in California Labor Code §§ 201-203, 510, 558, and 1194, and for
26 costs and attorneys’ fees;
- 27 5. Upon the Second Cause of Action, for all unpaid meal break premium wages and
28 penalties pursuant to statute as set forth in California Labor Code §§ 201-203, 226.7, and 512,

1 and for costs and attorneys' fees;

2 6. Upon the Third Cause of Action, for all unpaid rest break premium wages and
3 penalties pursuant to statute as set forth in California Labor Code §§ 201-203 and 226.7, and for
4 costs and attorneys' fees;

5 7. Upon the Fourth Cause of Action, for all penalties pursuant to statute as set forth
6 in California Labor Code §§ 201-203 for all unpaid sick pay wages, and for costs and attorneys'
7 fees;

8 8. Upon the Fifth Cause of Action, for all penalties pursuant to Labor Code § 226
9 and for costs and attorneys' fees;

10 9. Upon the Sixth Cause of Action, for restitution to Plaintiff and other similarly
11 affected members of the general public of all funds unlawfully acquired by Defendants by any
12 acts or practices declared by this Court to be in violation of Business and Professions Code §
13 17200, *et seq.*, for the time periods described above;

14 10. Upon the Seventh Cause of Action, for the full amount of penalties pursuant to
15 California Labor Code §§ 201-204, 226, 226.3, 226.7, 246, 510, 512, 558, 1194 and 2698, *et seq.*
16 and for costs and attorneys' fees;

17 11. On all causes of action, for attorneys' fees and costs as provided by California
18 Labor Code §§ 218.5, 226, and 1194, and Code of Civil Procedure § 1021.5; and

19 12. For such other and further relief as the Court may deem just and proper.
20

21 DATED: May 19, 2025

DIVERSITY LAW GROUP, P.C.

22
23 By: 

Max W. Gavron

Mai Tulyathan

Attorneys for Plaintiff, the Class, and Aggrieved
25 Employees
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