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on behalf of herself and all others similarly situated

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF YOLO

TESSA TEUSCHER, individually and on
behalf of herself and all others similarly
situated,

Plaintiff,

v.

SALLY BEAUTY SUPPLY, LLC, a
Virginia Limited Liability Company;
SALLY BEAUTY HOLDINGS, INC., a
Delaware Corporation, and DOES 1-50,
inclusive.

Defendants.

Case No. CV2022-1842

REPRESENTATIVE COMPLAINT

Assigned for All Purposes To:

Hon.

Dept.:

COMPLAINT FOR DAMAGES FOR:

- 1) **Civil Penalties Under Private
Attorneys' General Act, Labor Code
Section 2698 *et seq.***

COMES NOW, Plaintiff TESSA TEUSCHER (“Plaintiff”), individually and on behalf of others similarly situated, and asserts claims against defendants SALLY BEAUTY SUPPLY, LLC, a Virginia Limited Liability Company; SALLY BEAUTY HOLDINGS, INC., a Delaware Corporation; and DOES 1-50, inclusive (collectively “Defendants” or “Sally Beauty”) as follows:

INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys’ General Act of 2004 (“PAGA”), Cal. Lab. Code section 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of themselves and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. Plaintiff brings this action pursuant to the PAGA on a representative basis on behalf of all non-exempt employees working directly or indirectly for Defendants in the State of California (the “Aggrieved Employees”) from one year prior to the filing of the PAGA notice to the conclusion of this action.

3. Plaintiff brings this action on behalf of herself and the Aggrieved Employees to recover civil penalties and address Defendants’ violations of the California Labor Code and the IWC Wage Orders.

4. Pursuant to *Huff v. Securitas Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state and not only for that violation, but for violations affecting other employees as well. Accordingly, Ms. Teuscher has standing to pursue penalties on behalf of the state of violations affecting all the aggrieved employees working for Defendants, regardless of their classification, job title, or locations in California.

5. In this case, Defendants violated various provisions of the California Labor Code and IWC Wage Order. Defendants’ violations include: (1) failure to pay minimum wages; (2) failure to accurately pay overtime wages; (3) failure to provide lawful meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay wages during employment; (6) failure

1 to timely pay wages owed upon separation from employment; (7) failure to reimburse necessary
2 expenses (8) knowing and intentional failure to comply with itemized wage statement provisions;
3 (9) violation of the unfair competition law; (10) failure to keep accurate record; and (11) failure to
4 pay sick leave at the proper rate.

5 6. This action is timely because Plaintiff suffered from a violation or numerous
6 violations of the California Labor Code within one year of the date on which a PAGA notice was
7 sent to the LWDA via online submission. More than 65 days have passed, and no response has
8 been received by the LWDA. A copy of the letter sent to the LWDA with enclosure is attached
9 hereto as **Exhibit A**, thereby satisfying the notice requirement under the statute and permitting
10 Plaintiff to proceed with this action in a representative capacity.

11 **JURISDICTION AND VENUE**

12 7. This Court has jurisdiction over this action pursuant to the California Constitution
13 Article VI §10, which grants the California Superior Court original jurisdiction in all causes except
14 those given by statute to other courts.

15 8. Further, there is no federal question at issue, as the issues herein are based solely on
16 California statutes and law, including the Labor Code, IWC Wage Orders, the California Code of
17 Civil Procedure, the California Civil Code, and the California Business and Professions Code.

18 9. Venue is proper in this Court because one or more of the Defendants reside, transact
19 business, or have offices in this County, Plaintiff is a resident of this County, and the acts or
20 omissions alleged herein took place in this County.

21 **PARTIES**

22 10. Defendant Sally Beauty Supply, LLC is a Virginia Limited Liability Company
23 doing business in the state of California. It is based at 3001 Colorado Boulevard, Denton, TX
24 76210..

25 11. Upon information and belief, Sally Beauty Supply, LLC employs Non-Exempt
26 Employees, like Plaintiff, throughout the State of California.

27 12. Defendant Sally Beauty Holdings, Inc. is a Delaware Corporation doing business in
28 the state of California. It is based at 3001 Colorado Blvd., Denton, TX 76210.

1 13. Upon information and belief, Sally Beauty Holdings, Inc. employs Non-Exempt
2 Employees, like Plaintiff, throughout the State of California.

3 14. Plaintiff Tessa Teuscher is and during the liability period has been, a resident of
4 California.

5 15. Plaintiff was employed in an hourly, non-exempt position by Defendants during the
6 relevant time period.

7 16. Plaintiff and the members of the aggrieved group were employed, directly or
8 indirectly, by Defendants as non-exempt employees in the State of California from one year prior
9 to the filing of the PAGA notice to the conclusion of this action.

10 17. Whenever in this complaint reference is made to any act, deed, or conduct of
11 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through
12 one or more of Defendants' officers, directors, agents, employees, or representatives, who was
13 actively engaged in the management, direction, control, or transaction of the ordinary business and
14 affairs of Defendants.

15 18. The true names and capacities of Defendants, whether individual, corporate,
16 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
17 Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure
18 § 474. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
19 capacities of the Defendants designated hereinafter as DOES when such identities become known.

20 19. Plaintiff is informed and believes, and thereon alleges, that the Doe Defendants are
21 the partners, agents, or principals and co-conspirators of Defendants and of each other; that
22 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided
23 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits
24 of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the
25 liability of the Defendants as alleged herein.

26 20. Plaintiff is further informed and believes, and thereon alleges, that at all times
27 material herein, each Defendant was completely dominated and controlled by its co-Defendants
28 and each was the alter ego of the other. Whenever and wherever reference is made in this complaint

1 to any conduct by Defendant or Defendants, such allegations and references shall also be deemed
2 to mean the conduct of each of the Defendants, acting individually, jointly, and severally.
3 Whenever and wherever reference is made to individuals who are not named as Defendants in this
4 complaint, but were employees and/or agents of Defendants, such individuals, at all relevant times
5 acted on behalf of Defendants named in this complaint within the scope of their respective
6 employments.

7 **FACTUAL ALLEGATIONS**

8 21. During the relevant time frame, Defendants compensated Plaintiff and the Non-
9 Exempt Employees based upon an hourly wage.

10 22. Plaintiff and the Aggrieved Employees were, and at all times pertinent hereto, have
11 been non-exempt employees within the meaning of the California Labor Code, and the
12 implementing rules and regulations of the IWC California Wage Orders. They are subject to the
13 protections of the IWC Wage Orders and the Labor Code.

14 23. During the relevant time, Plaintiff was employed by Defendants in an hourly, non-
15 exempt position. She worked as an Inside Sales Representative in Defendants' retail store
16 approximately 5 days per week, 40+ hours per week.

17 24. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were
18 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the
19 requirements of California's wage and employment laws.

20 25. All Aggrieved Employees are similarly situated in that they are all subject to
21 Defendants' uniform policies and systemic practices as specified herein.

22 26. Plaintiff and the Aggrieved Employees were required to clock in at the beginning of
23 their shifts, clock out for lunch, in at the end of their lunch periods and out at the end of their shifts.
24 However, Plaintiff and the Aggrieved Employees were not paid for all hours worked because
25 employees were required to work off the clock.

26 27. In addition, Plaintiff and the Aggrieved Employees worked in excess of eight (8)
27 hours in day and/or over forty (40) hours in a workweek, but were not properly paid for such time
28 at a rate of time and one-half the employee's regular rate of pay per hour.

1 28. Upon information and belief, Defendants failed to incorporate all forms of non-
2 discretionary compensation into the regular rate, including differentials, gift cards, bonuses, spiffs,
3 and incentives.

4 29. Plaintiff and the Aggrieved Employees were regularly required to work shifts in
5 excess of five hours without being provided a lawful meal period as required by law and, on
6 occasion, over ten hours in a day without being provided a second lawful meal period as required
7 by law.

8 30. Indeed, during the relevant time, as a consequence of Defendants' scheduling
9 practices, work demands, and Defendants' policies and practices, Defendants frequently failed to
10 provide Plaintiff and the Aggrieved Employees timely, legally complaint uninterrupted 30-minute
11 meal periods as required by law. Not only were Plaintiff's and the Aggrieved Employees' first meal
12 breaks frequently not provided, untimely or short, but also Plaintiff and the Aggrieved Employees
13 were not provided a second meal period when working shifts in excess of 10 hours and in excess
14 of 12 hours.

15 31. On information and belief, Plaintiff and Aggrieved Employees did not waive their
16 rights to a second meal period.

17 32. Despite the above-mentioned meal period violations, Defendants failed to
18 compensate Plaintiff, and on information and belief, failed to compensate Aggrieved Employees,
19 one additional hour of pay at their regular rate as required by California law when meal periods
20 were not timely or lawfully provided in a compliant manner.

21 33. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
22 should know, knew, and/or should have known that Plaintiff and the other Aggrieved Employees
23 were entitled to receive accurate premium wages under Labor Code §226.7 but were not receiving
24 accurately calculated compensation.

25 34. In addition, during the relevant time frame, Plaintiff and the Non-Exempt
26 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
27 period for every four hours worked or major fraction thereof, which is a violation of the Labor Code
28 and IWC wage order.

1 35. Defendants maintained and enforced scheduling practices, policies, and imposed
2 work demands that frequently required Plaintiff and Aggrieved Employees to forego their lawful,
3 paid rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
4 requisite rest periods were not timely authorized and permitted.

5 36. As a matter of policy and practice, Defendants failed to authorize and permit the
6 requisite rest periods.

7 37. Despite the above-mentioned rest period violations, Defendants did not compensate
8 Plaintiff, and on information and belief, did not pay Aggrieved Employees one additional hour of
9 pay at their regular rate as required by California law, including Labor Code section 226.7 and the
10 applicable IWC wage order, for each day on which lawful rest periods were not authorized and
11 permitted.

12 38. In addition, Plaintiff and the Aggrieved Employees were required to carry work-
13 related cellular phones or other communications devices during meal and rest periods, and were
14 required to remain available. Meal and rest periods were frequently interrupted as a consequence.

15 39. Moreover, Plaintiff and the Aggrieved Employees were required to incur necessary
16 expenses in the discharge of their duties, but were not reimbursed for such costs.

17 40. Defendants also failed to provide accurate, lawful itemized wage statements to
18 Plaintiff and the Aggrieved Employees in part because of the above specified violations.

19 41. Defendants have also made it difficult to determine applicable rates of pay and
20 account with precision for the unlawfully withheld wages and deductions due to be paid to Non-
21 exempt Employees, including Plaintiff, during the liability period because they did not implement
22 and preserve a lawful record-keeping method to record all hours worked, and non-provided rest
23 and meal periods owed to employees as required for non-exempt employees by 29 U.S.C. section
24 211(c), California Labor Code section 226, and applicable California Wage Orders.

25 42. Plaintiff is informed and believes, and thereon alleges, that at all times herein
26 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
27 thereof for resignations without prior notice as the case may be) they had a duty to accurately
28 compensate Plaintiff and Aggrieved Employees for all wages owed including straight time,

overtime, meal and rest period premiums, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part because of the above-specified violations.

43. Plaintiff and the Aggrieved Employees are covered by applicable California IWC Wage Orders and corresponding applicable provisions of the California Code of Regulations, Title 8, section 11000 *et seq.*

FAILURE TO PAY MINIMUM WAGES

44. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein

45. Labor Code section 204 establishes the fundamental right of all employees in the State of California to be paid wages, including minimum wage, straight time, in a timely fashion for their work.

46. Labor Code section 1194(a) provides that notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

47. Labor Code section 1197 provides: The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.

48. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC Wage Order(s).

49. The applicable wage orders and California Labor Code sections 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law.

50. Labor Code sections 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code section 1197 may recover the unpaid

1 balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount
2 equal to the unpaid wages and interest accrued thereon.

3 51. During all relevant periods, the California Labor Code and wage orders required that
4 Defendants fully and timely pay its non-exempt, hourly employees all wages earned and due for all
5 hours worked.

6 52. The IWC Wage Orders define "hours worked" as "the time during which an
7 employee is subject to the control of an employer, and includes all the time the employee is suffered
8 or permitted to work, whether or not required to do so."

9 53. At all times relevant, Plaintiff and Aggrieved Employees consistently worked hours
10 for which they were not paid because Defendants frequently required Plaintiff and the Aggrieved
11 Employees to work off the clock (including without limitation during purported meal periods).

12 54. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the
13 Aggrieved Employees were working off the clock and that they should have been paid for this time.

14 55. In addition, Plaintiff and Aggrieved Employees were not compensated for all hours
15 worked because Defendants had an auto-deduct policy that resulted in 30-minutes of Plaintiff and
16 Aggrieved Employees hours worked being deducted, regardless if a legally compliant meal period
17 was provided.

18 56. Defendant's policy and practice of not paying all minimum wages violates
19 California Labor Code sections 204, 210, 216, 558, 1182.12, 1194, 1197, 1197.1, 1198, and the
20 applicable wage order 4-2001 and 5-2001.

21 ***FAILURE TO PAY OVERTIME OWED***

22 57. Plaintiff incorporates each and every allegation set forth in all of the foregoing
23 paragraphs as if fully set forth herein.

24 58. During all relevant periods, Defendant required Plaintiff and the Aggrieved
25 Employees to work shifts in excess of eight (8) hours per workday and/or to work in excess of forty
26 (40) hours per workweek.

27 59. During all relevant periods, both the California Labor Code sections 1194, 1197,
28 510, 1198, and the pertinent wage order 4-2001 and 5-2001 required that all work performed by

1 an employee in excess of eight (8) hours in any workday, on the seventh day of work in any
2 workweek, or in excess of forty (40) hours in any workweek be compensated at one and one-half
3 (1.5) times the employee's regular rate of pay. Any work in excess of twelve (12) hours in one (1)
4 day is required to be compensated at the rate of no less than twice the regular rate of pay for an
5 employee. In addition, any work in excess of eight (8) hours on any seventh (7th) day of a
6 workweek is required to be compensated at the rate of no less than twice the regular rate of pay of
7 an employee.

8 60. During all relevant periods, Defendants had a uniform policy of requiring Plaintiff
9 and the Aggrieved Employees to work in excess of eight (8) hours in a workday and/or in excess
10 of forty (40) hours in a workweek without compensating them at a rate of one and one-half (1.5)
11 times their regular rate of pay. Upon information and belief, Defendants also failed to properly
12 compensate Plaintiff and the Aggrieved Employees for hours worked in excess of twelve (12) hours
13 in one (1) day, or eight (8) hours on the seventh (7th) day of a workweek.

14 61. The IWC Wage Orders define "hours worked" as "the time during which an
15 employee is subject to the control of an employer, and includes all the time the employee is suffered
16 or permitted to work, whether or not required to do so."

17 62. At all times relevant, Plaintiff and Aggrieved Employees consistently worked hours
18 for which they were not paid because Plaintiff and the Aggrieved Employees were required to work
19 off the clock—some of these hours were over eight (8) hours in one (1) workday or in excess of
20 forty (40) hours in a workweek and should have been paid at the overtime rate.

21 63. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the
22 Aggrieved Employees were working off the clock and that they should have been paid for this time.

23 64. In addition, upon information and belief, Defendants failed to incorporate all forms
24 of compensation, including without limitation including differentials, gift cards, bonuses, spiffs,
25 and incentives, into the regular rate for overtime purposes.

26 65. As a result, Defendants failed to pay Plaintiff and the Aggrieved Employees earned
27 overtime wages and violated the law.

28 66. Defendants knew or should have known Plaintiff and the Aggrieved Employees

1 were undercompensated as a result of these practices.

2 ***FAILURE TO PROVIDE LAWFUL MEAL PERIODS***

3 67. Plaintiff incorporates each and every allegation set forth in all of the foregoing
4 paragraphs as if fully set forth herein.

5 68. Pursuant to Labor Code § 512, no employer shall employ an employee for a work
6 period of more than five (5) hours without providing a meal break of not less than thirty (30)
7 minutes in which the employee is relieved of all of his or her duties, except that when a work period
8 of not more than six (6) hours will complete the day's work the meal period may be waived by
9 mutual consent of the employer and employee.

10 69. During the relevant time, Defendants failed to provide Plaintiff and Aggrieved
11 Employees timely and uninterrupted first meal periods of not less than thirty (30) minutes within
12 the first five hours of a shift.

13 70. As a consequence of Defendants' policies and practices, requirements, scheduling
14 practices, work demands, coverage and staffing, Plaintiff and the Aggrieved Employees were often
15 required to forego such meal periods, take shortened meal periods, and/or commence their meal
16 periods into and beyond the sixth hour of their shifts. Moreover, Plaintiff and the Aggrieved
17 Employees were not provided a second meal period when working shifts in excess of 10 hours and
18 in excess of 12 hours.

19 71. In addition, Plaintiff and, upon information and belief, the Aggrieved Employees
20 were required to carry work-related cellular phones or other communications devices during meal
21 and rest periods, and were required to remain available. Meal and rest periods were frequently
22 interrupted as a consequence.

23 72. Upon information and belief, Plaintiff and the Aggrieved Employees were not paid
24 one hour of pay at their regular rate for each day that a meal period was not lawfully provided, in
25 part, because any such payments failed to include any incentives, gift cards, and other remuneration
26 in the regular rate.

27 73. As a proximate result of the aforementioned violations, Plaintiff and the Aggrieved
28 Employees have been damaged in an amount according to proof at time of trial.

1 74. Pursuant to Labor Code § 226.7, Plaintiff and Aggrieved Employees are entitled to
2 recover one (1) hour of premium pay at the regular rate for each day in which a meal period
3 violation occurred. They are also entitled to recover reasonable attorneys' fees, cost, interest, and
4 penalties as applicable.

5 75. As a result of the unlawful acts of Defendants, Defendants violated Labor Code
6 section 512, 226.7, 1198, and the Wage Orders.

7 ***FAILURE TO AUTHORIZE AND PERMIT LAWFUL REST PERIODS***

8 76. Plaintiff incorporates by reference and realleges each and every allegation contained
9 above, as though fully set forth herein.

10 77. Pursuant to the IWC wage orders applicable to Plaintiff's and Aggrieved
11 Employees' employment by Defendants, "Every employer shall authorize and permit all employees
12 to take rest periods, which insofar as practicable shall be in the middle of each work period....
13 [The] authorized rest period time shall be based on the total hours worked daily at the rate of ten
14 (10) minutes net rest time per four (4) hours worked or major fraction thereof.... Authorized rest
15 period time shall be counted as hours worked, for which there shall be no deduction from wages."

16 78. Labor Code §226.7(a) prohibits an employer from requiring any employee to work
17 during any rest period mandated by an applicable order of the IWC.

18 79. Defendants were required to authorize and permit employees such as Plaintiff and
19 Aggrieved Employees to take rest periods during shifts in excess of 3.5 hours, based upon the total
20 hours worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major fraction
21 thereof, with no deduction from wages.

22 80. Despite said requirements of the IWC wage orders applicable to Plaintiff's and
23 Aggrieved Employee's employment with Defendants, Defendants failed and refused to authorize
24 and permit Plaintiff and Aggrieved Employees to take lawful, net ten (10) minute rest periods for
25 every four (4) hours worked, or major fraction thereof as a consequence of Defendants' policies
26 and practices, requirements, scheduling practices, work demands, coverage and staffing. Such rest
27 breaks, when provided, were frequently untimely or less than net ten minutes because of the work
28 requirements imposed by Defendants, and frequent calls during rest periods.

1 81. Defendants did not pay Plaintiff one additional hour of pay at her regular rate of pay
2 for each day that a rest period violation occurred. On information and belief, the other members of
3 the aggrieved group endured similar violations as a result of Defendants' rest period policies and
4 practices and Defendant did not pay said Aggrieved Employees premium pay as required by law.

5 82. By their failure to authorize and permit Plaintiff and the Aggrieved Employees to
6 take a lawful, net ten (10) minute rest period free from work duties every four (4) hours or major
7 fraction thereof worked, including failure to provide two (2) total rest periods on six to ten hour
8 shifts and three (3) total ten (10) minute rest periods on days on which Plaintiff and the other
9 Aggrieved Employees work(ed) work a third rest period for shifts in excess of ten (10) hours, and
10 by their failure to provide compensation for such unprovided rest periods as alleged herein,
11 Defendants willfully violated the provisions of Labor Code sections 226.7 and the applicable IWC
12 Wage Order(s) 4-2001 and 5-2001.

13 83. As a result of the unlawful acts of Defendants, Defendants violated Labor Code
14 section 226.7, 512, 1198, and the Wage Orders.

15 ***FAILURE TO TIMELY PAY WAGES DUE AND PAYABLE DURING***
16 ***EMPLOYMENT***

17 84. Plaintiff incorporates by reference and realleges each and every allegation contained
18 above, as though fully set forth herein.

19 85. Labor Code section 204 requires that all wages are due and payable twice in each
20 calendar month.

21 86. The wages required by Labor Code §§ 226.7, 510, 1194 and other sections became
22 due and payable to each employee in each month that he or she was not provided with a meal period
23 or rest period or paid minimum wage, straight or overtime wages to which he or she was entitled.

24 87. Defendants violated Labor Code § 204 by systematically refusing to pay wages due
25 under the Labor Code.

26 88. Labor Code section 210 (a) provides that "In addition to, and entirely independent
27 and apart from, any other penalty provided in this article, every person who fails to pay the wages
28

of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follow:

(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

89. Plaintiff and the Aggrieved Group are entitled to civil penalties, attorneys fees, and costs.

FAILURE TO TIMELY PAY WAGES OWED AT SEPARATION

90. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

91. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages due within seventy-two (72) hours of separation of employment.

92. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employee's wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

93. Plaintiff and Aggrieved Employees are entitled to compensation for all forms of wages earned, including but not limited to minimum wages, overtime, sick pay, and premium meal and rest period compensation, but to date have not received such compensation, therefore entitling them to Labor Code § 203 penalties.

94. In addition, irrespective of any derivative violation, Defendants failed to timely pay Plaintiff and, upon information and belief, other Aggrieved Employees earned compensation at the time of termination despite their obligations under Labor Code 201 and 202.

95. More than thirty (30) days have passed since affected Aggrieved Employees have left Defendants' employ, and on information and belief, they have not received payment pursuant to Labor Code § 203.

1 96. Plaintiff and the Aggrieved Employees are thus entitled to 30 days' wages as
2 a penalty under Labor Code § 203, together with interest thereon and attorneys' fees and costs.

3 ***FAILURE TO REIMBURSE NECESSARY EXPENSES***

4 97. Plaintiffs repeat and incorporate herein by reference each and every allegation set
5 forth above, as though fully set forth herein.

6 98. Labor Code § 2802 requires Defendants to indemnify Plaintiffs and Aggrieved
7 Employees for necessary expenditures incurred in direct consequence of the discharge of his or her
8 duties.

9 99. Plaintiffs and the members of the Indemnification Aggrieved Group were required
10 to incur expenses in the performance of their assigned job duties.

11 100. Upon information and belief, the Defendants did not reimburse Plaintiffs or the
12 Aggrieved Group for such expenses.

13 101. As a result of the unlawful acts of Defendants, Defendants violated Labor Code
14 §2800 and 2802.

15 ***KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED***
16 ***EMPLOYEE WAGE STATEMENT PROVISIONS***

17 102. Plaintiff repeats and incorporates herein by reference each and every allegation set
18 forth above, as though fully set forth herein.

19 103. Labor Code section 226(a) reads in pertinent part: "Every employer shall,
20 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either
21 as a detachable part of the check, draft, or voucher paying the employee's wages, or separately
22 when wages are paid by personal check or cash, an accurate itemized statement in writing showing
23 (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions... (5) net
24 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
25 the employee and only the last four digits of his or her social security number or an employee
26 identification number other than a social security number, (8) the name and address of the legal
27 entity that is the employer, and (9) all applicable hourly rates in effect during each the pay period
28 and the corresponding number of hours worked at each hourly rate by the employee....".

1 104. Further, the IWC Wage Orders require in pertinent part: Every employer shall keep
2 accurate information with respect to each employee including the following: (3) Time records
3 showing when the employee begins and ends each work period. Meal periods, split shift intervals,
4 and total daily hours worked shall also be recorded...(5) Total hours worked in the payroll period
5 and applicable rates of pay....”

6 105. Labor Code section 1174 of the California also requires Defendants to maintain and
7 preserve, in a centralized location, among other items, records showing the names and addresses of
8 all employees employed and payroll records showing the hours worked daily by, and the wages
9 paid to, its employees. On information and belief and based thereon, Defendants have knowingly
10 and intentionally failed to comply with Labor Code section 1174, including by implementing the
11 policies and procedures and committing the violations alleged in the preceding causes of action and
12 herein. Defendants’ failure to comply with Labor Code section 1174 is unlawful pursuant to Labor
13 Code section 1175.

14 106. Defendants have failed to record many of the items delineated in applicable
15 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section 1174,
16 including by virtue of the fact that each wage statement which failed to accurately compensate
17 Plaintiff and Aggrieved Employees for all hours worked and for missed and non-provided meal and
18 rest periods, or which failed to include compensation for all minimum wages earned or overtime
19 hours worked, was an inaccurate wage statement.

20 107. On information and belief, Defendants failed to implement and preserve a lawful
21 record-keeping method to record all non-provided meal and rest periods owed to employees or all
22 hours worked, as required for Non-Exempt Employees under California Labor Code section 226
23 and applicable California Wage Orders. In order to determine if they had been paid the correct
24 amount and rate for all hours worked, Plaintiff and Aggrieved Employees have been, would have
25 been, and are compelled to try to discover the required information missing from their wage
26 statements and to perform complex calculations in light of the inaccuracies and incompleteness of
27 the wage statements Defendants provided to them.

28 108. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC

1 Wage Orders, Defendants did not and still do not furnish each of the members of the Aggrieved
2 Group with an accurate itemized statement in writing accurately reflecting all of the required
3 information. Here, Plaintiff asserts the Defendant omitted required information, failed to accurately
4 include all applicable hourly rates on the wage statements and the corresponding number of hours
5 worked at such rates or hours paid at such rates. In addition, Defendants have failed to provide
6 accurate itemized wage statements as a consequence of the above-specified violations for failure to
7 accurately pay all wages owed, accurately record all hours worked, and failure to pay meal and rest
8 period premiums as required by law.

9 109. Moreover, upon information and belief, as a pattern and practice, in violation of
10 Labor Code section 226(a) and the IWC Wage Orders, Defendants did not and do not maintain
11 accurate records pertaining to the total hours worked for Defendants by the members of the
12 Aggrieved Group, including but not limited to, beginning and ending of each work period, meal
13 period and split shift interval, the total daily hours worked, and the total hours worked per pay
14 period and applicable rates of pay.

15 ***VIOLATION OF THE UNFAIR COMPETITION LAW***

16 110. Plaintiffs incorporate by reference and reallege each and every allegation contained
17 above, as though fully set forth herein.

18 111. Defendants' conduct, as alleged in this complaint, has been, and continues to be,
19 unfair, unlawful, and harmful to Plaintiffs and the Aggrieved Employees, Defendants' competitors,
20 and the general public. Plaintiffs also seeks to enforce important rights affecting the public interest
21 within the meaning of the California Code of Civil Procedure § 1021.5.

22 112. Defendants' policies, activities, and actions as alleged herein are violations of
23 California law and constitute unlawful business acts and practices in violation of California
24 Business and Professions Code §§ 17200, *et seq.*

25 113. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be
26 predicated on the violation of any state or federal law.

27 114. The state law violations, including violations of the relevant IWC Wage Order,
28 detailed herein above are the predicate violations for this cause of action. By way of example only,

1 in the instant case Defendants' policy of failing to lawfully provide Plaintiffs and the Aggrieved
2 Group with timely meal and rest periods or pay one (1) hour of premium pay when a meal or rest
3 period was not lawfully provided violates Labor Code § 512, and § 226.7, and the IWC Wage
4 Orders. Defendants further violated the law through their policies of failing to fully and accurately
5 compensate Plaintiffs and the Aggrieved Employees for all hours worked, including minimum
6 wages and overtime, and failing to reimburse for necessary expenses, as well as failing to provide
7 accurate itemized wage statement as specified above.

8 115. Plaintiffs and the Aggrieved Employees have been personally aggrieved by
9 Defendants' unlawful and unfair business acts and practices alleged herein by the loss of money
10 and/or property.

11 116. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiffs
12 and the Aggrieved Employees are entitled to restitution of the wages withheld and retained by
13 Defendants during a period that commences four (4) years prior to the filing of this complaint; an
14 award of attorneys' fees pursuant to California Code of Civil Procedure §1021.5; interest; and an
15 award of costs.

16 ***FAILURE TO KEEP ACCURATE RECORDS***

17 117. Plaintiff repeats and incorporates herein by reference each and every allegation set
18 forth above, as though fully set forth herein.

19 118. The IWC wage orders, Labor Code Sections 226(a), 1174, and 1174.5 require that
20 the Defendant keep accurate payroll and timekeeping information.

21 119. The IWC Wage Orders required in pertinent part: Every employer shall keep
22 accurate information with respect to each employee including the following: (3) Time records
23 showing when the employee begins and ends each work period. Meal Periods, split shift intervals,
24 and total daily hours worked shall also be recorded...(5) Total hours worked in the payroll period
25 and applicable rate of pay..."

26 120. Labor Code section 1174 also requires Defendants to maintain and preserve, in a
27 centralized location, among other items, records showing the names and addresses of all employees
28

1 employed and payroll records showing the hours worked daily by and the wages paid to, its
2 employees.

3 121. On information and belief and based thereon, Defendants have knowingly and
4 intentionally failed to comply with Labor code section 1174, including by implementing the
5 policies and procedures and committing the violations alleged above, including without limitation
6 failing to keep records of meal periods and all wages earned at the proper rates.

7 122. Defendants' failure to comply with Labor Code section 1174 is unlawful pursuant
8 to Labor Code section 1175.

9 ***FAILURE TO PAY SICK LEAVE AT THE PROPER RATE***

10 123. Plaintiff repeats and incorporates herein by reference each and every allegation set
11 forth above, as though fully set forth herein.

12 124. Labor Code 246(i) provides: An employee who, on or after July 1, 2015, works in
13 California for the same employer for 30 or more days within a year from the commencement of
14 employment is entitled to paid sick days as specified.

15 125. Labor Code section 246(l) provides: "For the purposes of this section, an employer
16 shall calculate paid sick leave using any of the following calculations: (1) Paid sick leave for
17 nonexempt employees shall be calculated in the same manner as the regular rate of pay for the
18 workweek in which the employee uses paid sick time, whether or not the employee actually works
19 overtime in that workweek. (2) Paid sick time for nonexempt employees shall be calculated by
20 dividing the employee's total wages, not including overtime premium pay, by the employee's total
21 hours worked in the full pay periods of the prior 90 days of employment."

22 126. In this case, Plaintiff alleges that Defendants failed to pay sick leave at the proper
23 rate because it failed to take all forms of compensation, including incentives, and other wages into
24 account in calculating the regular rate. This constitutes a violation of Labor Code.

1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **PENALTIES UNDER THE PRIVATE ATTORNEYS' GENERAL ACT, LABOR CODE**

4 **SECTION 2698 ET SEQ.**

5 127. Plaintiff incorporates by reference each and every paragraph above, and realleges
6 each and every allegation contained above as though fully set forth herein.

7 128. Plaintiff gave timely written notice by online submission to the LWDA and by
8 certified mail to Defendants of Defendants' violations of numerous provisions of the California
9 Labor Code and the IWC Wage Orders as alleged in this complaint. All fees were paid as required
10 by statute. A copy of the letter sent to the LWDA with enclosure is attached hereto as **Exhibit A**.

11 129. Plaintiff is an "aggrieved employee" as defined in Labor Code Section 2699(A), as
12 he was employed by Defendants during the statutory period and suffered one or more of the Labor
13 Code violations set forth herein. He seeks to recover of herself and all other current and former
14 aggrieved employees of Defendants the civil penalties provided by PAGA, plus reasonable
15 attorneys' fees and costs.

16 130. 65 days have passed, and no response has been received from the LWDA.
17 Accordingly, the LWAD has permitted Plaintiff to proceed in a representative capacity.

18 131. Plaintiff has exhausted all administrative procedures required of them under the
19 Labor Code §§2698, 2699, 2699.3, and as a result, is justified as a matter of right in bringing
20 forward this cause of action.

21 132. Pursuant to Labor Code section 2699(a) Plaintiff seeks to recover civil penalties for
22 which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint.

23 133. Plaintiff seeks to recover the PAGA civil penalties through a representative action
24 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
25 4th 969. Class certification of the PAGA claims is not required.

26 134. Pursuant to Labor Code section 2698 et seq. and 2699(a), Plaintiff seeks to recover
27 civil penalties for which Defendants are liable due to numerous Labor Code and Wage Order
28 violations as set forth in this Complaint.

1 135. Specifically, Plaintiff, on behalf of herself and the Aggrieved Employees, seek
2 penalties under Labor Code §2699, for, without limitation, the claims set forth herein, including:

- 3 a. Defendants' failure to comply with the requirement of Labor Code §1182.12,
4 1194, 1197, 1198, and Wage Orders to pay at least minimum wage for every
5 hour worked;
- 6 b. Defendants' failure to comply with the requirement of Labor Code §510, 1194,
7 1197, 1198, and Wage Orders to accurately pay all wages earned;
- 8 c. Defendants' failure to comply with the requirement of Labor Code §216 to pay
9 wages after demand was made;
- 10 d. Defendants' failure to comply with the requirement of Labor Code §§204 and
11 210 to pay, without condition and within the time set by the applicable article,
12 all wages, or parts thereof;
- 13 e. Defendants' failure to comply with the requirement of Labor Code §225.5 to
14 pay wages due;
- 15 f. Defendants' failure to comply with the requirement of Labor Code §§201 and
16 202 to pay wages due to former employees;
- 17 g. Defendants' failure to comply with the requirement of Labor Code §203 to pay
18 waiting time penalties to former employees;
- 19 h. Defendants' failure to comply with the requirement of Labor Code §226.7, 512,
20 1198, and IWC Wage Orders to provide timely, uninterrupted 30 minute off-
21 duty meal periods;
- 22 i. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198,
23 and IWC Wage Orders to pay one hour of premium pay at the regular rate for
24 each lawful meal break that was not provided;
- 25 j. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198,
26 and IWC Wage Orders to authorize and permit ten (10) minute rest breaks;
- 27 k. Defendants' failure to comply with the requirement of Labor Code §§226.7,
28 1198, and IWC Wage Orders to pay one hour of premium pay at the regular rate

- 1 for each statutorily required rest break that was not lawfully authorized and
2 permitted;
- 3 l. Defendants' failure to reimburse necessary expenses in violation of Labor Code
4 §2802;
- 5 m. Defendants' failure to maintain required records in violation of Labor Code
6 §226, 1174, and Wage Orders;
- 7 n. Defendants' failure to provide accurate compliant wage statements under Labor
8 Code section 226;
- 9 o. Defendants' failure to pay sick leave at the proper rate of pay under Labor Code
10 section 246.

11 136. Plaintiff seeks civil penalties for Defendants' violation of Labor Code provisions for
12 which a civil penalty is specifically provided, including but not limited to the following:

- 13 a. Pursuant to Labor Code §210, for violations of Labor Code §204, Defendants are
14 subject to a civil penalty in the amount of one hundred dollars (\$100) for the initial
15 violation for each failure to pay each employee and two hundred (\$200) per
16 employee for violations in subsequent pay periods plus 25% of the amount
17 unlawfully withheld.
- 18 b. Pursuant to Labor Code §226.3, for violations of Labor Code §226 (a) Defendants
19 are subject to a civil penalty in the amount of two hundred and fifty dollars (\$250)
20 per aggrieved employee for the initial pay period where a violation occurs and one
21 thousand dollars (\$1,000) per aggrieved employee for violations in subsequent pay
22 period.
- 23 c. Pursuant to Labor Code §558(a), "[a]ny employer or other person acting on behalf
24 of an employer who violated, or causes to be violated, a section of this chapter or
25 any provisions regulating hours and days of work in any order of the Industrial
26 Welfare Commission," including Labor Code §§510 and 512, shall be subject to a
27 civil penalty, in addition to any other penalty provided by law, of fifty dollars (\$50)
28 for initial violations for each underpaid employee for each pay period for which the

1 employee was underpaid and one hundred dollars (\$100) for each subsequent
2 violation for each underpaid employee for each pay period for which the employee
3 was underpaid.

4 d. Pursuant to Labor Code §1174.5, for violations of Labor Code §1174(d), Defendants
5 are subject to a civil penalty of five hundred dollars (\$500).

6 e. Pursuant to Labor Code §1197.1, an employer who pays or causes to be paid to any
7 employee a wage less than the minimum fixed by an order of the commission, shall
8 be subject to a civil penalty as follows: for any initial violation that is intentionally
9 committed, one hundred dollars (\$100) for each underpaid employee for each pay
10 period for which the employee is underpaid; and for each subsequent violation of
11 the same offense, two hundred fifty dollars (\$250) for each underpaid employee for
12 each pay period for which the employee is underpaid regardless of whether the
13 initial violation was intentionally committed.

14 137. Further, as a result of the acts alleged hereinabove, Plaintiff seeks penalties under
15 Labor Code §§2698 et seq. and 2699 because of Defendants' violation of numerous provisions of
16 the California Labor Code and IWC Wage Orders.

17 138. Under Labor Code §2699, Plaintiff and Aggrieved Employees are entitled to \$100
18 for any initial violation and \$200 for all subsequent violations of the above-mentioned provisions
19 of the California Labor Code.

20 139. Under Labor Code §2699, Plaintiff and Aggrieved Employees should be awarded
21 twenty-five percent (25%) of all penalties due under California Law, interest, attorneys' fees and
22 costs.

23 140. Under Labor Code §2699, the State of California should we awarded seventy-five
24 percent (75%) of the penalties due under California Law.

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1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq. for the violations specified above;
2. For penalties under Labor Code sections 210, 226.3, 1174.5, 1197.1, and 2699(a) and (f);
3. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;
4. For reasonable attorneys' fees, expenses, and costs under Labor Code §§ 1194, 226, 2699, and/or Code of Civil Procedure § 1021.5, and/or any other applicable provisions providing for attorneys' fees and costs; and
5. For such other and further relief as the Court deems proper.

Dated: October 25, 2022

JAMES HAWKINS, APLC
James R. Hawkins, Esq.
Christina M. Lucio, Esq.

- 23 -

EXHIBIT A

JAMES *JH* HAWKINS
A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

August 18, 2022

Via Online Filing (LWDA)

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail (Employers)

Sally Beauty Supply, LLC
3001 Colorado Blvd.
Denton, TX 76210
Receipt No.: 7021 1970 0000 9061 1192

Agent for Service of Process for
Sally Beauty Supply, LLC:
Corporate Creations Network Inc.
4640 Admiralty Way 5th Floor
Marina Del Rey, CA 90292
Receipt No.: 7021 1970 0000 9061 1178

Sally Beauty Holdings, Inc.
3001 Colorado Blvd.
Denton, TX 76210
Receipt No.: 7021 1970 0000 9061 1185

Agent for Service of Process for
Sally Beauty Holdings, Inc.:
Corporate Creations Network Inc.
4640 Admiralty Way 5th Floor
Marina Del Rey, CA 90292
Receipt No.: 7021 1970 0000 9061 1161

RE: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 *et seq.*

To Whom It May Concern:

PLEASE TAKE NOTICE that Plaintiff Tessa Teuscher, individually and on behalf of all others similarly situated, gives NOTICE of her intent to commence a civil action pursuant to California Labor Code Section 2698, *et seq.* against her former employers. Plaintiff hereby gives written notice electronically to the Labor and Workforce Development Agency, and by certified mail to Defendant Sally Beauty Supply, LLC, a Delaware Limited Liability Company; Sally Beauty Holdings, Inc., a Delaware Corporation (“Defendants” or “Sally”) via their agent for service of process.

Plaintiff was employed by Defendant as an hourly, non-exempt employee. Plaintiff began her employment with Defendant in February 2019 and continued such employment through August 2021. She worked for Defendant in their Woodland, California retail location as an Inside Sales Representative.

NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 *et seq.*

August 11, 2022

The group of aggrieved employees that Plaintiff seeks to represent is a group of non-exempt employees working directly or indirectly for Defendant in the State of California during the relevant time period (“Aggrieved Employees”).

This notice is timely as it is provided within one year of the violations. Each of the violations set forth below and in the attached complaint is asserted on behalf of Plaintiff and the Aggrieved Employees.

Plaintiff has attached his Complaint, and incorporates the allegations in the Complaint as though fully set forth herewith, setting out the specific provisions of the Labor Code that Plaintiff alleges have been violated, including the facts and relevant theories alleged against Defendant in the Complaint.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Plaintiff has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees working for Defendant at their locations in the State regardless of their classification, job title, locations, or whether they were hired directly or through a labor contractor or staffing agency.

Plaintiff claims that Defendant implemented legally non-compliant policies and practices which led to Defendant’ (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Failure to Timely Pay Wages Owed During Employment; (6) Failure to Timely Pay Wages Owed Upon Separation From Employment; (7) Failure to Reimburse Necessary Expenses; (8) Unlawful Deductions; (9) Knowing and Intentional Failure to Comply with Itemized Wage Statement Provisions; and (10) Violation of the Unfair Competition Law.

Plaintiff further contends that Defendant failed to keep accurate records as required by Wage Order 7-2001 and 4-2001, Labor Code 1174, and 1198. IWC Wage Order 7-2001 and 4-2001 requires in pertinent part: Every employer shall keep accurate information with respect to each employee including the following: (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the payroll period and applicable rate of pay....” Labor Code section 1174 also requires Defendant to maintain and preserve, in a centralized location, among other items, records showing the names and addresses of all employees employed and payroll records showing the hours worked daily by, and the wages paid to, its employees. On information and belief and based thereon, Defendant have knowingly and intentionally failed to comply with Labor Code section 1174, including by implementing the policies and procedures and committing the violations alleged in the complaint, including without limitation failing to keep records of meal periods and all wages earned at the proper rates. Defendant’ failure to comply with Labor Code section 1174 is unlawful pursuant to Labor Code section 1175.

In addition to the violation specified above and in the attached Complaint, Plaintiff alleges that Defendant failed to pay sick leave pay to Plaintiff and the Aggrieved Employees at the proper

NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 *et seq.*

August 11, 2022

rate. Labor Code 246(i) provides: An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified. Labor Code section 246(1) provides: “For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations: (1) Paid sick leave 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 or not the employee actually works overtime in that workweek. (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.” In this case, Plaintiff alleges that Defendant failed to pay sick leave at the proper rate because it failed to take all forms of compensation, including incentives, bonuses, spiffs, gift cards, shift differentials, and other wages into account in calculating the regular rate. This constitutes a violation of Labor Code.

Plaintiff further alleges that the Defendants violated Labor Code section 551 and 52 which provide for at least one day of rest in seven days.

All Labor Code provisions in the Complaint alleged to have been violated pertain to all entities and individuals named in the Complaint, even if not expressly specified.

Please advise by certified mail within sixty-five (65) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and please contact me if you have any questions or require additional information.

Very Truly Yours,

/s/ Christina M. Lucio

Christina M. Lucio, Esq.

Enclosure: Complaint

James R. Hawkins (SBN 192925)
Christina M. Lucio (SBN 253677)
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, California 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676
James@Jameshawkinsaplc.com
Christina@Jameshawkinsaplc.com

Attorneys for Plaintiff Tessa Teuscher,
on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF YOLO

TESSA TEUSCHER, individually and on
behalf of herself and all others similarly
situated,

Plaintiff,

v.

SALLY BEAUTY SUPPLY, LLC, a
Virginia Limited Liability Company;
SALLY BEAUTY HOLDINGS, INC., a
Delaware Corporation; and DOES 1-50,
inclusive,

Defendants.

Case No.

COMPLAINT

Assigned for All Purposes To:

Hon.

Dept.:

COMPLAINT FOR DAMAGES FOR:

- 1) **Failure to Pay Minimum Wages;**
- 2) **Failure to Pay Overtime Owed;**
- 3) **Failure to Provide Lawful Meal Periods;**
- 4) **Failure To Authorize And Permit Rest Periods;**
- 5) **Failure to Timely Pay Wages During Employment**
- 6) **Failure to Timely Pay Wages Owed Upon Separation From Employment;**
- 7) **Failure to Reimburse Necessary Expenses;**
- 8) **Knowing and Intentional Failure to Comply with Itemized Wage Statement Provisions;**
- 9) **Violation of the Unfair Competition Law;**

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff TESSA TEUSCHER (“Plaintiff”), individually and on behalf of others similarly situated, and asserts claims against defendants SALLY BEAUTY SUPPLY, LLC, a Virginia Limited Liability Company; SALLY BEAUTY HOLDINGS, INC., a Delaware Corporation; and DOES 1-50, inclusive (collectively “Defendants” or “Sally”) as follows:

INTRODUCTION

1. This is a Class Action, pursuant to California Code of Civil Procedure section 382, on behalf of Plaintiff and any and all persons who are or were employed by Defendants, either directly or indirectly, in the State of California at any time from four years prior to the filing of this Complaint through resolution or trial of the matter. (“Class Members” or “Non-Exempt Employees”).

2. Defendants implemented uniform policies and practices that deprived Plaintiff and Class Members of earned wages, including minimum wages; straight time wages; overtime wages; premium wages; lawful meal and/or rest breaks; reimbursement for necessary expenses; and timely payment of wages.

3. Such actions and policies, as described above and further herein, were and continue to be in violation of the California Labor Code. Plaintiff, on behalf of herself and all Class members, bring this action pursuant to the California Labor Code, including sections 201, 202, 203, 204, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 245-249, 510, 512, 516, 558, 1174, 1194, 1194.2, 1195, 1197, 1198, 2802, applicable IWC California Wage Orders and California Code of Regulations, Title 8, section 11000 *et seq.*, seeking unpaid wages, unpaid meal and rest period compensation, unreimbursed expenses, penalties, liquidated damages, and reasonable attorneys’ fees and costs.

4. Plaintiff, on behalf of herself and others similarly situated, pursuant to Business and Professions Code sections 17200-17208, also seek restitution from Defendants for their failure to pay to Plaintiffs and Class Members all of their wages, including overtime and premium wages.

JURISDICTION AND VENUE

5. This action is brought as a Class Action on behalf of Plaintiff and similarly situated employees of Defendants pursuant to California Code of Civ. Proc. Section 382. The monetary

1 damages and restitution sought by Plaintiff exceeds the minimum jurisdiction limits of the
2 California Superior Court and will be established according to proof at trial.

3 6. This Court has jurisdiction over this action pursuant to the California Constitution
4 Article VI §10, which grants the California Superior Court original jurisdiction in all causes except
5 those given by statute to other courts. The statutes under which this action is brought do not give
6 jurisdiction to any other court.

7 7. This Court has jurisdiction over this Action pursuant to California Code of Civil
8 Procedure, Section 410.10 and California Business & Professions Code, Section 17203.

9 8. This Court has jurisdiction over Defendants because, upon information and belief,
10 each Defendant is either a resident of California, has sufficient minimum contacts in California, or
11 otherwise intentionally avails itself of the California market so as to render the exercise of
12 jurisdiction over them by the California Courts consistent with traditional notions of fair play and
13 substantial justice. Defendants have done and are doing business throughout California and Yolo
14 County.

15 9. The unlawful acts alleged herein have a direct effect on Plaintiff and the other
16 similarly situated Non-Exempt Employees within Yolo County and it is believed that Defendants
17 have employed hundreds of Class Members as Non-Exempt Employees in Yolo County.

18 10. The California Superior Court also has jurisdiction in this matter because the
19 individual claims of the Class Members described herein are presently believed to be under the
20 seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for Federal Court and the
21 aggregate potential damages and recovery by all of the claims of the Plaintiff's Class, including
22 attorneys' fees, placed in controversy by Plaintiff's class-wide claims, is presently believed to be
23 under the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of 2005.
24 Further, there is no federal question at issue, as the issues herein are based solely on California
25 statutes and law, including the Labor Code, IWC Wage Orders, the California Code of Civil
26 Procedure, the California Civil Code, and the California Business and Professions Code.

27 11. Venue is proper in this Court because one or more of the Defendants reside, transact
28 business, or have offices in this County, Plaintiff is a resident of this County, and the acts or

omissions alleged herein took place in this County.

PARTIES

12. Defendant Sally Beauty Supply, LLC is a Virginia Limited Liability Company doing business in the state of California. It is based at 3001 Colorado Boulevard, Denton, TX 76210.

13. Upon information and belief, Sally Beauty Supply, LLC employs Non-Exempt Employees, like Plaintiff, throughout the State of California.

14. Defendant Sally Beauty Holdings, Inc. is a Delaware Corporation doing business in the state of California. It is based at 3001 Colorado Blvd., Denton, TX 76210.

15. Upon information and belief, Sally Beauty Holdings, Inc. employs Non-Exempt Employees, like Plaintiff, throughout the State of California.

16. Plaintiff Tessa Teuscher is and during the liability period has been, a resident of California.

17. Plaintiff was employed in an hourly, non-exempt position by Defendants during the relevant time period.

18. Plaintiff and the members of the putative class were employed as hourly paid employees by employed by Defendants, either directly or indirectly, in the State of California at any time from four years prior to the filing of this Complaint.

19. Whenever in this complaint reference is made to any act, deed, or conduct of Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through one or more of Defendants' officers, directors, agents, employees, or representatives, who was actively engaged in the management, direction, control, or transaction of the ordinary business and affairs of Defendants.

20. The true names and capacities of Defendants, whether individual, corporate, associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

21. Plaintiff is informed and believes, and thereon allege, that the Doe Defendants are the partners, agents, or principals and co-conspirators of Defendants and of each other; that Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the liability of the Defendants as alleged herein.

22. Plaintiff is further informed and believes, and thereon allege, that at all times material herein, each Defendant was completely dominated and controlled by its co-Defendants and each was the alter ego of the other. Whenever and wherever reference is made in this complaint to any conduct by Defendant or Defendants, such allegations and references shall also be deemed to mean the conduct of each of the Defendants, acting individually, jointly, and severally. Whenever and wherever reference is made to individuals who are not named as Defendants in this complaint, but were employees and/or agents of Defendants, such individuals, at all relevant times acted on behalf of Defendants named in this complaint within the scope of their respective employments.

FACTUAL ALLEGATIONS

23. During the relevant time frame, Defendants compensated Plaintiff and the Non-Exempt Employees based upon an hourly wage.

24. Plaintiff and the Class Members were, and at all times pertinent hereto, have been non-exempt employees within the meaning of the California Labor Code, and the implementing rules and regulations of the IWC California Wage Orders. They are subject to the protections of the IWC Wage Orders and the Labor Code.

25. During the relevant time, Plaintiff was employed by Defendants in an hourly, non-exempt position. She worked as an Inside Sales Representative in Defendants' retail store approximately 5 days per week, 40+ hours per week.

26. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the requirements of California's wage and employment laws.

1 27. All Class Members are similarly situated in that they are all subject to Defendants'
2 uniform policies and systemic practices as specified herein.

3 28. Plaintiff and the Class Members were required to clock in at the beginning of their
4 shifts, clock out for lunch, in at the end of their lunch periods and out at the end of their shifts.
5 However, Plaintiff and the Class Members were not paid for all hours worked because employees
6 were required to work off the clock.

7 29. In addition, Plaintiff and the Class Members worked in excess of eight (8) hours in
8 day and/or over forty (40) hours in a workweek, but were not properly paid for such time at a rate
9 of time and one-half the employee's regular rate of pay per hour.

10 30. Upon information and belief, Defendants failed to incorporate all forms of non-
11 discretionary compensation into the regular rate, including differentials, gift cards, bonuses,
12 spiffs, and incentives.

13 31. Plaintiff and the Class Members were regularly required to work shifts in excess of
14 five hours without being provided a lawful meal period and, on occasion, over ten hours in a day
15 without being provided a second lawful meal period as required by law.

16 32. Indeed, during the relevant time, as a consequence of Defendants' scheduling
17 practices, work demands, and Defendants' policies and practices, Defendants frequently failed to
18 provide Plaintiff and the Class Members timely, legally complaint uninterrupted 30-minute meal
19 periods as required by law. Not only were Plaintiff's and the Class Members' first meal breaks
20 frequently not provided, untimely or short, but also Plaintiff and the Class Members were not
21 provided a second meal period when working shifts in excess of 10 hours and in excess of 12
22 hours.

23 33. On information and belief, Plaintiff and Class Members did not waive their rights
24 to a second meal period.

25 34. Despite the above-mentioned meal period violations, Defendants failed to
26 compensate Plaintiff, and on information and belief, failed to compensate Class Members, one
27 additional hour of pay at their regular rate as required by California law when meal periods were
28 not timely or lawfully provided in a compliant manner.

1 35. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
2 should know, knew, and/or should have known that Plaintiff and the other Class Members were
3 entitled to receive accurate premium wages under Labor Code §226.7 but were not receiving
4 accurately calculated compensation.

5 36. In addition, during the relevant time frame, Plaintiff and the Non-Exempt
6 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
7 period for every four hours worked or major fraction thereof, which is a violation of the Labor
8 Code and IWC wage order.

9 37. Defendants maintained and enforced scheduling practices, policies, and imposed
10 work demands that frequently required Plaintiff and Class Members to forego their lawful, paid
11 rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
12 requisite rest periods were not timely authorized and permitted.

13 38. As a matter of policy and practice, Defendants failed to authorize and permit the
14 requisite rest periods.

15 39. Despite the above-mentioned rest period violations, Defendants did not
16 compensate Plaintiff, and on information and belief, did not pay Class Members one additional
17 hour of pay at their regular rate as required by California law, including Labor Code section 226.7
18 and the applicable IWC wage order, for each day on which lawful rest periods were not
19 authorized and permitted.

20 40. In addition, Plaintiff and the Class Members were required to carry work-related
21 cellular phones or other communications devices during meal and rest periods, and were required
22 to remain available. Meal and rest periods were frequently interrupted as a consequence.

23 41. Moreover, Plaintiff and the Class Members were required to incur necessary
24 expenses in the discharge of their duties, but were not reimbursed for such costs.

25 42. Defendants also failed to provide accurate, lawful itemized wage statements to
26 Plaintiff and the Class Members in part because of the above specified violations.

27 43. Defendants have also made it difficult to determine applicable rates of pay and
28 account with precision for the unlawfully withheld wages and deductions due to be paid to Non-

1 exempt Employees, including Plaintiff, during the liability period because they did not implement
2 and preserve a lawful record-keeping method to record all hours worked, and non-provided rest
3 and meal periods owed to employees as required for non-exempt employees by 29 U.S.C. section
4 211(c), California Labor Code section 226, and applicable California Wage Orders.

5 44. Plaintiff is informed and believes, and thereon alleges, that at all times herein
6 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
7 thereof for resignations without prior notice as the case may be) they had a duty to accurately
8 compensate Plaintiffs and Class Members for all wages owed including straight time, overtime,
9 meal and rest period premiums, and that Defendants had the financial ability to pay such
10 compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part
11 because of the above-specified violations.

12 45. Plaintiff and the Class Members are covered by applicable California IWC Wage
13 Orders and corresponding applicable provisions of the California Code of Regulations, Title 8,
14 section 11000 *et seq.*

15 **CLASS ACTION ALLEGATIONS**

16 46. Plaintiff brings this action on his own behalf, as well as on behalf of each and every
17 other person similarly situated, and thus, seeks class certification under California Code of Civil
18 Procedure §382.

19 47. All claims alleged herein arise under California law for which Plaintiff seeks relief
20 as authorized by California law.

21 48. The proposed class is comprised of and defined as: **all persons who are or were**
22 **employed by the Defendants as hourly paid, non-exempt workers in the State of California at**
23 **any time from four years prior to the filing of this action through resolution or trial of the**
24 **matter.** (hereinafter collectively referred to as the “Class” or “Class Members”).

25 49. Plaintiff also seeks to represent Subclasses included in the Plaintiff’s Class, which
26 are composed of Class Members satisfying the following definitions:

27 a. All Class Members who were not paid at least minimum wage for all hours
28 worked (collectively “**Minimum Wage Subclass**”);

1 b. All Class Members who were not accurately paid overtime for hours worked
2 over eight in a day or over forty in a workweek (**collectively “Overtime Subclass”**);

3 c. All Class Members who worked more than five (5) hours in a workday and
4 were not provided with a timely, uninterrupted lawful meal period of net thirty (30) minutes, and
5 were not paid compensation of one hour premium wages at the employee’s regular rate in lieu
6 thereof (hereinafter collectively referred to as the **“First Meal Period Subclass”**);

7 d. All Class Members who worked more than three and a half hours in a
8 workday and were not authorized and permitted to take a net 10-minute rest period for every four
9 (4) hours or major fraction thereof worked per day and were not paid compensation of one hour
10 premium wages at the employee’s regular rate in lieu thereof (hereinafter collectively referred to
11 as the **“Rest Period Subclass”**);

12 e. All Class Members who were not reimbursed for all necessary expenditures
13 (collectively **“Indemnification Subclass”**);

14 f. All Class Members who did not receive all owed wages at time of separation
15 or within 72 hours in the case of resignation (hereinafter collectively referred to as the **“Waiting
16 Time Subclass”**);

17 g. All Class Members who were not provided with accurate and complete
18 itemized wage statements (hereinafter collectively referred to as the **“Inaccurate Wage Statement
19 Subclass”**);

20 h. All Class Members who were employed by Defendants and subject to
21 Defendant’s Unfair Business Practices (hereinafter collectively referred to as the **“Unfair Business
22 Practices Subclass”**).

23 50. Plaintiff reserves the right, under Rule 3.765, California Rules of Court, to amend
24 or modify the descriptions of the Class and Subclasses to provide greater specificity as appropriate,
25 or if it should be deemed necessary by the Court or to further divide the Class Members into
26 additional Subclasses or to limit the Subclasses to particular issues. Any reference herein to the
27 Class Members or the Plaintiffs’ Class includes the members of each of the Subclasses.

28 51. As set forth in further detail below, this action has been brought and may properly

1 be maintained as a class action under the provisions of section 382 of the Code of Civil Procedure
2 because there is a well-defined community of interest in the litigation, and the proposed Class and
3 Subclasses are easily ascertainable through Defendants' records.

4 a. Numerosity: The members of the Class and Subclasses are so numerous that
5 joinder of all members of the Class and Subclasses would be unfeasible and impractical. The
6 membership of the entire Class and Subclasses is unknown to Plaintiff at this time, however, the
7 Class is estimated to be hundreds of individuals. Accounting for employee turnover during the
8 relevant periods necessarily increases this number substantially. Plaintiff alleges Defendants'
9 employment records would provide information as to the number and location of all Class
10 Members. Joinder of all members of the proposed Class is not practicable.

11 b. The proposed class is easily ascertainable. The number and identity of the
12 class members are determinable from Defendants' payroll records and time records for each class
13 member.

14 c. Commonality: There are common questions of law and fact as to the Class
15 and Subclasses that predominate over questions affecting only individual Class Members. These
16 common questions of law and fact include, without limitation:

- 17 1. Whether Defendants accurately paid Class Members for all hours worked;
- 18 2. Whether Defendants knew or should have known that Class Members were
19 required to perform work off the clock;
- 20 3. Whether Defendants accurately calculated and paid all Class Members
21 overtime premiums for the hours which Plaintiff and Class Members worked
22 in excess of eight (8) hours per day and/or forty (40) hours per week;
- 23 4. Whether Defendants accurately paid employees double time for hours
24 worked in excess of 12 hours in one day or for work over 8 hours in a day
25 on the seventh day of work in a workweek;
- 26 6. Whether Defendants had a policy and practice of providing lawful, timely
27 meal periods in accordance with Labor Code § 512, as well as the applicable
28 Industrial Welfare Commission ("IWC") wage order;

1 7. Whether Defendants had a policy and practice of complying with Labor
2 Code section 226.7 and IWC Wage Order on each instance that a lawful,
3 timely 30-minute uninterrupted meal period was not provided;
4 8. Whether Defendants failed to authorize and permit a lawful, net 10-minute
5 rest period to the Class Members for every four (4) hours or major fraction thereof worked;
6 9. Whether Defendants required employees to remain on the premises during
7 rest periods;
8 10. Whether Defendants had a policy and practice of complying with Labor
9 Code section 226.7 and the IWC Wage Order on each instance that a lawful rest period was not
10 provided;
11 11. Whether Defendants failed to timely pay all wages upon separation in
12 accordance with Labor Code sections 201-202;
13 12. Whether Defendants failed to reimburse employees for necessary expenses
14 in accordance with Labor Code section 2802;
15 13. Whether Defendants omitted required information from itemized wage
16 statements;
17 14. Whether Defendants failed to maintain accurate records of Class Members'
18 earned wages, work periods, meal periods and deductions;
19 15. Whether Defendants engaged in unfair competition in violation of section
20 17200 et seq. of the Business and Professions Code;
21 16. Whether Defendants' conduct was willful and/or reckless;
22 17. Whether Defendants failed to provide accurate itemized wage statements in
23 violation of Labor Code § 226; and
24 18. The appropriate amount of damages, restitution, and/or monetary penalties
25 resulting from Defendants' violations of California law.
26 d. Typicality: Plaintiff is qualified to, and will fairly and adequately protect
27 the interests of each member of the Class and Subclasses with whom he has a well-defined
28 community of interest. Plaintiff's claims herein alleged are typical of those claims which could be

1 alleged by any member of the Class and/or Subclasses, and the relief sought is typical of the relief
2 which would be sought by each member of the Class and/or Subclasses in separate actions. All
3 members of the Class and/or Subclasses have been similarly harmed by Defendants' failure to
4 provide lawful meal and rest periods, failure to reimburse expenses, failure to provide accurate
5 wage statements, failure to timely pay wages at termination, failure to pay minimum wages,
6 rounding practices, and failure to accurately pay all wages earned including all owed premium and
7 overtime wages, all due to Defendants' policies and practices that affected each member of the
8 Class and/or Subclasses similarly. Further, Defendants benefited from the same type of unfair
9 and/or wrongful acts as to each member of the Class and/or Subclasses.

10 e. Adequacy: Plaintiff is qualified to, and will fairly and adequately protect the
11 interests of each member of the Class and/or Subclasses with whom he has a well-defined
12 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that
13 he has an obligation to make known to the Court any relationships, conflicts, or differences with
14 any member of the Class and/or Subclasses, and no such relationships or conflicts are currently
15 known to exist. Plaintiff's attorneys and the proposed counsel for the Class and Subclasses are
16 versed in the rules governing class action discovery, certification, litigation, and settlement and
17 experienced in handling such matters. Other former and current employees of Defendants may also
18 serve as representatives of the Class and Subclasses if needed.

19 f. Superiority: The nature of this action makes the use of class action
20 adjudication superior to other methods. A class action will achieve economies of time, effort,
21 judicial resources, and expense, which would not be achieved with separate lawsuits. The
22 prosecution of separate actions by individual members of the Class and/or Subclasses would create
23 a risk of inconsistent and/or varying adjudications with respect to the individual members of the
24 Class and/or Subclasses, establishing incompatible standards of conduct for the Defendants, and
25 resulting in the impairment of the rights of the members of the Class and/or Subclasses and the
26 disposition of their interests through actions to which they were not parties. Thus, a class action is
27 superior to other available means for the fair and efficient adjudication of this controversy because
28 individual joinder of all Class Members is not practicable, and questions of law and fact common

1 to the Class predominate over any questions affecting only individual Class Members. Each
2 member of the Class has been damaged and is entitled to recovery by reason of Defendants'
3 unlawful policies and practices that affected each member of the Class and/or Subclasses similarly.
4 Class action treatment will allow those similarly situated persons to litigate their claims in the
5 manner that is most efficient and economical for both parties and the judicial system. Plaintiff is
6 unaware of any difficulties that are likely to be encountered in the management of this action that
7 would preclude its maintenance as a class action.

8 g. Public Policy Considerations: Employers in the state of California violate
9 employment and labor laws every day. However, current employees are often afraid to assert their
10 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
11 because they believe their former employers may damage their future endeavors through negative
12 references and/or other means. The nature of this action allows for the protection of current and
13 former employees' rights without fear of retaliation or damage. Additionally, the citizens of
14 California have a significant interest in ensuring employers comply with California's labor laws
15 and in ensuring those employers who do not are prevented from taking further advantage of their
16 employees.

17 **CLASS ACTION CLAIMS**

18 **FIRST CAUSE OF ACTION**

19 **FAILURE TO PAY MINIMUM WAGES**

20 **(By Plaintiff and the Class Against Defendants)**

21 52. Plaintiff incorporates each and every allegation set forth in all of the foregoing
22 paragraphs as if fully set forth herein.

23 53. Labor Code section 204 establishes the fundamental right of all employees in the
24 State of California to be paid wages, including minimum wage, straight time and overtime, in a
25 timely fashion for their work.

26 54. Labor Code section 1194(a) provides that notwithstanding any agreement to work
27 for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
28 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance

1 of the full amount of this minimum wage or overtime compensation, including interest thereon,
2 reasonable attorney's fees, and costs of suit.

3 55. Labor Code section 1197 provides: The minimum wage for employees fixed by the
4 commission or by any applicable state or local law, is the minimum wage to be paid to employees,
5 and the payment of a lower wage than the minimum so fixed is unlawful.

6 56. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer
7 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC
8 Wage Order(s).

9 57. The applicable wage orders and California Labor Code sections 1197 and 1182.12
10 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by
11 state law.

12 58. Labor Code sections 1194(a) and 1194.2(a) provide that an employee who has not
13 been paid the legal minimum wage as required by Labor Code section 1197 may recover the unpaid
14 balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount
15 equal to the unpaid wages and interest accrued thereon.

16 59. During all relevant periods, the California Labor Code and wage orders required that
17 Defendants fully and timely pay its non-exempt, hourly employees all wages earned and due for all
18 hours worked.

19 60. The IWC Wage Orders define "hours worked" as "the time during which an
20 employee is subject to the control of an employer, and includes all the time the employee is suffered
21 or permitted to work, whether or not required to do so."

22 61. At all times relevant, Plaintiff and Class Members consistently worked hours for
23 which they were not paid because Defendants frequently required Plaintiff and the Class Members
24 to work off the clock.

25 62. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the
26 Class Members were working off the clock and that they should have been paid for this time.

27 63. Defendant's policy and practice of not paying all minimum wages violates
28 California Labor Code sections 204, 210, 216, 558, 1182.12, 1194, 1197, 1197.1, 1198, and the

1 applicable wage order 5-2001.

2 64. Due to Defendants' violations of the California Labor Code and wage orders,
3 Plaintiff and the Minimum Wage Subclass members are entitled to recover from Defendant their
4 unpaid wages, statutory penalties, reasonable attorneys' fees and costs in this action, and pre-
5 judgment and post-judgment interest, as well as liquidated damages.

6
7 **SECOND CAUSE OF ACTION**
8 **FAILURE TO PAY OVERTIME OWED**

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

10 65. Plaintiff incorporates each and every allegation set forth in all of the foregoing
11 paragraphs as if fully set forth herein.

12 66. During all relevant periods, Defendant required Plaintiff and the Class members to
13 work shifts in excess of eight (8) hours per workday and/or to work in excess of forty (40) hours
14 per workweek.

15 67. During all relevant periods, both the California Labor Code sections 1194, 1197,
16 510, 1198, and the pertinent wage order 5-2001 required that all work performed by an employee
17 in excess of eight (8) hours in any workday, on the seventh day of work in any workweek, or in
18 excess of forty (40) hours in any workweek be compensated at one and one-half (1.5) times the
19 employee's regular rate of pay. Any work in excess of twelve (12) hours in one (1) day is required
20 to be compensated at the rate of no less than twice the regular rate of pay for an employee. In
21 addition, any work in excess of eight (8) hours on any seventh (7th) day of a workweek is required
22 to be compensated at the rate of no less than twice the regular rate of pay of an employee.

23 68. During all relevant periods, Defendants had a uniform policy of requiring Plaintiff
24 and the Class members to work in excess of eight (8) hours in a workday and/or in excess of forty
25 (40) hours in a workweek without compensating them at a rate of one and one-half (1.5) times their
26 regular rate of pay. Upon information and belief, Defendants also failed to properly compensate
27 Plaintiff and the Class Members for hours worked in excess of twelve (12) hours in one (1) day, or
28 eight (8) hours on the seventh (7th) day of a workweek.

1 69. The IWC Wage Orders define “hours worked” as “the time during which an
2 employee is subject to the control of an employer, and includes all the time the employee is suffered
3 or permitted to work, whether or not required to do so.”

4 70. At all times relevant, Plaintiff and Class Members consistently worked hours for
5 which they were not paid because Plaintiff and the Class Members were required to work off the
6 clock—some of these hours were over eight (8) hours in one (1) workday or in excess of forty (40)
7 hours in a workweek and should have been paid at the overtime rate.

8 71. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the
9 Class Members were working off the clock and that they should have been paid for this time.

10 72. In addition, upon information and belief, Defendants failed to incorporate all forms
11 of compensation, including without limitation bonuses, differentials, spiffs, gift cards, and
12 incentives, into the regular rate for overtime purposes.

13 73. As a result, Defendants failed to pay Plaintiff and the Class members earned
14 overtime wages and such employees suffered damages as a result.

15 74. Defendants knew or should have known Plaintiffs and the Class Members were
16 undercompensated as a result of these practices.

17 75. Due to Defendant’s violations of the California Labor Code, Plaintiff and the Class
18 members are entitled to recover from Defendants their unpaid overtime wages, reasonable
19 attorneys’ fees and costs in this action, and pre-judgment and post-judgment interest, statutory
20 penalties, and liquidated damages.

21
22 **THIRD CAUSE OF ACTION**

23 **FAILURE TO PROVIDE LAWFUL MEAL PERIODS**

24 **(By Plaintiff and the Meal Period Subclasses Against All Defendants)**

25 76. Plaintiff incorporates by reference and realleges each and every allegation contained
26 above, as though fully set forth herein.

27 77. Pursuant to Labor Code § 512, no employer shall employ an employee for a work
28 period of more than five (5) hours without providing a meal break of not less than thirty (30)

1 minutes in which the employee is relieved of all of his or her duties, except that when a work period
2 of not more than six (6) hours will complete the day's work the meal period may be waived by
3 mutual consent of the employer and employee.

4 78. For the four (4) years preceding the filing of this lawsuit as properly tolled by
5 Emergency Rule 9, Defendants failed to provide Plaintiff and Class Members timely and
6 uninterrupted first meal periods of not less than thirty (30) minutes within the first five hours of a
7 shift.

8 79. As a consequence of Defendants' policies and practices, requirements, demands,
9 coverage and staffing, Plaintiff and the Class Members were often required to forego such meal
10 periods, take shortened meal periods, and/or commence their meal periods into and beyond the
11 sixth hour of their shifts.

12 80. In addition, Plaintiff and, upon information and belief, the Class Members were
13 required to carry work-related cellular phones or other communications devices during meal and
14 rest periods, and were required to remain available. Meal and rest periods were frequently
15 interrupted as a consequence.

16 81. Upon information and belief, Plaintiff and the Class Members were not paid one
17 hour of pay at their regular rate for each day that a meal period was not lawfully provided.

18 82. As a proximate result of the aforementioned violations, Plaintiff and the Class
19 Members have been damaged in an amount according to proof at time of trial.

20 83. Pursuant to Labor Code § 226.7, Plaintiff and Class Members are entitled to recover
21 one (1) hour of premium pay for each day in which a meal period violation occurred. They are also
22 entitled to recover reasonable attorneys' fees, cost, interest, and penalties as applicable.

23 84. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to
24 represent have been deprived of premium wages in amounts to be determined at trial, and are
25 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
26 under Labor Code sections 218.6, 226.7, 512 and the applicable IWC Wage Orders, and Civil Code
27 section 3287.

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO AUTHORIZE AND PERMIT LAWFUL REST PERIODS**

3 **(By Plaintiff and the Rest Period Subclasses Against All Defendants)**

4 85. Plaintiff incorporates by reference and realleges each and every allegation contained
5 above, as though fully set forth herein.

6 86. Pursuant to the IWC wage orders applicable to Plaintiff's and Class Members'
7 employment by Defendants, "Every employer shall authorize and permit all employees to take rest
8 periods, which insofar as practicable shall be in the middle of each work period.... [The] authorized
9 rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net
10 rest time per four (4) hours worked or major fraction thereof.... Authorized rest period time shall
11 be counted as hours worked, for which there shall be no deduction from wages."

12 87. Labor Code §226.7(a) prohibits an employer from requiring any employee to work
13 during any rest period mandated by an applicable order of the IWC.

14 88. Defendants were required to authorize and permit employees such as Plaintiff and
15 Class Members to take rest periods during shifts in excess of 3.5 hours, based upon the total hours
16 worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major fraction thereof,
17 with no deduction from wages.

18 89. Despite said requirements of the IWC wage orders applicable to Plaintiff's and Class
19 Member's employment with Defendants, Defendants failed and refused to authorize and permit
20 Plaintiff and Class Members to take lawful, net ten (10) minute rest periods for every four (4) hours
21 worked, or major fraction thereof. Such rest breaks, when provided, were frequently untimely or
22 less than net ten minutes because of the work requirements imposed by Defendants, and frequent
23 calls during rest periods.

24 90. In addition, as detailed above, Plaintiff and the Class Members were required to
25 carry work-related cellular phones or other communications devices during meal and rest periods,
26 and were required to remain available. Meal and rest periods were frequently interrupted as a
27 consequence.

91. Defendants did not pay Plaintiff one additional hour of pay at his regular rate of pay for each day that a rest period violation occurred. On information and belief, the other members of the Class endured similar violations as a result of Defendants' rest period policies and practices and Defendant did not pay said Class Members premium pay as required by law.

92. By their failure to authorize and permit Plaintiff and the Class Members to take a lawful, net ten (10) minute rest period free from work duties every four (4) hours or major fraction thereof worked, including failure to provide two (2) total rest periods on six to ten hour shifts and three (3) total ten (10) minute rest periods on days on which Plaintiff and the other Class Members work(ed) work a third rest period for shifts in excess of ten (10) hours, and by their failure to provide compensation for such unprovided rest periods as alleged herein, Defendants willfully violated the provisions of Labor Code sections 226.7 and the applicable IWC Wage Order(s).

93. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to represent have been deprived of premium wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 218.6, 226.7, the applicable IWC Wage Orders, and Civil Code 3287.

FIFTH CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES DUE AND PAYABLE DURING

EMPLOYMENT

(By Plaintiff and the Class Against All Defendants)

94. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

95. Labor Code section 204 requires that all wages are due and payable twice in each calendar month.

96. The wages required by Labor Code §§ 226.7, 510, 1194 and other sections became due and payable to each employee in each month that he or she was not provided with a meal period or rest period or paid minimum wage, straight or overtime wages to which he or she was entitled.

1 compensation, but to date have not received such compensation, therefore entitling them to Labor
2 Code § 203 penalties.

3 103. In addition, irrespective of any derivative violation, Defendants failed to timely pay
4 Plaintiff and, upon information and belief, other Class Members earned compensation at the time
5 of termination despite their obligations under Labor Code 201 and 202.

6 104. More than thirty (30) days have passed since affected Waiting Time Subclass
7 Members have left Defendants' employ, and on information and belief, they have not received
8 payment pursuant to Labor Code § 203.

9 105. Plaintiff and Waiting Time Subclass Members are thus entitled to 30 days' wages
10 as a penalty under Labor Code § 203, together with interest thereon and attorneys' fees and costs.

11 **SEVENTH CAUSE OF ACTION**

12 **FAILURE TO REIMBURSE NECESSARY EXPENSES**

13 **(By Plaintiff and the Indemnification Subclass Against All Defendants)**

14 106. Plaintiff incorporates by reference and realleges each and every allegation contained
15 above, as though fully set forth herein.

16 107. Plaintiff repeats and incorporates herein by reference each and every allegation set
17 forth above, as though fully set forth herein.

18 108. Labor Code § 2802 requires Defendants to indemnify Plaintiff and Class Members
19 for necessary expenditures incurred in direct consequence of the discharge of his or her duties.

20 109. Plaintiff and the members of the Indemnification Class were required to incur
21 expenses in the performance of their assigned job duties.

22 110. Upon information and belief, the Defendants did not reimburse Plaintiff or the
23 Plaintiff's subclass for such expenses.

24 111. As a result of the unlawful acts of Defendants, Plaintiffs and the Plaintiffs'
25 Subclass Members have been deprived of un-reimbursed sums in amounts to be determined at
26 trial, and are entitled to the recovery of such amounts, plus interest and penalties thereon,
27 attorneys' fees, and costs, pursuant to Labor Code §2802.

28

1 **EIGHTH CAUSE OF ACTION**

2 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**
3 **EMPLOYEE WAGE STATEMENT PROVISIONS**

4 **By Plaintiff and Wage Statement Subclass Against Defendants**

5 112. Plaintiff repeats and incorporates herein by reference each and every allegation set
6 forth above, as though fully set forth herein.

7 113. Labor Code section 226(a) reads in pertinent part: “Every employer shall,
8 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either
9 as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately
10 when wages are paid by personal check or cash, an accurate itemized statement in writing
11 showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of
12 piece-rate unites earned and applicable piece rate... (4) all deductions... (5) net wages earned, (6)
13 the inclusive dates of the period for which the employee is paid, (7) the name of the employee and
14 only the last four digits of his or her social security number or an employee identification number
15 other than a social security number, (8) the name and address of the legal entity that is the
16 employer, and (9) all applicable hourly rates in effect during each the pay period and the
17 corresponding number of hours worked at each hourly rate by the employee....”.

18 114. Further, the IWC Wage Orders require in pertinent part: Every employer shall
19 keep accurate information with respect to each employee including the following: (3) Time
20 records showing when the employee begins and ends each work period. Meal periods, split shift
21 intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the
22 payroll period and applicable rates of pay....”

23 115. Labor Code section 1174 of the California also requires Defendants to maintain
24 and preserve, in a centralized location, among other items, records showing the names and
25 addresses of all employees employed and payroll records showing the hours worked daily by, and
26 the wages paid to, its employees. On information and belief and based thereon, Defendants have
27 knowingly and intentionally failed to comply with Labor Code section 1174, including by
28 implementing the policies and procedures and committing the violations alleged in the preceding

1 causes of action and herein. Defendants' failure to comply with Labor Code section 1174 is
2 unlawful pursuant to Labor Code section 1175.

3 116. Defendants have failed to record many of the items delineated in applicable
4 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section
5 1174, including by virtue of the fact that each wage statement which failed to accurately
6 compensate Plaintiff and Class Members for all hours worked and for missed and non-provided
7 meal and rest periods, or which failed to include compensation for all minimum wages earned or
8 overtime hours worked, was an inaccurate wage statement. In addition, the wage statements
9 failed to accurately state total hours worked and hours worked at each hourly wage rate.

10 117. Moreover, Defendants failed to specify the number of units at issue in calculating
11 certain types of earned compensation including bonuses, spiffs, and incentives.

12 118. Further, Defendants failed include certain gift cards and other forms of
13 compensation on paystubs as required by Labor Code section 226.

14 119. On information and belief, Defendants failed to implement and preserve a lawful
15 record-keeping method to record all non-provided meal and rest periods owed to employees or all
16 hours worked, as required for Non-Exempt Employees under California Labor Code section 226
17 and applicable California Wage Orders. In order to determine if they had been paid the correct
18 amount and rate for all hours worked, Plaintiff and Class Members have been, would have been,
19 and are compelled to try to discover the required information missing from their wage statements
20 and to perform complex calculations in light of the inaccuracies and incompleteness of the wage
21 statements Defendants provided to them.

22 120. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
23 Wage Orders, Defendants did not and still do not furnish each of the members of the Wage
24 Statement Class with an accurate itemized statement in writing accurately reflecting all of the
25 required information. Here, Plaintiff asserts the Defendant omitted required information, failed to
26 accurately include all applicable hourly rates on the wage statements and the corresponding
27 number of hours worked at such rates or hours paid at such rates. In addition, Defendants have
28 failed to provide accurate itemized wage statements as a consequence of the above-specified

1 violations for failure to accurately pay all wages owed, accurately record all hours worked, and
2 failure to pay meal and rest period premiums as required by law.

3 121. Moreover, upon information and belief, as a pattern and practice, in violation of
4 Labor Code section 226(a) and the IWC Wage Orders, Defendants did not and do not maintain
5 accurate records pertaining to the total hours worked for Defendants by the members of the Wage
6 Statement Class, including but not limited to, beginning and ending of each work period, meal
7 period and split shift interval, the total daily hours worked, and the total hours worked per pay
8 period and applicable rates of pay.

9 122. Plaintiffs and the members of the Wage Statement Class have suffered injury as a
10 result of Defendants' failure to maintain accurate records for the members of the Wage Statement
11 Class in that the members of the Wage Statement Class were not timely provided written accurate
12 itemized statements showing all requisite information, such that the members of the Wage
13 Statement Class were misled by Defendants as to the correct information regarding various items,
14 including but not limited to total hours worked by the employee, net wages earned and all
15 applicable hourly rates in effect during the pay period and the corresponding number of hours
16 worked at each hourly rate.

17 123. Pursuant to Labor Code section 226, and in light of Defendants' violations
18 addressed above, Plaintiff and the Wage Statement Class Members are each entitled to recover up
19 to a maximum of \$4,000.00, along with an award of costs and reasonable attorneys' fees.

20 **NINTH CAUSE OF ACTION**

21 **VIOLATION OF THE UNFAIR COMPETITION LAW**

22 **By Plaintiff and Class Against All Defendants**

23 124. Plaintiff incorporates by reference and realleges each and every allegation contained
24 above, as though fully set forth herein.

25 125. Defendants' conduct, as alleged in this complaint, has been, and continues to be,
26 unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the
27 general public. Plaintiff also seeks to enforce important rights affecting the public interest within
28 the meaning of the California Code of Civil Procedure § 1021.5.

126. Defendants' policies, activities, and actions as alleged herein are violations of California law and constitute unlawful business acts and practices in violation of California Business and Professions Code §§ 17200, *et seq.*

127. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be predicated on the violation of any state or federal law.

128. The state law violations, including violations of the relevant IWC Wage Order, detailed herein above are the predicate violations for this cause of action. By way of example only, in the instant case Defendants' policy of failing to lawfully provide Plaintiff and the Class with timely meal and rest periods or pay one (1) hour of premium pay when a meal or rest period was not lawfully provided violates Labor Code § 512, and § 226.7, and the IWC Wage Orders. Defendants further violated the law through their policies of failing to fully and accurately compensate Plaintiff and the Class Members for all hours worked, including minimum wages and overtime, and failing to reimburse for necessary expenses, as well as failing to provide accurate itemized wage statement as specified above.

129. Plaintiff and the Class Members have been personally aggrieved by Defendants' unlawful and unfair business acts and practices alleged herein by the loss of money and/or property.

130. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiff and the Class Members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four (4) years prior to the filing of this complaint; an award of attorneys' fees pursuant to California Code of Civil Procedure §1021.5; interest; and an award of costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff pray judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiff be appointed as the representative of the Class;
3. That Plaintiff be appointed as the representatives of the Subclasses; and

1 4. That counsel for Plaintiff be appointed as counsel for the Class and Subclasses.

2 **On the First Cause of Action**

3 **(Failure to pay minimum wages)**

4 1. For the unpaid balance of the full amount of any minimum wages, and regular wages
5 owed, as well as interest thereon,

6 2. Penalties according to statute,

7 3. Liquidated damages,

8 4. Reasonable attorneys' fees, and costs of suit;

9 5. For interest and

10 6. For such other and further relief as the Court deems proper.

11 **On the Second Cause of Action**

12 **(Failure to pay overtime)**

13 1. For the unpaid balance of the full amount of any overtime wages owed, as well as
14 interest thereon,

15 2. Penalties according to statute,

16 3. Liquidated damages,

17 4. Reasonable attorneys' fees, and costs of suit;

18 5. For interest and

19 6. For such other and further relief as the Court deems proper.

20 **On the Third Cause of Action**

21 **(Failure to Provide Lawful Meal Periods)**

22 1. For one (1) hour of premium pay for each day in which a required meal period was
23 not lawfully provided;

24 2. For reasonable attorneys' fees and costs pursuant to statute; and

25 3. For such other and further relief as the Court deems proper.

1 **On the Fourth Cause of Action**

2 (Failure to Authorize and Permit Lawful Rest Periods)

- 3 1. For one (1) hour of premium pay for each day in which a required rest period was
4 not lawfully authorized and permitted; and
5 2. For reasonable attorneys' fees and costs pursuant to statute; and
6 3. For such other and further relief as the Court deems proper.

7 **On the Fifth Cause of Action**

8 (Failure to Timely Pay Wages Due and Payable During Employment)

- 9 1. For unpaid wages;
10 2. For penalties pursuant to Labor Code § 210 and 25% of the amount of wages
11 unlawfully withheld;
12 3. For interest;
13 4. For reasonable attorneys' fees and costs pursuant to statute; and
14 5. For such other and further relief as the Court deems proper.

15 **On the Sixth Cause of Action**

16 (Failure to Timely Pay Wages At Separation)

- 17 6. For unpaid wages;
18 7. For penalties pursuant to Labor Code § 203;
19 8. For interest;
20 9. For reasonable attorneys' fees and costs pursuant to statute; and
21 10. For such other and further relief as the Court deems proper.

22 **On the Seventh Cause of Action**

23 (Failure to Reimburse Necessary Expenses)

- 24 1. For unreimbursed sums;
25 2. For reasonable attorneys' fees and costs pursuant to statute;
26 3. For interest; and
27 4. For such other and further relief as the Court deems proper.
28 5.

1 **On the Eighth Cause of Action**

2 **(Failure to Provide Accurate Itemized Wage Statements)**

- 3 1. For statutory penalties, including penalties pursuant to Labor Code section 226;
4 2. For reasonable attorneys' fees and costs; and
5 3. For such other and further relief as the Court deems proper;

6 **On the Ninth Cause of Action**

7 **(Violation of the Unfair Competition Law)**

8 1. That Defendants, jointly and/or severally, pay restitution and/or disgorgement of
9 sums to Plaintiff and Class Members for the Defendants' past failure to pay minimum, overtime
10 and regular wages, for Defendants' past failure to reimburse necessary expenses, and for premium
11 wages for meal and rest periods that were not provided to Plaintiff and Class Members over the last
12 four (4) years in an amount according to proof;

13 2. For reasonable attorneys' fees that Plaintiff and Class Members are entitled to
14 recover under California Code of Civil Procedure § 1021.5 and Labor Code section 1194, 1197,
15 1198 ;

16 3. For pre-judgment interest on any unpaid minimum, regular and overtime wages due
17 from the day that such amounts were due;

18 4. For costs of suit incurred herein that Plaintiff and Class Members are entitled to
19 recover under the Labor Code; and

20 5. For such other and further relief as the Court deems proper.
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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of the Class and Subclasses, respectfully demand a jury trial in this matter to the fullest extent available under the law.

Respectfully submitted,

Dated: August 18, 2022

JAMES HAWKINS, APLC
James R. Hawkins, Esq.
Christina M. Lucio, Esq.

Attorneys for TESSA TEUSCHER, on behalf of herself
and all others similarly situated