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

HEATHER-ANN MONTERO, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

BISCO INDUSTRIES, INC., an Illinois
corporation; and DOES 1 through 100, inclusive

Defendants.

Case No.:23STCV00918

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

- (1) FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194, 1198);**
- (2) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (3) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (4) FAILURE TO REIMBURSE
NECESSARY BUSINESS
EXPENSES (LABOR CODE
§§ 2802, 2804);**
- (5) WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226 *et seq.*);**
- (6) WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (7) UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200);and**
- (8) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE §§ 2698, *et
seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

FILED
Superior Court of California
County of Los Angeles

03/20/2023

David W. Slayton, Executive Officer / Clerk of Court

By: K. Martinez Deputy

1 Plaintiff Heather-Ann Montero (“Plaintiff”), on behalf of herself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“Complaint”) against Defendants Bisco Industries, Inc., an Illinois corporation; and DOES 1 to
4 100, inclusive (collectively “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
7 action for recovery of unpaid wages, penalties, and unreimbursed expenses under California
8 Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1194, 1198, 2802, 2804, 2698 *et*
9 *seq.*, and California Business and Professions Code § 17200 *et seq.* (“Unfair Competition Law”),
10 and Industrial Welfare Commission Wage Order No. 7 (“Wage Order 7”), in addition to seeking
11 declaratory relief, injunctive relief, and restitution. This class action is brought pursuant to
12 California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations
13 of the California Labor Code because the amount in controversy exceeds this Court’s
14 jurisdictional minimum.

15 **VENUE**

16 2. Venue is proper in this jurisdictional district pursuant to California Code of Civil
17 Procedure §§ 395(a) and 395.5, as Defendants own, maintain offices, transact business, have an
18 agent or agents within Los Angeles County, and/or otherwise are found within Los Angeles
19 County, and Defendant are within the jurisdiction of this Court for purpose of service of process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was, and currently is, a California resident. During the four years immediately preceding
23 the filing of this lawsuit and within the statute of limitations periods applicable to each cause of
24 action pled herein, Plaintiff was employed by Defendants. Defendants classified Plaintiff and
25 other employees as exempt sales employees, while not meeting the requirements for the
26 exemption in all pay periods. As a result Plaintiff was, and is, a victim of Defendants’ policies
27 and/or practices complained of herein, lost money and/or property, and has been deprived of the
28 rights guaranteed to her by California Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 512, 516,

558, 1194, 1198, 2802, 2804 2698 *et seq.*, California Business and Professions Code § 17200 and Wage Order 7, which sets employment standards for the mercantile industry.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of this Complaint and continuing to the present, Defendants did (and do) business as a distributor of electronic components and fasteners, with its headquarters in Illinois, and employed Plaintiff and other, similarly situated non-exempt employees within Los Angeles County and the state of California, and, therefore, were (and are) doing business in Los Angeles County and the State of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to further amend this Complaint when such true names and capacities are discovered. Plaintiff is informed and believes, and based thereon alleges, that each of said fictitious defendants, whether individual, partner, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined herein) to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

6. Plaintiff is informed and believes, and thereon alleges, that all Defendants, however designated whether by real or fictitious name, were and are in some manner responsible for the events, happenings, occurrence and instrumentalities upon and about which this action is made. At all relevant times mentioned herein, Defendants were and are the employers of Plaintiff and all similarly situated employees.

7. Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants herein, whether designated by real or fictitious name, are, and at all times relevant hereto, were, the agents servants, and employees and hirelings of each of the co-Defendants, as well as the agents of all Defendants, and in doing things and acts herein alleged and complained of or in failing to do that which they should have done, were acting within the scope of employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions alleged herein.

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class Members.

GENERAL FACTUAL ALLEGATIONS

9. Defendants are an electronic components and fasteners distributor, specializing in the procurement and sale of electronic parts. Plaintiff was employed by Defendants as a “L3” from approximately July 2018 to May 2022. Plaintiff’s job duties included calling, telemarketing, and otherwise selling hardware and electrical components in addition to Defendants’ other products. Unless otherwise specified, all allegations herein occurred during Plaintiff’s employment with Defendants.

10. While Plaintiff was employed by Defendants, Defendant classified Plaintiff and other “L3’s” as exempt employees under the inside and/or outside sales exemptions. However, because Plaintiff and other similarly situated employees did not receive at least half of their compensation in the form of commissions, Plaintiff and other similarly situated employees did not meet the requirements for the inside sales exemption. Additionally, because Defendant required Plaintiff to work 50 hours a week during portions of the relevant time period, the salary she was paid did not amount to one and one-half times the minimum wage for all hours worked during each pay period, thus excluding her from the inside sales exception. *See Peabody v. Time Warner Cable, Inc.* (2014) 59 Cal. 4th 662, 669-70 (holding that the exemption’s language is to be construed narrowly against the employer with an eye towards protecting employees and that to comply with the requirements of the exemption and of [Section 204] for each workweek in the pay period the payment of the earnings to employee must exceed 1.5 times the minimum wage for each hour worked during the pay period). Moreover, because Plaintiff and other similarly situated employees did not work at least half their time outside of the office, Plaintiff and other similarly situated employees did not meet the requirements for the outside sales exemption in every pay period. As a result of not qualifying for the sales exemptions, Plaintiff and other

1 similarly situated employees were deprived of all overtime wages earned during the relevant time
2 period.

3 11. In addition, Defendants utilized a timekeeping system, which upon information
4 and belief, resulted in Plaintiff not being credited with all hours actually worked. Specifically,
5 although Plaintiff and other non-exempt employees frequently worked in excess of 8.0 hours per
6 day, they were specifically instructed by managers to record their hours worked to reflect only
7 eight hours of work a day regardless of the hours truly worked. As a result of Defendants'
8 timekeeping policies/practices, Plaintiff and other employees were not credited with all hours
9 actually worked, and Defendants failed to maintain accurate records of employees' hours worked.

10 12. Defendants failed to provide Plaintiff and other non-exempt employees with
11 timely 30-minute meal periods commencing before the end of the fifth hour of work. Specifically,
12 during the relevant time period, Defendants required Plaintiff and other non-exempt employees
13 to begin work at 7:00 a.m. or earlier each day. However, Defendants' policies/practices were to
14 have meal periods scheduled at 12:00 p.m. or later, after the end of the fifth hour of work.
15 Defendants also failed to provide Plaintiff and other non-exempt employees with an additional
16 hour of premium pay for each workday in which a meal period violation occurred, as required by
17 Labor Code § 226.7.

18 13. Defendants also failed to authorize and permit all required duty-free rest periods
19 for Plaintiff and other non-exempt employees because, upon information and belief, Defendants
20 did not maintain a lawful rest period policy. Specifically, Defendants required Plaintiff and other
21 non-exempt employees to remain available to cover the large volume of customer calls at any
22 given time, which generally did not permit employees to take duty-free rest periods. Additionally,
23 Defendants did not authorize and permit Plaintiff and other employees to take third rest periods
24 when they worked in excess of 10.0 hours in a workday. Defendants also failed to provide Plaintiff
25 and other non-exempt employees with an additional hour of premium pay for each workday in
26 which a rest period violation occurred, as required by Labor Code § 226.7.

27 14. Defendants required Plaintiff and other non-exempt employees to use their
28 personal cell phones to receive calls from clients and finalize sales. Specifically, after the

Defendant moved to remote work in 2020, all work related calls were conducted through Plaintiff and non-exempt employee's personal cell phones. Despite requiring employees to incur these necessary business expenses, Defendants failed to compensate Plaintiff and other non-exempt employees for any portion of their monthly cell phone expenses. *See Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144 (holding that employer who requires employees use their personal cell phone for business purposes must reimburse a reasonable percentage of the employee's cell phone bill). Moreover, during the relevant time period, Defendants required Plaintiff and other employees to work from home and use their home computers and internet to conduct essential company business. Although Defendant required Plaintiff and other employees to use their home computers and internet, they failed to compensate Plaintiff and other employees for any portion of these expenses.

15. As a result of Defendants' failure to pay overtime wages, as well as meal and rest period premium wages, Defendants maintained inaccurate payroll records, issued inaccurate wage statements, and failed to pay all final wages to Plaintiff and other non-exempt employees upon their separation of employment.

CLASS ACTION ALLEGATIONS

16. Class Definitions: Plaintiff brings this action on behalf of herself and the following Classes pursuant to § 382 of the California Code of Civil Procedure:

a. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who employees who were classified as exempt employees but who did not earn more than half their wages in the form of commissions in any pay period and/or were not compensated at one and one-half times the applicable minimum wage for every hour worked during any pay period and worked more than eight (8) hours per day and/or forty (40) hours per week and were subject to Defendants' timekeeping policies/practices, during the four years immediately preceding the filing of the lawsuit through the present.

b. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 5.0

hours without a meal period of at least 30-minutes commencing before the end of the fifth hour of work, during the four years immediately preceding the filing of the lawsuit through the present.

c. The Rest Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 3.5 hours, during the four years immediately preceding the filing of the lawsuit through the present.

d. The Reimbursement Class: all of Defendants' current and former non-exempt employees in California who were subject to Defendants' cellphone and home internet reimbursement policies/practices, during the four years immediately preceding the filing of the lawsuit through the present.

e. The Wage Statement Class consists of all members of the (i) Overtime Class; (ii) Meal Period Class; and (iii) Rest Period Class, who received a wage statement from Defendants during the one year immediately preceding the filing of the lawsuit through the present.

f. The Waiting Time Class consists of all members of the (i) Overtime Class; (ii) Meal Period Class; and (iii) Rest Period Class, who separated their employment from Defendants during the three years immediately preceding the filing of the lawsuit through the present.

17. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes and subclasses are unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than one hundred (100) individuals as to each Class. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

18. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual employees including, without limitation:

- i. Whether Defendants' timekeeping policies and/or practices resulted in the failure to properly compensate members of the Overtime Class;
- ii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class;
- iii. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class;
- iv. Whether Defendants provided meal and/or rest period premium payments for non-complaint meal and/or rest periods;
- v. Whether Defendants failed to properly reimburse the members of the Reimbursement Class for all necessary business expenses incurred;
- vi. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement; and
- vii. Whether Defendants' policies and/or practices for the timing and payment of final wages to members of the Waiting Time Class were unlawful.

19. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform time shaving, meal and rest period, and reimbursement policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

20. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Defendants employed Plaintiff as a non-exempt employee in California during the statute of limitations periods applicable to each cause of action pled herein. As alleged herein, Plaintiff, like the members of the Classes was deprived of all overtime wages, was not provided all legally required meal and rest breaks, was not reimbursed for necessary business expenditures, was furnished with inaccurate and incomplete wage statements, and was not paid all final wages upon her separation of employment.

1 21. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
2 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,
3 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of
4 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-
5 hour class actions in state and federal courts in the past and are committed to vigorously
6 prosecuting this action on behalf of the members of the Classes.

7 22. The California Labor Code is broadly remedial in nature and serves an important
8 public interest in establishing minimum working conditions and standards in California. These
9 laws and labor standards protect the average working employee from exploitation by employers
10 who have the responsibility to follow the laws, and who may seek to take advantage of superior
11 economic and bargaining power in setting onerous terms and conditions of employment. The
12 nature of this action and the format of laws available to Plaintiff and members of the Classes make
13 the class action format a particularly efficient and appropriate procedure to redress the violations
14 alleged herein. If each employee was required to file an individual lawsuit, Defendants would
15 necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm
16 the limited resources of each individual plaintiff with their vastly superior financial and legal
17 resources. Moreover, requiring each member of the Class(es) to pursue an individual remedy
18 would also discourage the assertion of lawful claims by employees who would be disinclined to
19 file an action against their former and/or current employer for real and justifiable fear of retaliation
20 and permanent damages to their careers at subsequent employment. Further, the prosecution of
21 separate actions by the individual class members, even if possible, would create a substantial risk
22 of inconsistent or varying verdicts or adjudications with respect to the individual class members
23 against Defendants herein; and which would establish potentially incompatible standards of
24 conduct for Defendants; and/or legal determinations with respect to individual class members
25 which would, as a practical matter, be dispositive of the interest of the other class members not
26 parties to adjudications or which would substantially impair or impede the ability of the class
27 members to protect their interests. Further, the claims of the individual members of the Classes
28 are not sufficiently large to warrant vigorous individual prosecution considering all of the

1 concomitant costs and expenses attending thereto. As such, the Classes (as defined herein) are
2 maintainable under § 382 of the Code of Civil Procedure. As such, each of the Classes (as defined
3 herein) are maintainable under § 382 of the Code of Civil Procedure.

4 **FIRST CAUSE OF ACTION**

5 **FAILURE TO PAY OVERTIME WAGES**

6 **(AGAINST ALL DEFENDANTS)**

7 23. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

8 24. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
9 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
10 overtime hours worked and provide a private right of action for the failure to pay all overtime
11 compensation for overtime work performed.

12 25. At all times relevant herein, Defendants were required to properly pay Plaintiff
13 and members of the Overtime Class for all overtime hours worked pursuant to California Labor
14 Code § 1194 and Wage Order 7. Wage Order 7, § 3 requires an employer to pay an employee
15 “one and one-half (1 ½) times the employee’s regular rate of pay for all hours worked in excess
16 of eight (8) hours” per workday and/or in excess of 40 hours of work in the workweek. Defendants
17 caused Plaintiff to work overtime hours, but did not compensate Plaintiff or members of the
18 Overtime Pay Class at one and one-half times their regular rate of pay for such hours.

19 26. The foregoing policies and practices alleged herein are unlawful and create
20 entitlement to recovery by Plaintiff and the members of the Overtime Class in a civil action for
21 the unpaid amount of overtime wages, including interest thereon, statutory penalties, civil
22 penalties, attorneys’ fees, and costs of suit according to California Labor Code §§ 204, 210, 216,
23 510, 558, 1194, and 1198; and Code of Civil Procedure § 1021.5.

24 **SECOND CAUSE OF ACTION**

25 **MEAL PERIOD VIOLATIONS**

26 **(AGAINST ALL DEFENDANTS)**

27 27. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

1 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 failed in their affirmative obligation to provide all of their non-exempt employees in California,
3 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
4 in accordance with the mandates of the California Labor Code and Wage Order 7, § 11. Despite
5 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
6 of the Meal Period Class at their respective regular rates of pay, in accordance with California
7 Labor Code §§ 204, 210, 226.7, and 512.

8 29. As a result, Defendants are responsible for paying premium compensation for meal
9 period violations pursuant to Labor Code §§ 226.7, 512, 558, and 1198, and Wage Order 7,
10 including interest thereon, statutory penalties, civil penalties, and costs of suit.

11 **THIRD CAUSE OF ACTION**

12 **REST PERIOD VIOLATIONS**

13 **(AGAINST ALL DEFENDANTS)**

14 30. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

15 31. Wage Order 7, § 12 and California Labor Code §§ 226.7, 516, 558, and 1198
16 establish the right of employees to be authorized and permitted to take a paid rest period of at
17 least ten (10) minutes of rest time for each four (4) hour period worked, or major fraction thereof.

18 32. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
19 of the Rest Period Class to take all required and legally compliant rest periods, and failed to pay
20 rest period premium wages when rest periods were not authorized and permitted.

21 33. The foregoing violations create an entitlement to recovery by Plaintiff and
22 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
23 owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according
24 to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289 and Wage
25 Order 7.

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENDITURES**

3 **(AGAINST ALL DEFENDANTS)**

4 34. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 35. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
6 states that “an employer shall indemnify his or her employees for all necessary expenditures or
7 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
8 his or her obedience to the directions of the employer.

9 36. At all relevant times herein, Defendants were subject to Labor Code § 2804, which
10 states that “any contract or agreement, express or implied, made by any employee to waive the
11 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
12 employee or his personal representative of any right or remedy to which he is entitled under the
13 laws of this State.”

14 37. As a proximate result of Defendants’ policies and/or practices in violation of Labor
15 Code §§ 2802 and 2804, and Wage Order 7 § 9, Plaintiff and members of the Reimbursement
16 Class were damaged in sums, which will be shown according to proof.

17 38. Plaintiff and members of the class are entitled to attorney’s fees and costs of suit
18 pursuant to Labor Code § 2802(c) for bringing this action. Pursuant to Labor Code § 2802(b), any
19 action brought for the reimbursement of necessary expenditures carries interest at the same rate
20 as judgments in civil actions. Thus, Plaintiff is entitled to interest, which shall accrue from the
21 date on which Plaintiff incurred the necessary expenditure.

22 **FIFTH CAUSE OF ACTION**

23 **WAGE STATEMENT VIOLATIONS**

24 **(AGAINST ALL DEFENDANTS)**

25 39. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

26 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants
27 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
28 and the Wage Statement Class with accurate and complete itemized wage statements that

1 included, among other requirements, all overtime wages owed and all meal and rest period
2 premium wages earned, all in violation of Labor Code § 226.

3 41. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
4 with complete and accurate itemized wage statements resulted in actual injury, as said failures led
5 to, among other things, the non-payment of all overtime wages owed, all meal and rest period
6 premium wages, and deprived them of the information necessary to identify the discrepancies in
7 Defendants' reported data.

8 42. Defendants' failures create an entitlement to recovery by Plaintiff and members of
9 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
10 Code § 226 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and
11 costs of suit according to California Labor Code § 226 *et seq.*

12 **SIXTH CAUSE OF ACTION**

13 **WAITING TIME PENALTIES**

14 **(AGAINST ALL DEFENDANTS)**

15 43. Plaintiff re-alleges and incorporates by reference all previous paragraphs

16 44. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
17 an employer to pay all wages earned immediately at the time of separation of employment in the
18 event the employer discharges the employee, or if the employee provides at least 72 hours of
19 notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of
20 his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon
21 said employee's last date of employment.

22 45. Plaintiff is informed and believes, and based thereon alleges, that Defendants
23 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
24 at the time of their separation including, among other things unpaid overtime wages as well as
25 unpaid meal and rest period premium wages. Further, Plaintiff is informed and believes, and based
26 thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay
27 members of the Waiting Time Class all earned wages at the end of employment in a timely manner
28

pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

46. Defendants' willful failure to timely pay Plaintiff and members of the Waiting Time Class all earned wages upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

48. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200 *et seq.*, by failing to pay Plaintiff and the Classes all overtime wages owed; failing to provide Plaintiff and the Classes lawful meal periods; failing to authorize and permit Plaintiff and the Classes lawful rest periods; and failing to reimburse Plaintiff and the Classes for all necessary business expenses.

49. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

50. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for herself and on behalf of the members of the Classes, seeks full restitution of monies, as necessary and according to proof, to restore all monies withheld, acquired and/or converted by the Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

51. The acts complained of herein occurred within the last four years immediately preceding the filing of the Complaint in this action.

1 52. Plaintiff was compelled to retain the services of counsel to file this court action to
2 protect Plaintiff's interests and those of the Class, to obtain restitution, to secure injunctive relief
3 on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting
4 the public interest. Plaintiff thereby incurred the financial burden of attorneys' fees and costs,
5 which Plaintiff is entitled to recover under Code of Civil Procedure § 1021.5.

6 **EIGHTH CAUSE OF ACTION**

7 **PRIVATE ATTORNEYS GENERAL ACT**

8 **(AGAINST ALL DEFENDANTS)**

9 53. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

10 54. Defendants have committed several Labor Code violations against Plaintiff,
11 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
12 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved
13 employees, brings this representative action against Defendants to recover the civil penalties due
14 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
15 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not
16 limited to: (1) \$100.00 for each initial violation for each failure to pay each employee pursuant
17 to Labor Code § 210 for each failure to pay each employee; (2) \$50.00 for each initial violation
18 pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation
19 pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial
20 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
21 each initial violation per employee per pay period for those violations of the Labor Code for
22 which no civil penalty is specifically provided, based on the following Labor Code violations:

23 a. Failing to pay Plaintiff and other aggrieved employees all overtime
24 compensation earned in violation of Labor Code §§ 204, 510, 558, 1194 and
25 1198;

26 b. Failing to provide all meal periods as required by law and failing to pay meal
27 period premiums to Plaintiff and similarly aggrieved employees in violation of
28 Labor Code §§ 226.7, 512, and 558;

- c. Failing to authorize and permit Plaintiff and similarly aggrieved employees to take all of their statutorily mandated, duty-free rest periods and failing to pay rest period premiums to Plaintiff and similarly aggrieved employees in violation of Labor Code §§ 226.7, 516, and 558;
- d. Failing to reimburse Plaintiff and other aggrieved employees for all work-related expenses incurred in violation of Labor Code §§ 2802 and 2804;
- e. Failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements in violation of Labor Code § 226;
- f. Failing to timely pay all final wages due to Plaintiff and other aggrieved employees in violation of Labor Code §§ 201, 202 and 203;
- g. Failing to pay Plaintiff and other aggrieved employees all wages earned at least twice during each calendar month in violation of Labor Code § 204; and
- h. Failing to maintain accurate records on behalf of Plaintiff and aggrieved employees in violation of Labor Code §§ 558 and 1174.

55. On January 13, 2023, Plaintiff notified Defendants, via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via e-mail of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified herein. Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

56. Based on the foregoing, Plaintiff seeks to represent herself and all other Aggrieved Employees, as defined by Labor Code § 2699(c), which includes all of Defendants’ current and former nonexempt employees who worked for Defendants in California at any time between January 13, 2022, and the present.

57. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other similarly aggrieved employees, and to assess

and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which she is entitled to receive under California Labor Code § 2699.

PRAYER

WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
 2. For an order appointing Plaintiff as representative of the Classes;
 3. For an order appointing Plaintiff's counsel as Counsel for the Classes;
 4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
 5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
 6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code § 226 *et seq.*;
 9. Upon the Sixth Cause of Action for statutory waiting time penalties pursuant to Labor Code § 201-203;
 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of California Business & Professions Code § 17200 *et seq.*;
- Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation of failing to pay employees pursuant to Labor Code § 210; (2) \$50.00 for each initial violation pursuant to Labor Code § 558

per employee per pay period; (3) \$100.00 for each initial violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the violations of Labor Code sections cited in Paragraph 54 (a)-(h) above;

11. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

12. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 218.5, 226, 1194 *et seq.*, 2802(c), and Code of Civil Procedure § 1021.5; and

13. For such other and further relief the Court may deem just and proper.

Dated: March 20, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

By: 
Fletcher W. Schmidt
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: March 20, 2023

HAINES LAW GROUP, APC

By: 
Fletcher W. Schmidt
Attorneys for Plaintiff