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on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

KATHRYN JEANINE FAGAN
ENGLER, individually and on behalf of
herself and all others similarly situated,

Plaintiff,

v.

PREMIUM BRANDS OPCO LLC dba
LOFT OUTLET, an Ohio limited liability
company, ASCENA RETAIL GROUP,
INC., a Delaware corporation; and DOES
1-50, inclusive,

Defendants.

Case No. 30-2023-01309041-CU-OE-CXC

COMPLAINT

Assigned for All Purposes To:

Hon. Peter Wilson

Dept.: CX101

COMPLAINT FOR DAMAGES FOR:

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

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff KATHRYN JEANINE FAGAN ENGLES (“Plaintiff”), individually and on behalf of others similarly situated, and asserts claims against Defendants PREMIUM BRANDS OPCO LLC doing business as LOFT OUTLET, an Ohio limited liability company, ASCENA RETAIL GROUP, INC., a Delaware corporation; and DOES 1-50, inclusive (collectively “Defendants” or “Loft Outlet”) 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, at retail locations 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 Plaintiff and Class Members all of their wages, including overtime and premium wages.

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1 Procedure, the California Civil Code, and the California Business and Professions Code.

2 11. Venue is proper in this Court because one or more of the Defendants reside, transact
3 business, or have offices in this County, Plaintiff is a resident of this County, and the acts or
4 omissions alleged herein took place in this County.

5 **PARTIES**

6 12. Defendant Premium Brands Opco LLC is an Ohio limited liability company, doing
7 business in the state of California. It is based at 7 Times Square, New York, NY 10036.

8 13. Defendant Ascena Retail Group, Inc. is a Delaware Corporation, doing business in
9 the state of California. It is based at 933 MacArthur Blvd, Mahwah, NJ 07430.

10 14. Upon information and belief, Defendants employ Non-Exempt Employees, like
11 Plaintiff, throughout the State of California.

12 15. Plaintiff Kathryn Jeanine Fagan Engles is and during the liability period has been, a
13 resident of Orange County, California.

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

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

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

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

20. Plaintiff is informed and believes, and thereon alleges, 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.

21. 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

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

23. 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.

24. During the relevant time, Plaintiff was employed by Defendants in an hourly, non-exempt position. She worked in sales and customer service in Defendants' retail location approximately 5 days per week, 4 to 5 hours a day.

25. 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

1 requirements of California's wage and employment laws.

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

4 27. Plaintiff and the Class Members were required to clock in at the beginning of their
5 shifts and out at the end. However, Plaintiff and the Class Members were not paid for all hours
6 worked because employees were required to work off the clock. By way of example only, Plaintiff
7 and Class Members were required to perform pre/post activities off the clock, including but not
8 limited to, waiting in line for electronic timeclock and waiting for managers to arrive on opening
9 shifts. In addition, Defendants performed bag checks after Plaintiff and Class Members clocked
10 out at the end of their shifts. By way of further example, Plaintiff and, upon information and belief,
11 Class Members, were required to wear clothing sold by the company, but were only allowed to
12 shop for the requisite clothing after clocking out and were required to perform work related
13 functions during this time while off the clock. Further, Plaintiff and the Class Members were
14 required to respond to work-related communications while off the clock. Plaintiff and the Class
15 Members should have been paid for these hours worked but were not paid for such time in violation
16 of the law.

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

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

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

28 31. Plaintiff and the Class Members were also required to carry work-related walkie-
talkies or other communications devices during meal and rest periods, and were required to remain
available. Rest periods were frequently interrupted as a consequence.

32. Further, Plaintiff and, upon information and belief, the Class Members were not

1 allowed to leave the premises during meal and rest periods.

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

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

11 35. Plaintiff and the Class Members were also required to use their personal cellular
12 phones for work related purposes throughout the working day and off the clock. Further, they were
13 required to download certain cellular phone applications to use for work-related purposes.

14 36. Moreover, Plaintiff and the Class Members were required to incur necessary
15 expenses in the discharge of their duties, including without limitation cell phone expenses and
16 company-sold clothing. Plaintiff and the Class Members were required to purchase company-sold
17 clothing and wear it while at work but were not reimbursed for purchasing these items. Neither
18 were they reimbursed for laundry and dry-cleaning expenses incurred.

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

21 38. Defendants have also made it difficult to determine applicable rates of pay and
22 account with precision for the unlawfully withheld wages and deductions due to be paid to Non-
23 exempt Employees, including Plaintiff, during the liability period because they did not implement
24 and preserve a lawful record-keeping method to record all hours worked, and non-provided rest
25 and meal periods owed to employees as required for non-exempt employees by 29 U.S.C. section
26 211(c), California Labor Code section 226, and applicable California Wage Orders.

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

1 compensate Plaintiff and Class Members for all wages owed including straight time, overtime, meal
2 and rest period premiums, and that Defendants had the financial ability to pay such compensation,
3 but willfully, knowingly, recklessly, and/or intentionally failed to do so in part because of the
4 above-specified violations.

5 40. Plaintiff and the Class Members are covered by applicable California IWC Wage
6 Orders and corresponding applicable provisions of the California Code of Regulations, Title 8,
7 section 11000 *et seq.*

8 **CLASS ACTION ALLEGATIONS**

9 41. Plaintiff brings this action on her own behalf, as well as on behalf of each and every
10 other person similarly situated, and thus, seeks class certification under California Code of Civil
11 Procedure §382.

12 42. All claims alleged herein arise under California law for which Plaintiff seeks relief
13 as authorized by California law.

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

19 44. Plaintiff also seeks to represent Subclasses included in the Plaintiff’s Class, which
20 are composed of Class Members satisfying the following definitions:

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

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

28 c. All Class Members who were not reimbursed for all necessary expenditures

(collectively “**Indemnification Subclass**”);

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

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

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

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

46. As set forth in further detail below, this action has been brought and may properly be maintained as a class action under the provisions of section 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation, and the proposed Class and Subclasses are easily ascertainable through Defendants’ records.

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

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

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

- 7 1. Whether Defendants accurately paid Class Members for all hours worked;
- 8 2. Whether Defendants knew or should have known that Class Members were
9 required to perform work off the clock;
- 10 5. Whether Defendants failed to authorize and permit a lawful, net 10-minute
11 rest period to the Class Members for every four (4) hours or major fraction
12 thereof worked;
- 13 6. Whether Defendants had a policy and practice of complying with Labor
14 Code section 226.7 and the IWC Wage Order on each instance that a lawful
15 rest period was not provided;
- 16 7. Whether Defendants failed to timely pay all wages upon separation in
17 accordance with Labor Code sections 201-202;
- 18 8. Whether Defendants failed to reimburse employees for necessary expenses
19 in accordance with Labor Code section 2802;
- 20 9. Whether Defendants omitted required information from itemized wage
21 statements;
- 22 10. Whether Defendants failed to maintain accurate records of Class Members'
23 earned wages, work periods, meal periods and deductions;
- 24 11. Whether Defendants engaged in unfair competition in violation of section
25 17200 et seq. of the Business and Professions Code;
- 26 12. Whether Defendants' conduct was willful and/or reckless;
- 27 13. Whether Defendants failed to provide accurate itemized wage statements in
28 violation of Labor Code § 226; and

1 14. The appropriate amount of damages, restitution, and/or monetary penalties
2 resulting from Defendants' violations of California law.

3 d. Typicality: Plaintiff is qualified to, and will fairly and adequately protect
4 the interests of each member of the Class and Subclasses with whom she has a well-defined
5 community of interest. Plaintiff's claims herein alleged are typical of those claims which could be
6 alleged by any member of the Class and/or Subclasses, and the relief sought is typical of the relief
7 which would be sought by each member of the Class and/or Subclasses in separate actions. All
8 members of the Class and/or Subclasses have been similarly harmed by Defendants' failure to
9 provide lawful meal and rest periods, failure to reimburse expenses, failure to provide accurate
10 wage statements, failure to timely pay wages at termination, failure to pay minimum wages,
11 rounding practices, and failure to accurately pay all wages earned including all owed premium and
12 overtime wages, all due to Defendants' policies and practices that affected each member of the
13 Class and/or Subclasses similarly. Further, Defendants benefited from the same type of unfair
14 and/or wrongful acts as to each member of the Class and/or Subclasses.

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

24 f. Superiority: The nature of this action makes the use of class action
25 adjudication superior to other methods. A class action will achieve economies of time, effort,
26 judicial resources, and expense, which would not be achieved with separate lawsuits. The
27 prosecution of separate actions by individual members of the Class and/or Subclasses would create
28 a risk of inconsistent and/or varying adjudications with respect to the individual members of the

1 Class and/or Subclasses, establishing incompatible standards of conduct for the Defendants, and
2 resulting in the impairment of the rights of the members of the Class and/or Subclasses and the
3 disposition of their interests through actions to which they were not parties. Thus, a class action is
4 superior to other available means for the fair and efficient adjudication of this controversy because
5 individual joinder of all Class Members is not practicable, and questions of law and fact common
6 to the Class predominate over any questions affecting only individual Class Members. Each
7 member of the Class has been damaged and is entitled to recovery by reason of Defendants'
8 unlawful policies and practices that affected each member of the Class and/or Subclasses similarly.
9 Class action treatment will allow those similarly situated persons to litigate their claims in the
10 manner that is most efficient and economical for both parties and the judicial system. Plaintiff is
11 unaware of any difficulties that are likely to be encountered in the management of this action that
12 would preclude its maintenance as a class action.

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

22 **CLASS ACTION CLAIMS**

23 **FIRST CAUSE OF ACTION**

24 **FAILURE TO PAY MINIMUM WAGES**

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

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

28 48. Labor Code section 204 establishes the fundamental right of all employees in the

1 State of California to be paid wages, including minimum wage, straight time and overtime, in a
2 timely fashion for their work.

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

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

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

14 52. The applicable Wage Orders and California Labor Code sections 1197 and 1182.12
15 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by
16 state law.

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

21 54. During all relevant periods, the California Labor Code and Wage Orders required
22 that Defendants fully and timely pay its non-exempt, hourly employees all wages earned and due
23 for all hours worked.

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

27 56. At all times relevant, Plaintiff and Class Members consistently worked hours for
28 which they were not paid because Defendants frequently required Plaintiff and the Class Members

1 to work off the clock including without limitation to perform job functions and duties, wait in line
2 to clock in, submit to security checks, bag checks, and while purchasing required clothing.

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

5 58. Defendant's policy and practice of not paying all minimum wages violates
6 California Labor Code sections 204, 210, 216, 558, 1182.12, 1194, 1197, 1197.1, 1198, and the
7 applicable Wage Order 7-2001.

8 59. Due to Defendants' violations of the California Labor Code and Wage Orders,
9 Plaintiff and the Minimum Wage Subclass members are entitled to recover from Defendant their
10 unpaid wages, statutory penalties, reasonable attorneys' fees and costs in this action, and pre-
11 judgment and post-judgment interest, as well as liquidated damages.

12 SECOND CAUSE OF ACTION

13 FAILURE TO AUTHORIZE AND PERMIT LAWFUL REST PERIODS

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

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

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

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

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

1 64. Despite said requirements of the IWC Wage Orders applicable to Plaintiff's and
2 Class Member's employment with Defendants, Defendants failed and refused to authorize and
3 permit Plaintiff and Class Members to take lawful, net ten (10) minute rest periods for every four
4 (4) hours worked, or major fraction thereof. Such rest breaks, when provided, were frequently
5 untimely or less than net ten minutes because of the work requirements imposed by Defendants,
6 and frequent calls during rest periods.

7 65. In addition, as detailed above, Plaintiff and the Class Members were required to
8 engage in work related activities during rest periods, and were required to remain available. Rest
9 periods were frequently interrupted as a consequence.

10 66. Further, Plaintiff and, upon information and belief, the Class Members were not
11 allowed to leave the premises during rest periods.

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

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

23 69. As a result of the unlawful acts of Defendants, Plaintiff 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, the applicable IWC Wage Orders, and Civil Code 3287.

THIRD CAUSE OF ACTION
FAILURE TO TIMELY PAY WAGES DUE AND PAYABLE DURING
EMPLOYMENT

(By Plaintiff and the Class Against All Defendants)

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

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

72. 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.

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

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

103. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to represent have been deprived of wages in amounts to be determined at trial, and are entitled to recovery of such amounts, penalties, plus interest thereon, attorneys fees, and costs, pursuant to Labor Code § 210, 218.5, 218.6, 510, 1194.

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO TIMELY PAY WAGES OWED AT SEPARATION**

3 **(By Plaintiff and the Waiting Time Subclass Against All Defendants)**

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

6 76. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages
7 due at termination or within seventy-two (72) hours of separation of employment.

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

12 78. Plaintiff and Class Members are entitled to compensation for all forms of wages
13 earned, including but not limited to minimum wages, overtime, and premium meal and rest period
14 compensation, but to date have not received such compensation, therefore entitling them to Labor
15 Code § 203 penalties.

16 79. In addition, irrespective of any derivative violation, Defendants failed to timely pay
17 Plaintiff and, upon information and belief, other Class Members earned compensation at the time
18 of termination (or within 72 hours as the case may be) despite their obligations under Labor Code
19 201 and 202.

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

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

25 **FIFTH CAUSE OF ACTION**

26 **FAILURE TO REIMBURSE NECESSARY EXPENSES**

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

28 82. Plaintiff incorporates by reference and realleges each and every allegation contained

1 above, as though fully set forth herein.

2 83. Plaintiff repeats and incorporates herein by reference each and every allegation set
3 forth above, as though fully set forth herein.

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

6 85. Plaintiff and the members of the Indemnification Class were required to incur
7 expenses in the performance of their assigned job duties, including , but not limited to, purchase of
8 company clothing they were required to wear at work, laundry, dry cleaning and cell phone
9 expenses.

10 86. Upon information and belief, the Defendants did not reimburse Plaintiff or the
11 Plaintiff's subclass for such expenses.

12 87. As a result of the unlawful acts of Defendants, Plaintiff and the Plaintiff's Subclass
13 Members have been deprived of un-reimbursed sums in amounts to be determined at trial, and are
14 entitled to the recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and
15 costs, pursuant to Labor Code §2802.

16 **SIXTH CAUSE OF ACTION**

17 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**
18 **EMPLOYEE WAGE STATEMENT PROVISIONS**

19 **(By Plaintiff and Wage Statement Subclass Against Defendants)**

20 88. Plaintiff repeats and incorporates herein by reference each and every allegation set
21 forth above, as though fully set forth herein.

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

1 identification number other than a social security number, (8) the name and address of the legal
2 entity that is the employer, and (9) all applicable hourly rates in effect during each the pay period
3 and the corresponding number of hours worked at each hourly rate by the employee....”.

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

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

17 92. Defendants have failed to record many of the items delineated in applicable
18 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section 1174,
19 including by virtue of the fact that each wage statement which failed to accurately compensate
20 Plaintiff and Class Members for all hours worked and for missed and non-provided meal and rest
21 periods, or which failed to include compensation for all minimum wages earned or overtime hours
22 worked, was an inaccurate wage statement. In addition, the wage statements inaccurately stated
23 totals hours worked and hours worked at each hourly wage rate.

24 93. On information and belief, Defendants failed to implement and preserve a lawful
25 record-keeping method to record all non-provided meal and rest periods owed to employees or all
26 hours worked, as required for Non-Exempt Employees under California Labor Code section 226
27 and applicable California Wage Orders. In order to determine if they had been paid the correct
28 amount and rate for all hours worked, Plaintiff and Class Members have been, would have been,

1 and are compelled to try to discover the required information missing from their wage statements
2 and to perform complex calculations in light of the inaccuracies and incompleteness of the wage
3 statements Defendants provided to them.

4 94. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
5 Wage Orders, Defendants did not and still do not furnish each of the members of the Wage
6 Statement Class with an accurate itemized statement in writing accurately reflecting all of the
7 required information. Here, Plaintiff asserts the Defendant omitted required information, failed to
8 accurately include all applicable hourly rates on the wage statements and the corresponding number
9 of hours worked at such rates or hours paid at such rates. In addition, Defendants have failed to
10 provide accurate itemized wage statements as a consequence of the above-specified violations for
11 failure to accurately pay all wages owed, accurately record all hours worked, and failure to pay
12 meal and rest period premiums as required by law.

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

19 96. Plaintiff and the members of the Wage Statement Class have suffered injury as a
20 result of Defendants' failure to maintain accurate records for the members of the Wage Statement
21 Class in that the members of the Wage Statement Class were not timely provided written accurate
22 itemized statements showing all requisite information, such that the members of the Wage
23 Statement Class were misled by Defendants as to the correct information regarding various items,
24 including but not limited to total hours worked by the employee, net wages earned and all applicable
25 hourly rates in effect during the pay period and the corresponding number of hours worked at each
26 hourly rate.

27 97. Pursuant to Labor Code section 226, and in light of Defendants' violations addressed
28 above, Plaintiff and the Wage Statement Class Members are each entitled to recover up to a

1 maximum of \$4,000.00, along with an award of costs and reasonable attorneys' fees.

2 **SEVENTH CAUSE OF ACTION**

3 **VIOLATION OF THE UNFAIR COMPETITION LAW**

4 **(By Plaintiff and Class Against All Defendants)**

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

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

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

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

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

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

27 104. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiff
28 and the Class Members are entitled to restitution of the wages withheld and retained by Defendants

1 during a period that commences four (4) years prior to the filing of this complaint; an award of
2 attorneys' fees pursuant to California Code of Civil Procedure §1021.5; interest; and an award of
3 costs.

4 **PRAYER FOR RELIEF**

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

7 **Class Certification**

- 8 1. That this action be certified as a class action;
- 9 2. That Plaintiff be appointed as the representative of the Class;
- 10 3. That Plaintiff be appointed as the representatives of the Subclasses; and
- 11 4. That counsel for Plaintiff be appointed as counsel for the Class and Subclasses.

12 **On the First Cause of Action**

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

- 14 1. For the unpaid balance of the full amount of any minimum wages, and regular wages
15 owed, as well as interest thereon,
- 16 2. Penalties according to statute,
- 17 3. Liquidated damages,
- 18 4. Reasonable attorneys' fees, and costs of suit;
- 19 5. For interest and
- 20 6. For such other and further relief as the Court deems proper.

21 **On the Second Cause of Action**

22 **(Failure to Authorize and Permit Lawful Rest Periods)**

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

27 **On the Third Cause of Action**

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

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

On the Fourth Cause of Action

(Failure to Timely Pay Wages At Separation)

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

On the Fifth Cause of Action

(Failure to Reimburse Necessary Expenses)

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

On the Sixth Cause of Action

(Failure to Provide Accurate Itemized Wage Statements)

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

On the Seventh Cause of Action

(Violation of the Unfair Competition Law)

1. That Defendants, jointly and/or severally, pay restitution and/or disgorgement of sums to Plaintiff and Class Members for the Defendants' past failure to pay minimum, overtime

1 and regular wages, for Defendants' past failure to reimburse necessary expenses, and for premium
2 wages for meal and rest periods that were not provided to Plaintiff and Class Members over the last
3 four (4) years in an amount according to proof;

4 2. For reasonable attorneys' fees that Plaintiff and Class Members are entitled to
5 recover under California Code of Civil Procedure § 1021.5 and Labor Code section 1194, 1197,
6 1198 ;

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

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

11 5. For such other and further relief as the Court deems proper.

12
13 **DEMAND FOR JURY TRIAL**

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

16 Respectfully submitted,

17
18
19 Dated February 10, 2023

20 
21 JAMES HAWKINS, APLC
22 James R. Hawkins, Esq.
23 Christina M. Lucio, Esq.

24 Attorneys for KATHRYN JEANINE FAGAN ENGLES,
25 on behalf of herself and all others similarly situated
26
27
28