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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

VIVIANA GONZALEZ, individually, and
on behalf of herself and all others similarly
situated,

Plaintiff,

v.

TOPGOLF USA SBD, LLC, a California
limited liability company; TOPGOLF
PAYROLL SERVICES, LLC, a Delaware
limited liability company; TOPGOLF
INTERNATIONAL, INC., a Delaware
corporation; TOPGOLF LOS ANGELES –
ONTARIO, an unknown business or
fictitious name of a business; TOPGOLF
CALLAWAY BRANDS CORP., a
Delaware corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. CIVSB2526112

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

- 1) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§1194, 1197 & 1197.1;**
- 2) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §510;**
- 3) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§226.7 & 512 and the Applicable IWC Wage Order;**
- 4) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§226.7 & 512 and the Applicable IWC Wage Order;**
- 5) Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab. Code §226;**
- 6) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code §2802;**
- 7) Failure to Pay Wages When Due in Violation of Cal. Lab. Code §§201, 202 and 203;**
- 8) Failure to Pay Sick Pay Wages In Violation of Cal. Lab. Code §§201-204, 233, 246;**
- 9) Failure to Pay Reporting Time Wages;**

10) Unfair Competition in Violation of Cal. Bus. & Prof. Code §§17200, *et seq.*; and

11) Civil Penalties Pursuant to Private Attorneys' General Act, Cal. Lab. Code §§2698, *et seq.*

Plaintiff VIVIANA GONZALEZ ("Plaintiff"), on behalf of herself and all others similarly situated, asserts claims against TOPGOLF USA SBD, LLC, a California limited liability company; TOPGOLF PAYROLL SERVICES, LLC, a Delaware limited liability company; TOPGOLF INTERNATIONAL, INC., a Delaware corporation; TOPGOLF LOS ANGELES – ONTARIO, an unknown business or fictitious name of a business; TOPGOLF CALLAWAY BRANDS CORP., a Delaware corporation; and DOES 1 through 50, inclusive (collectively "TopGolf" or "Defendants" and each, a "Defendant") as follows:

INTRODUCTION

1. This is a Class Action brought by Plaintiff on behalf of herself and all individuals who are or previously were employed as non-exempt employees by any of the Defendants to work for or in a TopGolf location, facility, center or otherwise TopGolf owned and/or operated building (collectively, "TopGolf Locations") in the State of California, including any employees staffed with any of the Defendants by a third party to work for or in a California TopGolf Location.

2. The Class Action, pursuant to California Code of Civil Procedure § 382, is made on behalf of Plaintiff and any and all persons who are or were employed by Defendants, directly or indirectly, as non-exempt employees, however titled, in the State of California (which is defined below as the "Class" or "Class Members" or "Non-Exempt Employees") to work for or in TopGolf Locations in the State of California, including any employees staffed with any of the Defendants by a third party to work for or in a California TopGolf Location, within the four (4) years prior to the filing of the Complaint in this action until the resolution of this lawsuit (which is defined below as the "Class Period"). The Class and Class Period is broken down into subclasses below.

3. The Class Period is the liability period based on the applicable statute of limitations for each and every cause of action contained herein on behalf of the Class Members – i.e. Plaintiff's claims under the Unfair Competition Law is four (4) years; Plaintiff's claims for either unpaid

1 wages or actual damages is three (3) years; and Plaintiff's claims for statutory penalties is one (1)
2 year from the filing of this action through the present.

3 4. During the Class Period, Defendants consistently maintained and enforced against
4 Class Members unlawful practices and policies in violation of California state wage and hour laws,
5 including failing to lawfully and accurately pay Plaintiff and Class Members for all hours worked,
6 including minimum wages and overtime; failing to lawfully provide meal and rest periods; failing
7 to pay one hour of pay at the employee's regular rate of pay when legally mandated meal or rest
8 periods were not lawfully provided; failing to accurately pay overtime; failing to reimburse
9 necessary expenses; failing to provide accurate itemized wage statements; and failing to keep
10 accurate records.

11 5. Defendants implemented uniform policies, practices, and/or procedures that
12 deprived Plaintiff and Class Members of earned wages, including minimum wages; straight time
13 wages; overtime wages; premium wages; unreimbursed expenses; and lawful meal and/or rest
14 breaks.

15 6. Such actions and policies, as described above and further herein, were and continue
16 to be in violation of the California Labor Code. Plaintiff, on behalf of herself and all Class
17 Members, bring this action pursuant to the California Labor Code, including sections 201, 202,
18 203, 204, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1194, 1194.2, 1195, 1197,
19 1198, 2802, applicable IWC California Wage Orders and California Code of Regulations, Title 8,
20 section 11000 *et seq.*, seeking unpaid wages, unpaid meal and rest period compensation, penalties,
21 liquidated damages, and reasonable attorneys' fees and costs.

22 7. Plaintiff, on behalf of herself and other similarly situated Class Members, pursuant
23 to Business and Professions Code sections 17200-17208, also seeks restitution from Defendants
24 for their failure to pay Plaintiff and Class Members all of their wages, including overtime and
25 premium wages.

26 8. Plaintiff also brings an action pursuant to the PAGA on a representative basis on
27 behalf of all non-exempt employees, however titled, employed by Defendant in the State of
28 California (the "Aggrieved Employees") from one year prior to the filing of the PAGA notice to

1 the conclusion of this action. Plaintiff seeks to recover civil penalties and address Defendant's
2 violations of the California Labor Code and the IWC Wage Orders under PAGA. The Aggrieved
3 Employees are a subgroup of the Class Members or Non-Exempt Employees.

4 9. This amendment formally alleges the PAGA allegations described herein. This
5 amendment is timely because Plaintiff suffered from a violation or numerous violations of the
6 California Labor Code within one year of the date on which a PAGA notice was sent to the LWDA
7 via online submission. More than 65 days have passed, and no response has been received by the
8 LWDA. Plaintiff thereby satisfied the notice requirement under the statute and is permitted to
9 proceed with this action in a representative capacity.

10 **JURISDICTION**

11 10. This action is brought as a PAGA and Class Action on behalf of Plaintiff and
12 similarly situated Aggrieved Employees and Class Member employees of Defendants pursuant to
13 California Labor Code § 2698, et seq. and California Code of Civ. Proc. Section 382, respectively.
14 The monetary damages and restitution sought by Plaintiff exceeds the minimum jurisdiction limits
15 of the California Superior Court and will be established according to proof at trial.

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

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

22 13. This Court has jurisdiction over Defendants because, upon information and belief,
23 each Defendant is either a resident of California, has sufficient minimum contacts in California, or
24 otherwise intentionally avails himself of the California market so as to render the exercise of
25 jurisdiction over them by the California Courts consistent with traditional notions of fair play and
26 substantial justice. Defendants have done and are doing business throughout California, including,
27 but not limited to, by maintaining and operating various TopGolf related businesses, facilities, and
28 services throughout California, including the location in San Bernardino County.

14. The unlawful acts alleged herein have a direct effect on Plaintiff and the other similarly situated Class Members within California including in San Bernardino County and it is believed that Defendants has employed hundreds of Aggrieved Employees and Class Members as non-exempt employees throughout the state.

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

VENUE

16. Venue is proper in this Court because one or more of the Defendants reside, transact business, or have offices in this County, and the acts, events, conduct and/or omissions alleged herein took place in this County, including, but not limited to, the TopGolf facility located at 1050 N Archibald Ave, Ontario, CA 91764.

17. Venue is proper in this Court because upon information and belief, one or more of the Defendants transact business, or have offices in this County and the acts, events, conduct and/or omissions alleged herein took place in this County, including, but not limited to, the TopGolf facility located at 1050 N Archibald Ave, Ontario, CA 91764.

THE PARTIES

Plaintiff

18. Plaintiff VIVIANA GONZALEZ is and during the liability period has been, a resident of San Bernardino County, California.

19. Plaintiff was employed by one or more of the Defendants in California as an hourly, non-exempt employee from approximately July 2022 through mid-2025.

20. Plaintiff primarily worked at the TopGolf Location located at 1050 N Archibald Ave, Ontario, CA 91764. She also performed some work remotely.

21. Plaintiff and the members of the Class and of the Aggrieved Employees were employed by one or more of the Defendants as hourly, non-exempt employees at TopGolf Locations in the State of California, however titled, during the Class Period and during the PAGA Period.

Defendants

22. Defendant TOPGOLF USA SBD, LLC is a California Limited Liability Company authorized to do business throughout the State of California. Defendant's principal address is located at 8750 N. Central Expressway, Suite 1200, Dallas, TX 75231, and it operates in California, including without limitation at the TopGolf Los Angeles – Ontario location located at 1050 N. Archibald Avenue, Ontario, CA 91764.

23. Defendant TOPGOLF INTERNATIONAL, INC., is a Delaware corporation with its principal address located at 8750 N. Central Expressway, Suite 1200, Dallas, TX 75231, and it operates throughout California and the nation, including without limitation, the TopGolf Los Angeles – Ontario location located at 1050 N. Archibald Avenue, Ontario, CA 91764.

24. Defendant TOPGOLF PAYROLL SERVICES, LLC is a California Limited Liability Company authorized to do business throughout the State of California. Defendant's principal address is located at 8750 N. Central Expressway, Suite 1200, Dallas, TX 75231, and it operates in California.

25. Defendant TOPGOLF LOS ANGELES – ONTARIO is a business entity and/or fictitious business name for a business entity operating at 1050 N. Archibald Avenue, Ontario, CA 91764.

26. Defendant TOPGOLF CALLAWAY BRANDS CORP. is a Delaware corporation authorized to do business throughout the State of California. Defendant's principal address is

1 located at 2180 Rutherford Road, Carlsbad, CA 92008, and it operates in California, including
2 without limitation at the TopGolf Los Angeles – Ontario location located at 1050 N. Archibald
3 Avenue, Ontario, CA 91764.

4 27. Defendants provide golf related amusement services, entertainment, food, drinks,
5 and other related services and jointly employ/employed Plaintiff and the Class Members, directly
6 or indirectly, in connection with those services.

7
8 **Doe Defendants, Agents, and Third Parties**

9 28. The true names and capacities, whether individual, corporate, subsidiary,
10 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
11 unknown to Plaintiff who therefore sue these Defendants by such fictitious names pursuant to Cal.
12 Civ. Proc. Code § 474. Plaintiff will seek leave to amend this Complaint to allege the true names
13 and capacities of Does 1 through 50, inclusive, when they are ascertained. Plaintiff is informed
14 and believe, and based upon that information and belief allege, that the Defendants named in this
15 Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or
16 more of the events and happenings that proximately caused the injuries and damages hereinafter
17 alleged.

18 29. The agents, servants and/or employees of the Defendants and each of them acting
19 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
20 agent, servant and/or employee of the Defendants, and personally participated in the conduct
21 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
22 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
23 Defendants are jointly and severally liable to Plaintiff and the other members of the California
24 Class, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants
25 and/or employees.

26
27 **THE FACTUAL ALLEGATIONS**

28 30. Plaintiff was employed by Defendants in California as an hourly, non-exempt

1 employee from approximately July 2022 through approximately May 2025. Defendants employed
2 various other hourly, non-exempt employees during such time. Plaintiff's duties included, but was
3 not limited to, servicing the customers of the Defendants in connection with food orders, drinks,
4 their golfing experience, golfing related amusement, and various other golfing related services
5 and/or food and drink delivery-related service.

6 31. Plaintiff was typically scheduled to work four to five days a week with typical shifts
7 between six to eight hours, but has, from time to time, worked more than eight hours in a day and
8 more than five days in a given week.

9 32. Plaintiff was hired to serve the customers of Defendants in various capacities
10 including, without limitation, serving of food, serving of drinks, assisting with golfing
11 entertainment, providing golfing entertainment, providing golfing amusement, providing golfing
12 and other games, and other similar services.

13 33. The TopGolf Locations had numerous tables across multiple floors to provide such
14 products and services, and such tables were frequently busy and to capacity from time to time with
15 customers. Defendants typically and systematically understaffed all of their TopGolf Locations for
16 the Plaintiff and Class Members to be overworked which resulted in various violations as herein
17 described among other policies, procedures, and practices.

18 34. Pursuant to the Industrial Welfare Commission ("IWC") Wage Orders, Defendants
19 were required to pay Plaintiff and Class Members for all their time worked, meaning the time during
20 which an employee is subject to the control of an employer, including all the time the employee is
21 suffered or permitted to work.

22 35. Defendants required Plaintiff and Class Members to work without paying them for
23 all the time they are under Defendants' control. Among other things, Defendants required Plaintiff
24 and the Class Members to work while clocked out before and after shifts, and during purported off-
25 duty meal breaks to perform job duties.

26 36. By way of example only, Plaintiff and the Class Members were required to clock in
27 and out at scheduled shift times and for purported meal periods; however, due to lack of coverage,
28 Defendants' policies and practices, and work demands, Plaintiff and the Class Members were

1 required to work off the clock to perform job duties including without limitation, serving guests,
2 running food and drinks, communicating with managers and co-workers, monitoring guest needs,
3 monitoring tables, cleaning the work area, folding napkins, and other job functions including end
4 of shift duties.

5 37. In addition, Plaintiff and the Class Members were from time to time interrupted by
6 work assignments while clocked out during purported off-duty meal breaks

7 38. Defendants, as a matter of established company policy and procedure, administer a
8 uniform practice of rounding the actual time worked and recorded by Plaintiff and Class Members,
9 always to the benefit of Defendant, so that during the course of their employment, Plaintiff and
10 Class Members are paid less than they would have been paid had they been paid for actual recorded
11 time rather than “rounded” time.

12 39. Additionally, Defendants engaged in the practice of requiring Plaintiff and Class
13 Members to perform work off the clock in that Defendants, as a condition of employment, required
14 these employees to submit communications to managers, supervisors, and other employees through
15 a cell phone application that was required to be downloaded onto the personal cell phones of
16 Plaintiff and the Class Members. Defendants also required Plaintiff and Class Members do training
17 modules on their respective cell phones for work off the clock.

18 40. Defendants also require Plaintiffs and the Class Members to maintain and were
19 instructed to provide certain uniforms, clothes, bags, and other wearable items, including, but not
20 limited to, instructions that such employees must wear to work certain t-shirts, leggings, and/or
21 short pants in certain colors or other requirements. Defendants required Plaintiffs and the Class
22 Members to purchase, prepare and maintain certain clothing and items required for the job off the
23 clock and outside of work. Also, Defendants often performed inspection of the Plaintiff and the
24 Class Members of their uniforms, clothes, bags, and other wearable items which were off the clock,
25 including during purported meal periods, to ascertain that such clothing and items are worn and/or
26 maintained. Defendants’ requirements and conducts violated IWC Wage Order No. 4, section 9
27 among other sections of IWC Work Order No. 4, Cal. Lab. Code §§ 1194, 1197, and 1197.1, and
28 other applicable laws.

1 41. Defendants also required other off the clock work such as “cleaning” after scheduled
2 hours. Defendants required Plaintiffs and the Class Members to work off the clock “cleaning” in
3 that Plaintiff and the Class Members were required to clock out at their scheduled shifts or times
4 but were required to continue working until such employees’ section or area of the facility worked
5 was clean. Defendants would require such employees to stay until their respective “section was
6 clean” even if such employee had clocked out. Defendants failed to pay and/or report such off the
7 clock work (including any respectively required overtime payments) in violation of IWC Wage
8 Orders, Cal. Lab. Code §§ 1194, 1197, and 1197.1, and other applicable laws.

9 42. In addition, Plaintiff and the Class Members were subject to controlled meal and rest
10 periods. As a result, Plaintiff and other Class Members forfeit minimum wage, overtime wage
11 compensation, and off-duty meal breaks by working without their time being correctly recorded
12 and without compensation at the applicable rates. Defendants’ policy and practice not to pay
13 Plaintiff and other Class Members for all time worked, is evidenced by Defendants’ business
14 records.

15 43. State and federal law provides that employees must be paid overtime and meal and
16 rest break premiums at one-and-one-half times their “regular rate of pay.” Plaintiff and other Class
17 Members are compensated at an hourly rate plus incentive pay that is tied to specific elements of
18 an employee’s performance.

19 44. Defendants failed to provide lawful meal periods to Plaintiff and the Class Members.
20 As a result of their rigorous work schedules, work demands, and lack of coverage, Plaintiff and
21 other Class Members were often not provided with lawful thirty (30) minute off duty meal breaks
22 and were not fully relieved of duty for their purported meal periods. Plaintiff and other Class
23 Members were also required from time to time to perform work as ordered by Defendants for more
24 than five (5) hours during some shifts without receiving a meal break. Further, Defendants, from
25 time to time, failed to provide Plaintiff and Class Members with a second off-duty meal period for
26 some workdays in which these employees were required by Defendants to work ten (10) hours of
27 work. Defendants also engaged in the practice of rounding or modifying the meal period times to
28 avoid paying penalties to Plaintiff and other Class Members. Plaintiff and other members of the

1 Class therefore forfeit meal breaks without additional compensation and in accordance with
2 Defendants' corporate policy and practice.

3 45. During the Class Period, Defendants also failed to authorize and permit lawful rest
4 periods. Plaintiff and other Class Members were often required to work in excess of four (4) hours
5 without being provided a lawful net ten (10) minute rest period. Further, these employees were
6 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2)
7 to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes for
8 some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
9 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
10 time to time. Plaintiff and other Class Members were also not provided with one-hour wages at the
11 regular rate in lieu thereof.

12 46. Additionally, the applicable California Wage Order requires employers to provide
13 employees with off-duty rest periods, which the California Supreme Court defined as time during
14 which an employee is relieved from all work-related duties and free from employer control. In so
15 doing, the Court held that the requirement under California law that employers authorize and permit
16 all employees to take rest period means that employers must relieve employees of all duties and
17 relinquish control over how employees spend their time which includes control over the locations
18 where employees may take their rest period. Here, Defendants failed to provide lawful duty-free
19 rest periods.

20 47. In addition, Defendants failed to lawfully authorize and permit rest breaks for Class
21 Members, as rest breaks which were provided were frequently untimely or less than net ten minutes
22 because of the work requirements imposed by Defendants, and frequent interruptions during rest
23 periods.

24 48. Additionally, from time to time, Defendants failed to pay credit card tips and would
25 list \$0 on the line item "Credit Card Tips" on various wage statements from time to time.
26 Defendants either kept the credit card tips, paid credit card tips in cash and did not report them,
27 and/or otherwise failed to accurately record and/or pay the Plaintiff and other Class Members for
28 the actual amount of the credit card tips. Plaintiff and other similar Class Members would receive

1 hundreds of dollars of tips for each day worked and such tips were either kept by the Defendants,
2 not distributed to the Plaintiff or the specified Class Member, allocated in a method that was not
3 disclosed and/or not properly recorded, and/or otherwise allocated in a method in violation of
4 applicable laws.

5 49. Defendants would also frequently violate IWC Wage Order No. 4, 5 and 10, section
6 5 in each, "Reporting Time Pay." Defendants often sent Plaintiff and other Class Members home
7 within two (2) hours of work or upon arrival at and reporting to work and would not pay for such
8 short durations or for the day. Section 5 in each of IWC Wage Order No. 4, 5, and 10 requires that
9 if an employee is required to report to work and does report, but is not put to work or is furnished
10 less than half said employee's usual or scheduled day's work, the employee shall be paid for half
11 the usual or scheduled day's work or the minimum hours described in Section 5 of each of IWC
12 Wage Order No. 4, 5, and 10. Plaintiff and other Class Members planned for working that day,
13 exhausted considerable off the clock work and time prior to the work schedule to prepare for the
14 working day, and arrive only to be returned home without being paid for the time and/or day based
15 on the schedule. Defendants failed to accurately record and pay Plaintiff and other Class Members
16 for such time. Such misconduct was frequent such that it was a matter of Defendants' practice,
17 policy, and/or procedure to return employees home at the discretion of Defendants without pay
18 and/or proper records. As such, Defendants violated Section 5 of IWC Wage Orders 4, 5, and 10,
19 and Cal. Lab. Code §§ 1194, 1197, 1198, among other applicable laws.

20 50. Additionally, Defendants frequently violated "final pay" related laws in that
21 Defendants would terminate and/or discharge Plaintiff and other Class Members without informing
22 such employees of their termination and/or discharge and without paying in full their final
23 paycheck, including earned vacation, immediately at the time of termination. In particular, Plaintiff
24 was never informed of her termination and discharge of her employment at the time of termination,
25 and, worse yet, Defendants had terminated her and/or set her termination date over one month prior
26 to when Plaintiff asked about her employment status and training. Accordingly, Defendants failed
27 to pay the full final paycheck, including earned vacation, immediately at the time of termination.
28 As such, Defendants violated IWC Wage Orders and Cal. Lab. Code §§ 201, 202, 203, 227.3, and

208, among other applicable laws for failure to pay final pay and Defendants failed to accurately record and pay Plaintiff and other Class Members for such conduct.

51. During the Class Period, Defendants failed to accurately record and pay Plaintiff and other Class Members for the actual amount of time these employees worked. Pursuant to the IWC Wage Orders, Defendants were required to pay Plaintiff and other Class Members for all time worked, meaning the time during which an employee was subject to the control of an employer, including all the time the employee was permitted or suffered to permit this work. Defendants required these employees to work off the clock without paying them for all the time they were under Defendants' control. As such, Defendants knew or should have known that Plaintiff and the other members of the California Class were under compensated for all time worked. As a result, Plaintiff and other Class Members forfeited time worked by working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime wage rates. To the extent that the time worked off the clock does not qualify for overtime premium payment, Defendants failed to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

52. Defendants failed to provide accurate, lawful itemized wage statements to Plaintiff and the California Class, as required by Labor Code section 226, in part because of the above specified violations.

53. In addition, from time to time, Defendants also failed to provide Plaintiff and the other members of the California Class with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Plaintiff and Class Members were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendants provided to Plaintiff and other Class Members failed to

1 identify such information. More specifically, the wage statements failed to identify the accurate
2 total hours worked each pay period. When the hours shown on the wage statements were added
3 up, they did not equal the actual total hours worked during the pay period in violation of Cal. Lab.
4 Code 226(a)(2). Aside, from the violations listed above in this paragraph, Defendants failed to
5 issue to Plaintiff and Class Members an itemized wage statement that lists all the requirements
6 under California Labor Code 226 et seq. As a result, Defendants from time to time provided
7 Plaintiff and the other members of the Class with wage statements which violated Cal. Lab. Code
8 § 226.

9 54. In addition, certain wage statements show deductions from Class Members
10 paychecks and show the reasoning as “Cash Tips Offset” or “Post Tax Deductions.” Such conduct
11 was and is in violation of Section 8 of each of IWC Wage Order No. 4, 5, and 10, violation of Labor
12 Code section 351, violation of laws for failing to accurately record and pay Plaintiff, violations of
13 laws in connection with falsely representing wages and deducting such amounts without disclosure,
14 and violation of other similar applicable labor laws. To the extent this sum does not constitute an
15 actual deduction from wages, it is also a violation of Labor Code section 226.

16 55. In relevant part Labor Code section 351 states, “No employer or agent shall collect,
17 take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a
18 patron, or deduct any amount from wages due an employee on account of a gratuity, or require an
19 employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages
20 due the employee from the employer. Every gratuity is hereby declared to be the sole property of
21 the employee or employees to whom it was paid, given, or left for.” There are only two conditions
22 created by Labor Code section 351, “the person must be an employee and the tip must have been
23 ‘paid, given or left for’ the employee.” *Budrow v. Dave & Buster's of California, Inc.* (2009) 171
24 Cal.App.4th 875, 879. As such, Defendants violated Labor Code section 351 because the Plaintiff
25 and the Class were not paid all tips and wages earned. In some cases, Defendants improperly
26 pooled the tips of the Plaintiff and the Class and this led to them not being paid all wages earned in
27 violation of Labor Code sections 201-202, among other applicable laws.

28 56. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be deemed

1 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
2 paid not more than seven (7) calendar days following the close of the payroll period. Cal. Lab.
3 Code § 210 provides:

4 [I]n addition to, and entirely independent and apart from, any other penalty provided
5 in this article, every person who fails to pay the wages of each employee as provided
6 in Sections. . . .204. . . shall be subject to a civil penalty as follows: (1) For any initial
7 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.

8 57. Defendants, from time to time, failed to pay Plaintiff and members of the Class
9 Members within seven (7) days of the close of the payroll period in accordance with Cal. Lab. Code
10 § 204(d), including but not limited to for the “Hourly” regular wage payments.

11 58. Defendants underpaid sick pay wages to Plaintiff and other Class Members by
12 failing to pay such wages at the regular rate of pay in violation of Cal. Lab. Code Section 246.
13 Specifically, Plaintiff and other non-exempt employees earn non-discretionary remuneration.
14 Rather than pay sick pay at the regular rate of pay, Defendants underpaid sick pay to Plaintiff and
15 other Class Members at their base rates of pay.

16 59. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
17 employees be calculated by dividing the employee’s total wages, not including overtime premium
18 pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of
19 employment.

20 60. Defendants violated Cal. Lab. Code Section 246 by failing to pay sick pay at the
21 regular rate of pay. Plaintiff and Class Members routinely earned non-discretionary incentive wages
22 which increased their regular rate of pay. However, when sick pay was paid, it was paid at the base
23 rate of pay for Plaintiff and members of the California Class, as opposed to the correct, higher
24 regular rate of pay, as required under Cal. Lab. Code Section 246.

25 61. As a pattern and practice, Defendants regularly failed to pay Plaintiff and other
26 members of the California Class their correct wages, including minimum wages, overtime, and
27 premium pay, and accordingly owe waiting time penalties pursuant to Cal. Lab. Code Section 203.
28 Further, Plaintiff is informed and believe and based thereon allege that such failure to pay sick pay

1 at regular rate was willful, such that Plaintiff and members of the California Class whose
2 employment has separated are entitled to waiting time penalties pursuant to Cal. Lab. Code Sections
3 201-203.

4 62. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer to
5 collect or receive from an employee any part of wages theretofore paid by said employer to said
6 employee." Defendants failed to pay all compensation due to Plaintiff and other Class Members,
7 made unlawful deductions from compensation payable to Plaintiff and Class Members, failed to
8 disclose all aspects of the deductions from compensation payable to Plaintiff and Class Members,
9 and thereby failed to pay these employees all wages due at each applicable pay period and upon
10 termination. Plaintiff and members of the Class seek recovery of all illegal deductions from wages
11 according to proof, related penalties, interest, attorney fees and costs.

12 63. Defendants intentionally and knowingly failed to reimburse and indemnify Plaintiff
13 and the other Class Members for required business expenses incurred by the Plaintiff and other
14 Class Members in direct consequence of discharging their duties on behalf of Defendants. Under
15 California Labor Code Section 2802, employers are required to indemnify employees for all
16 expenses incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly
17 states that "an employer shall indemnify his or her employee for all necessary expenditures or losses
18 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or
19 her obedience to the directions of the employer, even though unlawful, unless the employee, at the
20 time of obeying the directions, believed them to be unlawful."

21 64. In the course of their employment Plaintiff and other Class Members as a business
22 expense, were required by Defendants to use their own personal cellular phones as a result of and
23 in furtherance of their job duties as employees for Defendants but are not reimbursed or indemnified
24 by Defendants for the cost associated with the use of their personal cellular phones and
25 downloading of various applications for Defendants' benefit. Specifically, Plaintiff and other Class
26 Members were required by Defendants to use their personal cellular phones. As a result, in the
27 course of their employment with Defendants, Plaintiff and other members of the Class incurred
28 unreimbursed business expenses which included, but were not limited to, costs related to the use of

1 their personal cellular phones all on behalf of and for the benefit of Defendant.

2 65. Plaintiff and the Class Members were also required to incur expenses for the
3 purchase and maintenance of uniforms, pens, and paper. Such business expenses are properly borne
4 by Defendants; however, Defendants did not reimburse Plaintiff and the Class Members for such
5 sums.

6 66. Specifically, as to Plaintiff, Defendants failed to provide all the legally required off-
7 duty meal and rest breaks to Plaintiff as required by the applicable Wage Order and Labor Code
8 and failed to pay Plaintiff all minimum and overtime wages due to Plaintiff. Defendants did not
9 have a policy or practice which provided timely off-duty meal and rest breaks to Plaintiff and also
10 failed to compensate Plaintiff for Plaintiff's missed meal and rest breaks. The nature of the work
11 performed by the Plaintiff did not prevent Plaintiff from being relieved of all of Plaintiff's duties
12 for the legally required off-duty meal periods. As a result, Defendants' failure to provide Plaintiff
13 with the legally required meal periods is evidenced by Defendants' business records. The amount
14 in controversy for Plaintiff individually does not exceed the sum or value of \$75,000.

15 16 CLASS ALLEGATIONS

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

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

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

27 70. Plaintiff also seeks to represent Subclasses included in the Plaintiff's Class, which
28 are composed of Class Members satisfying the following definitions (collectively, "**Subclasses**");

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

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

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

9 d. All Class Members who worked more than ten hours in a workday and were
10 not provided with a timely, uninterrupted lawful second meal period of thirty (30) minutes, and
11 were not paid compensation of one hour premium wages at the employee’s regular rate in lieu
12 thereof (hereinafter collectively referred to as the **“Second Meal Period Subclass”**);

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

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

21 g. All Class Members who were not reimbursed for necessary expenses
22 (hereinafter collectively referred to as the **“Indemnification Subclass”**)

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

26 i. All Class Members who did not receive reporting time pay (hereinafter
27 collectively referred to as the **“Reporting Time Subclass”**); and

28 j. All Class Members who were employed by Defendants and subject to

1 Defendants' Unfair Business Practices (hereinafter collectively referred to as the "**Unfair Business**
2 **Practices Subclass**").

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

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

12 73. Defendants, as a matter of company policy, practice and procedure, and in violation
13 of the applicable Labor Code, IWC Wage Order requirements, and the applicable provisions of
14 California law, intentionally, knowingly, and willfully, engaged in a practice whereby Defendants
15 failed to record all meal and rest breaks missed by Plaintiff and other Class Members, even though
16 Defendants enjoyed the benefit of this work, required employees to perform this work and permits
17 or suffers to permit this work.

18 74. Defendants have the legal burden to establish that each and every Class Member
19 was paid accurately for all meal and rest breaks missed as required by California laws. The
20 Defendants, however, as a matter of policy and procedure failed to have in place during the Class
21 Period and still fails to have in place a policy or practice to ensure that each and every Class Member
22 is paid as required by law. This common business practice is applicable to each and every
23 California Class Member and can be adjudicated on a class-wide basis.

24 75. Defendants, in violation of the applicable Labor Code, IWC Wage Order
25 requirements, and the applicable provisions of California law, intentionally, knowingly, and
26 willfully, engaged in a practice whereby Defendants failed to correctly calculate compensation for
27 the time worked by Plaintiff and the other members of the Class and reporting time wages owed to
28 these employees, even though Defendants enjoyed the benefit of this work, required employees to

1 perform this work and permitted or suffered to permit this work. Defendants have denied these
2 Class Members wages to which these employees are entitled in order to unfairly cheat the
3 competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the
4 Class against Defendant, the Class Period should be adjusted accordingly.

5 76. Defendants maintained records from which the Court can ascertain and identify by
6 name and job title, each of Defendants' employees who have been intentionally subjected to
7 Defendants' company policy, practices and procedures as herein alleged. Plaintiff will seek leave
8 to amend the complaint to include any additional job titles of similarly situated employees when
9 they have been identified.

10 77. The California Class is so numerous that joinder of all Class Members is
11 impracticable.

12 78. Common questions of law and fact exist as to members of the Class, including, but
13 not limited, to the following:

- 14 a. Whether Defendants unlawfully failed to correctly calculate and pay
15 compensation due to members of the Class for missed meal and rest
16 breaks in violation of the California Labor Code and California
17 regulations and the applicable California Wage Order;
- 18 b. Whether Defendants accurately paid Class Members for all hours
19 worked;
- 20 c. Whether Defendants knew or should have known that Class
21 Members were required to perform work off the clock;
- 22 d. Whether Defendants accurately calculated and paid all Class
23 Members overtime premiums for the hours which Plaintiff and Class
24 Members worked in excess of eight (8) hours per day and/or forty
25 (40) hours per week;
- 26 e. Whether Defendants had a policy and practice of providing lawful,
27 timely meal periods in accordance with Labor Code § 512, as well as
28 the applicable Industrial Welfare Commission ("IWC") wage order;

- f. Whether Defendants had a policy and practice of complying with Labor Code section 226.7 and IWC Wage Order on each instance that a lawful, timely 30-minute uninterrupted meal period was not provided;
- g. Whether Defendants failed to authorize and permit a lawful, net 10-minute rest period to the Class Members for every four (4) hours or major fraction thereof worked;
- h. Whether Defendants had a policy and practice of complying with Labor Code section 226.7 and the IWC Wage Order on each instance that a lawful rest period was not provided;
- i. Whether Defendants failed to timely pay all wages upon separation in accordance with Labor Code sections 201-202;
- j. Whether Defendants failed to provide sufficient coverage for the taking of meal periods;
- k. Whether Defendants failed to provide sufficient coverage for the taking of rest breaks;
- l. Whether Defendants required Class Members to remain on premises during meal and/or rest periods;
- m. Whether Defendants' policies and procedures discouraged or impeded meal periods or rest breaks;
- n. Whether Defendants failed to reimburse necessary expenses in accordance with Labor Code § 2802;
- o. Whether Defendants omitted required information from itemized wage statements or provided inaccurate information;
- p. Whether Defendants failed to maintain accurate records of Class Members' earned wages, work periods, meal periods and deductions;
- q. Whether Defendants engaged in unfair competition in violation of section 17200 et seq. of the Business and Professions Code;

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

4 s. Whether Defendants' conduct was willful.

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

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

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

19 c. **Commonality**: As set forth above, there are common questions of law and
20 fact as to the Class and Subclasses that predominate over questions affecting only individual
21 Class Members.

22 d. **Typicality**: Plaintiff is qualified to, and will fairly and adequately protect
23 the interests of each member of the Class and Subclasses with whom she has a well-defined
24 community of interest. Plaintiff's claims herein alleged are typical of those claims which could be
25 alleged by any member of the Class and/or Subclasses, and the relief sought is typical of the relief
26 which would be sought by each member of the Class and/or Subclasses in separate actions. All
27 members of the Class and/or Subclasses have been similarly harmed by Defendants' failure to
28 provide lawful meal and rest periods, failure to provide accurate wage statements, failure to provide

1 sick leave, failure to timely pay wages at termination, failure to pay minimum wages, and failure
2 to accurately pay all wages earned including all owed premium and overtime wages, all due to
3 Defendants' policies and practices that affected each member of the Class and/or Subclasses
4 similarly. Further, Defendants benefited from the same type of unfair and/or wrongful acts as to
5 each member of the Class and/or Subclasses.

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

15 f. **Superiority**: The nature of this action makes the use of class action
16 adjudication superior to other methods. A class action will achieve economies of time, effort,
17 judicial resources, and expense, which would not be achieved with separate lawsuits. The
18 prosecution of separate actions by individual members of the Class and/or Subclasses would create
19 a risk of inconsistent and/or varying adjudications with respect to the individual members of the
20 Class and/or Subclasses, establishing incompatible standards of conduct for the Defendants, and
21 resulting in the impairment of the rights of the members of the Class and/or Subclasses and the
22 disposition of their interests through actions to which they were not parties. Thus, a class action is
23 superior to other available means for the fair and efficient adjudication of this controversy because
24 individual joinder of all Class Members is not practicable, and questions of law and fact common
25 to the Class predominate over any questions affecting only individual Class Members. Each
26 member of the Class has been damaged and is entitled to recovery by reason of Defendants'
27 unlawful policies and practices that affected each member of the Class and/or Subclasses similarly.
28 Class action treatment will allow those similarly situated persons to litigate their claims in the

1 manner that is most efficient and economical for both parties and the judicial system. Plaintiff is
2 unaware of any difficulties that are likely to be encountered in the management of this action that
3 would preclude its maintenance as a class action.

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

13 **CLASS ACTION CLAIMS**

14 **FIRST CAUSE OF ACTION**

15 **For Failure To Pay Minimum Wages**

16 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

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

18 80. Plaintiff, and the other members of the Class, reallege and incorporate by this
19 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

20 81. Plaintiff and the other members of the Class bring a claim for Defendants' willful
21 and intentional violations of the California Labor Code and the IWC requirements for Defendants'
22 failure to accurately calculate and pay minimum wages to Plaintiff and Class Members.

23 82. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
24 policy, an employer must timely pay its employees for all hours worked.

25 83. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
26 commission is the minimum wage to be paid to employees, and the payment of a less wage than
27 the minimum so fixed is unlawful.

1 84. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
2 including minimum wage compensation and interest thereon, together with the costs of suit.

3 85. Defendants maintained a wage practice of paying Plaintiff and the other members
4 of the Class without regard to the correct amount of time they work. As set forth herein,
5 Defendants' policy and practice was to unlawfully and intentionally deny timely payment of wages
6 due to Plaintiff and the other members of the Class.

7 86. Defendants' unlawful wage and hour practices manifested, without limitation,
8 applicable to the Class as a whole, as a result of implementing a policy and practice that denies
9 accurate compensation to Plaintiff and the other members of the Class in regards to minimum wage
10 pay.

11 87. In committing these violations of the California Labor Code, Defendants
12 inaccurately calculated the correct time worked and consequently underpaid the actual time worked
13 by Plaintiff and other members of the Class. Defendants acted in an illegal attempt to avoid the
14 payment of all earned wages, and other benefits in violation of the California Labor Code, the IWC
15 requirements and other applicable laws and regulations.

16 88. As a direct result of Defendants' unlawful wage practices as alleged herein, Plaintiff
17 and the other members of the Class did not receive the correct minimum wage and straight time
18 compensation for their hours worked for Defendants.

19 89. During the Class Period, Defendants required, permitted or suffered Plaintiff and
20 Class Members to work without paying them for all the time they were under Defendants' control.
21 During the Class Period, Plaintiff and the other members of the Class were paid less for hours
22 worked than they were entitled to, constituting a failure to pay all earned wages.

23 90. By virtue of Defendants' unlawful failure to accurately pay all earned compensation
24 to Plaintiff and the other members of the Class for the actual hours worked, Plaintiff and the other
25 members of the Class have suffered and will continue to suffer an economic injury in amounts
26 which are presently unknown to them and which will be ascertained according to proof at trial.

27 91. Defendants knew or should have known that Plaintiff and the other members of the
28 Class were under compensated for their time worked. Defendants elected, either through

1 intentional malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of
2 company policy, practice and procedure, and Defendants perpetrated this scheme by refusing to
3 pay Plaintiff and the other members of the Class the correct wages for their time worked.

4 92. In performing the acts and practices herein alleged in violation of California labor
5 laws, and refusing to compensate the members of the Class for all time worked and provide them
6 with the requisite compensation, Defendants acted and continue to act intentionally, oppressively,
7 and maliciously toward Plaintiff and the other members of the Class with a conscious and utter
8 disregard for their legal rights, or the consequences to them, and with the despicable intent of
9 depriving them of their property and legal rights, and otherwise causing them injury in order to
10 increase company profits at the expense of these employees.

11 93. Plaintiff and the other members of the Class therefore request recovery of all unpaid
12 wages, according to proof, interest, statutory costs, as well as the assessment of any statutory
13 penalties against Defendants, in a sum as provided by the California Labor Code and/or other
14 applicable statutes. Plaintiff and the Class are also entitled to an award of attorneys' fees and costs.

15 **SECOND CAUSE OF ACTION**

16 **For Failure To Pay Overtime Compensation**

17 **[Cal. Lab. Code § 1194, 1197, 510 and Wage Order]**

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

19 94. Plaintiff, and the other members of the Class, reallege and incorporate by this
20 reference, as though full set forth herein, the prior paragraphs of this Complaint

21 95. Plaintiff and the other members of the Class bring a claim for Defendants' willful
22 and intentional violations of the California Labor Code and the IWC requirements for Defendants'
23 failure to pay these employees for all overtime worked, including, work performed in excess of
24 eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
25 workweek.

26 96. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
27 policy, an employer must timely pay its employees for all hours worked.
28

1 97. Cal. Lab. Code § 510 further provides that employees in California shall not be
2 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
3 unless they receive additional compensation beyond their regular wages in amounts specified by
4 law.

5 98. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
6 including minimum wage and overtime compensation and interest thereon, together with the costs
7 of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours
8 than those fixed by the IWC is unlawful.

9 99. During the Class Period, Plaintiff and Class Members were required, permitted or
10 suffered by Defendants to work for Defendants and were not paid for all the time they worked,
11 including overtime work.

12 100. Defendants implemented a policy and practice that failed to accurately record
13 overtime worked by Plaintiff and other Class Members and denied accurate compensation to
14 Plaintiff and the other members of the Class for overtime worked, including, the overtime work
15 performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or
16 forty (40) hours in any workweek.

17 101. In committing these violations of the California Labor Code, Defendants
18 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
19 Plaintiff and other Class Members. Defendants acted in an illegal attempt to avoid the payment of
20 all earned wages, and other benefits in violation of the California Labor Code, the IWC
21 requirements and other applicable laws and regulations. As a direct result of Defendants' unlawful
22 wage practices as alleged herein, the Plaintiff and the other members of the Class did not receive
23 full compensation for overtime worked.

24 102. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from
25 the overtime requirements of the law. None of these exemptions are applicable to the Plaintiff and
26 the other members of the Class. Further, Plaintiff and the other members of the California Class
27 were not subject to a valid collective bargaining agreement that would preclude the causes of action
28 contained herein this Complaint. Rather, Plaintiff brings this Action on behalf of herself and the

1 Class based on Defendants' violations of non-negotiable, non-waivable rights provided by the State
2 of California.

3 103. During the Class Period, Plaintiff and the other members of the Class have been paid
4 less for overtime worked that they are entitled to, constituting a failure to pay all earned wages.

5 104. Defendants failed to accurately pay the Plaintiff and the other members of the Class
6 overtime wages for the time they worked which was in excess of the maximum hours permissible
7 by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though Plaintiff and the other
8 members of the Class were required to work, and did in fact work, overtime as to which Defendants
9 failed to accurately record and pay as evidenced by Defendants' business records and witnessed by
10 employees. In addition, Defendants' failed to pay recorded overtime at the correct rate, because it
11 failed to include all non-discretionary sums in calculating the regular rate.

12 105. By virtue of Defendants' unlawful failure to accurately pay all earned compensation
13 to Plaintiff and the other members of the Class for the true amount of time they worked, Plaintiff
14 and the other members of the Class have suffered and will continue to suffer an economic injury in
15 amounts which are presently unknown to them and which will be ascertained according to proof at
16 trial.

17 106. Defendants knew or should have known that Plaintiff and the other members of the
18 Class were under compensated for all overtime worked. Defendants elected, either through
19 intentional malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of
20 company policy, practice and procedure, and Defendants perpetrated this scheme by refusing to
21 pay Plaintiff and the other members of the Class for overtime worked.

22 107. In performing the acts and practices herein alleged in violation of California labor
23 laws, and refusing to compensate the members of the Class for all overtime worked and provide
24 them with the requisite overtime compensation, Defendants acted and continues to act intentionally,
25 oppressively, and maliciously toward Plaintiff and the other members of the California Class with
26 a conscious of and utter disregard for their legal rights, or the consequences to them, and with the
27 despicable intent of depriving them of their property and legal rights, and otherwise causing them
28 injury in order to increase company profits at the expense of these employees.

108. Plaintiff and the other members of the California Class therefore request recovery of all overtime wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against Defendant, in a sum as provided by the California Labor Code and/or other applicable statutes. Plaintiff and the Class are also entitled to an award of attorneys' fees and costs

THIRD CAUSE OF ACTION

For Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7 & 512]

(By Plaintiff and the Class and Against All Defendants)

109. Plaintiff, and the other members of the Class, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

110. During the Class Period, Defendants failed to provide all the legally required off-duty meal breaks to Plaintiff and the other Class Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by Plaintiff and Class Members did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, work demands, policies and practices, and coverage requirements, Plaintiff and other Class Members were from time to time not fully relieved of duty by Defendants for their meal periods. In some instances, Defendants' failure to provide Plaintiff and the Class Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by Defendants' business records. Further, Defendants failed to provide Plaintiff and Class Members with a second off-duty meal period in some workdays in which these employees were required by Defendants to work ten (10) hours of work from time to time. As a result, Plaintiff and other members of the Class therefore were often not provided with lawful meal breaks and were not provided with premium pay at the regular rate as compensation as required by law.

111. Defendants further violate California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate Plaintiff and Class Members who were not provided with a

1 meal period, in accordance with the applicable Wage Order, one additional hour of compensation
2 at each employee's regular rate of pay for each workday that a meal period was not provided.

3 112. As a proximate result of the aforementioned violations, Plaintiff and Class Members
4 have been damaged in an amount according to proof at trial, and seek all wages earned and due,
5 interest, penalties, expenses and costs of suit, as well as attorneys' fees and costs.

6
7 **FOURTH CAUSE OF ACTION**

8 **For Failure to Provide Required Rest Periods**

9 **[Cal. Lab. Code §§ 226.7 & 512]**

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

11 113. Plaintiff, and the other members of the Class, reallege and incorporate by this
12 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

13 114. Plaintiff and other Class Members were from often required to work in excess of
14 four (4) hours without being provided ten (10) minute rest periods. Further, these employees from
15 time to time were denied their first rest periods of at least ten (10) minutes for some shifts worked
16 of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for
17 some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period
18 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.

19 115. As a result of their rigorous work schedules, Plaintiff and other Class Members were
20 periodically denied their proper rest periods by Defendants and Defendants' managers.

21 116. Defendants further violated California Labor Code §§ 226.7 and the applicable IWC
22 Wage Order by failing to compensate Plaintiff and Class Members who were not provided a rest
23 period, in accordance with the applicable Wage Order, one additional hour of compensation at each
24 employee's regular rate of pay for each workday that rest period was not provided.

25 117. As a proximate result of the aforementioned violations, Plaintiff and Class Members
26 have been damaged in an amount according to proof at trial, and seek all wages earned and due,
27 interest, penalties, expenses and costs of suit, as well as attorneys' fees and costs.

1 **FIFTH CAUSE OF ACTION**

2 **For Failure to Provide Accurate Itemized Statements**

3 **[Cal. Lab. Code § 226]**

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

5 118. Plaintiff, and the other members of the Class, reallege and incorporate by this
6 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

7 119. Cal. Labor Code § 226 provides that an employer must furnish employees with an
8 “accurate itemized” statement in writing showing:

- 9 (1) gross wages earned,
10 (2) total hours worked by the employee, except for any employee whose compensation is
11 solely based on a salary and who is exempt from payment of overtime under subdivision
12 (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
13 (3) the number of piecerate units earned and any applicable piece rate if the employee is
14 paid on a piece-rate basis,
15 (4) all deductions, provided that all deductions made on written orders of the employee may
16 be aggregated and shown as one item,
17 (5) net wages earned,
18 (6) the inclusive dates of the period for which the employee is paid,
19 (7) the name of the employee and his or her social security number, except that by January
20 1, 2008, only the last four digits of his or her social security number or an employee
21 identification number other than a social security number may be shown on the itemized
22 statement,
23 (8) the name and address of the legal entity that is the employer, and
24 (9) all applicable hourly rates in effect during the pay period and the corresponding number
25 of hours worked at each hourly rate by the employee.

26 120. From time to time, Defendants also failed to provide Plaintiff and the other members
27 of the Class with complete and accurate wage statements which failed to show, among other things,
28 the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer shall
furnish each of his or her employees with an accurate itemized wage statement in writing showing,
among other things, gross wages earned and all applicable hourly rates in effect during the pay
period and the corresponding amount of time worked at each hourly rate. Plaintiff and Class
Members were paid on an hourly basis. As such, the wage statements should reflect all applicable

1 hourly rates during the pay period and the total hours worked, and the applicable pay period in
2 which the wages were earned pursuant to California Labor Code Section 226(a). The wage
3 statements Defendants provided to Plaintiff and other Class Members failed to identify such
4 information. More specifically, the wage statements failed to identify the accurate total hours
5 worked each pay period. When the hours shown on the wage statements were added up, they did
6 not equal the actual total hours worked during the pay period in violation of Cal. Lab. Code
7 226(a)(2). Aside, from the violations listed above in this paragraph, Defendants failed to issue to
8 Plaintiff an itemized wage statement that lists all the requirements under California Labor Code
9 226 et seq. As a result, Defendants from time to time provided Plaintiff and the other members of
10 the Class with wage statements which violated Cal. Lab. Code § 226.

11 121. In addition, Defendants failed to accurately include the name and address of the
12 employing entity on wage statements provided to the Class.

13 122. Defendants knowingly and intentionally failed to comply with Cal. Lab. Code § 226,
14 causing injury and damages to Plaintiff and the other members of the California Class. These
15 damages include, but are not limited to, costs expended calculating the correct wages for all missed
16 meal and rest breaks and the amount of employment taxes which were not properly paid to state
17 and federal tax authorities. These damages are difficult to estimate. Therefore, Plaintiff and the
18 other members of the Class may elect to recover liquidated damages of fifty dollars (\$50.00) for
19 the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
20 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to
21 proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for Plaintiff
22 and each respective member of the Class herein).

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1 **SIXTH CAUSE OF ACTION**

2 **For Failure to Reimburse Employees for Required Expenses**

3 **[Cal. Lab. Code § 2802]**

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

5 123. Plaintiff and the other Class members reallege and incorporate by this reference, as
6 though fully set forth herein, the prior paragraphs of this Complaint.

7 124. Cal. Lab. Code § 2802 provides, in relevant part, that:

8 An employer shall indemnify his or her employee for all necessary expenditures or
9 losses incurred by the employee in direct consequence of the discharge of his or her
10 duties, or of his or her obedience to the directions of the employer, even though
11 unlawful, unless the employee, at the time of obeying the directions, believed them
12 to be unlawful.

13 125. At all relevant times herein, Defendants violated Cal. Lab. Code § 2802, by failing
14 to indemnify and reimburse Plaintiff and the Class members for required expenses incurred in the
15 discharge of their job duties for Defendants' benefit.

16 126. In the discharge of their job duties for Defendants, Plaintiff and the Class Members
17 were required to incur costs associated with cellular phone usage, phone applications, pens and
18 paper, as well as costs for purchase of uniforms and the maintenance of uniforms.

19 127. Defendants failed to reimburse Plaintiff and the Class members for these expenses
20 which were necessary to complete their principal job duties. Defendants are estopped by
21 Defendants' conduct to assert any waiver of this expectation.

22 128. Although these expenses were necessary expenses incurred by Plaintiff and the
23 Class members, Defendants failed to indemnify and reimburse Plaintiff and the California Class
24 members for these expenses as an employer is required to do under the laws and regulations of
25 California.

26 129. Plaintiff therefore demands reimbursement for expenditures or losses incurred by
27 herself and the Class members in the discharge of their job duties for Defendant, or their obedience
28 to the directions of Defendant, with interest at the statutory rate and costs under Cal. Lab. Code §
2802. Plaintiff and the Class also seek an award of attorneys' fees and costs.

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1 **SEVENTH CAUSE OF ACTION**

2 **For Failure to Pay Wages When Due**

3 **[Cal. Lab. Code §§ 201, 202, 203]**

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

5 130. Plaintiff and the other members of the Class, reallege and incorporate by reference,
6 as though fully set forth herein, the prior paragraphs of this Complaint.

7 131. Cal. Lab. Code § 200 provides, in relevant part, that:

8 As used in this article:

9 (a) "Wages" includes all amounts for labor performed by employees of every description,
10 whether the amount is fixed or ascertained by the standard of time, task, piece, Commission
11 basis, or other method of calculation.

12 (b) "Labor" includes labor, work, or service whether rendered or performed under contract,
13 subcontract, partnership, station plan, or other agreement if the labor to be paid for is
14 performed personally by the person demanding payment.

15 132. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer discharges an
16 employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

17 133. Cal. Lab. Code § 202 provides, in relevant part, that:

18 If an employee not having a written contract for a definite period quits his or her
19 employment, his or her wages shall become due and payable not later than 72 hours
20 thereafter, unless the employee has given 72 hours previous notice of his or her
21 intention to quit, in which case the employee is entitled to his or her wages at the
22 time of quitting. Notwithstanding any other provision of law, an employee who quits
23 without providing a 72-hour notice shall be entitled to receive payment by mail if
24 he or she so requests and designates a mailing address. The date of the mailing shall
25 constitute the date of payment for purposes of the requirement to provide payment
26 within 72 hours of the notice of quitting.

27 134. There was no definite term in Plaintiff's or any Class Members' employment
28 contract.

135. Cal. Lab. Code § 203 provides, in relevant part, that:

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

136. The employment of Plaintiff and many Class Members was discharged and/or
terminated and Defendants did not and has not tendered payment of all wages owed as required by

1 law.

2 137. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the
3 members of the Class whose employment has terminated and who have not been fully paid their
4 wages due to her, Plaintiff and the Class demand thirty days of pay as penalty for not paying all
5 wages due at time of termination for all employees who terminated employment during the Class
6 Period and demands an accounting and payment of all wages due, plus interest and statutory costs
7 as allowed by law. Plaintiff and the Class are also entitled to recover reasonable attorneys' fees and
8 costs in this action

9 **EIGHTH CAUSE OF ACTION**

10 **For Failure to Pay Sick Pay Wages**

11 **[Cal. Lab. Code §§ 201-204, 210, 233, 246]**

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

13 138. Plaintiff, and the other members of the California Class, reallege and incorporate by
14 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

15 139. Cal Lab. Code § 233 provides that an employer must permit an employee to use
16 accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then current rate of
17 entitlement. Cal Lab. Code § 246 provides that an employee is entitled to sick pay wages for use
18 of accrued sick leave pursuant to Cal Lab. Code § 246.5. Specifically, once accrued sick leave is
19 used as paid sick time, an employee has a vested right to sick pay wages, which an employer must
20 calculate and compensate based on one of two calculations: (i) "Paid sick time for nonexempt
21 employees shall be calculated in the same manner as the regular rate of pay for the workweek in
22 which the employee uses paid sick time, whether or not the employee actually works overtime in
23 that workweek," or (ii) "Paid sick time for nonexempt employees shall be calculated by dividing
24 the employee's total wages, not including overtime premium pay, by the employee's total hours
25 worked in the full pay periods of the prior 90 days of employment." Under Cal Lab. Code §§ 218
26 and 233, employees may sue to recover underpaid sick pay wages as damages.

27 140. As a matter of policy and practice, Defendants pay sick pay wages to Plaintiff and
28 the other members of the Class at the incorrect rate of pay. Plaintiff and the other members of the

1 Class regularly use accrued sick leave in the workweeks in which they also earn non-hourly
2 remuneration. As a matter of policy and practice, Defendants pay sick pay wages to Plaintiff and
3 the other members of the Class at the base hourly pay, as opposed to the regular rate of pay, which
4 would consider all non-hourly remuneration in addition to base hourly wages, or the rate resulting
5 from dividing the employee's total wages, not including overtime premium pay, by the employee's
6 total hours worked in the full pay periods of the prior 90 days of employment. As a result,
7 Defendants underpaid sick pay wages to Plaintiff and the other members of the Class.

8 141. Cal. Lab. Code § 204 provides that wages generally are due and payable twice
9 during each calendar month and are to be paid no later than the payday for the next regular payroll
10 period. Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically requires that, upon
11 use of accrued sick leave, vested sick pay wages are due and to be paid no later than the payday for
12 the next regular payroll period after accrued sick leave is used as paid sick time. Similarly, Cal.
13 Lab. Code § 201 provides that if an employer discharges an employee, wages earned and unpaid at
14 the time of discharge are due and payable immediately. Cal. Lab. Code § 202 provides that an
15 employee is entitled to receive all unpaid wages no later than 72 hours after an employee quits his
16 or her employment, unless the employee has given 72-hour notice of his or her intention to quit, in
17 which case the employee is entitled to his or her wages at the time of quitting. The Labor Code
18 penalizes untimely payments. For example, Cal. Lab. Code § 203 provides that if an employer
19 willfully fails to pay wages owed in accordance with Cal. Lab. Code §§ 201-202, then the wages
20 of the employee shall continue as a penalty from the due date, and at the same rate until paid, but
21 the wages shall not continue for more than thirty (30) days. Likewise, Cal. Lab. Code § 210 provides
22 penalties for violations of Cal. Lab. Code § 204 and untimely payments during employment. Under
23 Cal. Lab. Code §§ 203, 210 and 218, employees may sue to recover applicable penalties.

24 142. As alleged herein and as a matter of policy and practice, Defendants routinely
25 underpay sick pay wages and thus did not timely pay Plaintiff and the other members of the Class
26 all owing and underpaid sick pay wages. As a result, Defendants violate Cal. Lab. Code §§ 201-
27 204, 210, 233, and 246, among other Labor Code provisions.

28 143. Plaintiff is informed and believe that Defendants were advised by skilled lawyers

1 and knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiff's
2 allegations, especially since the California Supreme Court has explained that "[c]ourts have
3 recognized that 'wages' also include those benefits to which an employee is entitled as a part of his
4 or her compensation, including money, room, board, clothing, vacation pay, and sick pay." *Murphy*
5 *v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added).

6 144. Because Defendants willfully failed to timely pay Plaintiff and the other members
7 of the Class all sick pay wages due, Defendants are subject to applicable penalties.

8 145. Such a pattern, practice, and uniform administration of corporate policy is unlawful
9 and entitles Plaintiff and the other members of the Class to underpaid sick pay wages, including
10 interest thereon, applicable penalties, attorney's fees, and costs of suit.

11 12 **NINTH CAUSE OF ACTION**

13 **Failure to Pay Reporting Time Wages**

14 **[Cal. Lab. Code §§ 1194, 1197, 1198, and IWC Wage Orders]**

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

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

18 147. Labor Code section 1197 makes it unlawful to pay an employee less than the
19 minimum wage as established by the IWC.

20 148. Labor Code section 1198 provides that the maximum hours of work and the standard
21 of conditions of labor fixed by the commission shall be the maximum hours of work and the
22 standard conditions of labor by the commission shall be the maximum hours of work and the
23 standard conditions of labor for employees. The employment of any employee for longer hours
24 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

25 149. The applicable reporting time wages are fixed by the IWC in Wage Orders 4-2001,
26 5-2001, and 10-2001.

27 150. In relevant part, Section 5 of the applicable wage order provides:

28 (A) Each workday an employee is required to report for work and does report, but

1 is not put to work or is furnished less than half said employee's usual or scheduled
2 day's work, the employee shall be paid for half the usual or scheduled day's work,
but in no event for less than two (2) hours nor more than four (4) hours, at the
employee's regular rate of pay, which shall not be less than the minimum wage

3 151. Defendants failed to pay reporting time wages. In particular, Plaintiff and the Class
4 Members were forced to report to work and were furnished with less than half the employee's usual
5 or scheduled day's work.

6 152. In fact, on numerous occasions, Plaintiff and Class Members reported to work at
7 Defendants' direction, and then were sent home – without the lawful minimum compensation.

8 153. By failing to pay hourly wages for reporting time, Defendants willfully violated
9 Labor Code sections 1194, 1197, 1198, and IWC Wage Orders 4-2001, 5-2001, and 10-2001.

10
11 **TENTH CAUSE OF ACTION**

12 **For Unlawful Business Practices**

13 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

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

15 154. Plaintiff, and the other members of the Class, reallege and incorporate by this
16 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

17 155. Defendants are “person(s)” as that term is defined under Cal. Bus. and Prof. Code §
18 17021. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines unfair
19 competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
20 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition
21 as follows:

22 Any person who engages, has engaged, or proposes to engage in unfair competition
23 may be enjoined in any court of competent jurisdiction. The court may make such
24 orders or judgments, including the appointment of a receiver, as may be necessary
25 to prevent the use or employment by any person of any practice which constitutes
unfair competition, as defined in this chapter, or as may be necessary to restore to
any person in interest any money or property, real or personal, which may have
been acquired by means of such unfair competition.

26 Cal. Bus. & Prof. Code § 17203.

27 156. By the conduct alleged herein, Defendants have engaged and continue to engage in
28 business practices which violates California law, including but not limited to, the applicable

1 Industrial Wage Order(s), the California Code of Regulations and the California Labor Code
2 including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198, and 2802, for
3 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof.
4 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
5 competition, including restitution of wages wrongfully withheld.

6 157. By the conduct alleged herein, Defendants' practices were unlawful and unfair in
7 that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous or
8 substantially injurious to employees, and were without valid justification or utility for which this
9 Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
10 Business & Professions Code, including restitution of wages wrongfully withheld.

11 158. By the conduct alleged herein, Defendants' practices were deceptive and fraudulent
12 in that Defendants' policy and practice failed to provide the legally mandated meal and rest periods,
13 the required amount of compensation for missed meal and rest periods and overtime and minimum
14 wages owed, failed to timely pay wages, and failed to reimburse all necessary business expenses
15 incurred, due to a business practice that cannot be justified, pursuant to the applicable Cal. Lab.
16 Code, and IWC requirements in violation of Cal. Bus. Code §§ 17200, et seq., and for which this
17 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
18 including restitution of wages wrongfully withheld.

19 159. By the conduct alleged herein, Defendants' practices were also unlawful, unfair and
20 deceptive in that Defendants' employment practices caused Plaintiff and the other members of the
21 Class to be underpaid during their employment with Defendant.

22 160. By the conduct alleged herein, Defendants' practices were also unlawful, unfair and
23 deceptive in that Defendants' policies, practices and procedures failed to provide all legally
24 required meal breaks to Plaintiff and the other members of the Class as required by Cal. Lab. Code
25 §§ 226.7 and 512.

26 161. Therefore, Plaintiff demands on behalf of herself and on behalf of each Class
27 Member, one (1) hour of pay for each workday in which an off-duty meal period was not timely
28 provided for each five (5) hours of work, and/or one (1) hour of pay for each workday in which a

1 second off-duty meal period was not timely provided for each ten (10) hours of work.

2 162. Plaintiff further demands on behalf of herself and each member of the Class, one (1)
3 hour of pay for each workday in which an off duty paid rest period was not timely provided as
4 required by law.

5 163. Plaintiff further demands on behalf of herself and each member of the Class, all
6 wages earned but unpaid, including minimum wages and overtime.

7 164. Plaintiff further demands on behalf of herself and each member of the Class, all
8 unreimbursed sums for the necessary expenses incurred by Plaintiff and the Class.

9 165. By and through the unlawful and unfair business practices described herein,
10 Defendants have obtained valuable property, money and services from Plaintiff and the other
11 members of the Class, including earned wages for all time worked, and has deprived them of
12 valuable rights and benefits guaranteed by law and contract, all to the detriment of these employees
13 and to the benefit of Defendants so as to allow Defendants to unfairly compete against competitors
14 who comply with the law.

15 166. All the acts described herein as violations of, among other things, the IWC Wage
16 Orders, the California Code of Regulations, and the California Labor Code, were unlawful and in
17 violation of public policy, were immoral, unethical, oppressive and unscrupulous, were deceptive,
18 and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal. Bus. &
19 Prof. Code §§ 17200, et seq.

20 167. Plaintiff and the other members of the Class are entitled to, and do, seek such relief
21 as may be necessary to restore to them the money and property which Defendants has acquired, or
22 of which Plaintiff and the other members of the Class have been deprived, by means of the above
23 described unlawful and unfair business practices, including earned but unpaid wages for all time
24 worked.

25 168. Plaintiff and the other members of the Class are further entitled to, and do, seek a
26 declaration that the described business practices are unlawful, unfair and deceptive, and that
27 injunctive relief should be issued restraining Defendants from engaging in any unlawful and unfair
28 business practices in the future.

1 169. Plaintiff and the other members of the Class have no plain, speedy and/or adequate
2 remedy at law that will end the unlawful and unfair business practices of Defendants. Further, the
3 practices herein alleged presently continue to occur unabated. As a result of the unlawful and unfair
4 business practices described herein, Plaintiff and the other members of the Class have suffered and
5 will continue to suffer irreparable legal and economic harm unless Defendants are restrained from
6 continuing to engage in these unlawful and unfair business practices.

7
8 **ELEVENTH CAUSE OF ACTION**

9 **Penalties Under Private Attorneys' General Act**

10 **[Cal. Lab. Code §§2698, *et seq.*]**

11 **(By Plaintiff and Aggrieved Employees and Against All Defendants)**

12 170. Plaintiff, and the other members of the Class, reallege and incorporate by this
13 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

14 171. Plaintiff gave timely written notice by online submission to the LWDA and by
15 certified mail to Defendant of Defendant's violations of numerous provisions of the California
16 Labor Code and the IWC Wage Orders as alleged in this complaint. All fees were paid as required
17 by statute.

18 172. Plaintiff is an "aggrieved employee" as defined in Labor Code Section 2699(a), as
19 she was employed by Defendant's during the statutory period and suffered one or more of the Labor
20 Code violations set forth herein. She seeks to recover on behalf of herself and all other current and
21 former aggrieved employees of Defendant the civil penalties provided by PAGA, plus reasonable
22 attorneys' fees and costs.

23 173. 65 days have passed, and no response has been received from the LWDA.
24 Accordingly, the LWDA has permitted Plaintiff to proceed in a representative capacity.

25 174. Plaintiff has exhausted all administrative procedures required of them under the
26 Labor Code §§2698, 2699, 2699.3, and as a result, are justified as a matter of right in bringing
27 forward this cause of action.

28 175. Pursuant to Labor Code section 2699(a) Plaintiff seeks to recover civil penalties for

1 which Defendant is liable due to numerous Labor Code violations as set forth in this Complaint.

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

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

8 178. Specifically, Plaintiff, on behalf of herself and the Aggrieved Employees, seeks
9 penalties, under Labor Code §2699, for, without limitation, the claims set forth herein, including:

- 10 a. Defendant's failure to comply with the requirement of Labor Code §1182.12,
11 1194, 1197, 1198, and Wage Orders to pay at least minimum wage for every
12 hour worked;
- 13 b. Defendant's failure to comply with the requirement of Labor Code §510, 1194,
14 1197, 1198, and Wage Orders to accurately pay all wages earned including
15 overtime wages;
- 16 c. Defendant's failure to comply with the requirement of Labor Code §216 to pay
17 wages after demand was made;
- 18 d. Defendant's failure to comply with the requirement of Labor Code §§204, and
19 210 to pay, without condition and within the time set by the applicable article,
20 all wages, or parts thereof;
- 21 e. Defendant's failure to comply with the requirement of Labor Code §225.5 to
22 pay wages due;
- 23 f. Defendant's failure to comply with the requirement of Labor Code §§201 and
24 202 to pay wages due to former employees;
- 25 g. Defendant's failure to comply with the requirement of Labor Code §203 to pay
26 waiting time penalties to former employees;
- 27 h. Defendant's failure to comply with the requirement of Labor Code §226.7, 512,
28 1198, and IWC Wage Orders to provide timely, uninterrupted 30 minute off-

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- duty meal periods;
- i. Defendant’s failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Orders to pay one hour of premium pay at the regular rate for each lawful meal break that was not provided;
- j. Defendant’s failure to comply with the requirement of Labor Code §226.7, 512, 1198, and IWC Wage Orders to provide timely, uninterrupted net 10 minute rest periods;
- k. Defendant’s failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Orders to pay one hour of premium pay at the regular rate for each lawful rest break that was not provided;
- l. Defendant’s failure to maintain accurate required records in violation of Labor Code §226, 1174, and Wage Orders;
- m. Defendant’s failure to pay sick leave at the proper rate in violation of Labor Code section 246(i);
- n. Defendant’s failure to provide required information at the time of hiring in violation of Labor Code section 2810.5;
- o. Defendant’s failure to comply with the notice requirements of Labor Code section 2810.5;
- p. Defendant’s failure to provide accurate compliant wage statements under Labor Code section 226;
- q. Defendant’s failure to provide one day of rest in seven in violation of Labor Code sections 551-552, and 1198;

179. Plaintiff seeks civil penalties for Defendant’s violation of Labor Code provisions for which a civil penalty is specifically provided, including but not limited to the following:

- a. Pursuant to Labor Code §210, for violations of Labor Code §204, Defendant is subject to a civil penalty in the amount of one hundred dollars (\$100) for the initial violation for each failure to pay each employee and two hundred (\$200) per employee for violations in subsequent pay periods plus 25% of the amount

1 unlawfully withheld.

- 2 b. Pursuant to Labor Code §226.3, for violations of Labor Code §226 (a) Defendant
3 is subject to a civil penalty in the amount of two hundred and fifty dollars (\$250)
4 per aggrieved employee for the initial pay period where a violation occurs and
5 one thousand dollars (\$1,000) per aggrieved employee for violations in
6 subsequent pay period.
- 7 c. Pursuant to Labor Code §558(a), “[a]ny employer or other person acting on
8 behalf of an employer who violated, or causes to be violated, a section of this
9 chapter or any provisions regulating hours and days of work in any order of the
10 Industrial Welfare Commission,” including Labor Code §§510 and 512, shall be
11 subject to a civil penalty, in addition to any other penalty provided by law, of
12 fifty dollars (\$50) for initial violations for each underpaid employee for each pay
13 period for which the employee was underpaid and one hundred dollars (\$100)
14 for each subsequent violation for each underpaid employee for each pay period
15 for which the employee was underpaid.
- 16 d. Pursuant to Labor Code §1174.5, for violations of Labor Code §1174(d),
17 Defendant is subject to a civil penalty of five hundred dollars (\$500).
- 18 e. Pursuant to Labor Code §1197.1, an employer who pays or causes to be paid to
19 any employee a wage less than the minimum fixed by an order of the
20 commission, shall be subject to a civil penalty as follows: for any initial violation
21 that is intentionally committed, one hundred dollars (\$100) for each underpaid
22 employee for each pay period for which the employee is underpaid; and for each
23 subsequent violation of the same offense, two hundred fifty dollars (\$250) for
24 each underpaid employee for each pay period for which the employee is
25 underpaid regardless of whether the initial violation was intentionally
26 committed.

27 180. Further, as a result of the acts alleged hereinabove, Plaintiff seeks penalties under
28 Labor Code §§2698 et seq. and 2699 because of Defendant’s violation of numerous provisions of

1 the California Labor Code and IWC Wage Orders.

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

5 182. Under Labor Code §2699, Plaintiff and Aggrieved Employees should be awarded
6 twenty-five percent (35%) of all penalties due under California law, interest, attorneys' fees and
7 costs.

8 183. Under Labor Code § 2699, the State of California should be awarded seventy-five
9 percent (65%) of the penalties due under California law.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for judgment against Defendants, jointly and severally, as
12 follows:

13 **Class Certification**

- 14 1. That this action be certified as a class action pursuant to Code of Civil Procedure
15 Section 382;
16 2. That Plaintiff be appointed as the representative of the Class;
17 3. That Plaintiff be appointed as the representatives of the Subclasses; and
18 4. That counsel for Plaintiff be appointed as counsel for the Class and Subclasses.

19
20 **On behalf of the Class:**

- 21 1. Compensatory damages, according to proof at trial, including compensatory
22 damages for minimum and overtime compensation due Plaintiff and the other
23 members of the California Class, during the applicable Class Period plus interest
24 thereon at the statutory rate;
25 2. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
26 which a violation occurs and one hundred dollars (\$100) per each member of the
27 Class for each violation in a subsequent pay period, not exceeding an aggregate
28 penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal.

1 Lab. Code § 226;

2 3. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
3 the applicable IWC Wage Order;

4 4. For liquidated damages pursuant to California Labor Code Sections 1194.2 and
5 1197;

6 5. The amount of the expenses Plaintiff and each member of the Class incurred in the
7 course of their job duties, plus interest, and costs of suit.; and,

8 6. The wages of all terminated employees in the Class as a penalty from the due date
9 thereof at the same rate until paid or 30 days, in accordance with Cal. Lab. Code §
10 203.

11 7. An order temporarily, preliminarily and permanently enjoining and restraining
12 Defendants from engaging in similar unlawful conduct as set forth herein;

13 8. An order requiring Defendants to pay all wages and all sums unlawfully withheld
14 from compensation due to Plaintiff and the other members of the Class; and,

15 9. Restitutionary disgorgement of Defendants' ill-gotten gains as restitution of the
16 sums incidental to Defendants' violations due to Plaintiff and to the other members
17 of the Class.

18 10. An award of interest, including prejudgment interest at the legal rate;

19 11. Such other and further relief as the Court deems just and equitable; and,

20 12. An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
21 including, but not limited to, pursuant to Labor Code §218.5, 221, §226, §1194,
22 §2802, and/or Code of Civil Procedure §1021.5.

23 **On behalf of the Aggrieved Employees**

24 (Penalties Under the Private Attorney Generals Act, Labor Code section 2698 et seq.)

25 1. For penalties according to proof, pursuant to Labor Code §§2698 et seq. for the
26 violations specified above;

27 2. For penalties under Labor Code sections 210, 226.3, 1174.5, 1197.1, and 2699(a)
28 and (f);

3. For interest at the legal rate pursuant to Labor Code §§218.6, 1194, 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.

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

EMPLAW, LLP

Christina M. Lucio, Esq.
Mitchell J. Murray, Esq.
Nathan N. Kiyam, Esq.