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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Shiela Retez, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

CASSANDRA WALKER, as an individual and on
behalf of all others similarly situated, and as a
private attorney general,

Plaintiff,

vs.

FITNESS ALLIANCE, LLC, a California limited
liability company; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 37-2023-00020191-CU-OE-CTL

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

- (1) Failure to Provide Meal Periods**
(Lab. Code §§ 226.7, 512);
- (2) Failure to Provide Rest Periods**
(Lab. Code § 226.7);
- (3) Unpaid Sick Pay Wages**
(Lab. Code §§ 201-204, 233, 246);
- (4) Inaccurate Itemized Wage Statements**
(Lab. Code § 226(a));
- (5) Unfair or Unlawful Business Practices**
(Bus. & Prof. Code §§ 17200 et seq.); and
- (6) Violations of the California Labor Code**
(Lab. Code §§ 2698 et seq.)

DEMAND OVER \$25,000.00

On behalf of herself and other similarly situated current and former employees of Defendants, and as a proxy for the State of California, Plaintiff, Cassandra Walker, submits this Second Amended Class and Representative Action Complaint (the “Complaint”) against Defendant, Fitness Alliance, LLC, and Does 1 through 50 (collectively, “Defendants”).

INTRODUCTION

1. This class and representative action challenges systemic employment practices resulting in violations of the California Labor Code against individuals who worked for Defendants. Plaintiff is informed and believes that Defendants have jointly and severally acted intentionally and with deliberate indifference and conscious disregard to the rights of employees by failing to pay an additional hour of regular rate wages for missed, late, or interrupted meal periods and rest periods, failing to pay all sick pay wages, failing to timely pay all wages during employment or upon termination of employment, and by failing to provide complete and accurate itemized wage statements. The Complaint seeks damages, penalties, and other relief pursuant to, among other provisions, Labor Code sections 201-204, 210, 218, 218.5, 218.6, 226, 226.3, 226.7, 233, 246, 512, 1198, and 2698 et seq., and the Unfair Competition Law, codified at Business and Professions Code sections 17200 et seq. (the “UCL”).¹

2. Plaintiff and other non-exempt employees regularly work shifts of at least 3.5 hours requiring rest periods and shifts of more than 5.0 hours requiring meal periods. Plaintiff and other non-exempt employees also earn non-base hourly wages or other non-hourly, non-discretionary remuneration, including for example incentives, commissions, and holiday hourly rates. Defendants fail to consider such earnings when Plaintiff and other non-exempt employees’ meal periods and rest periods are missed, late, or interrupted. Specifically, rather than pay an additional hour of regular rate wages for a missed, late, or interrupted meal period or rest period, Defendants routinely underpay the additional hour of wages to Plaintiff and other non-exempt employees at their base hourly rates of pay.

3. Defendants also fail to pay sick pay wages at the regular rate of pay. As discussed above, Plaintiff and other non-exempt employees also earn non-base hourly wages or other non-hourly, non-discretionary remuneration, including for example incentives, commissions, and holiday hourly rates. Defendants fail to consider such wages when paying sick pay wages. Rather than pay sick pay wages at

¹ Except as otherwise noted, all “Section” references are to the Labor Code.

1 the regular rate of pay, Defendants underpay sick pay wages to Plaintiff and other non-exempt
2 employees at their base rates of pay.

3 4. Because Plaintiff and other non-exempt employees are not paid an additional hour of
4 wages at their regular rates and are underpaid sick pay wages, Defendants routinely fail to timely pay
5 Plaintiff and other non-exempt employees all wages during employment or upon separation of
6 employment. Moreover, Defendants also routinely fail to furnish wage statements that accurately show
7 and itemize all applicable hourly rates in effect during the pay period, gross wages earned, and net
8 wages earned.

9 5. Plaintiff is informed and believes that Defendants have engaged in, among other things, a
10 system of willful violations of the Labor Code by creating and maintaining policies, practices, and
11 customs that knowingly deny its employees the above stated rights and benefits.

12 6. The policies, practices, and customs of Defendants result in unjust enrichment of
13 Defendants and an unfair business advantage over businesses that comply with the Labor Code.

14 **JURISDICTION AND VENUE**

15 7. The Complaint seeks relief exceeding \$25,000.00. The Court has jurisdiction of
16 Defendants' violations of Sections 201-204, 226, 226.7, 233, 246, and 512 and the UCL.

17 8. Venue is proper in the County of San Diego. Defendants employed aggrieved employees
18 in various locations within the County of San Diego.

19 **PARTIES**

20 9. In October of 2022, Plaintiff began working for Defendants as a certified personal trainer
21 and worked in California for Defendants for 30 or more days within a year. Until her employment ended
22 in July of 2023, Plaintiff was paid on an hourly basis as a non-exempt employee and earned non-base
23 hourly wages or other non-hourly, non-discretionary remuneration, including for example incentives,
24 commissions, and holiday hourly rates. When Plaintiff worked 3.5 hours in a workday, she regularly
25 was not provided lawful rest periods. Likewise, when Plaintiff worked more than 5.0 hours in a
26 workday, she regularly was not provided lawful meal periods. Plaintiff also was regularly not provided
27 an additional hour of regular rate wages for a missed, late, or interrupted meal period or rest period but
28 instead paid an additional hour of wages at her base hourly rate of pay. Throughout her employment,

1 Plaintiff also accrued and actually used sick leave. When sick leave was used in workweeks that
2 Plaintiff earned non-base hourly wages or other non-hourly, non-discretionary remuneration in addition
3 to her base hourly wages, sick pay wages were paid at Plaintiff's base rate of pay rather than her regular
4 rate of pay. Plaintiff was not timely paid all due wages during employment or upon separation of
5 employment and also was not provided with accurate itemized wage statements. Plaintiff thus is a
6 victim of the policies, practices, and customs of Defendants complained of in this action in ways that
7 have deprived her of the rights guaranteed by the Labor Code and the UCL.

8 10. Plaintiff is informed and believes that Fitness Alliance, LLC was and is a California
9 limited liability company. Plaintiff is informed and believes that at all times herein mentioned named
10 defendants and Does 1 through 50, were and are corporations, business entities, individuals, or
11 partnerships that are and were licensed to do business and actually doing business in the State of
12 California. Based upon all the facts and circumstances incident to Defendants' business, Defendants are
13 subject to Sections 201-204, 226, 226.7, 233, 246, and 512 and the UCL.

14 11. Plaintiff does not know the true names or capacities of the defendants sued herein as
15 Does 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are
16 sued under such fictitious names. Plaintiff prays for leave to amend this Complaint when the true names
17 and capacities are known. Plaintiff is informed and believes that each of said fictitious defendants was
18 responsible in some way for the matters alleged herein and proximately caused the illegal employment
19 practices, wrongs, and injuries complained of herein.

20 12. At all times mentioned herein, each of said Defendants participated in the doing of the
21 acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of
22 the other Defendants, as well as the agents of all Defendants, and were acting within the course and
23 scope of said agency and employment.

24 13. Plaintiff is informed and believes that at all times material hereto, each of said
25 Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with,
26 each of the other Defendants and was acting within the course and scope of such agency, employment,
27 joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by
28

1 certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or
2 omissions of the acting Defendants.

3 14. Plaintiff is informed and believes that at all times material hereto each of the Defendants
4 (i) aided and abetted the acts and omissions of each of the other Defendants in proximately causing the
5 alleged harms, or (ii) were members of, engaged in, and acting within the course and scope of, and in
6 pursuance of, a joint venture, partnership, or common enterprise.

7 CLASS ACTION ALLEGATIONS

8 15. **Definition:** Pursuant to Code of Civil Procedure section 382, Plaintiff seeks class
9 certification of the following classes: (i) all current and former non-exempt employees of Defendants in
10 the State of California who have been paid an additional hour of pay for missed, late, or interrupted
11 meal periods and rest periods in a workweek since May 1, 2019, in which they also earned non-base
12 hourly wages or other non-hourly, non-discretionary remuneration (the “Additional Hour Class”), (ii)
13 all current and former non-exempt employees of Defendants in the State of California who have been
14 paid sick pay wages in a workweek since May 1, 2019, in which they also earned non-base hourly
15 wages or other non-hourly, non-discretionary remuneration (the “Sick Pay Class”), and (iii) all current
16 and former non-exempt employees of Defendants in the State of California who have been paid an
17 additional hour of pay for missed, late, or interrupted meal periods and rest periods in a workweek since
18 May 1, 2022, in which they also earned non-base hourly wages or other non-hourly, non-discretionary
19 remuneration (the “Wage Statement Class”). The Additional Hour Class, Sick Pay Class, and Wage
20 Statement Class are collectively referred to as the “Class.”

21 16. **Numerosity and Ascertainability:** The members of the Class are so numerous that
22 joinder of all members would be impractical, if not impossible. The identities of the members of the
23 Class are readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff is
24 informed and believes that Defendants violated Sections 201-204, 226, 226.7, 233, 248, and 512 and the
25 UCL against Plaintiff and the Class by failing to pay an additional hour of regular rate wages for a
26 missed, late, or interrupted meal period or rest period, failing to pay all sick pay wages, and failing to
27 provide complete and accurate itemized wage statements.

1 17. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
2 represent fairly and adequately the interests of the Class defined above. Plaintiff's attorneys are ready,
3 willing, and fully and adequately able to represent Plaintiff and the Class. Plaintiff's attorneys have
4 prosecuted and settled wage-and-hour class actions in the past and continue to litigate numerous wage-
5 and-hour class actions currently pending in California state and federal courts.

6 18. **Common Question of Law and Fact:** There are predominant common questions of law
7 and fact and a community of interest amongst the claims of Plaintiff and of the Class. Plaintiff is
8 informed and believes that Defendants uniformly administer a corporate policy and practice of routinely
9 failing to pay an additional hour of regular rate wages for missed, late, or interrupted meal periods and
10 rest periods, to pay all sick pay wages due, to timely pay all wages during employment or upon
11 separation of employment, or provide complete and accurate itemized wage statements.

12 19. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class
13 in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the Class
14 suffered. As with other members of the Class, Plaintiff was paid on an hourly basis as a non-exempt
15 employee and also earned non-base hourly wages or other non-hourly, non-discretionary remuneration,
16 including for example incentives, commissions, and holiday hourly rates. Plaintiff was regularly not
17 provided an additional hour of regular rate wages for a missed, late, or interrupted meal period or rest
18 period but instead paid an additional hour of wages at her base hourly rate of pay. Plaintiff also was
19 regularly paid sick pay wages at Plaintiff's base rate of pay rather than her regular rate of pay. Plaintiff
20 was not timely paid all due wages during employment or upon separation of employment and also was
21 not provided with accurate itemized wage statements. Plaintiff thus is a member of the Class and has
22 suffered the alleged violations of the Labor Code.

23 20. The Labor Code is broadly remedial in nature. Its laws serve an important public interest
24 in establishing minimum working conditions and requirements in California. These labor standards
25 protect employees from onerous terms and conditions of employment or exploitation by employers who
26 have superior economic and bargaining power.

27 21. The nature of this action and the format of laws available to Plaintiff and members of the
28 Class make the class action format a particularly efficient and appropriate procedure to redress the

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

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

16 23. Defendants' pattern, practice, and uniform administration of corporate policy in violation
17 of the Labor Code is unlawful. Proof of a common business practice or factual pattern will establish the
18 rights of Plaintiff and the Class under Sections 201-204, 210, 218, 218.5, 218.6, 226, 226.7, 233, 246,
19 512, and 1198, applicable IWC Wage Orders, the UCL, and Code of Civil Procedure section 1021.5 to
20 recover damages and restitution, including unpaid wages and interest thereon, applicable penalties,
21 reasonable attorneys' fees, and costs of suit.

22 24. This action is brought for the benefit of the Class, which is commonly entitled to a
23 specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class
24 is commonly entitled to restitution of those funds being improperly withheld by Defendant.

25 **FIRST CAUSE OF ACTION**

26 **Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512)**

27 **(By Plaintiff and the Additional Hour Class Against All Defendants)**

28 25. The preceding paragraphs are re-alleged and incorporated by this reference.

1 26. Because Plaintiff and the Additional Hour Class were non-exempt employees,
2 Defendants were required to comply with Sections 226.7 and 512 and the applicable IWC Wage Order.
3 Section 512(a) generally prohibits employment of an individual for a work period of more than five
4 hours per day without providing the employee with an uninterrupted, duty-free meal period of at least 30
5 minutes. Section 226.7(b) provides that an employer shall not require an employee to work during a
6 meal period. Section 226.7(c) states that “the employer shall pay the employee one additional hour of
7 pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery
8 period is not provided.”

9 27. As a matter of policy and practice, whenever Defendants pay an additional hour of wages
10 to Plaintiff and the Additional Hour Class for missed, late, or interrupted meal periods, Defendants pay
11 an additional hour of wages at the base hourly rate of pay. As a matter of policy and practice, in
12 workweeks in which Plaintiff and the Additional Hour Class earn non-base hourly wages or other non-
13 hourly, non-discretionary remuneration, Defendants fail to consider such wages when calculating the
14 regular rate of pay for purposes of paying the additional hour of wages. As such, Plaintiff and the
15 Additional Hour Class are owed additional wages for missed, late, or interrupted meal periods.

16 28. Moreover, all owing wages must be paid timely. Section 204 provides that wages are
17 generally due and payable no later than seven days after the end of a pay period or at least twice during
18 each calendar month, on days designated in advance as the regular paydays. Section 201 provides that if
19 an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
20 payable immediately. Section 202 provides that an employee is entitled to receive all unpaid wages no
21 later than 72 hours after an employee quits his or her employment, unless the employee has given
22 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is
23 entitled to his or her wages at the time of quitting. Section 203 provides that if an employer willfully
24 fails to pay wages owed in accordance with Sections 201 and 202, then the wages of the employee shall
25 continue as a penalty from the due date, and at the same rate until paid, but the wages shall not continue
26 for more than thirty (30) days.

27 29. Based on Defendants’ failure to pay an additional hour of wages to Plaintiff and the
28 Additional Hour Class for missed, late, or interrupted meal periods, and as a matter of policy and

1 practice, Defendants also fail to timely pay Plaintiff and the Additional Hour Class all due wages. On
2 information and belief, Defendants were advised by skilled lawyers and knew, or should have known,
3 of the mandates of the Labor Code as it relates to Plaintiff's allegations. Because Defendants willfully
4 fail to timely pay Plaintiff and the Additional Hour Class all wages due, Defendants are subject to
5 applicable penalties pursuant to Sections 203 and 210, among other Labor Code provisions.

6 30. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
7 entitles Plaintiff and the Additional Hour Class to recover unpaid wages, including interest thereon,
8 applicable penalties, attorneys' fees, and costs of suit.

9 **SECOND CAUSE OF ACTION**

10 **Failure to Provide Rest Periods (Lab. Code § 226.7)**

11 **(By Plaintiff and the Additional Hour Class Against All Defendants)**

12 31. The preceding paragraphs are re-alleged and incorporated by this reference.

13 32. Because Plaintiff and the Additional Hour Class were non-exempt employees,
14 Defendants were required to comply with Section 226.7 and the applicable IWC Wage Order. Section
15 1198 makes unlawful conditions of labor that are prohibited by the applicable IWC Wage Order. The
16 applicable laws generally require an employer to provide a duty-free, 10-minute rest period for every
17 four hours worked, or major fraction thereof. Section 226.7(b) provides that an employer shall not
18 require an employee to work during a rest period. Section 226.7(c) states that "the employer shall pay
19 the employee one additional hour of pay at the employee's regular rate of compensation for each
20 workday that the meal or rest or recovery period is not provided."

21 33. As a matter of policy and practice, whenever Defendants pay an additional hour of wages
22 to Plaintiff and the Additional Hour Class for missed, late, or interrupted rest periods, Defendants pay an
23 additional hour of wages at the base hourly rate of pay. As a matter of policy and practice, in workweeks
24 in which Plaintiff and the Additional Hour Class earn non-base hourly wages or other non-hourly, non-
25 discretionary remuneration, Defendants fail to consider such wages when calculating the regular rate of
26 pay for purposes of paying the additional hour of wages. As such, Plaintiff and the Additional Hour
27 Class are owed additional wages for missed, late, or interrupted rest periods.

34. Moreover, all owing wages must be paid timely. Based on Defendants' failure to pay an additional hour of wages to Plaintiff and the Additional Hour Class for missed, late, or interrupted rest periods, and as a matter of policy and practice, Defendants also fail to timely pay Plaintiff and the Additional Hour Class all due wages. On information and belief, Defendants were advised by skilled lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiff's allegations. Because Defendants willfully fail to timely pay Plaintiff and the Additional Hour Class all wages due, Defendants are subject to applicable penalties pursuant to Sections 203 and 210, among other Labor Code provisions.

35. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff and the Additional Hour Class to recover unpaid wages, including interest thereon, applicable penalties, attorneys' fees, and costs of suit.

THIRD CAUSE OF ACTION

Unpaid Sick Pay Wages (Lab. Code §§ 201-204, 233, 246)

(By Plaintiff and the Sick Pay Class Against All Defendants)

36. The preceding paragraphs are re-alleged and incorporated by this reference.

37. Section 233 provides that an employer must permit an employee to use accrued sick leave in accordance with Section 246.5 at the employee's then current rate of entitlement. Section 246 provides that an employee is entitled to sick pay wages for use of accrued sick leave pursuant to Section 246.5. Specifically, once accrued sick leave is used as paid sick time, an employee has a vested right to sick pay wages, which an employer must calculate and compensate based on one of two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek," or (ii) "Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment." Under Sections 204, 218, and 233, employees may sue to recover underpaid sick pay wages as damages.

38. As a matter of policy and practice, Defendants pay sick pay wages to Plaintiff and the Sick Pay Class at the incorrect rate of pay. Plaintiff and the Sick Pay Class regularly use accrued sick

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

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

24 40. As alleged herein and as a matter of policy and practice, Defendants routinely underpay
25 sick pay wages and thus do not timely pay Plaintiff and the Sick Pay Class all owing and underpaid sick
26 pay wages. As a result, Defendants violate Sections 201-204, 210, 233, and 246, among other Labor
27 Code provisions. Plaintiff is informed and believe that Defendants were advised by skilled lawyers and
28 knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiff's allegations,

1 especially since the California Supreme Court has explained that “[c]ourts have recognized that ‘wages’
2 also include those benefits to which an employee is entitled as a part of his or her compensation,
3 including money, room, board, clothing, vacation pay, *and sick pay.*” *Murphy v. Kenneth Cole Prods.,*
4 *Inc.*, 40 Cal. 4th 1094, 1103 (2007) (emphasis added). Because Defendants willfully fail to timely pay
5 Plaintiff and the Sick Pay Class all sick pay wages due, Defendants are subject to applicable penalties.

6 41. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
7 entitles Plaintiff and the Sick Pay Class to recover underpaid sick pay wages, including interest thereon,
8 applicable penalties, attorneys’ fees, and costs of suit.

9 **FOURTH CAUSE OF ACTION**

10 **Inaccurate Itemized Wage Statements (Lab. Code § 226(a))**

11 **(By Plaintiff and the Wage Statement Class Against All Defendants)**

12 42. The preceding paragraphs are re-alleged and incorporated by this reference.

13 43. Section 226(a) requires an employer to furnish to its employees itemized wage
14 statements that show accurate information, including without limitation, all applicable hourly rates in
15 effect during the pay period, gross wages earned, and net wages earned.

16 44. Defendants fail to provide accurate itemized wage statements to Plaintiff and the Wage
17 Statement Class. Because of the above violations and as a matter of policy and practice, Defendants fail
18 to furnish Plaintiff and the Wage Statement Class with wage statements that accurately show the
19 applicable hourly rates in effect during the pay period, gross wages earned, and net wages earned.

20 45. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
21 entitles Plaintiff and the Wage Statement Class to recover applicable penalties, attorneys’ fees, and costs
22 of suit.

23 **FIFTH CAUSE OF ACTION**

24 **Unfair or Unlawful Business Practices (Bus. & Prof. Code §§ 17200 et seq.)**

25 **(By Plaintiff, the Additional Hour Class, and Sick Pay Class Against All Defendants)**

26 46. The preceding paragraphs are re-alleged and incorporated by this reference.

27 47. Plaintiff is informed and believes that at Defendants have engaged and continue to
28 engage in unfair and unlawful business practices in California by utilizing the employment policies and

practices alleged herein, including the failure to pay an additional hour of regular rate wages for missed, late, or interrupted meal periods and rest periods and the underpayment of sick pay wages.

48. Defendants' utilization of such unfair and unlawful business practices constitutes unfair and unlawful competition and provides an unfair advantage over Defendants' competitors, as proscribed by the UCL. Defendants have deprived Plaintiff, the Additional Hour Class, and the Sick Pay Class the minimum working condition standards and conditions due to them under the Labor Code and applicable IWC Wage Orders.

49. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff, the Additional Hour Class, and the Sick Pay Class to full restitution of all monies withheld, acquired, or converted by means of the unfair practices complained of herein, including interest thereon, attorneys' fees, and costs of suit.

SIXTH CAUSE OF ACTION

Violation of Labor Code §§ 2698 *Et Seq.*

(By Plaintiff as a Proxy for the State Against All Defendants)

50. The preceding paragraphs are re-alleged and incorporated by this reference.

51. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698 et seq. ("PAGA"), Plaintiff brings this cause of action as a proxy for the State of California. In this capacity, Plaintiff seeks penalties for Defendants' violations of Sections 201-204, 226, 226.7, 233, 246, and 512 committed since April 27, 2022, against all aggrieved employees. Under Section 2699(c), Plaintiff is an "aggrieved employee," as one or more of the alleged violations was committed against Plaintiff as an employee of Defendants.

52. As stated herein, Defendants fail to (i) provide duty-free meal periods, (ii) authorize and permit duty-free rest periods, (iii) pay all premium wages for such missed rest periods and meal periods, (iv) pay sick pay wages, (v) timely pay all wages, and (vi) provide accurate itemized wage statements.

53. On or about April 27, 2023, Xavier Lacosta sent written notices to the Labor & Workforce Development Agency ("LWDA") of specific facts and theories for Defendants' violations of Sections 201-204, 226, 226.7, 233, 246, and 512. On or about December 11, 2023, Plaintiff also sent written notices to the LWDA of specific facts and theories for Defendants' violations. Plaintiff

1 simultaneously sent written notice to Defendants via certified mail. As of the date of the filing of this
2 Complaint, the LWDA has neither responded nor indicated that it intends to investigate the allegations
3 in the written notice.

4 54. As such, pursuant to Section 2699(a), (f), and (g), Plaintiff seeks recovery of all
5 applicable penalties for Defendants' violations against all aggrieved employees for the period described
6 above.

7 **PRAYER FOR RELIEF**

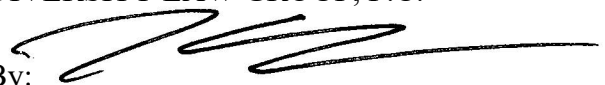
8 WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf this suit
9 is brought against Defendants, jointly and severally, as follows:

- 10 1. For an order certifying the proposed Classes;
 - 11 2. For an order appointing Plaintiff as the representative of the Classes;
 - 12 3. For an order appointing Counsel for Plaintiff as Class Counsel;
 - 13 4. Upon the First Cause of Action for damages, including unpaid wages and interest
14 thereon, penalties, and attorneys' fees and costs;
 - 15 5. Upon the Second Cause of Action for damages, including unpaid wages and interest
16 thereon, penalties, and attorneys' fees and costs;
 - 17 6. Upon the Third Cause of Action damages, including unpaid wages and interest thereon,
18 penalties, and attorneys' fees and costs;
 - 19 7. Upon the Fourth Cause of Action for penalties, actual damages, and attorneys' fees and
20 costs;
 - 21 8. Upon the Fifth Cause of Action for restitution of all funds unlawfully acquired by
22 Defendants by any acts or practices declared to be in violation of the UCL, including interest thereon,
23 and for attorneys' fees and costs;
 - 24 9. Upon the Sixth Cause of Action for penalties, attorneys' fees, and costs;
 - 25 10. Upon each cause of action for attorneys' fees and costs as provided by the Labor Code,
26 UCL, and Code of Civil Procedure section 1021.5; and
 - 27 11. For such other and further relief that the Court may deem just and proper.
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1 DATED: January 29, 2024

DIVERSITY LAW GROUP, P.C.

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3 By:


Larry W. Lee

Simon L. Yang

4 Attorneys for Plaintiff

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PROOF OF SERVICE

(Code of Civil Procedure Sections 1013a, 2015.5)

STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071.

On February 2, 2024, I served the following document(s) described as: **SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action as follows:

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 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the One Legal E-Filing System at the website www.onelegal.com, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 2, 2024, at Los Angeles, California.



Olympia Peña