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on behalf of herself and others similarly situated and current and former aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF TEHAMA COUNTY

KYLIE BLUE, on behalf of herself and others similarly situated and current and former aggrieved employees,

Plaintiff,

vs.

TEHAMA COUNTY OPPORTUNITY CENTER, INC., a California corporation, DBA NORTH VALLEY SERVICES; and DOES 1 to 100, inclusive,

Defendants.

Case No.: 23CI-000137

CLASS ACTION

PLAINTIFF KYLIE BLUE'S FIRST AMENDED COMPLAINT FOR DAMAGES AND RESTITUTION AND FOR:

1. **FAILURE TO PAY WAGES FOR ALL TIME WORKED AT MINIMUM WAGE IN VIOLATION OF LABOR CODE SECTIONS 1194 AND 1197**
2. **FAILURE TO PAY OVERTIME WAGES FOR DAILY OVERTIME WORKED, AND FAILURE TO INCLUDE ADDITIONAL REMUNERATION WHEN CALCULATING OVERTIME WAGES IN VIOLATION OF LABOR CODE SECTIONS 510, 1194, AND 1198**
3. **FAILURE TO AUTHORIZE OR PERMIT MEAL PERIODS IN VIOLATION OF LABOR CODE SECTIONS 512 AND 226.7**
4. **FAILURE TO AUTHORIZE OR PERMIT REST PERIODS IN VIOLATION OF LABOR CODE SECTION 226.7**

5. FAILURE TO PAY ALL ACCRUED AND VESTED VACATION/PTO WAGES IN VIOLATION OF LABOR CODE SECTION 227.3

6. FAILURE TO PROVIDE SICK PAY IN VIOLATION OF LABOR CODE SECTION 246

7. FAILURE TO INDEMNIFY EMPLOYEES FOR EMPLOYMENT-RELATED LOSSES AND EXPENDITURES IN VIOLATION OF LABOR CODE SECTION 2802

8. FAILURE TO TIMELY PAY EARNED WAGES DURING EMPLOYMENT IN VIOLATION OF LABOR CODE SECTION 204

9. FAILURE TO TIMELY PAY ALL EARNED WAGES AND FINAL PAYCHECKS DUE AT TIME OF SEPARATION OF EMPLOYMENT IN VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203

10. FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS IN VIOLATION OF LABOR CODE SECTION 226

11. UNFAIR BUSINESS PRACTICES, IN VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200, *et seq*.

12. CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 ("PAGA"), LABOR CODE SECTION 2698, *et seq.*

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff KYLIE BLUE ("Plaintiff"), who alleges and complains against Defendants TEHAMA COUNTY OPPORTUNITY CENTER, INC., a California corporation, DBA NORTH VALLEY SERVICES ("Defendant NORTH VALLEY SERVICES"), and DOES 1 to 100, inclusive (collectively "Defendants") as follows:

INTRODUCTION

1. This is a wage and hour class action lawsuit and Private Attorneys' General Act of 2004, Lab. Code §2698, et seq. ("PAGA") representative action on behalf of Plaintiff and other current and former non-exempt employees of Defendants in California seeking within the applicable statute of limitations periods:

(a) failure to pay wages for all hours worked at minimum wage;

(b) failure to pay overtime wages for all overtime hours worked;

(c) failure to pay overtime at the proper overtime rate by failing to include all remuneration in calculating the regular rate of pay for purposes of paying overtime;

(d) failure to authorize or permit all legally required and compliant meal periods and/or pay meal period premium wages;

(e) failure to authorize or permit all legally required and compliant rest periods and/or pay rest period premium wages;

(f) failure to pay accrued and vested vacation/PTO wages;

(g) failure to pay sick pay at the proper regular rate;

(h) failure to indemnify all necessary expenditures or losses incurred by employees in direct consequence of discharging their duties;

(i) statutory penalties for failure to timely pay earned wages during employment;

(j) statutory waiting time penalties in the form of continuation wages for failure to timely pay employees all wages due upon separation of employment; and

(k) statutory penalties for failure to provide accurate wage statements.

2. Based on these alleged violations, Plaintiff now brings this class action and representative action to recover unpaid wages, restitution, statutory penalties, injunctive relief and other equitable relief, reasonable attorney's fees pursuant to Labor Code §218.5, 226(e), 1194, costs,

interest, liquidated damages, and civil penalties pursuant to Labor Code §2698 associated with Defendant's violations of the Labor Code brought on behalf of Plaintiff and others similarly situated and/or other aggrieved employees and the Labor Workforce Development Agency ("LWDA").

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction to hear this case because Plaintiff's and putative class members' claims for unpaid wages, actual damages, liquidated damages, restitution, and penalties sought by Plaintiff on behalf of herself and others similarly situated from Defendants exceeds the minimal jurisdictional limits of the Superior Court of the State of California.

3. Venue is proper in Tehama County pursuant to Code of Civil Procedure §§393(a), 395(a) and 395.5 in that liability arose there, because at least some of the transactions that are the subject matter of this Complaint occurred therein and/or each defendant is found, maintains offices, transacts business, and/or has an agent therein.

4. Defendants operate throughout California; Defendants employed Plaintiff and putative class members in locations throughout California, including but not limited to Tehama County, at 11799 Highway 99W, Red Bluff, California 96080; more than two-thirds of putative class members are California citizens; the principal violations of California law occurred in California; no other class actions have been filed against Defendants in the last four (4) years alleging wage and hour violations; the conduct of Defendants forms a significant basis for Plaintiff's and putative class members' claims; and Plaintiff and putative class members seek significant relief from Defendants.

PAGA ALLEGATIONS

5. At all times herein set forth, PAGA was applicable to Plaintiff's employment by Defendants.

6. At all times herein set forth, PAGA provides that any provision of law under the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA for violations of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself and other current or former employees pursuant to procedures outlined in Labor Code §2699.3.

7. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved

employee," who is any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

8. Plaintiff was employed by Defendants and the alleged violation was committed against her during her time of employment and she is, therefore, an aggrieved employee. Plaintiff and the other employees are "aggrieved employees" as defined by Labor Code §2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them.

9. Pursuant to Labor Code §2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been met:

a. The aggrieved employee shall give written notice by online submission (hereinafter "Employee's Notice") to the Labor & Workforce Development Agency (hereinafter "LWDA") and by U.S. Certified Mail to the employer of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

b. The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee's Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee's Notice, the aggrieved employee may commence a civil action pursuant to Labor Code §2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

10. On May 8, 2023, Plaintiff provided written notice by online submission to the LWDA and by U.S. Certified Mail to Defendant of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Plaintiff has not received an LWDA Notice within sixty-five (65) calendar days of the date of Plaintiff's notice.

11. Therefore, Plaintiff has satisfied the administrative prerequisites under Labor Code §2699.3(a) to recover civil penalties against Defendants, in addition to other remedies, for violations

of Labor Code §201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, and 1198

PARTIES

12. Plaintiff brings this action on behalf of herself and other members of the general public similarly-situated. The named Plaintiff and the class of persons on whose behalf this action is filed are current, former and/or future employees of Defendants who work as hourly non-exempt employees. At all times mentioned herein, the currently named Plaintiff is and was a resident of California and were employed by Defendants within the four years prior to the filing of the Complaint.

13. Defendants employed Plaintiff as an hourly non-exempt employee from in or around November 13, 2020 to and including May 26, 2022.

14. Plaintiff is informed and believes, and on that basis alleges that Defendants employed Plaintiff and other hourly non-exempt employees throughout the State of California and therefore its conduct forms a significant basis of the claims asserted in this matter.

15. Plaintiff is informed and believes and thereon alleges that Defendants NORTH VALLEY SERVICES and DOES 1 through 25 are authorized to do business within the State of California and are doing business in the State of California and/or that Defendants DOES 1 through 25 are, and at all times relevant hereto were persons acting on behalf of Defendants in the establishment of, or ratification of, the aforementioned illegal wage and hour practices or policies. Defendants NORTH VALLEY SERVICES and DOES 1 through 25 operate in Tehama County and employed Plaintiff and other putative class members in Tehama County at its business located at 11799 Highway 99W, Red Bluff, California 96080.

16. It is believed and alleged that Defendants NORTH VALLY SERVICES and DOES 1 through 25 is a company that specializes in offering comprehensive adult development programs, adult day support programs, and behavior management programs for individuals with disabilities in Tehama County and the neighboring regions. It is believed and alleged that Defendant NORTH VALLEY SERVICES and DOES 1 through 25 is a company that is committed to promoting independence and community integration for their clients, while focusing on the acquisition and

upkeep of essential skills such as community integration, self-advocacy, personal care, social skills, recreation, leisure, employment, and behavioral management.

17. Plaintiff is informed and believes and thereon alleges that Defendants DOES 26 through 50 are corporations, or are other business entities or organizations of a nature unknown to Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and working conditions of employment of Plaintiff and aggrieved employees.

18. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51 through 100 are individuals unknown to Plaintiff. Each individual Defendant is sued individually in his or her capacity as an agent, shareholder, owner, representative, manager, supervisor, independent contractor and/or employee of each Defendant and participated in the establishment of, or ratification of, the aforementioned illegal wage and hour practices or policies.

19. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff sues said Defendants by said fictitious names, and will amend this Complaint when the true names and capacities are ascertained or when such facts pertaining to liability are ascertained, or as permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously named Defendants is in some manner responsible for the events and allegations set forth in this Complaint.

20. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each Defendant was an employer, was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this Complaint. Plaintiff is further informed and believes and thereon alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above, and that at all relevant times, each Defendant knew or should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other defendants. As used in this Complaint, "Defendants" means "Defendants and each of them," and refers to the Defendants named in the particular cause of action

in which the word appears and includes Defendants NORTH VALLEY SERVICES and DOES 1 to 100, inclusive.

21. At all times mentioned herein, each Defendant was the co-conspirator, agent, servant, employee, and/or joint venturer of each of the other Defendants and was acting within the course and scope of said conspiracy, agency, employment, and/or joint venture and with the permission and consent of each of the other Defendants.

22. Plaintiff makes the allegations in this Complaint without any admission that, as to any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff reserves all of Plaintiff rights to plead in the alternative.

DESCRIPTION OF ILLEGAL PAY PRACTICES

23. Pursuant to Industrial Welfare Commission ("IWC") Wage Order 1 ("Wage Order"), codified at California Code of Regulations title 8, §11010, Defendants are employers of Plaintiff within the meaning of Wage Order 1 and §18 of the Labor Code. Therefore, each of these Defendants is jointly and severally liable for the wrongs complained of herein in violation of the Wage Order and the Labor Code.

24. **Failure to pay wages for all hours worked at the legal minimum wage**: Defendants employed many of their employees, including Plaintiff, as hourly non-exempt employees. In California, an employer is required to pay hourly employees for all "hours worked" at least the minimum wage rate of pay which includes all time that an employee is under the control of the employer and all time the employee is suffered and permitted to work as established by the Industrial Welfare Commission ("IWC") and the Wage Orders. This includes the time an employee spends, either directly or indirectly, performing services which inure to the benefit of the employer.

25. Plaintiff and similarly situated hourly non-exempt employees worked more minutes per shift than Defendants credited them with having worked. Defendants failed to pay Plaintiff and similarly situated employees all wages at the applicable minimum wage for all hours worked due to Defendants' policies, practices, and/or procedures including, but not limited to:

a. Defendants "rounded" down or "shaved" Plaintiff's and similarly situated employees' total daily hours worked at the time of their clock-in and clock-out to the nearest

quarter of an hour, to the benefit of Defendants.

26. Defendants therefore suffered, permitted, and required its hourly employees to be subject to Defendants' control without paying wages for that time. This resulted in Plaintiff and similarly situated employees working time for which they were not compensated any wages, in violation of Labor Code §§1194, 1197, and the Wage Orders.

27. **Failure to pay overtime wages due to rounding down hours worked to the nearest quarter hour.** Defendants employed many of their employees, including Plaintiff, as non-exempt, hourly employees. In California, an employer is required to pay hourly employees for all "hours worked," which includes all time that an employee is under control of the employer and all time the employee is suffered and permitted to work. This includes the time an employee spends, either directly or indirectly, performing services that inure to the benefit of the employer.

28. Labor Code §§510 and 1194 require an employer to compensate employees a higher rate of pay for hours worked in excess of 8 hours in a workday, 40 hours in a workweek, and on any seventh consecutive day of work in a workweek:

> Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

(Lab. Code §510.)

29. In this case, Defendants "rounded" down or "shaved" Plaintiff and similarly situated employees' total daily hours worked to the nearest quarter of an hour at the clock-in and clock-out times, to the benefit of Defendants. This occurred on days where Plaintiff and similarly situated employees worked at least 8 hours or in workweeks where Plaintiff and similarly situated employees worked at least 40 hours. This resulted in Defendants failing to pay Plaintiff and similarly situated hourly non-exempt employees at their overtime rate of pay for this time, but was not paid any wages in violation of Labor Code §§510, 1194, and Wage Order 4, §3.

30. **Failure to pay overtime at the proper overtime rate by failing to include all remuneration in calculating the regular rate of pay for purposes of paying overtime:** Defendants employ hourly non-exempt employees, including Plaintiff and others similarly situated, with a compensation structure that includes additional remuneration, including an additional $500 "Sign-On" bonus.

31. California Labor Code sections 510 and 1194 require an employer to compensate employees a higher rate of pay for hours worked in excess of eight hours in a workday:

> Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

(Cal. Lab. Code §510.)

32. Regarding the "regular rate," overtime is based upon an employee's regular rate of pay. "The regular rate at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf, of the employee." *See* Division of Labor Standards Enforcement – Enforcement Policies and Interpretations Manual, Section 49.1.2.

33. At times, Plaintiff and similarly situated employees worked overtime hours under state law during pay periods that they earned the additional $500 "Sign-On" bonus. Despite the fact that California law requires employers to include all remuneration as part of the regular rate of pay for determining overtime premium pay, Defendants entirely excluded Plaintiff's and similarly situated hourly non-exempt employees' additional $500 "Sign-On" bonus in calculating those employees' overtime rate of pay.

34. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff and other similarly situated hourly non-exempt employees working hours in excess of eight hours in a workday and/or 40 hours in a workweek and Defendants paying them less overtime than they earned pursuant to California law.

35. **Failure to pay hourly non-exempt employees wages to compensate them for workdays Defendants failed to provide required meal periods:** California law requires an employer to authorize or permit an employee an uninterrupted meal period of no less than 30-minutes in which the employee is relieved of all duties and the employer relinquishes control over the employee's activities prior to the employee's sixth hour of work. Cal. Lab. Code §§ 226.7, 512; Wage Order 9-2001, 11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second such meal period of not less than 30 minutes prior to the start of the eleventh hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal period is only permitted when: (1) the nature of the work prevents an employee from being relieved of all duty; and (2) the parties have a written agreement agreeing to on duty meal periods. If an employer fails to provide an employee a meal period in accordance with the law, the employer must pay the employee one hour of pay at the employee's regular rate of pay for each workday that a legally required meal period was not timely provided or was not duty-free. *Id.*

36. During the four years prior to the filing of the complaint, Plaintiff and similarly situated employees regularly worked shifts of more than 5 hours in length. Nevertheless, Plaintiff and similarly situated employees were not given an uninterrupted 30-minute meal break for every five hours of work because Defendants' systematic company policy pressured and/or required employees to work without receiving meal periods, or the meal breaks were interrupted, untimely, taken while working, and/or were shorter than 30 minutes.

37. At times, Plaintiff and California non-exempt employees would work in excess of 10 hours which would entitle them to a second meal period before the 10th hour of work. Defendants did not provide Plaintiff and California non-exempt employees with a second meal period when they worked in excess of 10 hours. Defendants did not have a procedure in place to pay Plaintiff and California non-exempt employees a premium wage for their missed meal periods when they did not receive a second meal period. Accordingly, Defendants did not pay Plaintiff and California non-exempt employees a premium wage when they did not receive a second meal period.

38. Defendants also failed to pay Plaintiff and similarly situated employees one hour of pay at their regular rate of pay for each workday Plaintiff and similarly situated employees did not receive all legally compliant meal periods. Defendants lacked a policy and procedure for compensating Plaintiff and similarly situated employees with premium wages when they did not receive all legally required meal periods in a legally compliant manner.

39. These practices and procedures resulted in Plaintiff and all other similarly situated employees not receiving wages to compensate them for workdays which Defendants did not provide them with legally compliant meal periods in compliance with California law.

40. **Failure to pay hourly employees wages to compensate them for workdays Defendants failed to provide required rest periods:** Defendants often employed hourly employees, including the named Plaintiff and all others similarly-situated, for shifts at least three and one-half (3.5) hours in length.

41. California law states that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. … If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided." (Wage Order 4 §12; see Lab. Code § 226.7.) Under California law, "[e]mployees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." (*Brinker v. Superior Court* (2012) 53 Cal.4th 1004, 1029; Lab. Code §226.7; Wage Order 4 §12.) Rest periods must be in the middle of each work period. (Wage Order 4 §12.) If an employer fails to provide an employee a timely and legally compliant rest period, the employer must pay the employee one hour of pay at the employee's regular rate of compensation for each work day that a legally required meal period was not provided or was not duty free. (*Id.*)

42. Despite that California law requires employers to provide employees with one 10-minute rest break when an employee's work shift is in excess of 3.5, a second 10 minute rest break when a shift is in excess of 6 hours, a third 10-minute rest break when a shift is in excess of 10 hours, Defendants regularly failed to do so. As a result, Plaintiff and similarly situated non-exempt, employees did not receive legally compliant rest periods as they were untimely, on-duty, or were not taken at all.

43. Defendants also failed to pay employees one hour of pay at their regular rate of pay for each workday Plaintiff and similarly situated employees did not receive all timely and legally compliant rest periods.

44. This practice resulted in Plaintiff and all other similarly situated California non-exempt employees not receiving wages to compensate them for workdays which Defendants did not provide them with rest periods in compliance with California law.

45. **Failure to pay accrued and vested vacation wages**: Defendants had a policy and/or procedure of providing its employees with paid vacation time and/or personal time off ("Vacation/PTO").

46. Vacation/PTO wages are deferred wages that vest once accrued. Labor Code § 227.3 provides that an employer must pay its employees all unused vested vacation/PTO at the time of termination at the employees' final rate of pay.

47. Defendants had a vacation policy in which Plaintiff and other similarly situated employees accrued vacation/PTO wages.

48. Defendants terminated Plaintiff and other similarly situated employees without paying them the full amount of their earned vacation/PTO wages, in violation of California law, and employed policies and procedures which ensured Plaintiff and those similarly situated would not receive their accrued and vested vacation/PTO wages upon termination.

49. **Failure to pay sick pay at the proper rate:** Defendants failure to pay sick pay to Plaintiff and similarly situated employees at the correct rate. Plaintiff received compensation in addition to hourly wages, but those additional amounts were not included when calculating sick pay

wages. Instead, Defendants paid Plaintiff and similarly situated employees at their base hourly rate of pay.

50. **Failure to indemnify employees for losses and expenditures incurred as part of their employment:** Labor Code §2802(a) states that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer…" An employer is prohibited from passing the ordinary business expenses and losses of the employer onto the employee. (Labor Code §2802).

51. The costs incurred by Plaintiff and similarly situated employees to pay for their own mandatory compliance with Defendants' policies, practices, and/or procedures were significant as a result of their employment with Defendants.

52. Defendants employed policies and procedures which ensured Plaintiff and similarly situated employees would not receive indemnification for the necessary expenditures incurred as a result of their employment with Defendants.

53. Defendants' policies, practices, and/or procedures resulted in Plaintiffs and similarly situated California-based employees not receiving indemnification for employment-related expenditures, in violation of Labor Code §2802.

54. **Failure to timely pay earned wages during employment**: In California, wages must be paid at least twice during each calendar month on days designated in advance by the employer as regular paydays, subject to some exceptions. Labor Code §204(a). Wages earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the 16th and the 26th day of that month and wages earned between the 16th and the last day, inclusive, of any calendar month must be paid between the 1st and 10th day of the following month. *Id*. Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be paid within seven (7) calendar days following the close of the payroll period in which wages were earned. Labor Code §204(d).

55. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed to timely pay Plaintiff's and similarly situated employees' earned wages (including minimum wages, overtime wages, meal period premium wages, rest period premium wages, vacation/PTO pay, sick

pay, and reimbursement pay), in violation of Labor Code §204.

56. Defendants' aforementioned policies, practices, and/or procedures resulted in their failure to pay Plaintiff and similarly situated employees their earned wages within the applicable time frames outlined in Labor Code §204.

57. **Failure to timely pay all wages due at the time of termination/resignation:** An employer is required to pay all unpaid wages timely after an employee's employment ends. The wages are due immediately upon termination (Labor Code §201) or within 72 hours of resignation (Labor Code §202).

58. As a result of the aforementioned violations of the Labor Code, Plaintiff alleges that he, and other similarly situated employees, were not paid their final wages in a timely manner upon separation of employment, whether voluntary or involuntary, as required by Labor Code §201, 202, and 203.

59. **Failure to provide accurate wage statements**: Labor Code §226(a) provides (inter alia) that, upon paying an employee his or her wages, the employer must "furnish each of his or her employees ... an itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee."

60. Defendants failed to provide accurate and complete wage statements to Plaintiff and similarly situated employees. Because Defendants provided to employees wage statements which were inadequate as a result of the aforementioned conduct, Plaintiff and similarly situated employees wage statements inaccurately stated: the gross wages earned, total hours worked by the employee, the

net wages earned, and applicable hourly rates in effect in a pay period with corresponding number of hours worked.

61. Defendants applied these policies and procedures to Plaintiff and other similarly situated employees which resulted in Defendants failing to provide complete and accurate wage statements to non-exempt employees in compliance with Labor Code §226 (a).

CLASS DEFINITIONS AND CLASS ALLEGATIONS

62. Plaintiff brings this action on behalf of herself, on behalf of all others similarly situated, and on behalf of the General Public, and as a member of a Class defined as follows:

A. **Minimum Wage Class**: All current and former hourly non-exempt employees employed by Defendants in California at any time within the four years prior to the filing of the initial Complaint in this action and through the date notice is mailed to a certified class who were not paid at least at minimum wage for all time they were subject to Defendants' control.

B. **Overtime Class:** All current and former hourly non-exempt employees employed by Defendants in California at any time within the four years prior to the filing of the initial Complaint in this action and through the date notice is mailed to a certified class who worked more than eight hours in a in a workday or 40 hours in a workweek and to whom Defendants did not pay all overtime wages owed.

C. **Regular Rate Class:** All current and former non-exempt employees employed by Defendants in California at any time within the four years prior to the filing of the initial complaint in this action and through the date notice is mailed to a certified class, who earned commissions, bonuses, service charges, shift-differential pay or other non-hourly compensation which were not included in calculating the overtime pay earned during pay periods the employees earned the bonuses and worked in excess of 8 hours in a workday, 40 hours in a workweek, or on a seventh consecutive day of work in a workweek.

D. **Meal Period Class**: All current and former hourly non-exempt employees employed by Defendants in California at any time within the four years prior to the filing of the initial Complaint in this action and through the date notice is mailed to a certified class who worked more than 5 hours during a workday and did not receive wages to compensate them for missed meal periods,

late meal periods, interrupted meal periods, meal periods taken onsite and/or short meal periods.

E. **Meal Period Premium Wages Class**: All current and former hourly non-exempt employees employed by Defendants in California at any time from four (4) years prior to the filing of the initial Complaint in this matter through the date notice is mailed to a certified class who received additional remuneration including, but not limited to, $500 "Sign-On" bonus, during pay periods in which they were owed and/or paid meal period premium wages and whose regular rate of pay did not include additional remuneration including, but not limited to, $500 "Sign-On" bonus, when Defendants calculated those employees' meal period premium wages.

F. **Rest Period Class**: All current and former hourly non-exempt employees employed by Defendants in California at any time within the four years prior to the filing of the initial Complaint in this action and through the date notice is mailed to a certified class who worked at least three and one-half (3.5) or more hours in a day who did not receive required rest periods of ten net minutes rest time for every four hours worked between three and one-half and six hours, six and ten hours, or ten and fourteen hours.

G. **Rest Period Premium Wages Class**: All current and former hourly non-exempt employees employed by Defendants in California at any time from four (4) years prior to the filing of the initial Complaint in this matter through the date notice is mailed to a certified class who received additional remuneration including, but not limited to, an additional $500 "Sign-On" bonus during pay periods in which they were owed and/or paid rest period premium wages and whose regular rate of pay did not include additional remuneration including, but not limited to, an additional $500 "Sign-On" bonus when Defendants calculated those employees' rest period premium wages

H. **Vacation Pay Class**: All current and former non-exempt employees employed by Defendants in California at any time within the four (4) years prior to the filing of the initial complaint in this action and through the date notice is mailed to a certified class who accrued vacation time/personal time off, yet Defendants did not pay all wages due for vested vacation time/personal time off upon separation of employment.

I. **Sick Pay Class**: All current and former non-exempt employees employed by Defendants in California as direct employees as well as temporary employees employed through

temporary employment agencies at any time from four (4) years prior to the filing of the initial Complaint in this matter through the date notice is mailed to a certified class who were paid sick pay in a period in which they earned any other pay, including but not limited to, $500 "Sign-On" bonus, that should have been included in their sick pay wages.

J. **Indemnification Class**: All current and former hourly non-exempt employees employed by Defendants in California at any time from four (4) years prior to the filing of the initial Complaint in this action through the date notice is mailed to a certified class who did not receive indemnification to reimburse them for the necessary expenditures incurred in the discharge of their duties.

K. **Pay Day Class**: All current and former hourly non-exempt employees employed by Defendants in California at any time from four (4) years prior to the filing of the initial Complaint in this action through the date notice is mailed to a certified class who were not timely paid earned wages during their employment.

L. **Waiting Time Class**: All current and former hourly non-exempt employees employed by Defendants in California at any time within the three years prior to the filing of the initial Complaint in this action and through the date notice is mailed to a certified class who did not receive payment of all unpaid wages upon separation of employment within the statutory time period.

M. **Wage Statement Class**: All current and former non-exempt employees employed by Defendants in California at any time within the one year prior to the filing of the initial complaint in this action and through the date notice is mailed to a certified class who received inaccurate or incomplete wage statements.

N. **California Class**: All aforementioned classes are here collectively referred to as the "California Class."

63. There is a well defined community of interest in the litigation and the classes are ascertainable:

A. **Numerosity**: While the exact number of class members in each class is unknown to Plaintiff at this time, the Plaintiff classes are so numerous that the individual joinder of all members is impractical under the circumstances of this case.

B. **Common Questions Predominate**: Common questions of law and fact exist

as to all members of the Plaintiff classes and predominate over any questions that affect only individual members of each class. The common questions of law and fact include, but are not limited to:

i. Whether Defendants violated Labor Code §§1194 and 1197 by not paying employees' wages at a minimum wage rate for all time that the Minimum Wage Class Members were subject to Defendants' control but were not paid;

ii. Whether Defendants violated Labor Code §§510 and 1194 by not paying employees' wages at an overtime wage rate for all overtime hours that the Overtime Class Members were subject to Defendants' control but were not paid.

iii. Whether Defendants violated Labor Code §§510 and 1194 by failing to include all remuneration when calculating the overtime rate of pay for the members of the Regular Rate Class.

iv. Whether Defendants violated Labor Code §§512 and 226.7, as well as the applicable Wage Order, by employing Meal Period Class Members without providing all their required meal periods or paying meal period premium wages;

v. Whether Defendants violated Labor Code §§512 and 226.7, as well as the applicable Wage Order, by employing Meal Period Class Members and Meal Period Premium Class Members without providing all their required meal periods, paying meal period premium wages, or not including all remuneration when paying meal period premium wages;

vi. Whether Defendants violated the Wage Order and Labor Code section 226.7 and the applicable Wage Order by employing Rest Period Class Members without providing all their required rest periods or paying rest period premium wages;

vii. Whether Defendants violated Labor Code §227.3 by failing to pay the Vacation Pay Class Members all vacation time/personal time off wages due to them upon termination;

viii. Whether Defendants failed to pay sick pay to the Sick Pay Class at the correct rate;

ix. Whether Defendants violated Labor Code §2802 by failing to provide Indemnification Class Members with reimbursement of costs to compensate them for the necessary

expenditures incurred in the discharge of their duties;

x. Whether Defendants violated Labor Code §204 by employing Pay Day Class Members without timely paying them all earned wages during their employment;

xi. Whether Defendants failed to provide the Waiting Time Class Members with all of their earned wages upon separation of employment within the statutory time period;

xii. Whether Defendants unlawfully failed to furnish the Wage Statement Class with proper accurate itemized wage statements;

xiii. Whether Defendants committed unlawful business acts or practice within the meaning of Business and Professions Code §17200 *et seq.*;

xiv. Whether California Class Members are entitled to unpaid wages, penalties and other relief pursuant to their claims;

xv. Whether, as a consequence of Defendants' unlawful conduct, the California Class Members are entitled to restitution, and/or equitable relief; and

xvi. Whether Defendants' affirmative defenses, if any, raise any common issues of law or fact as to Plaintiff and as to the California Class Members as a whole.

C. **Typicality**: Plaintiff' claims are typical of the claims of the class members in each of the classes. Plaintiff and the members of the Minimum Wage Class sustained damages arising out of Defendants' failure to pay wages at least at minimum wage for all time the employees were subject to Defendants' control. Plaintiff and the members of the Overtime Wage Class sustained damages arising out of Defendants' failure to pay the overtime wages for overtime hours worked. Plaintiff and members of the Regular Rate Class sustained damages arising out of Defendants' failure to pay them at the proper overtime rate by failing to include all remuneration when calculating their regular rate of pay for purposes of determining their overtime rate of pay. Plaintiff and the members of the Meal Period Class sustained damages arising out of Defendants' failure to provide employees all legally required meal periods and failure to pay meal period premium wages as compensation. Plaintiff and the members of the Meal Period Class and Meal Period Premium Wages Class sustained damages arising out of Defendants' failure to provide employees meal periods of not less than 30

minutes and failure to pay meal period premium wages as compensation or failure to pay meal period premiums wages at the regular rate of pay. Plaintiff and the members of the Rest Period Class sustained damages arising out of Defendants' failure to provide employees all legally required rest periods and failure to pay rest period premium wages as compensation. Plaintiff and the Members of the Rest Period Class and Rest Period Premium Wages Class sustained damages arising out of Defendants' failure to provide non-exempt employees rest periods of a net 10 minutes and failure to pay rest period premium wages as compensation or failure to pay rest period premium wages at the regular rate of pay. Plaintiff and the members of the Vacation Pay Class sustained damages arising out of Defendants' failure to pay all accrued and vested vacation/PTO wages upon separation of employment. Plaintiff. Plaintiff and members of the Sick Pay Class sustained damages arising out of Defendants' failure to properly calculate and pay sick pay. Plaintiff and members of the Indemnification Class sustained damages from Defendants' failure to provide reimbursement of costs to compensate them for the necessary expenditures incurred in the discharge of their duties. Plaintiff and members of the Pay Day Class sustained damages arising out of Defendants' failure to timely pay them all wages earned during their employment in compliance with Labor Code §204. Plaintiff and the members of the Waiting Time Class sustained damages arising out of Defendants' failure to provide all unpaid yet earned wages due upon separation of employment within the statutory time limit. Plaintiff and the members of the Wage Statement Class sustained damages arising out of Defendants' failure to furnish them with accurate and/or complete itemized wage statements in compliance with Labor Code §226.

D. **Adequacy of Representation**: Plaintiff will fairly and adequately protect the interests of the members of each class. Plaintiff has no interest that is adverse to the interests of the other class members.

E. **Superiority**: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Because individual joinder of all members of each class is impractical, class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. The

expenses and burdens of individual litigation would make it difficult or impossible for individual members of each class to redress the wrongs done to them, while important public interests will be served by addressing the matter as a class action. The cost to and burden on the court system of adjudication of individualized litigation would be substantial, and substantially more than the costs and burdens of a class action. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

F. **Public Policy Consideration**: Employers throughout the state violate wage and hour laws. Current employees often are afraid to assert their rights out of fear of direct or indirect retaliation. Former employees fear bringing actions because they perceive their former employers can blacklist them in their future endeavors with negative references and by other means. Class actions provide the class members who are not named in the Complaint with a type of anonymity that allows for vindication of their rights.

FIRST CAUSE OF ACTION

FAILURE TO PAY WAGES FOR ALL HOURS OF WORK AT THE LEGAL MINIMUM WAGE RATE IN VIOLATION OF LABOR CODE SECTIONS 1194 AND 1197

(By Plaintiff and the Minimum Wage Class As Against all Defendants and Doe Defendants)

64. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein by reference.

65. At all times relevant to this Complaint, Plaintiff and the members of the Minimum Wage Class were hourly non-exempt employees of Defendants.

66. Pursuant to Labor Code §§1194, 1197, and Wage Orders, Plaintiff and the Minimum Wage Class are entitled to receive wages for all hours worked, i.e., all time subject to Defendants' control, and those wages must be paid at least at the minimum wage rate in effect during the time the Minimum Wage Class members earned the wages.

67. Defendants' payroll policies and procedures required members of the Minimum Wage Class to be engaged, suffered, or permitted to work without being paid wages for all of the time in which they were subject to Defendants' control.

68. Specifically, Defendants "rounded" down or "shaved" Plaintiff's and Minimum Wage Class Members' total daily hours worked at their clock-in and clock-out times to the nearest quarter of an hour, to the benefit of Defendants. Plaintiff and Minimum Wage Class Members' were not paid for this time.

69. As a result of Defendants' unlawful conduct, Plaintiff and members of the Minimum Wage Class have suffered damages in an amount subject to proof, to the extent that they were not paid wages at a minimum wage rate for all hours worked.

70. Pursuant to Labor Code §§1194 and 1194.2, Plaintiff and the Minimum Wage Class members are entitled to recover unpaid minimum wage, interest thereon, liquidated damages in the amount of their unpaid minimum wage, and attorneys' fees and costs.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES, IN VIOLATION OF LABOR CODE SECTIONS 510, 1194 AND 1198

(By Plaintiff and the Overtime Class and Regular Rate Class As Against All Defendants and Doe Defendants)

71. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein by reference.

72. At times relevant to this Complaint, Plaintiff and the members of the Overtime Class were hourly non-exempt employees of Defendants, covered by Labor Code §§510 and 1194 and the Wage Order.

73. Pursuant to Labor Code §§510 and 1194 and the Wage Order, hourly non-exempt employees are entitled to receive a higher rate of pay for all hours worked in excess of eight hours in a workday and/or 40 hours in a workweek.

74. Labor Code §510 (a) states in relevant part:

> Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no

> less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

75. Further, Labor Code §1198 provides,

> The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

76. Despite that California law requires employers to pay employees a higher rate of pay for all hours worked more than eight hours in a workday, Defendants failed to pay Plaintiff and similarly situated employees overtime wages due them for their daily overtime hours worked.

77. Defendants "rounded" down or "shaved" Plaintiff and Overtime Class Members' total daily hours worked to the nearest quarter of an hour at the clock-in and clock-out times, to the benefit of Defendants. This occurred on days where Plaintiff and Overtime Class Members worked at least 8 hours or in workweeks where Plaintiff and Overtime Class Members worked at least 40 hours. This resulted in Defendants failing to pay Plaintiff and Overtime Class Members at their overtime rate of pay for this time.

78. Lastly, Defendants failed to include non-discretionary bonus compensation in calculating their regular rate of pay for purposes of paying overtime. The foregoing resulted in time during each workday which Plaintiff and Regular Rate Class Members were under the control of Defendants, but were not compensated at their proper overtime rate of pay when they worked more than eight hours in a day or 40 hours in a week, in violation of Labor Code §§510, 1194, and 1198, and the Wage Order.

79. As a result of Defendants' unlawful conduct, Plaintiff and members of the Overtime Class and Regular Rate Class have suffered damages in an amount subject to proof, to the extent that they were not paid premium wages at an overtime rate of pay for all hours worked or at the proper overtime rate of pay.

80. Pursuant to Labor Code §1194, Plaintiff and the Overtime Class members are entitled to recover the full amount of their unpaid overtime wages, prejudgment interest and attorneys' fees and costs.

THIRD CAUSE OF ACTION

FAILURE TO AUTHORIZE OR PERMIT MEAL PERIODS IN VIOLATION OF LABOR CODE SECTIONS 512 AND 226.7

(By Plaintiff and the Meal Period Class As Against all Defendants and Doe Defendants)

81. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein by reference.

82. California law requires an employer to provide an employee an uninterrupted meal period of no less than 30-minutes before the end of a five hour work period. (Lab. Code §512; Wage Order 4 §11.) An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes before the end of a ten hour work period. (*Id.*) If the employee is not relieved of all duty during a meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal period is only permitted when 1) the nature of the work prevents an employee from being relieved of all duty and 2) the parties have a written agreement agreeing to on duty meal periods. If the employee is not free to leave the work premises or worksite during the meal period, even if the employee is relieved of all other duty during the meal period, the employee is subject to the employer's control and the meal period is counted as time worked. If an employer fails to provide an employee a meal period in accordance with the law, the employer must pay the employee one hour of pay at the employee's regular rate of compensation for each work day that a legally required meal period was not provided or was not duty free. (*Id.*)

83. Plaintiff and Meal Period Class Members would work on workdays in shifts long enough to entitle them to meal periods under California law. Despite that California law requires employers to provide employees with timely duty-free meal periods when they have worked a sufficient amount of hours, Defendants failed to provide employees a timely full thirty minute meal period for each five hour period of work as required by law.

84. At times, Plaintiff and California non-exempt employees would work in excess of 10 hours which would entitled them to a second meal period before the 10th hour of work. Defendants did not provide Plaintiff and California non-exempt employees with a second meal period when they

worked in excess of 10 hours. Defendants did not have a procedure in place to pay Plaintiff and California non-exempt employees a premium wage for their missed meal periods when they did not receive a second meal period. Accordingly, Defendants did not pay Plaintiff and California non-exempt employees a premium wage when they did not receive a second meal period.

85. Defendants' policies and procedures resulted in Plaintiff and all other similarly situated employees not receiving wages to compensate them for workdays which Defendants did not provide them with legally compliant meal periods in compliance with California law.

86. Defendants' policies and procedures made it impossible for Plaintiff and other Meal Period Class members from receiving all legally required and timely meal breaks or from Defendants making such meal breaks available to Plaintiff and other Meal Period Class Members when they worked a minimum of five hours in a work period.

87. Defendants' unlawful conduct alleged herein occurred in the course of employment of Plaintiff and all others similarly situated and such conduct has continued through the filing of this Complaint.

88. Defendants are liable to Plaintiff and members of the Meal Period Class for one hour of additional pay at the regular rate of compensation for each workday that Defendants did not provide all legally required and legally compliant meal periods.

89. Plaintiff, on behalf of herself and members of the Meal Period Class, seek damages and all other relief allowable including a premium meal break wage for each workday the employees were not provided with all legally required and legally compliant meal periods, pursuant to Labor Code §226.7 and the Wage Order.

FOURTH CAUSE OF ACTION

FAILURE TO AUTHORIZE OR PERMIT REST PERIODS IN VIOLATION OF LABOR CODE SECTION 226.7

(By Plaintiff and the Rest Period Class As Against all Defendants and Doe Defendants)

90. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein by reference.

91. At all times relevant to this Complaint, Plaintiff and the members of the Rest Period

Class were employees of Defendants, covered by Labor Code §226.7 and the Wage Order.

92. California law states that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. … If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided." (Wage Order 4 §12; see Lab. Code § 226.7.) Under California law, "[e]mployees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." (*Brinker v. Superior Court* (2012) 53 Cal.4th 1004, 1029; Lab. Code §226.7; Wage Order 4 §12.) Rest periods must be in the middle of each work period. (Wage Orders 4 §12.) If an employer fails to provide an employee a timely and legally compliant rest period, the employer must pay the employee one hour of pay at the employee's regular rate of compensation for each work day that a legally required meal period was not provided or was not duty free. (*Id.*)

93. Defendants failed to provide Plaintiff and the Class Members all legally required rest periods and failed to pay premium wages to Plaintiff and Rest Period Class Members to compensate them for each workday they did not receive all legally required rest periods. Because Defendants failed to afford employees rest periods in compliance with the law, Defendants are liable to Plaintiff and the Rest Period Class for one hour of additional pay at the regular rate of compensation for each workday that Defendants did not provide all rest periods in compliance with the law.

94. Pursuant to Labor Code §226.7 and the Wage Order, Plaintiff, on behalf of herself and on behalf of the Rest Period Class, seeks damages and all other relief allowable including rest period premium wages for each workday the employee was not provided with all legally compliant rest periods, plus prejudgment interest.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL ACCRUED AND VESTED VACATION/PTO WAGES IN VIOLATION OF LABOR CODE SECTION 227.3

(By Plaintiff and the Vacation Pay Class As Against All Defendants and Doe Defendants)

95. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein by reference.

96. At times relevant to this Complaint, Plaintiff and the members of the Vacation Pay Class were non-exempt employees of Defendants, covered by Labor Code §227.3.

97. Labor Code §227.3 states in relevant part

> Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served….

98. Defendants employ policies which provide for vacation/PTO to Plaintiff and Vacation Pay Class.

99. Wages vest during the pay period in which they are earned. Plaintiff and members of the Vacation Pay Class earned vacation/PTO wages while employed by Defendants. Defendants terminated Vacation Pay Class Members and failed to pay all earned and vested vacation/PTO wages upon termination.

100. Defendants employed policies and procedures which ensured Plaintiff and members of the Vacation Pay Class would not receive their accrued and vested vacation/PTO wages upon termination.

101. Pursuant to Labor Code §227.3, Plaintiff and members of the Vacation Pay Class seek their earned and vested vacation/PTO wages, plus interest thereon, for the four years preceding the filing of this Complaint.

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SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE SICK PAY IN VIOLATION OF LABOR CODE SECTION 246

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

102. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein by reference.

103. Sick pay must be compensated at the employee's regular rate of pay, for the workweek in which the paid leave was taken, or at a rate determined by averaging over 90 days. Labor Code §246(1).

104. By failing to pay Plaintiff and the Sick Pay Class for sick pay at the correct rate, Defendants willfully violated Labor Code §246.

105. In addition, Plaintiff and the Sick Pay Class earned wages other than their regular pay, including but not limited to, $500 "Sign-On" bonus, that should have been included in their sick pay wages, but were not included. As a result, Plaintiff and the Sick Pay Class are entitled to proper sick pay compensation.

106. Defendants' unlawful acts deprived Plaintiff and the Sick Pay Class of sick pay in amounts to be determined at trial, and they are entitled to recover these amounts, with interest, attorneys' fees, and costs.

SEVENTH CAUSE OF ACTION

FAILURE TO INDEMNIFY EMPLOYEES FOR EMPLOYMENT-RELATED LOSSES AND EXPENDITURES IN VIOLATION OF LABOR CODE SECTION 2802

(By Plaintiff and the Indemnification Class Against All Defendants and Doe Defendants)

107. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein by reference.

108. Plaintiff and members of the Indemnification Class have been employed by Defendants in the State of California. Labor Code §2802(a) states that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer…" An employer is prohibited from passing the ordinary business expenses and losses of

the employer onto the employee. (Labor Code §2802).

109. Defendants violated Labor Code §2802 by employing policies, practices, and/or procedures of impermissibly passing business-related expenses to Plaintiff and Indemnification Class Members.

110. Defendants employed policies and procedures which ensured that Plaintiff and Indemnification Class Members would not receive indemnification for all necessary expenditures or losses incurred by them in direct consequence of discharging their duties. Defendants' aforementioned policies, practices, and/or procedures resulted in Plaintiff and Indemnification Class Members not receiving indemnification for employment-related expenditures in compliance with California law.

111. Because Defendants failed to indemnify employees for the necessary expenditures incurred in the discharge of their duties, they are liable to Plaintiff and Indemnification Class Members for monies to compensate them for such expenditures or losses pursuant to Labor Code §2802.

112. As a direct and proximate result of Defendants' violation of Labor Code §2802, Plaintiff and Indemnification Class Members have suffered irreparable harm and monetary damages entitling them to both injunctive relief and restitution. Plaintiff, on behalf of herself and on behalf of the Indemnification Class, seeks damages and all other relief allowable including indemnification for all employment-related expenses as well as ordinary business expenses incurred by Defendants and passed on to Plaintiff and Indemnification Class Members, pursuant to Labor Code §2802.

113. Pursuant to Labor Code §2802, Plaintiff and Indemnification Class Members are entitled to recover full indemnification, reasonable attorneys' fees and costs of suit.

EIGHTH CAUSE OF ACTION

FAILURE TO TIMELY PAY EARNED WAGES DURING EMPLOYMENT IN VIOLATION OF LABOR CODE SECTION 204

(By Plaintiff and the Pay Day Class As Against All Defendants and Doe Defendants)

114. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein by reference.

115. Plaintiff and the Pay Day Class have been employed by Defendants in the State of California. In California, wages must be paid at least twice during each calendar month on days designated in advance by the employer as regular paydays, subject to some exceptions. Labor Code §204(a). Wages earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the 16th and the 26th day of that month and wages earned between the 16th and the last day, inclusive, of any calendar month must be paid between the 1st and 10th day of the following month. *Id*. Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be paid within seven (7) calendar days following the close of the payroll period in which wages were earned. Labor Code §204(d).

116. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed to timely pay Plaintiff's and the Pay Day Class' earned wages in violation of Labor Code §204.

117. Defendants' aforementioned policies, practices, and/or procedures resulted in their failure to pay Plaintiff and the Pay Day Class their earned wages within the applicable time frames outlined in Labor Code §204.

118. Defendants' failure to timely pay Plaintiff and the Pay Day Class their earned wages in accordance with Labor Code §204 was willful. Defendants had the ability to timely pay all wages earned by hourly workers in accordance with Labor Code §204, but intentionally adopted policies or practices incompatible with the requirements of Labor Code §204. When Defendants failed to timely pay Plaintiff and the Pay Day Class all earned wages, they knew what they were doing and intended to do what they did.

119. As a result of Defendants' unlawful conduct, Plaintiff and the Pay Day Class have suffered damages in an amount subject to proof, to the extent that they were not timely paid their earned wages pursuant to Labor Code §204.

120. Pursuant to Labor Code §210, Plaintiff and the Pay Day Class are entitled to recover civil penalties as follows: (1) for any initial violation, one hundred dollars ($100) for each failure to pay each employee; and (2) for each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus twenty-five (25%) percent of the amount unlawfully withheld.

NINTH CAUSE OF ACTION

FAILURE TO TIMELY PAY ALL EARNED WAGES AND FINAL PAYCHECKS DUE AT TIME OF SEPARATION OF EMPLOYMENT IN VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203

(By Plaintiff and the Waiting Time Class As Against all Defendants and Doe Defendants)

121. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein by reference.

122. At all times relevant to this Complaint, Plaintiff and the other members of the Waiting Time Class were employees of Defendants, covered by Labor Code §§201 and 202.

123. Pursuant to Labor Code §§201 and 202, Plaintiff and members of the Waiting Time Class were entitled upon termination to timely payment of all wages earned and unpaid prior to termination. Discharged employees were entitled to payment of all wages earned and unpaid prior to discharge immediately upon termination. Employees who resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and unpaid prior to resignation at the time of resignation.

124. Defendants failed to pay Plaintiff and members of the Waiting Time Class all wages earned and unpaid prior to separation of employment, in accordance with either Labor Code §§201 or 202. Plaintiff is informed and believes and thereon alleges that at all relevant times within the limitations period applicable to this cause of action Defendants maintained a policy or practice of not paying hourly employees all earned wages timely upon separation of employment.

125. Defendants' failure to pay Plaintiff and members of the Waiting Time Class all wages earned prior to separation of employment timely in accordance with Labor Code §§201 and 202 was willful. Defendants had the ability to pay all wages earned by Waiting Time Class Members prior to separation of employment in accordance with Labor Code §§201 and 202, but intentionally adopted policies or practices incompatible with the requirements of Labor Code §§201 and 202. Defendants' practices include failing to pay at least minimum wage for all time worked, failing to pay overtime wages for overtime hours worked, failing to pay overtime wages at the proper overtime rate of pay,

failing to pay premium wages for workdays Defendants did not provide employees all meal periods in compliance with California law, failing to pay premium wages for workdays Defendants did not provide employees all rest periods in compliance with California law, failure to pay all accrued and vested vacation/PTO wages upon termination, failure to provide sick pay, and failure to indemnify all necessary expenditures or losses incurred by employees in direct consequence of discharging their duties. When Defendants failed to pay its hourly non-exempt workers all earned wages timely upon separation of employment, it knew what they were doing and intended to do what it did.

126. Pursuant to either Labor Code §§201 or 202, Plaintiff and members of the Waiting Time Class are entitled to all wages earned prior to separation of employment that Defendants did not pay them.

127. Pursuant to Labor Code §203, Plaintiff and members of the Waiting Time Class are entitled to continuation of their wages, from the day their earned and unpaid wages were due upon separation until paid, up to a maximum of 30 days.

TENTH CAUSE OF ACTION

FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS IN VIOLATION OF LABOR CODE SECTION 226

(By Plaintiff and the Wage Statement Class As Against all Defendants and Doe Defendants)

128. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein by reference.

129. At all relevant times, Plaintiff and the members of the Wage Statement Class were non-exempt employees of Defendants and covered by Labor Code §226.

130. Pursuant to Labor Code §226 (a), Plaintiff and members of the Wage Statement Class were entitled to receive, semimonthly or at the time of each payment of wages, an itemized wage statement accurately stating the following:

> (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is

> paid, (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

131. Defendants' illegal practices (described supra) resulted in Defendants not providing Plaintiff and other California non-exempt employees with accurate and complete itemized wage statements in violation of Labor Code §226. The wage statements Defendants provided to employees were inadequate for reasons including but not limited to Defendants inaccurately or failing to state the following: the number of hours worked, the gross wages earned, the net wages earned, and hourly rates in place during the pay period with corresponding hours worked.

132. Defendants' failure to provide Plaintiff and members of the Wage Statement Class with accurate and complete wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and members of the Class with accurate and complete wage statements but intentionally provided wage statements that Defendants knew were not accurate. Defendants knowingly and intentionally put in place practices which deprived employees of wages and resulted in Defendants' knowing and intentional providing of inaccurate wage statements.

133. As a result of Defendants unlawful conduct, Plaintiff and members of the Wage Statement Class have suffered injury in that the wage statements inaccurately stated and/or failed to state the aforementioned items of information and Plaintiff and the members of the class could not promptly and easily determine from the wage statement alone an accurate statement of: the gross wages earned, and the net wages earned.

134. Pursuant to Labor Code §226(e), Plaintiff and members of the Wage Statement Class are entitled to recover actual damages or fifty dollars for the initial pay period in which a violation of Labor Code §226 occurred and one-hundred dollars for each violation of Labor Code §226 in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars per employee.

135. Pursuant to Labor Code §226(g), Plaintiff and members of the Wage Statement Class are entitled to bring an action for injunctive relief to ensure Defendants' compliance with Labor Code §226(a). Injunctive relief is warranted because Defendants continue to provide currently employed

members of the Class with inaccurate wage statements in violation of Labor Code §226(a) and currently employed members of the Class have no adequate legal remedy for the continuing injuries that will be suffered as a result of Defendants' ongoing unlawful conduct. Injunctive relief is the only remedy available for ensuring Defendants comply with Labor Code §226(a).

136. Pursuant to Labor Code §226(e) and 226(g), Plaintiff and members of the Class are entitled to recover the full amount of penalties due under Labor Code §226(e), reasonable attorney fees, and costs of suit.

ELEVENTH CAUSE OF ACTION

UNFAIR BUSINESS PRACTICES, IN VIOLATION OF

BUSINESS AND PROFESSIONS CODE SECTION 17200, *et seq*.

(By Plaintiff and the California Class As Against All Defendants and Doe Defendants)

137. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein by reference.

138. The unlawful conduct of Defendants alleged herein constitutes unfair competition within the meaning of California Business and Professions Code §17200. This unfair conduct includes Defendants' use of policies and procedures which resulted in the following: failing to pay employees at least the minimum wage rate for all hours which they worked; failure to pay overtime wages for overtime hours worked; failing to pay overtime wages at the proper overtime rate of pay; failure to provide all required meal periods or pay meal period premium wages; failure to authorize or permit, or provide, all required rest periods or pay rest period premium wages; failure to pay accrued and vested vacation/PTO wages; failure to provide proper sick pay; failure to indemnify all necessary expenditures or losses incurred by employees in direct consequence of discharging their duties; statutory penalties for failure to timely pay earned wages during employment; statutory waiting time penalties in the form of continuation wages for failure to timely pay employees all wages due upon separation of employment; statutory penalties for failure to provide accurate wage statements. Due to their unfair and unlawful business practices in violation of the Labor Code, Defendants have gained a competitive advantage over other comparable companies doing business in the State of California that comply with their obligations to pay employees for all hours worked, to provide meal periods or

pay meal period premium wages, to authorize or permit rest periods or pay rest period premium wages, to provide vacation/PTO pay, to provide proper sick pay, to indemnify employees for employment related losses and expenditures during the course of their employment, to timely pay wages during employment, to timely pay all wages due upon separation of employment, and to provide proper wage statements during the course of employment.

139. As a result of Defendants' unfair competition as alleged herein, Plaintiff and members of the Minimum Wage Class, Overtime Class, Regular Rate Class, Meal Period Class, Meal Period Premium Wages Class, Rest Period Class, Rest Period Premium Wages Class, Vacation Pay Class, Sick Pay Class, Indemnification Class, Pay Day Class, Waiting Time Class, and Wage Statement Class, have suffered injury in fact and lost money or property, as described in more detail above.

140. Pursuant to California Business and Professions Code §17203, Plaintiff and members of the Minimum Wage Class, Overtime Class, Regular Rate Class, Meal Period Class, Meal Period Premium Wages Class, Rest Period Class, Rest Period Premium Wages Class, Vacation Pay Class, Sick Pay Class, Indemnification Class, Pay Day Class, Waiting Time Class, and Wage Statement Class are entitled to restitution of all wages and other monies rightfully belonging to them that Defendants failed to pay and wrongfully retained by means of their unlawful and unfair business practices. Plaintiff also seeks an injunction against Defendants on behalf of the California Class enjoining Defendants, and any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies and patterns set forth herein.

TWELVTH CAUSE OF ACTION

CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004, LABOR CODE SECTION 2698, et seq.

(By Plaintiff As Against All Defendants and Doe Defendants)

141. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein by reference.

142. During the period beginning one-year period preceding the sending of the initial notice to the LWDA to the present, Defendants violated Labor Code §§201, 202, 203, 226, 226.7, 510, 512, 1194, 1197, and 1198 as alleged in more detail below.

143. **Failure to Pay Overtime Wages For Overtime Hours Worked and/or Failure to Properly Pay Overtime Rate of Pay Due to Employer's Failure to Include Remuneration When Calculating Regular Rate of Pay for Purposes of Paying Overtime Wages:** Defendants employed many of their employees, including Plaintiff, as non-exempt, hourly employees. In California, an employer is required to pay hourly employees for all "hours worked," which includes all time that an employee is under control of the employer and all time the employee is suffered and permitted to work. This includes the time an employee spends, either directly or indirectly, performing services that inure to the benefit of the employer. Labor Code §§510 and 1194 require an employer to compensate employees a higher rate of pay for hours worked in excess of 8 hours in a workday, 40 hours in a workweek, and on any seventh consecutive day of work in a workweek. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. (Lab. Code §510.)

144. In this case, Defendants maintained a policy, practice, and/or procedure whereby Defendant "rounded down" or "shaved down" Plaintiff's and Aggrieved Employees total daily hours worked at the time of their clock-in and clock-out to the nearest quarter of an hour, to the benefit of Defendants. This resulted in Plaintiff and aggrieved employees working time for which they were not compensated any wages, in violation of Labor Code §510, and the Wage Orders.

145. Additionally, Plaintiff along with other Aggrieved Employees earned additional bonus compensation, commissions, and/or incentives as part of their wages. And when Defendants did pay overtime wages to Plaintiff and Aggrieved Employees, Defendant failed to pay the overtime wages at the proper overtime rate of pay due to Defendant's failure to include all remuneration when calculating the overtime rate of pay. Specifically, Defendants maintained a policy, practice, and/or procedure that entirely excluded additional remuneration Plaintiff and Aggrieved Employees earned

including, but not limited to, bonus compensation, commissions, and/or incentives when calculating Plaintiff and Aggrieved Employees' regular rate of pay for the purpose of paying overtime. As a result, Plaintiff is informed and believes that Defendants failed to pay her and Plaintiff and Aggrieved Employees for all overtime hours worked and failed to pay overtime wages at their proper overtime rate of pay.

146. **Failure to Pay Hourly Non-Exempt Employees Wages to Compensate Them for Workdays Defendants Failed to Provide Required Meal Periods:** California law requires an employer to authorize or permit an employee an uninterrupted meal period of no less than 30-minutes in which the employee is relieved of all duties and the employer relinquishes control over the employee's activities prior to the employee's sixth hour of work. Cal. Lab. Code §§226.7, 512; Wage Order 9-2001, 11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second such meal period of not less than 30 minutes prior to the start of the eleventh hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal period is only permitted when: (1) the nature of the work prevents an employee from being relieved of all duty; and (2) the parties have a written agreement agreeing to on duty meal periods. If an employer fails to provide an employee a meal period in accordance with the law, the employer must pay the employee one hour of pay at the employee's regular rate of pay for each workday that a legally required meal period was not timely provided or was not duty-free. *Id.*

147. During the four years prior to the filing of the complaint, Plaintiff and Aggrieved Employees regularly worked shifts of more than 5 hours in length. Nevertheless, Plaintiff and Aggrieved Employees were not given an uninterrupted 30-minute meal break for every five hours of work because Defendants' systematic company policy pressured and/or required employees to work without receiving meal periods, or the meal breaks were interrupted, untimely, taken while working, and/or were shorter than 30 minutes. Nevertheless, Defendants automatically deducted 30 minutes from Plaintiff's and Plaintiff and Aggrieved Employees' daily hours worked and attributed that time to a first meal period. At times, Plaintiff and California non-exempt employees would work in excess

of 10 hours which would entitled them to a second meal period before the 10th hour of work. Defendants did not provide Plaintiff and California non-exempt employees with a second meal period when they worked in excess of 10 hours.

148. Further, Defendants did not have a procedure in place to pay Plaintiff and Aggrieved Employees a premium wage for their missed meal periods when they did not receive a second meal period. Accordingly, Defendants did not pay Plaintiff and Aggrieved Employees a premium wage when they did not receive a second meal period. Defendants also failed to pay Plaintiff and Aggrieved Employees one hour of pay at their regular rate of pay for each workday Plaintiff and Aggrieved Employees did not receive all legally compliant meal periods. Defendants lacked a policy and procedure for compensating Plaintiff and Aggrieved Employees with premium wages when they did not receive all legally required meal periods in a legally compliant manner. These practices and procedures resulted in Plaintiff and Aggrieved Employees not receiving wages to compensate them for workdays which Defendants did not provide them with legally compliant meal periods in compliance with California law.

149. Additionally, Plaintiff along with other Aggrieved Employees earned additional bonus compensation, commissions, and/or incentives as part of their wages. And when Defendants did pay meal period premium wages to Plaintiff and Aggrieved Employees for missed, short, late and/or interrupted meal periods, Defendant failed to pay the meal period premium wages at the proper rate of pay due to Defendant's failure to include all remuneration when calculating the meal period premium rate of pay. Specifically, Defendants maintained a policy, practice, and/or procedure that entirely excluded additional remuneration Plaintiff and Aggrieved Employees earned including, but not limited to, bonus compensation, commissions, and/or incentives when calculating Plaintiff and Aggrieved Employees' meal premium regular rate of pay. As a result, Plaintiff is informed and believes that Defendants failed to pay her and Aggrieved Employees proper meal period premiums for late, short, missed, and/or interrupted meal periods.

150. **Failure to Pay Hourly Employees Wages to Compensate Them for Workdays Defendants Failed to Provide Required Rest Periods:** Defendants often employed hourly employees, including the named Plaintiff and Aggrieved Employees, for shifts at least three and one-

half (3.5) hours in length. California law states that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. … If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided." (Wage Orders, subd. 12; see Lab. Code §226.7.) Under California law, "[e]mployees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." (*Brinker v. Superior Court* (2012) 53 Cal.4th 1004, 1029; Lab. Code §226.7; Wage Orders, subd. 12.) Rest periods must be in the middle of each work period. (Wage Orders, subd. 12.) If an employer fails to provide an employee a timely and legally compliant rest period, the employer must pay the employee one hour of pay at the employee's regular rate of compensation for each work day that a legally required meal period was not provided or was not duty free. (*Id.*)

151. Despite that California law requires employers to provide employees with one 10-minute rest break when an employee's work shift is in excess of 3.5 hours, a second 10 minute rest break when a shift is in excess of 6 hours, a third 10-minute rest break when a shift is in excess of 10 hours, Defendants regularly failed to do so. As a result, Plaintiff and Aggrieved Employees did not receive legally compliant rest periods as they were untimely, on-duty, or were not taken at all. Defendants also failed to pay employees one hour of pay at their regular rate of pay for each workday Plaintiff and Aggrieved Employees did not receive all timely and legally compliant rest periods. This practice resulted in Plaintiff and Aggrieved Employees not receiving wages to compensate them for workdays which Defendants did not provide them with rest periods in compliance with California law.

152. **Failure to Timely Pay Earned Wages During Employment**: In California, wages must be paid at least twice during each calendar month on days designated in advance by the employer as regular paydays, subject to some exceptions. Labor Code §204(a). Wages earned between the 1st

and 15th days, inclusive, of any calendar month must be paid between the 16th and the 26th day of that month and wages earned between the 16th and the last day, inclusive, of any calendar month must be paid between the 1st and 10th day of the following month. *Id*. Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be paid within seven (7) calendar days following the close of the payroll period in which wages were earned. Labor Code §204(d). Plaintiff maintains that Defendants failed to timely pay Plaintiff and Aggrieved Employees in violation of Labor Code §204.

153. **Failure to Pay California Employees All Wages Due at Time of Termination/Resignation**: An employer is required to pay all unpaid wages timely after an employee's employment ends. The wages are due immediately upon termination (Labor Code §201) or within 72 hours of resignation (Labor Code §202). Because Defendants failed to pay Plaintiff and Aggrieved Employees all their earned wages (including overtime wages, proper overtime wages to include additional renumeration, unpaid meal and rest period premium wages), Defendants failed to pay Plaintiff and Aggrieved Employees timely after each employee's termination and/or resignation.

154. **Failure to Provide Sick Pay at the Regular Rate:** In California, sick pay must be compensated at the employee's regular rate of pay, for the workweek in which the paid leave was taken, or at a rate determined by averaging total wages excluding overtime over 90-days. (Lab. Code §246(1).) Plaintiff maintains that Defendant failed to pay Plaintiff and Aggrieved Employees sick pay at the correct rate. In addition to hourly wages, Plaintiff and Aggrieved Employees received compensation in addition to hourly wages, including but not limited to, bonus compensation, commissions, and/or incentives, but those additional amounts were not included when calculating sick pay wages. By failing to pay Plaintiff and Aggrieved Employees for sick pay at the correct rate, Employers willfully violated Labor Code §246.

155. **Pay Stub Violations**: Labor Code §226(a) provides (inter alia) that, upon paying an employee his or her wages, the employer must "furnish each of his or her employees ... an itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare

Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee."

156. Defendants failed to provide accurate and complete wage statements to Plaintiff and Aggrieved Employees. Defendants provided to employees wage statements which were inadequate as a result of the aforementioned conduct (i.e., including overtime wages, proper overtime wages to include additional renumeration, unpaid meal and rest period premium wages), the wage statements inaccurately stated: the gross wages earned, total hours worked by the employee, the net wages earned, and applicable hourly rates in effect in a pay period with corresponding number of hours worked. Defendants applied these policies and procedures to Plaintiff and Aggrieved Employees which resulted in Defendants failing to provide complete and accurate wage statements to non-exempt employees in compliance with Labor Code §226, subdivision (a).

157. Labor Code §2699, subdivisions (a) and (g) authorize an aggrieved employee, on behalf of herself or herself and other current or former employees, to bring a civil action to recover civil penalties against all Defendants pursuant to the procedures specified in Labor Code §2699.3.

158. Plaintiff has complied with the procedures for bringing suit specified in Labor Code §2699.3. Plaintiff filed notice with the LWDA on May 8, 2023, and provided notice to Defendants by certified mail which provided notice of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

159. Pursuant to Labor Code §2699.3, the LWDA must give written notice by certified mail to the parties that it intends to investigate the alleged violations of the Labor Code within 65 days of the date of the complainant's written notice and/or Defendants may attempt to cure for certain violations. The LWDA failed to provide the parties notice within 65 days of the date of Plaintiff's letter that the LWDA intends to investigate Plaintiff's claims and/or Defendants failed to cure any of

the alleged violations which could have been cured.

160. Pursuant to Labor Code §2699(a) and (f), Plaintiff seeks, within the one year prior to the mailing of the LWDA letter, civil penalties for Defendants' violations of Labor Code §201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, and 1198, in the following amounts:

a. For violations of Labor Code §§201, 202, 203, 226.7, 1197, and 1198; one hundred dollars ($100) for each employee per pay period for the initial violation and two hundred dollars ($200) for each employee per pay period for each subsequent violation [penalty amounts established by Labor Code §2699(f)(2)].

b. For violations of Labor Code §226, subd. (a), two hundred fifty dollars ($250) for each employee for each pay period for the initial violation, and for each subsequent violation, one thousand dollars ($1000) for each underpaid employee for each pay period [penalty amounts established by Labor Code §226.3].

c. For violations of Labor Code §226, subd. (a), seven hundred fifty dollars ($750) for each employee [penalty amounts established by Labor Code §226, subd. (f)]

d. For violations of Labor Code §§510, 512, and 1194, fifty dollars ($50) for each employee for each pay period for the initial violation, and for each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period [penalty amounts established by Labor Code §558]

161. Pursuant to Labor Code §2699(g), Plaintiff is entitled to an award of reasonable attorney's fees and costs in connection with her claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF ON HIS OWN BEHALF AND ON BEHALF OF THOSE SIMILARLY-SITUATED, PRAYS AS FOLLOWS:

ON ALL CAUSES OF ACTION:

1. That the Court determine that this action may be maintained as a class action (for the entire California Class and/or any and all of the specified sub-classes) pursuant to California Code of Civil Procedure §382 and any other applicable law;

2. That the named Plaintiff be designated as class representative for the California Class (and all sub-classes thereof);

3. A declaratory judgment that the practices complained herein are unlawful; and,

4. An injunction against Defendants enjoining them, and any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies and patterns set forth herein.

ON THE FIRST CAUSE OF ACTION:

1. That Defendants be found to have violated the minimum wage provisions of the Labor Code and the IWC Wage Order as to Plaintiff and the Minimum Wage Class;

2. For damages, according to proof, including but not necessarily limited to unpaid wages;

3. For any and all legally applicable penalties;

4. For liquidated damages pursuant to Labor Code §1194.2;

5. For pre-judgment interest, including but not limited to that recoverable under Labor Code §1194, and post-judgment interest;

6. For attorneys' fees and costs of suit, including but not limited to that recoverable under Labor Code §1194;

7. For pre-judgment interest, including but not limited to that recoverable under Labor Code §218.6, and post-judgment interest; and,

8. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE FIRST CAUSE OF ACTION:

1. That Defendants be found to have violated the overtime provisions of the Labor Code and the IWC Wage Order as to Plaintiff and the Overtime Class;

2. For damages, according to proof, including but not limited to unpaid wages;

3. For any and all legally applicable penalties;

4. For pre-judgment interest, including but not limited to that recoverable under Labor Code §1194, and post-judgment interest;

5. For attorneys' fees and costs of suit, including but not limited to that recoverable under Labor Code §1194; and

6. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE THIRD CAUSE OF ACTION:

1. That Defendants be found to have violated the meal period provisions of the Labor Code and the Wage Order as to Plaintiff and the Meal Period Class;

2. For damages, according to proof, including unpaid premium wages;

3. For any and all legally applicable penalties;

4. For pre-judgment interest, including but not limited to that recoverable under Labor Code §218.6, and post-judgment interest; and

5. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE FOURTH CAUSE OF ACTION:

1. That Defendants be found to have violated the rest period provisions of the Labor Code and the Wage Order as to Plaintiff and the Rest Period Class;

2. For damages, according to proof, including unpaid premium wages;

3. For any and all legally applicable penalties;

4. For pre-judgment interest, including but not limited to that recoverable under Labor Code §218.6, and post-judgment interest; and

5. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE FIFTH CAUSE OF ACTION:

1. That Defendants be found to have violated the vested vacation/PTO wages provisions of the Labor Code as to Plaintiff and the Vacation Pay Class;

2. For damages, according to proof, including unpaid wages;

3. For any and all legally applicable penalties;

4. For pre-judgment interest, including but not limited to that recoverable under Labor

Code §218.6, and post-judgment interest; and

5. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE SIXTH CAUSE OF ACTION:

1. That Defendants be found to have violated the provisions of the Labor Code regarding correct payment of sick pay to Plaintiff and the Sick Pay Class;

2. For damages and/or penalties, according to proof, including damages and/or statutory penalties under the Labor Code and any other legally applicable damages or penalties; and

3. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE SEVENTH CAUSE OF ACTION:

1. That the Defendants be found to have violated the indemnification provisions of the Labor Code as to the Plaintiff and the Indemnification Class;

2. For damages, according to proof, including unpaid use and/or costs of necessary tools and/or resources;

3. For any and all legally applicable penalties;

4. For pre-judgment interest, including but not limited to that recoverable under Labor Code §2802, and post-judgment interest;

5. For attorneys' fees and costs of suit, including but not limited to that recoverable under Labor Code §2802; and

6. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE EIGHTH CAUSE OF ACTION:

1. That Defendants be found to have violated Labor Code 204 as to Plaintiff and the Pay Day Class;

2. For damages, according to proof;

3. For any and all legally applicable penalties, including but not limited to those recoverable pursuant to Labor Code §210(a);

4. For pre-judgment interest, including but not limited to that recoverable under Labor Code §218.6, and post-judgment interest; and

5. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE NINTH CAUSE OF ACTION:

1. That Defendants be found to have violated the provisions of the Labor Code regarding payment of all unpaid wages due upon resignation or termination as to the Waiting Time Class;

2. For damages and/or penalties, according to proof, including damages and/or statutory penalties under Labor Code §203 and any other legally applicable damages or penalties;

3. For pre-judgment interest, including under Labor Code §218.6, and post-judgment interest; and,

4. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE TENTH CAUSE OF ACTION:

1. That Defendants be found to have violated the provisions of the Labor Code regarding proper itemized paystubs as to the Wage Statement Class.

2. For damages and/or penalties, according to proof, including damages and/or statutory penalties under Labor Code §226(e) and any other legally applicable damages or penalties;

3. For pre-judgment interest and post-judgment interest; and,

4. For attorneys' fees and costs of suit, including but not limited to that recoverable under Labor Code §226(e); and,

5. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE ELEVENTH CAUSE OF ACTION:

1. That Defendants be found to have violated California Business and Professions Code §17200, *et seq*., for the conduct alleged herein as to all Classes;

2. A declaratory judgment that the practices complained herein are unlawful;

3. An injunction against Defendants enjoining them, and any and all persons acting in

concert with them, from engaging in each of the unlawful practices, policies and patterns set forth herein;

4. For restitution to the full extent permitted by law; and,

5. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE TWELVTH CAUSE OF ACTION

1. That the Defendants be found to have violated the provisions of the Labor Code and the IWC Wages Orders as to the Plaintiff and current and former employees;

2. For any and all legally applicable penalties during the relevant statute of limitations subject to any permissible tolling, including but not limited to that recoverable under Labor Code, including but not limited to §§2699(f), 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, 1174(d), 1174.5;

3. For attorneys' fees and costs of suit, including but not limited to that recoverable under Labor Code §2699(g); and,

4. For such and other further relief, in law and/or equity, as the Court deems just or appropriate.

Dated: August 28, 2025

Respectfully submitted,
E&L, LLP



By: _____
David Lavi, Esq.
Arie Ebrahimian, Esq
Attorneys for PLAINTIFF KYLIE BLUE
on behalf of herself and others similarly situated and
current and former aggrieved employees

DEMAND FOR JURY TRIAL

PLAINTIFF KYLIE BLUE demands a trial by jury for herself and the California Class on all claims so triable.

Dated: August 28, 2025

Respectfully submitted,
E&L, LLP



By: _____
David Lavi, Esq.
Arie Ebrahimian, Esq
Attorneys for PLAINTIFF KYLIE BLUE
on behalf of herself and others similarly situated and
current and former aggrieved employees