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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

AUG 01 2023

BY: 
Kayla Schuebel, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

SHEALTIEL DOW, an individual, on behalf
of herself and others similarly situated,

Plaintiff,

vs.

KLATCH COFFEE INC.; and DOES 1 to
50, inclusive,

Defendants.

Case No.: CIVSB2310155

**FIRST AMENDED CLASS ACTION
COMPLAINT**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, and 1199
2. Failure to Keep Records Pursuant to Labor Code § 1199(c) and Wage Order 4-2001
3. Failure to Provide Meal Periods Pursuant to Labor Code §§ 226.7 and 512
4. Failure to Provide Rest Periods Pursuant to Labor Code § 226.7
5. Violation of Labor Code § 226(a)
6. Failure to Reimburse Expenses Pursuant to Labor Code § 2802
7. Penalties Pursuant to Labor Code § 203
8. Violation of Business & Professions Code § 17200
9. Penalties Pursuant to Labor Code § 2699, *et seq.*

JURY TRIAL DEMANDED

1 Plaintiff SHEALTIEL DOW, an individual, on behalf of herself, all others similarly
2 situated, complains of Defendant KLATCH COFFEE INC. (“Defendant”) and each of them, as
3 follows:

4 I

5 **INTRODUCTION**

6 1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of
7 Plaintiff and a Proposed Class defined as:

8 All persons who are employed or have been employed as an
9 hourly employee by KLATCH COFFEE INC. in the State of
10 California since four (4) years prior to the filing of this action
to the present.

11 2. From at least four (4) years prior to the filing of this action continuing to the
12 present, Defendant has had a consistent policy of failing to pay wages and/or overtime to all
13 hourly employees for all work perform at the proper rate of compensation. Defendant required
14 Plaintiff and the Proposed Class to use the company “app” on their personal cellphones in order
15 to communicate regarding work related issues without compensation. Plaintiff and the Proposed
16 Class are required to respond to the communication while “off the clock” without proper
17 compensation. This resulted in underpayment of wages and/or overtime. As a result of
18 Defendant’s unlawful policies, Plaintiff and the Proposed Class were paid at a regular rate less
19 than the rate required under California law.

20 3. For at least four (4) years prior to the filing of this action continuing to the
21 present, Defendant has had a consistent policy of failing to keep accurate time records. Wage
22 Order 4-2001 Section 7(A)(3) requires an employer to keep records of when the employee
23 begins and ends each work period and meal periods. Labor Code § 1199(c) requires employers
24 to comply with any order of the commission. As such, Defendant has violated this statute and
25 the Wage Order by failing to keep accurate records.

26 4. For at least four (4) years prior to the filing of this action and continuing to the
27 present, Defendant has had a consistent policy of failing to inform employees of their right to
28 take meal periods and requiring employees within the State of California, including Plaintiff, to

1 work at least five (5) hours without a meal period and failing to pay such employees one (1)
2 hour of pay at the employees' regular rate of compensation for each workday that the meal
3 period is not provided or provided after five (5) hours, as required by California state wage and
4 hour laws.

5 5. For at least four (4) years prior to the filing of this action and continuing to the
6 present, Defendant has had a consistent policy of failing to inform employees of their right to
7 take rest periods and of failing to provide employees within the State of California, including
8 Plaintiff, rest periods of at least ten (10) minutes per four (4) hours worked or major fraction
9 thereof and failing to pay such employees one (1) hour of pay at the employees regular rate of
10 compensation for each workday that the rest period was not provided, as required by California
11 state wage and hour laws.

12 6. For at least four (4) year prior to the filing of this action continuing to the
13 present, Defendant has failed to comply with Labor Code § 226(a) by failing to include
14 necessary and required information on wage statements provided to Plaintiff and the Proposed
15 Class. Defendant failed to include the total hours worked, all applicable hourly rates in effect
16 during the pay period, and the corresponding number of hours worked at each hourly rate by the
17 employee.

18 7. For at least four (4) years prior to the filing of this action and continuing to the
19 present, Defendant has not reimbursed Plaintiff and the Proposed Class the cost and
20 maintenance of their personal cell phones necessary to perform their job duties during the
21 relevant time period in violation of Labor Code § 2802.

22 8. Based on the allegations alleged above, from at least four (4) years prior to the
23 filing of this action continuing to the present, Defendant has failed to pay all wages due at the
24 time of termination or resignation to Plaintiff and the Proposed Class.

25 9. Plaintiff, on behalf of herself and all Proposed Class Members brings this action
26 pursuant to Labor Code §§ 203, 226(a), 226.7, 510, 512, 1194, 1197, 1199, 2802; Wage Order
27 4-2001; and California Code of Regulations, Title 8, Section 11040, seeking unpaid wages
28 and/or overtime, accurate time records, meal break premiums, rest break premiums, penalties

1 for accurate itemized wage statements, reimbursement of expenses, wages upon termination or
2 resignation, other penalties, injunctive and other equitable relief, and reasonable attorney's fees
3 and costs.

4 10. Plaintiff, on behalf of herself and all Proposed Class Members, pursuant to
5 Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and
6 disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

7 11. Plaintiff, on behalf of herself and all members of the Proposed Class, brings this
8 representative action pursuant to Labor Code § 2699, *et seq.* seeking penalties for Defendant's
9 violation of California Labor Code §§ 203, 226(a), 226.7, 510, 512, 1194, 1197, 1199, and
10 2802.

11 II

12 JURISDICTION AND VENUE

13 12. This Court has subject matter jurisdiction over all causes of action asserted
14 herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil
15 Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in
16 controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted
17 arises under the laws of the State of California or is subject to adjudication in the courts of the
18 State of California.

19 13. This Court has personal jurisdiction over Defendant because Defendant has
20 caused injuries in the County of San Bernardino and the State of California through their acts,
21 and by their violation of the California Labor Code, California state common law, and
22 California Business & Professions Code § 17200, *et seq.*

23 14. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
24 Civil Procedure § 395. Defendant operates within California and does business within the
25 County of San Bernardino. The unlawful acts alleged herein have a direct effect on Plaintiff and
26 all Proposed Class Members within the State of California and the County of San Bernardino.

27 15. This case should be classified as complex according to Rule 3.400 of the
28 California Rules of Court, and assigned to a complex litigation judge and department, as it will

involve substantial documentary evidence, a large number of witnesses, and is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve and would require substantial post judgment judicial supervision.

III

PARTIES

A. PLAINTIFF

16. Plaintiff SHEALTIEL DOW is a resident of California.

17. Plaintiff and the Proposed Class Members were regularly required to:

- a. Work without being paid for all hours worked at the proper rate;
- b. Work without being supplied accurate time records;
- c. Work without being provided their meal periods;
- d. Work without being provided their rest periods;
- e. Work without Defendant maintaining accurate time records showing when the employee begins and ends each work period, meal periods, and total daily hours worked and work without being provided an accurate itemized wage statement that reflects all deductions from payment of wages and accurately report total hours worked, including when the employee begins and ends each work period, meal periods, and total daily hours worked, and the applicable rates of pay by Plaintiff and Proposed Class Members; and
- f. Work without being reimbursed for expenses as a condition of employment.

18. Defendant willfully failed to compensate Plaintiff and all Proposed Class Members for wages at the termination of their employment with Defendant.

19. As a result of this conduct, Defendant has engaged in unfair competition and unlawful business practices.

20. Plaintiff, on behalf of herself and all members of the Proposed Class, brings this representative action pursuant to Labor Code § 2699, *et seq.* seeking penalties for Defendant's violation of California Labor Code §§ 203, 226(a), 226.7, 510, 512, 1194, 1197, 1199, and 2802.

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1 at the proper rate of compensation. Defendant required Plaintiff and the Proposed Class to use
2 the company “app” on their personal cellphones in order to communicate regarding work related
3 issues without compensation. Plaintiff and the Proposed Class are required to respond to the
4 communication while “off the clock” without proper compensation. This resulted in
5 underpayment of wages and/or overtime. As a result of Defendant’s unlawful policies, Plaintiff
6 and the Proposed Class were paid at a regular rate less than the rate required under California
7 law.

8 27. On a regular and consistent basis Defendant has had a consistent policy of failing
9 to keep accurate time records. IWC Wage Order 4-2001 and Labor Code specifically require
10 that Defendant maintains time records showing when the employee begins and ends each work
11 period. *See* IWC Wage Order 4-2001(7). Further, meal periods, split shift intervals and total
12 daily hours worked shall also be recorded. *Id.* Here, Defendant’s own policies and procedures
13 failed to record the start and stop of each meal period as required by the Wage Order and Labor
14 Code. As a result, it is impossible to determine by Defendant’s records if Plaintiff and the
15 Proposed Class received a proper and timely thirty (30) minute uninterrupted meal period.
16 Further, this violates the Wage Order and Labor Code as Defendant failed to record when the
17 employee begins and ends each works period. This is to the detriment of Plaintiff and the
18 Proposed Class.

19 28. Plaintiff and the Proposed Class Members have been forced by Defendant to
20 work over five (5) hours in one day without being provided a thirty (30) minute uninterrupted
21 meal break and not being compensated one (1) hour of pay at the regular rate of compensation
22 for each workday that a meal period was not provided or provided after five (5) hours, all in
23 violation of California labor laws, regulations, and Industrial Welfare Commission Wage
24 Orders. Additionally, Defendant failed to inform Plaintiff and the Proposed Class of their right
25 to take meal periods by way of a lawful policy.

26 29. Plaintiff and the Proposed Class have been required to work four-hour
27 increments (or major fractions thereof) without being provided with a ten (10) minute rest
28 period. Additionally, Defendant failed to inform Plaintiff and the Proposed Class of their right

1 to take rest periods by way of a lawful policy.

2 30. Defendant has failed to provide accurate itemized wage statements in compliance
3 with Labor Code § 226(a) by failing to maintain time records showing when the employee
4 begins and ends each work period, meal periods, total daily hours worked by itemizing in wage
5 statements all deductions from payment of wages, accurately reporting total hours and
6 applicable rates of pay for Plaintiff and the Proposed Class.

7 31. On a regular and consistent basis, Plaintiff and the Proposed Class have not been
8 properly reimbursed expenses associated with the cost and maintenance of their personal cell
9 phones necessary to perform their job duties as a condition of employment.

10 32. Defendant willfully failed to pay wages and compensation, when Plaintiff and
11 Proposed Class Members quit or were discharged. Defendant failed to pay the wages described
12 above at the time of termination or resignation. This failure was willful, without legal
13 justification, and interfered with Plaintiff's and the Proposed Class Members' rights.

14 33. As a result of the facts alleged above, Defendant has engaged in unfair
15 competition and unlawful business practices.

16 34. As a result of the acts alleged herein, Defendant violated Labor Code § 2699, *et*
17 *seq.*

18 **V**

19 **CLASS ACTION ALLEGATIONS**

20 35. Plaintiff brings this action on behalf of herself and all others similarly situated as
21 a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent
22 proposed class composed of and defined as follows:

23 All persons who are employed or have been employed as a non-
24 exempt employee by KLATCH COFFEE INC. in the State of
25 California since four (4) years prior to the filing of this action to
the present.

26 36. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court
27 to amend or modify the class description with greater specificity, by division into subclasses, or
28 by limitation to particular issues.

1 37. This action has been brought and may properly be maintained as a class action
2 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
3 community of interest in the litigation and the Proposed Class is easily ascertainable.

4 **A. Numerosity**

5 38. The potential members of the Proposed Class as defined are so numerous that
6 joinder of all the members of the Proposed Class is impracticable. While the precise number of
7 Proposed Class Members has not been determined at this time, Plaintiff is informed and believes
8 that Defendant currently employ, and during the relevant time periods employed 50 to 99
9 members of the Proposed Class at any given time.

10 39. Plaintiff alleges that Defendant's employment records would provide information
11 as to the number and location of all Proposed Class Members. Joinder of all members of the
12 Proposed Class is not practicable.

13 **B. Commonality**

14 40. There are questions of law and fact common to the Proposed Class that
15 predominate over any questions affecting only individual Proposed Class Members. These
16 common questions of law and fact include, without limitation:

17 a. Whether Defendant failed to pay wages to Plaintiff and the Proposed
18 Class as required by the Labor Code and Wage Orders under Labor Code §§ 510, 1194, 1197,
19 and 1199;

20 b. Whether Defendant failed to keep accurate records in violation of Wage
21 Order 4-2001 Section 7(A)(3) and Labor Code § 1199(c);

22 c. Whether Defendant failed to provide all lawful meal periods or pay one
23 hour of wages in lieu thereof statements to Plaintiff and the Proposed Class;

24 d. Whether Defendant failed to provide all lawful rest periods or pay one
25 hour of wages in lieu thereof statements to Plaintiff and the Proposed Class;

26 e. Whether Defendant violated Labor Code § 226(a) and Wage Order 4-
27 2001 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11040 by
28 failing to issue accurate and complete itemized wage statements;

1 f. Whether Defendant violated Labor Code § 2802 and/or Wage Order 4-
2 2001 or other applicable IWC Wage Orders by failing to reimburse out of pocket expenses for
3 the cost and maintenance of their personal cell phones necessary to perform their job duties;

4 g. Whether Defendant violated §§ 201-203 of the Labor Code by failing to
5 pay compensation due and owing at the time that any Proposed Class Member's employment
6 with Defendant terminated;

7 h. Whether Defendant violated § 17200, *et seq.* of the Business &
8 Professions Code by engaging in the acts previously alleged;

9 i. Whether Plaintiff and the members of the Proposed Class are entitled to
10 equitable relief pursuant to Business & Professions Code § 17200, *et seq.*; and

11 j. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in
12 the acts alleged herein.

13 **C. Typicality**

14 41. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff
15 and all members of the Proposed Class sustained injuries and damages arising out of and caused
16 by Defendant's common course of conduct in violation of laws, regulations that have the force
17 and effect of law, and statutes as alleged herein.

18 **D. Adequacy of Representation**

19 42. Plaintiff will fairly and adequately represent and protect the interests of the
20 members of the Proposed Class. Counsel who represent Plaintiff and the Proposed Class are
21 competent and experienced in litigating large employment class actions.

22 **E. Superiority of Class Action**

23 43. A class action is superior to other available means for the fair and efficient
24 adjudication of this controversy. Individual joinder of all Proposed Class Members is not
25 practicable, and questions of law and fact common to the Proposed Class predominate over any
26 questions affecting only individual members of the Proposed Class. Each member of the
27 Proposed Class has been damaged and is entitled to recovery by reason of Defendant's illegal
28 policy and/or practice of failing to pay wages for all hours worked, failing to provide accurate

1 time records, failing to provide meal periods, failing to provide rest periods, failing to provide
2 accurate itemized wage statements, failing to provide reimbursement of expenses, and failing to
3 pay all wages upon resignation or termination.

4 44. Class action treatment will allow those similarly situated persons to litigate their
5 claims in the manner that is most efficient and economical for the parties and the judicial
6 system. Plaintiff is unaware of any difficulties that are likely to be encountered in the
7 management of this action that would preclude its maintenance as a class action.

8 VI

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PAY WAGES/OVERTIME**

11 **VIOLATION OF LABOR CODE §§ 510, 1194, 1197, AND 1199**

12 45. Plaintiff incorporates each and every allegation set forth in all of the foregoing
13 paragraphs as if fully set forth herein.

14 46. Labor Code § 510(a) states that eight hours of labor constitutes a day's work and
15 any work in excess of eight hours in one workday and any work in excess of 40 hours in any
16 one workweek must be compensated at the rate of no less than one and one-half times the
17 regular rate of pay for an employee. Labor Code §§ 1194 and 1199 require an employer to pay
18 its employees the legal minimum wage and the legal overtime compensation applicable.
19 California law also requires that any compensation, including a bonus, must be included in the
20 regular rate of pay.

21 47. On a regular and consistent basis, Plaintiff and the Proposed Class were not paid
22 at the proper rate of compensation. Defendant required Plaintiff and the Proposed Class to use
23 the company "app" on their personal cellphones in order to communicate regarding work related
24 issues without compensation. Plaintiff and the Proposed Class are required to respond to the
25 communication while "off the clock" without proper compensation. This resulted in
26 underpayment of wages and/or overtime. As a result of Defendant's unlawful policies, Plaintiff
27 and the Proposed Class were paid at a regular rate less than the rate required under California
28 law.

48. Plaintiff and the Proposed Class were forced to work on a regular and consistent basis without receiving compensation for all hours worked at the proper rate. Specifically, Plaintiff and the Proposed Class were not paid at the proper overtime rate when they were working more than eight (8) hours in one day or forty (40) hours in one week.

49. By their policy of requiring Plaintiff and the Proposed Class to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the rate of one-half (1 1/2) their regular rate of pay, Defendant willfully violated the provisions of Labor Code §§ 510, 1194 and 1199.

50. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class have been deprived of wages and overtime in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorney's fees, and costs.

VII

SECOND CAUSE OF ACTION

FAILURE TO KEEP ACCURATE TIME RECORDS PURSUANT TO

WAGE ORDER 4-2001 AND LABOR CODE § 1199

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

52. Labor Code § 1199 requires employers to comply with any provision of this chapter or any order or ruling of the commission.

53. Wage Order 4-2001 Section 7(A)(3) requires an employer to keep records of when the employee begins and ends each work period and meal periods.

54. Defendant failed to keep accurate records of when an employee begins and ends each work period and accurate meal period times. Defendant does not keep these records for Plaintiff and the Proposed Class.

55. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class are entitled to penalties thereon, attorney's fees, and costs.

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VIII

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO LABOR CODE § 226.7

AND LABOR CODE § 512

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

57. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of these rights.

58. Plaintiff and the Proposed Class consistently worked shifts over five (5) hours.

59. Defendant failed to provide Plaintiff and the Proposed Class with proper meal periods of not less than thirty (30) minutes as required by the Labor Code during the relevant time period. When Defendant provided these meal periods, they were often less than thirty (30) minutes in length.

60. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to damages in an amount equal to one (1) hour of wages per missed meal break, per day in a sum to be proven at trial.

IX

FOURTH CAUSE OF ACTION

FAILURE TO ALLOW REST PERIODS PURSUANT TO LABOR CODE § 226.7

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

62. Labor Code § 226.7 require an employer to pay an additional hour (1) of compensation for each rest period the employer fails to provide. Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked (or major fraction thereof). Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of this right.

63. Plaintiff and the Proposed Class consistently worked shifts with no rest breaks or with only some of their required rest breaks, and Defendant failed to maintain an accurate policy advising Plaintiff and the Proposed Class of these rest breaks and failed to provide Plaintiff and the Proposed Class with rest breaks of not less than ten (10) minutes as required by the Labor Code during the relevant time period.

64. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to damages in an amount equal to one (1) hour of wages per missed rest period, in a sum to be proven at trial.

X

FIFTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 226(a)

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

66. California Labor Code § 226(a) requires employers to itemize in wage statements all deductions from payment of wages, the appropriate rates of pay, and to accurately report total hours worked by Plaintiff and the Proposed Class.

67. Labor Code § 226(a)(2) requires that the itemized wage statement properly state the total hours worked by the employee. Plaintiff and the Proposed Class are issued wage statements that do not state the total hours worked during the pay period.

68. Labor Code § 226(a)(9) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Plaintiff and the Proposed Class are issued wage statements that do not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

69. Defendant's failure to provide accurate itemized wages statements according to Labor Code § 226(a) was all done on a regular and consistent basis.

70. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

XII

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE EXPENSES PURSUANT TO LABOR CODE § 2802

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

72. Labor Code § 2802 requires employers to indemnify employees for all necessary expenditures incurred by employees in the discharge of their duties.

73. Defendant has failed to reimburse Plaintiff and the Proposed Class the cost and maintenance of their personal cell phones necessary to perform their job duties during the relevant time period.

74. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class have been deprived of reimbursement in the amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorney's fees, and costs.

XII

SEVENTH CAUSE OF ACTION

WAITING TIME PENALTIES UNDER LABOR CODE § 203

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

76. Numerous members of the Proposed Class including the Plaintiff are no longer employed by Defendant. They were either fired or quit Defendant's employ.

77. Defendant's failure to pay wages, as alleged above was willful in that Defendant knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to

1 penalties under Labor Code § 203, which provides that an employee's wages shall continue as a
2 penalty until paid for a period of up to thirty (30) days from the time they were due.

3 78. Defendant has failed to pay Plaintiff and others a sum certain at the time of
4 termination or within seventy-two (72) hours of their resignation, and have failed to pay those
5 sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff
6 and the Proposed Class are entitled to a penalty in the amount of Plaintiff's and the Proposed
7 Class Members' daily wage multiplied by thirty (30) days.

8 **XIII**

9 **EIGHTH CAUSE OF ACTION**

10 **UNFAIR COMPETITION PURSUANT TO**

11 **BUSINESS & PROFESSIONS CODE § 17200**

12 79. Plaintiff incorporates each and every allegation set forth in all of the foregoing
13 paragraphs as if fully set forth herein.

14 80. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of
15 herself, on behalf of the general public, and on behalf of the Proposed Class, brings this claim
16 pursuant to Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged
17 in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the
18 general public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the
19 public interest within the meaning of Code of Civil Procedure § 1021.5.

20 81. Plaintiff is a "person" within the meaning of Business & Professions Code
21 § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution,
22 and other appropriate equitable relief.

23 82. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair
24 business practices.

25 83. California's wage and hour laws express fundamental public policies. Providing
26 employees with proper wages and compensation are fundamental public policies of this State
27 and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to
28 enforce vigorously minimum labor standards, to ensure that employees are not required or

1 permitted to work under substandard and unlawful conditions, and to protect law-abiding
2 employers and their employees from competitors who lower their costs by failing to comply
3 with minimum labor standards.

4 84. Defendant has violated statutes and public policies as alleged herein. Through
5 the conduct alleged in this Complaint, Defendant has acted contrary to these public policies,
6 have violated specific provisions of the Labor Code, and have engaged in other unlawful and
7 unfair business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving
8 Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and
9 privileges guaranteed to all employees under law.

10 85. Defendant's conduct, as alleged hereinabove, constitutes unfair competition in
11 violation of § 17200, *et seq.* of the Business & Professions Code.

12 86. Defendant, by engaging in the conduct herein alleged, either knew or in the
13 exercise of reasonable care, should have known that the conduct was unlawful. As such it is a
14 violation of § 17200, *et seq.* of the Business & Professions Code.

15 87. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and
16 others similarly situated have been damaged in a sum as may be proven.

17 88. Unless restrained, Defendant will continue to engage in the unlawful conduct as
18 alleged above. Pursuant to the Business & Professions Code, this court should make such
19 orders or judgments, including the appointment of a receiver, as may be necessary to prevent the
20 use or employment by Defendant, its agents, or employees, of any unlawful or deceptive
21 practices prohibited by the Business & Professions Code, and/or, including but not limited to,
22 restitution and disgorgement of profits which may be necessary to restore Plaintiff and the
23 Proposed Class the money Defendant has unlawfully failed to pay.

24 **XIV**

25 **NINTH CAUSE OF ACTION**

26 **PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ.**

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

1 90. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
2 § 2699, *et seq.* because of Defendant’s violation of Labor Code §§ 203, 226(a), 226.7, 510, 512,
3 1194, 1197, 1199, and 2802, which call for civil penalties.

4 91. For each such violation, Plaintiff and all other aggrieved employees are entitled
5 to penalties in an amount to be shown at the time of trial subject to the following formula:

- 6 a. \$100 for the initial violation per employee per pay period; and
7 b. \$200 for each subsequent violation per employee per pay period.

8 92. These penalties will be allocated 75% to the Labor Workforce Development
9 Agency and 25% to the affected employees.

10 93. On May 5, 2023, in compliance with Labor Code § 2699.3(a)(1), Plaintiff gave
11 written notice by online filing to the LWDA, setting forth the facts and theories of the violations
12 alleged against Defendant (“Notice Letter”, see Exhibit “1”) and paid the filing fee. Plaintiff
13 also mailed notice to Defendant by certified mail, return receipt requested, to the address listed
14 on the California Secretary of State’s website as the entity address for Defendant KLATCH
15 COFFEE INC., 8767 Onyx Ave., Rancho Cucamonga, CA 91730. (See Exhibit “2”).

16 94. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff
17 from the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of
18 May 5, 2023. Therefore, Plaintiff is entitled to commence a civil action as though the LWDA
19 has chosen not to investigate. Plaintiff will also provide the LWDA with a filed-stamped copy
20 of the First Amended Complaint immediately.

21
22 **RELIEF REQUESTED**

23 **WHEREFORE**, Plaintiff prays for the following relief:

24 1. For compensatory damages in the amount of unpaid wages and/or overtime not
25 paid to Plaintiff and each Proposed Class Member from at least four (4) years prior to the filing
26 of this action to the present as may be proven;

27 2. For compensatory damages in the amount of Plaintiff’s and each Proposed Class
28 Members’ hourly wage for each meal period missed or taken late from at least four (4) years

1 prior to the filing of this action to the present as may be proven;

2 3. For compensatory damages in the amount of Plaintiff's and each Proposed Class
3 Members' hourly wage for each rest period missed or taken late from at least four (4) years prior
4 to the filing of this action to the present as may be proven;

5 4. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code
6 § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs
7 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not
8 exceeding an aggregate penalty of four thousand dollars (\$4,000);

9 5. For compensatory damages in the amount of Plaintiff's and each Proposed Class
10 Members' out of pocket expenses as a requirement of employment;

11 6. For penalties pursuant to Labor Code § 203 for all employees who were
12 terminated or resigned equal to their daily wage times thirty (30) days;

13 7. An award of prejudgment and post judgment interest;

14 8. An order enjoining Defendant and its agents, servants, and employees, and all
15 persons acting under, in concert with, or for it from providing Plaintiff and the Proposed Class
16 with proper wages and/or overtime, accurate time records, meal periods, rest periods, accurate
17 itemized wage statements, reimbursement of expenses, and wages upon termination/resignation
18 pursuant to Labor Code §§ 203, , 226(a), 226.7, 510, 512, 1194, 1197, 1199, 2802, and IWC 4-
19 2001;

20 9. For restitution for unfair competition pursuant to Business & Professions Code
21 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

22 10. For penalties and other relief pursuant to Labor Code § 2699, *et seq.*;

23 11. An award providing for payment of costs of suit;

24 12. An award of attorney's fees; and

25 13. Such other and further relief as this Court may deem proper and just.

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

DATED: July 31, 2023

KINGSLEY & KINGSLEY, APC

By: 

DARREN M. COHEN

Attorneys for Plaintiff and the Proposed Class

EXHIBIT 1

KINGSLEY & KINGSLEY

| L A W Y E R S |

May 5, 2023

PAGAfilings@dir.ca.gov
<https://dir.tfaforms.net/308>

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

KLATCH COFFEE INC.
8767 Onyx Ave.
Rancho Cucamonga, CA 91730
Certified Mailing: # 7022 3330 0002 1335 6284

Re: Shealtiel Dow v. Klatch Coffee Inc.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Shealtiel Dow (“Plaintiff”) for the violations of California Labor Code §§ 203, 226(a), 226.7, 510, 512, 1194, 1197, 1199, and 2802. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et seq.* We herein set forth the facts and theories of California Labor Code violations, which we allege Klatch Coffee Inc. (“Defendant”) engaged in with respect to our client and all of their California employees.

Plaintiff wishes to bring a representative action on behalf of herself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as an hourly employee by Klatch Coffee, Inc., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’ (“aggrieved employees”).

Any limitations period referenced in this letter is extended pursuant to Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil

LABOR & WORKFORCE DEVELOPMENT AGENCY

KLATCH COFFEE INC.

California Labor Code § 2699 Penalties

May 5, 2023

Page 2 of 4

actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”]. Any reference to the relevant time period or statute of limitations referenced in this letter is extended into the past by the number of days in which this tolling was in effect.

Specifically, Defendant has violated Labor Code §§ 510, 1194 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and the aggrieved employees for all hours worked. On a regular and consistent basis, Defendant requires Plaintiff and the aggrieved employees to work “off the clock” without compensation. Defendant requires Plaintiff and the aggrieved employees to use the company “app” on their personal cellphones in order to communicate regarding work related issues. Plaintiff and the aggrieved employees are required to respond to the communication while “off the clock” without the proper compensation. This resulted in underpayment of minimum wages and/or overtime. As such, Plaintiff and the aggrieved employees were not paid for all hours worked at the proper rate.

Further, IWC Wage Order 4, ¶ 7 imposes on employers an obligation to record and maintain accurate records of time worked and meal periods. Labor Code § 1199 prohibits an employer from causing any employee to work under conditions of labor prohibited by an order of the IWC or from violating, refusing, or neglecting to comply with any order of the commission’s orders regarding wages, hours, and working conditions. Defendant does not maintain accurate records of time worked and meal periods for Plaintiff and the aggrieved employees. As such, Defendant has violated this statute and the Wage Order by failing to keep accurate records.

Also, Defendant has violated Labor Code § 512. Labor Code § 512 states that an employer may not employ an employee for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes. Additionally, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that a thirty-minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner. Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods and failed to provide compliant meal periods. Defendant required Plaintiff and the aggrieved employees to work shifts without providing them with meal periods. When employees were required to work through meal periods, Defendant failed to pay such employees one hour of pay at their regular rate of compensation.

Further, pursuant to Labor Code § 226.7 and Wage Order 4-2001, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Defendant failed to provide Plaintiff and the aggrieved employees with these rest periods and failed to inform them of their right to rest periods. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages at their regular rate of compensation for each missed rest period as required by Labor Code § 226.7.

Defendant engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a), which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing a number of specific items. Labor Code § 226(a)(2) requires that the itemized wage statement properly state the total hours worked by the employee. Plaintiff and the aggrieved employees are issued wage statements that do not state the total hours worked during the pay period. Labor Code § 226(a)(9) requires that the itemized wage statement properly state all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Plaintiff and the aggrieved employees are issued wage statements that do not include the applicable regular rate, overtime rate, and double time rates. In addition, Plaintiff and the aggrieved employees are issued wage statements that do not include the correct number of hours worked at each applicable hourly rate and do not include meal/rest period premiums. As such, Defendant has violated Labor Code § 226(a) with respect to Plaintiff and the aggrieved employees.

In addition, Labor Code § 2802 and Wage Order 4-2001 require employers to indemnify employees for all necessary expenditures incurred by employees in the discharge of their duties. Defendant has failed to properly reimburse Plaintiff and aggrieved employees the cost of using and maintaining their own personal cell phones. These expenses were incurred as a necessary part of the performance of Plaintiff's and the aggrieved employees' job duties. As such, Defendant violated Labor Code § 2802.

Lastly, Labor Code § 203 provides that if "an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." Here, Plaintiff and all aggrieved employees were not timely paid all wages due upon their separation from Defendant's employ as required. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code § 203.

Defendant's failure to provide wages and/or overtime, failure to maintain accurate records, failure to provide meal and rest periods, failure to provide compliant itemized wage statements, failure to reimburse expenses, and failure to pay all wages upon termination/resignation were all done on a regular and consistent basis.

LABOR & WORKFORCE DEVELOPMENT AGENCY

KLATCH COFFEE INC.

California Labor Code § 2699 Penalties

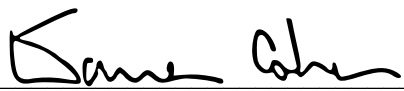
May 5, 2023

Page 4 of 4

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 203, 226(a), 226.7, 510, 512, 1194, 1197, 1199, and 2802 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 
DARREN M. COHEN

DMC/mt

LWDA Filed Electronic Submission via <https://dir.tfaforms.net/308>

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

KLATCH COFFEE INC. # 7022 3330 0002 1335 6284

EXHIBIT 2

USPS TRACKING #



9590 9402 7019 1225 1740 52

United States
Postal Service

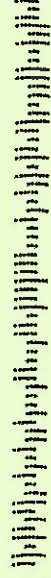
First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4® in this box•

KINGSLEY & KINGSLEY, APC
16133 VENTURA BLVD.
SUITE 1200
ENCINO, CA 91436

PADA Ctr.

Klatch Coffee



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Klatch Coffee Inc.
8767 onyx Ave.
Rancho Cucamonga, CA 91730



9590 9402 7019 1225 1740 52

2. Article Number (Transfer from service label)

7022 3330 0002 1335 6284

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒☐ Agent☐ Addressee

B. Received by (Printed Name)

VALERIE

C. Date of Delivery

9/18/12

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Mail☐ Mail Restricted Delivery☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt