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on behalf of herself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS**

SAMANTHA COUGHLIN, on behalf of herself
and others similarly situated,

Plaintiff,

vs.

FRESHPOINT CENTRAL CALIFORNIA,
INC.; and DOES 1 to 100, inclusive,

Defendants.

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Superior Court of California
County of Stanislaus
Clerk of the Court
By: Stephani Crow, Deputy

Case No.: CV-23-004628

CLASS ACTION

**PLAINTIFF SAMANTHA
COUGHLIN'S FIRST AMENDED
COMPLAINT FOR DAMAGES AND
RESTITUTION FOR:**

- 1. DECLARATORY RELIEF**
- 2. FAILURE TO PAY OVERTIME
WAGES FOR DAILY
OVERTIME WORKED IN
VIOLATION OF LABOR CODE
SECTIONS 510 AND 1194**
- 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 PROVIDE
COMPLETE AND ACCURATE
WAGE STATEMENTS IN
VIOLATION OF LABOR CODE
SECTION 226**

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6. **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**
7. **UNFAIR BUSINESS PRACTICES, IN VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTIONS 17200, ET SEQ.**
8. **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (“PAGA”), LABOR CODE SECTIONS 2698, ET SEQ.**

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff SAMANTHA COUGHLIN (“Plaintiff”), who alleges and complains against Defendants FRESHPOINT CENTRAL CALIFORNIA, INC.; and DOES 1 to 100, inclusive (collectively, “Defendants”) as follows:

I. INTRODUCTION

1. This is a class action lawsuit seeking declaratory relief; unpaid wages and interest thereon for failure to pay overtime wages for overtime hours worked; failure to authorize or permit all legally required and/or compliant meal periods or pay meal period premium wages; failure to authorize or permit all legally required and/or compliant rest periods or pay rest period premium wages; statutory penalties for failure to provide accurate wage statements; statutory waiting time penalties in the form of continuation wages for failure to timely pay employees all wages due upon separation of employment; injunctive relief and other equitable relief; reasonable attorneys’ fees pursuant to Labor Code sections 218.5, 226(e) and 1194; costs; and interest brought on behalf of Plaintiff and others similarly situated. Plaintiff also seeks on a representative basis, following notice to the Labor and Workforce Development Agency, civil penalties, reasonable attorneys’ fees pursuant to Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California, and others aggrieved.

/ / /

1 **II. JURIDISCTION AND VENUE**

2 2. This Court has jurisdiction over Plaintiff's and putative class members' claims for
3 declaratory relief; unpaid wages and interest thereon for failure to pay overtime wages for
4 overtime hours worked; failure to authorize or permit all legally required and/or compliant meal
5 periods or pay meal period premium wages; failure to authorize or permit all legally required
6 and/or compliant rest periods or pay rest period premium wages; statutory penalties for failure to
7 provide accurate wage statements; statutory waiting time penalties in the form of continuation
8 wages for failure to timely pay employees all wages due upon separation of employment; and
9 claims for injunctive relief and restitution under California Business and Professions Code
10 sections 17200, *et seq.*, for the following reasons: Defendants operate throughout California;
11 Defendants employed Plaintiff and putative class members in locations throughout California,
12 including but not limited to Stanislaus County, at 5900 N. Golden State Blvd, Turlock, CA 95382,
13 more than two-thirds of putative class members are California citizens; the principal violations of
14 California law occurred in California; no other class actions have been filed against Defendants in
15 the last four (4) years alleging wage and hour violations; the conduct of Defendants forms a
16 significant basis for Plaintiff's and putative class members' claims; and Plaintiff and putative class
17 members seek significant relief from Defendants.

18 **III. PARTIES**

19 3. Plaintiff brings this action on behalf of herself and other members of the general
20 public similarly situated. The named Plaintiff and the class of persons on whose behalf this action
21 is filed are current, former, and/or future employees of Defendants as direct employees who were
22 misclassified by Defendant as salaried employees despite that they did not earn a minimum
23 monthly salary of no less than two times the state minimum wage and, as such, should have been
24 classified as hourly non-exempt employees. At all times mentioned herein, the currently named
25 Plaintiff is and was a resident of California and was employed by Defendants in the State of
26 California within the four (4) years prior to the filing of this Complaint.

27 4. Defendants employed Plaintiff as an hourly non-exempt employee from in or
28 around November 2021 to November 2, 2023.

1 5. Plaintiff is informed and believes and thereon alleges that Defendants employed her
2 and other employees were misclassified by Defendant as salaried employees despite that they did
3 not earn a minimum monthly salary of no less than two times the state minimum wage and, as
4 such, should have been classified as hourly non-exempt employees throughout the State of
5 California and therefore their conduct forms a significant basis of the claims asserted in this
6 matter.

7 6. Plaintiff is informed and believes and thereon alleges that Defendant
8 FRESHPOINT CENTRAL CALIFORNIA, INC. is authorized to do business within the State of
9 California and is doing business in the State of California and/or that Defendants DOES 1-50 are,
10 and at all times relevant hereto were persons acting on behalf of Defendant FRESHPOINT
11 CENTRAL CALIFORNIA, INC. in the establishment of, or ratification of, the aforementioned
12 illegal wage and hour practices or policies. Defendant FRESHPOINT CENTRAL CALIFORNIA,
13 INC. operates in Stanislaus County and employed Plaintiff and putative class members in
14 Stanislaus County, including but not limited to, at 5900 N. Golden State Blvd, Turlock, CA 95382.

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

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

26 9. Plaintiff is informed and believes and thereon alleges that at all relevant times, each
27 Defendant was an employer, was the principal, agent, partner, joint venturer, officer, director,
28 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or

1 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
2 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
3 of the other defendants so as to be liable for their conduct with respect to the matters alleged in
4 this Complaint. Plaintiff is further informed and believe and thereon allege that Defendants acted
5 pursuant to and within the scope of the relationships alleged above, and that at all relevant times,
6 Defendants knew or should have known about, authorized, ratified, adopted, approved, controlled,
7 aided and abetted the conduct of all other Defendants. As used in this Complaint, "Defendant"
8 means "Defendants and each of them," and refers to the Defendant named in the particular cause
9 of action in which the word appears and includes Defendants FRESHPOINT CENTRAL
10 CALIFORNIA, INC.; and DOES 1 to 100, inclusive.

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

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

18 **IV. DESCRIPTION OF ILLEGAL PAY PRACTICES**

19 12. Pursuant to the applicable Industrial Welfare Commission ("IWC") Wage Order
20 ("Wage Order"), codified at California Code of Regulations, title 8, section 11090, Defendants are
21 employers of Plaintiff within the meaning of Wage Order 9 and applicable Labor Code sections.
22 Therefore, each of these Defendants is jointly and severally liable for the wrongs complained of
23 herein in violation of the Wage Order and the Labor Code.

24 13. **Defendants misclassified Plaintiff and similarly situated employees who did**
25 **not earn a minimum monthly salary of no less than two times the state minimum wage as**
26 **exempt employees:** Defendants employed and classified Plaintiff as an exempt employee as a
27 marketing specialist from in or around November 2021 to November 2, 2023.
28

1 14. Labor Code, § 515, subd. (a); Cal. Code of Regs., tit. 8, § 11090(A)(1)(f) provide
2 that, for each exempted category, the employee must earn “a monthly salary equivalent to no less
3 than two (2) times the state minimum wage for full-time employment.”

4 15. Throughout the relevant time period, Defendants classified Plaintiff and similarly
5 situated employees who did not earn a minimum monthly salary of no less than two times the state
6 minimum wage as exempt solely for the purposes of avoiding requirements of the California
7 Labor Code as it pertains to the payment of working conditions of hourly employees.

8 16. Specifically, because of their classification as exempt employees, Defendants failed
9 to keep track of the hours, including the overtime hours that Plaintiff and similarly situated
10 employees worked, failed to pay them at least minimum wage for all hours worked, failed to pay
11 them overtime wages for overtime hours worked, failed to provide them meal and rest breaks,
12 failed to provide them with complete and accurate wage statements, and, for former employees,
13 failed to pay them all the wages that they were owed upon the termination of their employment.

14 17. However, because Plaintiff and similarly situated employees did not meet the
15 salary test of earning a minimum monthly salary of no less than two times the state minimum
16 wage they could not be classified as exempt employees as a matter of law.

17 18. **Failure to pay wages for all hours worked in excess of eight hours per day at**
18 **the employees’ overtime rate of pay:** California Labor Code sections 510 and 1194 require an
19 employer to compensate employees a higher rate of pay for hours worked in excess of eight hours
20 in a workday:

21 Any work in excess of eight hours in one workday and any work in excess of 40
22 hours in any one workweek and the first eight hours worked on the seventh day of
23 work in any one workweek shall be compensated at the rate of no less than one and
24 one-half times the regular rate of pay for an employee. Any work in excess of 12
25 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.

26 (Cal. Lab. Code §510.)

27 Further, California Labor Code section 1198 provides,

28 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.

19. Here, Plaintiff maintains that Defendants routinely required her and similarly situated employees who were misclassified by Defendant as salaried employees despite that did not earn a minimum monthly salary of no less than two times the state minimum wage to work in excess of eight hours per day and/or 40 hours in one week. Nevertheless, Defendants compensated these employees at their salaried rate regardless of the numbers of hours worked and despite that they routinely worked in excess of eight hours per day and/or 40 hours in one week.

20. This resulted in time each workday which Plaintiff and similarly situated employees who were misclassified as exempt who were under the Defendant's control but were not compensated at their overtime rate of pay in violation of Labor Code sections 510, 1194, 1198, and the applicable Wage Order.

21. **Failure to authorize or permit all legally required and compliant meal periods and/or failure to pay meal period premium wages:** Defendants often employed misclassified exempt employees, including the named Plaintiff and similarly situated employees, for shifts longer than five (5) hours in length and shifts longer than ten (10) hours in length.

22. California law requires an employer to authorize or permit an uninterrupted meal period of no less than thirty (30) minutes no later than the end of the employee's fifth hour of work and a second meal period no later than the employee's tenth hour of work. Labor Code §512. If the employee is not relieved of all duties 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 (1) hour of pay at the employee's regular rate of pay for each workday that a legally required and compliant meal period was not provided. Labor Code §226.7.

1 23. Here, Plaintiff and similarly situated employees who were misclassified by
2 Defendant as salaried employees despite that they did not earn a minimum monthly salary of no
3 less than two times the state minimum wage worked shifts long enough to entitle them to meal
4 periods under California law. Nevertheless, Defendants employed policies, practices, and/or
5 procedures that resulted in their failure to authorize or permit meal periods to Plaintiff and
6 similarly situated employees of no less than thirty (30) minutes for each five-hour period of work
7 as required by law. Such policies, practices, and/or procedures included, but were not limited to,
8 failing to provide Plaintiff and similarly situated employees who Defendant misclassified as
9 exempt with meal breaks.

10 24. Additionally, Defendants failed to pay Plaintiff and similarly situated employees a
11 meal period premium wage of one (1) additional hour of pay at their regular rate of compensation
12 for each workday the employees did not receive all legally required and compliant meal periods.
13 Defendants employed policies and procedures which ensured that employees did not receive any
14 meal period premium wages to compensate them for workdays in which they did not receive all
15 legally required and compliant meal periods.

16 25. The aforementioned policies, practices, and/or procedures of Defendants resulted in
17 Plaintiff and similarly situated employees not being provided with all legally required and
18 compliant meal periods and/or not receiving premium wages to compensate them for such
19 instances, all in violation of California law.

20 26. **Failure to authorize and permit all legally required and compliant rest periods**
21 **and/or failure to pay rest period premiums:** Defendants often employed misclassified exempt
22 employees, including the named Plaintiff and similarly situated employees, for shifts of least
23 three-and-a-half (3.5) hours.

24 27. California law requires every employer to authorize and permit an employee a rest
25 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
26 Code §226.7. If the employer fails to authorize or permit a required rest period, the employer must
27 pay the employee one (1) hour of pay at the employee's regular rate of compensation for each
28 workday the employer did not authorize or permit a legally required rest period. *Id.* Under

1 California law, “[e]mployees are entitled to 10 minutes’ rest for shifts from three and one-half to
2 six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for
3 shifts of more than 10 hours up to 14 hours, and so on.” *Brinker Restaurant Corp. v. Sup. Ct.*
4 (*Hohnbaum*) (2012) 53 Cal.4th 1004, 1029; Labor Code §226.7. Rest periods, insofar as
5 practicable, shall be in the middle of each work period. Additionally, the rest period requirement
6 “obligates employers to permit – and authorizes employees to take – off-duty rest periods.”
7 *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods
8 employers must relieve employees of all duties and relinquish control over how employees spend
9 their time. *Id.*

10 28. In this case, Plaintiff and similarly situated employees who were misclassified by
11 Defendant as salaried employees despite that they did not earn a minimum monthly salary of no
12 less than two times the state minimum wage regularly worked shifts of more than three-and-a-half
13 (3.5) hours. Nevertheless, Defendants employed policies, practices, and/or procedures that resulted
14 in their failure to authorize or permit all legally required and compliant rest periods to Plaintiff and
15 similarly situated employees. Such policies, practices, and/or procedures included misclassifying
16 Plaintiff and similarly situated managers and/or assistant managers who were misclassified as
17 exempt and, consequently, failing to provide them rest breaks.

18 29. Additionally, Defendants failed to pay Plaintiff and similarly situated employees a
19 rest period premium wage of one (1) additional hour of pay at their regular rate of compensation
20 for each workday the employees did not receive all legally required and compliant rest periods.
21 Defendants employed policies and procedures which ensured that employees did not receive any
22 rest period premium wages to compensate them for workdays in which they did not receive all
23 legally required and compliant rest periods.

24 30. The aforementioned policies, practices, and/or procedures of Defendants resulted in
25 Plaintiff and similarly situated employees not being provided with all legally required and
26 compliant rest periods and/or not receiving premium wages to compensate them for such
27 instances, all in violation of California law.

28 31. **Failure to provide accurate wage statements:** Labor Code section 226(a)

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

13 32. As a derivative of Plaintiff’s claims above, Plaintiff alleges that Defendants failed
14 to provide accurate wage and hour statements to her and other similarly situated employees who
15 were misclassified by Defendant as salaried employees despite that they did not earn a minimum
16 monthly salary of no less than two times the state minimum wage and were subject to Defendants’
17 control for uncompensated time and who did not receive all their earned wages (including
18 overtime wages, meal period premium wages, and/or rest period premium wages), in violation of
19 Labor Code section 226.

20 33. **Failure to timely pay final wages:** An employer is required to pay all unpaid
21 wages timely after an employee’s employment ends. The wages are due immediately upon
22 termination or within seventy-two (72) hours of resignation. Labor Code sections 201, 202.

23 34. As a result of the aforementioned violations of the Labor Code, Plaintiff alleges
24 that her, and on information and belief, other similarly situated employees, who were misclassified
25 by Defendant as salaried employees despite that they did not earn a minimum monthly salary of
26 no less than two times the state minimum wage were not paid their final wages in a timely manner
27 as required by Labor Code section 203. Overtime wages for overtime hours worked, meal period
28 premium wages, and/or rest period premium wages (all described above), were not paid at the time

1 of Plaintiff's and other similarly situated employees' separation of employment, whether
2 voluntarily or involuntarily, as required by Labor Code sections 201, 202, and 203.

3 **V. CLASS DEFINITIONS AND CLASS ALLEGATIONS**

4 35. Plaintiff brings this action on behalf of herself, on behalf of others similarly
5 situated, and on behalf of the general public, and as members of a Class defined as follows:

6 A. **Misclassification Class:** All current and former employees who were
7 classified by Defendant as salaried employees despite that they did not earn a minimum monthly
8 salary of no less than two times the state minimum wage in California at any time within the four
9 years prior to the filing of the initial complaint in this action and through the date notice is mailed
10 to a certified class who were misclassified by Defendants as "exempt employees."

11 B. **Overtime Class:** All current and former employees who were classified by
12 Defendant as salaried employees despite that they did not earn a minimum monthly salary of no
13 less than two times the state minimum wage in California at any time from four (4) years prior to
14 the filing of the initial Complaint in this matter through the date notice is mailed to a certified
15 class who, as a result of their misclassification as exempt, worked more than eight (8) hours in a
16 workday, forty (40) hours in a workweek, and/or seven (7) days in a workweek, to whom
17 Defendants did not pay overtime wages.

18 C. **Meal Period Class:** All current and former employees who were classified
19 by Defendant as salaried employees despite that they did not earn a minimum monthly salary of
20 no less than two times the state minimum wage in California at any time from four (4) years prior
21 to the filing of the initial Complaint in this matter through the date notice is mailed to a certified
22 class who worked shifts more than five (5) hours yet Defendants failed to authorize or permit all
23 required duty-free meal periods of not less than thirty (30) minutes.

24 D. **Rest Period Class:** All current and former employees who were classified
25 by Defendant as salaried employees despite that they did not earn a minimum monthly salary of
26 no less than two times the state minimum wage in California at any time from four (4) years prior
27 to the filing of the initial Complaint in this matter through the date notice is mailed to a certified
28 class who worked shifts of at least three-and-a-half (3.5) hours who did not receive all required

1 duty-free rest periods of a net ten (10) minutes for every four (4) hours worked or major fraction
2 thereof.

3 E. **Wage Statement Class:** All current and former employees who were
4 classified by Defendant as salaried employees despite that they did not earn a minimum monthly
5 salary of no less than two times the state minimum wage in California at any time from one (1)
6 year prior to the filing of the initial Complaint in this action through the date notice is mailed to a
7 certified class who received inaccurate or incomplete wage and hour statements.

8 F. **Waiting Time Class:** All current and former employees who were
9 classified by Defendant as salaried employees despite that they did not earn a minimum monthly
10 salary of no less than two times the state minimum wage in California at any time from three (3)
11 years prior to the filing of the initial Complaint in this action through the date notice is mailed to a
12 certified class who did not receive payment of all unpaid wages upon separation of employment
13 within the statutory time period.

14 G. **California Class:** All aforementioned classes are herein collectively
15 referred to as the "California Class."

16 36. There is a well-defined community of interest in the litigation and the classes are
17 ascertainable:

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

21 B. **Common Questions Predominate:** Common questions of law and fact
22 exist as to all members of the Plaintiff classes and predominate over any questions that affect only
23 individual members of each class. The common questions of law and fact include, but are not
24 limited to:

25 i. Whether Defendants misclassified Plaintiff and the members for the
26 Misclassification Class as exempt employees when they should have been classified as non-
27 exempt

28 ii. Whether Defendants violated Labor Code sections 510 and 1194 by

1 not paying the Overtime Class Members at the applicable overtime rate for working in excess of
2 eight (8) hours in a workday, in excess of forty (40) hours in a workweek, and/or seven (7) days in
3 a workweek;

4 iii. Whether Defendants violated Labor Code sections 512 and 226.7, as
5 well as the applicable Wage Order, by employing the Meal Period Class Members without
6 providing all compliant and/or required meal periods and/or paying meal period premium wages;

7 iv. Whether Defendants violated Labor Code section 226.7 by
8 employing the Rest Period Class Members without providing all compliant and/or required rest
9 periods and/or paying rest period premium wages;

10 v. Whether Defendants failed to provide the Wage Statement Class
11 Members with accurate itemized statements at the time they received their itemized statements;

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

15 vii. Whether Defendants committed unlawful business acts or practice
16 within the meaning of Business and Professions Code sections 17200, *et seq.*;

17 viii. Whether Class Members are entitled to unpaid wages, penalties, and
18 other relief pursuant to their claims;

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

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

23 C. **Typicality:** Plaintiff's claims are typical of the claims of the class members
24 in each of the classes. Plaintiff and members of the Misclassification Class sustained damages
25 arising out of Defendants' classification of them as "exempt employees" rather than "non-
26 exempt." Plaintiff and members of the Overtime Wage Class sustained damages arising out of
27 Defendants' failure to pay overtime wages for overtime hours worked. Plaintiff and members of
28 the Meal Period Class sustained damages arising out of Defendants' failure to provide

1 misclassified employees with all required meal periods and/or meal periods that were duty-free
2 and not less than thirty (30) minutes and/or failure to pay meal period premium wages as
3 compensation. Plaintiff and members of the Rest Period Class sustained damages arising out of
4 Defendants' failure to provide misclassified employees with all required rest periods and/or rest
5 periods that were duty-free and of a net ten (10) minutes and/or failure to pay rest period premium
6 wages as compensation. Plaintiff and members of the Wage Statement Class sustained damages
7 arising out of Defendants' failure to furnish them with accurate itemized wage statements in
8 compliance with Labor Code section 226. Plaintiff and members of the Waiting Time Class
9 sustained damages arising out of Defendants' failure to provide all unpaid yet earned wages due
10 upon separation of employment within the statutory time limit.

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

14 **E. Superiority:** A class action is superior to other available means for the fair
15 and efficient adjudication of this controversy. Because individual joinder of all members of each
16 class is impractical, class action treatment will permit a large number of similarly situated persons
17 to prosecute their common claims in a single forum simultaneously, efficiently, and without the
18 unnecessary duplication of effort and expense that numerous individual actions would engender.
19 The expenses and burdens of individual litigation would make it difficult or impossible for
20 individual members of each class to redress the wrongs done to them, while important public
21 interests will be served by addressing the matter as a class action. The cost to and burden on the
22 court system of adjudication of individualized litigation would be substantial, and substantially
23 more than the costs and burdens of a class action. Individualized litigation would also present the
24 potential for inconsistent or contradictory judgments.

25 **F. Public Policy Consideration:** Employers throughout the state violate wage
26 and hour laws. Current employees often are afraid to assert their rights out of fear of direct or
27 indirect retaliation. Former employees fear bringing actions because they perceive their former
28 employers can blacklist them in their future endeavors with negative references or by other means.

1 Class actions provide the class members who are not named in the Complaint with a type of
2 anonymity that allows for vindication of their rights.

3 **FIRST CAUSE OF ACTION**

4 **DECLARATORY RELIEF**

5 **(Against All Defendants by Plaintiff and the Misclassification Class)**

6 37. Plaintiff incorporates all paragraphs above as though fully set forth herein.

7 38. At all times relevant to this Complaint, Plaintiff and the Misclassification Class, on
8 the one hand, and Defendants on the other, relating the following matters:

9 39. Whether Defendants misclassified Plaintiff and the Misclassification Class as
10 “exempt employees” when, in fact, they were “non-exempt.”

11 40. Plaintiff and the Misclassification Class further seek declaratory relief against all
12 Defendants herein and in their favor, which declares Defendants’ practices to be unlawful, and
13 which provides for recovery of all sums determined by the Court to be owed by Defendants, and
14 each of them, to Plaintiff and the Misclassification Class

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF LABOR CODE**

17 **SECTIONS 510 and 1194**

18 **(Against All Defendants by Plaintiff and the Overtime Class)**

19 41. Plaintiff incorporates all paragraphs above as though fully set forth herein.

20 42. At times relevant to this Complaint, Plaintiff and the Overtime Class were hourly
21 non-exempt employees of Defendants, covered by Labor Code sections 510 and 1194 and the
22 Wage Order 9.

23 43. Pursuant to Labor Code sections 510 and 1194 and the Wage Order 9, hourly non-
24 exempt employees are entitled to receive a higher rate of pay for all hours worked in excess of
25 eight (8) hours in a workday, forty (40) hours in a workweek, and on the seventh day of work in a
26 workweek.

27 44. Labor Code section 510, subdivision (a), states in relevant part:

28 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.

45. Further, Labor Code section 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.

46. Despite California law requiring employers to pay employees a higher rate of pay for all hours worked more than eight (8) hours in a workday, more than forty (40) hours in a workweek, and on the seventh day of work in a workweek, Defendants failed to pay all overtime wages to Plaintiff and the Overtime Class for their daily overtime hours worked.

47. Here, Plaintiff maintains that Defendants routinely required her and the Overtime Class to work in excess of eight hours per day and/or 40 hours in one week. Nevertheless, Defendants compensated, Plaintiff and Overtime Class specialists at their salaried rate regardless of the numbers of hours worked. This resulted in time each workday which Plaintiff and the Overtime Class who were under the Defendant's control but were not compensated at their overtime rate of pay in violation of Labor Code sections 510, 1194, 1198, and the applicable Wage Order.

48. As a result of Defendants' unlawful conduct, Plaintiff and the Overtime Class have suffered damages in an amount subject to proof, to the extent that they were not paid at their overtime rate of pay for all hours worked which constitute overtime.

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

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1 **THIRD CAUSE OF ACTION**

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

4 **(Against All Defendants by Plaintiff and the Meal Period Class)**

5 50. Plaintiff incorporates all paragraphs above as though fully set forth herein.

6 51. At all times relevant to this Complaint, Plaintiff and the Meal Period Class were
7 hourly non-exempt employees of Defendants, covered by Labor Code sections 512 and 226.7 and
8 the Wage Order.

9 52. California law requires an employer to authorize or permit an employee an
10 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
11 all duties and the employer relinquishes control over the employee's activities no later than the
12 end of the employee's fifth hour of work and a second meal period no later than the employee's
13 tenth hour of work. Labor Code sections 226.7, 512; Wage Order 9, §11; *Brinker Rest. Corp. v.*
14 *Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. If the employer requires the employee to remain at
15 the work site or facility during the meal period, the meal period must be paid. This is true even
16 where the employee is relieved of all work duties during the meal period. *Bono Enterprises, Inc. v.*
17 *Bradshaw* (1995) 32 Cal.App.4th 968. Labor Code section 226.7 provides that if an employee
18 does not receive a required meal or rest period that "the employer shall pay the employee one
19 additional hour of pay at the employee's regular rate of compensation for each work day that the
20 meal or rest period is not provided."

21 53. In this case, Plaintiff and the Meal Period Class worked shifts long enough to
22 entitle them to meal periods under California law. Nevertheless, Defendants employed policies,
23 practices, and/or procedures that resulted in their failure to authorize or permit meal periods to
24 Plaintiff and the Meal Period Class of no less than thirty (30) minutes for each five-hour period of
25 work as required by law. Such policies, practices, and/or procedures included, but were not limited
26 to: failing to provide Plaintiff and the Meal Period Class with meal breaks.

27 54. Additionally, Defendants failed to pay Plaintiff and the Meal Period Class one (1)
28 hour of pay at their regular rate of pay for each workday they did not receive all legally required

1 and legally compliant meal periods. Defendants lacked a policy and procedure for compensating
2 Plaintiff and the Meal Period Class with premium wages when they did not receive all legally
3 required and legally compliant meal periods.

4 55. Defendants' unlawful conduct alleged herein occurred in the course of
5 employment of Plaintiff and the Meal Period Class and such conduct has continued through the
6 filing of this Complaint.

7 56. Because Defendants failed to provide employees with meal periods in compliance
8 with the law, Defendants are liable to Plaintiff and the Meal Period Class for one (1) hour of
9 additional pay at the regular rate of compensation for each workday that Defendants did not
10 provide all legally required and legally compliant meal periods, pursuant to Labor Code section
11 226.7 and the Wage Order.

12 57. Plaintiff, on behalf of herself and the Meal Period Class seeks damages and all
13 other relief allowable, including a meal period premium wage for each workday Defendants failed
14 to provide all legally required and legally compliant meal periods, plus pre-judgment interest.

15 **FOURTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF**
17 **CALIFORNIA LABOR CODE SECTION 226.7 AND THE WAGE ORDER**

18 **(As Against All Defendants by the Rest Period Class)**

19 58. Plaintiff hereby incorporates the paragraphs above, as if fully set herein by
20 reference.

21 59. At all times relevant to this Complaint, Plaintiff and the members of the Rest
22 Period Class were employees of Defendants, covered by California Labor Code section 226.7 and
23 the Wage Order.

24 60. California law requires an employer to authorize or permit an employee to take a
25 rest period of ten (10) net minutes for every four hours worked. Cal. Lab. Code §226.7; Wage
26 Order §12. Such rest periods must be in the middle of the four-hour period "insofar as
27 practicable." *Id.* If the employer fails to provide any required rest period, the employer must pay
28 the employee one hour of pay at the employee's regular rate of compensation for each work day

1 the employer did not provide at least one legally required rest period. *Id.*

2 61. Here, Plaintiff alleges that Defendants failed to provide Plaintiff and the members
3 of the Rest Period Class with 10 minutes' rest for shifts.

4 62. Plaintiff, on behalf of herself and on behalf of the Rest Period Class, seeks damages
5 and all other relief allowable including rest period premium wages for each workday the employee
6 was not provided with all required rest periods of ten net minutes, plus prejudgment interest.

7 63. Pursuant to California Labor Code section 226.7 and the Wage Order, Plaintiff and
8 the Rest Period Class Members are entitled to one hour of pay for each workday Defendants failed
9 to provide all required rest periods, plus prejudgment interest.

10 **FIFTH CAUSE OF ACTION**

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

13 **(Against All Defendants by Plaintiff and the Wage Statement Class)**

14 64. Plaintiff incorporates all paragraphs above as though fully set forth herein.

15 65. At all times relevant to this Complaint, Plaintiff and the Wage Statement Class
16 were hourly, non-exempt employees of Defendants, covered by Labor Code section 226.

17 66. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and the Wage
18 Statement Class were entitled to receive, semimonthly or at the time of each payment of wages, an
19 itemized wage statement accurately stating the following:

20 (1) gross wages earned, (2) total hours worked by the employee, except for any
21 employee whose compensation is solely based on a salary and who is exempt from
22 payment of overtime under subdivision (a) of Section 515 or any applicable order of
23 the Industrial Welfare Commission, (3) the number of piece-rate units earned and
24 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
25 deductions, provided that all deductions made on written orders of the employee
26 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
27 dates of the period for which the employee is paid, (7) the name of the employee
28 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.

67. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
to provide accurate wage and hour statements to her and the Wage Statement Class who were

1 subject to Defendants' control for uncompensated time and who did not receive all their earned
2 wages (including overtime wages, meal period premium wages, and/or rest period premium
3 wages), in violation of Labor Code section 226.

4 68. Defendants provided Plaintiff and the Wage Statement Class with itemized
5 statements which stated inaccurate information including, but not limited to, the number of hours
6 worked, the gross wages earned, and the net wages earned.

7 69. Defendants' failure to provide Plaintiff and the Wage Statement Class with
8 accurate wage statements was knowing and intentional. Defendants had the ability to provide
9 Plaintiff and the Wage Statement Class with accurate wage statements but intentionally provided
10 wage statements they knew were not accurate. Defendants knowingly and intentionally put in
11 place practices which deprived employees of wages and resulted in Defendants knowingly and
12 intentionally providing inaccurate wage statements. These practices included Defendants' failure
13 to include all hours worked and all wages due.

14 70. As a result of Defendants' unlawful conduct, Plaintiff and the Wage Statement
15 Class have suffered injury. The absence of accurate information on their wage statements has
16 prevented earlier challenges to Defendants' unlawful pay practices, will require discovery and
17 mathematical computations to determine the amount of wages owed, and will cause difficulty and
18 expense in attempting to reconstruct time and pay records. Defendants' conduct led to the
19 submission of inaccurate information about wages and amounts deducted from wages to state and
20 federal government agencies. As a result, Plaintiff and the Wage Statement Class are required to
21 participate in this lawsuit and create more difficulty and expense for Plaintiff and the Wage
22 Statement Class from having to reconstruct time and pay records than if Defendants had complied
23 with their legal obligations.

24 71. Pursuant to Labor Code section 226(e), Plaintiff and the Wage Statement Class are
25 entitled to recover fifty (50) dollars per employee for the initial pay period in which a section 226
26 violation occurred and one hundred dollars per employee per violation for each subsequent pay
27 period, not to exceed an aggregate penalty of four thousand (4,000) dollars per employee.

28 72. Pursuant to Labor Code section 226(h), Plaintiff and the Wage Statement Class are

1 entitled to bring an action for injunctive relief to ensure Defendants' compliance with Labor Code
2 section 226(a). Injunctive relief is warranted because Defendants continue to provide currently
3 employed Wage Statement Class members with inaccurate wage statements in violation of Labor
4 Code section 226(a) and currently employed Wage Statement Class members have no adequate
5 legal remedy for the continuing injuries that will be suffered as a result of Defendants' ongoing
6 unlawful conduct. Injunctive relief is the only remedy available for ensuring Defendants'
7 compliance with Labor Code section 226(a).

8 73. Pursuant to Labor Code sections 226(e) and 226(h), Plaintiff and the Wage
9 Statement Class are entitled to recover the full amount of penalties due under section 226(e),
10 reasonable attorneys' fees, and costs of suit.

11 **SIXTH CAUSE OF ACTION**

12 **FAILURE TO PAY ALL WAGES TIMELY UPON SEPARATION OF EMPLOYMENT** 13 **IN VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

14 **(Against All Defendants by Plaintiff and the Waiting Time Class)**

15 74. Plaintiff incorporates all paragraphs above as though fully set forth herein.

16 75. At all times relevant to this Complaint, Plaintiff and the Waiting Time Class were
17 employees of Defendants, covered by Labor Code sections 201 and 202.

18 76. An employer is required to pay all unpaid wages timely after an employee's
19 employment ends. The wages are due immediately upon termination or within seventy-two (72)
20 hours of resignation. Labor Code sections 201, 202. If an employee gave seventy-two (72) hours
21 previous notice, they were entitled to payment of all wages earned and unpaid at the time of
22 resignation. *Id.*

23 77. Defendants failed to pay Plaintiff and on information and belief, the Waiting Time
24 Class, with all wages earned and unpaid prior to separation of employment, in accordance with
25 either Labor Code section 201 or 202. Plaintiff is informed and believes and thereon alleges that at
26 all relevant times within the limitations period applicable to this cause of action, Defendants
27 maintained a policy or practice of not paying hourly employees all earned wages timely upon
28 separation of employment.

1 78. Defendants' failure to pay Plaintiff and the Waiting Time Class with all wages
2 earned prior to separation of employment timely in accordance with Labor Code sections 201 and
3 202 was willful. Defendants had the ability to pay all wages earned by hourly workers prior to
4 separation of employment in accordance with Labor Code sections 201 and 202, but intentionally
5 adopted policies or practices incompatible with the requirements of Labor Code sections 201 and
6 202. Defendants' practices include failing to pay overtime wages for all overtime hours worked,
7 reporting time wages, meal period premium wages, and/or rest period premium wages. When
8 Defendants failed to pay Plaintiff and the Waiting Time Class all earned wages timely upon
9 separation of employment, they knew what they were doing and intended to do what they did.

10 79. Pursuant to either Labor Code section 201 or 202, Plaintiff and the Waiting Time
11 Class are entitled to all wages earned prior to separation of employment that Defendants have yet
12 to pay them.

13 80. Pursuant to Labor Code section 203, Plaintiff and the Waiting Time Class are
14 entitled to continuation of their wages, from the day their earned and unpaid wages were due until
15 paid, up to a maximum of thirty (30) days.

16 81. As a result of Defendants' conduct, Plaintiff and the Waiting Time Class have
17 suffered damages in an amount, subject to proof, to the extent they were not paid for all wages
18 earned prior to separation of employment.

19 82. As a result of Defendants' conduct, Plaintiff and the Waiting Time Class have
20 suffered damages in an amount, subject to proof, to the extent they were not paid all continuation
21 wages owed under Labor Code section 203.

22 83. Plaintiff and the Waiting Time Class are entitled to recover the full amount of their
23 unpaid wages, continuation wages under Labor Code section 203, and interest thereon.

24 **SEVENTH CAUSE OF ACTION**
25 **UNFAIR BUSINESS PRACTICES, IN VIOLATION OF BUSINESS AND PROFESSIONS**
26 **CODE SECTIONS 17200, ET SEQ.**

27 **(Against All Defendants by Plaintiff and the California Class)**

28 84. Plaintiff incorporates all paragraphs above as though fully set forth herein.

1 85. The unlawful conduct of Defendants alleged herein constitutes unfair competition
2 within the meaning of Business and Professions Code section 17200. This unfair conduct includes
3 Defendants' use of policies, practices, and/or procedures which resulted in: declaratory relief;
4 unpaid wages and interest thereon for failure to pay overtime wages for overtime hours worked;
5 failure to authorize or permit all legally required and/or compliant meal periods or pay meal
6 period premium wages; failure to authorize or permit all legally required and/or compliant rest
7 periods or pay rest period premium wages; statutory penalties for failure to provide accurate wage
8 statements; statutory waiting time penalties in the form of continuation wages for failure to timely
9 pay employees all wages due upon separation of employment. Due to their unfair and unlawful
10 business practices in violation of the Labor Code, Defendants have gained a competitive
11 advantage over other comparable companies doing business in the State of California that comply
12 with their obligations to pay declaratory relief; unpaid wages and interest thereon for failure to pay
13 overtime wages for overtime hours worked; failure to authorize or permit all legally required
14 and/or compliant meal periods or pay meal period premium wages; failure to authorize or permit
15 all legally required and/or compliant rest periods or pay rest period premium wages; statutory
16 penalties for failure to provide accurate wage statements; statutory waiting time penalties in the
17 form of continuation wages for failure to timely pay employees all wages due upon separation of
18 employment.

19 86. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
20 California Class have suffered injury in fact and lost money or property, as described in more
21 detail above.

22 87. Pursuant to Business and Professions Code section 17203, Plaintiff and the
23 California Class are entitled to restitution of all wages and other monies rightfully belonging to
24 them that Defendants failed to pay and wrongfully retained by means of their unlawful and unfair
25 business practices. Plaintiff also seeks an injunction against Defendants on behalf of the California
26 Class enjoining Defendants, and any and all persons acting in concert with them, from engaging in
27 each of the unlawful policies, practices, and/or procedures set forth herein.

28 / / /

EIGHTH CAUSE OF ACTION

**CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR CODE SECTIONS 2698, ET SEQ.**

(Against all Defendants by Plaintiff)

88. Plaintiff incorporates all paragraphs above as though fully set forth herein.

89. During Plaintiff's employment and continuing through the present, Plaintiff alleges Defendants violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194 and the applicable Wage Orders.

90. Specifically, Defendants have committed the following violations of California Labor Code:

91. **Defendants misclassified Plaintiff and current and former aggrieved employees who did not earn a minimum monthly salary of no less than two times the state minimum wage as exempt employees:** Defendants employed and classified Plaintiff as an exempt employee as a marketing specialist from in or around November 2021 to November 2, 2023.

92. Labor Code, § 515, subd. (a); Cal. Code of Regs., tit. 8, § 11090(A)(1)(f) provide that, for each exempted category, the employee must earn "a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment."

93. Throughout the relevant time period, Defendants classified current and former aggrieved employees who did not earn a minimum monthly salary of no less than two times the state minimum wage as exempt solely for the purposes of avoiding requirements of the California Labor Code as it pertains to the payment of working conditions of hourly employees. Specifically, because of their classification as exempt employees, Defendants failed to keep track of the hours, including the overtime hours that Plaintiff and other current and former aggrieved California-based exempt employees worked, failed to pay them at least minimum wage for all hours worked, failed to pay them overtime wages for overtime hours worked, failed to provide them meal and rest breaks, failed to provide them with complete and accurate wage statements, and, for former

1 employees, failed to pay them all the wages that they were owed upon the termination of their
2 employment.

3 94. However, because Plaintiff and other current and former aggrieved California-
4 based employees who were misclassified as exempt did not meet the salary test of earning a
5 minimum monthly salary of no less than two times the state minimum wage they could not be
6 classified as exempt employees as a matter of law.

7 95. Failure to pay wages for all hours worked at the legal minimum wage.

8 96. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
9 Defendants employed many of their employees, including Plaintiff, as exempt employees. In
10 California, an employer is required to pay hourly employees for all “hours worked,” which
11 includes all time that an employee is under control of the employer and all time the employee is
12 suffered and permitted to work. This includes the time an employee spends, either directly or
13 indirectly, performing services that inure to the benefit of the employer.’

14 97. Labor Code sections 510 and 1194 require an employer to compensate employees a
15 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty
16 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

17 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
18 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
19 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
20 one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
21 (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular
22 rate of pay for an employee. In addition, any work in excess of eight (8) hours on any
23 seventh day of a workweek shall be compensated at the rate of no less than twice the
24 regular rate of pay of an employee.

25 Labor Code section 510.

26 98. Here, Plaintiff maintains that Defendants routinely required her and other current
27 and former aggrieved California-based employees who were classified by Defendant as salaried
28 employees despite that they did not earn a minimum monthly salary of no less than two times the
state minimum wage to work in excess of eight hours per day and/or 40 hours in one week.
Nevertheless, Defendants compensated, Plaintiff and other current and former aggrieved
California-based exempt employees at their salaried rate regardless of the numbers of hours

1 worked. This resulted in time each workday which Plaintiff and other current and former
2 aggrieved California-based employees who were classified by Defendant as salaried employees
3 despite that they did not earn a minimum monthly salary of no less than two times the state
4 minimum wage who were under the Defendant's control but were not compensated at their
5 overtime rate of pay in violation of Labor Code sections 510, 1194, 1198, and the applicable Wage
6 Order.

7 99. The foregoing policies, practices, and/or procedures resulted in time during each
8 workday that Plaintiff and other current and former aggrieved California-based exempt employees
9 were under the control of Defendants but were not compensated. To the extent that the foregoing
10 uncompensated time occurred when Plaintiff and other current and former aggrieved California-
11 based exempt employees worked more than eight (8) hours in a workday, more than forty (40)
12 hours in a workweek, and/or seven (7) days in a workweek, Defendants failed to pay them at their
13 overtime rate of pay for overtime hours worked, in violation of Labor Code sections 510 and 1194
14 and the applicable Wage Order.

15 100. **Failure to pay wages to hourly employees who were classified by Defendant as**
16 **salaried employees despite that they did not earn a minimum monthly salary of no less than**
17 **two times the state minimum wage for workdays that Defendants failed to provide legally**
18 **required and compliant meal periods:** Plaintiff and other current and former aggrieved
19 California-based employees who were classified by Defendant as salaried employees despite that
20 they did not earn a minimum monthly salary of no less than two times the state minimum wage
21 regularly worked shifts of more than five (5) hours in length and shifts of more than ten (10) hours
22 in length.

23 101. California law requires an employer to authorize or permit an employee an
24 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
25 all duties and the employer relinquishes control over the employee's activities prior to the
26 employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 9 at §11; *Brinker*
27 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
28 employee for a work period of more than ten (10) hours per day without providing the employee

1 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh
2 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
3 shall be considered an “on duty” meal period and counted as time worked. A paid “on duty” meal
4 period is only permitted when: (1) the nature of the work prevents an employee from being
5 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

6 102. If an employer fails to provide an employee a meal period in accordance with the
7 law, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of pay
8 for each workday that a legally required and compliant meal period was not provided. Labor Code
9 section 226.7; Wage Order 9 at §11.

10 103. In this case, Defendants failed to authorize or permit legally required and compliant
11 meal periods to Plaintiff and other current and former aggrieved California-based employees who
12 were classified by Defendant as salaried employees despite that they did not earn a minimum
13 monthly salary of no less than two times the state minimum wage due to Defendants’ policies,
14 practices, and/or procedures, that resulted in their failure to authorize or permit meal periods to
15 Plaintiff and other current and former aggrieved California-based exempt employees of no less
16 than thirty (30) minutes for each five-hour period of work as required by law. Such policies,
17 practices, and/or procedures included, but were not limited to, failing to provide Plaintiff and other
18 current and former aggrieved California-based exempt employees who Defendant misclassified as
19 exempt with meal breaks.

20 104. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
21 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
22 based exempt employees one (1) hour of pay at their regular rate of pay for each workday that
23 Plaintiff and other current and former aggrieved California-based exempt employees did not
24 receive legally required and compliant meal periods, in violation of Labor Code section 226.7.

25 105. Defendants’ foregoing policies, practices, and/or procedures resulted in Plaintiff
26 and other current and former aggrieved California-based exempt employees not receiving wages to
27 compensate them for workdays during which Defendants did not provide them with meal periods
28 in compliance with California law.

1 106. **Failure to pay wages to hourly employees who were classified by Defendant as**
2 **salaried employees despite that they did not earn a minimum monthly salary of no less than**
3 **two times the state minimum wage for workdays that Defendants failed to provide legally**
4 **required and compliant rest periods:** Plaintiff and other current and former aggrieved
5 California-based employees who were classified by Defendant as salaried employees despite that
6 they did not earn a minimum monthly salary of no less than two times the state minimum wage
7 regularly worked shifts of more than three-and-a-half (3.5) hours.

8 107. California law requires every employer to authorize and permit an employee a rest
9 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
10 Code section 226.7; Wage Order 9 at §12. Under California law, “[e]mployees are entitled to 10
11 minutes’ rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
12 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
13 on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
14 section 226.7; Wage Order 9 at §12. Rest periods, insofar as practicable, shall be in the middle of
15 each work period. Wage Order 9 at §12. Additionally, the rest period requirement “obligates
16 employers to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM*
17 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
18 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

19 108. If the employer fails to authorize or permit a required rest period, the employer
20 must pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday
21 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
22 Wage Order 9 at § 12.

23 109. In this case, Defendants failed to authorize or permit all legally required and
24 compliant rest periods to Plaintiff and other current and former aggrieved California-based
25 employees who were classified by Defendant as salaried employees despite that they did not earn
26 a minimum monthly salary of no less than two times the state minimum wage due to Defendants’
27 policies, practices, and/or procedures that resulted in their failure to authorize or permit all legally
28 required and compliant rest periods to Plaintiff and other current and former aggrieved California-

1 based exempt employees. Such policies, practices, and/or procedures included misclassifying
2 Plaintiff and other current and former aggrieved California-based exempt employees who were
3 misclassified as exempt and, consequently, failing to provide them rest breaks.

4 110. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
5 procedure of failing to compensate Plaintiff other current and former aggrieved California-based
6 exempt employees with one (1) hour of pay at their regular rate of pay for each workday they did
7 not receive legally required and compliant rest periods, in violation of Labor Code section 226.7.

8 111. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
9 and other current and former aggrieved California-based exempt employees not receiving wages to
10 compensate them for workdays in which Defendants did not provide them with rest periods in
11 compliance with California law.

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

21 113. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
22 to timely pay Plaintiff's and other current and former aggrieved California-based employees who
23 were classified by Defendant as salaried employees despite that they did not earn a minimum
24 monthly salary of no less than two times the state minimum wage earned wages (including
25 overtime wages, meal period premium wages, and/or rest period premium wages), in violation of
26 Labor Code section 204. Defendants' aforementioned policies, practices, and/or procedures
27 resulted in their failure to pay Plaintiff's and other current and former aggrieved California-based
28 hourly non-exempt employees' their earned wages within the applicable time frames outlined in

1 Labor Code section 204.

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

15 115. As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff
16 and other current and former aggrieved California-based employees who were classified by
17 Defendant as salaried employees despite that they did not earn a minimum monthly salary of no
18 less than two times the state minimum wage all wages earned (including overtime wages, meal
19 period premium wages, and/or rest period premium wages) rendered Plaintiff’s and other current
20 and former aggrieved California-based hourly non-exempt employees’ wage statements
21 inaccurate, in violation of Labor Code section 226.

22 **116. Failure to pay employees all wages due at time of termination/resignation:** An
23 employer is required to pay all unpaid wages timely after an employee’s employment ends. The
24 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
25 hours of resignation (Labor Code section 202).

26 117. As a derivative of Plaintiff’s allegations above, because Defendants failed to pay
27 Plaintiff and other current and former aggrieved California-based employees who were classified
28 by Defendant as salaried employees despite that they did not earn a minimum monthly salary of

1 no less than two times the state minimum wage all their earned wages (including overtime wages,
2 meal period premium wages, and/or rest period premium wages), Defendants failed to pay those
3 employees timely after each employee's termination and/or resignation, in violation of Labor
4 Code sections 201, 202, and 203.

5 118. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
6 employee, on behalf of himself or herself and other current or former employees, to bring a civil
7 action to recover civil penalties against all Defendants pursuant to the procedures specified in
8 Labor Code section 2699.3.

9 119. Plaintiff has complied with the procedures for bringing suit specified in Labor
10 Code section 2699.3. On August 14, 2023, Plaintiff filed a PAGA Claim Notice with the LWDA
11 and provided notice to Defendants by certified mail which provided notice of the specific
12 provisions of the Labor Code alleged to have been violated, including the facts and theories to
13 support the violations alleged.

14 120. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
15 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
16 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
17 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
18 to investigate Plaintiff's claims.

19 121. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
20 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510,
21 512, and 1194, During Plaintiff's employment and continuing through the present, preceding
22 Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, in the following
23 amounts:

24 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, and 512;
25 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
26 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
27 violation [penalty amounts established by Labor Code section 2699(f)(2)].

28 b. For violations of Labor Code section 226, two hundred fifty dollars (\$250)

1 for each employee for each pay period for the initial violation, and for each subsequent violation,
2 one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts
3 established by Labor Code section 226.3].

4 c. For violations of Labor Code section 510, fifty dollars (\$50) for each
5 employee for each pay period for the initial violation, and for each subsequent violation, one
6 hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts
7 established by Labor Code section 558].

8 d. For violations of Labor Code section 1194, one hundred dollars (\$100) for
9 each underpaid employee for each pay period for the initial violation, and for each subsequent
10 violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay period
11 [penalty amounts established by Labor Code section 1197.1].

12 122. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
13 reasonable attorneys' fees and costs in connection with her claims for civil penalties.

14 **PRAYER FOR RELIEF**

15 **WHEREFORE, PLAINTIFF ON HER OWN BEHALF AND ON BEHALF OF**
16 **THOSE SIMILARLY SITUATED, PRAYS AS FOLLOWS:**

17 **ON THE FIRST, SECOND, THIRD, FOURTH, FIFTH, SIXTH, AND SEVENTH,**
18 **CAUSES OF ACTION:**

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

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

24 3. For a declaratory judgment that the policies, practices, and/or procedures
25 complained herein are unlawful; and

26 4. For an injunction against Defendants enjoining them, and any and all persons
27 acting in concert with them, from engaging in each of the unlawful policies, practices, and/or
28 procedures set forth herein.

ON THE FIRST CAUSE OF ACTION:

1. That the Court issues an Order declaring that Defendants misclassified Plaintiff and members of the Misclassification Class as “exempt,” when, in fact, they were “non-exempt”.

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 section 1194, and post-judgment interest;

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

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

ON THE SECOND CAUSE OF ACTION:

1. That Defendants be found to have violated the meal period provisions of the Labor Code and the IWC 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 section 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 FOURTH CAUSE OF ACTION:

1. That Defendants be found to have violated the rest period provisions of the Labor Code and the IWC 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;

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

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

5 **ON THE FIFTH CAUSE OF ACTION:**

6 1. That Defendants be found to have violated the provisions of the Labor Code
7 regarding accurate itemized paystubs as to Plaintiff and the Wage Statement Class;

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

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

12 4. For an injunction against Defendants enjoining them, and any and all persons
13 acting in concert with them, from engaging in violations of Labor Code section 226, subdivision
14 (a);

15 5. For attorneys' fees and costs of suit, including but not limited to those recoverable
16 under Labor Code section 226, subdivision (e); and

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

19 **ON THE SIXTH CAUSE OF ACTION:**

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

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

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

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

1 appropriate.

2 **ON THE SEVENTH CAUSE OF ACTION:**

3 1. That Defendants be found to have violated Business and Professions Code sections
4 17200, *et seq.*, for the conduct alleged herein as to the California Class;

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

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

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

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

12 **ON THE EIGHTH CAUSE OF ACTION:**

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

15 2. For any and all legally applicable penalties during the relevant statute of limitations
16 subject to any permissible tolling, including but not limited to those recoverable under the
17 California Labor Code, including but not limited to section 2699(f);

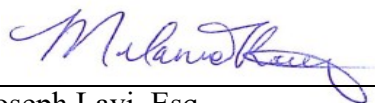
18 3. For attorneys' fees and costs of suit, including but not limited to those recoverable
19 under California Labor Code section 2699(g); and

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

22 Dated: January 10, 2024

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

23
24 By:



Joseph Lavi, Esq.
N. Nick Ebrahimian, Esq.
Vincent C. Granberry, Esq.
Alan Wilcox, Esq.
Melanie S. Rodriguez, Esq.
Attorneys for Plaintiff
SAMANTHA COUGHLIN,
on behalf of herself and others similarly situated

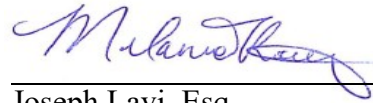
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2 **DEMAND FOR JURY TRIAL**

3 Plaintiff SAMANTHA COUGHLIN demands a trial by jury for herself and the California
4 Class on all claims so triable.

5 Dated: January 10, 2024

6 Respectfully submitted,
7 **LAVI & EBRAHIMIAN, LLP**

8 By:

9 

10 Joseph Lavi, Esq.
11 N. Nick Ebrahimiian, Esq.
12 Vincent C. Granberry, Esq.
13 Alan Wilcox, Esq.
14 Melanie S. Rodriguez, Esq.
15 Attorneys for Plaintiff
16 SAMANTHA COUGHLIN
17 on behalf of herself and others similarly situated
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am an employee in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 8889 W. Olympic Blvd., Suite 200, Beverly Hills, California 90211.

On January 10, 2024, I served the foregoing documents, described as:

1. PLAINTIFF SAMANTHA COUGHLIN'S FIRST AMENDED COMPLAINT

on all interested parties in this action by placing a true copy thereof in a sealed envelope, addressed as follows:

Attorneys for Defendant
FRESHPOINT CENTRAL CALIFORNIA, INC.

Cary G. Palmer, Esq. (SBN 186601)
Evan B. Beecher, Esq. (SBN 280364)
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E-mail: cary.palmer@jacksonlewis.com
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Service: Gail Baum
Gail.Baum@jacksonlewis.com

☒ **(BY ELECTRONIC MAIL)** As follows: I caused such documents to be emailed to the attorneys listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ **(STATE)** I declare, under penalty of perjury under the laws of the State of California, that the above is true and correct. Executed January 10, 2024, at Beverly Hills, California.

/s/ Rubi Martinez
Rubi Martinez