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Rachelle Rhodes

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

RACHELLE RHODES, Individually and on
Behalf of Other Members of the Public and
those Similarly Situated,

Plaintiff,

v.

OPTIMA OFFICE, INC. and DOES 1-10,
Inclusive,

Defendants.

Case No. 37-2023-00038927-CU-OE-CTL

**CLASS ACTION AS TO PLAINTIFF'S FIRST
THROUGH NINTH CAUSES OF ACTION
PAGA ACTION AS TO THE TENTH CAUSE
OF ACTION**

COMPLAINT FOR:

- (1) **ILLEGAL NON-COMPETE/NON-SOLICITATION;**
- (2) **INDEMNIFICATION UNDER CAL. LABOR CODE SECTION 2802;**
- (3) **OVERTIME VIOLATIONS;**
- (4) **MINIMUM WAGE VIOLATIONS;**
- (5) **UNPAID WAGE VIOLATIONS;**
- (6) **COMPENSABLE REST BREAK VIOLATIONS;**
- (7) **FAILURE TO PAY WAGES DUE UPON SEPARATION OF EMPLOYMENT;**
- (8) **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT ITEMIZED WAGE STATEMENTS;**
- (9) **UNFAIR COMPETITION;**
- (10) **CLAIMS UNDER THE PAGA**

[E-FILE]

Judge: Hon. Katherine Bacal
Dept.: C-69
Original Filing Date: September 8, 2023

**DAMAGES EXCEED \$25,000
DEMAND FOR JURY TRIAL**

COMES NOW Plaintiff Rachelle Rhodes (“Plaintiff” or “Rhodes”), individually and on behalf of the public, persons similarly situated and in a representative capacity, and asserts claims against Optima Office, Inc. (“Defendant” or “Optima”) and Does 1-10 inclusive (collectively with Optima, “Defendants”) as follows:

JURISDICTION AND VENUE

1. This is an individual action as well as a class action (Causes of Action One through Nine) brought by Plaintiff for violations of the California Labor Code including those pertaining to the illegal use of non-competition/non-solicitation agreements; the failure to reimburse employees for job-related expenses/losses; the failure to pay wages to employees timely upon separation of employment and the failure to pay waiting time penalties to employees; the issuance of noncompliant itemized wage statements; the failure to pay all overtime, minimum and regular wages and to provide compliant compensation for compensable rest breaks/rest break premiums and non-productive time; unlawful wage deductions and wage collection/repayment; unfair competition. The declaratory and injunctive relief sought by Plaintiff is within the jurisdiction of the Superior Court. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This is also a private attorneys general enforcement action brought by Plaintiff under the California Labor Code Private Attorneys General Act of 2004 codified in California Labor Code §2698, *et seq.* ("PAGA") (Tenth Cause of Action). Plaintiff seeks PAGA penalties on behalf of Defendant's current and former California employees as further defined herein.

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

4. This Court has jurisdiction over Defendants because, upon information and belief, each defendant is either a resident of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the California Courts consistent with traditional notions of fair play and substantial justice.

5. Venue is proper in this Court because Optima Office transacts business in the County of San Diego and Plaintiff performed work for Optima Office in the County of San Diego.

PARTIES

6. Plaintiff Rhodes is, and at times relevant in this complaint was a resident of California who performed work for Optima Office as an employee in California, including work in County of Ventura. Plaintiff Rhodes was an “employee,” at times relevant, as that term is defined in the California Labor Code and California Industrial Welfare Commission Wage Order.

7. Upon information and belief, Plaintiff is informed and believes, and thereon allege that Optima is an accounting and HR (human resources) consulting firm.

8. Upon information and belief, Plaintiff is informed and believes, and thereon allege, that at relevant times mentioned herein Optima did and continues to transact business in California, including in the County of San Diego, and the conduct and injuries alleged herein occurred in California, including in the County of San Diego. Plaintiff is informed and believes, and thereon allege, that Optima is an “employer” as that term is used in the California Labor Code and applicable California Industrial Welfare Commission (“IWC”) Wage Order.

9. Whenever in this complaint reference is made to any act, deed, or conduct of Optima, the allegation means that Optima engaged in the act, deed, or conduct by or through one or more of its officers, directors, agents, employees, or representatives, including those who were actively engaged in the management, direction, control, or transaction of the ordinary business and affairs of Optima.

10. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, associate, or otherwise, of the defendants sued herein as Does 1 through 10, inclusive and therefore sue said defendants by such fictitious names (“Doe Defendants”). Plaintiff will amend this Complaint to insert the true names and capacities of the Doe Defendants at such time as the identities of the Doe Defendants are ascertained.

11. Plaintiff is informed and believes, and thereon alleges, that the Doe Defendants are the partners, agents, or principals and/or co-conspirators of Optima, and of each other; that Optima and the Doe Defendants performed the acts and conduct herein alleged directly, aided and abetted the performance

thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the liability of Optima as alleged herein.

12. Plaintiff is further informed and believes, and thereon alleges, that at all times herein material, each Defendant was completely dominated and controlled by its co-Defendants and each was the alter ego of the other. Whenever and wherever reference is made in this complaint to any conduct by Optima or Defendants, such allegations and references shall also be deemed to mean the conduct of each of the Defendants, acting individually, jointly, and severally. Whenever and wherever reference is made to individuals who are not named as Defendants in this complaint, but were employees and/or agents of Defendants, such individuals at all relevant times acted on behalf of Defendants named in this complaint within the scope of their respective employments.

CLASS ACTION ALLEGATIONS

13. Plaintiff brings this action (Causes of Action One through Nine) on behalf of each and all other persons similarly situated, and thus, seek class certification under California Code of Civil Procedure §382.

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

15. With respect to Plaintiff's First through Ninth Causes of Action, the proposed Classes are comprised of and defined as:

Any and all applicants/prospective employees and current and former employees of Optima Office, Inc., in the state of California, however titled, who have been subject to and/or or presented with a non-compete/non-solicitation for post-Optima employment by way of written agreement from Optima Office, Inc. and/or other document (including but not limited to an Offer Letter, Optima Office Employment Offer, Employment Agreement, and Employee Confidentiality and Invention Assignment Agreement) that contains a post-employment non-compete/non-solicitation statement (hereinafter collectively referred to as the "Non-Compete/Non-Solicitation Class").

Any and all persons who have been employed by Optima Office, Inc., however titled, in the state of California, and whose salary has included, been termed, described and/or recorded as a salary draw or base salary draw at any time since the four-year statutory period prior to the filing of the complaint (plus applicable time for tolling under Emergency Rule No. 9 or other tolling rules) (hereinafter collectively referred to as the "Salary Draw Class").

1 16. The members of the Non-Compete/Non-Solicitation Class, and the Salary Draw Class
2 (collectively the “Classes” or “Class Members”) are so numerous as to make it impracticable to bring
3 them all before this Court. Plaintiff is unable to state the exact number of the Class Members without
4 discovery of Defendants' books and records, but based on discovery to date the Classes exceed 25
5 members. The identity of Class Members is readily ascertainable by an inspection of Defendants’
6 employment and payroll records.

7 17. There are questions of law and fact common to the members of each of the Classes that
8 predominate over any questions affecting any individual in the Classes. Defendants have acted, and
9 refused to act, on grounds generally applicable to members of the Classes.

10 18. Plaintiff’s claims are typical of the claims of the Class Members and Plaintiff will fairly
11 and adequately protect the interests of these members.

12 19. The prosecution of separate actions by individual members of the Classes would create the
13 risk of:

14 (a) Inconsistent or varying adjudications in different jurisdictions with respect to
15 individual Class Members, which would establish incompatible standards of conduct for Defendants; and

16 (b) Adjudications with respect to individual Class Members which, as a practical matter,
17 would be dispositive of the interests and rights of Class Members who are not parties to the adjudications,
18 or would substantially impair or impede the ability of Class Members to protect their interests.

19 20. At all times relevant to this action, Defendants have enacted and effected unlawful and
20 unfair state-wide employment policies and practices which have caused Plaintiff and members of the
21 Classes to suffer injury. A class action is superior to other available methods for the fair and efficient
22 adjudication of Defendants' policies and practices and the damage they caused Plaintiff and members of
23 the Classes to suffer and which are the subject matter of this action.

24 21. The claims asserted herein implicate questions of law or fact common to members of the
25 Classes. These common questions predominate over any questions affecting only individual Class
26 Members. Common questions include, but are not limited to:

27 (a) Whether Defendants unlawfully restrained engagement of a lawful profession, trade,
28 or business of any kind for Non-Compete/Non-Solicitation Class Members;

(b) Whether Defendants failed to pay compliant overtime and minimum wages to Salary Draw Class Members;

(c) Whether Defendants failed to pay compensable rest breaks and non-productive time to Salary Draw Class Members;

(d) Whether Defendants failed to pay accurate commission pay to Salary Draw Class Members;

(e) Whether Defendants failed to provide Salary Draw Class Members with wage statements that complied with the requirements of the California Labor Code §226(a);

(f) Whether Defendants failed to compensate Salary Draw Class Members timely upon separation of employment;

(g) Whether Defendants failed to indemnify members of the Salary Draw Class Members for all job-related expenses and losses;

(h) Whether Defendants engaged in unfair competition in violation of California Business and Professions Code §§17200, *et seq.* with respect to Salary Draw Class Members and Non-Compete/Non-Solicitation Class Members; and

(i) The appropriate amount of penalties, damages, and restitution and declaratory and injunctive relief resulting from Defendants' violations of California law.

ALLEGATIONS REGARDING PAGA ENFORCEMENT ACTION

22. This is a PAGA enforcement action as to the Tenth Cause of Action for recovery of civil penalties under the PAGA. PAGA permits an "aggrieved employee" to bring a lawsuit for civil penalties to address an employer's violations of the California Labor Code. Plaintiff seeks civil penalties, under this PAGA action, as a private attorneys general for the Labor Code violations committed by Defendant. Plaintiff Rhodes seeks PAGA penalties on behalf of Defendant's other current and former California employees as follows: (i) any and all current and former employees of Optima Office, Inc. in the state of California, however titled, who at any time since one year prior to the September 8, 2023 PAGA Notice (plus applicable time for tolling under Emergency Rule No. 9 or other tolling rules) have been subject to and/or presented with a non-compete/non-solicitation for post-Optima employment by way of written agreement from Optima Office, Inc. and/or other document (including but not limited to an Offer Letter,

Optima Office Employment Offer, Employment Agreement, and Employee Confidentiality and Invention Assignment Agreement) that contains a post-employment non-compete/non-solicitation statement (hereinafter collectively referred to as the “Non-Compete/Non-Solicitation Aggrieved Employees”); and (ii) any and all persons who have been employed by Optima Office, Inc., however titled, in the state of California, and whose salary has included, been termed, described and/or recorded as a salary draw or base salary draw at any time since one year prior to the September 8, 2023 PAGA Notice (plus applicable time for tolling under Emergency Rule No. 9 or other tolling rules) (hereinafter collectively referred to as the “Salary Draw Aggrieved Employees”). Plaintiff Rhodes’s Tenth Cause of Action is suitable for treatment as a PAGA enforcement action for the following reasons:

- (a) the violations set forth in the Tenth Cause of Action allege violations of the California Labor Code for which the Code provides a civil penalty to be assessed and recovered by the Labor and Workforce Development Agency ("LWDA") or any department, division, commission, boards, agencies, or employees, or for which a penalty is provided for under California Labor Code §2699(f);
- (b) Plaintiff Rhodes is an "aggrieved employee" because she was employed by the alleged violator and against whom one or more of the alleged violations was committed;
- (c) Plaintiff Rhodes has complied with the requirement to commence a civil action pursuant to the PAGA including pursuant to California Labor Code §2699.3;
- (d) Plaintiff Rhodes has complied with the exhaustion requirements of PAGA by providing written online notice to the LWDA and notice by certified letter to Defendant Optima Office, Inc. on September 8, 2023 concerning the PAGA claims Plaintiff Rhodes intends to pursue (the “PAGA Notice”). A true and correct copy of the PAGA Notice as well as confirmation of submission online to the LWDA and via certified mail to Defendant is attached hereto as Exhibit 1. Sixty-five (65) days have elapsed since Plaintiff submitted the PAGA Notice to the LWDA and Defendant and Plaintiff has received no response from the LWDA and no response or notice (including any “cure” notice) from Defendant in response to the PAGA Notice.

1 **FACTUAL ALLEGATIONS**

2 23. At times relevant, including in the statutory periods, Plaintiff was employed by Optima.

3 24. On information and belief, at times relevant herein, Defendants employed, and continue to
4 employ, employees throughout the state of California including but not limited to Non-Compete/Non-
5 Solicitation Class Members, Non-Compete/Non-Solicitation Aggrieved Employees, Salary Draw Class
6 Members and Salary Draw Aggrieved Employees.

7 **NON-COMPETE/NON-SOLICITATION**

8 25. From time to time at times relevant, including in the statutory periods, Plaintiff, Non-
9 Compete/Non-Solicitation Class Members and Non-Compete/Non-Solicitation Aggrieved Employees
10 have been subject to and/or presented with and/or required to sign a non-compete/non-solicitation for post-
11 Optima employment by way of written agreement from Optima Office, Inc. and/or other document
12 (including but not limited to an Offer Letter, Optima Office Employment Offer, Employment Agreement,
13 and Employee Confidentiality and Invention Assignment Agreement) that contains a post-employment
14 non-solicitation/non-competition statement that restrains the engagement in a lawful profession, trade or
15 business of any kind.

16 26. California Business and Professions Code §16600 prohibits non-competition/non-
17 solicitation agreements. Specifically it states “[e]xcept as provided in this chapter, every contract by
18 which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that
19 extent void.”

20 27. Any contract restraining anyone from engaging in a lawful profession, trade, or business
21 of any kind – a non-compete/non-solicitation - therefore is against public policy if the contract does not
22 fall within one of the limited exceptions in California Business and Professions Code §16600. None of
23 the limited exceptions are applicable here. A non-solicitation that restrains anyone from engaging in a
24 lawful profession, trade, or business of any kind is a non-compete.

25 28. California Business and Professions Code §16600.5 provides:

26 (a) Any contract that is void under this chapter is unenforceable regardless of where and
27 when the contract was signed.
28

1 (b) An employer or former employer shall not attempt to enforce a contract that is void
2 under this chapter regardless of whether the contract was signed and the employment was maintained
3 outside of California.

4 (c) An employer shall not enter into a contract with an employee or prospective
5 employee that includes a provision that is void under this chapter.

6 (d) An employer that enters into a contract that is void under this chapter or attempts to
7 enforce a contract that is void under this chapter commits a civil violation.

8 (e) (1) An employee, former employee, or prospective employee may bring a private right
9 of action to enforce this chapter for injunctive relief or the recovery of actual damages, or both. (2) In
10 addition to the remedies described in paragraph (1), a prevailing employee, former employee, or
11 prospective employee in an action based on a violation of this chapter shall be entitled to recover
12 reasonable attorney's fees and costs.

13 29. A non-compete/non-solicitation that places restrictions opportunities for work is an
14 unlawful restraint of trade, business and/or profession, in violation of California Business Code §16600.
15 From time to time at times relevant, including in the statutory periods, Optima violates California Business
16 and Professions Code §§16600 and 16600.5 with its non-compete/non-solicitation.

17 30. For example, an Optima Office Employment Offer (including the one presented and signed
18 by Rhodes and other Non-Compete/Non-Solicitation Class Members and Non-Compete/Non-Solicitation
19 Aggrieved Employees) states "As a condition of employment with Optima, all employees are required to
20 sign the attached Optima Employee Confidentiality and Invention Assignment Agreement. Please sign
21 and return this agreement with your offer letter." An Optima Employee Confidentiality and Invention
22 Assignment Agreement (including the one presented and signed by Rhodes and other Non-Compete/Non-
23 Solicitation Class Members and Non-Compete/Non-Solicitation Aggrieved Employees) states in part:

24 In consideration and as a condition of my employment or continued employment
25 with Optima Office, Inc., and for the benefit of my employer and its parent,
26 subsidiary and related entities and their respective successors and assigns
(hereinafter for purposes of this Agreement collectively the "Company"), I
hereby agree as follows:

27 *****

28 Solicitation of Employees.....for a period of one (1) year after the date of
termination of my employment with the Company (whether voluntary or

otherwise), I covenant and agree that I shall not directly or indirectly, as a principal, agent, shareholder, member, manager, partner, director, owner, employee, consultant or otherwise, on my own behalf or for the benefit of any other person or entity, solicit or attempt to solicit for employment or any other business-related position any employee, officer, contractor, director or member of the Company, and I will not otherwise unlawfully induce, raid, or encourage any employee, officer, contractor, director or member of the Company to terminate their relationship with the Company.

In the event that any legal action becomes necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees as shall be determined by the court. This Agreement shall be governed by the laws of the State of California.

The Company shall have the right to enforce this Agreement and any of its provisions by TRO, injunction, specific performance or other equitable relief, without prejudice to any other rights and remedies that the Company may have for a breach of this Agreement. Nothing in this Agreement shall limit the remedies available to the Company.

I acknowledge that this Agreement shall cover the entire time period from when I first performed any work for the Company and that it shall survive and remain in place even after the termination of my employment.

31. California Labor Code §432.5 states that "No employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law." From time to time at times relevant, including in the statutory periods, Optima's non-compete/non-solicitation violates Section 432.5.

32. California Labor Code §925(a)(2) prohibits an employer from requiring an employee who primarily resides and works in California, as a condition of employment, to agree to a provision that would "deprive the employee of the substantive protection of California with respect to a controversy arising in California." Section 925(b) provides that any provision of a contract that violates subdivision (a) is voidable by the employee. From time to time at times relevant, including in the statutory periods,, Optima violates Section 925(a)(2) in that it requires an employee who primarily resides and works in California, as a condition of employment, to agree to a provision that would "deprive the employee of the substantive protection of California with respect to a controversy arising in California," namely the protection to

engage in a lawful profession, trade or business of any kind. Furthermore, from time to time at times relevant, including in the statutory periods, California Labor Code §§432.5 and 925(a)(2) are violated through any sort of purported agreement to contract away protections under California Business and Professions Code §§16600, 16600.5, the California Labor Code including but not limited to indemnification under Sections 2802 and one-way fee and cost shifting, and California Civil Code §1668 (“All contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law.”)

SALARY DRAW AND OPTIMA’S COMPENSATION POLICY

33. Optima’s compensation policies (including that Rhodes worked under and other Salary Draw Class Members and Salary Draw Aggrieved Employees), from time to time at times relevant, including in the statutory periods, include a salary draw/base salary draw as a component. An Optima Office Employment Offer describes a compensation policy as:

When exempt, you will receive a minimum base salary of [\$] per month. You will be paid in semi-monthly installments on the 10th and 25th of each month. The base salary draw is subject to deductions for taxes and other withholdings as required by state and federal laws, and the policies of the company. You will receive [%] of everything you bill, less your base. More details and an example of how our salaried positions work is on the Addendum on page 4 of this outline.

All wages are subject to deductions for taxes and other withholdings as required by state and federal laws, and the policies of the company.

Addendum

Salary Details: The salary exempt position is a base salary which will likely be much lower than the amount you will make on a monthly basis. The way we compensate our consultants in the field is that we give them [%] of the billable revenue they generate each month less their base. An example of this program is below:

Annual Salary: \$60,000 (monthly **\$5,000**)

Billable Rate: \$95 per hour Monthly Billable Hours: 150

Billed in X Month: $95 * 150 = \$14,250$

Earnings calculated for X Month: $14,250 * 50\% = \$7,125$

Override Commission= $7,125 - \$5,000 = \$2,125$

1 You will be paid for the 1st through the 15th on the 25th and for the 16th -EOM on
2 the 10th, which will also include your override commissions for billable revenues
for the full month, 1st-EOM.

3 If the commission balance is negative, the negative balance will rollover and be
4 applied to the next month's commission calculation. In certain situations,
management may waive the deficit.

5 34. From time to time at times relevant, including in the statutory periods, under Optima's
6 plan, a salary draw is paid on or about the 25th of the month for the 1st through the 15th of the month. On
7 or about the 10th of the next month, another salary draw is paid for the 16th through the end of the previous
8 month and, assuming the commission balance is not in the negative, a commission payment is also made
9 for the previous month. From time to time at times relevant, including in the statutory periods, a negative
10 commission balance will rollover and be applied to the next month's commission calculation and payment.

11 Exemption Not Met

12 35. To meet exemption under California law, the salary basis test has to be met (in addition to
13 the duties test). For exemption, the employee must be paid a salary equivalent of a pre-determined amount
14 that is at least twice the state minimum wages for full time employment, that is not subject to reduction
15 because of variations in quality or quantity of the work performed.

16 36. A salary draw is not wages but is an advance of wages, and therefore Optima's
17 compensation policy, from time to time at times relevant including in the statutory periods, of paying a
18 salary draw (including those on the 10th and 25th of the month) does not meet the requirements for the
19 salary basis test.

20 37. The salary draw paid by Optima is subject, from time to time at times relevant, including
21 in the statutory periods, to overrides/reduction because of variations in quality or quantity of the work
22 performed as evidenced by the compensation policy; from time to time, the salary draw is
23 overridden/recoverable/taken back by Optima against commissions/incentive pay paid to Salary Draw
24 Class Members and Salary Draw Aggrieved Employees. From time to time at times relevant, including in
25 the statutory periods, the salary draw is an override and deducted from earned commissions and
26 recouped/recaptured and repaid to Optima. In other words, from time to time at times relevant, including
27 in the statutory periods, the salary draw was effectively overridden and recaptured when it served as an
28 offset/override to future commission pay.

1 38. A compensation structure with a recoverable draw against commissions/incentive pay
2 (hereinafter “commissions”) does not satisfy the salary basis test and thus exemption is not met and does
3 not apply.

4 39. To the extent the compensation termed by Optima as commissions is in fact not
5 commissions but some other form of compensation, the allegations equally apply to whatever the type of
6 compensation the non-base pay may be.

7 40. Additionally, commissions paid to employees (including those paid on the 10th of the
8 month for the previous month) from time to time at times relevant, including in the statutory periods, do
9 not meet the salary basis test including for the reasons that (i) commissions are not a pre-determined
10 amount; (ii) commissions are subject to reduction because of variations in quality or quantity of the work
11 performed; and (iii) commission cannot attribute wages paid in one pay period to a prior pay period
12 including to cure a shortfall in wages.

13 41. As a result of not meeting exemption from time to time at times relevant, including in the
14 statutory periods, Salary Draw Class Members and Salary Draw Aggrieved Employees are not exempt
15 despite being classified as exempt, and they, from time to time at times relevant, including in the statutory
16 periods, have not been paid appropriate overtime and minimum wages for work time as required by
17 California Labor Code §§510, 1182.12, 1194 *et seq.*, 1197, 1198. As a further result of Optima’s conduct,
18 Optima, from time to time at times relevant, including in the statutory periods, violates California Labor
19 Code §§201-204 (provisions setting forth timely payment of wages due during and upon termination of
20 employment; waiting time penalty due), 226(a) (non-compliant wage statements including but not limited
21 to gross and net earned wages not accurately stated as a result of recoupment of wages and payments being
22 advances not wages, the wage statements do not differentiate between advances and earned wages and
23 thus if all or part of the payments itemized on the wage statements are in fact advances, then the amount
24 of gross and net earned wages are incorrect, the gross and net earned wages are inaccurately understand
25 as a result of the underpayment of earned wages, all applicable hourly rates in effect during the pay period
26 and the corresponding number of hours worked at each hourly rate by the employee is not reported), and
27 1198 (employment of any employee for under conditions of labor prohibited by the wage order is
28 unlawful).

1 Unlawful Deductions/Recoupment and Paid Rest Breaks and Non-Productive Time

2 42. In California, earned wages cannot be taken back by the employer or deducted from future
3 pay.

4 43. From time to time at times relevant, including in the statutory periods, as noted in Optima's
5 compensation outline, base salary draw and wages are subject to deductions for other withholdings as
6 required by the policies of the company. From time to time at times relevant, including in the statutory
7 periods, per Optima policy, "[i]f the commission balance is negative, the negative balance will rollover
8 and be applied to the next month's commission calculation." To the extent deficits/reductions are made
9 from the salary draw, and if the salary is wages, Optima impermissibly deducts/recoups earned wages
10 from time to time at times relevant, including in the statutory periods. Likewise, to the extent
11 deficits/reductions are made from commissions, and if the commissions are wages, Optima impermissibly
12 deducts/recoups earned wages from time to time at times relevant, including in the statutory periods - per
13 Optima policy, commissions are earned wages not an advance of wages (including as a result of all
14 conditions precedent for the commission have been met and there is no provision that makes the
15 commissions an advance on wage).

16 44. Chargebacks/clawbacks to commissions (including but not limited to those related to billed
17 time and/or client payment) is also an impermissible deduction/recoupment when made from time to time
18 at times relevant, including in the statutory periods.

19 45. From time to time at times relevant, including in the statutory periods, wages designated
20 by statute or contract are not really being paid to the employee as a result of Optima making deductions
21 from and/or collecting/receiving, directly or indirectly, wages paid to the employee. The
22 offset/recoupment that Optima receives is akin to a kickback and makes it appear Optima is paying a
23 salary and at a certain rate and meeting statutory obligations including minimum and overtime wages
24 when in fact ultimately it is paying less from time to time.

25 46. As a result of Optima's conduct, Optima, from time to time at times relevant, including in
26 the statutory periods, violates California Labor Code §§201-204 (provisions setting forth timely payment
27 of wages due during and upon termination of employment; waiting time penalty due), 221 ("It shall be
28 unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by

said employer to said employee.”), 223 (“Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.”), 224 (employer’s right to withhold authorized sums not amounting to deduction from standard wages), 226(a) (non-compliant wage statements including but not limited to gross and net earned wages not accurately stated as a result of recoupment of wages and payments being advances not wages; and the wage statements do not differentiate between advances and earned wages and thus if all or part of the payments itemized on the wage statements are in fact advances, then the amount of gross and net earned wages are incorrect), 400 et seq. (deduction prohibited) and 1198 (employment of any employee for under conditions of labor prohibited by the wage order is unlawful).

Compensable Rest Breaks and Rest Premiums/Wages for Non-Productive Time

47. Pay averaging is unlawful in California and thus an employer may not meet its obligations to issue wages for all work time (including productive and non-productive time) and *compensable* rest breaks, by pay averaging. Non-exempt employees must be separately paid for all work time (both productive and non-productive time), and all *compensable* rest breaks.

48. From time to time at times relevant, including in the statutory periods, as a result of exemption not being met for Salary Draw Class Members and Salary Draw Aggrieved Employees and Optima’s pay structure (which included Optima overriding/re-capturing/recouping any pay it may have made for *compensable* rest breaks and non-productive time), Optima, from time to time at times relevant, including in the statutory periods (i) fails to provide payment for *compensable* rest breaks or pay premium wages to employees in lieu thereof (including as a result of the commissions being dependent on billing activity which is not a rest break) and (ii) fails to pay employees for non-productive time (including as a result of the commissions being dependent on productive time billing activity) at the regular, overtime or minimum wage rate as applicable, including but not limited to as required by California Labor Code §§510, 1182.12, 1194 et seq., 1197, 1198.

49. As a result of Optima’s conduct, Optima from time to time at times relevant, including in the statutory periods, violates California Labor Code §§201-204 (provisions setting forth timely payment of wages due during and upon termination of employment; waiting time penalty due), 221 (“It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by

1 said employer to said employee.”), 223 (“Where any statute or contract requires an employer to maintain
2 the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the
3 wage designated by statute or by contract.”), 224 (employer’s right to withhold authorized sums not
4 amounting to deduction from standard wages), 226(a) (non-compliant wage statements including but not
5 limited to gross and net earned wages not accurately stated as a result of recoupment of wages and
6 payments being advances not wages; the wage statements do not differentiate between advances and
7 earned wages and thus if all or part of the payments itemized on the wage statements are in fact advances,
8 then the amount of gross and net wages are incorrect; gross and net earned wages are omitted for the paid
9 rest breaks/rest premium wages and wages for non-productive time; all applicable hourly rates in effect
10 during the pay period and the corresponding number of hours worked at each hourly rate by the employee
11 is not reported), 226.7 (rest periods “shall be counted as hours worked for which there shall be no
12 deduction from wages”) and 1198 (employment of any employee for under conditions of labor prohibited
13 by the wage order is unlawful).

14 Commission Underpayments

15 50. From time to time at times relevant, including in the statutory periods, under Optima’s
16 compensation policy, a specific percentage of “everything” billed by the employee (less then salary base
17 draw) is to be applied and paid to the employee. Rather than applying the specific percentage to everything
18 the employee bills (less then salary base draw), Optima, from time to time at times relevant, including in
19 the statutory periods, applies the percentage to only the work that Optima bills and/or that Optima bills
20 and receives payment for. In this instance, from time to time at times relevant, including in the statutory
21 periods, the employee is not receiving the contracted wage amount. To achieve “goodwill” of its clients
22 and for other business reasons, Optima does not, at all times, bill the client everything that the employee
23 bills. In doing so, from time to time at times relevant, including in the statutory periods, Optima improperly
24 shifts the company’s business losses to its employees through illegal chargebacks/clawbacks, commission
25 wage forfeiture and unlawful deduction of wages. Through this conduct, from time to time at times
26 relevant, including in the statutory periods Optima requires employees to give up a portion of their earned
27 commission/incentive wages in order to compensate Optima for losses occasioned by Optima’s policies
28 and decisions associated with client billing. In doing so, it is making its employees insurers of Optima’s

1 business losses from time to time at times relevant, including in the statutory periods. As a result of
2 Optima's conduct, Optima violates California Labor Code §§201-204 (provisions setting forth timely
3 payment of wages due during and upon termination of employment; waiting time penalty due), 221 ("It
4 shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore
5 paid by said employer to said employee."), 223 ("Where any statute or contract requires an employer to
6 maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to
7 pay the wage designated by statute or by contract."), 224 (employer's right to withhold authorized sums
8 not amounting to deduction from standard wages), 226(a) (non-compliant wage statement including but
9 not limited to gross and net earned wages not accurately stated), 1198 (employment of any employee for
10 under conditions of labor prohibited by the wage order is unlawful).

11 California Labor Code §§ 432.5 and 925

12 51. Section 432.5 states that "No employer, or agent, manager, superintendent, or officer
13 thereof, shall require any employee or applicant for employment to agree, in writing, to any term or
14 condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be
15 prohibited by law." Section 925(a)(2) prohibits an employer from requiring an employee who primarily
16 resides and works in California, as a condition of employment, to agree to a provision that would "deprive
17 the employee of the substantive protection of California with respect to a controversy arising in
18 California." From time to time at times relevant, including in the statutory periods, for reasons alleged
19 herein, Optima's pay structure and agreements violate each of these two sections.

20 Wage Statements

21 51. In addition to the wage statement violations alleged herein, Optima, from time to time at
22 times relevant, including in the statutory periods, has violated California Labor Code §226(a) through its
23 failure to provide at the time of the final wage payment, an accurate itemized wage statement in
24 compliance with Section 226(a). From time to time at times relevant, including in the statutory periods,
25 when an employee's employment ends outside of the pay-cycle, Optima does not issue to the employee a
26 compliant wage statement at the time of the final wage payment but instead issues a wage statement at a
27 later date and does not correctly identify the correct inclusive date of the period for which the employee
28 is paid. For example, Plaintiff's separation of employment did not coincide with the end of the Optima

1 payroll period but rather her separation ended prior to the end of Optima’s payroll period (i.e. an off-cycle
2 check). In conjunction with the off-cycle payments to Plaintiff, (i) Plaintiff was not provided wage
3 statements at the time payments were made to her but instead Optima furnished wage statements at a later
4 date, and (ii) the wage statements Plaintiff ultimately was furnished reported both an incorrect check dates
5 of September 9, 2022 and an incorrect inclusive date of the period for which Plaintiff was paid (the period
6 ending date was stated as September 15, 2022 - which matches the on-cycle pay period end date - but
7 does not accurately identify the correct inclusive date for which Plaintiff was paid).

8 Waiting Time

9 52. From time to time at times relevant, including in the statutory periods, for reasons alleged
10 herein, Defendants failed to pay all Salary Draw Class Members and Salary Draw Aggrieved Employees
11 all wages due and owing at the time of separation of employment within the timing requirements set forth
12 by Sections 201-202 of the California Labor Code. As a result, from time to time at times relevant,
13 including in the statutory periods, for reasons alleged herein, Section 203 penalties are to be paid to Salary
14 Draw Class Members and Salary Draw Aggrieved Employees whose employment separated during the
15 applicable statutory periods. From time to time at times relevant, including in the statutory periods,
16 Defendants have failed to pay both the underlying wages due and owing at the time of employment
17 separation for reasons alleged herein, and further have failed to pay the Section 203 waiting time penalties,
18 in violation of Section 203.

19 Expenses/Losses

20 53. From time to time at times relevant, including in the statutory periods, Defendants failed
21 to indemnify Plaintiff, Salary Draw Class Members and Salary Draw Aggrieved Employees for all
22 necessary expenditures or losses incurred by the employee in direct consequence of job duties as required
23 by California Labor Code §2802. These business losses and expenditures include internet and home office
24 use.

25 54. From time to time at times relevant, including in the statutory periods, Salary Draw Class
26 Members and Salary Draw Aggrieved Employees worked, not from Optima’s office, but from home (i.e.
27 work from home (“WFH”)). From time to time at times relevant, including in the statutory periods,
28 Plaintiff, Salary Draw Class Members and Salary Draw Aggrieved Employees worked not from Optima’s

1 office, but remotely from a client's site. The WFH/remote nature of the work was per policy of Defendants
2 and thus was in direct consequence of job duties. For example, from time to time at times relevant,
3 including in the statutory periods, there was not enough office space/workspaces at the Optima office to
4 have all employees work from that office. From time to time at times relevant, including in the statutory
5 periods, Plaintiff worked away from the office as a result of Defendants' policy, both WFH and remotely
6 at the client site, and on information and belief, so did Salary Draw Class Members and Salary Draw
7 Aggrieved Employees, all without any payment, indemnification, and/or reimbursement for the
8 WFH/remote nature of the work including internet and home office use (all of which are necessary for
9 and in direct consequence of WFH/remote job duties), thereby passing on the employer's cost of doing
10 business onto Plaintiff, Salary Draw Class Members and Salary Draw Aggrieved Employees.

11 55. Further, from time to time at times relevant, including in the statutory periods, Defendants
12 fail to provide a cell reimbursement in the last month that the employee worked. A cell phone and cellular
13 service is necessary and a direct consequence of job duties and Optima's policy, at times relevant,
14 including in the statutory periods, provides for a "cell phone reimbursement" to the employee each month
15 – typically at the end of the month. Defendants however failed to issue cell phone reimbursement to
16 Plaintiff for and in last month of her employment (September 2022) despite a cell phone/cellular service
17 being a necessary and a direct consequence of job duties and Optima's policy, and on information and
18 belief, from time to time at times relevant, including in the statutory periods, Defendants fail to issue cell
19 phone reimbursement to Salary Draw Class Members and Salary Draw Aggrieved Employees for and in
20 their last month of employment.

21 UNFAIR COMPETITION

22 56. Plaintiff is informed and believes, and thereon alleges, that From time to time at times
23 relevant, including in the statutory periods, the allegations alleged in this Complaint apply with equal force
24 to all covered employees and that Defendants engaged in unfair competition.

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1 **CLASS ACTION CLAIMS**

2 **FIRST CAUSE OF ACTION**

3 **Non-Compete/Non-Solicitation Claim by Plaintiff and on Behalf of Non-Compete/Non-Solicitation Class Members Against Defendants**

4 57. Plaintiff incorporates by reference and realleges each and every allegation contained above,
5 as though fully set forth herein, except for paragraphs 2, 22.

6 58. As alleged herein, from time to time at times relevant, including in the statutory periods,
7 Plaintiff and Non-Compete/Non-Solicitation Class Members, have been subject to and/or presented with
8 and/or required to sign a non-compete/non-solicitation for post-Optima employment by way of written
9 agreement from Optima Office, Inc. and/or other document (including but not limited to an Offer Letter,
10 Optima Office Employment Offer, Employment Agreement, and Employee Confidentiality and Invention
11 Assignment Agreement) that contains a post-employment non-solicitation/non-competition statement that
12 restrains the engagement in a lawful profession, trade or business of any kind.

13 59. California Business and Professions Code §16600 prohibits non-competition/non-
14 solicitation agreements. Specifically it states “[e]xcept as provided in this chapter, every contract by
15 which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that
16 extent void.”

17 60. Any contract restraining anyone from engaging in a lawful profession, trade, or business
18 of any kind – a non-compete/non-solicitation - therefore is against public policy if the contract does not
19 fall within one of the limited exceptions in California Business and Professions Code §16600. None of
20 the limited exceptions are applicable here. A non-solicitation that restrains anyone from engaging in a
21 lawful profession, trade, or business of any kind is a non-compete.

22 61. California Business and Professions Code §16600.5 provides:

23 (a) Any contract that is void under this chapter is unenforceable regardless of where and
24 when the contract was signed.

25 (b) An employer or former employer shall not attempt to enforce a contract that is void
26 under this chapter regardless of whether the contract was signed and the employment was maintained
27 outside of California.

1 (c) An employer shall not enter into a contract with an employee or prospective
2 employee that includes a provision that is void under this chapter.

3 (d) An employer that enters into a contract that is void under this chapter or attempts to
4 enforce a contract that is void under this chapter commits a civil violation.

5 (e) (1) An employee, former employee, or prospective employee may bring a private right
6 of action to enforce this chapter for injunctive relief or the recovery of actual damages, or both. (2) In
7 addition to the remedies described in paragraph (1), a prevailing employee, former employee, or
8 prospective employee in an action based on a violation of this chapter shall be entitled to recover
9 reasonable attorney's fees and costs.

10 62. California Labor Code §925(a)(2) prohibits an employer from requiring an employee who
11 primarily resides and works in California, as a condition of employment, to agree to a provision that would
12 “deprive the employee of the substantive protection of California with respect to a controversy arising in
13 California.” In direct contravention to California Labor Code §925(a)(2), Defendants require employees
14 who primarily reside and work in California, as a condition of employment, to agree to non-compete/non-
15 solicitation – a provision that would deprive employees of the substantive protection of California with
16 respect to a controversy arising in California. California Labor Code §925(b) provides that “[a]ny
17 provision of a contract that violates subdivision (a) is voidable by the employee, and if a provision is
18 rendered void at the request of the employee, the matter shall be adjudicated in California and California
19 law shall govern the dispute.” Further, California Labor Code §925(c) provides that “[i]n addition to
20 injunctive relief and any other remedies available, a court may award an employee who is enforcing his
21 or her rights under this section reasonable attorney's fees.”

22 63. Non-compete/non-solicitation agreements also violate Cal. Labor Code §432.5 which
23 states that “[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any
24 employee or applicant for employment to agree, in writing, to any term or condition which is known by
25 such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.”

26 64. Furthermore, from time to time at times relevant, including in the statutory periods,
27 California Labor Code §§432.5 and 925(a)(2) are violated through any sort of purported agreement to
28 contract away protections under California Business and Professions Code §§16600, 16600.5, the

1 California Labor Code including but not limited to indemnification under California Labor Code §2802
2 and one-way fee and cost shifting, and California Civil Code §1668 (“All contracts which have for their
3 object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to
4 the person or property of another, or violation of law, whether willful or negligent, are against the policy
5 of the law.”)

6 65. Pursuant to California Code of Civil Procedure §1060, any person interested under a
7 written instrument, or under a contract, or who desires a declaration of his or her rights or duties with
8 respect to another may, in cases of actual controversy relating to the legal rights and duties of the respective
9 parties, bring an original action for a declaration of his or her rights and duties, including a determination
10 of any question of construction or validity arising under the instrument or contract. He or she may ask for
11 a declaration or rights or duties, either alone or with other relief and the court may make a binding
12 declaration of these rights or duties, whether or not future relief is or could be claimed at the time. The
13 declaration may be had before there has been any breach of the obligation in respect to which said
14 declaration is sought. The declaration shall have the force of a final judgment. Pursuant to California
15 Code of Civil Procedure §1062, the remedies set forth in the chapter (including §1060) are cumulative
16 and shall not be contrived as restricting any remedy, provisional or otherwise, provided by law for the
17 benefit of any party to such action, and no judgment under the chapter shall preclude any party from
18 obtaining additional relief based upon the same facts.

19 66. On behalf of herself and Non-Compete/Non-Solicitation Class Members, Plaintiff seeks a
20 declaration that any contract that purports to restrain their lawful trade, profession, or business is invalid
21 and void. Plaintiff further seeks the court to require Defendants to send and post notices to inform Non-
22 Compete/Non-Solicitation Class Members that its attempts to restrain lawful trade, profession, or business
23 is invalid and that any such agreement is invalid and void.

24 67. In addition to seeking to void the contract and declaratory relief, Plaintiff seeks an
25 injunction, pursuant to California Code of Civil Procedure §§526 and 527, Section 925 of the California
26 Labor Code and Section 16600.5 of the California Business and Professions Code to enjoin Defendants
27 from presenting any non-compete/non-solicitation instruments/agreements including but not limited to
28

1 Non-Compete/Non-Solicitation Class Members and to further enjoin Defendants from enforcing any non-
2 compete/non-solicitation instruments/agreements.

3 68. Plaintiff seeks any and all remedies including, but not limited to, declaratory and injunctive
4 relief, damages, monetary relief, and recovery of reasonable attorneys' fees and costs pursuant to including
5 but not limited to those permitted by California Code of Civil Procedure §1021.5, California Labor Code
6 §§925 and 2802, California Business and Professions Code §16600 to 16600.5, the substantial benefit
7 doctrine, and/or the common fund doctrine.

8 **SECOND CAUSE OF ACTION**

9 **Cal. Labor Code §2802 Indemnification Claim by Plaintiff and on Behalf of Salary Draw Class
Members Against Defendants**

10 69. Plaintiff incorporates by reference and realleges each and every allegation contained above,
11 as though fully set forth herein, except for paragraphs 2, 22.

12 70. Pursuant to California Labor Code §2802(a), "[a]n employer shall indemnify his or her
13 employee for all necessary expenditures or losses incurred by the employee in direct consequence of the
14 discharge of his or her duties, or of his or her obedience to the directions of the employer, even though
15 unlawful..." Cal. Labor Code §2802(c) states, "[f]or purposes of this section, the term "necessary
16 expenditures or losses" shall include all reasonable costs, including, but not limited to, attorney's fees
17 incurred by the employee enforcing the rights granted by this section."

18 71. As alleged herein, from time to time at times relevant, including in the statutory periods,
19 Defendants failed to indemnify Plaintiff and Salary Draw Class Members for all necessary expenditures
20 or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or
21 her obedience to the directions of the employer, even though unlawful. As alleged herein, these necessary
22 expenditures or losses, from time to time at times relevant, including in the statutory periods, are for
23 internet and home office use, and for reimbursement associated with cell phone/cell phone service in the
24 last month of employment, thereby passing on the employer's cost of doing business onto Plaintiff and
25 Salary Draw Class Members.

26 72. Plaintiff, on her behalf and on behalf of Salary Draw Class Members seek, all remedies
27 available under California law including but not limited Defendants' indemnification of necessary
28 expenditures and/or losses, interest, attorney's fees and costs, injunctive relief, and all available remedies

under California Labor Code §2802.

THIRD CAUSE OF ACTION
Overtime Claim by Plaintiff and on Behalf of Salary Draw Class Members Against Defendants

73. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein, except for paragraphs 2, 22.

74. As alleged herein, from time to time at times relevant, including in the statutory periods, Plaintiff and Salary Draw Class Members have not been exempt from receiving overtime wages.

75. During the relevant statutory periods, the IWC Wage Order applicable to Plaintiff and Salary Draw Class Members requires the payment of daily and weekly overtime compensation.

76. During the relevant statutory periods, California Labor Code §510 codifies the right to overtime daily and weekly compensation for Plaintiff and Salary Draw Class Members.

77. Unpaid overtime wages may be recovered through a civil action pursuant to California Labor Code §§510, 1194.

78. As alleged herein, from time to time at times relevant, including in the statutory periods, Defendants failed to pay overtime wages owed to Plaintiff and Salary Draw Class Members. As a result, from time to time during the relevant statutory periods, Plaintiff and Salary Draw Class Members have not been fully compensated for all overtime wages they are eligible for.

79. For this violation, Plaintiff and on behalf of Salary Draw Class Members seek any and all remedies available under the law to the extent permissible including but not limited to recovery of the unpaid overtime wages as well as the recovery of penalties, interest, attorneys' fees, and costs.

FOURTH CAUSE OF ACTION
Minimum Wage Claim by Plaintiff and on Behalf of Salary Draw Class Members Against Defendants

80. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein, except for paragraphs 2, 22.

81. During the relevant statutory periods California Labor Code §1197 provides that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser wage than the established minimum is unlawful.

82. During the relevant statutory periods, California Labor Code §1182.12 sets forth the

1 minimum wages due to employees and California Labor Code §1194 makes it unlawful for an employee
2 to receive less than the legal minimum wage due.

3 83. As alleged herein, from time to time at times relevant, including in the statutory periods,
4 Plaintiff and Salary Draw Class Members have not been exempt from receiving minimum wages.

5 84. As alleged herein, from time to time at times relevant, including in the statutory periods,
6 Plaintiff and Salary Draw Class Members have not been paid, at least minimum wage, for all hours that
7 they worked including but not limited to as a result of Defendants' practice of not paying for all work
8 (including non-productive and productive time) as a result of its compensation policy.

9 85. As alleged herein, from time to time at times relevant, including in the statutory periods,
10 Plaintiff and Salary Draw Class Members have not been paid, at least minimum wage, for all hours that
11 they worked (productive and non-productive time) as a result of Defendants' violation of Sections 221,
12 223, 224, and its practice of recovering wages in connection with a salary draw.

13 86. Defendants' failure, from time to time at times relevant, including in the statutory periods,
14 to pay Plaintiff and Salary Draw Class Members, minimum wages as required violates California Labor
15 Code §§1182.12, 1194, 1197.

16 87. Plaintiff and on behalf of Salary Draw Class Members seeks any and all remedies available
17 under the law to the extent permissible including but not limited to recovery of the unpaid balance of the
18 minimum wage compensation as well as the recovery of penalties, interest, attorneys' fees, costs and
19 liquidated damages.

20 **FIFTH CAUSE OF ACTION**
21 **Unpaid Wages Claim by Plaintiff and on Behalf of Salary Draw Class Members Against**
22 **Defendants**

23 88. Plaintiff incorporates by reference and realleges each and every allegation contained above,
24 as though fully set forth herein, except for paragraphs 2, 22.

25 89. As alleged herein, from time to time at times relevant, including in the statutory periods,
26 Plaintiff and Salary Draw Class Members have earned wages which includes regular wages for non-
27 productive time, unpaid salary as a result of the employer's recoupment of the salary through the salary
28 draw, compensable rest breaks, rest break premiums and underpaid commission wages.

90. As alleged herein, from time to time at times relevant, including in the statutory periods, Plaintiff and Salary Draw Class Members have not been paid all wages due to them.

91. Unpaid wages may be recovered through a civil action including pursuant to California Labor Code §§200-203, 218, 218.5, 218.6, 226.7.

92. Plaintiff and on behalf of Salary Draw Class Members seek any and all remedies available under the law to the extent permissible including but not limited to those under California Labor Code §§218, 218.5, 218.6, 226.7 including payment of the unpaid wages, damages, penalties, interest, and attorneys' fees and costs.

SIXTH CAUSE OF ACTION
Compensable Rest Break Claim by Plaintiff and on Behalf of Salary Draw Class Members Against Defendants

93. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein, except for paragraphs 2, 22.

94. Pursuant to the IWC Wage Orders applicable to Plaintiff Salary Draw Class Members' employment by Defendants:

Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof ... ***Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages.*** (emphasis added)

95. California Labor Code §226.7(d) requires that a rest period mandated pursuant to state law, including but not limited to by statute and/or an applicable order of the IWC shall be counted as hours worked, for which there shall be no deduction from wages.

96. California Labor Code §226.7(c) provides that employers who do not provide an employee a rest period in accordance with state law shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

97. As alleged herein, during the relevant statutory periods, Plaintiff and Non-Exempt Class Members have not been exempt from receiving paid rest breaks.

1 98. As alleged herein, from time to time at times relevant, including in the statutory periods,
2 Defendants have not counted rest breaks as hours worked for which there shall be no deduction from
3 wages. As alleged herein, from time to time at times relevant, including in the statutory periods,
4 Defendants take a deduction from wages for rest breaks for Plaintiff and Salary Draw Class Members
5 including as a result of the employer's recoupment of the salary through the salary draw.

6 99. Plaintiff and on behalf of Salary Draw Class Members seeks any and all remedies available
7 under the law to the extent permissible including but not limited to one hour of premium pay at the
8 employee's regular rate of compensation for each day a violation occurred with respect to compensable
9 rest periods alleged herein, interest, and attorneys' fees and costs.

10
11 **SEVENTH CAUSE OF ACTION**
12 **Failure to Pay Wages Due Upon Termination Claim by Plaintiff and on Behalf of Salary Draw**
13 **Class Members Against Defendants**

14 100. Plaintiff incorporates by reference and realleges each and every allegation contained above,
15 as though fully set forth herein, except for paragraphs 2, 22.

16 101. California Labor Code §203 provides that if an employer willfully fails to pay
17 compensation promptly upon discharge, as required by California Labor Code §§201, 201.3 and 202, the
18 employer is liable for waiting time penalties in the form of continued compensation for up to thirty
19 workdays.

20 102. As alleged herein, from time to time at times relevant, including in the statutory periods,
21 Defendants, have willfully failed to timely pay Plaintiff and Salary Draw Class Members all wages due
22 upon separation of employment as required by California Labor Code §§201-203's timing requirements.

23 103. Defendants' willful failure to timely pay Plaintiff and Salary Draw Class Members whose
24 employment has ended, their earned wages violates California Labor Code §§201, 201.3 and 202.

25 104. The exact amount of the wages accrued and unpaid at the time of discharge is unknown at
26 this time but information for the calculation may be ascertained from Defendants' records. Based on
27 information and belief gained from Plaintiff's records, and alleged herein, unpaid wages from time to time
28 at times relevant, including in the statutory periods includes the amount of work time that went unpaid
(including productive and unproductive time), underpayment and/or nonpayment of regular, minimum

1 and overtime wages, nonpayment of rest premiums, underpayment of salary due to salary recoupment
2 from the salary draw, nonpayment of compensable rest breaks, and underpayment of commission wages.

3 105. Plaintiff and on behalf of Salary Draw Class Members whose employment has ended with
4 Defendants during the applicable statutory period seek to recover any and all remedies available including
5 but not limited to waiting time penalties pursuant to California Labor Code §§203 in an amount according
6 to proof at the time of trial.

7
8 **EIGHTH CAUSE OF ACTION**
9 **Wage Statement Claim by Plaintiff and on Behalf of Salary Draw Class Members Against Defendants**

10 106. Plaintiff incorporates by reference and realleges each and every allegation contained above,
11 as though fully set forth herein, except for paragraphs 2, 22.

12 107. California Labor Code §226(a) sets forth reporting requirements for employers when they
13 pay wages. In relevant part it provides that

14 (a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his
15 or her employee, either as a detachable part of the check, draft, or voucher paying the
16 employee's wages, or separately if wages are paid by personal check or cash, an accurate
17 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by
18 the employee...(4) all deductions, provided that all deductions made on written orders of
the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
inclusive dates of the period for which the employee is paid....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

19 108. California Labor Code §226(e) provides:

20 An employee suffering injury as a result of a knowing and intentional failure by an
21 employer to comply with subdivision (a) shall be entitled to recover the greater of all actual
22 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
23 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 shall be entitled to
an award of costs and reasonable attorney's fees.

24 109. California Labor Code §226(e)(2)(B) provides in relevant part:

25
26 An employee is deemed to suffer injury for purposes of this subdivision if the employer
27 fails to provide accurate and complete information as required by any one or more of items
28 (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily
determine from the wage statement alone one or more of the following: (i) The amount of
the gross wages or net wages paid to the employee during the pay period or any of the other

1 information required to be provided on the itemized wage statement pursuant to items (2)
2 to (4), inclusive, (6), and (9) of subdivision (a)...

3 California Labor Code §226(e)(2)(C) states “For purposes of this paragraph, “promptly and
4 easily determine” means a reasonable person would be able to readily ascertain the
5 information without reference to other documents or information.”

6 110. As alleged herein, from time to time at times relevant, including in the statutory periods,
7 Defendants, from time to time as a result of conduct alleged herein, knowingly and intentionally failed,
8 and continue to fail to furnish and maintain for Plaintiff and Salary Draw Class Members, complete and
9 accurate wage statements upon each payment of wages in violation of California Labor Code §§226(a).

10 111. Defendants' failures during the relevant time period to record and record properly
11 information required on itemized wage statements were not isolated and unintentional payroll errors due
12 to clerical or inadvertent mistakes. Indeed, from time to time at times relevant, including in the statutory
13 periods, Defendants' policies, procedures and practices have been to purposefully exclude required
14 information from wage statements. These omissions occur routinely and were not isolated events.
15 Defendants knew of the omissions and inaccuracies, and intended for the form and content of the wage
16 statements to be inaccurate and incomplete. Further, Plaintiff and Salary Draw Class Members are not
17 able to promptly and easily determine from the wage statement alone one or more of items required but
18 that has been omitted.

19 112. As alleged herein, Plaintiff and Salary Draw Class Members have been injured by these
20 failures time to time because, among other things, they are not able to determine from the wage statements
21 alone one or more of the items required to be provided, and these failures required them to perform
22 mathematical computations including those related to: non-compliant wage statements including but not
23 limited to gross and net earned wages not accurately stated as a result of recoupment of wages and
24 payments being advances not wages; the wage statements do not differentiate between advances and
25 earned wages and thus if all or part of the payments itemized on the wage statements are in fact advances,
26 then the amount of gross and net wages are incorrect; gross and net earned wages are omitted for the paid
27 rest breaks/rest premium wages and wages for non-productive time; all applicable hourly rates in effect
28 during the pay period and the corresponding number of hours worked at each hourly rate by the employee
is not reported; the inclusive dates for which the employee is paid.

113. Defendants will no doubt continue these illegal practices until such time as it is forced to

1 pay penalties in compliance with California Labor Code §226(e).

2 114. Plaintiff and on behalf of Salary Draw Class Members seek to recover any and all remedies
3 available including statutory penalties, interest, injunctive relief, and attorneys' fees and costs pursuant to
4 California Labor Code §§226(e) and (h).

5
6 **NINTH CAUSE OF ACTION**

7 **Unfair Competition Claim by Plaintiff and on Behalf of Non-Compete/Non-Solicitation Class
Members and Salary Draw Class Members Against Defendants**

8 115. Plaintiff incorporates by reference and realleges each and every allegation contained above,
9 as though fully set forth herein, except for paragraphs 2, 22.

10 116. Defendants' conduct, as alleged in this complaint, has been, and continues to be, unfair,
11 unlawful, and harmful to Plaintiff, Class Members', Defendants' competitors, prospective
12 employees/applicants, and the general public. Plaintiff seeks to enforce important rights affecting the
13 public interest within the meaning of California Code of Civil Procedure §1021.5.

14 117. Defendants' policies, activities, and actions as alleged herein are violations of California
15 law and constitute unlawful business acts and practices in violation of California Business and Professions
16 Code §§17200, *et seq.*

17 118. A violation of California Business and Professions Code §§17200, *et seq.*, may be
18 predicated on the violation of any state or federal law. In the instant case, as alleged herein, Defendants'
19 policies and practices of not complying with California laws, from time to time at times relevant, including
20 in the statutory periods, includes, but is not limited to, the following violations: unlawful non-
21 compete/non-solicitation, not paying all wages due upon separation of employment, not paying all regular,
22 minimum wages, overtime and commission wages due, not payment for compensable rest breaks and non-
23 productive time, unlawfully recouping and taking back wages, not indemnifying employees for business
24 expenditures, and not providing compliant wage statements.

25 119. From time to time at times relevant, including in the statutory periods, Plaintiff and Class
26 Members have been personally aggrieved and injured by Defendants' unlawful and unfair business acts
27 and practices alleged herein by the loss of money and/or property.

120. Pursuant to California Business and Professions Code §§17200, *et seq.*, Plaintiff and on behalf of Class Members seek injunctive and restitutionary relief for the period that commences four years prior to the filing of the original Complaint, an award of attorneys' fees pursuant to California Code of Civil Procedure §1021.5, and an award of costs.

PAGA ACTION CLAIM

TENTH CAUSE OF ACTION

Claims under the PAGA by Plaintiff on Behalf of Non-Compete/Non-Solicitation Aggrieved Employees and Salary Draw Aggrieved Employees Against Defendant

121. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein, except for paragraphs 1, 13-21.

122. PAGA permits an "aggrieved employee" to bring an action on behalf of an employer's other current and former employees to address an violations of the California Labor Code.

123. Plaintiff is an "aggrieved employees" as defined under the PAGA because she is a person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

124. Plaintiff brings this PAGA action on behalf of Non-Compete/Non-Solicitation Aggrieved Employees and Salary Draw Aggrieved Employees.

125. Plaintiff has complied with the requirements to commence a civil action pursuant to the PAGA including by exhausting requirements of PAGA by providing written online notice to the LWDA and notice by certified letter to Defendant Optima Office, Inc. on September 8, 2023 (attached hereto as Exhibit 1) (the "PAGA Notice") concerning the PAGA claims Plaintiff Rhodes intends to pursue and provisions of the Labor Code alleged to have been violated as required by California Labor Code §2699.3. The statutory waiting period for Plaintiff to add PAGA claims to the complaint has expired and Plaintiff has received no response from the LWDA and no response or notice (including any "cure" notice) from Defendant in response to the PAGA Notice.

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126. The violations set forth herein allege violations of the California Labor Code for which the Labor Code provides a civil penalty to be assessed and recovered by the LWDA or any department, division, commission, boards, agencies, or employees, or for which a penalty is provided under California Labor Code §2699(f).

127. As alleged herein and in the PAGA Notice (Exhibit 1) which is incorporated herein, Defendant violated, from time to time, the following California Labor Code sections, and penalties are sought for same because Defendant: (a) violated California's anti non-compete laws, indemnification laws (Labor Code §2802), and one-way fee and cost-shifting laws under the California Labor Code and violated California Labor Code §§432.5 and 925(a)(2) with respect to Non-Compete/Non-Solicitation Aggrieved Employees; and (b) violated California Labor Code §§201-203, 204, 221, 223, 224, 226(a), 226.7, 432.5, 510, 925(a)(2), 1182.12, 1194 *et seq.*, 1197, 1198, 2802 with respect to Salary Draw Aggrieved Employees.

128. For these violations, Plaintiff seeks all available remedies under the PAGA including PAGA penalties on behalf of the State of California, Non-Compete/Non-Solicitation Aggrieved Employees and Salary Draw Aggrieved Employees, plus attorney's fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests entry of judgment against each defendant, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiff be appointed as the representatives of all members of the Classes; and
3. That counsel for Plaintiff be appointed as counsel for all Classes.

On the First Cause of Action

1. For declaratory relief;
2. For injunctive relief;
3. For posting and mailing of notice of voiding the agreements;
4. For damages;

3. For reasonable attorneys' fees;
4. For costs of suit incurred herein; and
5. For such other and further relief as the Court deems proper.

On the Second Cause of Action

1. For indemnification pursuant to §2802;
2. For pre-judgment interest from the date on which the employee incurred the necessary expenditure or loss;
3. For reasonable attorneys' fees and costs;
4. For such other and further relief as the Court deems proper.

On the Third Cause of Action

1. For all unpaid overtime wages;
2. For liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon pursuant;
3. For reasonable attorneys' fees and costs;
4. For interest;
5. For such other and further relief as the Court deems proper.

On the Fourth Cause of Action

1. For compensatory damages equal to the amount of unpaid minimum wage compensation owed to Plaintiff and Class Members;
2. For pre-judgment interest on any unpaid minimum wage compensation due from the day that such amounts were due;
3. For liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon pursuant to California Labor Code §1194.2;
4. For payment of waiting time penalties according to proof;
5. For reasonable attorneys' fees and costs; and
6. For such other and further relief as the Court deems proper including that under 1194, 1194.2 and 1197.

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On the Fifth Cause of Action

1. For unpaid wages;
2. For pre-judgment interest on any unpaid wages due from the day that such amounts were due;
3. For reasonable attorneys' fees and costs;
4. For such other and further relief as the Court deems proper.

On the Sixth Cause of Action

1. For premium pay for each day in which there was no compensable rest break;
2. For pre-judgment interest on any unpaid meal period compensation due from the day that such amounts were due;
3. For reasonable attorneys' fees and costs;
4. For such other and further relief as the Court deems proper.

On the Seventh Cause of Action

5. For statutory penalties pursuant to California Labor Code §203;
6. For reasonable attorneys' fees and costs;
7. For such other and further relief as the Court deems proper.

On the Eighth Cause of Action

1. For statutory damages pursuant to California Labor Code §226(e);
2. For reasonable attorneys' fees and costs pursuant to California Labor Code §226(e) and (h);
3. For injunctive relief pursuant to California Labor Code §226(h);
4. For such other and further relief as the Court deems proper.

On the Ninth Cause of Action

1. That Defendants pay restitution and/or disgorgement of sums to Plaintiff and Class in an amount according to proof;
2. For injunctive relief;
3. For pre-judgment interest on any unpaid wages due from the day that such amounts were due;

- 1 4. For reasonable attorneys' fees that Plaintiff and Class Members are entitled to recover under
2 California Code of Civil Procedure §1021.5;
3 5. For costs of suit incurred herein;
4 6. For such other and further relief as the Court deems proper.

5 On the Tenth Cause of Action

- 6 1. For civil penalties according to proof including underpaid wages as part of civil penalties;
7 1. For reasonable attorneys' fees and costs; and
8 2. For such other and further relief as the Court deems proper.

9
10 **DEMAND FOR JURY TRIAL**

11 Plaintiff requests a jury trial in this matter as permitted.

12 Dated: November 13, 2023

RICHARD LAW, P.C.

13 By: Diane Richards

14 DIANE E. RICHARD

15 Attorneys for Plaintiff Rachelle Rhodes
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EXHIBIT 1
(SEPTEMBER 8, 2023 PAGA NOTICE WITH CONFIRMATIONS
OF SUBMISSIONS TO: THE EMPLOYER VIA CERTIFIED MAIL AND
ONLINE TO THE LWDA)

September 8, 2023

VIA ONLINE SUBMISSION

STATE OF CALIFORNIA
LABOR & WORKFORCE DEVELOPMENT AGENCY/DIR

VIA U.S. CERTIFIED MAIL

Optima Office, Inc.
Attn: Jennifer Audrey Barnes, Agent
5120 Shoreham Place, Ste 285
San Diego, CA 92122

Re: Notice of Claims/Labor Code Private Attorneys General Act of 2004, California Labor Code §2698, et seq.

To: California Labor and Workforce Development Agency, and Optima Office, Inc:

This firm represents Rachelle Rhodes ("Rhodes") who was employed at Optima Office, Inc. ("Optima"). This notice is intended to constitute notice, including notice pursuant to the California Labor Code Private Attorneys General Act of 2004, California Labor Code §2698, et seq. ("PAGA"), of the provisions of the California Labor Code alleged to have been violated including the facts and theories to support the alleged violations by Optima. Rhodes alleges that Optima has violated the following California Labor Code provisions with respect to aggrieved employees in California. Aggrieved employees are defined as:

Any and all current and former employees of Optima Office, Inc. in the state of California, however titled, who at any time since one year prior to this PAGA notice (plus applicable time for tolling under Emergency Rule No. 9 or other tolling rules) have been subject to and/or presented with a non-compete/non-solicitation for post-Optima employment by way of written agreement from Optima Office, Inc. and/or other document (including but not limited to an Offer Letter, Optima Office Employment Offer, Employment Agreement, and Employee Confidentiality and Invention Assignment Agreement) that contains a post-employment non-compete/non-solicitation statement (hereinafter collectively referred to as the "Non-Compete/Non-Solicitation Aggrieved Employees").

Any and all persons who have been employed by Optima Office, Inc., however titled, in the state of California, and whose salary has included, been termed, described and/or recorded as a salary draw or base salary draw at any time since one year prior to this PAGA notice (plus applicable time for tolling under Emergency Rule No. 9 or other tolling rules) (hereinafter collectively referred to as the "Salary Draw Aggrieved Employees").

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Non-Compete/Non-Solicitation Aggrieved Employees:

From time to time at times relevant, including in the statutory periods, Non-Competition/Non-Solicitation Aggrieved Employees have been subject to and/or presented and/or required to sign with a non-compete/non-solicitation for post-Optima employment by way of written agreement from Optima Office, Inc. and/or other document (including but not limited to an Offer Letter, Optima Office Employment Offer, Employment Agreement, and Employee Confidentiality and Invention Assignment Agreement) that contains a post-employment non-solicitation/non-competition statement that restrains the engagement in a lawful profession, trade or business of any kind.

California Business and Professions Code §16600 prohibits non-compete/non-solicitation agreements. Specifically it states "[e]xcept as provided in this chapter, every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." Any contract restraining anyone from engaging in a lawful profession, trade, or business of any kind – a non-compete/non-solicitation - therefore is against public policy if the contract does not fall within one of the limited exceptions in California Business and Professions Code §16600. None of the limited exceptions are applicable here. A non-solicitation that restrains anyone from engaging in a lawful profession, trade, or business of any kind is a non-compete. California Business and Professions Code §16600.5 provides in part:

- (a) Any contract that is void under this chapter is unenforceable regardless of where and when the contract was signed.
- (b) An employer or former employer shall not attempt to enforce a contract that is void under this chapter regardless of whether the contract was signed and the employment was maintained outside of California.
- (c) An employer shall not enter into a contract with an employee or prospective employee that includes a provision that is void under this chapter.

California Labor Code §432.5 states that "No employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law." California Labor Code §925(a)(2) prohibits an employer from requiring an employee who primarily resides and works in California, as a condition of employment, to agree to a provision that would "deprive the employee of the substantive protection of California with respect to a controversy arising in California."

In direct contravention to California Labor Code §432.5, Optima from time to time at times relevant including in the statutory periods, requires Non-Compete/Non-Solicitation Aggrieved Employees to agree, in writing, to a term or condition (i.e. post-termination non-compete/non-solicitation provision) which is known by Optima to be prohibited by law (including prohibition of California Business and Professions Code §16600). For example, an Optima Office Employment Offer (including the one presented and signed by Rhodes and other Non-Compete/Non-Solicitation Aggrieved Employees) states "As a condition of employment with Optima, all employees are required to sign the attached Optima Employee Confidentiality and Invention Assignment Agreement. Please sign and return this agreement with your offer letter." An Optima Employee Confidentiality and Invention Assignment Agreement (including the one presented and signed by Rhodes and other Non-Compete/Non-Solicitation Aggrieved Employees) states in part:

In consideration and as a condition of my employment or continued employment with Optima Office, Inc., and for the benefit of my employer and its parent, subsidiary and related entities and their respective successors and assigns

(hereinafter for purposes of this Agreement collectively the “Company”), I hereby agree as follows:

Solicitation of Employees.....for a period of one (1) year after the date of termination of my employment with the Company (whether voluntary or otherwise), I covenant and agree that I shall not directly or indirectly, as a principal, agent, shareholder, member, manager, partner, director, owner, employee, consultant or otherwise, on my own behalf or for the benefit of any other person or entity, solicit or attempt to solicit for employment or any other business-related position any employee, officer, contractor, director or member of the Company, and I will not otherwise unlawfully induce, raid, or encourage any employee, officer, contractor, director or member of the Company to terminate their relationship with the Company.

In the event that any legal action becomes necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover costs and reasonable attorneys’ fees as shall be determined by the court. This Agreement shall be governed by the laws of the State of California.

The Company shall have the right to enforce this Agreement and any of its provisions by TRO, injunction, specific performance or other equitable relief, without prejudice to any other rights and remedies that the Company may have for a breach of this Agreement. Nothing in this Agreement shall limit the remedies available to the Company.

I acknowledge that this Agreement shall cover the entire time period from when I first performed any work for the Company and that it shall survive and remain in place even after the termination of my employment.

This also violates California Labor Code §925(a)(2) in that it requires an employee who primarily resides and works in California, as a condition of employment, to agree to a provision that would “deprive the employee of the substantive protection of California with respect to a controversy arising in California,” namely the protection to engage in a lawful profession, trade or business of any kind. Furthermore, California Labor Code §§432.5 and 925(a)(2) are violated from time to time through any sort of purported agreement to contract away protections under California Business and Professions Code §§16600, 16600.5, the California Labor Code including but not limited to indemnification under Sections 2802 and one-way fee and cost shifting, and California Civil Code §1668 (“All contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law.”)

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Salary Draw Aggrieved Employees:

Optima's Compensation Policy

Optima's compensation policies (including that Rhodes worked under and other Salary Draw Aggrieved Employees), from time to time at times relevant including in the statutory periods, include a salary draw/base salary draw as a component. An Optima Office Employment Offer describes a compensation policy as:

When exempt, you will receive a minimum base salary of [\$] per month. You will be paid in semi-monthly installments on the 10th and 25th of each month. The base salary draw is subject to deductions for taxes and other withholdings as required by state and federal laws, and the policies of the company. You will receive [%] of everything you bill, less your base. More details and an example of how our salaried positions work is on the Addendum on page 4 of this outline.

All wages are subject to deductions for taxes and other withholdings as required by state and federal laws, and the policies of the company.

Addendum

Salary Details: The salary exempt position is a base salary which will likely be much lower than the amount you will make on a monthly basis. The way we compensate our consultants in the field is that we give them [%] of the billable revenue they generate each month less their base. An example of this program is below:

Annual Salary: \$60,000 (monthly **\$5,000**)

Billable Rate: \$95 per hour Monthly Billable Hours: 150

Billed in X Month: $\$95 \times 150 = \$14,250$

Earnings calculated for X Month: $\$14,250 \times 50\% = \$7,125$

Override Commission = $\$7,125 - \$5,000 = \$2,125$

You will be paid for the 1st through the 15th on the 25th and for the 16th -EOM on the 10th, which will also include your override commissions for billable revenues for the full month, 1st-EOM.

If the commission balance is negative, the negative balance will rollover and be applied to the next month's commission calculation. In certain situations, management may waive the deficit.

Overtime/Minimum Wage/Compensable Rest Breaks and Rest Premiums/Wages for Compensable Non-Productive Time/Unlawful Deductions from Wages/Unlawful Collection/Receipt of Wages/Unlawful Chargebacks/Failure to Pay Statutory and Contracted Wages

From time to time at times relevant including in the statutory periods, under Optima's plan, a salary draw is paid on or about the 25th of the month for the 1st through the 15th of the month. On or about the 10th of the next month, another salary draw is paid for the 16th through the end of the previous month and, assuming the commission balance is not in the negative, a commission payment is also made for the previous month. From time to time at times relevant including in the statutory periods, a negative commission balance will rollover and be applied to the next month's commission calculation and payment.

Exemption Not Met - To meet exemption under California law, the salary basis test has to be met (in addition to the duties test). For exemption, the employee must be paid a salary equivalent of a pre-determined amount that is at least twice the state minimum wages for full time employment, that is not subject to reduction because of variations in quality or quantity of the work performed. A salary draw is not wages but is an advance of wages, and therefore Optima's compensation policy, from time to time at times relevant including in the statutory periods, of paying a salary draw (including those on the 10th and 25th of the month) does not meet the requirements for the salary basis test. The salary draw paid by Optima is subject, from time to time at times relevant including in the statutory periods, to overrides/reduction because of variations in quality or quantity of the work performed as evidenced by the compensation policy; from time to time, the salary draw is overridden/recoverable/taken back by Optima against commissions/incentive pay paid to Salary Draw Aggrieved Employees. From time to time at times relevant including in the statutory periods, the salary draw is an override and deducted from earned commissions and recouped/recaptured and repaid to Optima. In other words, from time to time at times relevant including in the statutory periods, the salary draw was effectively overridden and recaptured when it served as an offset/override to future commission pay. A compensation structure with a recoverable draw against commissions/incentive pay (hereinafter "commissions") does not satisfy the salary basis test and thus exemption is not met and does not apply. To the extent the compensation termed by Optima as commissions is in fact not commissions but some other form of compensation, the allegations equally apply to whatever the type of compensation the non-base pay may be. Additionally, commissions paid to employees (including those paid on the 10th of the month for the previous month) from time to time at times relevant including in the statutory periods, do not meet the salary basis test including for the reasons that (i) commissions are not a pre-determined amount; (ii) commissions are subject to reduction because of variations in quality or quantity of the work performed; and (iii) commission cannot attribute wages paid in one pay period to a prior pay period including to cure a shortfall in wages. As a result of not meeting exemption from time to time at times relevant including in the statutory periods, Salary Draw Aggrieved Employees are not exempt despite being classified as exempt, and they, from time to time at times relevant including in the statutory periods, have not been paid appropriate overtime and minimum wages for work time as required by California Labor Code §§510, 1182.12, 1194 *et seq.*, 1197, 1198. As a further result of Optima's conduct, Optima, from time to time at times relevant including in the statutory periods, violates California Labor Code §§201-204 (provisions setting forth timely payment of wages due during and upon termination of employment; waiting time penalty due), 226(a) (non-compliant wage statements including but not limited to gross and net earned wages not accurately stated as a result of recoupment of wages and payments being advances not wages, the wage statements do not differentiate between advances and earned wages and thus if all or part of the payments itemized on the wage statements are in fact advances, then the amount of gross and net earned wages are incorrect, the gross and net earned wages are inaccurately understand as a result of the underpayment of earned wages, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee is not reported), and 1198 (employment of any employee for under conditions of labor prohibited by the wage order is unlawful).

Unlawful Deductions/Recoupment and Paid Rest Breaks and Non-Productive Time - In California, earned wages cannot be taken back by the employer or deducted from future pay. From time to time at times relevant including in the statutory periods, as noted in Optima's compensation outline, base salary draw and wages are subject to deductions for other withholdings as required by the policies of the company. From time to time at times relevant including in the statutory periods, per Optima policy, "[i]f the commission balance is negative, the negative balance will rollover and be applied to the next month's commission calculation." To the extent deficits/reductions are made from the salary draw, and if the salary is wages, Optima impermissibly deducts/recoups earned wages from time to time at times relevant including in the statutory periods. Likewise, to the extent deficits/reductions are made from commissions, and if the commissions are wages, Optima impermissibly deducts/recoups earned wages from time to time

at times relevant including in the statutory periods - per Optima policy, commissions are earned wages not an advance of wages (including as a result of all conditions precedent for the commission have been met and there is no provision that makes the commissions an advance on wages). Chargebacks/clawbacks to commissions (including but not limited to those related to billed time and/or client payment) is also an impermissible deduction/recoupment when made from time to time at times relevant including in the statutory periods. From time to time at times relevant including in the statutory periods, wages designated by statute or contract are not really being paid to the employee as a result of Optima making deductions from and/or collecting/receiving, directly or indirectly, wages paid to the employee. The offset/recoupment that Optima receives is akin to a kickback and makes it appear Optima is paying a salary and at a certain rate and meeting statutory obligations including minimum and overtime wages when in fact ultimately it is paying less from time to time. As a result of Optima's conduct, Optima, from time to time at times relevant including in the statutory periods, violates California Labor Code §§201-204 (provisions setting forth timely payment of wages due during and upon termination of employment; waiting time penalty due), 221 ("It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee."), 223 ("Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract."), 224 (employer's right to withhold authorized sums not amounting to deduction from standard wages), 226(a) (non-compliant wage statements including but not limited to gross and net earned wages not accurately stated as a result of recoupment of wages and payments being advances not wages; and the wage statements do not differentiate between advances and earned wages and thus if all or part of the payments itemized on the wage statements are in fact advances, then the amount of gross and net earned wages are incorrect), and 1198 (employment of any employee for under conditions of labor prohibited by the wage order is unlawful).

Compensable Rest Breaks and Rest Premiums/Wages for Non-Productive Time – Pay averaging is unlawful in California and thus an employer may not meet its obligations to issue wages for all work time (including productive and non-productive time) and *compensable* rest breaks, by pay averaging. Non-exempt employees must be separately paid for all work time (both productive and non-productive time), and all *compensable* rest breaks. From time to time at times relevant, including in the statutory periods, as a result of exemption not being met for Salary Draw Aggrieved Employees and Optima's pay structure (which included Optima overriding/re-capturing/recouping any pay it may have made for *compensable* rest breaks and non-productive time), Optima from time to time at times relevant, including in the statutory periods (i) fails to provide payment for *compensable* rest breaks or pay premium wages to employees in lieu thereof (including as a result of the commissions being dependent on billing activity which is not a rest break) and (ii) fails to pay employees for non-productive time (including as a result of the commissions being dependent on productive time billing activity) at the regular, overtime or minimum wage rate as applicable, including but not limited to as required by California Labor Code §§510, 1182.12, 1194 *et seq.*, 1197, 1198. As a result of Optima's conduct, Optima from time to time at times relevant, including in the statutory periods, violates California Labor Code §§201-204 (provisions setting forth timely payment of wages due during and upon termination of employment; waiting time penalty due), 221 ("It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee."), 223 ("Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract."), 224 (employer's right to withhold authorized sums not amounting to deduction from standard wages), 226(a) (non-compliant wage statements including but not limited to gross and net earned wages not accurately stated as a result of recoupment of wages and payments being advances not wages; the wage statements do not differentiate between advances and earned wages and thus if all or part of the payments itemized on the wage statements are in fact advances, then the amount of gross and net wages are incorrect; gross and net earned wages are omitted for the paid rest breaks/rest premium wages and wages for non-productive time; all applicable

hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee is not reported), 226.7 (rest periods “shall be counted as hours worked for which there shall be no deduction from wages”) and 1198 (employment of any employee for under conditions of labor prohibited by the wage order is unlawful).

Commission Underpayments – From time to time at times relevant, including in the statutory periods, under Optima’s compensation policy, a specific percentage of “everything” billed by the employee (less then salary base draw) is to be applied and paid to the employee. Rather than applying the specific percentage to everything the employee bills (less then salary base draw), Optima, from time to time at times relevant, including in the statutory periods, applies the percentage to only the work that Optima bills and/or that Optima bills and receives payment for. In this instance, from time to time at times relevant, including in the statutory periods, the employee is not receiving the contracted wage amount. To achieve “goodwill” of its clients and for other business reasons, Optima does not, at all times, bill the client everything that the employee bills. In doing so, Optima improperly shifts the company’s business losses to its employees through illegal chargebacks/clawbacks, commission wage forfeiture and unlawful deduction of wages. Through this conduct, from time to time at times relevant, including in the statutory periods, Optima requires employees to give up a portion of their earned commission/incentive wages in order to compensate Optima for losses occasioned by Optima’s policies and decisions associated with client billing. In doing so, it is making its employees insurers of Optima’s business losses from time to time at times relevant, including in the statutory periods. As a result of Optima’s conduct, Optima violates California Labor Code §§201-204 (provisions setting forth timely payment of wages due during and upon termination of employment; waiting time penalty due), 221 (“It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”), 223 (“Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.”), 224 (employer’s right to withhold authorized sums not amounting to deduction from standard wages), 226(a) (non-compliant wage statement including but not limited to gross and net earned wages not accurately stated), 1198 (employment of any employee for under conditions of labor prohibited by the wage order is unlawful).

California Labor Code §§ 432.5 and 925(a)(2) - Section 432.5 states that “No employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.” Section 925(a)(2) prohibits an employer from requiring an employee who primarily resides and works in California, as a condition of employment, to agree to a provision that would “deprive the employee of the substantive protection of California with respect to a controversy arising in California.” From time to time at times relevant, including in the statutory periods, for the reasons alleged herein, Optima’s pay structure and agreements violate each of these two sections.

Wage Statements– In addition to the wage statement violations alleged herein, from time to time at times relevant, including in the statutory periods, Optima has violated California Labor Code §226(a) through its failure to provide at the time of the final wage payment, an accurate itemized wage statement in compliance with Section 226(a). From time to time at times relevant, including in the statutory periods, when an employee’s employment ends outside of the pay-cycle, Optima does not issue to the employee a compliant wage statement at the time of the final wage payment but instead issues a wage statement at a later date and does not correctly identify the correct inclusive date of the period for which the employee is paid. For example, Rhodes’ separation of employment did not coincide with the end of the Optima payroll period but rather her separation ended prior to the end of Optima’s payroll period (i.e. an off-cycle check). In conjunction with the off-cycle payments to Rhodes, (i) Rhodes was not provided wage statements at the time payments were made to her but instead Optima furnished wage statements at a later date, and (ii) the wage statements Rhodes ultimately was furnished reported both incorrect check dates of

September 8, 2023

Page 8

September 9, 2022 and an incorrect inclusive date of the period for which Rhodes was paid (the period ending date was stated as September 15, 2022 - which matches the on-cycle pay period end date - but does not accurately identify the correct inclusive date for which Rhodes was paid).

Waiting Time – From time to time at times relevant, including in the statutory periods, for reasons alleged herein, Optima failed to pay all Salary Draw Aggrieved Employees all wages due and owing at the time of separation of employment within the timing requirements set forth by Sections 201-202 of the California Labor Code. As a result, from time to time at times relevant, including in the statutory periods, for reasons alleged herein, Section 203 penalties are to be paid to Salary Draw Aggrieved Employees whose employment separated during the applicable statutory periods. From time to time at times relevant, including in the statutory periods, Optima has failed to pay both the underlying wages due and owing at the time of employment separation for reasons alleged herein, and further have failed to pay the Section 203 waiting time penalties, in violation of Section 203.

Expenses/Losses – From time to time at times relevant, including in the statutory periods, Optima failed to indemnify Rhodes and Salary Draw Aggrieved Employees for all necessary expenditures or losses incurred by the employee in direct consequence of job duties as required by Section 2802 of the California Labor Code. These business losses and expenditures include internet and home office use. From time to time at times relevant, including in the statutory periods, Salary Draw Aggrieved Employees worked, not from Optima's office, but from home (i.e. work from home ("WFH")). From time to time at times relevant, including in the statutory periods, Salary Draw Aggrieved Employees worked not from Optima's office, but remotely from a client's site. The WFH/remote nature of the work was per policy of Optima and thus was a direct consequence of job duties. For example, from time to time at times relevant, including in the statutory periods, there was not enough office space/workspaces at the Optima office to have all employees work from that office. From time to time at times relevant, including in the statutory periods, Rhodes worked away from the office as a result of Optima's policy, both WFH and remotely, and on information and belief, so did Salary Draw Aggrieved Employees, all without any payment, indemnification, and/or reimbursement for the WFH/remote nature of the work including internet and home office use (all of which are necessary for and in direct consequence of WFH/remote job duties), thereby passing on the employer's cost of doing business onto Salary Draw Aggrieved Employees. Further, from time to time at times relevant, including in the statutory periods, Optima fails to provide a cell reimbursement in the last month that the employee worked. A cell phone and cellular service is necessary and a direct consequence of job duties and Optima's policy, at times relevant, including in the statutory periods, provides for a "cell phone reimbursement" to the employee each month – typically at the end of the month. Optima however failed to issue cell phone reimbursement to Rhodes for and in the last month of her employment (September 2022) despite a cell phone/cellular service being a necessary and a direct consequence of job duties and Optima's policy, and on information and belief, from time to time at times relevant, including in the statutory periods, Optima fails to issue cell phone reimbursement to Salary Draw Aggrieved Employees for and in their last month of employment, all in violation of Section 2802.

Please feel free to contact the undersigned with any questions you may have.

Very truly yours,

Diane Richard

Diane E. Richard

Electronic Delivery Confirmation™



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Optima Office, Inc.
Attn - Jennifer Audrey Barnes, Agent
5120 SHOREHAM PL STE 285
SAN DIEGO CA 92122-5992



Reference	PAGA Notice
USPS #	9407111898765411499165
USPS Mail Class	Certified with Electronic Delivery Confirmation
USPS Status	Your item was delivered to an individual at the address at 11:43 am on September 11, 2023 in SAN DIEGO, CA 92122.
USPS History	In Transit to Next Facility, 09/10/2023 Departed USPS Regional Facility, September 9, 2023, 1:27 am, SAN DIEGO CA DISTRIBUTION CENTER Arrived at USPS Regional Facility, September 8, 2023, 8:18 pm, SAN DIEGO CA DISTRIBUTION CENTER Accepted at USPS Origin Facility, September 8, 2023, 7:03 pm, SAN DIEGO, CA 92106 Shipping Label Created, USPS Awaiting Item, 09/08/2023, 4:57 pm, SAN DIEGO, CA 92106

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Subject: Thank you for submission of your PAGA Case.
Date: September 8, 2023 at 9:53 AM
To: d ane@r chard awpc.com



9/8/2023

LWDA Case No. LWDA-CM-980396-23
Law Firm : Richard Law, P.C.
Plaintiff Name : Rachele Rhodes
Employer: Optima Office, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to paganfo@d r.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: <http://abor.ca.gov/PrivateAttorneysGeneralAct.htm>