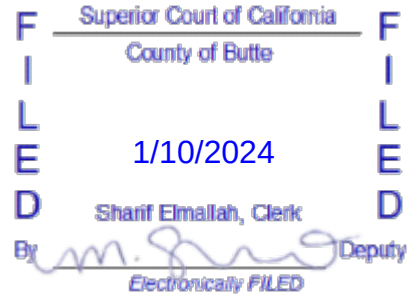


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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF BUTTE

10 UNLIMITED JURISDICTION

11 RACHELLE SALVAGNO, on behalf of
12 herself and all others similarly situated, and
the general public,

13 *Plaintiff,*

14 v.

15 TRI COUNTIES BANK, a stock corporation;
16 and DOES 1 through 50, inclusive,

17 *Defendants.*

Case No. 23CV02904

CLASS AND REPRESENTATIVE ACTION

FIRST AMENDED COMPLAINT

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
3. Failure to Pay Hourly and Overtime Wages (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
4. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
5. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);
7. Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff RACHELLE SALVAGNO (“Plaintiff”), on behalf of herself and all others
2 similarly situated, and the general public, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this representative action against defendants TRI COUNTIES
5 BANK, a stock corporation; and DOES 1 through 50, inclusive, (collectively referred to as
6 “Defendants”) for alleged violations of the Labor Code. As set forth below, Plaintiff alleges that
7 Defendants have

- 8 (1) failed to provide Plaintiff and all other similarly situated individuals with meal
9 periods;
- 10 (2) failed to provide them with rest periods;
- 11 (3) failed to pay them premium wages for missed meal and/or rest periods;
- 12 (4) failed to pay them premium wages for missed meal and/or rest periods at the regular
13 rate of pay;
- 14 (5) failed to pay them at least minimum wage for all hours worked;
- 15 (6) failed to pay them overtime wages at the correct rate;
- 16 (7) failed to pay them double time wages at the correct rate;
- 17 (8) failed to pay them overtime and/or double time wages by failing to include all
18 applicable remuneration in calculating the regular rate of pay;
- 19 (9) failed to provide them with accurate written wage statements; and
- 20 (10) failed to pay them all of their final wages following separation of employment.

21 Based on these alleged violations, Plaintiff now brings this representative action to recover unpaid
22 wages, restitution, civil and statutory penalties, and related relief on behalf of herself and all others
23 similarly situated, all other aggrieved employees, and the State of California.

24 **JURISDICTION AND VENUE**

25 2. This Court has subject matter jurisdiction to hear this case because the unpaid wages,
26 actual damages, liquidated damages, restitution, and penalties sought by Plaintiff from Defendants
27 exceeds the minimal jurisdictional limits of the Superior Court of the State of California.

28 3. Venue is proper in BUTTE pursuant to Code of Civil Procedure §§ 393(a), 395(a)

1 and 395.5 in that liability arose there, because at least some of the transactions that are the subject
2 matter of this Complaint occurred therein and/or each defendant is found, maintains offices,
3 transacts business, and/or has an agent therein.

4 4. Venue is proper in BUTTE county because Defendants' principal place of business
5 is in California, is incorporated under the laws of California, does business in BUTTE, and has
6 registered a California place of business with the California Secretary of State. As such, venue is
7 proper in any county in California.

8 **PARTIES**

9 5. Plaintiff is and was, and at all relevant times mentioned herein, an individual
10 residing in the State of California.

11 6. Plaintiff is informed and believes, and thereupon alleges, that Defendant TRI
12 COUNTIES BANK is, and at all relevant times mentioned herein, a stock corporation doing
13 business in the State of California.

14 7. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
15 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names.
16 Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants
17 when ascertained. Plaintiff is informed and believes, and thereupon alleges, that each of the
18 fictitiously named defendants are responsible in some manner for the occurrences, acts and
19 omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these
20 defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and
21 capacities of the DOE defendants when ascertained.

22 8. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
23 mentioned herein, some or all of the defendants were the representatives, agents, employees,
24 partners, directors, associates, joint venturers, joint employers, principals, or co-participants of some
25 or all of the other defendants, and, in doing the things alleged herein, were acting within the course
26 and scope of such relationship and with the full knowledge, consent, and ratification by such other
27 defendants.

28 **CLASS ALLEGATIONS**

9. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure § 382, because there is a well-defined community of interest among the persons who comprise the readily ascertainable classes defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

10. **Relevant Time Period:** The relevant time period is defined as the time period beginning four years prior to the filing of this action until judgment is entered.

Hourly Employee Class: All persons employed by Defendants whether directly or indirectly through any staff and/or third parties in hourly or non-exempt positions in California during the **Relevant Time Period**.

Meal Period Sub-Class: All **Hourly Employee Class** members who worked in a shift in excess of five hours during the **Relevant Time Period**.

Rest Period Sub-Class: All **Hourly Employee Class** members who worked a shift of at least three and one-half (3.5) hours during the **Relevant Time Period**.

Wage Statement Penalties Sub-Class: All **Hourly Employee Class** members employed by Defendants in California during the period beginning one year before the filing of this action and ending when final judgment is entered.

Waiting Time Penalties Sub-Class: All **Hourly Employee Class** members who separated from their employment with Defendants during the period beginning three years before the filing of this action and ending when final judgment is entered.

UCL Class: All **Hourly Employee Class** members employed by Defendants in California during the **Relevant Time Period**.

11. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definitions with greater specificity by further division into sub-classes and/or by limitation to particular issues.

12. **Numerosity:** The class members are so numerous that the individual joinder of each individual class member is impractical. While Plaintiff does not currently know the exact number of class members, Plaintiff is informed and believes, and thereupon alleges, that the actual number exceeds the minimum required for numerosity under California law.

13. **Commonality and Predominance:** Common questions of law and fact exist as to all class members and predominate over any questions that affect only individual class members. These common questions include, but are not limited to:

- i. Whether Defendants maintained a policy or practice of failing to provide employees with their meal periods;
- ii. Whether Defendants maintained a policy or practice of failing to provide employees with their rest periods;
- iii. Whether Defendants failed to pay premium wages to class members when they have not been provided with required meal and/or rest periods;
- iv. Whether Defendants failed to pay minimum and/or overtime wages to class members as a result of policies that fail to provide meal periods in accordance with California law;
- v. Whether Defendants failed to pay minimum and/or overtime wages to class members for all time worked;
- vi. Whether Defendants failed to provide class members with accurate written wage statements as a result of providing them with written wage statements with inaccurate entries for, among other things, amounts of gross and net wages, and total hours worked;
- vii. Whether Defendants are liable to class members for waiting time penalties under Labor Code section 203;
- viii. Whether class members are entitled to restitution of money or property that Defendants may have acquired from them through unfair competition;

14. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff is informed and believes, and thereupon alleges, that Defendants have a policy or practice of failing to comply with the Labor Code and Business and Professions Code as alleged in this Complaint.

15. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that she has no interests that are adverse to or otherwise conflict with the interests of absent class members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly and adequately represent and protect the interests of the other class members.

16. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent class members, are experienced in

1 wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on
2 behalf of Plaintiff and absent class members.

3 17. **Superiority:** A class action is vastly superior to other available means for fair and
4 efficient adjudication of the class members' claims and would be beneficial to the parties and the
5 Court. Class action treatment will allow a number of similarly situated persons to prosecute their
6 common claims simultaneously and efficiently in a single forum without the unnecessary
7 duplication of effort and expense that numerous individual actions would entail. In addition, the
8 monetary amounts due to many individual class members are likely to be relatively small and would
9 thus make it difficult, if not impossible, for individual class members to both seek and obtain relief.
10 Moreover, a class action will serve an important public interest by permitting class members to
11 effectively pursue the recovery of monies owed to them. Further, a class action will prevent the
12 potential for inconsistent or contradictory judgments inherent in individual litigation.

13 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

14 18. Plaintiff worked for Defendants as an hourly, non-exempt employee from
15 approximately June 1, 2004, through October 25, 2022.

16 **Clocking In and Off-the-Clock Work**

17 19. Plaintiff and the putative class were required to utilize the general entrance to the
18 bank. Plaintiff and the putative class were required to turn on their workstation computer to clock
19 in. The computers could take as long as 5 minutes to turn on and load the software to clock in. The
20 time required to turn on the computer and wait for it to boot up was not paid or compensated for by
21 Defendants.

22 20. After Plaintiff and the putative class entered their username and password, their
23 computer would proceed to load to the desktop while other programs were started in the background
24 automatically as part of the normal boot up process. It generally took another one to five minutes
25 for it to complete the entire boot up cycle.

26 21. Occasionally, Plaintiff and the putative class would encounter login errors or
27 computer crashes that would require them to restart the entire boot up process. The entire time
28 spent booting up the computer would not be accurately recorded and therefore resulted in Plaintiff

1 and the putative class not being paid for all hours worked while waiting for the computer to boot up.

2 22. After the computer successfully booted up, Plaintiff and the putative class would be
3 required to log in to other programs such as UltePro which was used to clock in.

4 23. Accordingly, by the time Plaintiff and the putative class logged into UltePro, 5 to 15
5 minutes or more may have already passed – This time was not properly recorded as time worked
6 and resulted in Plaintiff and the putative class not being paid for all hours worked by Defendants.

7 24. Additionally, on occasion the software used to clock in did not work. Plaintiff and
8 the putative class were required to email a supervisor to adjust the time. As a result, time was not
9 accurately recorded.

10 25. Further, on occasions Plaintiff and the putative class would have meetings or task
11 assignments that Plaintiff and the putative class were required to commence immediately upon the
12 beginning of their scheduled work shift. To avoid being late to the meetings or completing such
13 assignments, Plaintiff and the putative class began work or attended the meetings before they
14 clocked in. Plaintiff and the putative class would then request a supervisor input a clock in time
15 which was not always accurate. As a result, their time was not accurately recorded.

16 26. Based on the above, Defendants' clock in practices have resulted in substantial
17 amounts of time not recorded as hours worked therefore resulting in substantial amounts of wages
18 not paid to Plaintiff and the putative class.

19 **Improper Rounding Practices**

20 27. Defendants utilizes and utilized, at all relevant times herein, a rounding practice that
21 is not and was not "fair and neutral" and that results and resulted in a failure to pay employees over
22 a period of time.

23 28. Plaintiff is informed and believes, and thereupon alleges, that Defendants have not,
24 did not, and do not keep records of actual hours worked by Plaintiff and the putative class. In the
25 absence of records showing actual hours worked, Plaintiff and the putative class are unable to
26 ascertain whether (1) Defendants' rounding practices comply with California law; (2) whether
27 Defendants' rounding practices resulted over a period of time, in failure to compensate Plaintiff and
28 the putative class properly for all the time they actually worked; and (3) whether Plaintiff and the

1 putative class were properly paid for all hours worked.

2 29. Defendants utilized a rounding practice that required Plaintiff and the putative class
3 to round their start times to the next quarter of an hour. For example, if an employee were
4 scheduled to work at 9:00 a.m., that employee had a seven-minute grace period to clock in for his
5 or her shift by that time. If this employee were to attempt to clock in after the expiration of the
6 grace period, the employee's start time would be rounded to the next quarter of an hour, which
7 would be 9:15 a.m., even though the employee commenced work at 9:08 a.m.

8 **Missed Rest Periods**

9 30. Plaintiff and the putative class members were not provided with rest periods of at
10 least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to
11 Defendants' policy of not scheduling each rest period as part of each work shift and understaffing.

12 31. Plaintiff and the putative class did not have scheduled breaks, nor would any
13 manager or supervisor encourage or remind employees to take their breaks. Plaintiff and the
14 putative class would often commence their rest period late, or not take a rest period at all, because
15 of the amount of mandatory scheduled meetings that plaintiff and the putative class were required
16 to attend. Plaintiff and the putative class could risk reprimands and/or termination for failing to
17 attend these mandatory scheduled meetings or not completing large volume of work. As a result,
18 Plaintiff and the putative class often missed their rest period entirely.

19 32. Additionally, Defendants were understaffed which resulted in pressure that
20 discouraged Plaintiff and the putative class from taking their rest periods. Plaintiff and the putative
21 class that worked in the IT call center, product managers, or hourly employees were always busy
22 responding to calls. Plaintiff and the putative class would risk reprimand and/or termination if they
23 did not respond to incoming calls in a timely manner. As a result, Plaintiff and the putative class
24 would work through their ten-minute breaks.

25 **Shortened Rest Periods**

26 33. Plaintiff and the putative class members were not provided with rest periods of at
27 least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to
28 Defendants' policy of not scheduling each rest period as part of each work shift and understaffing.

34. Even when Plaintiff and the Putative class would take a break, these breaks were often interrupted to help with work tasks relating to IT issues or other tasks that Defendants demanded be addressed immediately. Defendants frequently scheduled meetings or other tasks which would interrupt Plaintiff and putative class from taking a full 10-minute rest period.

35. Additionally, Plaintiff and the putative class felt pressured would be subject to reprimand if they did not complete their work whether it be responding to IT calls or completing other work tasks. Since Defendants were understaffed, Plaintiff and the putative class often did not take full uninterrupted breaks.

Missed Meal Periods

36. Plaintiff and the putative class were not provided with meal periods of at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal period as part of each work shift; (2) chronically understaffing each work shift with not enough workers; (3) imposing so much work on each employee such that it made it unlikely that an employee would be able to take their breaks if they wanted to finish their work on time; and (4) no formal written meal and rest period policy that encouraged employees to take their meal and rest periods.

37. As a result of Defendants' policy, Plaintiff and the putative class were regularly not provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours worked due to complying with Defendants' productivity requirements that required Plaintiff and the putative class to work through their meal periods in order to complete their assignments on time.

38. Plaintiff and the putative class were discouraged from taking their meal period rest because Defendants were understaffed. Plaintiff and the putative class would face a reprimand up to and including termination if they were not attending to calls or work tasks. Additionally, meal periods were not scheduled. As a result, Plaintiff and the putative class would work over five hours before taking their meal period as they waited for a time in the day that was less busy.

Shortened Meal Periods

39. Plaintiff alleges that, at all relevant times during the applicable limitations period,

1 Defendants were understaffed and required Plaintiffs to attend to all of their tasks or face a
2 reprimand up to termination. As a result, Plaintiff and the putative class often took shortened
3 lunches to ensure that they completed their work.

4 40. Additionally, Defendants had a policy of not scheduling meal periods which
5 resulted in Plaintiff and the putative class taking their meal period when they could find any time
6 to take a rest period. Defendants were also understaffed. Plaintiff and the putative class would only
7 take minimal or partial meal period to ensure all of their tasks were completed resulting in Plaintiff
8 and the putative class not taking a complete 30-minute meal period.

9 **Regular Rate of Pay**

10 41. The regular rate of pay under California law includes all remuneration for
11 employment paid, on behalf of the employer, to the employee. This requirement includes but is not
12 limited to, commissions, mandatory service charges, non-discretionary bonuses and shift
13 differential pay.

14 42. During the applicable limitations period, Defendants violated the rights of Plaintiff
15 and the putative class under the above-referenced Labor Code sections by failing to pay them
16 overtime wage premiums, meal period premiums, rest period premiums, and sick pay for all
17 overtime hours worked in violation of Labor Code §§ 226.7, 246, 510, 1194, and 1198 as a result
18 of not correctly calculating their regular rate of pay to include all applicable remuneration,
19 including, but not limited to, commissions, mandatory service charges, non-discretionary bonuses
20 and shift differential pay.

21 **Wage Statements**

22 43. Plaintiff and the putative class were not provided with accurate wage statements as
23 mandated by law pursuant to Labor Code § 226.

24 44. Defendants failed to comply with Labor Code § 226(a)(1) as “gross wages earned”
25 were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work
26 were not included.

27 45. Defendants failed to comply with Labor Code § 226(a)(2) as “total hours worked by
28 the employee” were not accurately reflected in that all hours worked, including overtime and “off-

1 the-clock” work were not included.

2 46. Defendants failed to comply with Labor Code section 226(a)(4) as “all deductions”
3 were not accurately reflected in that deductions, even “aggregated and shown as one item,” were not
4 included.

5 47. Defendants failed to comply with Labor Code section 226(a)(6) as “the inclusive
6 dates of the period for which the employee is paid” were not included.

7 48. Plaintiff and the putative class earned tips while working in concession stands
8 during event days at the venue. These tips were not always paid on time and were not reflected
9 accurately in their wage statements.

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PROVIDE MEAL PERIODS**

12 **(Lab. Code §§ 204, 223, 226.7, 512 and 1198)**

13 **(Plaintiff and Meal Period Sub-Class)**

14 49. Plaintiff incorporates by reference the preceding paragraphs as if fully alleged
15 herein.

16 50. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been
17 non-exempt employees of Defendants entitled to the full meal period protections of both the Labor
18 Code and the applicable Industrial Welfare Commission Wage Order (“Wage Order”).

19 51. Labor Code § 512 and § 11 of the applicable Wage Order impose an affirmative
20 obligation on employers to provide non-exempt employees with uninterrupted, duty-free meal
21 periods of at least thirty minutes for each work period of five hours, and to provide them with two
22 uninterrupted, duty-free meal periods of at least thirty minutes for each work period of ten hours.

23 52. Labor Code § 226.7 and § 11 of the applicable Wage Order both prohibit employers
24 from requiring employees to work during required meal periods and require employers to pay non-
25 exempt employees an hour of premium wages on each workday that the employee is not provided
26 with the required meal period.

27 53. Compensation for missed meal periods constitutes wages within the meaning of
28 Labor Code § 200.

1 54. Labor Code § 1198 makes it unlawful to employ a person under conditions that
2 violate the applicable Wage Order.

3 55. Section 11 of the applicable Wage Order states:

4 “No employer shall employ any person for a work period of more than five (5)
5 hours without a meal period of not less than 30 minutes, except that when a
6 work period of not more than six (6) hours will complete the day’s work the
7 meal period may be waived by mutual consent of the employer and employee.
8 Unless the employee is relieved of all duty during a 30 minute meal period, the
9 meal period shall be considered an ‘on duty’ meal period and counted as time
worked. An ‘on duty’ meal period shall be permitted only when the nature of
the work prevents an employee from being relieved of all duty and when by
written agreement between the parties an on-the-job paid meal period is agreed
to. The written agreement shall state that the employee may, in writing, revoke
the agreement at any time.”

10 56. At all relevant times, Plaintiff was not subject to a valid on-duty meal period
11 agreement. Plaintiff is informed and believes that, at all relevant times, **Meal Period Sub-Class**
12 members were not subject to valid on-duty meal period agreements with Defendants.

13 57. Plaintiff alleges that, at all relevant times during the applicable limitations period,
14 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal**
15 **Period Sub-Class** with uninterrupted, duty-free meal periods for at least thirty (30) minutes for
16 each five (5) hour work period, as required by Labor Code § 512 and the applicable Wage Order.

17 58. Plaintiff alleges that, at all relevant times during the applicable limitations period,
18 Defendants maintained a policy or practice of failing to pay premium wages to **Meal Period Sub-**
19 **Class** members when they worked five (5) hours without clocking out for any meal period.

20 59. Moreover, Defendants’ written policies do not provide that employees must take
21 their first meal period before the end of the fifth hour of work, that employees are entitled to a
22 second meal period if they work a shift of over ten hours, or that the second meal period must
23 commence before the end of the tenth hour of work, unless waived.

24 60. At all relevant times, Defendants failed to pay Plaintiff and the **Meal Period Sub-**
25 **Class** members additional premium wages, and/or were not paid premium wages at the employees’
26 regular rates of pay when required meal periods were not provided.

27 61. Pursuant to Labor Code §§ 204, 218.6 and 226.7, Plaintiff, on behalf of herself and
28 the **Meal Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon, and

1 costs of suit.

2 62. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial
3 benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and the **Meal**
4 **Period Sub-Class** members, seeks to recover reasonable attorneys' fees.

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PROVIDE REST PERIODS**

7 **(Lab. Code §§ 204, 223, 226.7 and 1198)**

8 **(Plaintiff and Rest Period Sub-Class)**

9 63. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

10 64. At all relevant times, Plaintiff and the **Rest Period Sub-Class** members have been
11 non-exempt employees of Defendants entitled to the full rest period protections of both the Labor
12 Code and the applicable Wage Order.

13 65. Section 12 of the applicable Wage Order imposes an affirmative obligation on
14 employers to permit and authorize employees to take required rest periods at a rate of no less than
15 ten minutes of net rest time for each four-hour work period, or major fraction thereof, that must be
16 in the middle of each work period insofar as practicable.

17 66. Labor Code § 226.7 and § 12 of the applicable Wage Order both prohibit employers
18 from requiring employees to work during required rest periods and require employers to pay non-
19 exempt employees an hour of premium wages at the employees' regular rates of pay, on each
20 workday that the employee is not provided with the required rest period(s).

21 67. Compensation for missed rest periods constitutes wages within the meaning of Labor
22 Code § 200.

23 68. Labor Code § 1198 makes it unlawful to employ a person under conditions that
24 violate the Wage Order.

25 69. Plaintiff alleges that, at all relevant times during the applicable limitations period,
26 Defendants maintained a policy or practice of not providing members of the **Rest Period Sub-Class**
27 with net rest period of at least ten minutes for each four-hour work period, or major fraction thereof,
28 as required by the applicable Wage Order.

70. At all relevant times, Defendants failed to pay Plaintiff and the **Rest Period Sub-Class** members additional premium wages when required rest periods were not provided.

71. Specifically, Defendants written policies do not provide that employees may take a rest period for each four hours worked, or major fraction thereof, nor that rest periods should be taken in the middle of each work period insofar as practicable.

72. Pursuant to Labor Code §§ 204, 218.6 and 226.7, Plaintiff, on behalf of herself and **Rest Period Sub-Class** members, seeks to recover unpaid premium wages, interest thereon, and costs of suit.

73. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and **Rest Period Sub-Class** members, seeks to recover reasonable attorneys' fees.

THIRD CAUSE OF ACTION

FAILURE TO PAY HOURLY AND OVERTIME WAGES

(Lab. Code §§ 223, 510, 1194, 1197 and 1198)

(Plaintiff and Hourly Employee Class)

74. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

75. At all relevant times, Plaintiff and **Hourly Employee Class** members are or have been non-exempt employees of Defendants entitled to the full protections of the Labor Code and the applicable Wage Order.

76. Section 2 of the applicable Wage Order defines "hours worked" as "the time during which an employee is subject to the control of the employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

77. Section 4 of the applicable Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that an employer has actual or constructive knowledge that employees are working.

78. Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum or overtime wage required under the applicable Wage Order.

1 79. Labor Code § 1194.2 entitles non-exempt employees to recover liquidated damages
2 in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition to the
3 underlying unpaid minimum wages and interest thereon.

4 80. Labor Code § 1197 makes it unlawful for an employer to pay an employee less than
5 the minimum wage required under the applicable Wage Order for all hours worked during a payroll
6 period.

7 81. Labor Code § 1197.1 provides that it is unlawful for any employer or any other
8 person acting either individually or as an officer, agent, or employee of another person to pay an
9 employee, or cause an employee to be paid, less than the applicable minimum wage.

10 82. Labor Code § 1198 makes it unlawful for employers to employ employees under
11 conditions that violate the applicable Wage Order.

12 83. Labor Code § 204 requires employers to pay non-exempt employees their earned
13 wages for the normal work period at least twice during each calendar month on days the employer
14 designates in advance and to pay non-exempt employees their earned wages for labor performed in
15 excess of the normal work period by no later than the next regular payday.

16 84. Labor Code § 223 makes it unlawful for employers to pay their employees lower
17 wages than required by contract or statute while purporting to pay them legal wages.

18 85. Labor Code § 510 and § 3 of the applicable Wage Order require employers to pay
19 non-exempt employees overtime wages of no less than one and one-half times the employees'
20 respective regular rates of pay for all hours worked in excess of eight hours in one workday, all
21 hours worked in excess of forty hours in one workweek, and for the first eight hours worked on the
22 seventh consecutive day of one workweek.

23 86. Labor Code § 510 and § 3 of the applicable Wage Order also require employers to
24 pay non-exempt employees overtime wages of no less than two times the employees' respective
25 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours
26 worked in excess of eight hours on a seventh consecutive workday during the workweek.

27 87. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
28 centrally devised policies and practices to her and **Hourly Employee Class** members with respect

1 to working conditions and compensation arrangements.

2 88. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**
3 **Employee Class** members for all time worked, including but not limited to, overtime hours at
4 statutory and/or agreed rates.

5 89. During the relevant time period, Defendants failed to pay Plaintiff and **Hourly**
6 **Employee Class** members all earned wages every pay period at the correct rates, including
7 overtime rates, because Defendants directed, permitted, or otherwise encouraged Plaintiff and
8 **Hourly Employee Class** members to perform off-the-clock work.

9 90. As a result of Defendants' unlawful conduct, Plaintiff and **Hourly Employee Class**
10 members have suffered damages in an amount subject to proof, to the extent they were not paid the
11 full amount of wages earned during each pay period during the applicable limitations period,
12 including overtime wages.

13 91. Pursuant to Labor Code §§ 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiff, on
14 behalf of herself and **Hourly Employee Class** members, seeks to recover unpaid straight time and
15 overtime wages, interest thereon, and costs of suit.

16 92. The regular rate of pay under California law includes all remuneration for
17 employment paid, on behalf of the employer, to the employee. This requirement includes but is not
18 limited to, commissions, mandatory service charges, non-discretionary bonuses, shift differential
19 pay, etc.

20 93. During the applicable limitations period, Defendants violated the rights of Plaintiff
21 and **Hourly Employee Class** members under the above-referenced Labor Code sections by failing
22 to pay them overtime wages for all overtime hours worked in violation of Labor Code §§ 510, 1194
23 and 1198 by not correctly calculating their regular rate of pay to include all applicable
24 remuneration, including but not limited to, commissions, mandatory service charges, non-
25 discretionary bonuses, shift differential pay, etc.

26 94. California law uses the terms "compensation" and "pay" interchangeably and
27 requires that all applicable remuneration, including but not limited to commissions, mandatory
28 service charges, non-discretionary bonuses, shift differential pay, etc., be included when calculating

1 an employee's regular rate of pay.

2 95. At all relevant times, Defendants paid Plaintiff premium wages based on a rate of
3 compensation that did not reflect, among other things, commissions, mandatory service charges,
4 non-discretionary bonuses, shift differential pay, etc. as required by Labor Code § 226.7(b) and §§
5 11 and 12 of the applicable Wage Order on the occasions when Defendants paid her premium
6 wages in lieu of meal and/or rest periods.

7 96. Plaintiff is informed and believes, and thereupon alleges, that, at all relevant times
8 during the applicable limitations period, Defendants maintained a policy or practice of paying
9 **Hourly Employee Class** members premium wages based on rates of compensation that have not
10 reflected commissions, mandatory service charges, non-discretionary bonuses, shift differential pay,
11 etc. as required by Labor Code § 226.7(b) and §§ 11 and 12 of the applicable Wage Order on the
12 occasions when Defendants paid them premium wages in lieu of meal and/or rest periods.

13 97. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial
14 benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and **Hourly**
15 **Employee Class** members, seeks to recover reasonable attorneys' fees.

16 **FOURTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

18 **(Lab. Code § 226)**

19 **(Plaintiff and Wage Statement Penalties Sub-Class)**

20 98. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

21 99. Labor Code § 226(a) states:

22 An employer, semimonthly or at the time of each payment of wages, shall furnish to
23 his or her employee, either as a detachable part of the check, draft, or voucher paying
24 the employee's wages, or separately if wages are paid by personal check or cash, an
25 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
26 worked by the employee, except as provided in subdivision (j), (3) the number of
27 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
28 rate basis, (4) all deductions, provided that all deductions made on written orders of
the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
inclusive dates of the period for which the employee is paid, (7) the name of the
employee and only the last four digits of his or her social security number or an
employee identification number other than a social security number, (8) the name and
address of the legal entity that is the employer and, if the employer is a farm labor
contractor, as defined in subdivision (b) of Section 1682, the name and address of the

1 legal entity that secured the services of the employer, and (9) all applicable hourly
2 rates in effect during the pay period and the corresponding number of hours worked
3 at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a
4 temporary services employer as defined in Section 201.3, the rate of pay and the total
5 hours worked for each temporary services assignment. The deductions made from
6 payment of wages shall be recorded in ink or other indelible form, properly dated,
7 showing the month, day, and year, and a copy of the statement and the record of the
8 deductions shall be kept on file by the employer for at least three years at the place of
9 employment or at a central location within the State of California. For purposes of
10 this subdivision, 'copy' includes a duplicate of the itemized statement provided to an
11 employee or a computer-generated record that accurately shows all of the information
12 required by this subdivision.

13 100. The Division of Labor Standards Enforcement ("DLSE") has sought to harmonize
14 the "detachable part of the check" provision and the "accurate itemized statement in writing"
15 provision of Labor Code section 226(a) by allowing for electronic wage statements so long as each
16 employee retains the right to elect to receive a written paper stub or record and that those who are
17 provided with electronic wage statements retain the ability to easily access the information and
18 convert the electronic statements into hard copies at no expense to the employee. (DLSE Opinion
19 Letter July 6, 2006.)

20 101. Plaintiff is informed and believes that, at all relevant times during the applicable
21 limitations period, Defendants have failed to provide **Wage Statement Penalties Sub-Class**
22 members with written wage statements as described above.

23 102. Plaintiff is informed and believes that Defendants' failure to provide her and **Wage**
24 **Statement Penalties Sub-Class** members with accurate written wage statements were intentional in
25 that Defendants had the ability to provide them with accurate wage statements but had intentionally
26 provided them with written wage statements that Defendants knew do not comply with Labor Code
27 § 226(a).

28 103. Plaintiff and **Wage Statement Penalties Sub-Class** members have suffered injuries,
in that Defendants have violated Plaintiff's and **Wage Statement Penalties Sub-Class** members'
legal rights to receive accurate wage statements and have misled them about their actual rates of pay
and wages earned. In addition, inaccurate information on their wage statements have prevented
immediate challenges to Defendants' unlawful pay practices, has required discovery and
mathematical computations to determine the amount of wages owed, has caused difficulty and

1 expense in attempting to reconstruct time and pay records, and/or has led to the submission of
2 inaccurate information about wages and deductions to federal and state government agencies.

3 104. Pursuant to Labor Code § 226(e), Plaintiff, on behalf of herself and **Wage Statement**
4 **Penalties Sub-Class** members, seeks the greater of actual damages or fifty dollars (\$50.00) for the
5 initial pay period in which a violation of Labor Code section 226(a) occurred and one hundred
6 dollars (\$100.00) for each subsequent pay period in which a violation of Labor Code § 226(a)
7 occurred, not to exceed an aggregate penalty of four thousand dollars (\$4,000.00) per class member.

8 105. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or
9 the common fund doctrine, Plaintiff, on behalf of herself and **Wage Statement Penalties Sub-**
10 **Class** members, seek awards of reasonable attorneys' fees and costs.

11 **FIFTH CAUSE OF ACTION**

12 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

13 **(Lab. Code §§ 201–203)**

14 **(Plaintiff and Waiting Time Penalties Sub-Class)**

15 106. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

16 107. At all relevant times, Plaintiff and **Waiting Time Penalties Sub-Class** members
17 have been entitled, upon the end of their employment with Defendants, to timely payment of all
18 wages earned and unpaid before termination or resignation.

19 108. At all relevant times, pursuant to Labor Code § 201, employees who have been
20 discharged have been entitled to payment of all final wages immediately upon termination.

21 109. At all relevant times, pursuant to Labor Code § 202, employees who have resigned
22 after giving at least seventy-two (72) hours' notice of resignation have been entitled to payment of
23 all final wages at the time of resignation.

24 110. At all relevant times, pursuant to Labor Code § 202, employees who have resigned
25 after giving less than seventy-two (72) hours' notice of resignation have been entitled to payment of
26 all final wages within seventy-two (72) hours' of giving notice of resignation.

27 111. During the applicable limitations period, Defendants failed to pay Plaintiff all of her
28 final wages in accordance with the Labor Code by failing to timely pay her all of her final wages.

112. Plaintiff is informed and believes that, at all relevant times during the applicable limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class** members all of their final wages in accordance with the Labor Code.

113. Plaintiff is informed and believes that, at all relevant times during the applicable limitations period, Defendants have maintained a policy or practice of paying **Waiting Time Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code §§ 201 or 202 by failing to timely pay them all final wages.

114. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to timely pay all final wages to her and **Waiting Time Penalties Sub-Class** members have been willful in that Defendants have the ability to pay final wages in accordance with Labor Code §§ 201 and/or 202 but have intentionally adopted policies or practices that are incompatible with those requirements.

115. Pursuant to Labor Code §§ 203 and 218.6, Plaintiff, on behalf of herself and **Waiting Time Penalties Sub-Class** members, seeks waiting time penalties from the respective dates that their final wages had first become due until paid, up to a maximum of thirty days, and interest thereon.

116. Pursuant to Labor Code § 226, Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine, Plaintiff, on behalf of herself and **Waiting Time Penalties Sub-Class** members, seek awards of reasonable attorneys' fees and costs.

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200 *et seq.*)

(Plaintiff and UCL Class)

117. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

118. Business and Professions Code § 17200 defines "unfair competition" to include any unlawful business practice.

119. Business and Professions Code §§ 17203–17204 allow a person who has lost money or property as a result of unfair competition to bring a class action in accordance with Code of Civil

1 Procedure § 382 to recover money or property that may have been acquired from similarly situated
2 persons by means of unfair competition.

3 120. California law requires employers to pay hourly, non-exempt employees for all hours
4 they are permitted or suffered to work, including hours that the employer knows or reasonably
5 should know that employees have worked.

6 121. Plaintiff, on behalf of herself and the **UCL Class** members, re-alleges and
7 incorporates the FIRST, SECOND, and THIRD causes of action herein.

8 122. Plaintiff lost money and/or property as a result of the aforementioned unfair
9 competition.

10 123. Defendants have or may have acquired money by means of unfair competition.

11 124. Plaintiff is informed and believes and thereupon alleges that, by committing the
12 Labor Code violations described in this Complaint, Defendants violated Labor Code §§ 215, 216,
13 225, 226.6, 354, 408, 553, 1175, 1199 and 2802. Defendants thus committed misdemeanors by
14 violating the Labor Code as alleged herein.

15 125. Defendants have committed criminal conduct through their policies and practices of,
16 *inter alia*, failing to comport with their affirmative obligations as an employer to provide non-
17 exempt employees with uninterrupted, duty-free meal periods of at least thirty minutes for each
18 work period of five or more hours, and by failing to pay non-exempt employees for all hours
19 worked.

20 126. At all relevant times, Plaintiff and **UCL Class** members have been non-exempt
21 employees and entitled to the full protections of both the Labor Code and the applicable Wage
22 Order.

23 127. Defendants' unlawful conduct as alleged in this Complaint amounts to and
24 constitutes unfair competition within the meaning of Business and Professions Code section 17200
25 *et sequitur*. Business and Professions Code §§ 17200 *et sequitur* protect against unfair competition
26 and allow a person who has suffered an injury-in-fact and has lost money or property as a result of
27 an unfair, unlawful, or fraudulent business practice to seek restitution on behalf of herself and on
28 behalf of similarly situated persons in a class-action proceeding.

1 128. As a result of Defendants’ violations of the Labor Code during the applicable
2 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
3 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants’
4 conduct.

5 129. Plaintiff is informed and believes that other similarly situated persons have been
6 subject to the same unlawful policies or practices of Defendants.

7 130. Due to the unfair and unlawful business practices in violation of the Labor Code,
8 Defendants have gained a competitive advantage over other comparable companies doing business
9 in the State of California that comply with their legal obligations.

10 131. California’s Unfair Competition Law (“UCL”) permits civil recovery and injunctive
11 relief for “any unlawful, unfair or fraudulent business act or practice,” including a practice or act
12 that violates, or is considered unlawful under, any other state or federal law.

13 132. Accordingly, pursuant to Business & Professions Code §§ 17200 and 17203,
14 Plaintiff requests the issuance of temporary, preliminary, and permanent injunctive relief enjoining
15 Defendants, and each of them, and their agents and employees, from further violations of the Labor
16 Code and applicable Industrial Welfare Commission Wage Orders, and upon a final hearing, an
17 order permanently enjoining Defendants, and each of them, and their respective agents and
18 employees, from further violations of the Labor Code and applicable Industrial Welfare
19 Commission Wage Orders.

20 133. Pursuant to Business and Professions Code § 17203, Plaintiff, on behalf of herself
21 and **UCL Class** members, seeks declaratory relief and restitution of all monies rightfully belonging
22 to them that Defendants did not pay them or otherwise retained by means of its unlawful and unfair
23 business practices.

24 134. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or
25 the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover reasonable
26 attorneys’ fees in connection with their unfair competition claims.

27 **SEVENTH CAUSE OF ACTION**

28 **CIVIL PENALTIES**

(Lab. Code §§ 2698 et seq.)

135. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

136. During the applicable limitations period, Defendants have violated Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 227.3, 510, 512, 1194, 1197, 1198, and 2802.

137. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of herself and other current and former employees, to bring a representative civil action to recover civil penalties pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not, be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

138. Plaintiff, a former employee against whom Defendants committed one or more of the alleged Labor Code violations during the applicable limitations period, is an aggrieved employee within the meaning of Labor Code § 2699(c).

139. Plaintiff has complied with the procedures for bringing suit specified in Labor Code § 2699.3. Notice was provided to the California Labor & Workforce Development Agency (“LWDA”) and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an intent to investigate.

140. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil penalties for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 227.3, 510, 512, 1194, 1197, 1198 and 2802:

- i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 227.3, 1194, 1198 and 2802, one hundred dollars (\$100) for each employee per pay period for each initial violation and two hundred dollars (\$200) for each employee per pay period for each subsequent violation (penalties set by Labor Code § 2699(f)(2));
- ii. For violations of Labor Code § 203, a penalty in an amount not exceeding thirty (30) days’ pay as waiting time (penalties set by Labor Code § 256);
- iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each employee for each initial violation that was neither willful nor intentional, two hundred dollars (\$200) for each employee, plus 25% of the amount

1 unlawfully withheld from each employee, for each initial violation that was
2 either willful or intentional, and two hundred dollars (\$200) for each
3 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
4 from each employee, for each subsequent violation, regardless of whether the
5 subsequent violation was either willful or intentional (penalties set by Labor
6 Code § 210);

7 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
8 employee for each initial violation that was neither willful nor intentional,
9 two hundred dollars (\$200) for each employee, plus twenty-five percent
10 (25%) of the amount unlawfully withheld from each employee, for each
11 initial violation that was either willful or intentional, and two hundred dollars
12 (\$200) for each employee, plus twenty-five percent (25%) of the amount
13 unlawfully withheld from each employee, for each subsequent violation,
14 regardless of whether the subsequent violation was either willful or
15 intentional (penalties set by Labor Code § 225.5);

16 v. For violations of Labor Code § 226(a), if this action is deemed to be an initial
17 citation, two hundred and fifty dollars (\$250) for each employee for each
18 violation. Alternatively, if an initial citation or its equivalent occurred before
19 the filing of this action, one thousand dollars (\$1,000) for each employee for
20 each violation (penalties set by Labor Code § 226.3);

21 vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each
22 employee for each initial pay period for which the employee was underpaid,
23 and one hundred dollars (\$100) for each employee for each subsequent pay
24 period for which the employee was underpaid (penalties set by Labor Code §
25 558);

26 vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each
27 aggrieved employee for each initial violation of Labor Code § 1197 that was
28 intentional and two hundred and fifty dollars (\$250) for each aggrieved

employee per pay period for each subsequent violation of Labor Code § 1197, regardless of whether the initial violation was intentional (penalties set by Labor Code § 1197.1);

viii. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable attorneys' fees and costs in connection with Plaintiff's claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself, all others similarly situated, and the general public, prays for relief and judgment against Defendants as follows:

- (1) An order that the action be certified as a class action;
- (2) An order that Plaintiff be appointed class representative;
- (3) An order that counsel for Plaintiff be appointed class counsel;
- (4) Unpaid wages;
- (5) Actual damages;
- (6) Liquidated damages;
- (7) Restitution;
- (8) Declaratory relief;
- (9) Pre-judgment interest;
- (10) Statutory penalties;
- (11) Civil penalties;
- (12) Costs of suit;
- (13) Reasonable attorneys' fees; and
- (14) Such other relief as the Court deems just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself, all other similarly situated, and the general public, hereby demands a jury trial on all issues so triable.

Dated: January 10, 2024 SETAREH LAW GROUP

/s/ Thomas Segal
SHAUN SETAREH
THOMAS SEGAL
FARRAH GRANT
Attorneys for Plaintiff
RACHELLE SALVAGNO

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

in this action by transmitting a true copy thereof addressed as follows:

[X] BY MAIL: I am readily familiar with the practice of Setareh Law Group for the collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with United States Postal Service the same day it is submitted for mailing with postage thereon fully prepaid at Beverly Hills, California. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[X] STATE: I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 10, 2024, at Beverly Hills, California.


Diana Maytorena