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California and all aggrieved employees*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

LATOYA HONEY WALKER, on behalf of
herself and all others similarly situated;

Plaintiff,

vs.

NURSEFINDERS, LLC;

Defendant,

Case No.: 22-cv-04084-AGT

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

DEMAND FOR JURY TRIAL

Judge: Hon. Alex G. Tse
Complaint Filed: July 12, 2022
Trial Date: None Set

INTRODUCTION

1. Plaintiff Latoya Honey Walker (“Plaintiff”) brings this action on behalf of herself and other similarly situated individuals against NurseFinders, LLC (“NurseFinders” or “Defendant”) for violations of California wage and hour laws.

2. This action stems from Defendant’s policies and practices of: (1) failing to pay Plaintiff and putative Class Members minimum wage; (2) failing to pay Plaintiff and putative Class Members overtime wages; (3) failing to provide or make available to Plaintiff and putative Class Members the meal periods to which they are entitled by law, and failing to pay premium compensation payment for non-compliant meal breaks; (4) failing to authorize and permit rest periods, and failing to pay premium compensation payment for non-compliant rest periods; (5) failing to reimburse Plaintiff and putative Class Members for business expenses; (6) failing to provide Plaintiff and putative Class Members with accurate itemized wage statements; (7) failing to timely pay all wages due upon separation from employment; and (8) and engaging in unfair business practices.

3. Plaintiff seeks damages, penalties, and interest to the full extent permitted by the California Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Orders, as well as other relief requested herein.

PARTIES

4. Plaintiff Latoya Honey Walker is an individual over the age of eighteen, and at all times mentioned in this Complaint was a resident of the State of California, county of Contra Costa.

5. Plaintiff was employed by Defendant as a certified nursing assistant (“CNA”) from August 6, 2019, to January 16, 2021. Plaintiff worked for Defendant in different facilities across California, including in Alameda, San Francisco, Los Angeles, La Habra, Anaheim, Santa Ana, San Jose, Santa Rosa, Santa Clara, Pleasanton, and San Leandro.

6. NurseFinders is a healthcare employment agency which provides medical staff to facilities throughout the United States. NurseFinders is an AMN company. Plaintiff is informed, believes, and thereon alleges that NurseFinders is a Texas corporation. NurseFinders is registered

1 to do business in California, does business in California and employs and/or employed hourly, non-
 2 exempt employees, including Plaintiff and putative Class Members in California. Plaintiff is
 3 informed, believes, and thereon alleges that NurseFinders employs hundreds of hourly, non-exempt
 4 workers similarly situated to Plaintiff in California. NurseFinders may be served with process by
 5 serving its registered agent, Corporation Service Company which will do business in California as
 6 CSC – Lawyers Incorporating Service, 2710 Gateway Oaks Drive, Suite 150N, Sacramento,
 7 California, 95833.

8 7. Plaintiff is informed, believes, and thereon alleges that at all material times,
 9 Defendant has done business under the laws of California, has had places of business in California,
 10 including in this judicial district, and has employed putative Class Members in this District and
 11 elsewhere throughout California. Defendant is a “person” as defined in Labor Code § 18 and an
 12 “employer” as that term is used in the Labor Code, the IWC Wage Orders regulating wages, hours,
 13 and working conditions, and the California Business and Professions Code § 17201.

14 **JURISDICTION AND VENUE**

15 8. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act
 16 (“CAFA”), 28 U.S.C. § 1332(d)(2)(A), because the aggregated claims of the putative Class
 17 members exceed the sum of \$5,000,000, exclusive of interests and costs, and this is a class action
 18 in which at least one member of the putative Class, on one hand, and Defendant, on the other, are
 19 citizens of different states. This Court has supplemental jurisdiction over Plaintiff’s California state
 20 law claims under 28 U.S.C. § 1367(a) because they are so related to this action that they form part
 21 of the same case or controversy.

22 9. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b). Plaintiff was
 23 employed in this District and the claims asserted arose in this District. At all material times
 24 Defendant has been actively conducting business in the State of California and within the
 25 geographic area encompassing the Northern District of the State of California.

26 **FACTUAL ALLEGATIONS**

27 10. Plaintiff worked for Defendant as a CNA in California in facilities in Alameda, San
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1 Francisco, Los Angeles, La Habra, Anaheim, Santa Ana, San Jose, Santa Rosa, Santa Clara,
2 Pleasanton, and San Leandro from August 6, 2019, to January 16, 2021. Plaintiff was classified as
3 an hourly, non-exempt employee and was paid an hourly rate of \$19.00. This hourly rate could vary
4 based on the location Plaintiff was assigned to and ranged from \$19 to \$32, but was most commonly
5 \$19 or \$21.

6 11. Plaintiff is informed, believes, and thereon alleges that Defendant employs and have
7 employed hundreds of hourly, non-exempt workers similarly situated to Plaintiff in California,
8 including but not limited to CNAs, registered nurses, certified surgical technicians, medical
9 assistants, certified occupational therapist assistants, and other employees with similar job duties.

10 12. Although Plaintiff's shifts varied in length, Plaintiff usually worked between eight
11 (8) to twelve (12) hours or more per shift, and up to seven (7) shifts per week. Plaintiff's weekly
12 hours varied, but on average, Plaintiff worked approximately sixty (60) to seventy (70) hours per
13 week, or more. Such time is exclusive of all time worked off-the-clock, as alleged herein.

14 13. Defendant routinely requires Plaintiff and putative Class Members to perform work
15 off-the-clock without compensation. This includes but is not limited to Defendant requiring
16 Plaintiff and putative Class Members to change into an isolation suit and undergo a COVID-19
17 temperature check prior to clocking in for the start of their shift. It takes Plaintiff and putative Class
18 Members up to thirty minutes to go through the line, change into their isolation suit, and undergo
19 such temperature checks. This time spent working over eight hours goes unrecorded and therefore
20 uncompensated.

21 14. Further, Defendant requires Plaintiff and putative Class Members to clock out for
22 thirty-minute meal periods but requires them to remain on-duty and subject to interruption during
23 these meal breaks. Plaintiff and putative Class Members are required to be available to assist
24 patients or answer questions regarding patients during their breaks. At least two times a week,
25 Plaintiff and putative Class Members' meal periods are interrupted. These interruptions typically
26 last ten to fifteen minutes. During these interruptions, Plaintiff and putative Class Members assisted
27 patients or answered questions regarding patients. Defendant does not compensate these employees
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1 for this work performed while clocked out for meal periods.

2 15. As a result of these policies and/or practices, Plaintiff and putative Class Members
3 are denied compensation for overtime, which they are lawfully owed resulting from the off-the-
4 clock work in excess of eight (8) hours per day and forty (40) hours per week.

5 16. Plaintiff is informed, believes, and thereon alleges that Defendant utilizes and apply
6 these unpaid, on-duty meal break protocols, policies, and practices across all Defendant's locations
7 throughout California.

8 17. Plaintiff is informed, believes, and thereon alleges that Defendant utilizes the same
9 or substantially similar timekeeping mechanisms throughout all its locations in California.

10 18. In addition to the above, Defendant regularly fails to provide Plaintiff and putative
11 Class Members with compliant meal and rest breaks, yet do not provide them with requisite
12 premium payments for missed meal and rest breaks. In the rare occasions when premium payments
13 are made, such are not paid at Plaintiff's and putative Class Members' regular rate of pay.

14 19. By requiring Plaintiff and putative Class Members to remain on-duty and subject to
15 interruption in order to assist with patients during their off-the-clock meal breaks, Defendant also
16 routinely denies Plaintiff and putative Class Members legally compliant meal breaks. In addition,
17 Plaintiff and putative Class Members often miss their meal breaks entirely because Defendant fails
18 to provide sufficient staffing to allow Plaintiff and putative Class Members to take their meal
19 breaks. When Plaintiff and putative Class Members do attempt to take a meal break, such meal
20 breaks are often untimely and/or shortened. As a result, Plaintiff and putative Class Members are
21 not provided duty-free, uninterrupted, and timely thirty-minute meal periods during which they
22 should be completely relieved of any duty.

23 20. Plaintiff is informed, believes, and thereon alleges that Defendant utilizes and applies
24 these meal break policies and practices across all Defendant's facilities throughout California.

25 21. Plaintiff and putative Class Members are similarly denied legally authorized rest
26 breaks. Plaintiff and putative Class Members remain on-duty because Defendant fails to provide
27 sufficient staffing to allow Plaintiff and putative Class Members to take their rest breaks. In
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1 addition, when Plaintiff and putative Class Members manage to take a rest break, they are required
2 to remain on duty and available to assist with patients during those breaks.

3 22. When Plaintiff and putative Class Members do attempt to take a rest break, such rest
4 breaks are untimely and/or shortened. As a result, Plaintiff and putative Class Members are not
5 provided duty-free, uninterrupted, and timely ten-minute rest breaks during which they should be
6 completely relieved of any duty.

7 23. Plaintiff is informed, believes, and thereon alleges that Defendant utilizes and applies
8 these rest break policies and practices across all Defendant's facilities throughout California.

9 24. Defendant's common course of wage-and-hour abuse also includes routinely failing
10 to maintain accurate records of the hours worked by Plaintiff and putative Class Members.

11 25. Defendant fails to provide Plaintiff and putative Class Members reimbursement for
12 all necessary expenditures or losses incurred by Plaintiff and putative Class Members in direct
13 consequence of the discharge of their duties, or as a result of their obedience to the directions of
14 Defendant. Defendant required Plaintiff and putative Class Members to provide their own cellphone
15 in order to clock in and out, provide their own scrubs, and to launder these scrubs at home.
16 Defendant did not reimburse Plaintiff and putative Class Members for such expenses.

17 26. As a result of the aforementioned violations, Plaintiff and putative Class Members
18 are provided with untrue and inaccurate wage statements as such statements do not include all hours
19 worked, including minimum wages and overtime, and premium pay for missed meal and rest breaks

20 27. Additionally, Plaintiff and putative Class Members did not receive all wages during
21 employment and following separation from employment, including payment for hours spent
22 undergoing temperature checks and donning isolation suits and during meal periods, as well as
23 premium payments for noncompliant meal breaks, and rest breaks.

24 28. Putative Class Members are employed by Defendant and performed work materially
25 similar to Plaintiff.

26 29. On information and belief, putative Class Members report to locations owned,
27 operated, or managed by Defendant to perform their jobs.

1 30. On information and belief, putative Class Members perform their jobs under
2 Defendant's supervision using materials and technology approved and supplied by Defendant.

3 31. On information and belief, putative Class Members are required to follow and abide
4 by Defendant's common work, time, and pay policies and procedures in the performance of their
5 jobs.

6 32. On information and belief, at the end of each pay period, putative Class Members
7 receive wages from Defendant that are determined by common systems and methods that Defendant
8 selects and controls.

9 33. On information and belief, Defendant pays putative Class Members on an hourly rate
10 basis.

11 34. On information and belief, Defendant's method of paying Plaintiff and putative Class
12 Members is willful and not based on a good faith and reasonable belief that their conduct complied
13 with California law.

14 35. On information and belief, Defendant's unlawful conduct has been widespread,
15 repeated, and consistent throughout Defendant's California facilities.

16 36. Defendant knows or should know that its policies and practices are unlawful and
17 unfair.

18 37. Defendant's conduct is willful, carried out in bad faith, and causes significant
19 damages to non-exempt hourly employees in an amount to be determined at trial.

20 **CLASS ACTION ALLEGATIONS**

21 38. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
22 herein.

23 39. Plaintiff brings this case as a class action on behalf of herself and all others similarly
24 situated pursuant to Federal Rules of Civil Procedure Rule 23. The putative Class that Plaintiff
25 seeks to represent are defined as follows:

26 **All current and former hourly, non-exempt employees of**
27 **NurseFinders, LLC in California, excluding those individuals who**
28 **signed an arbitration agreement, during the time period starting**
 four years prior to the filing of this Complaint until the resolution

of this action (“the putative Class”).

40. This action has been brought and may properly be maintained as a class action under FRCP Rule 23 because there is a well-defined community of interest in the litigation and the putative class and subclass are ascertainable.

a. **Numerosity:** The potential Members of the class are so numerous that joinder of all the Members of the Class is impracticable. Plaintiff is informed and believes that the number of putative Class Members exceeds 40. This volume makes bringing the claims of each individual member of the class before this Court impracticable. Likewise, joining each individual member of the putative Class as a plaintiff in this action is impracticable. Furthermore, the identities of the putative Class will be determined from Defendant’s records, as will the compensation paid to each of them. As such, a class action is a reasonable and practical means of resolving these claims. To require individual actions would prejudice the putative and Defendant.

b. **Commonality:** There are questions of law and fact common to Plaintiff and the putative Class that predominate over any questions affecting only individual members of the putative Class. These common questions of law and fact include, but are not limited to:

- i. Whether Defendant fails to compensate putative Class Members for all hours worked, including minimum wages and overtime compensation, in violation of the Labor Code and Wage Order 4;
- ii. Whether Defendant has a policy and/or practice of requiring putative Class Members to be in the control of Defendant, spend time primarily for the benefit of Defendant, and work for Defendant off-the-clock and without compensation;
- iii. Whether Defendant fails to authorize and permit, make available, and/or provide putative Class Members with compliant meal periods to which

- 1 they are entitled in violation of Cal. Lab. Code and Wage Order 4;
- 2 iv. Whether Defendant fails to authorize and permit, make available, and/or
- 3 provide putative Class Members with compliant rest periods to which they
- 4 are entitled in violation of Cal. Lab. Code and Wage Order 4;
- 5 v. Whether Defendant fails to fully reimburse Class Members with all
- 6 necessary business expenses incurred for the benefit of Defendant, in
- 7 violation of the Labor Code;
- 8 vi. Whether Defendant fails to provide putative Class Members with timely,
- 9 accurate itemized wage statements in violation of the Labor Code and
- 10 Wage Orders 4;
- 11 vii. Whether Defendant violates Business and Professions Code §§ 17200 *et*
- 12 *seq.*, by:
- 13 (a) failing to compensate putative Class Members for all hours
- 14 worked, including at minimum wages and overtime
- 15 compensation;
- 16 (b) failing to authorize and permit, make available, and/or provide
- 17 putative Class Members with compliant meal and rest periods to
- 18 which they are entitled;
- 19 (c) failing to fully reimburse Plaintiff and putative Class Members for
- 20 all necessary business expenses made for the benefit of Defendant;
- 21 (d) failing to provide putative Class Members with timely, accurate
- 22 itemized wage statements; and
- 23 (e) failing to provide putative Class Members with all wages owed
- 24 upon separation from employment.
- 25 viii. The proper formula for calculating restitution, damages, and penalties
- 26 owed to Plaintiff and the putative Class as alleged herein.
- 27 c. **Typicality:** Plaintiff's claims are typical of the claims of the Class.
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1 Defendant's common course of conduct in violation of law as alleged herein
2 has caused Plaintiff and putative Class Members to sustain the same or similar
3 injuries and damages. Plaintiff's claims are thereby representative of and co-
4 extensive with the claims of the Putative Class.

5 d. **Adequacy of Representation:** Plaintiff is a member of the putative Class,
6 does not have any conflicts of interest with other putative Class Members,
7 and will prosecute the case vigorously on behalf of the putative Class.
8 Counsel representing Plaintiff is competent and experienced in litigating large
9 employment class actions, including wage and hour cases. Plaintiff will fairly
10 and adequately represent and protect the interests of the putative Class
11 Members.

12 e. **Superiority of Class Action:** A class action is superior to other available
13 means for the fair and efficient adjudication of this controversy. Individual
14 joinder of all putative Class Members is not practicable, and questions of law
15 and fact common to the putative Class predominate over any questions
16 affecting only individual members of the putative Class. Each putative Class
17 Member has been damaged and is entitled to recovery by reason of
18 Defendant's illegal policies and/or practices. Class action treatment will
19 allow those similarly situated persons to litigate their claims in the manner
20 that is most efficient and economical for the parties and the judicial system.

21 41. The putative Class may also be certified because the prosecution of separate actions
22 by the individual members of the putative Class would create a risk of inconsistent or varying
23 adjudication with respect to individual members of the putative Class, and, in turn, would establish
24 incompatible standards of conduct for Defendant.

25 42. If each individual putative Class Member were required to file an individual lawsuit,
26 Defendant would necessarily gain an unconscionable advantage because Defendant would be able
27 to exploit and overwhelm the limited resources of each member of the putative Class with
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1 Defendant's vastly superior financial legal resources.

2 43. Requiring each individual putative Class Member to pursue an individual remedy
3 would also discourage the assertion of lawful claims by the putative Class Members who would be
4 disinclined to pursue these claims against Defendant because of an appreciable and justifiable fear
5 of retaliation and permanent damage to their lives, careers, and well-being.

6 44. Plaintiff also seeks certification of the putative Class to the extent applicable under
7 FRCP Rule 23 on the grounds that the party opposing the putative Class has acted or refused to act
8 on grounds that apply generally to the putative Class, so that final injunctive relief or corresponding
9 declaratory relief is appropriate respecting the putative Class as a whole.

10 **FIRST CAUSE OF ACTION**

11 **Failure to Pay for All Hours Worked** 12 **Pursuant to Labor Code §§ 200, 204, 1194, and 1198** **(On Behalf of Plaintiff and Putative Class)**

13 45. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
14 herein.

15 46. Plaintiff alleges that Defendant willfully engaged and continue to engage in a policy
16 and practice of not compensating Plaintiff and putative Class members for all hours worked or spent
17 in Defendant's control.

18 47. Defendant regularly requires Plaintiff and putative Class members to perform
19 uncompensated off-the-clock work. Detailed above, Defendant requires Plaintiff and putative Class
20 members to clock out for meal breaks but then require, suffer, and/or permit them to work through
21 these meal breaks.

22 48. Labor Code § 200(a) defines wages as "all amounts for labor performed by
23 employees of every description, whether the amount is fixed or ascertained by the standard of time,
24 task, piece, commission basis or other method of calculation."

25 49. Labor Code § 204 provides that employers must compensate employees for all hours
26 worked "twice during each calendar month, on days designated in advance by the employer as the
27 regular paydays."
28

1 50. Labor Code § 1194(a) provides as follows:

2 Notwithstanding any agreement to work for a lesser wage, any
3 employee receiving less than the legal minimum wage or the legal
4 overtime compensation applicable to the employee is entitled to recover
5 in a civil action the unpaid balance of the full amount of this minimum
6 wage or overtime compensation, including interest thereon, reasonable
7 attorneys' fees, and costs of suit.

8 51. Labor Code § 1198 makes it unlawful for employers to employ employees under
9 conditions that violate the Wage Orders.

10 52. IWC Wage Order 4-2001(2)(K) defines hours worked as "the time during which an
11 employee is subject to the control of an employer, and includes all the time the employee is suffered
12 or permitted to work, whether or not required to do so."

13 53. In violation of California law, Defendant knowingly and willfully refuses to perform
14 its obligation to provide Plaintiff and putative Class members with compensation for all time
15 worked. Therefore, Defendant committed, and continues to commit, the acts alleged herein
16 knowingly and willfully, and in conscious disregard of Plaintiff's and putative Class members'
17 rights. Plaintiff and putative Class members are thus entitled to recover nominal, actual, and
18 compensatory damages, plus interest, attorneys' fees, expenses and costs of suit.

19 54. As a proximate result of the aforementioned violations, Plaintiff and putative Class
20 members have been damaged in an amount according to proof at time of trial.

21 55. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

22 **SECOND CAUSE OF ACTION**

23 **Failure to Pay Minimum Wages**

24 **Pursuant to California Labor Code §§ 1182.12, 1194, 1197, 1197.1 and 1198** 25 **(On Behalf of Plaintiff and Putative Class)**

26 56. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
27 herein.

28 57. During the applicable statutory period, California Labor Code §§, 1182.12 and 1197,
and the IWC Wage Order No. 4-2001 (4) were in full force and effect, and required that Defendant's
hourly employees receive the minimum wage for all hours worked irrespective of whether
nominally paid on a piece rate, or any other basis,; at the rate of eleven dollars (\$11.00) per hour

commencing January 1, 2018; at the rate of twelve dollars (\$12.00) per hour commencing January 1, 2019; at the rate of thirteen dollars (\$13.00) per hour commencing January 1, 2020; at the rate of fourteen dollars (\$14.00) commencing January 1, 2021; and at the rate of fifteen dollars (\$15.00) commencing January 1, 2022.

58. Labor Code § 1197.1 provides, in relevant part:

(a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission, shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows: (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.

59. California Labor Code §1194 states:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

60. IWC Wage Order 4-2001(2)(K) defines hours worked as “the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

61. Labor Code § 1198 makes it unlawful for employers to employ employees under

1 conditions that violate the Wage Orders.

2 62. Labor Code §1194.2 provides that, in any action under Section 1194 to recover wages
3 because of the payment of a wage less than minimum wage fixed by an order of the commission,
4 an employee shall be entitled to recover liquidated damages in an amount equal to the wages
5 unlawfully unpaid and interest thereon.

6 63. Defendant willfully engaged in and continues to engage in a policy and practice of
7 not compensating Plaintiff and putative Class Members at the California minimum wage.

8 64. Defendant willfully engaged in and continues to engage in a policy and practice of
9 not compensating Plaintiff and putative Class Members for all hours worked or spent in Defendant's
10 control. Defendant routinely requires Plaintiff and putative Class Members to perform work off-
11 the-clock without compensation. This includes but is not limited to Defendant requiring Plaintiff
12 and putative Class Members to change into an isolation suit and undergo a COVID-19 temperature
13 prior to clocking in for the start of their shift. It takes Plaintiff and putative Class Members up to
14 thirty minutes to go through the line, change into their isolation suit, and undergo such temperature
15 checks. This time spent working over eight hours goes unrecorded and therefore uncompensated.

16 65. Further, Defendant requires Plaintiff and putative Class Members to clock out for
17 thirty-minute meal periods but interrupt these meal breaks for ten to fifteen minutes at least two
18 times a week. During these interruptions Plaintiff and putative Class Members assisted patients or
19 answered questions regarding patients. Defendant does not compensate these employees for this
20 work performed while clocked out for meal periods.

21 66. As a result, Defendant fails to track Plaintiff and putative Class Members' actual
22 hours worked, and consequently fail to pay Plaintiff and putative Class Members for all hours
23 worked. In violation of California law, Defendant knowingly and willfully refuses to perform their
24 obligations to provide Plaintiff and putative Class Members with compensation for all time worked.

25 67. Therefore, Defendant committed, and continues to commit, the acts alleged herein
26 knowingly and willfully, and in conscious disregard of the Plaintiff and putative Class Members'
27 rights. Plaintiff and putative Class Members are thus entitled to recover nominal, actual, and
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1 compensatory damages, plus interest, attorneys' fees, expenses, and costs of suit.

2 68. Defendant has maintained policies and procedures which create a working
3 environment where hourly employees are routinely compensated at a rate that is less than the
4 statutory minimum wage.

5 69. As a direct and proximate result of the unlawful acts and/or omissions of Defendant,
6 Plaintiff and putative Class Members have been deprived of minimum wages in an amount to be
7 determined at trial, and are entitled to a recovery of such amount, plus liquidated damages, plus
8 interest thereon, attorneys' fees, and costs of suit pursuant to Labor Code §§ 1194, 1194.2 and
9 1197.1.

10 70. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

11 **THIRD CAUSE OF ACTION**

12 **Failure to Pay Overtime Wages** 13 **Pursuant to Labor Code §§ 510, 1194, & 1198** **(On Behalf of Plaintiff and Putative Class)**

14 71. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
15 herein.

16 72. Defendant does not compensate Plaintiff and putative Class Members with the
17 appropriate overtime rate, as required by California law.

18 73. Labor Code § 510 provides, in pertinent part, that:

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

25 74. Labor Code § 1198 makes it unlawful for employers to employ employees under
26 conditions that violate the Wage Orders.

27 75. The IWC Wage Order 4-2001(3)(A)(1) states:

28 The following overtime provisions are applicable ... employees shall

not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than: . . . One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and ... [d]ouble the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

76. Labor Code § 1194(a) provides that:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

77. Labor Code § 200 defines wages as "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or other method of calculation." All such wages are subject to California's overtime requirements, including those set forth above.

78. Defendant regularly does not compensate Plaintiff and putative Class Members for their overtime hours. For instance, Plaintiff and putative Class Members do not receive overtime compensation for time spent working during their meal breaks while they are off-the-clock, when the hours worked are in excess of eight (8) hours per day and forty (40) hours per week.

79. Further, Defendant pays Plaintiff and putative Class Members below the California minimum wage therefore unlawfully paying them a rate of overtime based on a regular rate of compensation lower than the California minimum wage.

80. Plaintiff and putative Class Members work overtime hours for Defendant without being paid overtime premiums in violation of the Labor Code, the applicable IWC Wage Order, and other applicable law.

81. Defendant has knowingly and willfully refused to perform its obligation to provide Plaintiff and putative Class Members with premium wages for all overtime work. As a proximate result of the aforementioned violations, Defendant has damaged Plaintiff and putative Class Members in amounts to be determined according to proof at time of trial.

82. Defendant is liable to Plaintiff and putative Class Members alleged herein for the unpaid overtime and civil penalties, with interest thereon. Furthermore, Plaintiff is entitled to an award of attorneys' fees and costs as set forth below.

83. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

FOURTH CAUSE OF ACTION

Failure to Provide or Make Available Meal Periods Pursuant to Labor Code §§ 226.7 and 512 (On Behalf of Plaintiff and the Putative Class)

84. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

85. Defendant routinely fails to provide or make available complaint meal periods to Plaintiff and putative Class Members.

86. Plaintiff's and putative Class Members' schedules regularly prevent them from taking first meal periods, and, when applicable second meal periods throughout the day. Plaintiff and putative Class Members do not receive the requisite premium pay for their missed meal breaks as required by California law.

87. Labor Code §§ 226.7 and 512 and the applicable Wage Order require Defendant to provide or make available meal periods to its employees. Labor Code §§ 226.7 and 512 and the Wage Orders prohibit employers from employing an employee for more than five (5) hours without a meal period of not less than thirty minutes, and from employing an employee more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty minutes.

88. Unless the employee is relieved of all duty during the thirty-minute meal period, the

1 employee is considered “on duty” and the meal period is counted as time worked under the
2 applicable Wage Order 4-2001(11)(A).

3 89. Under Labor Code § 226.7(b) and the applicable Wage Order, an employer who fails
4 to provide or make available a required meal period must, as compensation, pay the employee one
5 (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal
6 period was not provided or made available.

7 90. Despite these requirements, Defendant has knowingly and willfully refused to
8 perform their obligations to provide or make available to Plaintiff and putative Class Members the
9 ability to take the off-duty meal periods to which they are entitled.

10 91. Defendant has also failed to pay Plaintiff and putative Class Members one (1) hour
11 of pay for each day an off-duty meal period was denied. Defendant’s conduct described herein
12 violates Labor Code §§ 226.7 and 512. Therefore, pursuant to Labor Code § 226.7(b), Plaintiff and
13 putative Class Members are entitled to compensation for the failure to provide or make available
14 meal periods, plus interest, attorneys’ fees, expenses and costs of suit.

15 92. As a proximate result of the aforementioned violations, Plaintiff and putative Class
16 Members have been damaged in an amount according to proof at time of trial.

17 93. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

18 **FIFTH CAUSE OF ACTION**

19 **Failure to Authorize and Permit Rest Periods** 20 **Pursuant to Labor Code §§ 226.7** **(On Behalf of Plaintiff and Putative Class)**

21 94. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
22 herein.

23 95. Defendant routinely fails to authorize and permit rest periods to Plaintiff and putative
24 Class Members.

25 96. Cal. Lab. Code §226.7 and the applicable Wage Orders require employers to
26 authorize and permit employees to take ten (10) minutes of net rest time per (4) four hours or major
27 fraction thereof of work, and to pay employees their full wage during those rest periods.

1 clock in and out, provide their own scrubs, and to launder their scrubs on their own. Defendant does
2 not reimburse Plaintiff and putative Class Members for such expenses.

3 104. As a proximate result of the aforementioned violation, Plaintiff and the putative Class
4 Members have been damaged in an amount according to proof at time of trial. Plaintiff and the
5 putative Class Members are also entitled to recover penalties, interest, attorneys' fees, expenses,
6 costs of suit, and/or other relief pursuant to statute. Wherefore, Plaintiff and the putative Class
7 Members request relief as hereinafter provided.

8 **SEVENTH CAUSE OF ACTION**

9 **Failure to Provide Accurate Itemized Wage Statements** 10 **Pursuant to Labor Code §§ 226, and 226.3** 11 **(On Behalf of Plaintiff and Putative Class)**

12 105. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
13 herein.

14 106. Defendant does not provide Plaintiff and putative Class Members with accurate
15 itemized wage statements as required by California law.

16 107. Labor Code § 226(a) provides that:

17 Every employer shall, semimonthly or at the time of each payment of
18 wages, furnish each of his or her employees, either as a detachable part
19 of the check, draft, or voucher paying the employee's wages, or
20 separately when wages are paid by personal check or cash, an accurate
21 itemized statement in writing showing (1) gross wages earned, (2) total
22 hours worked by the employee, except for any employee whose
23 compensation is solely based on a salary and who is exempt from
24 payment of overtime under subdivision (a) of Section 515 or any
25 applicable order of the Industrial Welfare Commission, (3) the number
26 of piece-rate units earned and any applicable piece rate if the employee
27 is paid on a piece-rate basis, (4) all deductions, provided that all
28 deductions made on written orders of the employee may be aggregated
and shown as one item, (5) net wages earned, (6) the inclusive dates of
the period for which the employee is paid, (7) the name of the employee
and his or her social security number, (8) the name and address of the
legal entity that is the employer, and (9) all applicable hourly rates in
effect during the pay period and the corresponding number of hours
worked at each hourly rate by the employee. The deductions made from
payments of wages shall be recorded in ink or other indelible form,
properly dated, showing the month, day, and year, and a copy of the
statement or a record of the deductions shall be kept on file by the

1 employer for at least four years at the place of employment or at a
2 central location within the State of California.

3 108. The IWC Wage Orders also establish this requirement. (*See* IWC Wage Order 4-
4 2001(7).)

5 109. Labor Code § 226.3 provides, in relevant part:

6 Any employer who violates subdivision (a) of Section 226 shall be
7 subject to a civil penalty in the amount of two hundred fifty dollars
8 (\$250) per employee per violation in an initial citation and one
9 thousand dollars (\$1,000) per employee for each violation in a
subsequent citation, for which the employer fails to provide the
employee a wage deduction statement or fails to keep the records
required in subdivision (a) of Section 226.

10 110. Labor Code § 226(e) provides:

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

16 111. Defendant does not provide timely, accurate itemized wage statements to Plaintiff
17 and putative Class Members in accordance with Labor Code § 226(a) and the IWC Wage Orders.
18 The wage statements Defendant provides their employees, including Plaintiff and putative Class
19 Members, do not accurately reflect all hours actually worked, actual gross wages earned and/or
20 actual net wages earned, including minimum wages and overtime, as a result of the failure to pay
21 for time worked off-the-clock and the resulting violations described herein. In addition, the wage
22 statements Defendant provides do not include premium pay for missed rest periods, and/or meal
23 periods.

24 112. Defendant is liable to Plaintiff and the putative Class Members for the amounts
25 described above in addition to the civil penalties set forth below, with interest thereon.
26 Furthermore, Plaintiff is entitled to an award of attorneys' fees and costs as set forth below,
27 pursuant to Labor Code § 226(e).

113. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

EIGHTH CAUSE OF ACTION

**Waiting Time Penalties
Pursuant to Cal. Lab. Code §§ 201-203
(On Behalf of Plaintiff and Putative Class)**

114. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

115. Defendant does not provide putative Class Members with their wages when due under California law after their employment with Defendant ends.

116. Cal. Lab. Code § 201 provides: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

117. Cal. Lab. Code § 202 provides:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

118. Cal. Lab. Code § 203 provides, in relevant part:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

119. Plaintiff and some of the putative Class Members left their employment with Defendant during the statutory period, at which time Defendant owed them unpaid wages. These earned, but unpaid, wages derive from time spent working for the benefit of Defendant off-the-clock, working for the benefit of Defendant while being paid less than minimum wage, and during missed or interrupted meal periods, and/or missed rest periods.

120. Defendant willfully refuses and continues to refuse to pay Plaintiff and putative Class Members all the wages that are due and owing to them for the work performed and the resulting premium payments for missed or interrupted meal periods, and/or missed rest periods, upon the end of their employment. As a result of Defendant’s actions, Plaintiff and putative Class Members have

suffered and continue to suffer substantial losses, including lost earnings, and interest.

121. Defendant's willful failure to pay Plaintiff and putative Class Members the wages due and owing them constitutes a violation of Cal. Lab. Code §§ 201-202. As a result, Defendant is liable to Plaintiff and proposed putative Class Members for all penalties owing pursuant to Cal. Lab. Code §§ 201-203.

122. In addition, addition, Cal. Lab. Code § 203 provides that an employee's wages will continue as a penalty up to thirty days from the time the wages were due. Therefore, the Plaintiff and putative Class Members are entitled to penalties pursuant to Cal. Lab. Code § 203, plus interest.

123. Wherefore, Plaintiff and putative Class Members request relief as hereinafter provided.

NINTH CAUSE OF ACTION

Unfair Business Practices Pursuant to California Business and Professions Code §§ 17200 *et seq.* (On Behalf of Plaintiff and Putative Class)

124. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

125. The UCL prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business acts or practices.

126. Business and Professions Code § 17204 allows a person injured by the unfair business acts or practices to prosecute a civil action for violation of the UCL.

127. Labor Code § 90.5(a) states it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

128. Beginning at an exact date unknown to Plaintiff, but at least since the date four years prior to the filing of this lawsuit, Defendant has committed acts of unfair competition as defined by the UCL, by engaging in the unlawful, unfair, and fraudulent business acts and practices described

1 in this Complaint, including, but not limited to:

- 2 a. violations of Labor Code §§ 1182.11 1182.12, 1194, 1197, 1197.1, 1198, and
- 3 IWC Wage Order 4-2001 pertaining to payment of wages, including minimum
- 4 wage, for all hours worked;
- 5 b. violations of Labor Code § 510 and IWC Wage Order 4-2001 pertaining to
- 6 overtime;
- 7 c. violations of Cal. Lab. Code §§ 226.7 and 512 and Wage Order 4-2001
- 8 pertaining to meal breaks;
- 9 d. violations of Cal. Lab. Code §§ 226.7 and Wage Order 4-2001 pertaining to rest
- 10 breaks;
- 11 e. violations of Labor Code § 2802 pertaining to reimbursement of business
- 12 expenditures;
- 13 f. violations of Labor Code §§ 226, and 226.3 regarding accurate, timely itemized
- 14 wage statements; and
- 15 g. violations of Cal. Lab. Code §§ 201-203 pertaining to payment of all wages owed
- 16 during employment and following separation from employment.

17 129. The violations of these laws and regulations, as well as of the fundamental California
 18 public policies protecting wages, serve as unlawful predicate acts and practices for purposes of
 19 Business and Professions Code §§ 17200 *et seq.*

20 130. The acts and practices described above constitute unfair, unlawful, and fraudulent
 21 business practices, and unfair competition, within the meaning of Business and Professions Code
 22 §§ 17200 *et seq.* Among other things, the acts and practices have taken from Plaintiff and the
 23 putative Class wages rightfully earned by them, while enabling Defendant to gain an unfair
 24 competitive advantage over law-abiding employers and competitors.

25 131. Business and Professions Code § 17203 provides that a court may make such orders
 26 or judgments as may be necessary to prevent the use or employment by any person of any practice
 27 which constitutes unfair competition. Injunctive relief is necessary and appropriate to prevent
 28

1 Defendant from repeating the unlawful, unfair, and fraudulent business acts and practices alleged
2 above.

3 132. As a direct and proximate result of the aforementioned acts and practices, Plaintiff
4 and putative Class Members have suffered a loss of money and property, in the form of unpaid
5 wages, which are due and payable.

6 133. Business and Professions Code § 17203 provides that the Court may restore to any
7 person in interest any money or property which may have been acquired by means of such unfair
8 competition. Plaintiff and putative Class Members are entitled to restitution pursuant to Business
9 and Professions Code § 17203 for all wages and payments unlawfully withheld from employees
10 during the four-year period prior to the filing of this Complaint. Plaintiff's success in this action
11 will enforce important rights affecting the public interest and, in that regard, Plaintiff sues on behalf
12 of herself as well as others similarly situated. Plaintiff and putative Class Members seek and are
13 entitled to unpaid wages, declaratory and injunctive relief, and all other equitable remedies owing
14 to them.

15 134. Plaintiff herein takes upon herself enforcement of these laws and lawful claims.

16 135. There is a financial burden involved in pursuing this action, the action is seeking to
17 vindicate a public right, and it would be against the interests of justice to penalize Plaintiff by
18 forcing her to pay attorneys' fees from any recovery thereof. Attorneys' fees are appropriate
19 pursuant to Code of Civil Procedure § 1021.5 and otherwise.

20 136. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

21 **TENTH CAUSE OF ACTION**

22 **Penalties Pursuant to Labor Code § 2699(f)**

23 **(On Behalf of the State of California and Aggrieved Employees)**

24 137. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
25 herein.

26 138. Labor Code § 2699(f) provides:

27 For all provisions of this code except those for which a civil penalty is
28 specifically provided, there is established a civil penalty for a violation of
these provisions, as follows: . . . (2) If, at the time of the alleged violation,
the person employs one or more employees, the civil penalty is one hundred
dollars (\$100) for each aggrieved employee per pay period for the initial

violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

139. Labor Code § 200 defines wages as “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or method of calculation.”

140. Labor Code § 204(a) provides that “[a]ll wages ... earned by any person in any employment are due and payable twice during each calendar month....”

141. The applicable IWC Wage Order defines hours worked as “the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

142. Labor Code § 1198 makes it unlawful for employers to employ employees under conditions that violate the Wage Orders.

143. Labor Code § 510 provides, in relevant part:

Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

144. Labor Code § 1197 provides:

The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.

145. Labor Code § 1194 provides, in relevant part:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

1 146. Labor Code §§ 226.7 and 512 and IWC Wage Order 1-2001 and 7-2001 require
2 Defendant to authorize, permit, and/or make available timely and compliant meal and rest periods
3 to its employees. Labor Code §§ 226.7 and 512 and IWC Wage 1-2001 and Order 4-2001 prohibit
4 employers from employing an employee for more than five hours without a meal period of not less
5 than thirty minutes, and from employing an employee more than ten hours per day without
6 providing the employee with a second meal period of not less than thirty minutes. Unless the
7 employee is relieved of all duty during the thirty-minute meal period and ten-minute rest period,
8 the employee is considered “on duty” and the meal period is counted as time worked under the
9 applicable wage orders.

10 147. To the extent than any violation alleged herein does not carry penalties under Labor
11 Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for each pay period
12 in which Plaintiff and an Aggrieved Employee was aggrieved, in the amounts established by Labor
13 Code § 2699(f). The “Aggrieved Employees” are Defendant’s non-exempt hourly California
14 employees. Plaintiff seeks penalties pursuant to Labor Code § 2699(f) for Plaintiff and Aggrieved
15 Employees for violations of Labor Code provisions including, but not limited to, Labor Code 204,
16 226.7, 510, 512, 558, 1194, 1197, 1198, 2802, the applicable IWC Wage Orders, and any other
17 violation alleged herein that does not carry penalties under Labor Code § 2699(a).

18 148. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA
19 with notice of her intention to file this claim. When sixty-five calendar days have passed without
20 notice from the LWDA, Plaintiff will have satisfied the administrative prerequisites to commence
21 this civil action in compliance with § 2699.3(a).

22 149. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
23 Employees, and herself as set forth in Labor Code § 2699(g)(1).

24 150. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for
25 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an
26 award of attorneys’ fees and costs as set forth below.

27 151. Wherefore, Plaintiff requests relief as hereinafter provided.
28

ELEVENTH CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(a)
(On Behalf of the State of California and Aggrieved Employees)

152. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

153. Labor Code § 2699(a) provides:

Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself or herself and other current or former employees.

154. Labor Code §§ 201 and 202 require employers to immediately pay wages earned and unpaid to an employee that is discharged, and to pay an employee who quits within 72 hours after he or she quits, at the latest.

155. Labor Code § 203 provides, in relevant part:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employees shall continue as a penalty from the due date thereof at the same rate paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

156. Labor Code § 256 provides: “The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days’ pay as waiting time under the terms of Section 203.”

157. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendants, as alleged above, to timely pay all wages owed to Plaintiff and the Aggrieved Employees in compliance with Labor Code §§ 201-202 and in the amounts established by Labor Code § 203. The “Aggrieved Employees” are Defendant’s non-exempt hourly California employees.

158. Labor Code § 226(a) provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely

based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

159. Labor Code § 226(e)(1) provides, in relevant part:

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

160. Labor Code § 226.3 provides:

Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.

161. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendant, alleged above, to provide Plaintiff and Aggrieved Employees a timely, accurate, itemized wage statement in compliance with Labor Code § 226(a) in the amounts established by Labor Code § 226.3. In addition, Plaintiff seeks penalties in the amount established by Labor Code § 226(e)(1), as prayed for herein.

162. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and Workforce Development Agency ("LWDA") with notice of her intention to file this claim. When sixty-five calendar days have passed without notice from the LWDA, Plaintiff will have satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

163. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved

1 Employees, and herself as set forth in Labor Code § 2699.

2 164. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for
3 the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys' fees
4 and costs as set forth below.

5 165. Wherefore, Plaintiff requests relief as hereinafter provided.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for relief as follows:

- 8 a. Damages and restitution according to proof at trial for all unpaid wages and other
9 injuries, as provided by the California Labor Code and California Business and
10 Professions Code;
- 11 b. For a declaratory judgment that Defendant has violated the California Labor Code,
12 California law, and public policy as alleged herein;
- 13 c. For a declaratory judgment that Defendant has violated California Business and
14 Professions Code §§ 17200 *et seq.*, as a result of the aforementioned violations of the
15 California Labor Code;
- 16 d. For an order awarding the State of California, Plaintiff, and Aggrieved Employees
17 civil penalties provided under the PAGA;
- 18 e. For an equitable accounting to identify, locate, and restore to all current and former
19 employees the wages they are due, with interest thereon;
- 20 f. For an order awarding Plaintiff and putative Class Members compensatory damages,
21 including lost wages, earnings, liquidated damages, and other employee benefits,
22 restitution, recovery of all money, actual damages, treble damages, punitive damages,
23 and all other sums of money owed to Plaintiff and putative Class Members, together
24 with interest on these amounts, according to proof;
- 25 g. For an award of reasonable attorneys' fees as provided by the California Labor Code,
26 including California Labor Code § 2699(g)(1), California Code of Civil Procedure §
27 1021.5, and/or other applicable law;

- h. For all costs of suit;
- i. For interest as provided by applicable law; and
- j. For such other and further relief as this Court deems just and proper.

Dated: November 6, 2023

Respectfully submitted,

/s/ Carolyn H. Cottrell

Carolyn H. Cottrell

Ori Edelsten

Michelle S. Lim

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

Attorneys for Plaintiff and the Putative Class

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to a jury.

Dated: November 6, 2023

Respectfully submitted,

/s/ Carolyn H. Cottrell

Carolyn H. Cottrell

Ori Edelsten

Michelle S. Lim

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

Attorneys for Plaintiff and the Putative Class

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document(s) with the Clerk of the Court for the United States District Court, Northern District of California, by using the Court's CM/ECF system on November 9, 2023.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the Court's CM/ECF system.

/s/ Carolyn H. Cottrell
Carolyn H. Cottrell