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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
CENTRAL DIVISION

GINA MAKSIMOW, an individual, on behalf
of herself, all others similarly situated, and all
other aggrieved employees,

Plaintiff,

vs.

BETWEEN THE SHEETS, INC., a California
Corporation, and DOES 1-20, inclusive.

Defendants.

CASE NO.: 37-2024-00012650-CU-OE-CTL

COMPLAINT FOR:

- 1) FAILURE TO PAY MINIMUM WAGE;**
- 2) FAILURE TO PAY OVERTIME;**
- 3) FAILURE TO PROVIDE MEAL/REST BREAKS;**
- 4) FAILURE TO REIMBURSE BUSINESS EXPENSES;**
- 5) FAILURE TO TIMELY PAY ALL WAGES DUE**
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;**
- 7) UNLAWFUL BUSINESS PRACTICES**
- 8) REPRESENTATIVE ACTION FOR CIVIL PENALTIES UNDER CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT.**

1 Plaintiff Gina Maksimow (“Plaintiff” or “Maksimow”), individually and on behalf of
2 others similarly situated, brings this Complaint against Defendant Between the Sheets, Inc.
3 (“Defendant” or “BTS”) and alleges as follows:

4 **NATURE OF THE ACTION**

5 1. This is an individual, representative, and class action seeking owed—but unpaid—
6 wages, as well as any ensuing penalties, brought pursuant to the provisions of the California Labor
7 Code.

8 **THE PARTIES**

9 2. Plaintiff Gina Maksimow is a resident of the State of California and was employed
10 by Defendants. Maksimow worked for BTS as a non-exempt employee in California from in or
11 around February 8, 2021, to January 12, 2023. She was paid on an hourly basis, and entitled to the
12 legally required meal and rest periods and payment of minimum and overtime wages due for all
13 time worked.

14 3. Defendant Between the Sheets, Inc., is a corporation, association, partnership, joint
15 venture, or other business entity, organized and existing under the laws of the State of California;
16 headquartered and with its principal-place-of-business in California. BTS operates throughout the
17 state, including in San Diego.

18 4. Plaintiff is unaware of the true names and capacities of the Defendants fictitiously
19 designated as “DOES” 1 through 20, and therefore sues those Defendants by these fictitious
20 names. Plaintiff will amend this Complaint when the true names and capacities of these factiously
21 designated Defendants have been ascertained. Plaintiff is informed and believes, and thereon
22 alleges, that “DOES” 1 through 20, are legally responsible in some manner for the events and
23 happenings referenced that caused the injuries to Plaintiff for which Plaintiff now seeks damages.

24 5. Plaintiff is informed and believes, and thereon alleges, that Defendants were the
25 agents, servants, employees of the other Defendants, and were acting within the scope, course and
26 authority of their agency and or employment. Plaintiff is further informed, believes, and thereon
27 alleges that each of the Defendants consented to, ratified, participated in, or authorized the acts of
28 the remaining Defendants.

1 **JURISDICTION, VENUE, AND EXHAUSTION OF REMEDIES**

2 6. Jurisdiction is proper in the Superior Court for the County of San Diego because it
3 has general subject matter jurisdiction and no statutory exceptions to jurisdiction exist.

4 7. This Court has jurisdiction over Defendant Between the Sheets, Inc., because it is
5 an association, corporation, or business entity based in, authorized, registered to conduct, or in fact
6 conducts substantial business in the State of California; including in the County of San Diego.

7 8. Venue is proper in the County of San Diego as a substantial part of the events and
8 omissions giving rise to the claims occurred in this County.

9 9. Plaintiff gave written notice by certified mail to the California Labor and
10 Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the
11 Labor Code she alleged to have been violated, including the facts and theories to support the
12 alleged violations, on January 9, 2024; and the LWDA gave no notice within 65 days of that filing
13 that it intended to investigate the alleged violations. Plaintiff has thus exhausted her
14 administrative remedies.

15 **CLASS ACTION**

16 10. This class action is properly brought under the provisions of California Code of
17 Civil Procedure section 382; and the procedural provisions of Rule 23 of the Federal Rules of Civil
18 Procedure, which have been adopted by the California Supreme Court for use by the trial courts of
19 this State.

20 11. Maksimow brings this Class Action on behalf of herself and a California class,
21 defined as all individuals who are or previously were employed by Defendant in California—
22 including any employees staffed with Defendant by a third party—and classified as non-exempt
23 employees (the “Class”) at any time during the period beginning four years prior to the filing of
24 this Complaint and ending on the date as determined by the Court (the “ Class Period”).

25 12. Maksimow reserves the right under California Rule of Court 3.765(b) and other
26 applicable laws to amend or modify the class definition with respect to issues or in any other ways.
27 Maksimow is a member of the Class.

1 13. The term “Class” or “Class Members” includes Maksimow and all members of the
2 Class and each of the Sub-Classes, if applicable. Maksimow seeks class-wide recovery based on
3 the allegations set forth in this complaint.

4 14. There is a well-defined community of interest in the litigation and the proposed
5 Class is easily ascertainable through the records Defendants are required to keep.

6 15. **Numerosity.** The members of the Class are so numerous that individual joinder of
7 all of them as plaintiffs is impracticable. While the exact number of the Class members is
8 unknown to Maksimow at this time, she is informed and believes and thereon alleges that there are
9 at least 50 Class members.

10 16. **Commonality.** This action involves common questions of law and fact to the
11 potential class because the action focuses on Defendant’s systematic course of illegal employment
12 and payroll practices and policies, which was applied to all current and former non-exempt
13 employees of Defendant in violation of the Labor Code, IWC Wage Orders, and the California
14 Business and Professions Code, which prohibits unfair business practices arising from such
15 violations.

16 17. **Typicality.** Maksimow’s wage-and-hour claims herein alleged are typical of those
17 claims which could be alleged by any member of the Class, and the relief sought is typical of the
18 relief which would be sought by each member of the Class in separate actions. Plaintiff and all
19 members of the Class sustained injuries and damages arising out of and caused by Defendant’s
20 common course of conduct in violation of California laws, regulations, and statutes as alleged
21 herein.

22 18. **Adequacy.** Maksimow is qualified to, and will fairly and adequately protect the
23 interests of each member of the Class with whom Plaintiff has a well-defined community of
24 interest and typicality of claims, as demonstrated herein. Maksimow acknowledges an obligation
25 to make known to the Court any relationships, conflicts, or differences with any member of the
26 Class. Maksimow’s attorneys and the proposed Counsel for the Class are versed in the rules
27 governing class action discovery, certification, litigation, and settlement; and has experience in
28

1 handling such matters. Other former and current employees of Defendant may also serve as
2 representatives of the Class if needed.

3 19. **Superiority.** A class action is superior to other available means for the fair and
4 efficient adjudication of the claims of the Class and would be beneficial for the parties and the
5 court. Class action treatment will allow a large number of similarly situated persons to prosecute
6 their common claims in a single forum, simultaneously, efficiently, and without the unnecessary
7 duplication of effort and expense that numerous individual actions would require. The damages
8 suffered by each Class member are relatively small in the sense pertinent to class action analysis,
9 and the expense and burden of individual litigation would make it extremely difficult or
10 impossible for the individual Class Members to seek and obtain individual relief. A class action
11 will serve an important public interest by permitting such individuals to effectively pursue
12 recovery of the sums owed to them. Further, class litigation prevents the potential for inconsistent
13 or contradictory judgments raised by individual litigation.

14 20. **Public Policy Considerations.** Employers in the state of California violate
15 employment and labor laws every day. Current employees are often afraid to assert their rights out
16 of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because
17 they believe their former employers may damage their future endeavors through negative
18 references and/or other means. The nature of this action allows for the protection of current and
19 former employees' rights without fear of retaliation or damage.

20 **ALLEGED VIOLATIONS**

21 21. Pursuant to the Industrial Welfare Commission Wage Orders and the California
22 Labor Code, Defendant was required to pay Plaintiff and Class Members for all their time worked,
23 meaning the time during which an employee is subject to the control of an employer, including all
24 the time the employee is suffered or permitted to work. Defendant nevertheless requires Plaintiff
25 and Class Members to work without paying them for all the time they are under Defendant's
26 control, including (but not limited to) by:

- 27 a. Calling and texting Plaintiff and Class Members while they are off-the-clock about
28 work-related matters without paying them;

- 1 b. Requiring Plaintiff and Class Members meet with clients at their homes and places
2 of business to assist with design decisions, and sell products, without paying them
3 for that time; *and*
4 c. Requiring Plaintiff and Class Members work during off-duty meal periods, without
5 pay, in order to accommodate Defendant’s scheduling policies and workload
6 demands.

7 22. Defendant also unlawfully omitted several pieces of remuneration—including, but
8 not limited to, the non-discretionary pay labeled “BONUS” on Defendant’s paystubs—from its
9 calculation of the “regular rate of pay” for purposes of paying Plaintiff and Class Members
10 overtime and meal and rest break premiums. As a matter of law, this compensation must be
11 included in the “regular rate of pay.” The failure to do so has resulted in an underpayment of
12 overtime compensation and meal and rest break premiums to Plaintiff and other Class Members.

13 23. As a result of their rigorous work schedules, Plaintiff and other Class Members
14 were from time to time unable to take thirty minute off duty meal breaks and were not fully
15 relieved of duty for their meal periods. Plaintiff and other Class Members were required to
16 perform work as ordered by Defendant for more than five hours during some shifts without
17 receiving a meal break. Further, Defendant failed to provide Plaintiff and Class Members with a
18 second off-duty meal period for some workdays in which these employees were required by
19 Defendant to work ten hours of work. Defendant also engaged in the practice of rounding the meal
20 period times to avoid paying penalties to Plaintiff and other Class Members. Plaintiff and other
21 members of the Class therefore forfeit meal breaks without additional compensation and in
22 accordance with Defendant’s corporate policy and practice.

23 24. Defendant also require Plaintiff and other Class Members to work in excess of four
24 hours without being provided ten minute rest periods. Further, these employees were denied their
25 first rest periods of at least ten minutes for some shifts worked of at least two to four hours; a first
26 and second rest period of at least ten minutes for some shifts worked of between six and eight
27 hours; and a first, second and third rest period of at least ten minutes for shifts worked of ten hours
28 or more. Plaintiff and other Class Members were also not provided with one hour wages in lieu

1 thereof. Additionally, the applicable California Wage Order requires employers to provide
2 employees with off duty rest periods, which the California Supreme Court defined as time during
3 which an employee is relieved from all work related duties and free from employer control. In so
4 doing, the Court held that the requirement under California law that employers authorize and
5 permit all employees to take rest period means that employers must relieve employees of all duties
6 and relinquish control over how employees spend their time, which includes control over the
7 locations where employees may take their rest period. Defendant's policy restricted Plaintiff and
8 other Class Members from spending their rest periods outside of Defendant's place-of-business,
9 which is unlawful

10 25. Defendant also failed to accurately record and pay Plaintiff and other Class
11 Members for the actual amount of time these employees worked. Pursuant to the Industrial
12 Welfare Commission Wage Orders, Defendant was required to pay Plaintiff and other
13 Class Members for all time worked, meaning the time during which an employee was subject
14 to the control of an employer, including all the time the employee was permitted or suffered to
15 permit this work. Defendant required these employees to work off the clock without paying them
16 for all the time they were under Defendant's control. As such, Defendant knew or should have
17 known that Plaintiff and the other members of the Class were under compensated for all time
18 worked. As a result, Plaintiff and other Class Members forfeited time worked by working without
19 their time being accurately recorded and without compensation at the applicable minimum wage
20 and overtime wage rates. To the extent that the time worked off the clock does not qualify for
21 overtime premium payment, Defendant fails to pay minimum wages for the time worked off-the-
22 clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

23 26. Defendant also failed to intentionally and knowingly failed to reimburse and
24 indemnify Plaintiff and the other Class Members for required business expenses incurred
25 by the Plaintiff and other Class Members in direct consequence of discharging their duties
26 on behalf of Defendant. Under California Labor Code Section 2802, employers are
27 required to indemnify employees for all expenses incurred in the course and scope of their
28 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his

1 or her employee for all necessary expenditures or losses incurred by the employee in direct
2 consequence of the discharge of his or her duties, or of his or her obedience to the
3 directions of the employer, even though unlawful, unless the employee, at the time of
4 obeying the directions, believed them to be unlawful.”

5 27. In the course of their employment Plaintiff and other Class Members, as a
6 business expense, were required by Defendant to (among other things):

7 a. Use their own personal cellular phones as a result of and in furtherance of
8 their job duties as employees for Defendant but are not reimbursed or
9 indemnified by Defendant for the cost associated with the use of their
10 personal cellular phones for Defendant’s benefit; *and*

11 b. Whenever a client or customer failed to pay the full amount owed to Defendant,
12 Defendant would require Plaintiff and members of the Class to pay the difference
13 out-of-pocket and then fail to reimburse them.

14 28. As a result, in the course of their employment with Defendant, Plaintiff and
15 other members of the California incurred unreimbursed business expenses which included,
16 but were not limited to, costs related to the use of their personal cellular phones and costs
17 of covering losses due to underpayment by clients/customers all on behalf of and for the
18 benefit of Defendant.

19 29. Finally, Defendant had a policy and practice of post-dating checks
20 representing Plaintiff’s and Class Member’s final pay on the date of discharge, resulting in
21 them being unable to access their final wages until that date. As a result, Defendant failed
22 to pay terminated employees on the date of their termination, or quitting employees within
23 72 hours of their separation, as required by California Law. Additionally, Defendant has a
24 policy and practice of omitted several forms of wages—such as other regular wages,
25 overtime, accrued sick leave, paid-time-off, and mileage reimbursements—in the final paychecks
26 it issues to Plaintiff and Class Members, instead sending such payments weeks later.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGE**

3 **(By Plaintiff and Class Against All Defendants)**

4 30. Maksimow restates and incorporates by reference each and every allegation in all
5 preceding paragraphs as though fully set forth herein.

6 31. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Order No. 7-
7 2001, § 4, payment to an employee of less than the applicable minimum wage for all hours worked
8 in a payroll period is unlawful.

9 32. During the Class Period, Defendant failed to pay Plaintiff and Class Members
10 minimum wages for all hours worked by, among other things: requiring, permitting or suffering
11 Plaintiff and Class Members to work off the clock; requiring, permitting or suffering Plaintiff and
12 Class Members to work through meal and rest breaks; illegally and inaccurately recording time in
13 which Plaintiff and Class Members worked; failing to properly maintain Plaintiff's and Class
14 Members' records; and other methods as alleged herein and to be discovered.

15 33. Defendant's conduct described herein violates California Labor Code §§ 1194,
16 1197, and IWC Wage Order No. 7-2001, § 4. As a proximate result of the aforementioned
17 violations, Plaintiff and Class Members have been damaged in an amount according to proof at
18 trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and other
19 applicable provisions under the Labor Code and IWC Wage Orders, Plaintiff and Class Members
20 are entitled to recover the unpaid balance of wages owed to them by Defendant, plus interest,
21 penalties, attorneys' fees, expenses, and costs of suit.

22 **SECOND CAUSE OF ACTION**

23 **FAILURE TO PAY OVERTIME**

24 **(By Plaintiff and Class Against All Defendants)**

25 34. Maksimow restates and incorporates by reference each and every allegation in all
26 preceding paragraphs as though fully set forth herein.

27 35. Pursuant to Labor Code §§ 510, 1194, and IWC Wage Order No. 7-2001, § 3,
28 Defendant required to compensate Plaintiff and Class Members for all overtime, which is

1 calculated at one and one-half times the regular rate of pay for all hours worked in excess of 8
2 hours per day and/or 40 hours per week, and for the first 8 hours on the seventh consecutive
3 workday, with double time for all hours worked in excess of 12 hours in any workday and for all
4 hours worked in excess of 8 hours on the seventh consecutive day of work in any workweek.

5 36. Plaintiff and Class Members are current and former non-exempt employees of
6 Defendant entitled to the protections of Labor Code §§ 510, 1194, and IWC Wage Order No. 7-
7 2001. During the Class Period, failed to compensate Plaintiff and Class Members for all overtime
8 hours worked as required under the foregoing provisions of the Labor Code and IWC Wage Order
9 by, among other things: failing to pay overtime at one and one-half or double the regular rate of
10 pay as provided by Labor Code §§ 510, 1194, and IWC Wage Order No. 7-2001, § 3; requiring,
11 permitting or suffering Plaintiff and Class Members to work off the clock; requiring, permitting or
12 suffering Plaintiff and Class Members to work through meal and rest breaks; miscalculated the
13 regular rate of pay; illegally and inaccurately recording time in which Plaintiff and Class Members
14 worked; failing to properly maintain Plaintiff's and Class Members' records; and other methods as
15 alleged herein and to be discovered.

16 37. In violation of California law, Defendant has knowingly and willfully refused to
17 perform their obligations to compensate Plaintiff and Class Members for all wages earned and all
18 hours worked. As a proximate result Plaintiff and Class Members have suffered, and continue to
19 suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such
20 wages, and expenses and attorneys' fees in seeking to compel Defendant to fully perform their
21 obligations under state law, all to their respective damages in amounts according to proof at time
22 of trial, and within the jurisdiction of this Court.

23 38. Defendant's conduct described herein violates Labor Code §§ 510, 1194, 1198 and
24 IWC Wage Order No. 7-2001, § 3. Therefore, pursuant to Labor Code §§ 200, 203, 226, 558,
25 1194, 1197.1, and other applicable provisions under the Labor Code and IWC Wage Orders,
26 Plaintiff and Class Members are entitled to recover the unpaid balance of wages owed to them by
27 Defendant, plus interest, penalties, attorneys' fees, expenses, and costs of suit.
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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL/REST BREAKS**

3 **(By Plaintiff and Class Against All Defendants)**

4 39. Maksimow restates and incorporates by reference each and every allegation in all
5 preceding paragraphs as though fully set forth herein.

6 40. During the Class Period, as part of Defendant's illegal payroll policies and practices
7 to deprive their current and former non-exempt employees all wages earned and due, Defendant
8 required, permitted or otherwise suffered Plaintiff and Class Members to take less than the 30-
9 minute meal period, or to work through them, and have failed to otherwise provide the required
10 meal periods to Plaintiff and Class Members pursuant to Labor Code § 226.7, 512 and IWC Order
11 No. 7-2001, § 11. As part of those same policies, Defendant also failed to provide rest periods to
12 Plaintiff and Class Members as required under Labor Code §§ 226.7 and 512; and IWC Wage
13 Order No. 7-2001, § 12.

14 41. Defendant further violated Labor Code § 226.7 and IWC Wage Order No. 7-11
15 2001, §§ 11-12 by failing to pay Plaintiff and Class Members who were not provided with a meal
16 and/or rest period, in accordance with the applicable IWC Wage Order, one additional hour of
17 compensation at each employee's regular rate of pay for each workday that a meal and/or rest
18 period was not provided.

19 42. Defendant further violated Labor Code §§ 226.7, 510, 1194, 1197, and IWC Wage
20 Order No. 7-2001 by failing to compensate Plaintiff and Class Members for all hours worked
21 during their meal periods.

22 43. As a proximate result of the aforementioned violations, Plaintiff and Class
23 Members have been damaged in an amount according to proof at trial, and seek all wages earned
24 and due, interest, penalties, attorneys' fees, expenses, and costs of suit.

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 **(By Plaintiff and Class Against All Defendants)**

4 44. Maksimow restates and incorporates by reference each and every allegation in all
5 preceding paragraphs as though fully set forth herein.

6 45. Cal. Lab. Code § 2802 provides, in relevant part, that “An employer shall
7 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in
8 direct consequence of the discharge of his or her duties, or of his or her obedience to the directions
9 of the employer, even though unlawful, unless the employee, at the time of obeying the directions,
10 believed them to be unlawful.”

11 46. At all relevant times herein, Defendant violated Cal. Lab. Code § 2802, by failing
12 to indemnify and reimburse Plaintiff and Class Members for required expenses incurred in the
13 discharge of their job duties for Defendant’s benefit, as alleged herein. These expenses were
14 necessary to complete their principal job duties. Defendant is estopped by its conduct to assert any
15 waiver of this expectation. Although these expenses were necessary expenses incurred by Plaintiff
16 and Class Members, DEFENDANT failed to indemnify and reimburse Plaintiff and Class
17 Members for these expenses as an employer is required to do under the laws and regulations of
18 California.

19 47. Plaintiff therefore demands reimbursement for expenditures or losses incurred by
20 herself and Class Members in the discharge of their job duties for Defendant, or their obedience to
21 the directions of Defendant, with interest at the statutory rate and costs under Cal. Lab. Code §
22 2802.

23 **FIFTH CAUSE OF ACTION**

24 **FAILURE TO TIMELY PAY ALL WAGES DUE**

25 **(By Plaintiff and Class Against All Defendants)**

26 48. Maksimow restates and incorporates by reference each and every allegation in all
27 preceding paragraphs as though fully set forth herein.
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1 49. California Labor Code § 200 defines wages as “all amounts for labor performed by
2 employees of every description, whether the amount is fixed or ascertained by the standard of
3 time, task, piece, commission basis, or other method of calculation.”

4 50. Labor Code § 201 mandates that if an employer discharges an employee, the
5 employee’s wages earned and unpaid at the time of discharge are due and payable immediately.

6 51. Furthermore, pursuant to Labor Code § 202, Defendant is required to pay all
7 accrued wages due to an employee no later than 72 hours after the employee quits his or her
8 employment, unless the employee provided 72 hours previous notice of his or her intention to quit,
9 in which case the employee is entitled to his or wages at the time of quitting.

10 52. Labor Code § 203 provides that if an employer willfully fails to pay, in accordance
11 with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the
12 employer is liable for waiting time penalties in the form of continued compensation to the
13 employee at the same rate for up to 30 workdays.

14 53. Finally, Labor Code § 204—in conjunction with the DLSE Enforcement Manual—
15 requires incentive payments be paid when “reasonably calculable.”

16 54. Defendant’s willful violation of the California Labor Code, as alleged above, and
17 ensuing failure to pay Maksimow and Class Members all wages owed has meant it willfully failed
18 to pay accrued wages and other compensation to Plaintiff and Class Members in accordance with
19 Labor Code §§ 201 and 202; and failed to pay Maksimow and Class Members all wages owed
20 once “reasonably calculable” in violation of Labor Code § 204.

21 55. As a result, Plaintiff and the Class are entitled to all wages owed but not yet paid; as
22 well as all available statutory penalties, including the waiting time penalties provided in Labor
23 Code §§ 203 and 204 and the statutory penalties for failure to pay wages timely; together with
24 interest thereon, as well as other available remedies.

25 56. Maksimow and the Class is also entitled to recover any legal expenses and
26 attorneys’ fees they have incurred, and continues to incur, in pursuing this action per California
27 Labor Code §§ 218, 218.5, and 218.6.

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1 periods, and any other Labor Code violations alleged herein or discovered during litigation—the
2 wage statements did not contain all the required information; including but not limited to the
3 correct gross and net wages earned, correct applicable hourly rates at the corresponding hours
4 worked, or correct total hours worked.

5 61. Such a pattern, practice, and uniform administration of corporate policy as
6 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class, in a
7 civil action, for all damages or penalties pursuant to Labor Code §226(a), including interest
8 thereon, injunctive relief pursuant to Labor Code § 226(h), attorneys’ fees, and costs of suit
9 according to the mandate of California Labor Code §226.

10 **SEVENTH CAUSE OF ACTION**

11 **UNLAWFUL, UNFAIR, OR FRAUDULENT BUSINESS PRACTICES**

12 **UNDER CAL. BUS. & PROF. CODE § 17200 ET SEQ.**

13 **(By Plaintiff And Class Against All Defendants)**

14 62. Maksimow restates and incorporates by reference each and every allegation in all
15 preceding paragraphs as though fully set forth herein.

16 63. Section 17200 of the California Business and Professions Code prohibits any
17 unlawful, unfair, or fraudulent business act or practice.

18 64. Each and every one of Defendant’s acts and omissions as alleged herein constitute
19 unfair and unlawful business practices under California Business & Professions Code § 17200 *et*
20 *seq.*

21 65. As a result of Defendant’s unfair and unlawful business practices, Defendant has
22 reaped unfair and illegal profits at the expense of Plaintiff, Class Members, and members of the
23 public. Defendant should thus be made to disgorge their ill-gotten gains and restore them to
24 Plaintiff and the Class; and Plaintiff and the Class are entitled to all monies to be disgorged from
25 Defendants in an amount according to proof at the time of trial. Defendant’s unfair and unlawful
26 business practices also entitle Plaintiff and the Class to seek preliminary and injunctive relief.

27 66. Plaintiff seeks to enforce important rights affecting the public interest within the
28 meaning of California Code of Civil Procedure § 1021.5. Defendant’s conduct, as alleged herein,

1 has been and continues to be unfair, unlawful, and harmful to Plaintiff, Class Members, and the
2 general public. Based on Defendant's conduct as alleged herein, Plaintiff and Class Members are
3 entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

4 **EIGHTH CAUSE OF ACTION**

5 **REPRESENTATIVE ACTION FOR CIVIL PENALTIES**

6 **UNDER CALIFORNIA'S PRIVATE ATTORNEYS GENERAL ACT (PAGA)**

7 **(Only By Plaintiff Against Entity Defendants)**

8 67. Maksimow restates and incorporates by reference each and every allegation in all
9 preceding paragraphs as though fully set forth herein.

10 68. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
11 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
12 ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees for
13 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by
14 an aggrieved employee on behalf of himself or herself and other current or former employees
15 pursuant to the procedures specified in Labor Code § 2699.3.

16 69. For all provisions of the Labor Code except those for which a civil penalty is
17 specifically provided, Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred
18 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
19 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
20 period in which Defendants violated these provisions of the Labor Code.

21 70. Defendant's conduct violates numerous Wage Order and Labor Code sections,
22 including, but not limited to, the following:

- 23 a. Violation of Labor Code §§ 223, 225.5, 510, 558, 1194, 1194.2, 1197, 1197.1,
24 1198, and the "Minimum Wages" and "Hours and Days of Work" sections of the
25 applicable IWC Wage Order for failure to pay minimum and overtime wages;
26 b. Violation of Labor Code §§ 226.7, 512, 558, 1198 and the "Meal Periods" section
27 of the Applicable IWC Wage Order for failing to provide meal and rest periods;
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- c. Violation of Labor Code §§ 1174, 1174.5, 1198, and the “Records” section of the Applicable IWC Wage Order for failing to maintain accurate records;
- d. Violation of Labor Code §§ 226, 226.3, 1198, and the “Records” section of the Applicable IWC Wage Order for issuing inaccurate wage statements to Plaintiff and other aggrieved employees as herein alleged;
- e. Violation of Labor Code §§ 201, 202, 203, 204, 210, 256, 1198, and the “Minimum Wages” section of the Applicable IWC Wage Order for failing to pay all wages owed when due; *and*
- f. Violation of Labor Code §§ 2800 and 2802 for failing to reimburse necessary business expenses.

71. Plaintiff is an “aggrieved employee” because she was employed by the alleged violator and had one or more of the violations committed against her, and therefore is properly suited to represent the interests of all other aggrieved employees.

72. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as to Defendant and is therefore able to pursue a claim for penalties on behalf of herself and all other aggrieved employees under PAGA.

73. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

74. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. For certification under California Code of Civil Procedure § 382 of the proposed Class and any other appropriate subclass;
2. For appointment of Maksimow as class representative;
3. For appointment of Mouton Law, as class counsel for all purposes;

4. For nominal, actual, and compensatory damages;
5. For special and/or non-economic damages in an amount according to proof;
6. For punitive and/or exemplary damages in an amount according to proof;
7. For liquidated damages in an additional amount equal to the entire award of other damages;
8. For statutory and civil penalties according to proof, including but not limited to all penalties authorized by the Labor Code §§ 226(f) and 2699;
9. For attorneys' fees pursuant to applicable laws;
10. For costs of suit incurred herein;
11. For pre-judgment interest to the extent allowed by law;
12. For post-judgment interest to the extent allowed by law;
13. For declaratory relief declaring that Defendants committed the unlawful practices alleged herein;
14. For injunctive relief restraining Defendants from committing any similar future unlawful employment practices and implementing practices to deter or discourage similar future unlawful practices; *and*
15. For such other and further relief as the Court deems just and proper.

DATED: March 18, 2024

MOUTON LAW
STACEY Y. MOUTON

By: /s/ Stacey Y. Mouton
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Attorney for Plaintiff
GINA MAKSIMOW

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DATED: March 18, 2024

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COMPLAINT