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Attorneys for Plaintiff PAMELA BUKHATWA on
behalf of herself and others similarly situated

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE

PAMELA BUKHATWA, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

OAKLEY, INC., a Washington corporation;
and DOES 1 to 10, inclusive,

Defendants.

CASE NO.

CLASS ACTION COMPLAINT FOR:

- 1. Failure to Pay Overtime Wages in Violation of Labor Code sections 510 and 1198;**
- 2. Failure to pay all Wages and Minimum Wages in Violation of Labor Code sections 221, 223, 1182, 1194, 1197, and 1198;**
- 3. Failure to Provide Meal Periods in Violation of Labor Code sections 226.7, 512, 516 and 1198;**
- 4. Failure to Provide Rest Periods in Violation of Labor Code sections 226.7, 516, 1198;**
- 5. Failure to Timely Furnish Accurate Itemized Wage Statements in Violation of Labor Code section 226(a) and Failure to Maintain Accurate Records;**
- 6. Failure to Provide Sick Pay in Violation of Labor Code Section 246;**
- 7. Failure to Timely Pay Wages During Employment in Violation of Labor Code Sections 204, 210; and**
- 8. Violations of Business & Professions Code section 17200 et seq.**

DEMAND FOR JURY TRIAL

1 Plaintiff, PAMELA BUKHATWA (hereinafter “Plaintiff”) hereby submits her Class Action
2 Complaint against Defendants OAKLEY, INC., a Washington corporation; and DOES 1 to 10
3 (hereinafter referred to as “Defendants”) on behalf of herself and the class of all other similarly
4 situated current and former employees of Defendants as follows:

5 **NATURE OF THE CASE**

6 1. This is a class action arising out of Defendants’ failure to provide their non-exempt
7 employees with all wages, meal and rest periods and sick pay wages in compliance with the
8 applicable wage order and/or the California Labor Code.

9 2. Oakley, Inc. designs, develops, and manufactures sports performance equipment
10 and lifestyle pieces. Oakley, Inc. is headquartered in Foothill Ranch, California. At all relevant
11 times, Defendants used and maintained uniform, standardized scheduling and timekeeping
12 practices and procedures for all non-exempt, hourly paid employees in California, including
13 Plaintiff and others similarly situated, regardless of their location or position.

14 3. Defendants have maintained practices across its locations which have failed and
15 continue to fail to pay Plaintiff and other non-exempt employees all wages. Specifically,
16 Defendants have a company-wide policy of discouraging Plaintiff and other non-exempt
17 employees from recording hours worked off-the-clock. Specifically, Plaintiff and other non-exempt
18 employees were required to undergo an off-the-clock security check after clocking out at the end of
19 their shifts. The security check would take several minutes and was unpaid. Further, after clocking
20 out for meal periods, Plaintiff and other non-exempt employees would have to undergo off-the-
21 clock security check when leaving the facility. This caused short and late meal periods. Moreover,
22 following the meal breaks, Plaintiff would have to walk several minutes to the time clock to clock
23 back in. This also caused short meal periods.

24 4. Defendants also failed to provide rest breaks due to demanding work schedules.
25 Moreover, sick pay is paid at the base rate of pay rather than at the regular rate.

26 5. In light of the foregoing, Defendants failed to provide Plaintiff and other non-
27 exempt employees with compliant wage statements and failed to timely pay all wages during
28 employment.

6. Plaintiff brings Causes of Action One through Eight (the “class claims”) as a class action on behalf of herself and other similarly situated individuals who have worked for Defendants in California, at any time from four-years prior to the filing of this complaint, through the resolution of this action. Plaintiff, on his own behalf and on behalf of all Class Members, brings the class claims pursuant to Labor Code sections 204, 210, 221, 223, 226, 226.7, 246, 500, 510, 512, 1174, 1194, 1194.2, 1197, 1198, the applicable wage order and under Business & Professions Code sections 17200-17208, for unfair competition due to Defendants’ unlawful, unfair and fraudulent business acts and practices.

7. Plaintiff is informed and believes, and based thereon alleges, that Defendants have engaged in, among other things a system of willful violations of the Labor Code and the applicable IWC wage orders by creating and maintaining policies, practices and customs that knowingly deny employees the above stated rights and benefits.

PARTIES

8. Plaintiff, Pamela Bukhatwa is an individual over the age of eighteen (18) and is now, and/or at all relevant times mentioned in this Complaint was, a resident and domiciliary of the State of California. During the relevant time period, Plaintiff has worked for Defendants in Lake Forest, California since approximately October 2021. Plaintiff works in assembly as a non-exempt hourly paid employee.

9. Plaintiff is informed and believes, and based thereon alleges, that Defendant Oakley, Inc. is a Washington corporation. Plaintiff is further informed and believes that at all times relevant hereto, Defendant has transacted, and continues to transact, business throughout the State of California.

10. Plaintiff is informed and believes, and based upon such information and belief alleges, that Defendants are, now and/or at all times mentioned in this Complaint was in some manner legally responsible for the events, happenings and circumstances alleged in this Complaint.

11. Plaintiff is further informed and believes, and based upon such information and belief alleges, that at all times herein mentioned, Defendants proximately caused Plaintiff, all others similarly situated, and the general public to be subjected to the unlawful practices, wrongs,

1 complaints, injuries and/or damages alleged in this Complaint.

2 12. Plaintiff is informed and believes and based thereon alleges that at all times herein
3 mentioned Defendants and DOES 1 through 10, are and were corporations, business entities,
4 individuals, and partnerships, licensed to do business and actually doing business in the State of
5 California.

6 13. Plaintiff does not know the true names or capacities, whether individual, partner or
7 corporate, of the Defendants sued herein as DOES 1 through 10, inclusive, and for that reason, said
8 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
9 complaint when the true names and capacities are known. Plaintiff is informed and believes and
10 based thereon alleges that each of said fictitious Defendants were responsible in some way for the
11 matters alleged herein and proximately caused Plaintiff and members of the general public and
12 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

13 14. At all times herein mentioned, each of said Defendants participated in the doing of
14 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
15 Defendants, and each of them, were the agents, servants and employees of each of the other
16 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
17 within the course and scope of said agency and employment.

18 15. Plaintiff is informed and believes and based thereon alleges that at all times material
19 hereto, each of the Defendants named herein were the agent, employee, alter ego and/or joint
20 venturer of, or working in concert with each of the other co-Defendants and were acting within the
21 course and scope of such agency, employment, joint venture, or concerted activity. To the extent
22 said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining
23 Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

24 16. At all times herein mentioned, Defendants, and each of them, were members of, and
25 engaged in, a joint venture, partnership and common enterprise, and acting within the course and
26 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

27 17. At all times herein mentioned, the acts and omissions of various Defendants, and
28 each of them, concurred and contributed to the various acts and omissions of each and all of the

1 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
2 herein mentioned, Defendants, and each of them, ratified each and every act or omission
3 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and
4 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
5 damages as herein alleged.

6 18. The members of the Class (as defined below), including the representative Plaintiff
7 named herein, have been employed during the Class Period in California. The practices and
8 policies which are complained of by way of this Complaint are enforced throughout the State of
9 California.

10 **JURISDICTION AND VENUE**

11 19. The Court has jurisdiction over this class action pursuant to article 6, section 10 of
12 the California Constitution and Code of Civil Procedure section 410.10.

13 20. Additionally, this Court has jurisdiction over Plaintiff's and the Classes' claims for
14 injunctive relief, including restitution of earned wages, arising from Defendants' unfair
15 competition under Business & Professions Code section 17203 and 17204. The Court also has
16 jurisdiction over Plaintiff's and the Classes' claims pursuant to the applicable provisions.

17 21. The Court has jurisdiction over Defendants because they are authorized to do
18 business in the State of California and are registered with the California Secretary of State.
19 Defendants do sufficient business with sufficient minimum contacts in California, and/or otherwise
20 intentionally avails itself of the California market through the advertising, marketing and sale of
21 goods and services, to render the exercise of jurisdiction over Defendants by the California court
22 consistent with traditional notions of fair play and substantial justice.

23 22. Venue is proper in Orange County because the acts which give rise to this litigation
24 occurred in this county and because Defendants have employed class members in this county and
25 transacts business in this county.

26 **FACTUAL ALLEGATIONS**

27 23. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

28 ***Defendants' Failure to Pay Overtime Wages***

1 24. During the Class Period, upon information and belief, Defendants had, and
2 continues to have, a company-wide policy of failing to pay Plaintiff and members of the class any
3 overtime wages as described above. Because Plaintiff and members of the Class worked shifts of
4 eight (8) hours a day or more or forty (40) hours a week or more, which can be seen on Plaintiff's
5 and members of the classes' time entry records, they were entitled to overtime wages. However,
6 Defendants failed to pay for all hours worked off-the-clock.

7 25. Therefore, Plaintiff and members of the Class were not paid overtime wages for all
8 of the overtime hours they actually worked.

9 ***Defendants' Failure to Pay all Wages and Minimum Wages***

10 26. As stated above, during the relevant time period, as a result of Defendants' policy of
11 limiting the amount of overtime employees could accrue, and because Plaintiff and members of the
12 Classe were forced to work off-the-clock, they were not paid all wages.

13 27. Thus, Defendants did not pay at least minimum wages for all hours worked by
14 Plaintiff and class members. To the extent that the off-the-clock hours did not qualify for overtime
15 premium payment, Defendants did not pay at least minimum wages for those hours worked off-the-
16 clock.

17 ***Failure to Provide Compliant Meal Periods***

18 28. As stated above, Defendants had, and continue to have, a company-wide policy of
19 failing to provide Plaintiff and other non-exempt employees from taking all timely meal periods to
20 which they were entitled. As a result, Plaintiff and other non-exempt employees were forced to
21 work in excess of five (5) hours before taking a meal period and, at times, had their meal periods
22 cut short due to security checks and walking time.

23 29. Plaintiff and members of the Class did not sign valid meal period waivers on days
24 that they were entitled to meal periods and were not relieved of all duties.

25 ***Defendants' Failure to Provide Compliant Rest Breaks***

26 30. During the relevant time period, Defendants regularly failed to authorize and permit
27 Plaintiff and members of the Class to take a ten (10) minute rest period per each four (4) hour
28 period worked or major fraction thereof.

31. Specifically, rest breaks were frequently missed due to heavy work demands.

Defendants' Failure to Provide Compliant Wage Statements

32. During the relevant time period, Defendants have knowingly and intentionally provided Plaintiff and members of the Class with uniform, incomplete, and inaccurate wage statements. For example, Defendants provided uniform wage statements to Plaintiff and members of the Class that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours actually worked.

33. Further, wage statements fail to state the hours for shift differential pay.

34. Because Defendants failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Plaintiff and members of the Class have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Plaintiff and members of the Class have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Defendants' Failure to Pay Sick Pay Wages

35. Defendants maintained a company-wide practice whereby it failed to pay sick pay wages at the regular rate, and instead paid sick wages at the base rate of pay. Plaintiff received compensation such as shift differentials in addition to her hourly wages while employed by Defendants. Those additional amounts should have been included when calculating her regular rate of pay and used when paying overtime wages, premium wages, and sick leave wages, but were not. Instead, Plaintiff and members of the Class were paid sick wages at their base rate of pay.

Defendants' Failure to Timely Pay all Wages During Employment

36. Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th

1 day of the month during which the labor was performed, and that all wages earned by any person in
2 any employment between the 16th and the last day, inclusive, of any calendar month, other than
3 those wages due upon termination of an employee, are due and payable between the 1st and the
4 10th day of the following month.

5 37. Labor Code section 204 also requires that all wages earned for labor in excess of the
6 normal work period shall be paid no later than the payday for the next regular payroll period.
7 Alternatively, Labor Code section 204 provides that the requirements of this section are deemed
8 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
9 paid not more than seven (7) calendar days following the close of the payroll period.

10 38. During the class period, Defendants willfully failed to pay Plaintiff and members of
11 the Class all wages due including, but not limited to, minimum wages, and/or meal and rest period
12 premiums, within the time periods specified by Labor Code section 204.

13 ***Facts Regarding Willfulness***

14 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants are
15 and were advised by skilled lawyers, other professionals, employees with human resources
16 background and advisors with knowledge of the requirements of California wage and hour laws
17 and that at all relevant times, Defendants knew or should have known, that the Plaintiff Class
18 Members, including Plaintiff, were entitled to receive one hour of pay at the employee's regular
19 rate of compensation for each day that a meal and/or rest period was not provided and were and are
20 entitled to receive pay for all hours worked, accurate itemized wage statements, and final pay in a
21 timely manner.

22 ***Unfair Business Practices***

23 40. Defendants have further engaged in, and continues to engage in, unfair business
24 practices in California by practicing, employing and utilizing the unlawful employment practices
25 and policies outlined above.

26 41. As a direct result of the wage and hour violations herein alleged, Plaintiff and
27 members of the Plaintiff Class have suffered, and continue to suffer substantial losses related to the
28 use and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in

1 seeking to compel Defendants to perform their obligations under state law, all to Plaintiff's and the
2 Plaintiff Class members' respective damage in amounts according to proof at the time of trial.

3 ***Plaintiff's Exhaustion of Administrative Remedies***

4 42. Plaintiff is currently complying with the procedures for bringing suit specified in
5 Labor Code section 2699.3.

6 43. By letter dated February 26, 2024, required notice was provided to the Labor and
7 Workforce Development Agency ("LWDA") and Defendants, of the specific provisions of the
8 Labor Code alleged to have been violated, including the facts and theories to support the alleged
9 violations.

10 44. This Complaint will be amended when more than sixty-five (65) days have passed
11 since the date the notice was mailed to Defendants and the LWDA, if the LWDA chooses not to
12 investigate the allegations herein.

13 **CLASS ACTION ALLEGATIONS**

14 45. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

15 46. Pursuant to Code of Civil Procedure section 382, this action is brought and may be
16 properly maintained as a class action. This action satisfies the ascertainability, numerosity,
17 commonality, typicality, adequacy, predominance, and superiority requirements of those
18 provisions.

19 47. Plaintiff brings this suit as a class action on behalf of the following class:

20 48. Plaintiff Class: All persons who have been, or currently are, employed by
21 Defendants and who held, or hold, job positions which Defendants have classified as "non-exempt"
22 employees in the State of California, at any time since four years prior to filing this action, through
23 the date judgment is rendered in this action.

24 49. Numerosity: Plaintiff is informed and believes, and on that basis alleges, that during
25 the class period hundreds of class members have been employed by Defendants as non-exempt
26 employees in the State of California. Because so many persons have been employed by Defendants
27 in this capacity, the members of the Plaintiff Class are so numerous that joinder of all members is
28 impossible and/or impracticable.

1 50. Common Questions of Law and/or Fact: Common questions of law and fact exist as
2 to all members of the Plaintiff Class and predominate over any questions affecting solely individual
3 members of the Plaintiff Class. Among the questions of law and fact, that are relevant to the
4 adjudication of Class Members' claims are as follows:

- 5 a. Whether Plaintiff and Class Members are subject to and entitled to the benefits
6 of California wage and hour statutes;
- 7 b. Whether Defendants failed to pay Plaintiff and Class Members for all hours
8 worked;
- 9 c. Whether Defendants failed to pay Plaintiff and Class Members all overtime;
- 10 d. Whether Defendants had a standard policy of not providing compliant meal
11 breaks and premiums to Plaintiff and members of the Plaintiff Class;
- 12 e. Whether Defendants had a standard policy of not providing compliant rest
13 breaks and premiums to Plaintiff and members of the Plaintiff Class;
- 14 f. Whether Defendants had a standard policy of not providing Plaintiff and
15 members of the Plaintiff Class with sick wages at the regular rate;
- 16 g. Whether Defendants unlawfully and/or willfully failed to provide Plaintiff and
17 members of the Plaintiff Class with true and proper wage statements upon
18 payment of wages, in violation of Labor Code section 226;
- 19 h. Whether Defendants failed to timely pay wages to Plaintiff and members of the
20 Plaintiff Class during their employment;
- 21 i. Whether Plaintiff and members of the Plaintiff Class sustained damages, and if
22 so, the proper measure of such damages, as well as interest, penalties, costs,
23 attorneys' fees, and equitable relief;
- 24 j. Whether Defendants' conduct as alleged herein violates the Unfair Business
25 Practices Act of California (Bus. & Prof. Code, § 17200 et seq.)

26 51. Typicality: The claims of the named Plaintiff are typical of the claims of the
27 members of the Plaintiff Class. Defendants' common course of conduct in failing to provide their
28 non-exempt employees with meal and rest periods and all wages in compliance with the applicable

1 wage order, or premium compensation at the regular rate in lieu thereof, failing to provide them
2 with proper wages and overtime, failing to provide sick pay at the regular rate of pay, and failing to
3 provide them with compliant wage statements has caused Plaintiff and the proposed Class to
4 sustain the same or similar injuries and damages. Plaintiff's claims are thereby representative of
5 and co-extensive with the claims of the proposed Class. Plaintiff and the proposed Class sustained
6 the same or similar injuries and damages arising from Defendants' common policies, practices,
7 procedures, protocols, routines, and rules which were applied to other Class Members as well as
8 Plaintiff. Plaintiff seeks recovery for the same type of losses, injuries, and damages as were
9 suffered by other members of the proposed class.

10 52. Adequacy of Representation: Plaintiff is an adequate representative of the proposed
11 class because she is a member of the class, and her interests do not conflict with the interests of the
12 members she seeks to represent. Plaintiff has retained competent counsel, experienced in the
13 prosecution of complex class actions, and together Plaintiff and her counsel intend to prosecute this
14 action vigorously for the benefit of the class. The interests of the Class Members will fairly and
15 adequately be protected by Plaintiff and her attorneys.

16 53. Superiority of Class Action: A class action is superior to other available methods for
17 the fair and efficient adjudication of this litigation since individual litigation of the claims of all
18 Class Members is impracticable. It would be unduly burdensome to the courts if these matters were
19 to proceed on an individual basis, because this would potentially result in hundreds of individual,
20 repetitive lawsuits. Further, individual litigation presents the potential for inconsistent or
21 contradictory judgments, and the prospect of a "race to the courthouse," and an inequitable
22 allocation of recovery among those with equally meritorious claims. By contrast, the class action
23 device presents far fewer management difficulties, and provides the benefit of a single
24 adjudication, economics of scale, and comprehensive supervision by a single court.

25 54. The various claims asserted in this action are additionally or alternatively certifiable
26 under the provisions of the Code of Civil Procedure section 382 because:

- 27 a. The prosecution of separate actions by hundreds of individual class members
28 would create a risk of varying adjudications with respect to individual class

members, thus establishing incompatible standards of conduct for Defendants, and

- b. The prosecution of separate actions by individual class members would also create the risk of adjudications with respect to them that, as a practical matter, would be dispositive of the interest of the other class members who are not a party to such adjudications and would substantially impair or impede the ability of such non-party class members to protect their interests.

FIRST CAUSE OF ACTION

Unpaid Overtime

(By Plaintiff and Members of the Putative Class Against Defendants)

55. Plaintiff incorporates herein by reference the allegations set forth above.

56. At all times relevant herein, which comprise of the time period not less than four (4) years preceding the filing of this action, Defendants were required to compensate their hourly employees for all overtime hours worked.

57. California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) wage order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of one-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC wage order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

58. Defendants willfully failed to pay all overtime wages owed to Plaintiff and members of the Class. During the relevant time period, Plaintiff and members of the Class were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not compensated. Defendants knew or should have known that as a result of

1 company-wide practices and/or policies, that prevents Plaintiff and members of the Class from
2 earning overtime, Plaintiff and members of the Class were performing assigned duties off-the-
3 clock before and after their shifts and/or during meal periods, and were suffered or permitted to
4 perform work for which they were not paid. Because Plaintiff and members of the Class worked
5 shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-
6 clock work qualified for overtime premium pay. Therefore, Plaintiff and members of the Class
7 were not paid overtime wages for all of the overtime hours they actually worked.

8 59. Defendants' failure to pay Plaintiff and members of the Class the balance of
9 overtime compensation, as required by California law, violates the provisions of Labor Code
10 sections 510 and 1198. Plaintiff and members of the Class are entitled to recover civil penalties,
11 attorney's fees, costs, and interest thereon.

12 **SECOND CAUSE OF ACTION**

13 **Failure to Pay All Wages**

14 **(By Plaintiff and Members of the Putative Class Against Defendants)**

15 60. Plaintiff incorporates herein by reference the allegations set forth above.

16 61. At all times relevant herein, which comprise of the time period not less than four (4)
17 years preceding the filing of this action, Defendants was required to compensate their hourly
18 employees for all hours worked.

19 62. For at least the four (4) years preceding the filing of this action, Defendants failed to
20 compensate employees for all hours worked. Defendants implemented policies that actively
21 prevented employees from being compensated for all time worked by subjecting Plaintiff and
22 members of the Class to work off-the-clock as mentioned above.

23 63. Under the applicable wage order and state regulations, Plaintiff and the Plaintiff
24 Class are entitled to recover compensation for all hours worked, but not paid, for the four (4) years
25 preceding the filing of this action, in addition to reasonable attorney's fees and costs of suit in
26 accordance with Labor Code section 218.5, and penalties pursuant to Labor Code sections 203 and
27 206.

28 64. The applicable IWC wage order section 2(G) defines "hours worked" to mean "the

1 time during which an employee is subject to the control of an employer and includes all the time
2 the employee is suffered or permitted to work, whether or not required to do so.”

3 65. Defendants suffered or permitted Plaintiff and members of the Class to work
4 portions of the day for which Defendants failed to compensate them. This includes time spent
5 under Defendants’ control prior to clocking in, after clocking out, and during meal periods

6 66. Labor Code section 1194(a) provides in relevant part: “Notwithstanding any
7 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage ...
8 is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage
9 ... including interest thereon, reasonable attorney’s fees, and costs of suit.”

10 67. Labor Code section 1194.2(a) provides in relevant part: “In any action under section
11 1193.6 or section 1194 to recover wages because of the payment of a wage less than the minimum
12 wage fixed by an order of the commission, an employee shall be entitled to recover liquidated
13 damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

14 68. Labor Code section 1197 provides: “The minimum wage for employees fixed by the
15 commission is the minimum wage to be paid to employees, and the payment of a less wage than
16 the minimum so fixed is unlawful.”

17 69. Plaintiff is informed and believes, and therefore alleges, that Defendants’
18 compensation schemes do not fairly compensate Plaintiff and other Class Members for all hours
19 spent performing their job duties.

20 70. The failure to pay at least minimum wages to Plaintiff and members of the Plaintiff
21 Class for each and every hour worked violates Labor Code sections 1182.11-1182.12, 1194,
22 1194.2, and 1197; the applicable IWC wage order section 4; and Business & Professions Code.

23 71. The failure to pay designated wages to Plaintiff and members of the Plaintiff Class
24 for each and every hour worked violates Labor Code section 221 and 223; the applicable IWC
25 wage order section 3; and Business & Professions Code.

26 72. During the applicable time period, Defendants have and continues to have a pattern
27 and practice of not providing its employees all wages, by failing to include all compensable time.

28 73. As a proximate result of the above-mentioned violations. Plaintiff and the Plaintiff

1 Class have been damaged in an amount according to proof at time of trial.

2 **THIRD CAUSE OF ACTION**

3 **Non-Compliant Meal Breaks**

4 **(By Plaintiff and Members of the Putative Class Against Defendants)**

5 74. Plaintiff hereby incorporates by reference each and every one of the allegations
6 contained in the preceding paragraphs as if the same were fully set forth herein.

7 75. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and the Class
8 Members regularly worked more than five (5) hours per shift and were entitled to a meal period of
9 not less than thirty (30) minutes without duty.

10 76. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that
11 Defendants routinely failed to provide Plaintiff and the members of the Class with such meal
12 periods without duty, notwithstanding the fact that Plaintiff and the members of the Class had not
13 waived their right to the same. Thus, Defendants failed to provide Plaintiff and the members of the
14 Class with meal periods required by Labor Code sections 226.7, 512, 516 and the applicable IWC
15 wage order section 10, and categorically failed to pay any and all meal period wages due.

16 77. Plaintiff and Class Members seek damages pursuant to Labor Code section 226.7(b)
17 and the applicable IWC wage order section 10(F), in the amount of one additional hour of pay at
18 the regular rate for each work day that the meal period is/was not provided to Plaintiff and any
19 member of the Class, the cumulative sum of which is to be determined at trial.

20 78. Under the foregoing, California employers must provide meal periods and authorize
21 and permit rest periods to all employees during their shifts. In *Augustus et al. v. ABM Security*
22 *Services, Inc.* (2016) 2 Cal.5th 257, the California Supreme Court reaffirmed that the required meal
23 and rest periods must be “off-duty,” which means that employees must be relieved of “all work-
24 related duties,” including the duty to remain “on call,” and they must be “free from employer
25 control” over how they “spend their time.” *Id.* at 264, 269. Employees must have the freedom to
26 use meal and rest periods for their own purposes. *Id.* at 270; *Brinker Rest. Corp. v. Superior Court*
27 (2012) 53 Cal.4th 1004, 1038-39.

28 79. When employees must either “remain at the ready and capable of being summoned

1 to action,” “respond when the employer seeks contact with [them],” “perform other work if the
2 employer so requests,” and/or remain “on call” during their meal and rest periods, the employees
3 have not been “relieve[d] ... of all work-related duties and employer control.” *Augustus*, *supra*, 2
4 Cal.5th at 270. Such a meal or rest period is not “off duty” and therefore is “impermissible.” *Ibid*.

5 80. The Supreme Court’s decision in *Augustus* is just the latest in a series of meal and
6 rest break cases that have affirmed California’s broad, protective standard for employees.¹

7 81. Moreover, as the mere existence of a facially lawful meal and rest break policy is
8 unavailing if there are practical constraints and pressures on employees to perform their duties in
9 ways that omit breaks. See *Brinker*, *supra*, 53 Cal.4th at 1040.

10 82. Yet Defendants did and does not provide Plaintiff and members of the Class with
11 meal periods during which they are completely relieved of duty for at least thirty (30) minutes by
12 the fifth hour of work and again by the tenth hour of work.

13 83. Rather, Plaintiff alleges that meal breaks were frequently provided late, were missed
14 and/or were interrupted.

15 84. Thus, Defendants have failed to perform its obligations to provide Plaintiff and the
16 members of the Plaintiff Class with off-duty meal periods by the end of the fifth hour of work and
17 a second meal period by the end of the tenth hour of work. Defendants have also failed to pay
18 Plaintiff and the members of the Plaintiff Class one (1) hour of pay at the regular rate for each off-
19 duty meal period that they have been denied.

20 85. On July 15, 2021, the California Supreme Court issued a decision in *Ferra v. Loews*
21 *Hollywood Hotel, LLC* (2021) 11 Cal.5th 858 where the court unanimously held that employers
22 must pay premium payments to employees for missed meal, rest, and recovery breaks at the
23 employee’s “regular rate of pay” instead of their base hourly rate.

24
25 ¹ See, e.g., *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004; *Lubin v.*
26 *Wackenhut Corp.* (2016) 5 Cal.App.5th 926 , *rehg. denied* (Dec. 14, 2016); *Faulkinbury v. Boyd &*
27 *Assocs., Inc.* (2013) 216 Cal.App.4th 220; *Berlanga v. Equilon Enterprises LLC* (N.D.Cal., Aug.
28 31, 2017, No. 17-CV-00282-MMC) 2017 WL 3782245 at *3 (a policy requiring employees to
“remain in contact with supervisors and other employees working in their units throughout their
shifts... would appear to be unlawful under [*Augustus*.]”)

1 86. Defendants knew or should have known that as a result of its policies and/or
2 practices, that Plaintiff and members of the Class were not actually relieved of all duties to take
3 timely, uninterrupted meal periods. Defendants further knew or should have known that it did not
4 pay Plaintiff and members of the Class all meal period premiums when meal periods were missed,
5 late, short, and/or interrupted. Furthermore, Defendants have engaged in a company-wide practice
6 and/or policy of not paying meal period premiums owed when compliant meal periods are not
7 provided. Because of this practice and/or policy, Plaintiff and members of the Class have not
8 received all premium pay for missed, interrupted, or late meal periods. Accordingly, Defendants
9 failed to provide all meal periods in violation of Labor Code sections 226.7, 512(a), 516, and 1198.

10 87. Plaintiff and members of the Class are entitled to civil penalties, attorney's fees,
11 costs, and interest thereon.

12 **FOURTH CAUSE OF ACTION**

13 **Non-Compliant Rest Breaks**

14 **(By Plaintiff and Members of the Putative Class Against Defendants)**

15 88. Plaintiff hereby incorporates by reference each and every one of the allegations
16 contained in the preceding paragraphs as if the same were fully set forth herein.

17 89. Labor Code sections 226.7, 516, and 1198, and the applicable IWC wage order
18 require employers to provide rest periods and to pay an employee one (1) additional hour of pay at
19 the employee's regular rate for each work day that a meal or rest period is not provided. Labor
20 Code section 226.7 provides that no employer shall require an employee to work during any rest
21 period mandated by an applicable order of the IWC. The applicable IWC wage order provides that
22 "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as
23 practicable shall be in the middle of each work period" and that the "rest period time shall be based
24 on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or
25 major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

26 90. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and Class
27 Members were entitled to a paid rest period of not less than ten (10) minutes without duty for each
28 and every four (4) hours or major fraction thereof worked during the workday.

91. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that Defendants routinely failed to provide Plaintiff and the members of the Class with such paid rest periods without duty, notwithstanding the fact that Plaintiff and the members of the Class had not waived their right to the same. Thus, Defendants failed to provide Plaintiff and Class Members with rest periods required by Labor Code sections 226.7, 512, and 516, the applicable IWC wage order section 11 and categorically failed to pay any and all rest period wages due. Specifically, rest breaks were rarely provided due to heavy work schedules.

92. Plaintiff and Class Members seek damages pursuant to Labor section 226.7(b) and the applicable IWC wage order section 11(D), in the amount of one additional hour of pay at the regular rate for each work day that the rest period is/was not provided or provided late to Plaintiff and any member of the Class, the cumulative sum of which is to be determined at trial.

93. Therefore, Plaintiff and members of the Plaintiff Class are entitled to compensation for Defendants' failure to provide rest periods, plus interest, attorneys' fees, expenses, and costs of suit pursuant to Labor Code section 226.7(b) and the applicable wage order.

FIFTH CAUSE OF ACTION

Failure to Furnish Accurate Itemized Wage Statements and Maintain Accurate Records

(By Plaintiff and Members of the Putative Class Against Defendants)

94. Plaintiff hereby incorporates by reference each and every one of the allegations contained in the preceding paragraphs as if the same were fully set forth herein.

95. Labor Code section 226(a) and the applicable IWC wage order section 6(B) requires employers to furnish each employee with a statement itemizing, among other things, the total hours worked by the employee, on a semi-monthly basis or at the time of each payment of wages.

96. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in section 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation

1 in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which
2 the employer fails to provide the employee a wage statement or fails to keep the required records
3 pursuant to section 226(a).

4 97. Defendants knowingly and intentionally failed to furnish Plaintiff and the members
5 of the Class with timely, itemized statements in compliance with Labor Code section 226(a) and
6 the applicable IWC Wage order section 6(B).

7 98. Plaintiff is informed and believes, and thereon alleges, that Defendants knowingly
8 and intentionally failed to furnish Plaintiff and members of the Class with timely, itemized
9 statements showing (a) total hours, (b) gross wages earned, (c) all deductions, and/or (d) all
10 applicable hourly rates in effect during each respective pay period and the corresponding number
11 of hours worked at each hourly rate by each respective individual. Moreover, Defendants failed to
12 include the number of hours for shift differential pay.

13 99. Plaintiff is informed and believes, and thereon alleges, that Defendants did not
14 maintain accurate business records pertaining to the total hours worked for Defendants by Plaintiff
15 and the members of the Class as required under Labor Code section 1174.5. This is a result of
16 missing hours worked, and missed meal and rest-break premiums, as illustrated above.

17 100. As a result of not having kept accurate records, Plaintiff and the Class Members
18 suffered injuries in the form of confusion over whether they received all wages owed to them, and
19 difficulty and expense in reconstructing pay records in addition to other injuries which may come
20 to light during the discovery process.

21 101. Labor Code section 1198 provides that the maximum hours of work and the
22 standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the
23 applicable IWC wage order. Section 1198 further provides that “[t]he employment of any
24 employees for longer hours than those fixed by the order or under conditions of labor prohibited by
25 the order is unlawful.” Pursuant to the applicable IWC Wage order, employers are required to keep
26 accurate time records showing when the employee begins and ends each work period and meal
27 period.

28 102. During the class period, Defendants failed, on a company-wide basis, to keep

1 accurate records of work and meal period start and stop times for Plaintiff and members of the
2 Class, in violation of Labor Code section 1198. Plaintiff and the members of the Class herein seek
3 damages and penalties pursuant to Labor Code section 226(e) for Defendants' violations of Labor
4 Code section 226(a).

5 103. Plaintiff and Class Members also seek preliminary and permanent injunctive relief
6 and an award of reasonable attorneys' fees and costs pursuant to Labor Code section 226(h).

7 **SIXTH CAUSE OF ACTION**

8 **Failure to Provide Sick Pay**

9 **(By Plaintiff and Members of the Putative Class Against Defendants)**

10 104. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
11 forth herein.

12 105. Sick pay must be compensated at the employee's regular rate of pay, for the
13 workweek in which the paid leave was taken, or at a rate determined by averaging over 90-days.
14 (Lab. Code § 246(1).)

15 106. Defendants failed to pay Plaintiff and members of the Class sick pay at the correct
16 rate. Plaintiff received compensation in addition to hourly wages, but those additional amounts
17 were not included when calculating sick pay wages. By failing to pay Plaintiff and Class Members
18 for sick pay at the correct rate, Defendants willfully violated Labor Code section 246.

19 107. Defendants' unlawful acts deprived Plaintiff and the Class of all wages. Plaintiff
20 seeks to represent of sick pay in amounts to be determined at trial, and they are entitled to recover
21 these amounts with interest, attorneys' fees, and costs.

22 **SEVENTH CAUSE OF ACTION**

23 **Failure to Timely Pay Wages During Employment**

24 **(By Plaintiff and Members of the Putative Class Against Defendants)**

25 108. Plaintiff hereby incorporates by reference each and every one of the allegations
26 contained in the preceding paragraphs as if the same were fully set forth herein.

27 109. Labor Code section 204 requires that all wages earned by any person in any
28 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those

1 wages due upon termination of an employee, are due and payable between the 16th and the 26th
2 day of the month during which the labor was performed, and that all wages earned by any person in
3 any employment between the 16th and the last day, inclusive, of any calendar month, other than
4 those wages due upon termination of an employee, are due and payable between the 1st and the
5 10th day of the following month.

6 110. Labor Code section 204 also requires that all wages earned for labor in excess of the
7 normal work period shall be paid no later than the payday for the next regular payroll period.
8 Alternatively, Labor Code section 204 provides that the requirements of this section are deemed
9 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
10 paid not more than seven (7) calendar days following the close of the payroll period.

11 111. During the class period, Defendants willfully failed to pay Plaintiff and members of
12 the Class all wages due including, but not limited to, all wages, and/or meal and rest period
13 premiums, within the time periods specified by Labor Code section 204.

14 112. Labor Code section 210 provides:

15 210. (a) In addition to, and entirely independent and apart from, any other penalty
16 provided in this article, every person who fails to pay the wages of each employee
17 as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and
18 1197.5, shall be subject to a penalty as follows:

19 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
20 employee.

21 (2) For each subsequent violation, or any willful or intentional violation, two
22 hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the
23 amount unlawfully withheld.

24 113. As a proximate result of the above-mentioned violations, Plaintiff and the Plaintiff
25 Class have been damaged in an amount according to proof at time of trial. Plaintiff and the
26 members of the Class herein seek damages and penalties pursuant to Labor Code section 210.

27 ///

28 ///

1 **EIGHTH CAUSE OF ACTION**

2 **Violation of California**

3 **Business and Professions Code Section 17200 et seq.**

4 **(By Plaintiff and the Members of the Plaintiff Class Against Defendants)**

5 114. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
6 forth herein.

7 115. Business and Professions Code section 17200 defines unfair competition to include,
8 “unlawful, unfair or fraudulent business practices.”

9 116. Plaintiff and all proposed Class Members are “persons within the meaning of
10 Business and Professions Code section 17204, who have suffered injury in fact and have lost
11 money or property as a result of Defendants’ unfair competition.

12 117. Defendants have been committing, and continues to commit, acts of unfair
13 competition by engaging in the unlawful, unfair and fraudulent business practices and acts
14 described in this Complaint, including, but not limited to:

15 a) violations of Labor Code sections 510, 1198;

16 b) violations of Labor Code sections 221, 223, 1182.11-1182.12, 1194, 1194.2,
17 1197, 1198;

18 c) violations of Labor Code sections 226.7, 512, 516, and 1198;

19 d) violations of Labor Code sections 226, 1174;

20 e) violations of Labor Code section 204;

21 f) violations of Labor Code section 246; and

22 g) violations of Labor Code section 1198.

23 118. As a result of its unlawful, unfair, and/or fraudulent business acts and practices,
24 Defendants have reaped and continues to reap unfair benefits and illegal profits at the expense of
25 Plaintiff and proposed Class Members. Defendants’ unlawful, unfair, and/or fraudulent conduct has
26 also enabled Defendants to gain an unfair competitive advantage over law-abiding employers and
27 competitors.

28 119. Business and Professions Code section 17203 provides that the Court may restore to

an aggrieved party any money or property acquired by means of the unlawful, unfair, and/or fraudulent business acts or practices.

120. Plaintiff seeks a court order enjoining Defendants from the unlawful, unfair, and/or fraudulent activity alleged herein.

121. Pursuant to Civil Code section 3287(a), Plaintiff and other members of the Plaintiff Class are entitled to recover pre-judgment interest on wages earned, but not paid.

122. Plaintiff further seeks an order requiring an audit and accounting of the payroll records to determine the amount of restitution of all unpaid wages owed to himself and members of the proposed Plaintiff Class, according to proof, as well as a determination of the amount of funds to be paid to current and former employees that can be identified and located pursuant to a court order and supervision.

123. Plaintiff seeks restitution for herself and all others similarly situated of these amounts, including all earned and unpaid wages and attorneys' fees and costs pursuant to Code of Civil Procedure section 1021.5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, and the Class Members pray for judgment as follows:

1. For an order certifying the proposed Plaintiff Class;
2. For an order that counsel for Plaintiff be appointed class counsel
3. Certification of this class action on behalf of the proposed Plaintiff Class;
4. Designation of Plaintiff as the class representative of the Plaintiff Class;
5. For restitution of all monies due to Plaintiff and the members of the Plaintiff Class and disgorgement of all profits from the unlawful business practices of Defendants;
6. Prejudgment and post judgment interest on all sums awarded;
7. For compensatory damages;
8. For penalties pursuant to Labor Code sections 200, 210, 226, 226.3, 226.7;
9. For interest accrued to date;
10. For costs of suit and expenses incurred herein pursuant to Labor Code sections 226, 1194 and;

- 1 11. For reasonable attorneys' fees pursuant to Labor Code section 226, 218.5, and Code of
2 Civil Procedure section 1021.5, and/or other applicable law; and
3 12. A declaratory judgment that Defendants have knowingly and intentionally violated the
4 following provisions of law;
5 13. Labor Code sections 510, 1198 for failing to pay overtime;
6 a) Labor Code sections 1182.11-1182.12, 1194, 1194.2, 1197, 1198, 221, 223,
7 for failing to pay all wages;
8 b) Labor Code sections 226.7, 512, 516, and 1198 for failing to provide
9 compliant meal and rest breaks;
10 c) Labor Code sections 226, 1174 for failing to provide compliant wage
11 statements;
12 d) Labor Code sections 204 for failing to pay wages timely during
13 employment;
14 e) Labor Code section 246 for failing to pay sick pay wages;
15 f) Business & Professions Code sections 17200-08 for violating the provisions
16 set forth herein above.
17 14. For all such other and further relief that the Court may deem just and proper.
18

19 DATED: February 26, 2024

BRADLEY/GROMBACHER, LLP

21
22 By: 

Marcus Bradley, Esq.
Kiley Grombacher, Esq.
Lirit King, Esq.
Emilie MacLean, Esq.

Attorneys for Plaintiff and others similarly
situated

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of Plaintiff's and the members of the Classes' claims by jury to the extent authorized by law.

DATED: February 26, 2024

BRADLEY/GROMBACHER, LLP



By: _____

Marcus Bradley, Esq.
Kiley Grombacher, Esq.
Lirit King, Esq.
Emilie MacLean, Esq.

Attorneys for Plaintiff and others similarly
situated