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situated*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

YURI VENCES, individually, and on behalf
of all others similarly situated,

Plaintiff,

v.

OPA MANAGEMENT GROUP, INC., a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

CASE NUMBER: 24CV434435

CLASS ACTION COMPLAINT

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Breaks
3. Failure to Pay Overtime Wages
4. Failure to Pay Minimum Wages
5. Failure to Pay Timely Wages
6. Failure to Pay All Wages Due to Discharged and Quitting Employees
7. Failure to Furnish Accurate Itemized Statements
8. Failure to Maintain Required Records
9. Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties
10. Failure to Pay and Include COVID-19 Supplemental Sick Pay on Wage Statements
11. Unfair and Unlawful Business Practices

DEMAND FOR JURY TRIAL

1 This is a Class and Representative Action brought by Yuri Vences, individually and on
2 behalf of all others similarly situated (“Plaintiff”), relating to systemic violations of California
3 wage and hour laws by her former employer, OPA Management Group, Inc. (hereinafter referred
4 to as “OPA Management Group” or “Defendant”). Plaintiff makes the following allegations on
5 information and belief, except as to allegations pertaining to Plaintiff individually, which are based
6 on her personal knowledge.

7 **INTRODUCTION**

8 1. As private, for-profit businesses, Defendant has implemented common policies and
9 practices that have resulted in systemic violations of California’s wage and hour laws.

10 2. Defendant onboarded Plaintiff and all other similarly situated individuals, and
11 assigned them to work at its affiliated entities, including but not limited to, OPA! DTSJ LP, OPA
12 Authentic Greek Cuisine, LLC, OPA! Morgan Hill, LP, OPA Los Altos, LP, OPA!
13 Oakridge LP, OPA Palo Alto LP, OPA! Santa Clara, LP, OPA Signature Foods, LP, OPA!
14 Campbell LP, OPA Walnut Creek LP, OPA Willow Glen, LP.

15 3. Defendant maximized and its related entities maximized profits by cutting labor
16 costs, grossly understaffing, denying meal and rest breaks, systematically requiring off-the-clock
17 work, and cheating employees out of minimum and overtime wages and premium payments.

18 4. Defendant has implemented unlawful written policies with respect to meal and
19 rest breaks. Defendants also require their non-exempt employees, who are informed that the
20 needs of the businesses take top priority, to work through meal and rest breaks, to take untimely
21 meal periods and to remain on call during such breaks. As a result, Plaintiff and other aggrieved
22 employees have been denied the ability to take the meal and rest breaks that they were and are
23 legally entitled to take.

24 5. Defendant also failed to compensate non-exempt employees at their regular rate
25 of pay for meal and rest period premium payments, to the extent any are paid, and non-
26 discretionary bonus payments are not calculated into the regular rate of pay for non-exempt
27 employees which results in the systematic underpayment of wages to Plaintiff and other non-
28 exempt employees. Defendant willfully turns a blind eye to off-the-clock work that Plaintiff and

1 other non-exempt employees perform as a direct consequence of Defendant's inadequate staffing
2 and imposition of an unreasonable workload. Moreover, Defendant uniformly failed to pay
3 Plaintiff and other non-exempt, hourly employees proper overtime wages due the fact that it has
4 willfully turn a blind eye to off-the-clock work that Plaintiff and other non-exempt, hourly
5 employees perform as a direct consequence of Defendant's understaffing and imposition of an
6 unreasonable workload. Finally, Defendant has failed to pay final wages to Plaintiff and other
7 on-exempt, hourly employees who were employed by Defendant.

8 6. Plaintiff seeks declaratory, compensatory and other statutorily available relief for
9 herself and a Class of all current and former non-exempt employees of Defendant during the
10 applicable limitations period to compensate these workers for the wages Defendant has stolen
11 from them and to protect current and future workers from being subjected to similar unlawful
12 working conditions perpetrated by Defendant.

13 **JURISDICTION AND VENUE**

14 7. The Superior Court of the State of California has jurisdiction in this matter
15 because Plaintiff is a resident of the State of California, and Defendant is licensed to do business
16 under the laws of the State of California.

17 8. Venue is proper in this judicial district and the County of Santa Clara because
18 Defendant maintains its office and operates one or more restaurants in the County of Santa Clara
19 and Plaintiff was trained by Defendant in Santa Clara, California, a city located in the County of
20 Santa Clara. Plaintiff was assigned to worked at Defendant's San Jose, California location, also
21 a City located in the County of Santa Clara.

22 9. Venue is also proper in this judicial district and the County of Santa Clara because
23 Plaintiff was assigned to work for Defendant as a cook and food preparer in the County of Santa
24 Clara. Many non-exempt, hourly employees also worked for Defendant in the County of Santa
25 Clara.

26 10. Defendant employed Plaintiff and other non-exempt, hourly employees within the
27 State of California and the unlawful acts alleged herein have a direct effect on Plaintiff and other
28 non-exempt, hourly employees.

THE PARTIES

11. Plaintiff is a citizen of the State of California and currently resides in Santa Clara County. During the relevant time period, Plaintiff was employed by Defendant as a cook and food preparer, a nonexempt, hourly position.

12. Plaintiff is informed and believes, and thereon alleges, that Defendant at all times relevant hereto was, a corporation organized and existing under the laws of the State of California. Defendant is authorized to conduct business and does conduct business in the State of California.

13. At all relevant times herein, Defendant and each of its affiliated entities were the joint employer of Plaintiff and the other non-exempt, hourly employees. Defendant and each of its affiliated entities were the alter egos, divisions, affiliates, integrated enterprises, joint employers, subsidiaries, parents, principals, related entities, co-conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible, of each other. Each Defendant was completely dominated by his, her or its co-Defendant, and each was the alter ego of the other. Moreover, at all material times there has been extensive interrelation of operations, common management, centralized control of labor relations with respect to Plaintiff and the other non-exempt, hourly employees, and common ownership or financial control between all Defendant.

14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy. Managing agent, and/or principal of the co-Defendants, and in performing the acts mentioned below was acting, at least in part, within the course and scope of that authority as such agent, proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with the permission and consent of the co-Defendants. Plaintiff also alleges that the acts of each Defendant are legally attributable to the other Defendants.

15. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants sued herein was, at all relevant times, the employer, owner, shareholder, principal, joint venture, alter-ego, employee, proxy, managing agent, and/or principal of the remaining Defendants, and was acting, at least in part, within the course and scope of such employment and agency, with the express and implied permission, consent and knowledge, approval and/or

1 ratification of the other Defendants. The above co-Defendant, managing agents, and supervisors,
2 aided, abetted, condoned, permitted, approved, authorized, and/or ratified the unlawful acts
3 described herein.

4 **CLASS ACTION ALLEGATIONS**

5 16. Plaintiff brings this action on behalf of herself, and the following similarly
6 situated Class of individuals ("Class members"):

7 All hourly and nonexempt employees who were employed by Defendant at
8 any time in the state of California during the relevant statute of limitations
9 period.

10 17. Plaintiff reserves the right to name additional Class representatives as may be
11 necessary and appropriate. Plaintiff also reserves the right to modify or amend the definition of
12 the proposed Class and/or add subclasses before the Court determines whether certification is
13 appropriate.

14 18. This action is appropriately suited for a class action because:

15 A. The proposed Class is a significant number. Plaintiff is informed and
16 believes that the proposed Class consists of at least one hundred (100) current and former non-
17 exempt employees, rendering joinder impractical.

18 B. This action involves common questions of law and fact to the proposed
19 Class because the action focuses on Defendant's systematic course of illegal payroll practices
20 and policies, which was applied to all non-exempt employees in uniform violation of the
21 California Labor Code, IWC Wage Orders, and the California Business and Professions Code,
22 which prohibits unfair business practices arising from such violations. Here are a few common
23 questions of law and fact that will drive resolution of this action:

- 24 1. Whether Defendant failed to provide non-exempt employees with legally
25 compliant meal periods and rest breaks, and whether Defendant properly
26 paid premium pay at the appropriate regular rate as a result of missed and
27 non-compliant meal periods and rest breaks;
- 28 2. Whether Defendant failed to timely pay wages to non-exempt employees

- 1 in compliance with California law;
- 2 3. Whether Defendant's time rounding policy and practice is in violation of
- 3 California law;
- 4 4. Whether Defendant failed to pay overtime and minimum wages to non-
- 5 exempt employees in compliance with California law;
- 6 5. Whether Defendant failed to maintain required records and accurate wage
- 7 statements for non-exempt employees;
- 8 6. Whether Defendant failed to pay non-exempt employees all wages due,
- 9 for all hours worked, including for off-the-clock work, travel time, pre-
- 10 shift and post-shift work and COVID screening;
- 11 7. Whether Defendant failed to pay COVID-19 supplemental sick pay and
- 12 include it on wage statements;
- 13 8. Whether Defendant engaged in unfair and/or unlawful business practices.

14 C. Plaintiff's claims are typical of the proposed Class because Defendant

15 subjected all of its non-exempt employees to the similar and overlapping violations of the

16 California Labor Code, the applicable IWC wage order, and the California Business and

17 Professions Code.

18 D. Plaintiff is able to fairly and adequately protect the interests of all

19 members of the proposed Class because it is in her best interests to prosecute the claims alleged

20 herein to obtain full compensation due to the proposed Class for all services rendered and hours

21 worked. Plaintiff has also retained counsel that is experienced in wage and hour class action

22 litigation.

23 **FIRST CAUSE OF ACTION**

24 **Failure to Provide Required Meal Periods**

25 **[Cal. Lab. Code §§ 226.7, 510, 512, 1194, 1197; and All Applicable IWC**

26 **Wage Orders and Applicable Sections]**

27 **(On Behalf of Plaintiff and the Class Against all Defendants)**

28 19. Plaintiff incorporates herein by specific reference, as though fully set forth, the

allegations in paragraphs 1 through 18 (A) – (D).

1 20. During the statute of limitations period, as part of Defendant's unlawful policies
2 and practices to deprive their non-exempt employees of all wages earned and due, Defendant
3 required, permitted or otherwise suffered Plaintiff and Class members to perform work during
4 their meal periods, to completely skip their meal periods, to take late and short meal periods,
5 working during meal periods, and Defendant has otherwise failed to provide the required meal
6 periods to Plaintiff and Class members as required under California Labor Code §§ 226.7, 512,
7 and § 11 of the applicable IWC Order.

8 21. Moreover, Defendant interfered with and restricted the ability of Plaintiff and
9 Class members to take meal periods by not permitting Plaintiff and the other Class members to
10 leave their work areas when taking meal periods.

11 22. Defendant has implemented several common policies and practices that have
12 caused Plaintiff and Class members to systematically miss and otherwise take non-compliant
13 meal periods.

14 23. Defendant grossly understaffs its affiliated restaurants such that non-exempt
15 employees are given so much work to complete that they regularly miss or take non-compliant
16 meal periods. As a direct consequence of this understaffing, Plaintiff and Class members have
17 so much work to complete within their scheduled shifts that they are forced to skip their meal
18 periods altogether, to take them after working longer than five (5) hours, to perform work during
19 their meal periods, or return to work after taking less than a thirty (30) minute meal period.
20 Further, Defendant failed to implement a meal period policy for work shifts longer than ten (10)
21 hours or more.

22 24. Moreover, Defendant failed to implement adequate policies or procedures to
23 provide meal periods to their non-exempt employees. Among other things, Defendant
24 overworked Plaintiff and Class members and did not adequately advise them of their rights to
25 take meal periods, and systematically denied them the opportunity to take meal periods,
26 including second meal periods during shifts of ten hours or longer.

27 25. Defendant has also violated California Labor Code §§ 226.7, all applicable wage
28 orders and applicable sections, and the California Unfair Competition Law, Cal. Bus. & Prof.

Code §§ 17200 *et. seq.*, by failing to compensate Plaintiff and Class members who were not authorized and permitted to take a complete, timely, uninterrupted meal period, in accordance with the applicable wage order, one additional hour of compensation at the proper regular rate of pay for each workday that such a meal period was not authorized or permitted.

26. Defendant further violated California Labor Code sections 226.7, 510, 1194, 1197, IWC Wage Order No. 5-2001, and all applicable IWC Wage Orders, by failing to compensate Plaintiff and Class members for all hours worked during their meal periods.

27. As a proximate result of the aforementioned violations, Plaintiff and Class members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses, and costs of suit.

SECOND CAUSE OF ACTION
Failure to Provide Required Rest Breaks
[Cal. Lab. Code §§ 226.7, 512; and All Applicable IWC Wage Orders
and Applicable Sections]
(On Behalf of Plaintiff and the Class Against all Defendants)

28. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 27.

29. At all times relevant herein, as part of Defendant's illegal policies and practices to deprive its non-exempt employees of all wages earned and due, Defendant failed to permit Plaintiff and Class members to take rest breaks as required under California Labor Code §§ 226.7 and 512, and § 12 of the applicable IWC Wage Order.

30. As with meal periods, Defendant's policies and practices caused Plaintiff and Class members to miss or otherwise take non-compliant rest periods by, among other things, giving them unreasonable amounts of work that had to be completed within their shift such that rest periods simply could not be taken. This was the result of systematic understaffing of its affiliated restaurants. Further, as set forth above, Defendant implemented skeletal staffing policies, which resulted in the inability of Plaintiff and Class members to take compliant rest periods. In addition, Defendant did not adequately notify Plaintiff and Class members of their rights to take rest periods, and systematically denied them the opportunity to take rest periods,

1 including all rest periods required during long shifts, which at times exceeded 12 consecutive
2 hours.

3 31. Defendant further violated California Labor Code § 226.7, IWC Wage Order No.
4 5-2001, § 12, all other applicable IWC Wage Orders and the California Unfair Competition Law,
5 Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by failing to pay Plaintiff and Class members who
6 were not provided with a rest break, in accordance with the applicable wage order, one additional
7 hour of compensation at the proper regular rate of pay for each workday that a rest break was not
8 provided.

9 32. As a proximate result of the aforementioned violations, Plaintiff and Class
10 members have been damaged in an amount according to proof at trial, and seek all wages earned
11 and due, interest, penalties, expenses, and costs of suit.

12 **THIRD CAUSE OF ACTION**
13 **Failure to Pay Overtime Wages**
14 **[Cal. Lab. Code §§ 510, 1194, 1198; and All Applicable IWC Wage Orders**
15 **and Applicable Sections]**
16 **(On Behalf of Plaintiff and the Class against all Defendants)**

17 33. Plaintiff incorporates herein by specific reference, as though fully set forth, the
18 allegations in paragraphs 1 through 32.

19 34. Pursuant to California Labor Code §§ 510, 1194, and all applicable wage orders
20 and applicable sections, Defendant is required to compensate Plaintiff and Class members for all
21 overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours
22 worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first
23 eight (8) hours on the seventh consecutive workday, with double time for all hours worked in
24 excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours
25 on the seventh consecutive day of work in any workweek.

26 35. Plaintiff and Class members are current and former direct and temporary hourly
27 paid employees entitled to the protections of California Labor Code §§ 510, 1194, and all
28 applicable IWC Wage Orders. During the statute of limitations period, Defendant failed to
compensate Plaintiff and Class members for all overtime hours worked as required under the

1 foregoing provisions of the California Labor Code and IWC Wage Order by, among other
2 methods: failing to pay any overtime compensation; failing to properly calculate the regular rate
3 of pay for the purposes of calculating overtime pay owed and due; requiring, permitting or
4 suffering Plaintiff and Class members to work off-the-clock; illegally rounding time worked so
5 as to deprive Plaintiff and the Class members of wages; requiring, suffering, or permitting
6 Plaintiff and Class members to work through meal and rest periods but not compensating them
7 for this time, failing to include this time in all hours worked; failing to pay the highest regular
8 rate of pay based upon nondiscretionary bonus/commission payments; failing to pay for training
9 time; editing or otherwise manipulating the overtime hours worked, failing to pay for pre-and
10 post-shift work (including COVID screenings and donning and doffing uniforms); and other
11 methods to be discovered.

12 36. In a short-sighted attempt to maximize profits, Defendant understaffed the
13 restaurants of its affiliated restaurants. Not only has this practice resulted in widespread missed
14 meal and rest breaks, but it has also caused Plaintiff and Class members to perform significant
15 amounts of work while off-the-clock. Defendant knows and was aware that Plaintiff and Class
16 members performed this work off-the-clock work because managers see them doing this work
17 well before the beginning of the start and end of their scheduled shifts.

18 37. Defendant has also engaged in an unlawful time rounding practice, where the time
19 worked by Plaintiff and Class members is systematically rounded down, resulting in unpaid
20 regular and overtime wages. Defendant implements a rounding practice wherein it rounds the time
21 worked by non-exempt employees unfavorable to the Class members. Defendant pays Plaintiff
22 and Class members based on rounded time despite the fact that it maintains records of all hours
23 worked.

24 38. In violation of California law, Defendant has knowingly and willfully refused to
25 perform its obligations to compensate Plaintiff and Class members for all wages earned and all
26 hours worked at the legally required rates of pay. As a proximate result, Plaintiff and Class
27 members have suffered, and continue to suffer, substantial losses related to the use and
28 enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in

1 seeking to compel Defendant to fully perform its obligations under state law, all to their
2 respective damages in amounts according to proof at time of trial, and within the jurisdiction of
3 this Court.

4 39. Defendant's conduct described herein violates California Labor Code §§ 510,
5 1194, 1198 and all applicable IWC Wage Orders and applicable sections. Therefore, pursuant to
6 California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions
7 under the California Labor Code and IWC Wage Orders, Plaintiff and Class members are
8 entitled to recover the unpaid balance of wages owed to them by Defendant, plus interest,
9 penalties, attorneys' fees, expenses, and costs of suit.

10 **FOURTH CAUSE OF ACTION**
11 **Failure to Pay Minimum Wages**
12 **[Cal. Lab. Code §§ 1194, 1197; All Applicable IWC Wage Orders and Applicable Sections]**
13 **(On Behalf of Plaintiff and the Class against all Defendants)**

14 40. Plaintiff incorporates herein by specific reference, as though fully set forth, the
15 allegations in paragraphs 1 through 39.

16 41. Pursuant to Cal. Lab. Code §§ 1194, 1197, and all applicable IWC Wage Orders
17 and applicable sections, payment to an employee of less than the applicable minimum wage for
18 all hours worked in a payroll period is unlawful.

19 42. During the statute of limitations period, the hourly rates for Plaintiff and Class
20 members were precisely at minimum wage. Based on this common practice, Defendant failed to
21 actually pay Plaintiff and Class members minimum wages for all hours worked by requiring,
22 permitting or suffering them to work off-the-clock, such as requiring them to work through meal,
23 rest breaks, but not compensating them for this time, and failing to include this time in all hours
24 worked, engaging in illegal and unlawful rounding and time entry manipulation practices, failing
25 to pay for travel time, failing to pay for pre-shift work and post-shift work (including COVID
26 screenings and donning and doffing uniforms); and other methods to be discovered.

27 43. Defendant's conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and
28 all applicable IWC Wage Orders and applicable sections. As a proximate result of the
aforementioned violations, Plaintiff and other Class members have been damaged in an amount

1 according to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558,
2 1194, 1197.1, and any other applicable law, Plaintiff and other aggrieved employees are entitled
3 to recover the unpaid balance of wages owed to them by Defendant, plus interest, penalties,
4 attorneys' fees, expenses, and costs of suit.

5 **FIFTH CAUSE OF ACTION**
6 **Failure to Pay Timely Wages**
7 **[Cal. Lab. Code §§ 204, 210]**
8 ***(On Behalf of Plaintiff and the Class against all Defendants)***

9 44. Plaintiff incorporates herein by specific reference, as though fully set forth, the
10 allegations in paragraphs 1 through 43.

11 45. California Labor Code § 204 provides that all wages earned by any person in any
12 employment between the 1st and 15th days, inclusive, of any calendar month, other than those
13 wages due upon termination of an employee, are due and payable between the 16th and 26th day
14 of the month during which the labor was performed. California Labor Code § 204 further
15 provides that all wages earned by any person in any employment between the 16th and the last
16 day, inclusive, of any calendar month, other than those wages due upon termination of an
17 employee, are due and payable between the 1st and the 10th day of the following month.
18 California Labor Code § 204 further provides that all wages eared for labor in excess of the
19 normal work period shall be paid no later than the payday for the next regular payroll period.

20 46. During the statute of limitations period, Defendant, among other things, willfully
21 failed to pay Plaintiff and Class members all wages earned and due to them, including but not
22 limited to, meal and rest break premiums, and payment for work performed off-the-clock, within
23 any time period permissible under Labor Code § 204.

24 47. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff
25 and Class members are entitled to all available statutory penalties, including but not limited to,
26 civil penalties pursuant to California Labor Code §§ 200, 210, 558, 1194, 1197.1, 2699(a), and
27 other applicable provisions under the California Labor Code and IWC Wage Orders, and an
28 award of costs, expenses, and reasonable attorneys' fees.

SIXTH CAUSE OF ACTION
Failure to Pay All Wages Due to Discharged and Quitting Employees
[Cal. Lab. Code §§ 201, 202, 203]
(On Behalf of Plaintiff and the Class against all Defendants)

48. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 47.

49. Pursuant to California Labor Code §§ 200, 201, 202, and 203, Defendant is required to pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately.

50. Furthermore, pursuant to California Labor Code § 202, Defendant is required to pay all accrued wages due to an employee no later than seventy-two (72) hours after the employee quits his or her employment, unless the employee provided seventy-two (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.

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

52. During the statute of limitations period, Defendant has willfully failed to pay accrued wages and other compensation to Plaintiff and Class members in accordance with California Labor Code §§ 201 and 202. Defendant does not have a sufficient policy to provide Plaintiff and Class members with their final paychecks within the timeframes required under California law. In addition, because Defendant has failed and continue to fail to properly compensate Plaintiff and Class members for all hours worked when due, overtime wages, and compensation for non-compliant meal and rest breaks, Defendant has also willfully failed and continues to fail to pay accrued wages and other compensation to Plaintiff and Class members in accordance with California Labor Code §§ 201 and 202.

53. As a result, Plaintiff and Class members are entitled to all available statutory

1 penalties, including the waiting time penalties provided in California Labor Code § 203, together
2 with interest thereon, as well as other available remedies.

3 54. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff
4 and Class members have been deprived of compensation in an amount according to proof at the
5 time of trial, but in excess of the jurisdiction of this Court, and are entitled to recovery of such
6 amounts, plus interest thereon, and attorneys' fees and costs, pursuant to California Labor Code
7 § 1194.

8 **SEVENTH CAUSE OF ACTION**
9 **Failure to Furnish Accurate Itemized Wage Statements**
10 **[Cal. Lab. Code §§ 226, 246, 248.1, 248.2 and 248.6; and All Applicable**
11 **IWC Wage Orders and Applicable Sections]**
12 **(On Behalf of Plaintiff and the Class against all Defendants)**

13 55. Plaintiff incorporates herein by specific reference, as though fully set forth, the
14 allegations in paragraphs 1 through 54.

15 56. During the statute of limitations period, Defendant routinely failed to provide
16 Plaintiff and Class members with timely, accurate, and itemized wage statements in writing
17 showing each employee's gross wages earned, total hours worked, all deductions made, net
18 wages earned, and all applicable hourly rates in effect during each pay period and the
19 corresponding number of hours worked at each hourly rate, in violation of California Labor Code
20 § 226 and all applicable IWC Wage Orders and applicable sections.

21 57. Defendant's pay stubs violate Labor Code § 226 on their face by, failing to list the
22 applicable rates of pay for regular and overtime hours worked by Plaintiff and aggrieved
23 employees, and in violation of Labor Code §§246, 248.1, 248.2 and 248.6 based upon Defendant
24 failure to include information related to COVID-19 supplemental sick pay. Further, Defendant
25 was and is not providing Plaintiff and other Class members with proper meal periods and rest
26 breaks but intentionally fails to include in their wage statements one (1) additional hour of
27 compensation at their regular rates of pay for each non-compliant meal period or rest break
28 which include but not limited to, shift differentials, nondiscretionary bonuses, etc., and failing to
pay all wages due based upon Defendant's illegal and unlawful rounding policy which favored

1 Defendant. These are violations of Labor Code §226.

2 58. Defendant knowingly and intentionally failed to provide Plaintiff and Class
3 members with timely, accurate, and itemized wage statements in accordance with California
4 Labor Code § 226(a) so as to prevent Plaintiff and Class members from being able to determine
5 whether they were being paid for, among other things, all of the hours they worked and at the
6 proper rates of pay.

7 59. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff
8 and Class members have been damaged in an amount according to proof at trial, and seek all
9 wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are
10 entitled to all available penalties, including but not limited to penalties pursuant to California
11 Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable
12 attorneys' fees, including but not limited to those provided in California Labor Code § 226(e), as
13 well as other available remedies.

14 **EIGHTH CAUSE OF ACTION**
15 **Failure to Maintain Required Records**
16 **[Cal. Lab. Code §§ 226, 1174; and All Applicable IWC Wage Orders**
17 **and Applicable Sections]**
18 **(On Behalf of Plaintiff and the Class against all Defendants)**

19 60. Plaintiff incorporates herein by specific reference, as though fully set forth, the
20 allegations in paragraphs 1 through 59.

21 61. During the statute of limitations period, as part of Defendant's illegal payroll
22 policies and practices to deprive Plaintiff and Class members of all wages earned and due,
23 Defendant knowingly and intentionally failed to maintain records as required under California
24 Labor Code §§ 226, 1174, and all applicable IWC Wage Orders and applicable sections,
25 including but not limited to, the following records: total daily hours worked by each non-exempt
26 employee; applicable rates of pay; all deductions; meal periods; time records showing when each
27 non-exempt employee begins and ends each workday; and accurate itemized wage statements.

28 62. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff
and Class members have been damaged in an amount according to proof at trial, and are entitled

1 to all wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are
2 entitled to all available statutory penalties, including but not limited to civil penalties pursuant to
3 California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and
4 reasonable attorneys' fees, including but not limited to those provided in California Labor Code
5 § 226(e), as well as other available remedies.

6 **NINTH CAUSE OF ACTION**
7 **Failure to Indemnify for Necessary Expenditures Incurred in Discharge of Duties**
8 **[Cal. Lab. Code § 2802]**
9 **(On Behalf of Plaintiff and the Class against Defendants)**

10 63. Plaintiff incorporates herein by specific reference, as though fully set forth, the
11 allegations in paragraphs 1 through 64.

12 64. California Labor Code § 2802(a) requires an employer to indemnify an employee
13 for all necessary expenditures or losses incurred by the employee in direct consequence of the
14 discharge of her his or her duties, or of his or her obedience to the directions of the employer.

15 65. During the Class period, Defendant knowingly and willfully failed to indemnify
16 Plaintiff and Class members for all business expenses and/or losses incurred in direct
17 consequence of the discharge of their duties while working under the direction of Defendants,
18 including but not limited to, the costs and expenses related to their uniforms and uniform
19 maintenance, cellular phones, personal protective equipment ("PPE's) during the COVID-19
20 pandemic, mileage reimbursements, all in violation of California Labor Code § 2802.

21 66. As a proximate result of Defendant's unlawful actions and omissions, Plaintiff
22 and Class members have been damaged in an amount according to proof at trial, and seek
23 reimbursement of all necessary expenditures, plus interest thereon pursuant to California Labor
24 Code § 2802(b). Additionally, Plaintiff and Class members are entitled to all available statutory
25 penalties and an award of costs, expenses, and reasonable attorneys' fees, including those
26 provided in California Labor Code § 2802(c), as well as other available remedies.

27 ///

28 ///

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TENTH CAUSE OF ACTION
Failure to Provide Sick Leave and Supplemental COVID-19 Sick Leaves
[Cal. Lab. Code §§246, 248.1, 248.2 and 248.6]
(On Behalf of Plaintiff and the Class against Defendants)

67. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 66.

68. Plaintiff is informed and believes Defendant knowingly and intentionally failed in its affirmative obligation to provide and pay paid sick leave and Covid-19 Supplemental Sick Leave to Plaintiff and Class Members in violation of Labor Code section 246. 81. Labor Code section 246(b)(1) requires that employees accrue sick leave at the commencement of employment at a rate of 1 hour for every thirty hours worked. Section 246(c) entitles employees to use any accrued sick leave beginning on their 90th day of employment.

69. Defendant failed to pay Plaintiff and Class Members paid sick leave at one of the lawful rates set forth in the statute because Defendant failed to include in their calculation the commissions and additional remuneration received by Plaintiff and the Class Members.

70. Furthermore, Defendant knowingly and intentionally failed its affirmative obligation to provide and pay Covid-19 Supplemental Sick Leave to Class Members in violation of Labor Code Sections 246, 247.5, 248.1, 248.2, and 248.6.

71. Labor Code Section 248.1 requires employers to provide up to 80 hours of Covid19 Supplemental Paid Sick Leave to employees for the period of April 16, 2020 to December 31, 2020. Labor Code 248.2 requires employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2022 to September 30, 2022, and may be extended thereafter. 85. Under Labor Code section 248.1, employees must be paid for Covid-19 Supplemental Paid Sick Leave at the highest of the following: (1) the regular rate of pay for the last pay period, (2) state minimum wage, (3) local minimum wage.

1 72. Under Labor Code Section 248.2, non-exempt employees must be paid Covid-19
2 supplemental paid sick leave according to the highest of the following four methods: (1) the
3 regular rate of pay for the workweek in which the employee uses COVID-19 supplemental paid
4 sick leave, (2) the employee's total wages in a 90-day period divided by total hours worked, (3)
5 the state minimum wage, or (4) the local minimum wage.

6 73. Labor Code Section 248.6 requires employers to pay Covid-19 supplemental sick
7 leave under either one of the following methods: (1) regular rate of pay or (2) the employee's
8 total wages in a 90-day period divided by total hours worked.

9 74. Defendant failed to provide and pay Covid-19 supplemental paid sick leave in the
10 manner described above because Defendant failed to pay Plaintiff and the Class Members such
11 sick leave at one of the rates authorized by statute.

12 75. As a result, Defendant violated the Labor Code and are liable to Plaintiff and the
13 Class for underpaid sick leave earnings, in addition to interest, attorneys' fees, and costs.

14 **ELEVENTH CAUSE OF ACTION**
15 **Unfair and Unlawful Business Practices**
16 **[Cal. Bus. & Prof. Code § 17200 *et. seq.*]**
 (On Behalf of Plaintiff and the Class against all Defendants)

17 76. Plaintiff incorporates herein by specific reference, as though fully set forth, the
18 allegations in paragraphs 1 through 75.

19 77. Each and every one of Defendant's acts and omissions in violation of the
20 California Labor Code and/or the applicable IWC Wage Orders as alleged herein, including but
21 not limited to, Defendant's failure to provide required meal and rest breaks, failure to pay proper
22 overtime compensation, unlawful rounding and requiring off-the-clock work, failure to pay all
23 wages due to discharged or quitting employees or to pay timely wages, failure to furnish accurate
24 itemized wage statements, failure to maintain required records, and failure to provide
25 supplemental COVID-19 sick leave, all constitute an unfair and unlawful business practice under
26 California Business and Professions Code § 17200 *et seq.*

27 78. Defendant's violations of California wage and hour laws constitute an unfair
28 business practices because the aforementioned acts and omissions were done repeatedly over a

1 significant period of time, and in a systematic manner, to the detriment of Plaintiff and Class
2 members.

3 79. Among other practices, Defendant has avoided payment of wages, overtime
4 wages, the provision of meal and rest breaks, and other benefits as required by the California
5 Labor Code, the California Code of Regulations, and the applicable IWC Wage Orders. Further,
6 Defendant has failed to record, report, and pay the correct sums of assessment to the state
7 authorities under the California Labor Code and other applicable regulations.

8 80. As a result of these unfair and unlawful business practices, Defendant and its
9 affiliated business have reaped unfair and illegal profits during the Class period at the expense of
10 Plaintiff and Class members, and members of the public. Defendant should be made to disgorge
11 its ill-gotten gains and to restore them to Plaintiff and Class members.

12 81. Defendant's unfair and unlawful business practices entitle Plaintiff and Class
13 members to seek preliminary and permanent injunctive relief, including but not limited to orders
14 that Defendant account for, disgorge, and restore to Plaintiff and Class members the wages and
15 other compensation unlawfully withheld from them. Plaintiff and Class members are entitled to
16 restitution of all monies to be disgorged from Defendant in an amount according to proof at the
17 time of trial.

18 **PRAYER FOR RELIEF**

19 **WHEREFORE**, Plaintiff, individually and on behalf of all other persons similarly
20 situated, respectfully prays for relief against Defendant and DOES 1 through 50, inclusive, and
21 each of them, as follows:

- 22 1. For compensatory damages in an amount to be ascertained at trial;
- 23 2. For restitution of all monies due to Plaintiff and Class members, as well as
24 disgorged profits from the unfair and unlawful business practices of Defendant;
- 25 3. For meal and rest break compensation pursuant to California Labor Code § 226.7
26 and IWC Wage Order No. 5-2001 and all applicable IWC Wage Orders and pertinent sections;
- 27 4. For liquidated damages pursuant to California Labor Code § 1194.2;
- 28

1 5. For preliminary and permanent injunctive relief enjoining Defendant from
2 violating the relevant provisions of the California Labor Code and the IWC Wager Orders, and
3 from engaging in the unlawful business practices complained of herein;

4 6. For waiting time penalties pursuant to California Labor Code § 203;

5 7. For statutory penalties according to proof, including but not limited to all
6 penalties authorized by the California Labor Code §§ 210, 225.5, 226(e), 226.3, 558, 1174.5,
7 1775, and 1197.1;

8 8. An award of actual, statutory, and/or punitive damages to Plaintiff and the Class
9 pursuant to California Civil Code §§ 1785.31 and 1786.50, in an amount subject to proof at trial;

10 9. For interest on the unpaid wages at 10 percent per annum pursuant to California
11 Labor Code §§ 218.6, 1194, 2802 and California Civil Code §§ 3287, 3288, and/or any other
12 applicable provision providing for pre-judgment interest;

13 10. For reasonable attorneys' fees and costs pursuant to California Labor Code §§
14 218.5, 226, 1194, 2802, et seq. and California Code of Civil Procedure § 1021.5, California Civil
15 Code § 1786.50(a)(2), California Civil Code § 1785.31(a), and/or any other applicable provisions
16 providing for attorneys' fees and costs;

17 11. For declaratory relief;

18 12. For an order requiring and certifying the First through Eleventh Causes of Action
19 as a class action;

20 13. For an order appointing Plaintiff as Class representative and Plaintiff's counsel as
21 Class counsel; and

22 14. For such further relief that the Court may deem just and proper.

23 DATED: April 4, 2024

LAW OFFICE OF SCOTT ERNEST WHEELER

24
25 By: _____


SCOTT ERNEST WHEELER
JUSTIN A. WHEELER

26
27 *Attorney for Plaintiff and all others similarly*
28 *situated*

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DEMAND FOR JURY TRIAL

Plaintiff on behalf of herself and all others similarly situated, hereby demands a jury trial with respect to all issues triable of right by jury.

DATED: April 4, 2024

LAW OFFICE OF SCOTT ERNEST WHEELER



By: _____
SCOTT ERNEST WHEELER
JUSTIN A. WHEELER

Attorney for Plaintiff and all others similarly situated