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Noemi Corona Zuniga

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

NOEMI CORONA ZUNIGA, individually
and on behalf of others similarly situated,

Plaintiff,

vs.

AMERICAN HEARING + BALANCE, a
California corporation; KEITH PATRICK
MICHAELS, an individual; MATTHEW
DENZIL MICHAELS, an individual; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 24STCV15786

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

- (1) Violation of Cal. Labor Code §§ 510, 558, 558.1, 1194, and 1198 (Unpaid Overtime)
- (2) Violation of Cal. Labor Code §§ 226.7 and 512(a), 558, and 558.1 (Unpaid Meal Period Premiums)
- (3) Violation of Cal. Labor Code § 226.7, 558, and 558.1 (Unpaid Rest Period Premiums)
- (4) Violation of Cal. Labor Code §§ 558, 558.1, 1194, 1197 and 1197.1 (Unpaid Minimum Wages)
- (5) Violation of Cal. Labor Code §§ 201, 202, 203, 558, and 558.1 (Final Wages Not Timely Paid)
- (6) Violation of Cal. Labor Code §§ 204, 210, 558, and 558.1 (Wages Not Timely Paid During Employment)
- (7) Violation of Cal. Labor Code §§ 226(a), 558, and 558.1 (Failure to Provide Accurate Wage Statements)
- (8) Violation of Cal. Labor Code §§ 558, 558.1, 2800, and 2802 (Failure to Reimburse Necessary Business Expenses)
- (9) Violation of Cal. Business & Professions Code §§ 17200, et seq.
- (10) Violation of Cal. Labor Code § 2699 (Private Attorneys General Act)

DEMAND FOR TRIAL BY JURY

1 Plaintiff Noemi Corona Zuniga (“Plaintiff”), individually and on behalf of other
2 members of the general public similarly situated, based upon facts that either have evidentiary
3 support or are likely to have evidentiary support after a reasonable opportunity for further
4 investigation and discovery, alleges as follows:

5 **JURISDICTION AND VENUE**

6 1. Plaintiff brings this action against Defendants (defined below) and DOES 1
7 THROUGH 50 (hereinafter also collectively referred to as “Defendants”) for California Labor
8 Code violations, unfair business practices, and civil penalties stemming from Defendants’
9 failure to pay overtime compensation, failure to provide meal periods, failure to authorize and
10 permit rest periods, failure to pay minimum wage, failure to timely pay wages, failure to
11 provide accurate wage statements, failure to maintain accurate time and payroll records, failure
12 to reimburse necessary business-related expenses, and failure to pay reporting wages. In
13 addition, this is a class action lawsuit seeking unpaid wages and interest thereon for unpaid
14 wages for all hours worked at minimum wage and overtime worked at the overtime rate of pay
15 due to defendants’ policy, practice, and/or procedure of rounding down or shaving down
16 employees’ daily hours worked.

17 2. Plaintiff’s First through Ninth Causes of Action are brought as a class action on
18 behalf of herself and similarly situated current and former employees of Defendants (hereinafter
19 collectively referred to as the “Class” or “Class Members,” as defined more fully in paragraph
20 12, below) pursuant to California Code of Civil Procedure section 382. The monetary damages
21 and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court
22 and will be established according to proof at trial.

23 3. Plaintiff’s Tenth Cause of Action is brought as a representative action on behalf
24 of herself and certain other current and former individuals who performed work for Defendants
25 as employees in California during the statutory period (hereinafter collective referred to as the
26 “Aggrieved Employees”) pursuant to California Labor Code sections 2698, et seq. Plaintiff is
27 an aggrieved employee against whom one or more of the alleged violations occurred. The civil
28 penalties sought by Plaintiff exceed the minimal jurisdictional limits of the Superior Court and

1 will be established according to proof at trial.

2 4. The Court has jurisdiction over this action pursuant to the California
3 Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all
4 other causes” except those given by statute to other courts. The statutes under which this action
5 is brought do not specify any other basis for jurisdiction.

6 5. This Court has jurisdiction over Defendants because, upon information and
7 belief, Defendants are citizens of California, have sufficient minimum contacts in California, or
8 otherwise intentionally avail themselves of the California market so as to render the exercise of
9 jurisdiction over them by the California courts consistent with traditional notions of fair play
10 and substantial justice.

11 6. Venue is proper in this Court because, upon information and belief, Defendants
12 maintain offices, have agents, and/or transact business in the State of California, County of Los
13 Angeles.

14 **PARTIES**

15 7. Plaintiff Noemi Corona Zuniga is an individual residing in the County of Los
16 Angeles, State of California.

17 8. Defendant American Hearing + Balance, is and at all times herein mentioned
18 was, a corporation organized and existing under the laws of the State of California and
19 registered to do business in the state of California.

20 9. Defendant Keith Patrick Michaels, (“Defendant Keith Patrick Michaels”) is an
21 individual who resides and works within the State of California and is an owner of the Entity
22 Defendants.

23 10. Defendant Matthew Denzil Michaels, (“Defendant Matthew Denzil Michaels”) is
24 an individual who resides and works within the State of California and is an owner of the Entity
25 Defendants.

26 11. Plaintiff is ignorant of the identities of defendants Does 1 through 50, inclusive,
27 and therefore sues these defendants by such fictitious names. The Doe defendants may be
28 individuals, partnerships, or corporations. Plaintiff is informed and believes, and thereon

1 alleges, that, at all times mentioned herein, each of the Doe defendants was the parent,
2 subsidiary, agent, servant, employee, co-venturer, and/or co-conspirator of each of the other
3 defendants and was at all times mentioned acting within the scope, purpose, consent,
4 knowledge, ratification and authorization of such agency, employment, joint venture and
5 conspiracy. Plaintiff will amend this Complaint to allege their true names and capacities when
6 ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously
7 named Doe defendants is responsible in some manner for the occurrences herein alleged, and
8 that Plaintiff's damages as herein alleged were proximately caused by its conduct. American
9 Hearing + Balance, Keith Patrick Michaels, Matthew Denzil Michaels, and Doe Defendants 1
10 through 50 are collectively referred to herein as "Defendant" or "Defendants."

11 12. Defendants were and at all times herein mentioned were, (a) conducting business
12 in the County of Los Angeles, State of California, and (b) the employer of Plaintiff consistent
13 with the California Labor Code and Industrial Welfare Commission Wage Orders ("Wage
14 Orders").

15 13. Plaintiff further alleges that Defendant, directly or indirectly controlled or
16 affected the working conditions, wages, working hours, and conditions of employment of
17 Plaintiff, the Class, and the Aggrieved Employees so as to make each of said Defendants
18 employers and employers jointly liable under the statutory provisions set forth herein.

19 **CLASS ACTION ALLEGATIONS**

20 14. Plaintiff brings the First through Ninth Causes of Action as a class action on her
21 own behalf and on behalf of all other members of the general public similarly situated, and,
22 thus, seeks class certification under Code of Civil Procedure section 382.

23 15. The proposed class is defined as follows: All current and former non-exempt
24 employees of any of Defendants within the State of California at any time commencing four (4)
25 years preceding the filing of Plaintiff's complaint up until the time that notice of the certified
26 class action is provided to the class (hereinafter referred to as the "Class" or "Class Members.>").

27 16. Plaintiff reserves the right to establish other subclasses as appropriate.

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1 17. The Class is ascertainable and there is a well-defined community of interest in
2 the litigation:

- 3 a. Numerosity: The Class Members are so numerous that joinder of all Class
4 Members is impracticable. The membership of the entire Class is unknown to
5 Plaintiff at this time; however, the Class is estimated to be over fifty (50)
6 individuals and the identity of such membership is readily ascertainable by
7 inspection of Defendants' employment records.
- 8 b. Typicality: Plaintiff's claims are typical of all other Class Members
9 demonstrated herein. Plaintiff will fairly and adequately protect the interests of
10 the other Class Members with whom she has a well-defined community of
11 interest.
- 12 c. Adequacy: Plaintiff will fairly and adequately protect the interests of each Class
13 Member, with whom she has a well-defined community of interest and typicality
14 of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to
15 the other Class Members. Plaintiff's attorneys, the proposed class counsel, are
16 versed in the rules governing class action discovery, certification, and
17 settlement. Plaintiff has incurred, and during the pendency of this action will
18 continue to incur, costs and attorneys' fees, that have been, are, and will be
19 necessarily expended for the prosecution of this action for the substantial benefit
20 of each Class Member.
- 21 d. Superiority: A class action is superior to other available methods for the fair and
22 efficient adjudication of this litigation because individual joinder of all Class
23 Members is impractical.
- 24 e. Public Policy Considerations: Certification of this lawsuit as a class action will
25 advance public policy objectives. Employers of this great state violate
26 employment and labor laws every day. Current employees are often afraid to
27 assert their rights out of fear of direct or indirect retaliation. However, class
28 actions provide the Class Members who are not named in the complaint

1 anonymity that allows for the vindication of their rights.

2 18. There are common questions of law and fact as to the Class that predominate
3 over questions affecting only individual members. The following common questions of law or
4 fact, among others, exist as to the members of the Class:

- 5 a. Whether Defendants' failure to pay wages, without abatement, or reduction, in
6 accordance with the California Labor Code was willful;
- 7 b. Whether Defendants had a corporate policy and practice of failing to pay
8 Plaintiff and the other Class Members for all hours worked, and missed, short,
9 late or interrupted meal periods and rest breaks in violation of California law;
- 10 c. Whether Defendants required Plaintiff and the other Class Members to work
11 more than eight (8) hours per day and/or more than forty (40) hours per week
12 and failed to pay the legally required overtime compensation to Plaintiff and the
13 other Class Members;
- 14 d. Whether Defendants deprived Plaintiff and the other Class Members of meal
15 and/or rest periods or required Plaintiff and the other Class Members to work
16 during meal and/or rest periods without compensation;
- 17 e. Whether Defendants failed to pay meal period premium wages to Class
18 Members when they were not provided with a legally compliant meal period;
- 19 f. Whether Defendants failed to pay rest period premium wages to Class Members
20 when they were not authorized and permitted to take legally compliant rest
21 periods;
- 22 g. Whether Defendants failed to pay minimum wages to Plaintiff and the other
23 Class Members for all hours worked;
- 24 h. Whether Defendants failed to pay Plaintiff and the other Class Members the
25 required minimum wage pursuant to California law;
- 26 i. Whether Defendants failed to pay Plaintiff and the other Class Members proper
27 overtime compensation pursuant to California law;
- 28 j. Whether Defendants failed to pay all wages due to Plaintiff and the other Class

Members within the time required upon their discharge or resignation from employment;

- k. Whether Defendants failed to reimburse Plaintiff and the other Class Members for all necessary business-related expenses and costs in violation of California Labor Code section 2802;
- l. Whether Defendants failed to pay reporting time wages in violation of the applicable IWC Wage Order;
- m. Whether Defendants failed to timely pay all wages due to Plaintiff and the other Class Members during their employment;
- n. Whether Defendants complied with wage reporting as required by the California Labor Code, including section 226;
- o. Whether Defendants' conduct was with malice, fraud or oppression;
- p. Whether Defendants' conduct was willful or reckless;
- q. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200, *et seq.* based on their improper withholding of compensation and deduction of wages;
- r. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and
- s. Whether Plaintiff and the other Class Members are entitled to compensatory damages pursuant to the California Labor Code.

PAGA ALLEGATIONS

19. At all times herein set forth, PAGA was applicable to Plaintiff's employment by Defendants.

20. At all times herein set forth, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

1 21. Pursuant to PAGA, a civil action under PAGA may be brought by an “aggrieved
2 employee,” who is any person that was employed by the alleged violator and against whom one
3 or more of the alleged violations was committed.

4 22. Plaintiff was employed by Defendants and the alleged violations were committed
5 against her during her time of employment and she is, therefore, an aggrieved employee.
6 Plaintiff and the other employees are “Aggrieved Employees” as defined by California Labor
7 Code section 2699(c) in that they are all current or former employees of Defendants, and one or
8 more of the alleged violations were committed against them.

9 23. Pursuant to California Labor Code sections 2699.3 and 2699.5, aggrieved
10 employees, including Plaintiff, may pursue a civil action arising under PAGA after the
11 following requirements have been met:

- 12 a. The aggrieved employee shall give written notice by online submission
13 (hereinafter “Employee’s Notice”) to the Labor & Workforce
14 Development Agency (hereinafter “LWDA”) and by U.S. Certified Mail
15 to the employer of the specific provisions of the California Labor Code
16 alleged to have been violated, including the facts and theories to support
17 the alleged violations.
- 18 b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
19 employer and the aggrieved employee by certified mail that it does not
20 intend to investigate the alleged violation within sixty (60) calendar days
21 of the postmark date of the Employee’s Notice. Upon receipt of the
22 LWDA Notice, or if the LWDA Notice is not provided within sixty-five
23 (65) calendar days of the postmark date of the Employee’s Notice, the
24 aggrieved employee may commence a civil action pursuant to California
25 Labor Code section 2699 to recover civil penalties in addition to any
26 other penalties to which the employee may be entitled.

27 24. On June 24, 2024, Plaintiff provided written notice by online submission to the
28 LWDA and by U.S. Certified Mail to Defendants American Hearing + Balance, Keith Patrick

1 Michaels and Matthew Denzil Michaels of the specific provisions of the California Labor Code
2 alleged to have been violated, including the facts and theories to support the alleged violations.
3 Plaintiff has not received an LWDA Notice within sixty-five (65) calendar days of the date of
4 Plaintiff's notice.

5 25. Therefore, Plaintiff has satisfied the administrative prerequisites under California
6 Labor Code section 2699.3(a) to recover civil penalties against Defendant, in addition to other
7 remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7,
8 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.

9 **GENERAL ALLEGATIONS**

10 26. Defendants provide hearing care services at multiple locations, including the Los
11 Angeles Area.

12 27. Defendants employed Plaintiff to work as an Audiologist Assistant from
13 approximately September 2020 through November 2021 and as a Hearing Aid Specialist from
14 approximately November 2021 to September 2023. Plaintiff's job duties included, but were not
15 limited to, clerical and non-exempt duties, such as answering phone calls, confirming
16 appointments, checking invoices for payments, testing patients, verifying insurance, and
17 offering hearing aid options.

18 28. At all relevant times set forth herein, Defendants employed Plaintiff, the Class,
19 and the Aggrieved Employees as hourly-paid or non-exempt employees.

20 29. Throughout the time period involved in this case, Defendants had the authority to
21 hire and terminate Plaintiff, the Class, and the Aggrieved Employees; to directly or indirectly
22 control work rules, working conditions, wages, working hours, and conditions of employment
23 of Plaintiff, the Class, and the Aggrieved Employees; and to hire and terminate the employment
24 of Plaintiff, the Class, and the Aggrieved Employees.

25 30. At all times herein mentioned, Defendants were subject to the Labor Code of the
26 State of California and the applicable Industrial Welfare Commission Orders.

27 31. Plaintiff, the Class, and the Aggrieved Employees worked more minutes per shift
28 than Defendants credited them with having worked, which resulted in them working for periods

1 of time in which they were not paid at the minimum wage or overtime rate, as well as not taking
2 proper and compliant meal breaks. Defendants “rounded” down or “shaved” Plaintiff, the Class
3 and the Aggrieved Employees’ total daily hours worked at the time of their clock-in and clock-
4 out to the nearest quarter (or tenth) of an hour, to the benefit of Defendants, in policy and/or
5 practice. Plaintiff, the Class, and the Aggrieved Employees were not paid for this time. Despite
6 the fact that California law requires employers to pay employees for all hours worked at least at
7 a minimum wage rate, Defendants rounded down or shaved down Plaintiff, the Class, and the
8 Aggrieved Employees’ daily hours worked, Defendants suffered, permitted, and required its
9 hourly employees to be subject to Defendants’ control without paying wages for that time. This
10 resulted in Plaintiff, the Class, and the Aggrieved Employees’ working time for which they
11 were not compensated any wages, in violation of California Labor Code sections 1194, 1197,
12 and the Wage Orders.

13 32. Plaintiff is informed and believes, and thereon alleges that Defendants engaged
14 in an ongoing and systematic scheme of wage abuse against their hourly-paid or non-exempt
15 employees. As set forth in more detail below, this scheme involved, *inter alia*, regularly
16 requiring Plaintiff, the Class, and the Aggrieved Employees to work off the clock without
17 compensation, thereby failing to pay them for all hours worked, including minimum and
18 overtime wages. Defendants also implemented policies that prohibited Plaintiff, the Class, and
19 the Aggrieved Employees from accurately recording the actual time worked, resulting in a
20 failure to pay Plaintiff, the Class, and the Aggrieved Employees all wages owed. In addition,
21 Defendants routinely failed to permit Plaintiff, the Class, and the Aggrieved Employees to take
22 timely and duty-free meal periods and rest periods in violation of California law. Defendants
23 also failed to reimburse Plaintiff, the Class, and the Aggrieved Employees for all necessary
24 business-related expenses and failed to pay reporting wages.

25 33. Throughout the time period involved in this case, Defendants implemented
26 policies and/or practices which failed to provide Plaintiff, the Class, and the Aggrieved
27 Employees with timely and duty-free meal periods. Defendants routinely failed to relieve
28 Plaintiff, the Class, and the Aggrieved Employees of all duties during their meal periods,

1 regularly failed to relinquish control over Plaintiff, the Class, and the Aggrieved Employees
2 during their meal periods, regularly failed to permit Plaintiff, the Class, and the Aggrieved
3 Employees a reasonable opportunity to take their meal periods, and regularly impeded or
4 discouraged Plaintiff, the Class, and the Aggrieved Employees from taking thirty (30) minute
5 uninterrupted meal breaks no later than the end of their fifth hour of work and/or from taking a
6 second thirty (30) minute uninterrupted meal break no later than their tenth hour of work for
7 shifts lasting more than ten (10) hours. Defendants also failed to maintain accurate records of
8 meal periods taken by Plaintiff, the Class, and the Aggrieved Employees.

9 34. Throughout the time period involved in this case, Defendants did not adequately
10 inform Plaintiff, the Class, and the Aggrieved Employees of their right to take meal periods
11 under California law. Moreover, Defendants systematically disregarded their own written
12 policies regarding the provision and timing of meal periods for Plaintiff, the Class, and the
13 Aggrieved Employees.

14 35. Throughout the time period involved in this case, Defendants failed to pay
15 Plaintiff, the Class, and the Aggrieved Employees premium wages for meal periods that were
16 missed, late, interrupted, or shortened in violation of California law. Defendants knew or should
17 have known that Plaintiff, the Class, and the Aggrieved Employees were entitled to receive all
18 meal periods or payment of one additional hour of pay at their regular rate of pay when a meal
19 period was missed, short, late, and/or interrupted. Notwithstanding this knowledge, Defendants
20 routinely failed to provide legally compliant meal periods to Plaintiff, the Class, and the
21 Aggrieved Employees, and routinely failed to pay one additional hour of pay to Plaintiff, the
22 Class, and the Aggrieved Employees at their regular rate of pay when a meal period was missed,
23 short, late, and/or interrupted.

24 36. Throughout the time period involved in this case, Defendants have implemented
25 policies and practices which prohibited Plaintiff, the Class, and the Aggrieved Employees from
26 taking timely and duty-free rest periods. Defendants regularly failed to provide, authorize, and
27 permit Plaintiff, the Class, and the Aggrieved Employees to take full, uninterrupted, off-duty
28 rest periods for every shift lasting three and one-half (3.5) to six (6) hours and/or two full,

uninterrupted, off-duty rest periods for every shift lasting six (6) to ten (10) hours, and failed to make a good faith effort to authorize, permit, and provide such rest breaks in the middle of each work period.

37. Throughout the time period involved in this case, Defendants did not adequately inform Plaintiff, the Class, and the Aggrieved Employees of their right to take rest periods under California law. Moreover, Defendants systematically disregarded their own written policies regarding the provision and timing of rest periods for Plaintiff, the Class, and the Aggrieved Employees. Instead, Defendants' actual policy and practice was to schedule Plaintiff, the Class, and the Aggrieved Employees in a way that regularly prohibited them from taking timely and duty-free rest periods, and to regularly require Plaintiff, the Class, and the Aggrieved Employees to work through their rest periods. Defendants informed Plaintiff, the Class, and the Aggrieved Employees that they did not take rest breaks because Defendants paid for their hour meal period.

38. Throughout the time period involved in this case, Defendants failed to pay Plaintiff, the Class, and the Aggrieved Employees premium wages for rest periods that were missed, late, interrupted, or shortened in violation of California law. Defendants knew or should have known that Plaintiff, the Class, and the Aggrieved Employees were entitled to receive all rest periods or payment of one additional hour of pay at their regular rate of pay when a rest period was missed, short, late, and/or interrupted. Notwithstanding this knowledge, Defendants routinely failed to authorize and permit Plaintiff, the Class, and the Aggrieved Employees to take duty-free rest periods, and failed to pay one additional hour of pay to Plaintiff, the Class, and the Aggrieved Employees at their regular rate of pay when a rest period was missed, short, late and/or interrupted.

39. Throughout the time period involved in this case, Defendants regularly required Plaintiff, the Class, and the Aggrieved Employees to perform work off the clock. Although Defendants prohibited overtime, Defendants still regularly required that Plaintiff, the Class, and the Aggrieved Employees complete all of their assigned duties. To do so, Plaintiff, the Class, and the Aggrieved Employees were regularly required to perform work off the clock for which they

1 were not compensated.

2 40. Throughout the time period involved in this case, Defendants implemented
3 policies that prohibited Plaintiff, the Class, and the Aggrieved Employees from accurately
4 recording the actual time worked, resulting in a failure to pay Plaintiff, the Class, and the
5 Aggrieved Employees all wages owed.

6 41. Throughout the time period involved in this case, Plaintiff, the Class, and the
7 Aggrieved Employees worked more than eight (8) hours in a day, and/or forty (40) hours in a
8 week.

9 42. Throughout the time period involved in this case, Defendants regularly failed to
10 pay all overtime compensation owed to Plaintiff, the Class, and the Aggrieved Employees when
11 they worked in excess of eight (8) hours in a single work day and/or forty (40) hours in a single
12 work week, or in excess of twelve (12) hours in a single work day and/or eighty (80) hours in a
13 single work week. Defendants knew or should have known that Plaintiff, the Class, and the
14 Aggrieved Employees were entitled to receive certain wages for overtime compensation and
15 that they were not receiving wages for overtime compensation.

16 43. Throughout the time period involved in this case, Defendants failed to pay
17 overtime to Plaintiff, the Class, and the Aggrieved Employees for all overtime hours worked
18 based on regular rates of pay correctly calculated to include all applicable remuneration.

19 44. Throughout the time period involved in this case, Defendants regularly failed to
20 pay Plaintiff, the Class, and the Aggrieved Employees at least minimum wages for all hours
21 worked. Defendants knew or should have known that Plaintiff, the Class, and the Aggrieved
22 Employees were entitled to receive at least minimum wages for all hours worked and that they
23 were not receiving at least minimum wages for all hours worked. Defendants' failure to pay
24 minimum wages included, *inter alia*, failing to pay Plaintiff, the Class, and the Aggrieved
25 Employees at the required minimum wage pursuant to California law, requiring Plaintiff, the
26 Class, and the Aggrieved Employees to perform work off the clock.

27 45. Throughout the time period involved in this case, Defendants regularly failed to
28 pay Plaintiff, the Class, and the Aggrieved Employees all wages owed to them upon discharge

1 or resignation. Defendants knew or should have known that Plaintiff, the Class, and the
2 Aggrieved Employees were entitled to receive all wages owed to them upon termination within
3 the time permissible under California Labor Code section 202. Plaintiff, the Class, and the
4 Aggrieved Employees did not receive payment of all final wages owed to them upon discharge
5 or resignation, including overtime compensation and minimum wages within any time
6 permissible under California Labor Code section 202.

7 46. Throughout the time period involved in this case, Defendants regularly failed to
8 pay Plaintiff, the Class, and the Aggrieved Employees all wages within any time permissible
9 under California law, including, *inter alia*, California Labor Code section 204. Defendants knew
10 or should have known that Plaintiff, the Class, and the Aggrieved Employees were entitled to
11 receive all wages owed to them during their employment. Plaintiff, the Class, and the Aggrieved
12 Employees did not receive payment of all wages, including overtime compensation, minimum
13 wages, and meal and rest period premiums.

14 47. Throughout the time period involved in this case, Defendants regularly failed to
15 provide complete or accurate wage statements to Plaintiff, the Class, and the Aggrieved
16 Employees. Defendants knew or should have known that Plaintiff, the Class, and the Aggrieved
17 Employees were entitled to receive complete and accurate wage statements in accordance with
18 California law, but, in fact, they did not receive complete and accurate wage statements from
19 Defendant. The deficiencies included, *inter alia*, the failure to include the total number of hours
20 worked, the actual gross wages earned and the correct rates of pay.

21 48. Throughout the time period involved in this case, Defendants regularly failed to
22 keep complete or accurate payroll records for Plaintiff, the Class, and the Aggrieved
23 Employees. Defendants knew or should have known that Defendants were required to keep
24 complete and accurate payroll records for Plaintiff, the Class, and the Aggrieved Employees in
25 accordance with California law, but, in fact, did not keep complete and accurate payroll records.

26 49. Throughout the time period involved in this case, Defendants regularly failed to
27 maintain accurate records relating to Plaintiff's, the Class, and the Aggrieved Employees' work
28 periods, meal periods, total daily hours, hours per pay period, and applicable pay rates.

1 50. Throughout the time period involved in this case, Defendants failed to reimburse
2 Plaintiff, the Class, and the Aggrieved Employees for all necessary business-related expenses,
3 including but not limited to usage of personal cell phones. Defendants knew or should have
4 known that Defendants were required to reimburse Plaintiff, the Class, and the Aggrieved
5 Employees for all necessary business-related expenses and costs, but, in fact, failed to do so in
6 violation of California law.

7 51. Throughout the time period involved in this case, Plaintiff, the Class, and the
8 Aggrieved Employees were sometimes required by Defendants to report for work and did report
9 for work but were either not to put to work or were furnished with less than half of their usual or
10 scheduled day's work. On such occasions, Defendants failed to pay Plaintiff, the Class, and the
11 Aggrieved Employees required reporting time wages for half their usual or scheduled day's
12 work. Defendants also failed to pay Plaintiff, the Class, and the Aggrieved Employees for two
13 (2) hours at the employee's regular rate of pay on days in which Plaintiff, the Class, and the
14 Aggrieved Employees were required to report for work a second time in one workday and were
15 furnished less than two (2) hours of work upon the second reporting.

16 52. Throughout the time period involved in this case, Defendants knew or should
17 have known that they had a duty to compensate Plaintiff, the Class, and the Aggrieved
18 Employees pursuant to California law. Defendants had the financial ability to pay such
19 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
20 represented to Plaintiff, the Class, and the Aggrieved Employees that they paid all wages owed
21 to them, all in order to increase Defendants' profits.

22 53. California Labor Code section 218 states that nothing in Article 1 of the Labor
23 Code shall limit the right of any wage claimant to "sue directly ... for any wages or penalty due
24 to him [or her] under this article."

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1 **FIRST CAUSE OF ACTION**

2 **(Violation of Cal. Labor Code §§ 510, 558, 558.1, 1194, and 1198)**

3 **(Against All Defendants)**

4 54. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
5 and every allegation set forth above.

6 55. California Labor Code section 1198 and the applicable Industrial Welfare
7 Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without
8 compensating them at a rate of pay either time-and-one-half or two-times that person’s regular
9 rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

10 56. Specifically, the applicable IWC Wage Order provides that Defendants are and
11 were required to pay Plaintiff and the other Class Members employed by Defendant, and
12 working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the
13 rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than
14 forty (40) hours in a workweek.

15 57. The applicable IWC Wage Order further provides that Defendants are and were
16 required to pay Plaintiff and the Class overtime compensation at a rate of two times their regular
17 rate of pay for all hours worked in excess of twelve (12) hours in a day and for all hours worked
18 in excess of eight (8) hours on the seventh day of work in a workweek.

19 58. California Labor Code section 510 codifies the right to overtime compensation at
20 one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a
21 day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of
22 work, and no overtime compensation at twice the regular hourly rate for hours worked in excess
23 of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

24 59. During the relevant time period, Plaintiff and the other Class Members regularly
25 worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

26 60. Plaintiff and similarly situated employees worked more minutes per shift than
27 Defendants credited them with having worked.

28 //

1 61. Defendants “rounded” down or “shaved” Plaintiff and similarly situated
2 employees’ total daily hours worked to the nearest quarter of an hour at the clock-in and clock-
3 out times, to the benefit of Defendants without Plaintiff and similarly situated employees being
4 paid wages for this time. Plaintiff and other similarly situated employees were not paid for this
5 time. The foregoing resulted in time during each workday which Plaintiff and similarly situated
6 employees were under control of Defendants, but were not compensated at their overtime rate of
7 pay when they worked more than eight hours in a day or 40 hours in a week, in violation of
8 Labor Code sections 510, 1194, and 1198.

9 62. During the relevant time period, Defendants intentionally and willfully failed to
10 pay overtime wages owed to Plaintiff and the other Class Members.

11 63. Defendants’ failure to pay Plaintiff and the other Class Members the unpaid
12 balance of overtime compensation, as required by California laws, violates the provisions of
13 California Labor Code sections 510 and 1198, and is therefore unlawful.

14 64. Pursuant to California Labor Code section 1194, Plaintiff and the other Class
15 Members are entitled to recover unpaid overtime compensation, as well as interest, costs, and
16 attorneys’ fees.

17 **SECOND CAUSE OF ACTION**

18 **(Violation of Cal. Labor Code §§ 226.7 and 512(a), 558, and 558.1)**

19 **(Against All Defendants)**

20 65. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
21 and every allegation set forth above.

22 66. At all relevant times, the relevant IWC Order and California Labor Code sections
23 226.7 and 512(a) were applicable to Plaintiff and the other Class Members’ employment by
24 Defendant.

25 67. At all relevant times, California Labor Code section 226.7 provides that no
26 employer shall require an employee to work during any meal or rest period mandated by an
27 applicable order of the California IWC.

28 //

1 68. At all relevant times, the applicable IWC Wage Order and California Labor Code
2 section 512(a) provide that an employer may not require, cause or permit an employee to work
3 for a work period of more than five (5) hours per day without providing the employee with a
4 meal period of not less than thirty (30) minutes, except that if the total work period per day of
5 the employee is no more than six (6) hours, the meal period may be waived by mutual consent
6 of both the employer and employee.

7 69. At all relevant times, California Labor Code section 512(a) further provides that
8 an employer may not require, cause or permit an employee to work for a work period of more
9 than ten (10) hours per day without providing the employee with a second uninterrupted meal
10 period of not less than thirty (30) minutes, except that if the total hours worked is no more than
11 twelve (12) hours, the second meal period may be waived by mutual consent of the employer
12 and the employee only if the first meal period was not waived.

13 70. During the relevant time period, Plaintiff and the other Class Members who were
14 scheduled to work for a period of time longer than six (6) hours, and who did not waive their
15 legally-mandated meal periods by mutual consent, were required to work for periods longer
16 than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.

17 71. During the relevant time period, Plaintiff and the other Class Members who were
18 scheduled to work for a period of time in excess of ten (10) hours were required to work for
19 periods longer than ten (10) hours without a second uninterrupted meal period of not less than
20 thirty (30) minutes.

21 72. During the relevant time period, Defendants “rounded” down or “shaved”
22 Plaintiff and similarly situated employees’ total number of hours (or fraction thereof) in which
23 they took lunch. This policy of rounding meal periods made it such that Plaintiff and other
24 similarly situated employees were not provided with legally compliant meal breaks and were
25 not paid meal period premiums for any meal breaks that were less than thirty (30) minutes in
26 duration.

27 73. During the relevant time period, Defendants intentionally and willfully required
28 Plaintiff and the other Class Members to miss their meal periods and to take meal periods that

1 were late, shortened, or interrupted, and failed to compensate Plaintiff and the other Class
2 Members the full meal period premium for missed, shortened, late, or interrupted meal periods.

3 74. During the relevant time period, Defendants failed to pay Plaintiff and the other
4 Class Members the full meal period premiums due pursuant to California Labor Code section
5 226.7.

6 75. Defendants' conduct violates the applicable IWC Wage Order and California
7 Labor Code sections 226.7 and 512(a).

8 76. Pursuant to the applicable IWC Wage Order and California Labor Code section
9 226.7(b), Plaintiff and the other Class Members are entitled to recover from Defendants one
10 additional hour of pay at the employee's regular rate of compensation for each work day that the
11 meal period was not provided.

12 **THIRD CAUSE OF ACTION**

13 **(Violation of Cal. Labor Code § 226.7, 558, and 558.1)**

14 **(Against All Defendants)**

15 77. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
16 and every allegation set forth above.

17 78. At all times herein set forth, the applicable IWC Wage Order and California
18 Labor Code section 226.7 were applicable to Plaintiff and the other Class Members'
19 employment by Defendant.

20 79. At all relevant times, California Labor Code section 226.7 provides that no
21 employer shall require an employee to work during any rest period mandated by an applicable
22 order of the California IWC.

23 80. At all relevant times, the applicable IWC Wage Order provides that "[e]very
24 employer shall authorize and permit all employees to take rest periods, which insofar as
25 practicable shall be in the middle of each work period" and that the "rest period time shall be
26 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
27 hours or major fraction thereof unless the total daily work time is less than three and one-half
28 (3.5) hours."

1 81. During the relevant time period, Defendants required Plaintiff and other Class
2 Members to work four (4) or more hours without authorizing or permitting a ten (10) minute
3 rest period per each four (4) hour period worked.

4 82. During the relevant time period, Defendants willfully required Plaintiff and the
5 other Class Members to work during rest periods, failed to allow Plaintiff and the other Class
6 Member to take any rest period and/or failed to authorize and permit Plaintiff and the other
7 Class Members to take uninterrupted, duty-free rest breaks.

8 83. During the relevant time period, Defendants failed to pay Plaintiff and the other
9 Class Members the full rest period premium due pursuant to California Labor Code section
10 226.7 for work performed during rest periods, and/or for failure to authorize and permit Plaintiff
11 and other Class Members from taking uninterrupted rest periods.

12 84. Defendants' conduct violates applicable IWC Wage Orders and California Labor
13 Code section 226.7.

14 85. Pursuant to the applicable IWC Wage Orders and California Labor Code section
15 226.7(b), Plaintiff and the other Class Members are entitled to recover from Defendants one
16 additional hour of pay at the employees' regular hourly rate of compensation for each work day
17 that the rest period was not provided.

18 **FOURTH CAUSE OF ACTION**

19 **(Violation of Cal. Labor Code §§ 558, 558.1, 1194, 1197 and 1197.1)**

20 **(Against All Defendants)**

21 86. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
22 and every allegation set forth above.

23 87. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1
24 provide that the minimum wage to be paid to employees and the payment of a lesser wage than
25 the minimum so fixed is unlawful.

26 88. During the relevant time period, Defendants regularly failed to pay minimum
27 wage to Plaintiff and the other Class Members as required pursuant to California Labor Code
28 sections 1194, 1197, and 1197.1.

89. Defendants' failure to pay Plaintiff and the other Class Members the minimum wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections, Plaintiff and the other Class Members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorneys' fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

90. Pursuant to California Labor Code section 1194.2, Plaintiff and the other Class Members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

FIFTH CAUSE OF ACTION

(Violation of Cal. Labor Code §§ 201, 202, 203, 558, and 558.1)

(Against All Defendants)

91. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

92. At all relevant times herein set forth, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' 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.

93. During the relevant time period, the employment of Plaintiff and many other Class Members with Defendants ended, *i.e.* was terminated by quitting or discharge. Defendants intentionally and willfully failed to pay Plaintiff and other Class Members who are no longer employed by Defendants all of their wages, earned and unpaid, including but not limited to minimum wages, straight time wages, and overtime wages, within seventy-two (72) hours of their leaving Defendants' employ.

94. Defendants' failure to pay Plaintiff and other Class Members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

95. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

96. Plaintiff and other Class Members who are no longer employed by Defendants are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SIXTH CAUSE OF ACTION

(Violation of Cal. Labor Code §§ 204, 210, 558, and 558.1)

(Against All Defendants)

97. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

98. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 1st and 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 26th day of the month during which the labor was performed.

99. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

100. At all times herein set forth, California Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

101. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and other Class Members all wages due to them, within any time period permissible under California Labor Code section 204.

102. Plaintiff and other Class Members are entitled to recover all available remedies for Defendants' violations of California Labor Code section 204, including statutory penalties

pursuant to Labor Code section 210(b).

SEVENTH CAUSE OF ACTION

(Violation of Cal. Labor Code §§ 226(a), 558, and 558.1)

(Against All Defendants)

103. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

104. At all material times set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

105. Defendants have intentionally and willfully failed to provide Plaintiff and the Class with complete and accurate wage statements. The deficiencies include, but are not limited to, the failure list the total number of hours worked, and the actual gross wages earned.

106. Because of Defendants' violation of California Labor Code section 226(a), Plaintiff and the Class have suffered injury and damage to their statutorily protected rights.

107. More specifically, Plaintiff and the Class have been injured by Defendants' intentional and willful violation of California Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate and

1 itemized wage statements pursuant to California Labor Code section 226(a).

2 108. Plaintiff and the Class are entitled to recover from Defendants the greater of their
3 actual damages caused by Defendants' failure to comply with California Labor Code section
4 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

5 109. Plaintiff and the Class are also entitled to injunctive relief to ensure compliance
6 with this section, pursuant to California Labor Code section 226(g).

7 **EIGHTH CAUSE OF ACTION**

8 **(Violation of Cal. Labor Code §§ 558, 558.1, 2800, and 2802)**

9 **(Against All Defendants)**

10 110. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
11 and every allegation set forth above.

12 111. Pursuant to California Labor Code sections 2800 and 2802, an employer must
13 reimburse its employee for all necessary expenditures incurred by the employee in direct
14 consequence of the discharge of his or her job duties or in direct consequence of his or her job
15 duties or in direct consequence of his or her obedience to the directions of the employer.

16 112. Plaintiff and the Class incurred necessary business-related expenses and costs
17 that were not fully reimbursed by Defendant. Defendants' failure to reimburse for all necessary
18 business-related expenses and costs included their failure to reimburse Plaintiff and the Class
19 for costs incurred as a result of, including but not limited to, simple negligence.

20 113. Defendants have intentionally and willfully failed to reimburse Plaintiff and the
21 Class for all necessary business-related expenses and costs. Plaintiff and the Class are entitled to
22 recover from Defendants their business-related expenses and costs incurred during the course
23 and scope of their employment, plus interest accrued from the date on which the employee
24 incurred the necessary expenditures at the same rate as judgments in civil actions in the State of
25 California.

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1 **NINTH CAUSE OF ACTION**

2 **(Violation of Cal. Business & Professions Code §§ 17200, et seq.)**

3 **(Against All Defendants)**

4 114. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
5 and every allegation set forth above.

6 115. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
7 unlawful and harmful to Plaintiff and the Class, to the general public, and Defendants'
8 competitors. Accordingly, Plaintiff seeks to enforce important rights affecting the public interest
9 within the meaning of Code of Civil Procedure section 1021.5.

10 116. Defendants' activities as alleged herein are violations of California law, and
11 constitute unlawful business acts and practices in violation of California Business & Professions
12 Code section 17200, *et seq.*

13 117. A violation of California Business & Professions Code section 17200, *et seq.*
14 may be predicated on the violation of any state or federal law. In this instant case, Defendants'
15 policies and practices of requiring employees, including Plaintiff and the Class, to work
16 overtime without paying them proper compensation violate California Labor Code sections 510
17 and 1198. Additionally, Defendants' policies and practices of requiring employees, including
18 Plaintiff and the Class, to work through their meal and rest periods without paying them proper
19 compensation violate California Labor Code sections 226.7 and 512(a). Moreover, Defendants'
20 policies and practices of failing to timely pay wages to Plaintiff and the Class violate California
21 Labor Code sections 201, 202, 203 and 204.

22 118. Defendants also violated California Labor Code sections 221, 226(a), 1194,
23 1197, 1197.1, 510, 1174(d), 2800, and 2802.

24 119. As a result of the herein described violations of California law, Defendants
25 unlawfully gained an unfair advantage over other businesses.

26 120. Plaintiff and the Class have been personally injured by Defendants' unlawful
27 business acts and practices as alleged herein, including but not necessarily limited to the loss of
28 money and/or property.

121. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and the Class are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this Complaint; an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

TENTH CAUSE OF ACTION

Violation of California Labor Code § 2699, Et Seq. (“Private Attorneys General Act”)

(Against All Defendants)

122. Plaintiff incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

123. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

124. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

125. Plaintiff and the other hourly-paid or non-exempt employees or individuals who performed work for Defendants during the statutory period are “aggrieved employees” as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them. As set forth in detail above, during all times relevant to this Action, Defendants have routinely subjected Plaintiff and the Aggrieved Employees to violations of California Labor Codes by:

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1 **Failure to Pay Overtime**

2 126. Defendants' failure to pay legally required overtime wages to Plaintiff and the
3 other Aggrieved Employees is in violation of the Wage Orders and constitutes unlawful or
4 unfair activity prohibited by California Labor Code sections 510 and 1198.

5 **Failure to Provide Meal Periods**

6 127. Defendants' failure to provide legally required meal periods to Plaintiff and the
7 other Aggrieved Employees is in violation of the Wage Orders and constitutes unlawful or
8 unfair activity prohibited by California Labor Code sections 226.7 and 512(a).

9 **Failure to Provide Rest Periods**

10 128. Defendants' failure to provide legally required rest periods to Plaintiff and the
11 other Aggrieved Employees is in violation of the Wage Orders and constitutes unlawful or
12 unfair activity prohibited by California Labor Code section 226.7.

13 **Failure to Pay Minimum Wages**

14 129. Defendants' failure to pay legally required minimum wages to Plaintiff and the
15 other Aggrieved Employees is in violation of the Wage Orders and constitutes unlawful or
16 unfair activity prohibited by California Labor Code sections 1194, 1197 and 1197.1.

17 **Failure to Timely Pay Wages Upon Termination**

18 130. Defendants' failure to timely pay wages to Plaintiff and the other Aggrieved
19 Employees upon termination in accordance with Labor Code sections 201 and 202 constitutes
20 unlawful and/or unfair activity prohibited by California Labor Code sections 201 and 202.

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

22 131. Defendants' failure to timely pay wages to Plaintiff and the other Aggrieved
23 Employees during employment in accordance with Labor Code section 204 constitutes unlawful
24 and/or unfair activity prohibited by California Labor Code section 204.

25 **Failure to Provide Complete and Accurate Wage Statements**

26 132. Defendants' failure to provide complete and accurate wage statements to
27 Plaintiff and the other Aggrieved Employees in accordance with Labor Code section 226(a)
28 constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226(a).

Failure to Keep Complete and Accurate Payroll Records

133. Defendants' failure to keep complete and accurate payroll records relating to Plaintiff and the other Aggrieved Employees in accordance with California Labor Code section 1174(d) constitutes unlawful and/or unfair activity prohibited by California Labor Code section 1174(d).

134. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on behalf of all Aggrieved Employees, requests and is entitled to recover from Defendants and each of them, business expenses, unpaid wages, and/or untimely wages according to proof, interest, attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as all statutory penalties against Defendants, and each of them, including but not limited to:

- a. Penalties under California Labor Code section 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under California Code of Regulations Title 8 section 11010, et seq. in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each subsequent violation; and
- c. Penalties under California Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation; and
- d. Any and all additional penalties and sums as provided by the California Labor Code and/or other statutes.

135. Pursuant to California Labor Code section 2699(i), civil penalties recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and Workforce Development Agency for the enforcement of labor laws and education of

1 employers and employees about their rights and responsibilities and twenty-five percent (25%)
2 to the aggrieved employees.

3 136. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and
4 costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable
5 statute.

6 137. Plaintiff has exhausted their administrative remedies pursuant to Labor Code
7 section 2699.3. On June 24, 2024, Plaintiff, through her counsel of record, by online filing with
8 the Labor and Workforce Development Agency ("LWDA") and by certified mail to the
9 Defendants, notified Defendants and the LWDA of the specific provisions of the Labor Code
10 and IWC Wage Orders that Defendants have violated, including the facts and theories to
11 support the violations, and of Plaintiff's intent to bring a claim for civil penalties under PAGA.
12 Plaintiff also paid the filing fee required under Labor Code section 2699.3. As of the filing of
13 this Complaint, more than sixty-five (65) days have elapsed since the mailing of Plaintiff's June
14 24, 2024, notice, and the Labor and Workforce Development Agency has not indicated that it
15 intends to investigate the violations discussed in the notice. Accordingly, Plaintiff may
16 commence a civil action to recover penalties for herself and other Aggrieved Employees
17 pursuant to Labor Code section 2699.3.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff, individually and on behalf of all other members of the general
20 public similarly situated, prays for relief and judgment against Defendant, jointly and severally,
21 as follows:

22 **Class Certification**

- 23 1. That this action be certified as a class action;
- 24 2. That Plaintiff be appointed as the representative of the Class;
- 25 3. That counsel for Plaintiff be appointed as Class Counsel; and
- 26 4. That Defendants provide to Class Counsel immediately the names and most
27 current/last known contact information (address, e-mail and telephone numbers) of all class
28 members.

1 **As to the First Cause of Action**

2 5. That the Court declare, adjudge and decree that Defendants violated California
3 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay
4 all overtime wages due to Plaintiff and other Class Members;

5 6. For general unpaid wages at overtime wage rates and such general and special
6 damages as may be appropriate;

7 7. For pre-judgment interest on any unpaid overtime compensation commencing
8 from the date such amounts were due;

9 8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
10 California Labor Code section 1194; and

11 9. For such other and further relief as the Court may deem just and proper.

12 **As to the Second Cause of Action**

13 10. That the Court declare, adjudge and decree that Defendants violated California
14 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to
15 provide all meal periods (including second meal periods) to Plaintiff and the Class;

16 11. That the Court make an award to Plaintiff and the Class of one (1) hour of pay at
17 each employee's regular rate of compensation for each workday that a meal period was not
18 provided;

19 12. For all actual, consequential, and incidental losses and damages, according to
20 proof;

21 13. For premium wages pursuant to California Labor Code section 226.7;

22 14. For pre-judgment interest on any unpaid wages from the date such amounts were
23 due;

24 15. For reasonable attorneys' fees and costs of suit incurred herein; and

25 16. For such other and further relief as the Court may deem just and proper.

26 **As to the Third Cause of Action**

27 17. That the Court declare, adjudge and decree that Defendants violated California
28 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all

rest periods to Plaintiff and the Class;

18. That the Court make an award to Plaintiff and the Class of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

19. For all actual, consequential, and incidental losses and damages, according to proof;

20. For premium wages pursuant to California Labor Code section 226.7;

21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

22. For such other and further relief as the Court may deem just and proper.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the Class;

24. For general unpaid wages and such general and special damages as may be appropriate;

25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiff and the Class in the amount as may be established according to proof at trial;

26. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

27. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194(a);

28. For liquidated damages pursuant to California Labor Code section 1194.2; and

29. For such other and further relief as the Court may deem just and proper.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and other Class Members no longer

employed by Defendant;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff and other Class Members who have left Defendants' employ;

33. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

34. For such other and further relief as the Court may deem just and proper.

As to the Sixth Cause of Action

35. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to pay all compensation owed at the time required by California Labor Code section 204 to Plaintiff and the Class;

36. For statutory penalties pursuant to California Labor Code section 210;

37. For such other and further relief as the Court deems just and proper.

As to the Seventh Cause of Action

38. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and the Class, and willfully failed to provide accurate itemized wage statements thereto;

39. For actual, consequential and incidental losses and damages, according to proof;

40. For statutory penalties pursuant to California Labor Code section 226(e); and

41. For such other and further relief as the Court may deem just and proper.

As to the Eight Cause of Action

42. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the Class for all necessary business-related expenses as required by California Labor Code sections 2800 and 2802;

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43. For actual, consequential and incidental losses and damages, according to proof;
44. For the imposition of civil penalties and/or statutory penalties;
45. For reasonable attorneys' fees and costs of suit incurred herein; and
46. For such other and further relief as the Court may deem just and proper.

As to the Ninth Cause of Action

47. That the Court declare, adjudge and decree that Defendants violated California Business and Professions Code sections 17200, *et seq.* by failing to provide Plaintiff and the Class all overtime compensation due to them, failing to provide all meal and rest periods to Plaintiff and the Class, failing to pay at least minimum wages to Plaintiff and the Class, failing to pay Plaintiff's and other Class Members' wages timely as required by California Labor Code section 201, 202 and 204 and by violating California Labor Code sections 226(a), 1174(d), 2800, and 2802;

48. For restitution of unpaid wages to Plaintiff and the Class and all pre-judgment interest from the day such amounts were due and payable;

49. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violation of California Business and Professions Code sections 17200, *et seq.*;

50. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

51. For injunctive relief to ensure compliance with this section, pursuant to California Business and Professions Code sections 17200, *et seq.*; and

52. For such other and further relief as the Court may deem just and proper.

As to the Tenth Cause of Action

53. For civil penalties and wages as permitted by law pursuant to California Labor Code sections 2699(a), (f) and (g) and 558 plus costs and attorneys' fees for violation of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 1198.5, 2800 and 2802; and

1 54. For such other and further relief as the Court may deem equitable and
2 appropriate.

3
4 Dated: September 9, 2024

DOMB & RAUCHWERGER, LLP

5
6 By:



ZACK I. DOMB
DEVIN E. RAUCHWERGER
JEFFREY P. JACKSON
Attorneys for Plaintiff
Noemi Corona Zuniga

DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury as to all causes of action triable by a jury.

Dated: September 9, 2024

DOMB & RAUCHWERGER, LLP

By:



ZACK I. DOMB
DEVIN E. RAUCHWERGER
JEFFREY P. JACKSON
Attorneys for Plaintiff
Noemi Corona Zuniga

**PROOF OF SERVICE
(CCP § 1013(a) and 2015.5)**

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; am employed with Domb & Rauchwerger LLP and my business address is 1055 East Colorado Blvd., Fifth Floor, Pasadena, California 91106. My e-mail address is jessica@dombrauchwerger.com.

On September 9, 2024, I served the foregoing document entitled **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on all the appearing and/or interested parties in this action by placing ☐ *the original* ☒ *a true copy* thereof enclosed in sealed envelope(s) addressed as follows:

American Hearing + Balance
6229 W. 87th St.
Los Angeles, CA 90045

Defendant American Hearing + Balance

Keith Patrick Michaels
6229 W. 87th St
Los Angeles, CA 90045

Defendant Keith Patrick Michaels

Matthew Denzil Michaels
6229 W. 87th St
Los Angeles, CA 90045

Defendant Matthew Denzil Michaels

☒ **[by MAIL]** - I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit.

☐ **[by ELECTRONIC SERVICE]** - Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification address listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed September 9, 2024, at Sacramento County, California.

Jessica Delgado

Print Name

By:



Signature