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10 and all others similarly situated

11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 ANA GARCIA, on behalf of herself and
14 all others similarly situated,

15 Plaintiff,

16 v.

17 STG INTERNATIONAL, INC., a
18 Virginia Corporation,

19 Defendant.

Case No. 20-CV-1701-AJB-LL

CLASS ACTION

**FIRST AMENDED CLASS AND
COLLECTIVE ACTION
COMPLAINT**

1. Failure to Pay All Wages Owed (Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*)
2. Failure to Pay All Wages Owed (Lab. Code §§ 1194 and 1194.2)
3. Failure to Pay Overtime Wages (Lab. Code §§ 510 and 1194)
4. Failure to Timely Pay Wages at Separation (Lab. Code §§ 201-203)
5. Failure to Provide Accurate Itemized Wage Statements (Lab. Code §§ 226(a) and (b))
6. Failure to Permit Meal Periods or Pay All Premiums Owed (Lab. Code §§ 226.7, 512)
7. Failure to Permit Rest Periods or Pay All Premiums Owed (Lab. Code §§ 226.7, 512)

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8. Violation of Unfair Business Practices Act (Bus. & Prof. Code §§ 17200-17208)
9. Civil Penalties for Failure to Pay All Regular and Minimum Wages (PAGA)
10. Civil Penalties for Failure to Pay All Overtime Wages (PAGA)
11. Civil Penalties for Meal Period Violations (PAGA)
12. Civil Penalties for Rest Period Violations (PAGA)
13. Civil Penalties for Untimely Payment of Wages (PAGA)
14. Civil Penalties for Wage Statement Violations (PAGA)
15. Civil Penalties for Failure to Timely Pay All Wages Upon Separation of Employment (PAGA)
16. Civil Penalties for Recordkeeping Violations (PAGA)

Action Filed: August 31, 2020
Trial Date: Not Set

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1 Plaintiff ANA GARCIA (“Plaintiff”), on behalf of herself, and all others
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. This is a class, PAGA, and collective action against Defendant STG
5 INTERNATIONAL, INC (collectively “Defendant” or “STG”).

6 2. Plaintiff brings this action on behalf of herself and all other non-
7 exempt employees of Defendant who worked in California (“Class Members”) at
8 any time during the four years preceding the filing of this action through the time
9 the time of trial (“Class Period”), and in the United States (“Covered Employees”)
10 at any time in the three years preceding the filing of this action (“FLSA Class
11 Period”).

12 3. During the Class and FLSA Class Period, Defendant had a consistent
13 payroll administration practice whereby Defendant did not accurately calculate the
14 “regular rate of pay” for non-exempt employees because Defendant failed to
15 include all remuneration earned—including bonuses, cash health and welfare
16 benefits, shift differentials, among other sums—in the lawful overtime hourly rate
17 in violation of California and federal wage and hour laws.

18 4. Defendant also failed to provide meal and rest periods (or pay the
19 applicable premiums) and failed to provide notice of paid sick leave to the Class.

20 5. These issues are apparent based on the face of records STG maintains
21 and is required to maintain, including wage statements and time records, and are
22 amenable for adjudication on a class and collective action bases on the claims set
23 forth in this Complaint.

24 6. Plaintiff includes in this amended complaint causes of action for civil
25 penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA,”
26 California Labor Code § 2689 *et seq.*) on behalf of herself, the aggrieved
27 employees, and the State of California as a private attorney general.
28

1 **JURISDICTION AND VENUE**

2 7. This Court has original federal question jurisdiction under 28 U.S.C.
3 § 1331 because this case is brought under the Fair Labor Standards Act (“FLSA”),
4 29 U.S.C. §§ 201, et seq. Diversity subject matter jurisdiction exists pursuant 28
5 U.S.C. § 1332(d)(2) as amended by the Class Action Fairness Act of 2005,
6 because at least some members of the proposed class have different citizenship
7 from Defendant, and the claims of the proposed class members exceed five
8 million dollars (\$5,000,000) in the aggregate.

9 8. Diversity of citizenship exists between Plaintiff ANA GARCIA, a
10 citizen of California, and STG, a Virginia corporation.

11 9. The exact damages of Plaintiff and the Class are unknown, but
12 Plaintiff reasonably believes they exceed \$5,000,000 in the aggregate.

13 10. This Court has personal jurisdiction over STG because STG
14 purposefully availed itself of the privilege of conducting business in the State of
15 California, in this judicial district.

16 11. Venue is proper in this district because a substantial part of the events
17 and omissions giving rise to the claims occurred in this district and because
18 Plaintiff seeks claims on behalf of a Class of California current and former
19 employees. Venue is proper in this district also because there is personal
20 jurisdiction in this district over STG. Presently and at all relevant times, STG has
21 conducted substantial, continuous and systematic commercial activities in this
22 district.

23 **PARTIES**

24 **A. The Plaintiff**

25 12. Plaintiff ANA GARCIA is over the age of 18 and a California
26 citizen.

1 13. The State of California, via the Labor and Workforce Development
2 Agency (“LWDA”), is the real party in interest in this action with respect to the
3 PAGA claims.

4 **B. The Defendant**

5 14. Plaintiff is informed, believes, and alleges: Defendant STG
6 INTERNATIONAL, INC. is a Virginia corporation, which conducts business in
7 the County of San Diego, was the employer of Plaintiff and Class Members during
8 the Class Period; and, also employed Covered Employees during the FLSA Class
9 Period.

10 15. Plaintiff is informed, believes, and alleges that Defendant employed
11 Class Members in California during the Class Period and employed Covered
12 Employees during the FLSA Class Period in the following states: Virginia,
13 Arizona, Texas, Florida, Missouri, Maryland, North Dakota, South Dakota,
14 Pennsylvania, Oklahoma, Tennessee, Kentucky, Massachusetts, Illinois,
15 Louisiana, Idaho, Georgia, Arkansas, Washington, New Jersey, New York, and
16 Washington, D.C.

17 **GENERAL ALLEGATIONS**

18 16. At all times during the Class Period, Defendant conducted business
19 and employed Plaintiff and Class Members in San Diego County, California.

20 17. Plaintiff and Class members were non-exempt employees, covered by
21 Defendant’s policies and Industrial Welfare Commission (IWC) Wage Orders,
22 including 4-2001, Labor Code § 1194, the FLSA, and/or other orders, regulations
23 and statutes, throughout the Class Period.

24 **PLAINTIFF’S EXPERIENCE**

25 18. Plaintiff was employed by STG INTERNATIONAL, INC. as a
26 Registered Nurse from December 2018 through July 2020. For part of her
27 employment, Plaintiff worked in El Paso, Texas. During the last three months of
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1 her employment, Plaintiff worked at the Otay Mesa Detention Facility in San
2 Diego County, California.

3 19. Plaintiff was classified as a non-exempt employee by Defendant
4 throughout her employment and paid various forms remuneration, including shift
5 differentials, bonuses, and cash benefits.

6 20. Each pay period, STG paid Plaintiff bonuses and multiple types of
7 remuneration, in addition to her regular hourly wage, which were identified as
8 follows on her wage statements as “bonus,” “Sd/Oc 3.00,” “Shift Diff/Page,” “Shift
9 Diff 1.00,” “Shift Diff 1.50,” “Shift Diff 1.75,” “Shift Diff 3.50,” “Shift Diff
10 4.00.”

11 21. Plaintiff alleges that Defendant paid the same or similar non-
12 discretionary bonuses and shift differentials to other non-exempt employees.

13 22. Some of the bonuses paid to Plaintiff, Covered Employees, and Class
14 Members were flat sum bonuses that were earned by showing up for a particular
15 shift.

16 23. Plaintiff is informed, believes and alleges that she and other Covered
17 Employees and Class Members received other forms of remuneration during their
18 employment and during the relevant time periods that were required to be
19 included in the regular rate of pay for purposes of calculation and payment of the
20 lawful overtime rate, but which were excluded from the calculation without a
21 legal basis and in violation of California and federal wage and hour laws.

22 24. Throughout her employment, Plaintiff received cash health and
23 welfare payments that fluctuated based on the number of hours that she worked
24 each pay period.

25 25. These payments appear on Plaintiff’s wage statements as “Cash 4.13”
26 and “Cash 4.18” and may appear on the wage statements or records of Class
27 Members and Covered Employees with the same or similar designations, without
28 limitation.

1 26. The cash payments were paid directly by Defendant to Plaintiff and
2 not by a third party or trustee and are not excluded from the regular rate of pay
3 calculation under California or federal law. *See Bonner v. Metropolitan Security*
4 *Services, Inc.* (W.D. Tex. Mar. 15, 2011) Case No. SA-10-CV-937-XR (holding
5 that cash health and welfare payments made directly by an employer to an
6 employee under a contract governed by the Service Contract Act are not are not
7 excludable from the “regular rate of pay”).

8 27. Plaintiff is informed and believes the Covered Employees and Class
9 Members also received the same or similar cash health and welfare payments
10 which may bear the same or different description on each employee’s wage
11 statement.

12 28. In pay periods when Plaintiff earned overtime or meal and rest period
13 premiums, Defendant calculated and paid Plaintiff and Class Members based only
14 on their straight time hourly rate, not their respective regular rate of pay, which
15 includes the cash payments, shift differentials, and bonuses, among other sums.

16 29. Defendant underpaid Plaintiff, Covered Employees, and Class
17 Members by not including all forms of remuneration, including the cash
18 payments, shift differentials, bonuses, and other forms of remuneration in the
19 regular rate of pay for purposes of overtime during the respective statutory
20 periods.

21 30. By way of example, on Plaintiff’s June 10, 2020 wage statement, she
22 was paid overtime at a rate of \$78.19, which was one and one-half times her
23 *straight time* hourly rate of \$52.13 (i.e., $\$52.13 * 1.5 = \78.19).

24 31. However, in addition to her hourly wages, Plaintiff was also paid
25 shift differentials, cash health and welfare benefits, a bonus, and other
26 remuneration in the total amount of \$866.40.

27 32. Although this amount is required to be included in the “regular rate
28 of pay” Defendant failed to include the \$866.40 (or any additional amount) in the

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1 regular rate of pay for Plaintiff or Covered Employees and Class Members as a
2 matter of common practice, as the overtime rate is a straight time 1.5x multiple of
3 the hourly rate, facially demonstrating Defendant's failure to pay all overtime at
4 the proper hourly rate (i.e., the regular rate of pay multiple).

5 33. Additionally, Defendant issued wage statements to Plaintiff and, on
6 information and belief, other Class Members, which contain at least six distinct
7 types of violations.

8 34. First, in each wage statement furnished to Plaintiff and on
9 information and belief the Class Members, Defendant failed to identify the "total
10 hours worked" on the wage statement.

11 35. Second, Defendant's wage statements inaccurately state the gross
12 wages, total hours worked, net wages earned, applicable hourly rates in effect and
13 the number of hours worked at each hourly rate.

14 36. These wage statement defects are the result of Defendant's failure to
15 pay overtime at the "regular rate of pay," thus rendering the wage statement total
16 amounts inaccurate.

17 37. Third, Defendant failed to pay meal and rest period premiums at the
18 lawful regular rate of compensation rendering the wage statements an inaccurate
19 reflection of the wages and hours of Plaintiff and the Class Members.

20 38. Because of the failure to pay meal and rest premiums, Defendant
21 thus listed the incorrect gross wages earned, total hours worked, net wages earned,
22 and all applicable hourly rates in effect during the pay period with the number of
23 hours worked at each hourly rate by the employee.

24 39. Fourth, irrespective of the "regular rate of pay" issue, when Plaintiff
25 was paid for double time, the double time rate on the wage statement was
26 inaccurate because it is stated as being the same as Plaintiff's straight time hourly
27 rates instead of a 2x multiple of the straight hourly rate. As a result, Defendant
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1 failed to list the correct hourly rate of pay for double time compensation for
2 Plaintiff and the Class Members.

3 40. Fifth, Defendant did not list the corresponding number of hours
4 worked for all forms of hourly-based remuneration earned by Plaintiff and the
5 Class Members.

6 41. Specifically, Defendant's wage statements for Plaintiff did not list the
7 corresponding number of hours worked for earnings listed as "Cash," "Sd/Oc,"
8 "Shift Diff 3.50," "Shift Diff/Page," among other forms of pay.

9 42. When Plaintiff and Class Members were paid these forms of
10 remuneration, such as shift differentials, their wage statements failed to specify
11 the number of hours worked for the particular earning category.

12 43. An example of this practice appears on Plaintiff's wage statement
13 with the pay date 05/22/2020.

14 44. Sixth, Defendant also failed to include paid sick leave accruals and
15 balance on Plaintiff and the Class Members' wage statements in violation of
16 California Labor Code section 246.

17 45. Defendant's wage statement issues described above rendered the
18 wage statements inaccurate and confusing to Plaintiff and Class Members.

19 46. Plaintiff and Class Members suffered injury in the form of confusion
20 regarding amounts paid for hours worked, and in the form of concealment of the
21 common payroll practices causing the violations and underpayment of wages and
22 wage statement deficiencies as addressed in this Complaint.

23 47. Defendant's wage statement violations were knowing and intentional
24 as a matter of law with respect to Plaintiff and Class Members given that the legal
25 obligation was not disputed, the wage statement and overtime laws are clear and
26 unambiguous as written, and because Defendant nevertheless failed to comply
27 despite the means and ability to do so.

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1 48. Plaintiff is informed and believes, and alleges, that Defendant knew
2 or should have known Plaintiff and Class Members were entitled to receive all
3 meal periods or payment of one additional hour of pay at their respective regular
4 rate of compensation when they did not receive a compliant meal period.

5 49. Plaintiff is informed and believes that Defendant maintained a
6 company-wide practice in which it automatically deducted a 30-minute
7 uncompensated meal period per workday regardless of whether Plaintiff and the
8 Class Members actually took a duty-free 30-minute meal period. Because of this
9 practice, Defendant did not maintain any records of the actual times that Plaintiff
10 and Class Members took meal periods (if any).

11 50. Plaintiff's actual meal periods were often late, short, interrupted, or
12 missed entirely due to Defendant's policies and practices which did not provide
13 enough coverage for employees to take meal periods and which effectively
14 required employees to skip, work through, or cut short meal periods on certain
15 occasions.

16 51. Despite being on notice of its employees being deprived of the
17 opportunity to take compliant meal periods or any meal period at all, Defendant
18 nonetheless automatically deducted 30 minutes of time from Plaintiff and the
19 Class Members each workday. These automatic deductions are reflected on
20 Plaintiff's time records for each workday as .50 "non-work hours."

21 52. As a result of Defendant's practice, Plaintiff and the Class Members
22 often worked multiple hours per workweek for which they received no
23 compensation whatsoever, whether straight time or overtime pay.

24 53. In violation of the Labor Code and IWC Wage Orders, Plaintiff and
25 Class Members did not receive all meal periods or payment of one additional hour
26 of pay at their "regular rate of compensation" when they did not receive a
27 compliant meal period (i.e., untimely, short or interrupted).

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1 54. Plaintiff is informed and believes, and alleges, Defendant knew or
2 should have known Plaintiff and Class Members were entitled to receive all rest
3 periods or payment of one additional hour of pay at their respective regular rate of
4 compensation when they did not receive a compliant rest period.

5 55. In violation of the Labor Code and IWC Wage Orders, Plaintiff and
6 Class Members did not receive all rest breaks or payment of one additional hour
7 of pay at their respective regular rate of pay when they did not receive a compliant
8 rest period (i.e., short or interrupted).

9 **PAGA ALLEGATIONS**

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

17 57. Plaintiff seeks to recover civil penalties as an individual aggrieved
18 employee and on behalf of the State of California and all other current and former
19 non-exempt employees of Defendant who work or worked within the State of
20 California within the one-year period prior to the date on which Plaintiff first
21 provided written notice to the Labor and Workforce Development Agency and
22 Defendant under Labor Code § 2699.3 and continuing through the present (the
23 “aggrieved employees” and the “PAGA Period”) (i.e., August 10, 2019 through
24 the present).

25 58. Plaintiff is an “aggrieved employee” because Plaintiff was employed
26 by Defendant and suffered one or more of the Labor Code violations committed
27 by Defendant and alleged in this Complaint.

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1 59. On August 10, 2020, Plaintiff gave written notice by online filing
2 with the LWDA and by certified mail to Defendant of the specific provisions of
3 the Labor Code and Wage Orders alleged to have been violated, including the
4 facts and theories to support the alleged violations. Plaintiff paid the requisite
5 filing fee to the LWDA.

6 60. A copy of this PAGA notice is attached hereto as Exhibit 2 and
7 incorporated by reference as though fully set forth herein.

8 61. Within 33 calendar days of the postmark date of the notice sent by
9 Plaintiff, Defendant did not give written notice by certified mail to Plaintiff
10 providing a description of any actions taken to cure the alleged violations.

11 62. Now that at least 65 days have passed from Plaintiff notifying
12 Defendant of these violations, without any notice of cure from them or notice
13 from the LWDA of its intent to investigate the alleged allegations and issue the
14 appropriate citations to Defendant, Plaintiff exhausted all prerequisites and
15 commences this civil action under Labor Code § 2699.

16 **FLSA COLLECTIVE ACTION**

17 63. Plaintiff brings the First Cause of Action for violations of FLSA
18 Section 16(b), 29 U.S.C. § 216(b), on behalf of all Covered Employees during the
19 FLSA Class Period.

20 64. At all relevant times, Plaintiff and Covered Employees have been
21 similarly situated, had substantially similar job requirements and pay provisions,
22 and been subject to Defendant's common practices, policies and procedures of
23 willfully failing to pay them for all straight and overtime hours due to Defendant's
24 practice of automatically deducting 30 minutes of pay each shift for a meal period
25 regardless of whether a meal period was actually taken. Defendant also failed to
26 pay Plaintiff and the Covered Employees them at the legally required time-and-a-
27 half rates for work in excess of forty (40) hours per workweek, including by
28

1 failing to include all remuneration to correctly calculate the “regular rate of pay.”
2 Plaintiff’s claims are similar to those of the other Covered Employees.

3 65. The First Cause of Action is properly brought and maintained as an
4 opt-in collective action. FLSA, 29 U.S.C. 216(b). Covered Employees names and
5 addresses are readily available from Defendant. Covered Employees can be
6 provided notice by first class mail to the last address known to their employer.

7 66. Plaintiff ANA GARCIA’S signed consent is attached to this
8 Complaint as Exhibit 1. Plaintiff is informed, believes and alleges many other
9 Covered Employees will sign and file consents to join this lawsuit if given the
10 opportunity to do so.

11 **CALIFORNIA CLASS ACTION**

12 67. Plaintiff brings this action on behalf of herself and all similarly-
13 situated persons in California pursuant to FRCP 23 on behalf of all Class
14 Members. The class Plaintiff seeks to represent is defined as:

15 All Defendant’s non-exempt California employees
16 employed at any time during the period four (4) years before
17 the filing of the Complaint to the time of trial.

18 68. Plaintiff seeks to certify a subclass of employees defined as:

19 **California Unpaid Wage Subclass**

20 All Class Members who were not paid regular or overtime
21 wages for all hours worked as a result of Defendant’s policy
22 of automatically deducting 30 minutes of pay each workday
23 for a meal period regardless of whether a compliant meal
24 period was actually taken.

25 69. Plaintiff seeks to certify a subclass of employees defined as:

26 **California Overtime Subclass**

27 All Class Members who were not paid all overtime wages at
28 the correct regular rate of pay for hours worked over eight
(8) hours per day or forty (40) hours per week.

70. Plaintiff seeks to certify a subclass of employees defined as:

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1 **Waiting Time Subclass**

2 All Class Members to whom Defendant failed to pay all
3 wages due to them upon termination or resignation.

4 71. Plaintiff seeks to certify a subclass of employees defined as:

5 **Wage Statement Subclass**

6 All Class Members whom Defendant improperly failed to
7 provide accurate itemized wage statements under Labor
8 Code § 226(b).

8 72. Plaintiff seeks to certify a subclass of employees defined as:

9 **Premium Wage Subclass**

10 All Class Members who were not paid premium wages for a
11 meal period not provided or a rest period not permitted or
12 authorized.

13 73. Plaintiff seeks to certify a subclass of employees defined as:

14 **UCL Subclass**

15 All members of the California Overtime Subclass and
16 Premium Wage Subclass.

17 74. This action has been brought and may be maintained as a class action
18 pursuant to FRCP 23 because there is a well-defined common interest of many
19 persons and it is impractical to bring them all before the court. Plaintiff reserves
20 the right to modify the Class description or further divide it into subclasses or
21 limit it to particular issues.

22 75. **Ascertainability**: The proposed Class and Subclasses are
23 ascertainable because they can be identified and located using Defendant's payroll
24 and personnel records.

25 76. **Numerosity**: The potential members of the Class and Subclasses as
26 defined is so numerous that joinder of all members would be infeasible and
27 impractical. The disposition of their claims through this class action will benefit
28 both the parties and this Court. The number of members of the Class and

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1 Subclasses is unknown to Plaintiff, but is estimated to be in excess of 100
2 individuals. The number and identity of members can be readily ascertained using
3 Defendant's records.

4 77. **Typicality**: Plaintiff's claims are typical of Class and Subclass
5 Member's because all sustained similar injuries and damages arising out of
6 Defendant's common course of conduct in violation of law and the injuries and
7 damages of all members of the Class and Subclasses were caused by Defendant's
8 wrongful conduct in violation of law, as alleged.

9 78. **Adequacy**: Plaintiff is an adequate representative of the Class and
10 Subclasses, will fairly protect the interests of Class and Subclass members, has no
11 interests antagonistic to Class and Subclass members, and will vigorously pursue
12 this lawsuit. Plaintiff's attorneys are competent, skilled and experienced in
13 litigating large wage and hour class actions.

14 79. **Superiority**: A class action is superior to other available means for
15 the fair and efficient adjudication of this controversy. Each Class Member has
16 been damaged, and is entitled to recovery, by Defendant's unlawful policies. A
17 Class action will allow litigation of claims in the most efficient and economical
18 manner for the parties and judicial system. Plaintiff is unaware of any likely
19 difficulties in managing this action that precludes a class action.

20 80. Nearly all factual, legal, statutory, declaratory, and injunctive relief
21 issues that are raised in this Complaint are common to the Class Members and will
22 apply uniformly to every Class Member. The predominating common questions
23 of law and fact include:

- 24 a. Whether Defendant violated California law by failing to properly
25 compensate Plaintiff Class Members when it automatically deducted
26 30 minutes for a meal period each workday on days when a 30-
27 minute uninterrupted meal period was not actually taken.

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- 1 b. Whether Defendant violated federal law by failing to properly
2 compensate Plaintiff Class Members when it automatically deducted
3 30 minutes for a meal period each workday on days when a 30-
4 minute uninterrupted meal period was not actually taken.
- 5 c. Whether Defendant violated the law by failing to properly calculate
6 Plaintiff Class Members' regular rate of pay;
- 7 d. Whether Defendant violated California law by failing to properly
8 compensate Plaintiff Class Members for all overtime hours;
- 9 e. Whether Defendant violated federal law by failing to properly
10 compensate Covered Employees for all overtime hours;
- 11 f. Whether Defendant violated California law by failing to properly
12 compensate Plaintiff Class Members for all compensation based on
13 the regular rate of pay;
- 14 g. Whether Defendant violated California law by failing to properly
15 compensate Plaintiff Class Members for all meal and rest period
16 premium payments at the regular rate of compensation;
- 17 h. Whether Defendant violated California Labor Code section §§ 226
18 and 246 by failing to provide Plaintiff Class Members with accurate
19 itemized wage statements;
- 20 i. Whether the Plaintiff Class is entitled to waiting time penalties under
21 § 203;
- 22 j. Whether Defendant violated Labor Code §§ 201, 202, 203, 204, 226,
23 510, 1182.12, 1194, 1194.2, 1197, 1198; IWC Wage Order 4-2001,
24 and other applicable IWC Wage Orders, and whether that establishes
25 a violation of fundamental public policy;
- 26 g. Whether Plaintiff Class and Subclasses are entitled to equitable relief
27 pursuant to Business and Professions Code, §§ 17200, *et seq.*
28

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Failure to Pay All Wages Owed [FLSA - 29 USC §§ 206, 207]

(Plaintiff and Covered Employees Against Defendant)

81. Plaintiff incorporates the preceding paragraphs of this Complaint.

82. At all relevant times, Defendant has been, and continues to be, an “employer” engaged in “interstate commerce” within the meaning of FLSA, 29 U.S.C. § 203, and Defendant has employed, and continues to employ the Covered Employees as “employee[s]” within the meaning of the FLSA.

83. Defendant knowingly, willfully, and intentionally, failed to compensate Plaintiff and the FLSA Covered Employees all wages due under the FLSA, including agreed upon wages and the applicable minimum wage, as mandated by 29 U.S.C. § 206(a), and for overtime hours, as mandated by 29 U.S.C. § 207(a).

84. Defendant failed to pay Plaintiff and the Covered Employees for all hours worked as a result of its policy of automatically deducting 30 minutes for each work day for an unpaid meal period even when employees did not actually take a full 30-minute, uninterrupted meal period. This practice resulted in Plaintiff and the Covered Employees being deprived of their regular and overtime wages.

85. Defendant employed Plaintiff and the FLSA Covered Employees to work, and they did work, in excess of forty (40) hours per week.

86. Further, Defendant paid Plaintiff and the FLSA Covered Employees non-discretionary bonuses, cash health and welfare benefits, shift differentials, and other forms of remuneration that were not subject to exclusion from the regular rate of pay under the FLSA.

87. Defendant failed to pay Plaintiff and the FLSA Covered Employees for work in excess of forty (40) hours per week at one-and-one half times the regular rate of pay for each Employee.

1 88. Plaintiff seeks judgment against Defendant on her own behalf, and on
2 behalf of each FLSA Covered Employee, for all unpaid wages, including
3 minimum and overtime wages owed by Defendant, together with an award of an
4 additional equal amount as liquidated damages, and costs, interest, and reasonable
5 attorneys' fees.

6 **SECOND CAUSE OF ACTION**

7 **Failure to Pay All Wages [Labor Code §§ 1194 and 1194.2]**

8 **(Plaintiff and the Unpaid Wage Subclass Against Defendant)**

9 89. Plaintiff incorporates the preceding paragraphs of this Complaint.

10 90. At all times herein relevant, Defendant had a duty to comply with
11 Labor Code sections 204, 1182.12, 1194, 1194.2, 1197, 1198, the applicable IWC
12 Wage Orders, and all applicable local minimum wage ordinances in effect
13 throughout California.

14 91. Labor Code section 204 and the IWC Wage Orders require timely
15 payment of all wages owed on regularly scheduled paydays at least twice during
16 each calendar month, on days designated in advance by the employer as the
17 regular paydays. All wages earned in excess of the normal work period must be
18 paid no later than the payday for the next regular payroll period.

19 92. Labor Code section 1182.12 sets forth the minimum hourly wage that
20 must be paid to all employees in California for all hours worked. Labor Code
21 section 1197 affirms that it is unlawful to pay less than the state or local minimum
22 wage, whichever is higher, for any hour of work.

23 93. Labor Code section 1194 requires that employers pay employees at
24 least the legal minimum wage rate for all hours worked, notwithstanding any
25 agreement to work for a lesser wage. Labor Code section 1194 further authorizes
26 any employee receiving less than the legal minimum wage applicable to the
27 employee to recover in a civil action the unpaid balance of the full amount of
28 wages, along with interest thereon, reasonable attorneys' fees and costs of suit.

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1 94. Labor Code section 1194.2 authorizes the recovery of liquidated
2 damages in an amount equal to the wages unlawfully unpaid and interest thereon
3 for unpaid wage violations.

4 95. Labor Code section 1198 prohibits employers from employing for
5 longer hours or less favorable conditions than those set forth in the Labor Code,
6 IWC Wage Orders, or as otherwise set by the Labor Commissioner.

7 96. Defendant failed to pay Plaintiff and the Class Members for all hours
8 worked as a result of its policy of automatically deducting 30 minutes for each
9 workday for an unpaid meal period even when employees did not actually take a
10 full 30-minute, uninterrupted meal period. This practice resulted in Plaintiff and
11 the Class Members being deprived of compensation for all hours that they
12 worked.

13 97. As a direct and proximate result of Defendant's failure to pay
14 Plaintiff and Class Members in accordance with Labor Code sections 204,
15 1182.12, 1194, 1194.2, 1197, 1198, the applicable IWC Wage Orders, and all
16 applicable local minimum wage ordinances in effect throughout California,
17 Plaintiff and Class Members are entitled to recover the full amount of unpaid
18 wages, liquidated damages, prejudgment interest, and statutory penalties, along
19 with attorneys' fees and costs in amounts that will be established at trial.

20 **THIRD CAUSE OF ACTION**

21 **Failure to Pay Overtime Wages [Labor Code §§ 510 and 1194]**

22 **(Plaintiff and the Unpaid Wage Subclass and California Overtime Subclass**
23 **Against Defendant)**

24 98. Plaintiff incorporates the preceding paragraphs of this Complaint.

25 99. Defendant employed Plaintiff and Class Members to work, and they
26 did work, in excess of eight hours per day and forty hours per week.
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1 100. Defendant paid Plaintiff and the Class Members non-discretionary
2 bonuses, cash health and welfare benefits, shift differentials, and other forms of
3 remuneration that were not subject to exclusion from the regular rate of pay.

4 101. Defendant failed to pay Plaintiff and Class Members for work in
5 excess of eight hours per day and forty hours per week at one-and-one half times
6 the regular rate of pay in violation of Labor Code §§ 510 and 1194. Instead,
7 Defendant paid Plaintiff and Class Members overtime based on a 1.5x or 2.0x
8 multiple of their straight time hourly rate, notwithstanding the well known
9 obligation and requirement for employers in California (and the United States) to
10 include all other forms of remuneration in the “regular rate of pay” for purposes of
11 overtime, with the exception of the well-defined and narrowly construed
12 exclusions.

13 102. Defendant also failed to pay Plaintiff and the Class Members for all
14 hours worked, which included overtime hours, as a result of its policy of
15 automatically deducting 30 minutes for each work day for an unpaid meal period
16 even when employees did not actually take a full 30-minute, uninterrupted meal
17 period. This practice resulted in Plaintiff and the Class Members being deprived
18 of their overtime wages.

19 103. Defendant’s unlawful acts deprived Plaintiff and Class Members of
20 overtime wages in amounts to be determined at trial, and they are entitled to
21 recover these amounts, along with interest, attorneys’ fees, and costs.

22 **FOURTH CAUSE OF ACTION**

23 **Failure to Pay Wages Due at Termination [Labor Code §§ 201 through 203]**

24 **(Plaintiff and the Waiting Time Subclass Against Defendant)**

25 104. Plaintiff incorporates the preceding paragraphs of this Complaint.

26 105. Defendant had a consistent and uniform policy, practice and
27 procedure of willfully failing to pay their employees all final wages due within the
28 time required by law, in violation of Labor Code §§ 201, 202, and 203. This is a

1 result of Defendant's overtime violations that occurred systemically throughout
2 the Class Period as a result of the regular rate violations.

3 106. An employer that willfully fails to timely pay such wages must, as a
4 penalty, continue to pay an employee's wages until the back wages are paid in full
5 or an action is commenced. Labor Code § 203. The penalty cannot exceed 30
6 days of wages.

7 107. The Waiting Time Subclass Members no longer work for Defendant.

8 108. Defendant knew wages were due them, but willfully failed to pay
9 Waiting Time Subclass Members all wages due at termination or within seventy-
10 two (72) hours of resignation, in violation of Labor Code §§ 201, 202, and 203.

11 **FIFTH CAUSE OF ACTION**

12 **Failure to Provide Itemized Wage Statements [Labor Code § 226(a)]**

13 **(Plaintiff and the Wage Statement Subclass Against Defendant)**

14 109. Plaintiff incorporates all preceding paragraphs of this Complaint.

15 110. Labor Code section 226(a) requires an employer to furnish wage
16 statements to employees semimonthly or at the time of each payment of wages,
17 "an accurate itemized statement in writing showing:" (1) gross wages earned,
18 (2) total hours worked, (3) the number of piece rate units earned and applicable
19 piece rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates
20 of the pay period, (7) the name of the employee and last four digits of SSN or an
21 EIN, (8) the name and address of the legal name of the employer, and (9) all
22 applicable hourly rates in effect during the pay period and the number of hours
23 worked at each hourly rate by the employee.

24 111. Defendant knowingly and intentionally failed to comply with this
25 provision by, among other things, providing wage statements to Plaintiff and
26 Class Members which failed to accurately set forth all gross wages earned, total
27 hours worked, net wages earned, and all applicable hourly rates in effect during
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1 the pay period with the number of hours worked at each hourly rate by the
2 employee.

3 112. As described herein, Defendant's wage statement violations caused
4 injury to Plaintiff and Class Members in the form of confusion about wages paid
5 and amounts owed, misleading and incorrect rates of pay listed on wage
6 statements (causing Plaintiff and Class Members to not vindicate their rights or
7 inquire about the miscalculation of wages due to the misrepresentation on the
8 wage statement), among other reasons.

9 113. Based on Defendant's knowing and intentional failure to provide
10 accurate itemized wage statements, Wage Statement Subclass members are
11 entitled to penalties not to exceed \$4,000 for each employee together with interest
12 and attorneys' fees and costs.

13 **SIXTH CAUSE OF ACTION**

14 **Failure to Provide Meal Periods or Pay All Meal Period Premiums Owed**

15 **[Labor Code §§ 226.7, 512]**

16 **(Plaintiff and the Premium Wage Subclass Against Defendant)**

17 114. Plaintiff incorporates all preceding paragraphs of this Complaint.

18 115. Defendant violated Labor Code §§ 226.7 and 512 and the IWC Wage
19 Orders by failing to provide compliant meal periods or pay meal period premiums
20 at the regular rate of compensation in lieu thereof.

21 116. Defendant did not maintain a lawful meal period waiver that allowed
22 for Defendant and the Class Members to waive meal periods for shifts of less than
23 six hours in length. During such times, Defendant required Plaintiff and other
24 Class Members to work shifts of five hours or more, but did not provide a timely,
25 uninterrupted 30-minute meal period or a payment of a meal period premium in
26 lieu thereof for those shifts in excess of five hours (with no meal period waiver in
27 effect).

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1 117. On days in which Plaintiff and Class Members did not receive an
2 uninterrupted 30-minute meal period within the first five hours of their shift,
3 Defendant failed to pay a corresponding meal period premium at one hour their
4 regular rate of compensation. Plaintiff alleges, on information and belief, that this
5 practice extends to second meal periods for shifts in excess of 10 hours in a
6 workday, as Defendant had a policy and frequent practice of not paying meal
7 period premiums when due to the Class Members.

8 118. As a result of this common practice, Defendant failed to provide
9 Plaintiff and the Class Members and Premium Wage Subclass all meal periods
10 owed and all premiums due at the lawful regular rate of compensation in violation
11 of Labor Code §§ 226.7 and 512 and the IWC Wage Orders.

12 **SEVENTH CAUSE OF ACTION**

13 **Failure to Permit Rest Periods or Pay All Rest Period Premiums Owed**

14 **[Labor Code §§ 226.7, 512]**

15 **(Plaintiff and the Premium Wage Subclass Against Defendant)**

16 119. Plaintiff incorporates all preceding paragraphs of this Complaint.

17 120. Defendant violated Labor Code § 226.7 and the IWC Wage Orders
18 by failing to authorize and permit compliant rest periods for every 4 hours worked
19 or major fraction thereof or pay rest period premiums in lieu thereof.

20 121. On days in which Plaintiff and Class Members did not receive at least
21 one 10-minute rest period for each four-hour period worked (or major fraction
22 thereof), Defendant failed to pay a corresponding rest period premium at one hour
23 their regular rate of compensation.

24 122. As a result of this common practice, Defendant failed to provide
25 Plaintiff and the Class Members and Premium Wage Subclass all meal periods
26 owed and all premiums due at the lawful rate in violation of Labor Code §§ 226.7
27 and 512 and the IWC Wage Orders

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1 **EIGHTH CAUSE OF ACTION**

2 **Violations of the Unfair Competition Law**

3 **[Business and Professions Code §§ 17200 et seq.]**

4 **(Plaintiff and the Class Members Defendant)**

5 123. Plaintiff incorporates all preceding paragraphs of this Complaint.

6 124. Defendant's failure to pay Plaintiff and Class Members for all hours
7 worked, as required by Wage Orders and the Labor Code, constitutes unlawful
8 activity prohibited by Business and Professions Code §§ 17200, et seq.

9 125. Defendant's actions constitute false, unfair, fraudulent and deceptive
10 practices, within the meaning of Business and Professions Code, §§ 17200, et seq.

11 126. Plaintiff is entitled to an injunction, specific performance under
12 Business and Professions Code, § 17202, and other equitable relief against such
13 unlawful practices in order to prevent future loss, for which there is no adequate
14 remedy at law, and to avoid a multiplicity of lawsuits. Plaintiff brings this cause
15 individually and as a member of the general public as a representative of all others
16 subject to Defendant's unlawful acts and practices.

17 127. This cause of action is brought as a cumulative remedy and is
18 intended as an alternative remedy for restitution for Plaintiff, and each Plaintiff
19 Class Member, for the four (4) year period before the filing of this Complaint, and
20 as the primary remedy during the fourth year before the filing of this Complaint.
21 Business and Professions Code § 17205.

22 128. As a result of Defendant's unlawful and unfair business practice of
23 failing to pay earned wages, each Plaintiff Class Member has suffered damages
24 and is entitled to restitution in an amount according to proof.

25 129. The illegal conduct alleged is continuing and there is no indication
26 Defendant will discontinue such activity. Plaintiff alleges if Defendant is not
27 enjoined from the conduct set forth in this Complaint, it will continue to fail to
28 pay all overtime, premium, and final wages as required by law.

1 130. Plaintiff further requests the court issue a preliminary and permanent
2 injunction prohibiting Defendant from continuing to fail to pay overtime wages at
3 the lawful regular rate.

4 **NINTH CAUSE OF ACTION**

5 **Civil Penalties for Failure to Pay All Regular and Minimum Wages (PAGA)**

6 **[Labor Code §§ 2698, *et seq.*]**

7 131. Plaintiff incorporates all outside paragraphs of this Complaint as if
8 set forth herein.

9 132. Labor Code section 2699(a) provides: “Notwithstanding any other
10 provision of law, any provision of this code that provides for a civil penalty to be
11 assessed and collected by the Labor and Workforce Development Agency or any
12 of its departments, divisions, commissions, boards, agencies, or employees, for a
13 violation of this code, may, as an alternative, be recovered through a civil action
14 brought by an aggrieved employee on behalf of himself or herself and other
15 current or former employees pursuant to the procedures specified in Section
16 2699.3 .”

17 133. Labor Code section 2699(f) provides: “For all provisions of this
18 code except those for which a civil penalty is specifically provided, there is
19 established a civil penalty for a violation of these provisions, as follows: ... (2) If,
20 at the time of the alleged violation, the person employs one or more employees,
21 the civil penalty is one hundred dollars (\$100) for each aggrieved employee per
22 pay period for the initial violation and two hundred dollars (\$200) for each
23 aggrieved employee per pay period for each subsequent violation.”

24 134. Labor Code section 558(a) provides: “Any employer or other
25 person acting on behalf of an employer who violates, or causes to be violated, a
26 section of this chapter or any provision regulating hours and days of work in any
27 order of the Industrial Welfare Commission shall be subject to a civil penalty as
28 follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid

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1 employee for each pay period for which the employee was underpaid in addition
2 to an amount sufficient to recover underpaid wages. (2) For each subsequent
3 violation, one hundred dollars (\$100) for each underpaid employee for each pay
4 period for which the employee was underpaid in addition to an amount sufficient
5 to recover underpaid wages.”

6 135. Labor Code section 1197.1(a) provides: “Any employer or other
7 person acting either individually or as an officer, agent, or employee of another
8 person, who pays or causes to be paid to any employee a wage less than the
9 minimum fixed by an applicable state or local law, or by an order of the
10 commission, shall be subject to a civil penalty ... and any applicable penalties
11 imposed pursuant to Section 203 as follows: (1) For any initial violation that is
12 intentionally committed, one hundred dollars (\$100) for each underpaid employee
13 for each pay period for which the employee is underpaid ... and any applicable
14 penalties imposed pursuant to Section 203. (2) For each subsequent violation for
15 the same specific offense, two hundred fifty dollars (\$250) for each underpaid
16 employee for each pay period for which the employee is underpaid regardless of
17 whether the initial violation is intentionally committed.”

18 136. Plaintiff does not seek for any cause of action in this Complaint
19 under PAGA any amounts that are not recoverable pursuant to Labor Code
20 section 2699 *et seq.* (i.e., underpaid wages).

21 137. Defendant willfully failed in its affirmative obligation to pay
22 Plaintiff and aggrieved employees at least the lawful minimum wage for all hours
23 worked in violation of Labor Code sections 1182.12, 1197 and 1198 and the IWC
24 Wage Orders (the “Hours and Days of Work” and “Minimum Wages” sections of
25 the applicable orders).

26 138. Despite being on notice of its employees being deprived of the
27 opportunity to take compliant meal periods or any meal period at all, Defendant
28 nonetheless automatically deducted 30 minutes of time from Plaintiff and the

1 aggrieved employees each workday. These automatic deductions are reflected on
2 Plaintiff's time records for each workday as .50 "non-work hours."

3 139. As a result, Defendant violated the Labor Code and IWC Wage
4 Orders and are liable to Plaintiff, the aggrieved employees and the State of
5 California for civil penalties as required by Labor Code sections 558, 1197.1, and
6 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent
7 permitted by law, including under Labor Code section 2699(g).

8 **TENTH CAUSE OF ACTION**

9 **Civil Penalties for Failure to Pay All Overtime Wages (PAGA)**

10 **[Labor Code §§ 2698, *et seq.*]**

11 140. Plaintiff incorporates all outside paragraphs of this Complaint as if
12 set forth herein.

13 141. Defendant failed in its affirmative obligation to pay Plaintiff and
14 aggrieved employees no less than one and one-half times their respective
15 "regular rate of pay" for all hours worked in excess of eight hours in one day,
16 40 hours in one week, or the first eight hours worked on the seventh day of work
17 in any one workweek, and no less than twice their respective "regular rate of
18 pay" for all hours over 12 hours in one day and any work in excess of
19 eight hours on any seventh day of a workweek in violation of Labor Code
20 sections 510 and 1198 and the IWC Wage Orders and the IWC Wage Orders
21 (the "Hours and Days of Work" sections of the applicable orders).

22 142. As described in full detail in the allegations section of this
23 Complaint, the civil penalties sought are based on Defendant's policy and
24 practice of underpaying the hourly overtime rate using the method required by
25 California law and, additionally, based on Defendant's policy and practice of
26 automatically deducting 30 minutes from the workday for meal periods not
27 always taken.

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1 143. As a result, Defendant violated the Labor Code and IWC Wage
2 Orders and are liable to Plaintiff, the aggrieved employees and the State of
3 California for civil penalties as required by Labor Code sections 558 and 2699(a)
4 and (f)(2), in addition to interest, attorneys' fees, and costs to the extent
5 permitted by law, including under Labor Code section 2699(g).

6 **ELEVENTH CAUSE OF ACTION**

7 **Civil Penalties for Meal Period Violations (PAGA)**

8 **[Labor Code §§ 2698, *et seq.*]**

9 144. Plaintiff incorporates all outside paragraphs of this Complaint as if
10 set forth herein.

11 145. Defendant willfully failed in its affirmative obligation to consistently
12 provide Plaintiff and aggrieved employees compliant, duty-free meal periods of
13 not less than 30 minutes beginning before the fifth hour of hour for each work
14 period of more than five hours per day and a second on-duty meal period of not
15 less than 30 minutes beginning before the tenth hour of hour of work in violation
16 of Labor Code sections 226.7 and 512 and the IWC Wage Orders (the "Meal
17 Periods" sections of the applicable orders)..

18 146. Further, Defendant willfully failed in its affirmative obligation to
19 consistently pay Plaintiff and aggrieved employees one additional hour of pay at
20 the respective regular rate of compensation for each workday that a fully
21 compliant meal period was not provided, in violation of Labor Code sections
22 226.7 and the IWC Wage Orders.

23 147. As a result, Defendant violated the Labor Code and IWC Wage
24 Orders and are liable to Plaintiff, the aggrieved employees and the State of
25 California for civil penalties as required by Labor Code sections 558 and 2699(a)
26 and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted
27 by law, including under Labor Code section 2699(g).

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1 **TWELFTH CAUSE OF ACTION**

2 **Civil Penalties for Rest Period Violations (PAGA)**

3 **[Labor Code §§ 2698, *et seq.*]**

4 148. Plaintiff incorporates all outside paragraphs of this Complaint as if
5 set forth herein.

6 149. Defendant willfully failed in its affirmative obligation to consistently
7 authorize and permit Plaintiff and aggrieved employees to receive compliant,
8 duty-free rest periods of not less than ten (10) minutes for every four hours
9 worked (or major fraction thereof) in violation of Labor Code sections 226.7 and
10 516 and the IWC Wage Orders (the “Rest Periods” sections of the applicable
11 orders).

12 150. Further, Defendant willfully failed in its affirmative obligation to
13 consistently pay Plaintiff and aggrieved employees one additional hour of pay at
14 the respective regular rate of compensation for each workday that a fully
15 compliant rest period was not provided, in violation of Labor Code sections 226.7
16 and the IWC Wage Orders.

17 151. As a result, Defendant violated the Labor Code and IWC Wage
18 Orders and are liable to Plaintiff, the aggrieved employees and the State of
19 California for civil penalties as required by Labor Code sections 558 and 2699(a)
20 and (f)(2), in addition to interest, attorneys’ fees, and costs to the extent permitted
21 by law, including under Labor Code section 2699(g).

22 **THIRTEENTH CAUSE OF ACTION**

23 **Civil Penalties for Untimely Payment of Wages (PAGA)**

24 **[Labor Code §§ 2698, *et seq.*]**

25 152. Plaintiff incorporates all outside paragraphs of this Complaint as if
26 set forth herein.

27 153. Defendant willfully failed in its affirmative obligation to timely pay
28 all wages and premiums earned by Plaintiff and aggrieved employees twice

1 during each calendar month on days designated in advance by the employer as
2 regular paydays (for employees paid on a non-weekly basis) and on the regularly-
3 scheduled weekly payday for any weekly employees, in violation of Labor Code
4 sections 204 and 204b and the IWC Wage Orders (the “Minimum Wages”
5 sections of the applicable orders).

6 154. As a result, Defendant violated the Labor Code and IWC Wage
7 Orders and are liable to Plaintiff, the aggrieved employees and the State of
8 California for civil penalties as required by Labor Code sections 558 and 2699(a)
9 and (f)(2), in addition to interest, attorneys’ fees, and costs to the extent permitted
10 by law, including under Labor Code section 2699(g).

11 **FOURTEENTH CAUSE OF ACTION**

12 **Civil Penalties for Wage Statement Violations (PAGA)**

13 **[Labor Code §§ 2698, *et seq.*]**

14 155. Plaintiff incorporates all outside paragraphs of this Complaint as if
15 set forth herein.

16 156. Labor Code section 226.3 provides: “Any employer who violates
17 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of
18 two hundred fifty dollars (\$250) per employee per violation in an initial citation
19 and one thousand dollars (\$1,000) per employee for each violation in a
20 subsequent citation, for which the employer fails to provide the employee a wage
21 deduction statement or fails to keep the records required in subdivision (a) of
22 Section 226. The civil penalties provided for in this section are in addition to any
23 other penalty provided by law.”

24 157. Defendant failed in its affirmative obligation provide accurate
25 itemized wage statements to Plaintiff and aggrieved employees in violation of
26 Labor Code section 226(a) and Labor Code section 246(i) which requires
27 employers with written notice that sets forth the amount of paid sick leave
28 available on wage statements or other notices each pay period.

1 158. As a result, Defendant violated the Labor Code and IWC Wage
2 Orders and are liable to Plaintiff, the aggrieved employees and the State of
3 California for civil penalties as required by Labor Code sections 226.3 and
4 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent
5 permitted by law, including under Labor Code section 2699(g).

6 **FIFTEENTH CAUSE OF ACTION**

7 **Civil Penalties for Failure to Timely Pay All Wages**

8 **Upon Separation of Employment (PAGA)**

9 **[Labor Code §§ 2698, *et seq.*]**

10 159. Plaintiff incorporates all outside paragraphs of this Complaint
11 as if set forth herein.

12 160. Defendant willfully failed in its affirmative obligation to pay
13 all wages earned and unpaid to Plaintiff and aggrieved employees immediately
14 upon termination of employment or within 72 hours thereafter for employees who
15 did not provide at least 72 hours prior notice of his or her intention to quit, and
16 further failed to pay those sums for 30 days thereafter in violation of Labor Code
17 sections 201 through 203 and the IWC Wage Orders.

18 161. As a result, Defendant violated the Labor Code and IWC
19 Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of
20 California for civil penalties as required by Labor Code sections 558 and 2699(a)
21 and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted
22 by law, including under Labor Code section 2699(g).

23 **SIXTEENTH CAUSE OF ACTION**

24 **Civil Penalties for Recordkeeping Violations (PAGA)**

25 **[Labor Code §§ 2698, *et seq.*]**

26 162. Plaintiff incorporates all outside paragraphs of this Complaint as if
27 set forth herein.

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1 163. Labor Code section 1174 provides: “Every person employing labor
2 in this state shall: ...(d) Keep, at a central location in the state or at the plants or
3 establishments at which employees are employed, payroll records showing the
4 hours worked daily by and the wages paid to, and the number of piece-rate units
5 earned by and any applicable piece rate paid to, employees employed at the
6 respective plants or establishments. These records shall be kept in accordance
7 with rules established for this purpose by the commission, but in any case shall be
8 kept on file for not less than three years.”

9 164. Labor Code section 1174.5 provides: “Any person employing labor
10 who willfully fails to maintain the records required by subdivision (c) of Section
11 1174 or accurate and complete records required by subdivision (d) of Section
12 1174 ..., shall be subject to a civil penalty of five hundred dollars (\$500).”

13 165. Defendant willfully failed in its affirmative obligation to maintain
14 accurate records showing the hours worked daily and wages paid to the aggrieved
15 employees, in violation of Labor Code section 1174.

16 166. As a result, Defendant violated the Labor Code and are liable to
17 Plaintiff, the aggrieved employees and the State of California for civil penalties
18 as required by Labor Code section 1174.5, in addition to interest, attorneys’ fees,
19 and costs to the extent permitted by law, including under Labor Code section
20 2699(g).

21 **PRAYER FOR RELIEF**

22 Plaintiff prays for judgment as follows:

23 A. Determine this action may be maintained as a class action with
24 Plaintiff as Class Representative and Plaintiff’s counsel as Class Counsel;

25 B. Determine this action may be maintained as a collective action, with
26 Plaintiff serving as Class Representative and her counsel serving as Class
27 Counsel;

28 C. For Facilitated Notice under 29 USC § 216(b);

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1 D. For recovery of all unpaid wages owed, including all overtime wages,
2 and interest, and an equal amount as liquidated damages pursuant to the FLSA, 29
3 U.S.C. § 207, et seq;

4 E. Attorneys' fees and costs pursuant to statute, including, but not
5 limited to, 29 USC § 216;

6 F. Determine Defendant's failure to pay overtime and premium wages
7 to Plaintiff and Class members violates IWC Wage Orders, regulations and
8 statutes;

9 G. Defendant be ordered to pay and judgment entered for overtime and
10 premium wages for Plaintiff and Plaintiff Subclass members, according to proof;

11 H. Defendant be ordered to pay and judgment entered for Labor Code
12 § 226 penalties to Plaintiff and Plaintiff Subclass member, according to proof;

13 I. Defendant be ordered to pay and judgment entered for Labor Code
14 § 203 penalties to Plaintiff and each Plaintiff Subclass member, according to
15 proof;

16 J. Defendant be ordered to pay liquidated damages under Labor
17 Code § 1194.2;

18 K. Defendant be found to have engaged in unfair competition in
19 violation of Business and Professions Code § 17200 and be ordered to pay
20 restitution to Plaintiff, and each Plaintiff Class member, due to Defendant's
21 unlawful and unfair competition, including disgorgement of wrongfully obtained
22 profits, and wrongfully withheld wages, according to proof, and interest, under
23 Business and Professions Code §§ 17203 and 17204;

24 L. For this action to be maintained as a representative action under the
25 PAGA and for Plaintiff and counsel to be provided with all enforcement capability
26 as if the action were brought directly by the State of California, LWDA, or
27 California Division of Labor Standards Enforcement;

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1 M. For recovery of all civil penalties and other recoverable amounts
2 under the PAGA;

3 N. Defendant be enjoined from further acts of unfair competition and
4 specifically from failing to pay Class Members overtime wages;

5 O. Plaintiff, Plaintiff Class members, and Subclass members be awarded
6 attorneys' fees and costs pursuant to statute, including, but not limited to, Labor
7 Code §§ 226, 1194, 2699 and Code of Civil Procedure § 1021.5;

8 P. Determine the appropriate remedy to compensate Plaintiff, Class and
9 Subclass members, as required to promote fairness and justice, including but not
10 limited procedures for compensation, and fluid recovery if appropriate;

11 Q. Prejudgment Interest; and

12 R. Any other relief the court deems proper.

13
14 Respectfully submitted,

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16 Dated: October 15, 2020

FERRARO EMPLOYMENT LAW, INC.

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19 _____
NICHOLAS J. FERRARO

20 Attorneys for Plaintiff Ana Garcia, on behalf of
21 herself and all others similarly situated
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