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11 **SUPERIOR COURT OF CALIFORNIA**
12 **COUNTY OF SAN DIEGO**
13

14 STEPHANIE ROJAS, an individual, on behalf
of herself and others similarly situated;

15
16 Plaintiff,

17 vs.

18 CONSTELLATION HOMEBUILDER
19 SYSTEMS, INC.; Z57, INC.; ZURPLE, INC.;
and DOES 1 through 50;

20 Defendants.
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Case No. 37-2019-00035229-CU-OE-CTL

SECOND AMENDED COMPLAINT

1. Failure to Pay All Wages
2. Failure to Pay Overtime Wages
3. Meal Period Violations
4. Rest Period Violations
5. Failure to Provide Accurate Itemized Wage Statements
6. Waiting Time Penalties
7. Failure to Reimburse Business Expenses
8. Unfair Business Practices
9. Enforcement of the Private Attorneys General Act of 2004

Filed: July 9, 2019
Judge: Hon. Katherine Bacal
Dept.: C-69

1 Plaintiff STEPHANIE ROJAS (“Plaintiff”), individually, and on behalf of all others similarly
2 situated, filed the CLASS ACTION COMPLAINT against Defendants Z57, INC., ZURPLE, INC.,
3 CONSTELLATION HOMEBUILDER SYSTEMS, INC., and DOES 1 through 50 (collectively,
4 “Defendants”) on July 9, 2019 in this Court and now, on information and belief, files this SECOND
5 AMENDED COMPLAINT (“Complaint”) alleging as follows:

6 **SUMMARY OF THE CASE**

7 1. This is a wage and hour class and representative action on behalf of all California
8 citizens currently or formerly employed by Defendants as non-exempt employees within the
9 applicable statutory limitation periods along with California exempt employees of Z57 who received
10 wage statements listing the incorrect employer name on their wage statements during the applicable
11 statutory limitation periods.

12 2. Defendants, as a common and systematic policy and practice, have violated the
13 California Labor Code, Industrial Welfare Commission Wage Orders and California Business and
14 Professions Code, causing substantial losses to Plaintiff and Class Members. Now comes Plaintiff, a
15 former employee of Defendants, who has retained counsel to prosecute this action against Defendants
16 and to recover all damages, monetary relief, wages, premiums, liquidated damages, reimbursements,
17 restitution, and statutory and civil penalties, along with attorneys’ fees and costs and on behalf of the
18 Class Members.

19 3. Plaintiff gave written notice of the claims in this Complaint to Defendants and to the
20 California Labor and Workforce Development Agency (“LWDA”), seeking intervention. As there
21 has been no LWDA intervention within 65 days of that notice, Plaintiff asserted in Plaintiff’s First
22 Amended Complaint claims for civil penalties as a representative “aggrieved employee” for and on
23 behalf of all other aggrieved employees and the State of California in a representative capacity under
24 the California Private Attorneys General Act of 2004 (“PAGA”). Plaintiff reasserts those claims in
25 this Second Amended Complaint.

26 **JURISDICTION AND VENUE**

27 4. Jurisdiction of this action is proper in the Superior Court of California under Article VI,
28 §10 of the California Constitution. The monetary damages, restitution, penalties and other amounts

1 sought in this Complaint exceed the minimal jurisdictional limits of this Court. Defendants have
2 sufficient minimum contacts in California or otherwise intentionally avail themselves of the California
3 market, thus rendering them subject to the jurisdiction of this Court in accordance with traditional
4 notions of fair play and substantial justice. Plaintiff's claims arise under California law.

5 5. Venue as to Defendants is proper in this judicial district under Code of Civil Procedure
6 § 395(a) and 395.5 because at least some of the acts and omissions complained of in this Complaint
7 occurred in this county. Defendants either own, maintain offices, transact business, or have an agent
8 or agents within this county.

9 6. Plaintiff is informed and believes, and thereon alleges, that more than two-thirds of the
10 proposed Class Members are citizens of California; that the principal injuries resulting from
11 Defendants' alleged conduct were incurred in California; and that no class action asserting similar
12 factual allegations has been filed against Defendants in the preceding three years. Defendants Z57,
13 INC. and ZURPLE, INC. are California citizens whose alleged conduct forms a significant basis for
14 the claims asserted and relief sought by Plaintiff on behalf of the proposed Class Members.

15 **THE PARTIES**

16 7. Plaintiff STEPHANIE ROJAS is a California citizen who worked for Defendants in
17 California as an hourly, non-exempt employee from 2015 through 2019. Plaintiff worked in a sales
18 position where Plaintiff was incentivized to earn bonuses and commissions based on non-discretionary
19 sales metrics.

20 8. Defendant Z57, INC. ("Z57") is a California corporation that does business throughout
21 California, including San Diego County, and maintains its principal place of business in San Diego,
22 California. Z57 bills itself as an innovative real estate marketing company. Z57 appears to be a
23 subsidiary of Defendant CONSTELLATION HOMEBUILDER SYSTEMS, INC. and/or
24 CONSTELLATION SOFTWARE, INC.

25 9. Defendant ZURPLE, INC. ("ZURPLE") is a Delaware corporation that does business
26 throughout California, including San Diego County, and maintains its principal place of business in
27 San Diego, California. ZURPLE bills itself as a software company that provides real estate lead
28 generation services. Z57 appears to be a subsidiary of Defendant CONSTELLATION

1 HOMEBUILDER SYSTEMS, INC. and/or CONSTELLATION SOFTWARE, INC.

2 10. Defendant CONSTELLATION HOMEBUILDER SYSTEMS, INC. (“CHS”) is a
3 Delaware corporation that does business throughout California, including San Diego County. CHS
4 bills itself as the largest provider of software and services in the building industry. CHS appears to be
5 a division of CONSTELLATION SOFTWARE, INC.

6 11. Defendants Z57, ZURPLE and CHS share common management, issued common
7 wage statements, and share common employment and payment policies and practices with respect to
8 Plaintiff and Class Members as their employers. Defendants Z57, ZURPLE, and CHS shared common
9 wage statements with respect to Plaintiff and other Class Members during the Class Period. Plaintiff
10 is informed and believes, and thereon alleges, that Defendants Z57, ZURPLE and CHS are owned
11 and/or operated by CONSTELLATION SOFTWARE INC.

12 12. Plaintiff is informed and believes, and thereon alleges, that CONSTELLATION
13 SOFTWARE INC. (“CS”) is a Canadian corporation that does business throughout California,
14 including in San Diego County. CS operates under the trade name of Perseus Operating Group with
15 respect to its employment of Plaintiff and Class Members.

16 13. Defendant DOES 1 through 50 (“DOES”), are sued under fictitious names pursuant to
17 Code of Civil Procedure § 474 because Plaintiff does not know their true names or capacities. On
18 information and belief, Plaintiff alleges that DOES 1 through 50 are liable based on the allegations set
19 forth in this Complaint and proximately caused Plaintiff and other current and former employees harm
20 as a result of their acts and omissions. Plaintiff will seek leave of court to amend this Complaint when
21 the true names and capacities are ascertained.

22 14. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 50 are or
23 were the partners, agents, owners, shareholders, managers, or employees of Defendants at all relevant
24 times.

25 15. Plaintiff is informed and believes, and thereon alleges, that each Defendant acted in all
26 respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business
27 plan, or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable
28 to the other Defendants. Furthermore, each Defendant in all respects acted as the employer and/or

1 joint employer of Plaintiff and the Class Members.

2 16. Plaintiff is informed and believes, and thereon alleges, that each Defendant directly or
3 indirectly, through agents or other persons or entities, employed or otherwise exercised control over
4 the wages, hours, and working conditions of Plaintiff. Plaintiff further alleges that each Defendant
5 acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint
6 venturer, co-conspirator, partner, within a common enterprise, or other liable affiliate of all other
7 Defendants, such that the acts and omissions of each Defendant are legally attributable to all others.

8 17. Plaintiff is informed and believes, and thereon alleges that at all times mentioned in
9 this Complaint, Defendants were and are subject to the California Labor Code and Industrial Welfare
10 Commission Wage Orders (“IWC Wage Orders”) as employers of individuals who were and currently
11 are engaged as employees throughout this county and the State of California.

12 **FACTUAL ALLEGATIONS**

13 18. ***Background.*** At all relevant times mentioned herein, Defendants employed Plaintiff
14 and other persons as non-exempt employees at Defendants’ locations within California. Defendants
15 employed Plaintiff in a non-exempt position during their employment. Plaintiff was subject to all of
16 the protections of California law during their employment with Defendants. Defendants continue to
17 employ non-exempt employees within California or who are otherwise subject to the protections of
18 California law.

19 19. Plaintiff is informed and believes, and thereon alleges, that at all times herein
20 mentioned, Defendants were advised by skilled management, employees, lawyers, and other
21 professionals who were knowledgeable about California wage and hour and employment laws that
22 applied to Plaintiff and Class Members.

23 20. ***Unpaid Wages.*** Plaintiff is informed and believes, and thereon alleges, that Defendants
24 knew or should have known that Plaintiff and Class Members were entitled to receive at least minimum
25 wages and that they were not receiving minimum wages for all work that was required to be performed.
26 In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class Members were not paid at
27 least minimum wage for *all* hours worked for work performed off-the-clock due to the work demands
28 and policies of Defendants.

1 21. Specifically, Plaintiff alleges that Defendants knew or should have known that Plaintiff
2 and other Class Members worked off-the-clock from home without receiving compensation for such
3 hours of work. Plaintiff and other Class Members had access to their work emails on their personal
4 computers and on their personal cell phones and were expected to answer and respond to work-related
5 calls and emails after hours without expectation that they would be paid for such hours worked.
6 Additionally, Plaintiff alleges that Defendants knew or should have known that Plaintiff and other
7 Class Members worked during uncompensated 30-minute meal periods. For those hours worked,
8 Plaintiff and other Class Members did not receive compensation at the applicable hourly or overtime
9 rate and thus were not paid minimum wage for those off-the-clock hours. Plaintiff alleges that this
10 was a common policy and practice amenable to class treatment.

11 22. ***Unpaid Overtime.*** Plaintiff is informed and believes, and thereon alleges, that
12 Defendants knew or should have known that Plaintiff and Class Members were entitled to be paid
13 overtime for all overtime hours worked. In violation of the Labor Code and IWC Wage Orders,
14 Plaintiff and Class Members were not paid at their lawful overtime rate for all overtime hours for work
15 performed off-the-clock.

16 23. ***Regular Rate of Pay Underpayments.*** Plaintiff is informed and believes, and thereon
17 alleges, that Defendants knew or should have known that Plaintiff and Class Members were entitled
18 to receive certain wages for overtime compensation based on the regular rate of pay. In violation of
19 the Labor Code and IWC Wage Orders, Plaintiff and Class Members were not properly paid for all of
20 their overtime hours because Defendants improperly calculated the regular rate by failing to include
21 bonuses, commissions, incentive pay, and other forms of benefits and remuneration in the computation
22 of their regular rate of pay for purposes of overtime pay.

23 24. Specifically, Plaintiff and Class Members earned significant non-discretionary
24 bonuses, commissions and incentive during their employment with Defendants. As non-exempt
25 employees, Defendants were required to include these wages in the regular rate of pay. Defendants
26 did not accurately include all forms of remuneration in the regular rate of pay for Plaintiff and Class
27 Members. As a result, Plaintiff and Class Members were underpaid and deprived of overtime
28 compensation at the lawful rate.

1 25. ***Meal Period Violations.*** Plaintiff is informed and believes, and thereon alleges, that
2 Defendants knew or should have known that Plaintiff and Class Members were entitled to receive all
3 meal periods or payment of one additional hour of pay at their respective regular rate of
4 pay/compensation when they did not receive a timely, full-compliant and uninterrupted meal period.
5 In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class Members did not receive
6 all meal periods or payment of one additional hour of pay at their respective regular rate of
7 pay/compensation when they missed or received non-compliant meal periods (i.e., untimely, short or
8 interrupted).

9 26. Specifically, Plaintiff alleges that Defendants knew or should have known that Plaintiff
10 and Class Members regularly missed or had their meal periods provided late, cut short or interrupted
11 as a result of Defendants' common employment policies and practices. The work demands and sales-
12 driven culture effectively deprived Plaintiff and Class Members of the opportunity to take fully
13 compliant meal periods on a regular basis. On many of those occasions, Defendants failed to pay a
14 meal period premium to Plaintiff and Class Members. To the extent any meal period premiums were
15 provided to Plaintiff and Class Members for a deficient meal period, the premiums were not paid based
16 on the regular rate applicable to Plaintiff and Class Members. As a result, Plaintiff and Class Members
17 were underpaid and deprived of meal period premiums at the lawful rate.

18 27. ***Rest Period Violations.*** Plaintiff is informed and believes, and thereon alleges, that
19 Defendants knew or should have known that Plaintiff and Class Members were entitled to receive all
20 rest breaks or payment of one additional hour of pay at their respective regular rate of
21 pay/compensation when they did not receive a timely, fully compliant uninterrupted rest period. In
22 violation of the Labor Code and IWC Wage Orders, Plaintiff and Class Members did not receive all
23 rest breaks or payment of one additional hour of pay at their respective regular rate of
24 pay/compensation when they missed or received non-complaint rest periods (i.e., short or interrupted).

25 28. Specifically, Plaintiff alleges that Defendants knew or should have known that Plaintiff
26 and Class Members regularly missed or had their rest periods cut short or interrupted as a result of
27 Defendants' common employment policies and practices. The work demands and sales-driven culture
28 effectively deprived Plaintiff and Class Members of the opportunity to take fully compliant rest

1 periods on a regular basis. On essentially all of those occasions, Defendants failed to pay a rest period
2 premium to Plaintiff and Class Members. To the extent any rest period premiums were provided to
3 Plaintiff and Class Members for a deficient rest period, the premiums were not paid based on the
4 regular rate applicable to Plaintiff and Class Members. As a result, Plaintiff and Class Members were
5 underpaid and deprived of rest period premiums at the lawful rate.

6 29. ***Wages Upon Separation.*** Plaintiff is informed and believes, and thereon alleges, that
7 Defendants knew or should have known that Plaintiff and Class Members who left their employment
8 with Defendants during the relevant statutory period were entitled to timely payment of all wages due
9 upon separation. In violation of the Labor Code, Plaintiff and those Class Members did not receive
10 payment of all wages owed upon separation within the permissible time period because of Defendants'
11 policies and practices which underpaid wages and premiums to Plaintiff and Class Members
12 throughout their employment.

13 30. Specifically, Plaintiff alleges that Defendants knew or should have known that Plaintiff
14 and Class Members were being shorted on their wages during their employment. Plaintiff and Class
15 Members were not paid all wages or premiums owed to them each pay period as a result of Defendants'
16 systemic employment violations. As a result, Plaintiff and other Class Members were not paid all
17 wages owed upon separation of employment.

18 31. ***Wage Statement Violations.*** Plaintiff is informed and believes, and thereon alleges
19 that Defendants knew or should have known that Plaintiff and Class Members were entitled to receive
20 complete and accurate wage statements. In violation of the Labor Code and IWC Wage Orders,
21 Plaintiff and Class Members were not furnished with complete and accurate wage statements that show
22 all of the information required by Labor Code section 226, including, but not limited to, the accurate
23 name and address of each legal entity that is the employer, total number of hours worked each pay
24 period, the number of hours worked at the corresponding applicable pay rates, gross and net wages,
25 among other things.

26 32. First, because of the Labor Code violations set forth in this Complaint—including the
27 off-the-clock hours worked and Defendants' failure to pay meal and rest period premiums at the
28 regular rate pay and Defendants' failure to include all forms of remuneration in the regular rate of pay

1 to calculate overtime, premiums, and other forms of wages that must be paid at the regular rate—
2 among other reasons, Defendants have inaccurately stated, each pay period, gross wages earned, total
3 hours worked, net wages earned, and all applicable hourly rates in effect and the corresponding number
4 of hours worked at each hourly rate on each wage statement.

5 33. Second, Defendants' wage statements also fail to include the accurate name and address
6 of each legal entity that is the employer. Plaintiff and other Class Members were employed by
7 Defendants, yet the 2018 wage statements include employer information only for "Z57 Inc" and the
8 2019 wage statements include employer information only for "Constellation Homebuilder Systems
9 Inc". Plaintiff alleges that Class Members who received wage statements with the incorrect employer
10 include Z57 exempt employees, in addition to non-exempt employees. Plaintiff alleges that this
11 employer name violation occurred for the period of January 1, 2019 to May 31, 2019.

12 34. Third, Defendants have further violated Labor Code section 226 by failing to include
13 all gross and net wages earned on each wage statement in each pay period when Claimant or aggrieved
14 employees earned a bonus or commission. Instead, in such pay periods when Defendants paid Plaintiff
15 and, on information and belief, other Class Members, a commission or bonus, Defendants would issue
16 a separate wage statement for the pay period including only the amount of the commission or bonus
17 earned. As a result, Defendants did not include the total net or gross wages earned per pay period as
18 required by Labor Code section 226.

19 35. Fourth, Defendants also violated Labor Code section 226 by not issuing corrected wage
20 statements to Plaintiff and, on information and belief, other Class Members when Defendants made
21 an error regarding overtime. For instance, Plaintiff's wage statement with the pay date of January 18,
22 2019 lists at the bottom of the first column of the page: "Correction: .25 OT Hours for 12/30/18 –
23 01/05/19". For each corrected wage statement, Defendants have violated Labor Code section 226 with
24 respect to the original pay period and with respect to the pay period in which the correction was issued,
25 by failing to simply reissue a corrected wage statement for the particular pay period.

26 36. These knowing and intentional wage statement violations are significant because they
27 sowed confusion among Plaintiff and, on information and belief, other Class Members with respect to
28 what amounts were owed and when those amounts were due. As a result of the wage statement

1 violations, Defendants have been able to avoid liability, until now, for the wage violations set forth in
2 this Complaint.

3 37. ***Unreimbursed Expenses.*** Plaintiff is informed and believes, and thereon alleges, that
4 Defendants knew or should have known that Plaintiff and Class Members were entitled to receive
5 reimbursement for their work-related business expenses. In violation of the Labor Code and IWC
6 Wage Orders, Plaintiff and Class Members were not reimbursed for all expenses necessarily incurred
7 in the direct discharge of their employment with Defendants.

8 38. Specifically, Defendants knew or should have known that Plaintiff and other Class
9 Members used their personal cell phones for work in direct consequence of the discharge of their
10 duties. Defendants maintained common reimbursement policies but Plaintiff and, on information and
11 belief, other Class Members were not reimbursed for the cost of their work-related personal cell phone
12 use or their monthly cellular and data plans.

13 39. ***Intentional Violations.*** Plaintiff is informed and believes, and thereon alleges, that
14 Defendants, jointly and severally, have acted knowingly, intentionally and with deliberate indifference
15 and conscious disregard to the rights of Plaintiff and Class Members in committing the violations set
16 forth in this Complaint.

17 40. ***Systemic and Continuing Violations.*** Plaintiff is informed and believes, and thereon
18 alleges, that Defendants have engaged in systemic violations of the Labor Code and IWC Wage Orders
19 by creating and maintaining policies, practices and customs that knowingly deny Plaintiff and Class
20 Members of their employment rights. Plaintiff is informed and believes, and thereon alleges, that all
21 violations are ongoing.

22 **CLASS ALLEGATIONS**

23 41. ***Class Period.*** The class period shall be defined to cover, at a minimum, the time period
24 beginning four years before the filing of the original complaint in this matter, through final judgment,
25 plus any and all additional time periods that should be added by way of equitable tolling, statutory
26 tolling, the discovery rule, or any other doctrine that would toll, delay, or stop the running of the usual
27 statutes of limitations (the "Class Period").

28 42. ***Class Definition.*** Plaintiff seeks class certification, pursuant to Code of Civil

1 Procedure section 382 on behalf of All California citizens currently or formerly employed by
2 Defendants as non-exempt employees in California within the Class Period, in addition to exempt
3 employees of Z57, Inc. in California who are included in the “Exempt Wage Statement Subclass” (the
4 “Class” or “Class Members”).

5 43. ***Exempt Wage Statement Subclass Definition.*** Plaintiff also seeks to certify the
6 following subclass: All exempt employees of Z57 in California who received wage statements from
7 January 1, 2019 to May 31, 2019.

8 44. ***Waiting Time Subclass Definition.*** Plaintiff further seeks to certify the following
9 subclass: All Class Members who separated from their employment with Defendants at any time
10 within three years prior to the filing of this action to resolution of this action (the “Subclass” or
11 “Waiting Time Subclass”).

12 45. Plaintiff reserves the right to modify or redefine the Class, establish additional
13 subclasses, or modify or re-define any class or subclass definition as appropriate based on
14 investigation, discovery, and specific theories of liability.

15 46. ***Numerosity/Ascertainability.*** The members of the Class are so numerous that joinder
16 of all Class Members would be impractical. Although the members of the entire Class and Subclass
17 are unknown to Plaintiff at this time, Plaintiff is informed and believes, and thereon alleges, that the
18 class is estimated to be greater than 40 individuals. The identity of the Class Members is currently
19 unknown to Plaintiff; however, the identities of the Class Members are readily ascertainable from
20 Defendants’ employment and payroll records.

21 47. ***Typicality.*** The claims of Plaintiff are typical of the claims of all Class Members in
22 that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner as the Class
23 Members because of Defendants’ failure to comply with the provisions of California wage and hour
24 laws, which entitled Plaintiff Class Members to similar employment rights, pay requirements, and
25 other legal protections. Defendants have committed the same or similar labor violations against
26 Plaintiff and the Class Members. The injuries sustained by Plaintiff are also typical of the injuries
27 sustained by the Class Members because they arise out of and are caused by Defendants’ common
28 unlawful employment and payroll policies, practice, conduct, and customs.

1 48. *Adequacy.* Plaintiff is fully prepared to take all necessary steps to fairly and adequately
2 represent the interests of the Class. Plaintiff's attorneys are ready, willing and able to fully and
3 adequately represent Plaintiff and the Class Members. Plaintiff's attorneys have prosecuted and
4 defended wage and hour class actions in state and federal courts and are committed to vigorously
5 prosecuting this action.

6 49. *Superiority.* The nature of this action makes the use of class action adjudication
7 superior to other methods. A class action will achieve economies of time, effort and expense as
8 compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can
9 be adjudicated in the same manner and at the same time for the entire Class.

10 50. *Public Policy.* Employment and labor law violations in California are violated every
11 day. Current employees are often afraid to assert their rights out of fear of direct or indirect
12 retaliation. Former employees are fearful of bringing actions because they believe their former
13 employers might damage their future endeavors through negative references and through other
14 means. Many California employees simply do not know their employment rights and rely on their
15 employer to get it right. A class action provides the Class Members who are not named in the
16 Complaint with a type of anonymity that allows for the vindication of their rights while also protecting
17 their privacy.

18 51. *Commonality.* There are common questions of law and fact as to the Class which
19 predominate over questions affecting only individual Class Members, thus creating a well-defined
20 community of interest. Plaintiff and Class Members have suffered the common injuries as a result of
21 Defendants' systemic employment policies and practices. Looking to Defendants' employment
22 policies and practices, the Court can adjudicate the lawfulness of those policies and practices on a
23 class-wide basis, according to proof, and issue an award to Plaintiff and Class Members accordingly.
24 Answers to the common questions raised in this Complaint will advance resolution of each individual
25 proposed Class Member's claims.

26 **FIRST CAUSE OF ACTION**
27 **FAILURE TO PAY ALL WAGES**
28 **(AGAINST ALL DEFENDANTS)**

1 52. Plaintiff incorporates in this cause of action all paragraphs outside this section with the
2 same force and effect as if fully set forth herein.

3 53. At all times herein relevant, Defendants had a duty to comply with Labor Code sections
4 204, 1182.12, 1194, 1194.2, 1197, 1198, the applicable IWC Wage Orders, and all applicable local
5 minimum wage ordinances in effect throughout California.

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

10 55. The IWC Wage Orders define “hours worked” as “the time during which an employee
11 is subject to the control of an employer and includes all time the employee is suffered or permitted to
12 work, whether or not required to do so.”

13 56. Labor Code section 1182.12 sets forth the minimum hourly wage that must be paid to
14 all employees in California for all hours worked. Local minimum wage ordinances, including but not
15 limited to San Diego Municipal Code section 39.0107, provide for higher minimum wage rates that
16 must be paid to employees for all hours worked in those locales where each local ordinance is in effect.
17 Labor Code section 1197 affirms that it is unlawful to pay less than the state or local minimum wage,
18 whichever is higher, for any hour of work.

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

24 58. Labor Code section 1194.2 authorizes the recovery of liquidated damages in an amount
25 equal to the wages unlawfully unpaid and interest thereon for unpaid wage violations.

26 59. Labor Code section 1198 prohibits employers from employing for longer hours or less
27 favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise set by
28 the Labor Commissioner.

1 60. As a direct and proximate result of Defendants’ failure to pay Plaintiff and Class
 2 Members in accordance with Labor Code sections 204, 1182.12, 1194, 1194.2, 1197, 1198, the
 3 applicable IWC Wage Orders, and all applicable local minimum wage ordinances in effect throughout
 4 California, Plaintiff and Class Members are entitled to recover the full amount of unpaid wages,
 5 liquidated damages, prejudgment interest, and civil and statutory penalties, along with attorneys’ fees
 6 and costs in amounts that will be established at trial.

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PAY OVERTIME WAGES**

9 **(AGAINST ALL DEFENDANTS)**

10 61. Plaintiff incorporates in this cause of action all paragraphs outside this section with the
 11 same force and effect as if fully set forth herein.

12 62. At all relevant times, Defendants had a duty to comply with Labor Code sections 204,
 13 510, 558, 1194 and 1198 and the applicable IWC Wage Orders.

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

18 64. Labor Code section 510 and the IWC Wage Orders require that employers pay
 19 employees for all overtime hours at a rate of one and one-half times the employee’s regular rate of pay
 20 for hours worked in excess of eight hours in one workday, 40 hours in one workweek, and after the
 21 first eight hours on the seventh consecutive workday in one work week. Labor Code section 510 and
 22 the IWC Wage Orders further require that employers pay employees double their regular rate of pay
 23 for hours work in excess of 12 hours in a workday and after eight hours on the seventh consecutive
 24 workday in one workweek. Labor Code section 510 requires payment of overtime wages at the
 25 “regular rate of pay,” which includes all forms of remuneration earned by the employee, including
 26 wages, commissions, bonuses, and other incentive pay earned by the employee.

27 65. Labor Code section 558, which applies to any provision of the Labor Code or IWC
 28 Wage Orders regulating hours and days of work, entitles an employee to recover from an employer all

1 penalties and amounts sufficient to recover the underpaid wages. Labor Code section 558(a)(3)
2 provides that wages recovered pursuant to this section “shall be paid to the affected employee.”

3 66. Labor Code section 1194 requires that employers pay employees at least the legal
4 overtime rate for all overtime hours worked, notwithstanding any agreement to work for a lesser wage.
5 Labor Code section 1194 further authorizes any employee receiving less than the legal overtime
6 compensation applicable to the employee to recover in a civil action the unpaid balance of the full
7 amount of overtime compensation, along with interest thereon, reasonable attorneys’ fees and costs of
8 suit.

9 67. Labor Code section 1198 prohibits employers from employing for longer hours or less
10 favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise set by
11 the Labor Commissioner.

12 68. As a direct and proximate result of Defendants’ failure to pay overtime to Plaintiff and
13 Class Members in accordance with Labor Code sections 204, 510, 558, 1194 and 1198 and the IWC
14 Wage Orders, Plaintiff and Class Members are entitled to recover the full amount of unpaid wages,
15 prejudgment interest, and civil and statutory penalties, along with attorneys’ fees and costs in amounts
16 that will be established at trial.

17 **THIRD CAUSE OF ACTION**
18 **MEAL PERIOD VIOLATIONS**
19 **(AGAINST ALL DEFENDANTS)**

20 69. Plaintiff incorporates in this cause of action all paragraphs outside this section with the
21 same force and effect as if fully set forth herein.

22 70. At all relevant times, Defendants had a duty to comply with Labor Code sections 226.7,
23 512 and 516 and the applicable IWC Wage Orders.

24 71. Labor Code section 512 and the IWC Wage Orders prohibit an employer from
25 employing any person for a work period of more than 5 hours per day without providing the employee
26 with a meal period of not less than 30 minutes (commencing before the employee’s fifth hour of work),
27 except that if the total work period per day is no more than 6 hours, the meal period may be waived
28 by mutual consent of the employer and employee. A second meal period of not less than 30 minutes

1 is required if an employee works more than 10 hours per day and must begin before the employee's
2 tenth hour of work, except if the total hours worked is no more than 12 hours, the second meal period
3 may be waived by mutual consent of the employer and employee, but only if the first meal period was
4 not waived. For all meal periods, an employer must relieve an employee of all duties during meal
5 periods.

6 72. The applicable IWC Wage Orders state that “[u]nless the employee is relieved of all
7 duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period
8 and counted as time worked.”

9 73. Labor Code section 226.7(b) and the IWC Wage Orders prohibit an employer from
10 requiring any employee to work during a meal period mandated by any California statute, regulation,
11 standard or order. If an employer fails to provide an employee with a meal period in accordance with
12 state law, Labor Code section 226.7(c) and the IWC Wage Orders require that the employer pay the
13 employee one additional hour of pay at the employee’s regular rate of compensation for each workday
14 that the meal period is noncompliant.

15 74. Labor Code section 516 authorizes the IWC to adopt or amend protections relating to
16 meal and rest periods.

17 75. As a direct and proximate result of Defendants’ failure to provide compliant meal
18 periods or meal period premiums to Plaintiff and Class Members in accordance with the IWC Wage
19 Orders and Labor Code sections 226.7, 512 and 516, Plaintiff and Class Members are entitled to
20 recover the full amount of unpaid meal period premiums, prejudgment interest, and civil and statutory
21 penalties, along with attorneys’ fees and costs in amounts that will be established at trial.

22 **FOURTH CAUSE OF ACTION**
23 **REST PERIOD VIOLATIONS**
24 **(AGAINST ALL DEFENDANTS)**

25 76. Plaintiff incorporates in this cause of action all paragraphs outside this section with the
26 same force and effect as if fully set forth herein.

27 77. At all relevant times, Defendants had a duty to comply with Labor Code sections 226.7,
28 and 516 and the applicable IWC Wage Orders.

1 78. Labor Code section 516 authorizes the IWC to adopt or amend protections relating to
2 meal and rest periods. The IWC Wage Orders require employers to authorize and permit all employees
3 to take 10-minute duty-free rest periods for each four hours worked (or major fraction thereof).

4 79. If an employer fails to provide an employee with a rest period in accordance with state
5 law, Labor Code section 226.7(c) and the IWC Wage Orders require that the employer pay the
6 employee one additional hour of pay at the employee's regular rate of compensation for each workday
7 that the rest period is noncompliant.

8 80. As a direct and proximate result of Defendants' failure to provide compliant rest
9 periods or rest period premiums to Plaintiff and Class Members in accordance with the IWC Wage
10 Orders and Labor Code sections 226.7 and 516, Plaintiff and Class Members are entitled to recover
11 the full amount of unpaid rest period premiums, prejudgment interest, and civil and statutory penalties,
12 along with attorneys' fees and costs in amounts that will be established at trial.

13 **FIFTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
15 **(AGAINST ALL DEFENDANTS)**

16 81. Plaintiff incorporates in this cause of action all paragraphs outside this section with the
17 same force and effect as if fully set forth herein.

18 82. At all relevant times, Defendants had a duty to comply with Labor Code section 226.

19 83. Labor Code section 226(a) requires that, semimonthly or at the time of each payment
20 of wages, employers must furnish each employee with an accurate itemized wage statement in writing
21 that accurately shows (1) gross wages earned, (2) total number of hours worked, (3) the number of any
22 piece-rate units earned and all applicable piece rates, (4) all deductions made from wages, (5) net
23 wages earned, (6) the inclusive dates of the pay period, (7) the name and last four digits or employment
24 identification number of the employee, (8) the name and address of the legal entity that is the
25 employer, and (9) all applicable hourly rates in effect and the corresponding number of hours worked
26 at each hourly rate.

27 84. Labor Code section 226(e)(1) authorizes an employee suffering injury as a result of a
28 knowing and intentional failure by an employer to provide an accurate itemized wage statement to

1 recover the greater of all actual damages or \$50 for the initial pay violation and \$100 for each violation
2 in a subsequent pay period, not to exceed an aggregate penalty of \$4,000 per employee, in addition to
3 an award of costs and attorneys' fees.

4 85. As a direct and proximate result of Defendants' knowing and intentional failure to
5 provide timely, accurate itemized wage statements at the time of each payment of wages in accordance
6 with Labor Code section 226, Plaintiff and Class Members are entitled to recover all damages
7 including prejudgment interest, statutory and civil penalties, along with attorneys' fees and costs in
8 amounts that will be established at trial.

9 **SIXTH CAUSE OF ACTION**
10 **WAITING TIME PENALTIES**
11 **(AGAINST ALL DEFENDANTS)**

12 86. Plaintiff incorporates in this cause of action all paragraphs outside this section with the
13 same force and effect as if fully set forth herein.

14 87. At all relevant times, Defendants had a duty to comply with Labor Code sections 201,
15 202 and 203. Defendants failed to comply with these final paycheck requirements with respect to
16 Plaintiff and Class Members.

17 88. Labor Code section 201 requires that if an employer discharges an employee, the wages
18 earned and unpaid at the time of discharge are due and payable immediately. Labor Code section 202
19 requires that if "an employee not having a written contract for a definite period" quits, the employee's
20 wages shall become due and payable not later than 72 hours thereafter, unless the employee has given
21 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or
22 her wages at the time of quitting.

23 89. Labor Code section 203 provides that if an employer willfully fails to pay, without
24 abatement or reduction, any wages of an employee who is discharged or quits, the wages of the
25 employee shall continue as a penalty from the due date thereof at the same rate until paid or until an
26 action therefor is commenced, but that the wages shall not continue for more than 30 days per
27 employee.

28 90. As a direct and proximate result of Defendants' failure to timely pay all wages owed to

1 Plaintiff and Class Members in the Waiting Time Subclass in accordance with Labor Code
2 sections 201, 202 and 203, Plaintiff and Class Members in the Waiting Time Subclass are entitled to
3 recover the full amount waiting time penalties, prejudgment interest, and civil and statutory penalties,
4 along with attorneys' fees and costs in amounts that will be established at trial.

5 **SEVENTH CAUSE OF ACTION**

6 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

7 **(AGAINST ALL DEFENDANTS)**

8 91. Plaintiff incorporates in this cause of action all paragraphs outside this section with the
9 same force and effect as if fully set forth herein.

10 92. At all relevant times, Defendants had a duty to comply with Labor Code sections 2800
11 and 2802. Defendants failed to comply with these indemnification and reimbursement requirements
12 with respect to Plaintiff and Class Members.

13 93. Labor Code section 2800 requires employers to always indemnify employees for losses
14 caused by the employer's want of ordinary care. To the extent Defendants claim that Plaintiff and
15 Class Members failed to request, demand, notify or otherwise seek reimbursement for their expenses
16 and losses, Defendants were obligated to nevertheless indemnify Plaintiff and Class Members due to
17 their own negligence.

18 94. Labor Code section 2802(a) requires that employers indemnify and reimburse
19 employees for all business expenses, which are defined as all necessary expenditures or losses incurred
20 by the employee in direct consequence of the discharge of the employee's duties or otherwise incurred
21 based on the employee's obedience to the employer's directions. Labor Code section 2802(b)
22 authorizes employees to recover in a court action interest which shall accrue from the date on which
23 the employee incurred the necessary expenditure or loss. Labor Code section 2802(c) authorizes
24 employees who to enforce their right to reimbursements under Labor Code section 2802 to also
25 recover attorneys' fees and costs.

26 95. As a direct and proximate result of Defendants' failure to indemnify and reimburse
27 Plaintiff and Class Members for all business and work-related costs, expenditures, losses and expenses
28 in accordance with Labor Code sections 2800 and 2802, Plaintiff and Class Members are entitled to

1 recover the full unreimbursed balance of reimbursements, expenditures and losses, prejudgment
2 interest, and civil and statutory penalties, along with attorneys' fees and costs in amounts that will be
3 established at trial.

4 **EIGHTH CAUSE OF ACTION**
5 **UNFAIR BUSINESS PRACTICES**
6 **(AGAINST ALL DEFENDANTS)**

7 96. Plaintiff incorporates in this cause of action all paragraphs outside this section with the
8 same force and effect as if fully set forth herein.

9 97. At all relevant times, Defendants have engaged in unlawful and unfair business
10 practices in violation of Business and Professions Code section 17200 *et seq.* through common and
11 systemic employment policies and practices by failing to provide the employment protections, wages,
12 premiums, reimbursements and other funds and property owed to Plaintiff and Class Members, as
13 alleged throughout this Complaint, in violation of the Labor Code and IWC Wage Orders.

14 98. Defendants' business practices deprived Plaintiff and Class Members of compensation,
15 reimbursements and other funds to which they are legally entitled, constitutes unlawful and unfair
16 fraudulent business practices, and provides an unfair advantage to Defendants over its competitors
17 who have been or are currently in honest compliance with applicable wage and hour and employment
18 laws. Plaintiff is informed, believes, and based thereon alleges, that Defendants are unjustly enriched
19 as a result of their unlawful and unfair business practices.

20 99. Because Plaintiff is a victim of Defendants' unfair and unlawful conduct, as alleged in
21 throughout this Complaint, Plaintiff, as an individual and on behalf of the Class Members, seeks
22 restitution of all monies and property withheld, acquired or converted by Defendants pursuant to
23 Business and Professions Code sections 17202, 17203, 17204, and 17208.

24 100. Plaintiff and Class Members are entitled to an injunction, restitution, and other
25 equitable relief against such unlawful practices to return all funds over which Plaintiff and Class
26 Members have an ownership interest and to prevent future damage pursuant to Business and
27 Professions Code section 17200 *et seq.*

28 101. Plaintiff was compelled to retain the services of counsel to file this court action to

1 protect their interests and those of the Class Members and to enforce important employment rights
2 affecting the public interest. Plaintiff has thereby incurred attorneys' fees and costs, which Plaintiff
3 is entitled to recover on all causes of action under Code of Civil Procedure section 1021.5.

4 **NINTH CAUSE OF ACTION**

5 **ENFORCEMENT OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**
6 **(AGAINST ALL DEFENDANTS)**

7 102. Plaintiff incorporates in this cause of action all paragraphs outside this section with the
8 same force and effect as if fully set forth herein. Specifically, Plaintiff incorporates all Labor Code
9 violations and pleads all associated civil penalties recoverable for each violation set forth in this
10 Complaint.

11 103. Plaintiff has satisfied Labor Code section 2699.3's pre-filing requirements by notifying
12 the LWDA via its website and Defendants via certified mail (with a courtesy copy via email) of the
13 specific sections of the Labor Code Defendants violated, including the facts and theories to support
14 the alleged violations. Plaintiff paid the associated filing fee to the LWDA. Now that 65 days have
15 passed from Plaintiff's notifying of the LWDA of these allegations and violations, and the LWDA has
16 not notified Plaintiff's representative by certified mail of its intent to investigate, Plaintiff has
17 exhausted her administrative requirements for bringing a civil action under the PAGA.

18 104. Plaintiff is an "aggrieved employee" within the meaning of Labor Code section
19 2699(a) and (c) because she is a person who was employed by Defendants and against whom one or
20 more of the alleged violations was committed.

21 105. As set forth in this Complaint, Defendants have committed a series of Labor Code
22 violations against Plaintiff and Class Members who worked for Defendants on or after July 1, 2018
23 (the "aggrieved employees") and are liable for civil penalties and other relief provided by the PAGA
24 for those violations committed within this one-year statutory period (the "PAGA Period").

25 106. For all provisions of the Labor Code except those for which a civil penalty is
26 specifically provided, Labor Code section 2699(f) imposes upon Defendants a civil penalty of \$100 for
27 each aggrieved employee per pay period for each initial Labor Code violation and \$200 for each
28 aggrieved employee per pay period for each subsequent Labor Code violation.

1 107. Defendants' conduct with respect to Plaintiff and the other aggrieved employees
2 violates numerous sections of the Labor Code including, but not limited to, the following:

3 108. ***Unpaid Wage Violations.*** Defendants have violated and are liable pursuant to Labor
4 Code sections 201 to 204, 204b, 210, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 for
5 failing to timely pay all earned wages owed for all hours worked at the lawful rate of pay to Plaintiff
6 and the aggrieved employees.

7 109. ***Meal and Rest Period Violations.*** Defendants have violated and are liable pursuant to
8 Labor Code sections 226.7, 512 and 558 for failing to provide and permit meal and rest periods and
9 failing to pay all premiums wages owed in lieu of such breaks to Plaintiff and the aggrieved employees.

10 110. ***Wage Statement Violations.*** Defendants have violated and are liable pursuant to Labor
11 Code sections 226 and 226.3 for failing to provide accurate and complete itemized wage statements
12 to Plaintiff and the aggrieved employees.

13 111. ***Recordkeeping Violations.*** Defendants have violated and are liable pursuant to Labor
14 Code sections 1174 and 1174.5 for failing to accurately track or keep accurate payroll records showing
15 all wages and hours worked by Plaintiff and the other aggrieved employees.

16 112. ***Reimbursement Violations.*** Defendants have violated and are liable pursuant to Labor
17 Code sections 2800 and 2802 for failing to reimburse all necessary business expenses to Plaintiff and
18 the aggrieved employees.

19 113. ***Violation of the California Fair Pay Act.*** Defendants have violated and are liable
20 pursuant to Labor Code section 1197.5, known as the California Fair Pay Act, which prohibits an
21 employer from prohibiting an employee from disclosing, discussing or inquiring about employee
22 wages and earnings (or encouraging or aiding others to do the same). Plaintiff alleges that Defendants
23 maintained pay secrecy policies and practices—namely in the form of “pay secrecy” or compensation
24 confidentiality requirements—regarding the pay and earnings of Plaintiff and other aggrieved
25 employees in violation of Labor Code section 1197.5.

26 114. Plaintiff was compelled to retain the services of counsel to file this enforcement claim
27 under the PAGA. Plaintiff has thereby incurred attorneys' fees and costs, which Plaintiff is entitled
28 to recover pursuant to Labor Code section 2699(g).

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2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff prays for judgment individually and for all others on whose behalf
4 this suit is brought against Defendants, jointly and severally, as follows:

- 5 1. For an order certifying the proposed Class and Subclasses;
- 6 2. For an order appointing Plaintiff as a class representative and as a PAGA
7 representative;
- 8 3. For an order appointing Counsel for Plaintiff as class counsel;
- 9 4. For an award of all damages, monetary relief, wages, premiums, reimbursements, and
10 other sums due to Plaintiffs and Class Members by virtue of their claims;
- 11 5. For an award of waiting time penalties pursuant to Labor Code § 203;
- 12 6. For an award of liquidated damages pursuant to Labor Code § 1194.2;
- 13 7. For an award of civil penalties (and all recoverable wages, damages, waiting time
14 penalties, and other sums) for each Labor Code violation on behalf of Plaintiff and the
15 aggrieved employees pursuant to Labor Code §§ 210, 226.3, 558, 1174.5, 1194.2,
16 1197.1, and 2699(f).
- 17 8. For restitution to Plaintiff and Class Members of all money and property unlawfully
18 acquired by Defendants through unfair or unlawful business practices pursuant to
19 Business and Professions Code § 17200 *et seq.*;
- 20 9. For an award of prejudgment interest on all sums recovered pursuant to Labor Code
21 § 218.6 and Civil Code §§ 3287 and 3289;
- 22 10. For an order for post judgment interest on all amounts awarded to Plaintiff and Class
23 Members as provided by law;
- 24 11. For recovery attorneys' fees and costs provided by Labor Code §§ 226, 1194, 2802,
25 2699(g), and Code of Civil Procedure § 1021.5; and
- 26 12. For such other and further relief as the Court deems just and proper.

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1 Dated: January 23, 2020

2 FERRARO EMPLOYMENT LAW, INC.
3 &
4 LAW OFFICE OF DANIEL J. HYUN

5 

6 NICHOLAS J. FERRARO, ESQ.

7 DANIEL J. HYUN, ESQ.

8 Attorneys for Plaintiff Stephanie Rojas

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