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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN DIEGO**

11 TAYLRE CHOWNING, as an individual and
12 on behalf of all others similarly situated;
13 THOMAS ARMALY, as an individual and on
14 behalf of all others similarly situated,

15 Plaintiffs,

16 v.

17 FREEDOM MORTGAGE CORPORATION,
18 a corporation; RYAN PERUSSI, an individual;
19 and DOES 1 through 50,

20 Defendants.

Case No. 37-2022-00005613-CU-OE-CTL

CLASS ACTION

CLASS ACTION COMPLAINT

1. Failure to Pay All Minimum Wages
2. Failure to Pay All Overtime Wages
3. Meal Period Violations
4. Rest Period Violations
5. Untimely Payment of Wages
6. Wage Statement Violations
7. Failure to Provide Paid Sick Leave
8. Waiting Time Penalties
9. Failure to Reimburse Business Expenses
10. Violations of the Unfair Competition Law

1 Plaintiffs TAYLRE CHOWNING and THOMAS ARMALY (“Plaintiffs”), as
2 individuals and on behalf of all others similarly situated, bring this action against Defendants
3 FREEDOM MORTGAGE CORPORATION, RYAN PERUSSI, and DOES 1 through 50
4 (collectively, “Defendants”), alleging as follows:

5 INTRODUCTION

6 1. This is a class action filed for wage and hour violations of the California Labor
7 Code. Defendants maintained an unlawful practice requiring employees work off-the-clock
8 during uncompensated meal periods, resulting in unpaid minimum wages and overtime for those
9 hours worked. Defendants failed to pay overtime, meal and rest period premiums, and paid sick
10 leave at the required regular rate calculation, instead paying those wages based on straight time
11 hourly rates (and multiples). Defendants also maintained unlawful meal and rest period policies
12 that rendered the statutory breaks late, short, missed, or interrupted, without payment of the
13 corresponding meal or rest period premium. Defendants failed to reimburse employee expenses.
14 As a result, Defendants failed to timely pay Plaintiffs and Class Members each pay period on
15 paydays and upon separation of employment, failed to provide accurate itemized wage
16 statements, and thus are liable for waiting time and other statutory penalties.

17 2. Defendants’ employment policies and practices and payroll administration
18 enabled and facilitated these violations on a company-wide basis with respect to Class Members.

19 JURISDICTION & VENUE

20 3. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of
21 the California Constitution.

22 4. Venue as to each defendant is proper in this judicial district under Code of Civil
23 Procedure sections 395 and 395.5 because Defendants conduct business in this county, employed
24 putative class members in this county, and committed some of the violations in this county.

25 PARTIES

26 **A. Plaintiffs Taylre Chowning and Thomas Armaly**

27 5. Plaintiff Taylre Chowning is a California citizen over 18 years of age who worked
28 for Defendants in San Diego County as an hourly, non-exempt employee.

1 6. Plaintiff Thomas Armaly is a California citizen over 18 years of age who worked
2 for Defendants in San Diego County as an hourly, non-exempt employee.

3 **B. Defendants**

4 7. Plaintiffs are informed, believe, and allege that Defendant FREEDOM
5 MORTGAGE CORPORATION is a corporation registered to do business in the State of
6 California, doing business and employing labor throughout San Diego County.

7 8. Plaintiffs are informed, believe, and allege that Defendant RYAN PERUSSI is a
8 California citizen and Vice President of Regional Sales for Freedom Mortgage Corporation, with
9 his home residence in San Diego County. Defendant PERUSSI controlled the wages, hours, and
10 working conditions of the putative Class Members. (*See, e.g., Atempa v. Pedrazzani* (2018) 27
11 Cal. App. 5th 809.)

12 9. The true names and capacities, whether individual, corporate, or otherwise, of the
13 parties sued as DOES 1 through 50, are presently unknown to Plaintiffs, who sue them by such
14 fictitious names under Code of Civil Procedure section 474. Plaintiffs are informed, believe, and
15 allege that each of the factiously-named defendants is responsible in some manner for the acts
16 and omissions alleged herein. Plaintiffs may later seek leave to amend this Complaint to reflect
17 their true names and capacities.

18 10. Plaintiffs are informed, believe, and allege that all defendants in this action are
19 employers and/or joint employers and part of an integrated employer enterprise, as each
20 defendant exercises control over the wages, hours, and working conditions of Plaintiffs and the
21 aggrieved employees, suffers and permits them to work, and engages the workforce creating a
22 common law employment relationship.

23 11. Additionally, all defendants have common ownership, common management,
24 interrelationship of operations, and centralized control over labor relations and are therefore part
25 of an integrated enterprise and thus jointly and severally responsible for the acts and omissions
26 alleged herein.

27 12. Plaintiffs are informed, believe, and allege that each defendant acted in all
28 respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-

1 conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other
2 co-defendants, such that the acts and omissions of each defendant are legally attributable to all
3 others.

4 GENERAL ALLEGATIONS

5 13. Defendants failed to pay Class Members for all hours worked at the applicable
6 minimum, regular, overtime, and/or double time hourly rate, because of Defendants' policy and
7 practice of requiring employees to perform work duties during unpaid meal periods. Defendants'
8 Employee Handbook, p. 36, affirms the ongoing practice that "departments and phones still need
9 to be covered during meal breaks." Plaintiffs and Class Members covered departments and
10 phones during uncompensated meal breaks. The Employee Handbook also required Class
11 Members to "check with your supervisor or manager for your assigned meal break[.]" but meal
12 periods were not scheduled or coordinated. Defendants' have failed to pay for all hours worked
13 and are liable accordingly for unpaid minimum wage, liquidated damages, and any
14 corresponding overtime wages owed.

15 14. When Defendants paid overtime to Plaintiff and other Class Members,
16 Defendants failed to pay overtime using a correct calculation of the regular rate of pay. Plaintiff
17 and Class Members regularly worked overtime and were paid non-excludable earnings, such as
18 sales commissions, in the same pay period. In those pay periods, however, Defendants paid
19 Class Members based on a multiple of the *straight time hourly rate*, rather than "at the rate of no
20 less than one and one-half times the regular rate of pay for an employee[.]" or "at the rate of no
21 less than twice the regular rate of pay for an employee" for any applicable double time hours, as
22 required by Labor Code section 510 and the IWC Wage Orders. An illustrative example of the
23 regular rate of pay violation is found on Plaintiff CHOWNING's 11/07/2021 to 11/20/2022 wage
24 statement (pay date: 11/26/2021), revealing an overtime rate of \$28.8462 despite earning \$12,500
25 in commissions. The total damages are evident from Defendants' wage statements, pay records,
26 and earning reports.

27 15. Defendants failed to consistently provide timely, off-duty 30-minute meal periods
28 to Class Members within the first five hours of work, and timely second off-duty 30-minute meal

1 periods to the extent they worked shifts of 10 hours or more, in violation of Labor Code sections
2 226.7, 512 and section 11 of the applicable IWC Wage Orders. (*Donohue v. AMN Services, LLC*
3 (2021) 11 Cal. 5th 58, 61 [“[T]ime records showing noncompliant meal periods raise a rebuttable
4 presumption of meal period violations, including at the summary judgment stage”].) This was
5 the result of the aforementioned practice which resulted in late, short, interrupted and missed
6 meal periods.

7 16. When Defendants did not provide fully compliant meal periods, Defendants failed
8 to pay Plaintiffs and Class Members a meal period premium at the regular rate of compensation,
9 in violation of Labor Code section 226.7. (*See e.g., Ferra v. Loews Hollywood Hotel, LLC* (2021)
10 11 Cal. 5th 858, 863 [“We hold that the terms are synonymous: “regular rate of compensation”
11 under section 226.7(c), like “regular rate of pay” under section 510(a), encompasses all
12 nondiscretionary payments, not just hourly wages.”]) Akin to Defendants’ overtime
13 underpayments, Defendants did not include commission earnings or other forms of non-
14 excludable remuneration in the “regular rate of compensation” at which meal period premiums
15 must be paid. Defendants’ policy and practice of not paying all meal period premiums at the
16 lawful rate is a matter of common corporate policy and payroll administration such that it applies
17 and affected all other Class Members and are evident from the time records and wage statements
18 maintained by Defendants.

19 17. Moreover, Defendants failed to authorize or *permit* ten-minute rest periods for
20 every four hours of work or major fraction thereof as required by Labor Code section 226.7 and
21 516 and section 12 of the applicable IWC Wage Order. Defendants’ written policy and corporate
22 practice effectively required Class Members to remain on site and on duty during rest periods to
23 meet work demands, respond to emails, and telephone calls, and perform other tasks, such that
24 rest periods were not free from all work responsibilities. Defendants’ written policy required
25 employees “notify and coordinate the times of each work break and meal period with their
26 supervisory or manager[,]” but Class Members instead were authorized to take breaks and
27 routinely worked through them.

28

1 18. When Defendants did not provide a fully compliant rest period to Plaintiffs or
2 other Class Members, Defendants failed to pay Plaintiffs and other Class Members a rest period
3 premium at the lawful “regular rate of compensation” in violation of Labor Code section 226.7
4 based on a failure to include all forms of non-excludable remuneration, like sales commissions,
5 in the regular rate of compensation. Plaintiffs are informed, believe, and allege that Defendants
6 had a policy of not paying rest period premiums. To the extent Defendants paid any premiums,
7 Plaintiffs allege that they were underpaid because they were paid at the straight time rate and not
8 the regular rate of compensation. (*Loews Hollywood Hotel*, 11 Cal. 5th at 863.)

9 19. In pay periods where Defendants provided Plaintiff and other Class Members
10 with remuneration in addition to their respective base hourly rate for hours worked (such as sales
11 commissions)—excluding any forms of pay subject to any applicable statutory exclusions from
12 the “regular rate”—Defendants failed to properly calculate and pay paid sick leave at the
13 appropriate regular rate of pay, in violation of Labor Code §§ 246, 248.1, and 248.2.

14 20. Defendants’ workforce worked from home for a significant part of the Class
15 Period, but Defendants did not maintain a lawful reimbursement policy, in violation of Labor
16 Code section 2802. Class Members incurred “work from home costs” associated with their use
17 of personal internet, data, cell phones, utilities, and home office supplies. In direct consequence
18 of their job duties, Plaintiffs and the Class Members unavoidably and necessarily incurred losses,
19 expenditures, costs and expenses that Defendants did not reimburse as a matter of policy and
20 practice.

21 21. With respect to the unpaid wages and premiums owed to Plaintiffs and Class
22 Members, Defendants failed to pay those wages on time each pay period or upon separation of
23 employment. Because Defendants did not pay Plaintiffs and the Class for all wages/premiums
24 owed each pay period their employment (i.e., minimum wage, overtime, sick leave pay, meal
25 and rest period premiums, commission earnings), Defendants failed to timely pay all wages owed
26 on time each pay day or upon separation of employment (or within 72 hours thereof, as
27 applicable), in violation of Labor Code sections 201 through 203 (waiting time) and 204 and
28 204b (paydays).

1 22. Defendants equally failed in their affirmative obligation to provide accurate
2 itemized wage statements each pay period to Plaintiffs and Class Members. Defendants issued
3 wage statements to Plaintiffs and, on information and belief, other Class Members, which contain
4 at least several types of violations. First, on each wage statement furnished, Defendants failed
5 to accurately state the “gross wages earned” and “net wages earned” in violation of Labor Code
6 § 226(a)(1) and (5), as Plaintiffs and Class Members earned regular and overtime wages, but
7 were underpaid due to the regular rate violations and the off-the-clock hours worked, and were
8 deprived of meal and rest period premiums payments at the lawful rate, resulting in an inaccurate
9 itemization of gross and net wages earned on those wage statements. Second, on each wage
10 statement furnished to Plaintiffs and, on information and belief, the Class Members, Defendants
11 failed to accurately state “all applicable hourly rates in effect during the pay period and the
12 corresponding number of hours worked at each hourly rate by the employee” in violation of
13 Labor Code § 226(a)(9), as the wage statements issued to Plaintiffs and Class Members do not
14 accurately list the actual hours worked by employees (due to off the clock work), but instead list
15 deflated hours and wages, and list the incorrect hourly rates for paid sick leave, overtime, meal
16 and rest period premiums, as such amounts were not paid at the lawful regular rate of pay. Third,
17 Defendants inaccurately listed total hours worked during the pay period in violation of Labor
18 Code § 226(a)(2), as Plaintiffs and Class Members worked off-the-clock during times
19 uncompensated meal periods.

20 23. Defendants’ wage statement issues described above rendered the wage statements
21 inaccurate and confusing to Plaintiffs and Class Members, concealing the underpayments and
22 presenting a false portrayal of accuracy on the wage statements relied upon by Plaintiffs and
23 Class Members as the sole documentary evidence of their respective earnings. Plaintiffs and, on
24 information and belief, Class Members were misinformed and misled by the wage statements
25 wages, hours, rates, and earnings. Defendants’ wage statement violations were knowing and
26 intentional as a matter of law with respect to Plaintiffs and Class Members given that the legal
27 obligation was not disputed, the wage statement and wage laws are clear and unambiguous as
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1 written, and because Defendants nevertheless failed to comply despite the means and ability to
2 do so.

3 24. Because of the violations set forth in this Complaint, including Defendants'
4 failure to accurately maintain records of pay for all hours worked at the appropriate lawful rates
5 of pay (*i.e.*, unrecorded off-the-clock hours), Defendants violated Labor Code section 1174 and
6 the IWC Wage Orders by failing to maintain records showing accurate daily hours worked at the
7 corresponding wage rate, and the wages paid to each employee.

8 25. Plaintiffs are informed, believe, and allege that Defendants' acts and omissions
9 have knowingly and intentionally caused harm to Plaintiffs and the Class. Plaintiffs are
10 informed, believe, and allege that Defendants have engaged in systemic violations of the Labor
11 Code and IWC Wage Orders by maintaining practices, policies, and customs that are inconsistent
12 with their obligations under California law.

13 **CLASS ACTION ALLEGATIONS**

14 26. ***Class Definition.*** The named individual Plaintiffs seek class certification under
15 California Code of Civil Procedure section 382. Plaintiffs propose the following class:

16 a. All individuals currently or formerly employed by Defendants in the State
17 of California as hourly non-exempt employees at any time from **February**
18 **10, 2018** through the date of trial in this action (the "Class" or "Class
19 Members" and the "Class Period").

20 27. Further, Plaintiff proposes the following subclasses:

21 a. All Class Members who separated from employment with Defendants at
22 any time from **February 10, 2019** through the time of trial in this action
23 ("Waiting Time Subclass").

24 b. All Class Members who received a wage statement from Defendants at
25 any time from **February 10, 2021** through the time of trial in this action
26 ("Wage Statement Subclass").

27 28. Plaintiffs reserve the right to amend or modify the class definitions and to
28 establish additional classes and subclasses. California Rule of Court 3.765(b).

1 29. **Numerosity.** The members of the Class are so numerous that joinder of all
2 individuals is impracticable. The identity of the Class Members is readily ascertainable by
3 review of Defendants’ employment and payroll records. Plaintiffs are informed, believe, and
4 allege there are more than 40 Class Members.

5 30. **Adequacy of Representation.** Plaintiffs are adequate class representatives.
6 Plaintiffs will take all necessary steps to adequately and fairly represent and protect the interest
7 of the Class. Plaintiffs are represented by attorneys who have substantial experience prosecuting
8 and resolving wage-and-hour class actions in California state and federal courts, including as
9 both plaintiff and defense counsel.

10 31. **Manageability.** This class action is manageable because the liability and damages
11 to Class Members can be ascertained by review of corporate and employer timekeeping and
12 payroll records, along with other evidence that Defendants maintained and are required to
13 maintain under the California Labor Code, IWC Wage Orders and federal law. This class action
14 is manageable because the contact information and identity of percipient witnesses—namely,
15 Defendants’ employees (the putative class members)—is readily maintained by Defendants.

16 32. **Superiority.** A class action is superior to other means for adjudication of the
17 claims of the Class and is beneficial and efficient for the parties and the Court. Class treatment
18 will allow for the common issues to be resolved in a single forum, simultaneously and without
19 duplication of effort and expense.

20 33. **Commonality.** Common questions of law and fact and a community of interest
21 exists amongst Plaintiffs and the Class. These common issues arise from the employment
22 relationship with Defendants and predominate over any individual issues.

23 34. **Typicality.** Plaintiffs’ claims are typical of the claims of the other Class Members.
24 Plaintiffs and Class Members were subject to the same policies and practices of Defendants,
25 which resulted in losses to Plaintiffs and Class Members.

26 35. Proof of common unlawful business practices, which Plaintiffs experienced and
27 are adequate representatives of, will establish the right of the Class to recover on the causes of
28 action alleged herein.

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY ALL MINIMUM WAGES**

3 **Labor Code §§ 1194 and 1194.2**

4 **(ALL CLAIMS ALLEGED AGAINST ALL DEFENDANTS)**

5 36. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth
6 herein.

7 37. Defendants willfully failed in their affirmative obligation to pay Plaintiffs and
8 Class Members at least the lawful minimum wage for each hour worked in violation of Labor
9 Code sections 1182.12, 1194, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and
10 Days of Work” and “Minimum Wages” sections of the applicable orders), including payment at
11 the lawful local and county minimum wage ordinances in effect.

12 38. As alleged, Defendants knew or should have known Class Members worked off-
13 the-clock during uncompensated meal periods, resulting in unpaid hours worked and
14 corresponding liability for minimum wages and overtime.

15 39. Defendants’ unlawful acts and omissions deprived Plaintiffs and the Class of
16 minimum, regular and overtime wages in amounts to be determined at trial. Plaintiffs and the
17 Class are entitled to recover to the full amount of the unpaid wages, plus liquidated damages in
18 an amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest,
19 attorneys’ fees, and costs to the extent permitted by law, including under Labor Code sections
20 1194 and 1194.2.

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PAY ALL OVERTIME WAGES**

23 **Labor Code §§ 510 and 1194**

24 40. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth
25 herein.

26 41. Defendants failed in their affirmative obligation to pay Plaintiffs and Class
27 Members no less than one and one-half times their respective “regular rate of pay” for all hours
28 worked in excess of eight hours in one day, 40 hours in one week, or the first eight hours worked

1 on the seventh day of work in any one workweek, and no less than twice their respective “regular
2 rate of pay” for all hours over 12 hours in one day and any work in excess of eight hours on any
3 seventh day of a workweek in violation of Labor Code sections 510, 1194, and 1198 and the
4 IWC Wage Orders (the “Hours and Days of Work” sections of the applicable orders).

5 42. Defendants failed to pay overtime to Class Members at the required 1.5x multiple
6 of the regular rate of pay or 2.0x multiple of the regular rate of pay for double time hours. This
7 was due to Defendants’ illegal policy and practice of including commissions and bonuses in the
8 regular rate of pay.

9 43. Defendants’ unlawful acts and omissions deprived Plaintiffs and the Class of
10 overtime wages in amounts to be determined at trial. Plaintiffs and the Class are entitled to
11 recover to the full amount of the unpaid overtime wages, in addition to interest, attorneys’ fees,
12 and costs to the extent permitted by law, including under Labor Code section 1194.

13 **THIRD CAUSE OF ACTION**

14 **MEAL PERIOD VIOLATIONS**

15 **Labor Code §§ 226.7 and 512**

16 44. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth
17 herein.

18 45. Defendants willfully failed in their affirmative obligation to consistently provide
19 Plaintiffs and Class Members compliant, duty-free meal periods of not less than 30 minutes
20 beginning before the fifth hour of hour for each work period of more than five hours per day and
21 a second on-duty meal period of not less than 30 minutes beginning before the tenth hour of hour
22 of work in violation of Labor Code sections 226.7 and 512 and the IWC Wage Orders (the “Meal
23 Periods” sections of the applicable orders). This was a direct result of Defendants’ policy and
24 practice of requiring Plaintiffs and Class Members to work without pay during uncompensated
25 meal periods, rendering the meal periods missed, late, short, and/or interrupted.

26 46. Further, Defendants willfully failed in their affirmative obligation to consistently
27 pay Plaintiffs and Class Members one additional hour of pay at the respective regular rate of
28 compensation for each workday that a fully compliant meal period was not provided, in violation

1 of Labor Code sections 226.7, 512, and 1198 and the IWC Wage Orders (the “Meal Periods”
2 sections of the applicable orders). This was a direct result of Defendants’ failure to include
3 commission, bonus, and other non-excludable earnings in the regular rate for purposes of meal
4 period computation for Plaintiffs and Class Members.

5 47. Defendants’ unlawful acts and omissions deprived Plaintiffs and the Class of meal
6 periods and meal period premiums in amounts to be determined at trial. Plaintiffs and the Class
7 are entitled to recover to the full amount of the unpaid premiums, in addition to interest,
8 attorneys’ fees, and costs to the extent permitted by law, including under Code of Civil Procedure
9 section 1021.5.

10 **FOURTH CAUSE OF ACTION**

11 **REST PERIOD VIOLATIONS**

12 **Labor Code §§ 226.7 and 516**

13 48. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth
14 herein.

15 49. Defendants willfully failed in their affirmative obligation to consistently
16 authorize and permit Plaintiffs and Class Members to receive compliant, duty-free rest periods
17 of not less than ten (10) minutes for every four hours worked (or major fraction thereof) in
18 violation of Labor Code sections 226.7, 516, and 1198 and the IWC Wage Orders (the “Rest
19 Periods” sections of the applicable orders). This was a direct result of Defendants’ policies and
20 practices requiring what amounted to effectively working rest periods.

21 50. Further, Defendants willfully failed in their affirmative obligation to consistently
22 pay Plaintiffs and Class Members one additional hour of pay at the respective regular rate of
23 compensation for each workday that a fully compliant rest period was not provided, in violation
24 of Labor Code sections 226.7 and 1198 and the IWC Wage Orders.

25 51. Defendants’ unlawful acts and omissions deprived Plaintiffs and the Class of rest
26 periods and rest period premiums in amounts to be determined at trial. Plaintiffs and the Class
27 are entitled to recover to the full amount of the unpaid premiums, in addition to interest,
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1 attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure
2 section 1021.5.

3 **FIFTH CAUSE OF ACTION**

4 **UNTIMELY PAYMENT OF WAGES**

5 **Labor Code §§ 204, 204b and 210**

6 52. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth
7 herein.

8 53. Defendants willfully failed in their affirmative obligation to timely pay all wages
9 and premiums earned by Plaintiffs and Class Members twice during each calendar month on days
10 designated in advance by the employer as regular paydays (for employees paid on a non-weekly
11 basis) and on the regularly-scheduled weekly payday weekly employees, if any, in violation of
12 Labor Code sections 204 and 204b and the IWC Wage Orders (the "Minimum Wages" sections
13 of the applicable orders).

14 54. Defendants' unlawful acts and omissions deprived Plaintiffs and the Class of
15 timely wages in amounts to be determined at trial. Plaintiffs and the Class are entitled to recover
16 to the full amount of the unpaid wages, in addition to a statutory penalty in the amount of \$100
17 for the initial violation for each failure to pay each employee and \$200 for all subsequent
18 violations and for all willful or intentional violations for each failure to pay each employee, plus
19 25 percent of the amount unlawfully withheld under provided in Labor Code section 210, in
20 addition to interest, attorneys' fees, and costs to the extent permitted by law.

21 **SIXTH CAUSE OF ACTION**

22 **WAGE STATEMENT VIOLATIONS**

23 **Labor Code § 226**

24 55. Plaintiffs incorporate all outside paragraphs of this Complaint as if set forth
25 herein.

26 56. Defendants knowingly and intentionally failed in their affirmative obligation
27 provide accurate itemized wage statements to Plaintiffs and Class Members in violation of Labor
28 Code section 226(a).

1 (1) Paid sick time for nonexempt employees shall be calculated in the
2 same manner as the regular rate of pay for the workweek in which the
3 employee uses paid sick time, whether or not the employee actually
4 works overtime in that workweek.

5 (2) Paid sick time for nonexempt employees shall be calculated by
6 dividing the employee's total wages, not including overtime premium
7 pay, by the employee's total hours worked in the full pay periods of the
8 prior 90 days of employment.

9 (3) Paid sick time for exempt employees shall be calculated in the same
10 manner as the employer calculates wages for other forms of paid leave
11 time.

12 63. Defendants failed to pay Plaintiff and Class Members paid sick leave at one of
13 the lawful rates set forth in the statute because Defendants failed to include in their calculation
14 the additional remuneration received by Plaintiff and the Class Members.

15 64. Furthermore, Defendants knowingly and intentionally failed in their affirmative
16 obligation to provide and pay Covid-19 Supplemental Sick Leave to Class Members in violation
17 of Labor Code sections 246, 247.5, 248.1, and 248.2.

18 65. Labor Code section 248.1 requires Covid-19 Supplemental Paid Sick Leave to be
19 paid at the *highest of* the following methods:

- 20 (1) the regular rate of pay for the workweek in which leave is taken
- 21 (2) state minimum wage; or
- 22 (3) local ordinance minimum wage

23 66. Labor Code section 248.2 requires Covid-19 Supplemental Paid Sick Leave to be
24 paid at the *highest of* the following methods:

- 25 (1) the regular rate of pay for the workweek in which leave is taken
- 26 (2) state minimum wage
- 27 (3) local ordinance minimum wage; or
- 28 (4) average hourly pay for preceding 90 days (excluding overtime pay).

1 fees, and costs to the extent permitted by law, including under Code of Civil Procedure section
2 1021.5.

3 **PRAYER FOR RELIEF**

4 Plaintiffs pray for judgment as follows:

- 5 a. For certification of this action as a class action;
- 6 b. For appointment of Plaintiffs as the representatives of the Class;
- 7 c. For appointment of counsel for Plaintiffs as Class Counsel;
- 8 d. For injunctive relief;
- 9 e. For compensatory damages in amount according to proof;
- 10 f. For all recoverable pre- and post-judgment interest;
- 11 g. For recovery of all statutory penalties and liquidated damages;
- 12 h. For disgorgement of all amounts wrongfully obtained;
- 13 i. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
14 permitted by law on each cause of action, including (without limitation) under
15 California Labor Code sections 218.5, 226, 1194, 2802, and Code of Civil
16 Procedure section 1021.5;
- 17 j. For such other relief the Court deems just and proper.

18
19 Respectfully submitted,

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21 Dated: February 10, 2022

Ferraro Vega Employment Lawyers, Inc.

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24 _____
25 Nicholas J. Ferraro
26 Attorneys for Plaintiffs
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