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9 ALICIA RANILLO

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SONOMA

12 ALICIA RANILLO, individually and on
13 behalf of all others similarly situated,

14 Plaintiffs,

15 v.

16 ENSIGN SONOMA LLC, a California
17 limited liability company, and DOE 1
18 through and including DOE 100,

19 Defendants.

Case No. SCV258369

SECOND AMENDED COMPLAINT

1. Cal. Lab. Code §§ 510 and 1194; Failure to Pay Proper Minimum Wages and Overtime Compensation
2. Cal. Lab. Code § 203, Continuing Wages
3. Cal Lab. Code §§ 226.7 and 512; Wage Order Number 5, Meal Period Violations
4. Cal Lab. Code § 226.7 and 512; Wage Order Number 5, Rest Period Violations
5. Cal. Lab. Code § 204 - Late Payment of Overtime Wages
6. Cal. Lab. Code § 226 – Failure to Provide Accurate Itemized Wage Statements
7. Cal. Bus. & Prof. Code section 17200 *et seq.*— Restitution and Injunction
8. Private Attorneys General Act, Cal. Lab.Code § 2698 *et seq.* – Civil Penalties

20 DEMAND FOR JURY TRIAL

1 COME NOW Plaintiff, and for her causes of action against Defendant, alleges as follows:

2 **PARTIES**

3 1. Plaintiff Alicia Ranillo (“Plaintiff”) is an individual who, at time periods relevant to this
4 First Amended Complaint, was living in the County of Napa, State of California and was employed by
5 Defendant within the County of Sonoma, State of California.

6 2. Defendant Ensign Sonoma LLC (“Defendant”) a California limited liability corporation,
7 was and is doing business within the State of California, County of Sonoma, with its company
8 headquarters at 1250 Broadway, Sonoma, California, 94503. Defendant provides long-term healthcare
9 services for seniors at its facility in Sonoma, California.

10 3. The true names and/or capacities, whether individual, corporate, associate or otherwise,
11 of defendants Does 1 to 100 inclusive, are unknown to Plaintiff at this time, who therefore sue said
12 defendants by such fictitious names. When the true names and capacities of said defendants have been
13 ascertained, Plaintiff will amend this complaint accordingly. Plaintiff is informed and believes and
14 thereupon allege that each defendant designated herein as a Doe is responsible, negligently,
15 intentionally, contractually, or in some other actionable manner, for the events and happenings
16 hereinafter referred to, and caused injuries and damages proximately thereby to Plaintiff as is hereinafter
17 alleged, either through said defendants' own wrongful conduct or through the conduct of their agents,
18 servants, employees, representatives, officers or attorneys, or in some other manner.

19 4. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned
20 defendants, and each of them, were the agents, servants, employees and/or joint ventures of their co-
21 defendants, and were, as such, acting within the scope, course and authority of said agency,
22 employment, corporate capacity and/or joint venture, and that each and every defendant as aforesaid,
23 when acting as a principal, was negligent and reckless in the selection and hiring of each and every other
24 defendant as an agent, servant, employee, corporate officer and/or joint venture, and that each and every
25 defendant ratified the acts of his co-defendants.

26 **JURISDICTION AND VENUE**

27 5. This is a civil class action seeking continuing wages, restitution, injunctive relief,
28 damages and attorneys’ fees and costs. Venue is proper in this judicial district, pursuant to California

1 Business & Professions Code section 17203 and California Code of Civil Procedure sections 395(a) and
2 395.5. Defendant maintains an office, transacts business, has an agent, or is found in the County of
3 Sonoma and is within the jurisdiction of this Court for purposes of service of process. The unlawful acts
4 alleged herein had a direct effect on and were committed within the County of Sonoma, State of
5 California.

6 **GENERAL ALLEGATIONS**

7 6. Defendant employs both full-time and part-time individuals. These workers are primarily
8 engaged in hourly, non-exempt duties. Plaintiff and the Class she seeks to represent consist of
9 “employees in the public housekeeping industry” as defined in Industrial Welfare Commission (“IWC”)
10 Wage Order.

11 7. Defendant employed Plaintiff as a Charge Nurse from on or about July 2007 through
12 September 2015, at its facility located in Sonoma, California.

13 **MINIMUM WAGE AND OVERTIME**

14 8. At all times relevant hereto, sections 510, 1194, and 1198 of the California Labor Code
15 and 8 California Code of Regulations section 11040¹ required (1) the payment of at least the minimum
16 wage, (2) the payment of wages equal to one-and-one-half times an employee’s regular rate of pay for
17 all hours worked in excess of eight per day or forty per week, and (3) the payment of wages equal
18 to double the employee’s regular rate of pay for all hours worked in excess of twelve per day and for
19 all hours worked in excess of eight on the seventh day of work in any one workweek.

20 9. At all relevant times mentioned herein, section 510 of the California Labor Code
21 provided, in relevant part:

- 22 (a) Eight hours of labor constitutes a day's work. Any work in excess of eight hours
23 in one workday and any work in excess of 40 hours in any one workweek and the first
24 eight hours worked on the seventh day of work in any one workweek shall be
25 compensated at the rate of no less than one and one-half times the regular rate of pay for
26 an employee. Any work in excess of 12 hours in one day shall be compensated at the rate
27

28

¹ Section 11040 sets forth the relevant Industrial Welfare Commission Wage Order 5.

1 of no less than twice the regular rate of pay for an employee. In addition, any work in
2 excess of eight hours on any seventh day of a workweek shall be compensated at the rate
3 of no less than twice the regular rate of pay of an employee. Nothing in this section
4 requires an employer to combine more than one rate of overtime compensation in order to
5 calculate the amount to be paid to an employee for any hour of overtime work. The
6 requirements of this section do not apply to the payment of overtime compensation to an
7 employee working pursuant to any of the following:

- 8 (1) An alternative workweek schedule adopted pursuant to Section 511.
- 9 (2) An alternative workweek schedule adopted pursuant to a collective bargaining
10 agreement pursuant to Section 514.

11 Cal. Lab. Code § 510.

12 10. At all relevant times mentioned herein, section 1194(a) of the California Labor Code
13 provided, in relevant part:

14 (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving
15 less than the legal minimum wage or the legal overtime compensation applicable to the
16 employee is entitled to recover in a civil action the unpaid balance of the full amount of
17 this minimum wage or overtime compensation, including interest thereon, reasonable
18 attorney's fees, and costs of suit.

19 Cal. Lab. Code § 1194(a).

20 11. With regard to the employment of Plaintiff and Class Members as described
21 above, the provisions of subparagraphs (1) and (2) of section 510 of the California Labor Code
22 were inapplicable in that no alternative workweek schedule had been adopted pursuant to section
23 510 and Plaintiff and Class Members' employment was not governed by a collective bargaining
24 agreement as described in section 514 of the California Labor Code.

25 12. During Plaintiff and Class Members' employment with Defendant, Defendant
26 failed to provide Plaintiff and Class Members with minimum wages and/or overtime
27 compensation as required by the California Labor Code and/or Industrial Welfare Commission
28 Order No. 5-2001 ("Wage Order 5").

1 13. During her employment with Defendant, Defendant failed to provide Plaintiff and Class
2 Members with the proper minimum wage and overtime compensation as required by the California
3 Labor Code and/or Wage Order 5. For example, Defendant had a practice of routinely modifying
4 Plaintiff and Class Members time records in order to indicate, for example, that Plaintiff and Class
5 Members received a 30-minute lunch break when no such lunch period was provided. These changes to
6 Plaintiff and Class Members time records was done without authorization from Plaintiff and Class
7 Members, thereby denying Plaintiff and Class Members minimum wage and overtime compensation for
8 all hours worked. Additionally, in certain instances Plaintiff and Class Members would work hours in
9 excess of 8 in a day and/or 40 in a week, but Defendant would not pay Plaintiff and Class Members for
10 the overtime hours worked because Defendant required all overtime hours be approved by management.
11 Indeed, Defendant regularly required Plaintiff and Class Members to punch out and then return to work
12 in order to finish any tasks that they had not completed within the eight hour day, which resulted in “off-
13 the-clock” work, for which the Plaintiff and Class Members were not paid altogether. In some instances
14 Plaintiff and Class Members worked overtime hours that were not approved and Defendant would change
15 Plaintiff and Class Members time records, thereby depriving Plaintiff and Class Members of minimum
16 wages and overtime wages. Furthermore, in those rare instances when overtime wages were paid, the
17 overtime rate that Plaintiff and Class Members were paid was incorrect and was not computed based on
18 “one and one-half times the regular rate of pay for an employee,” as required by the relevant statutes.
19 Instead, Defendant calculated the overtime rate based only on the employees’ base hourly wage, not
20 taking into consideration other wages earned by the Plaintiff and Class Members during the pay period,
21 including without limitation shift differential wages, which should properly have been have been
22 included when calculating Plaintiff and Class Members’ regular rate of pay.

23 **MEAL PERIODS**

24 14. Sections 226.7 and 512 of the California Labor Code, as well as 8 California Code of
25 Regulations section 11050 codifies an employee’s right to meal and rest periods. At all relevant times
26 mentioned herein, section 512(a) provided:

27 An employer may not employ an employee for a work period of more than five hours per day
28 without providing the employee with a meal period of not less than 30 minutes, except that if the total

1 work period per day of the employee is no more than six hours, the meal period may be waived by mutual
2 consent of both the employer and the employee. An employer may not employ an employee for a work
3 period of more than 10 hours per day without providing the employee with a second meal period of not
4 less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal
5 period may be waived by mutual consent of the employer and the employee only if the first meal period
6 was not waived. [Cal. Lab. Code § 512(a).]

7 15. At all relevant times mentioned herein, section 226.7(b) provided:

8 If an employer fails to provide an employee with a meal period or rest period in accordance with
9 an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one
10 additional hour of pay at the employee's regular rate of compensation for each work day that the meal or
11 rest period is not provided. [Cal. Lab. Code § 226.7(b).]

12 16. IWC Wage Order number 5 states the following:

13 A) No employer shall employ any person for a work period of more than five (5) hours without a meal
14 period of not less than 30 minutes, except that when a work period of not more than six (6) hours will
15 complete the day's work the meal period may be waived by mutual consent of the employer and
16 employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period
17 shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period
18 shall be permitted only when the nature of the work prevents an employee from being relieved of all
19 duty and when by written agreement between the parties an on-the-job paid meal period is agreed to.
20 The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

21 (B) If an employer fails to provide an employee a meal period in accordance with the applicable
22 provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's
23 regular rate of compensation for each work day that the meal period is not provided.

24 (C) In all places of employment where employees are required to eat on the premises, a suitable place
25 for that purpose shall be designated.

26 (D) Notwithstanding any other provision of this order, employees in the health care industry who work
27 shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two
28 meal periods. In order to be valid, any such waiver must be documented in a written agreement that is
voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any
time by providing the employer at least one day's written notice. The employee shall be fully
compensated for all working time, including any on-the-job meal period, while such a waiver is in
effect.

IWC Wage Order number 5, section 11.

1 17. Plaintiff and Class Member were not allowed or authorized to take meal breaks without
2 authorization from their supervisors. Additionally, in many instances, work demands were such that
3 Plaintiff and Class Members could not begin their meal period within the first five (5) hours of the
4 work day. Additionally, because of the nature of their work, incidents would often occur which
5 required employees to cut short their 30-minute meal period. In other instances, Plaintiff and Class
6 Members would simply not receive a meal period at all.

7 18. During their employment with Defendant, Plaintiff and Class Members were routinely
8 deprived of proper and timely 30-minute meal breaks. Furthermore, Defendant failed to obtain valid
9 written and proper meal waivers from Plaintiff and the other Class Members.

10 19. As a result of Defendant's policy of denying to Plaintiff and Class Members to timely
11 meal breaks wherein they were relieved of all duties, Plaintiff and Class Members are entitled to one-
12 hour wage premiums for each day these meal periods were not properly provided, as well as resulting
13 civil penalties and attorney's fees and costs.

14 [Cal. Lab. Code § 226.7(b).]

15 **REST PERIODS**

16 20. Plaintiff and Class Members were also deprived of statutorily required rest periods under
17 California Labor Code section 226.7 and Wage Order 5. Wage Order 5 provides, in relevant part:

18 (A) Every employer shall authorize and permit all employees to take rest periods, which
19 insofar as practicable shall be in the middle of each work period. The authorized rest
20 period time shall be based on the total hours worked daily at the rate of ten (10) minutes
21 net rest time per four (4) hours or major fraction thereof. However, a rest period need not
22 be authorized for employees whose total daily work time is less than three and one-half
23 (3 ½) hours. Authorized rest period time shall be counted as hours worked for which
24 there shall be no deduction from wages.

25 (B) If an employer fails to provide an employee a rest period in accordance with the
26 applicable provisions of this order, the employer shall pay the employee one (1) hour of
27 pay at the employee's regular rate of compensation for each workday that the rest period
28 is not provided. [IWC Wage Order number 5, section 12.]

29 21. During their employment with Defendant, Plaintiffs and Class Members were routinely
30 deprived of their rest breaks because they could not take rest breaks without permission from their
31 supervisors. Accordingly, Plaintiff and Class Members are entitled to an additional hour of pay for each

1 workday a proper rest period was missed. [Cal. Lab. Code § 226.7(b); 8 Cal. Code Regs. §
2 11040(12)(B).]

3 **CONTINUING WAGES**

4 22. Plaintiff and Class Members are therefore entitled to restitution of accrued but unpaid
5 wages earned on account of all of the services they performed, including without limitation, when
6 working through meal periods and rest periods and instances when they were entitled to minimum
7 wages and/or overtime wages.

8 23. Plaintiff's employment was terminated but she was not provided payment of all
9 outstanding wages owed to her on the date of her termination.

10 24. At all relevant times mentioned herein, section 201 of the California Labor Code
11 provided that "wages earned and unpaid at the time of discharge are due and payable immediately."
12 Cal. Lab. Code § 201. Furthermore, with respect to employees who quit, the California Labor Code
13 provides:

14 (a) If an employee not having a written contract for a definite period quits his or her
15 employment, his or her wages shall become due and payable not later than 72 hours
16 thereafter, unless the employee has given 72 hours previous notice of his or her intention
17 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
18 Notwithstanding any other provision of law, an employee who quits without providing a
19 72-hour notice shall be entitled to receive payment by mail if he or she so requests and
20 designates a mailing address. The date of the mailing shall constitute the date of payment
21 for purposes of the requirement to provide payment within 72 hours of the notice of
22 quitting. [Cal. Lab. Code § 202(a).]

23 25. Defendant did not compensate Plaintiff and other Class Members the proper overtime
24 wages earned on all of the various applicable hourly rates worked by Plaintiff and Class Members
25 during the class period. To date, Plaintiff and other, former employees of Defendant have not been
26 compensated fully for all minimum wage and/or overtime wages earned while working for Defendant.

27 26. At all relevant times mentioned herein, section 203 of the California Labor Code
28 provided:

1 If an employer willfully fails to pay, without abatement or reduction, in accordance with
2 Sections 201, 201.5, 202 and 202.5, any wages of an employee who is discharged or who
3 quits, the wages of the employee shall continue as a penalty from the due date thereof at
4 the same rate until paid or until action therefore is commenced; but the wages shall not
5 continue for more than 30 days. [Cal. Lab. Code § 203(a).]

6 27. Plaintiff contends that Defendant's failure to pay Plaintiff and Class Members who are
7 former employees within the time provided by the California Labor Code was and is "willful" within the
8 meaning of section 203 of the California Labor Code and that, accordingly, they are entitled to the
9 continuing wages for which provision is made by section 203 of the California Labor Code.

10 **WAGE STATEMENT VIOLATIONS**

11 28. At all relevant times mentioned hereto, section 226 of the California Labor Code
12 provides:

13 (a) Every employer shall, semimonthly or at the time of each payment of wages, furnish
14 each of his or her employees, either as a detachable part of the check, draft, or voucher
15 paying the employee's wages, or separately when wages are paid by personal check or
16 cash, an itemized statement in writing showing (1) gross wages earned, (2) total hours
17 worked by the employee, except for any employee whose compensation is solely based
18 on a salary and who is exempt from payment of overtime under subdivision (a) of Section
19 515 or any applicable order of the Industrial Welfare Commission, (3) the number of
20 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
21 rate basis, (4) all deductions, provided, that all deductions made on written orders of the
22 employee may be aggregated and shown as one item, (5) net wages earned, (6) the
23 inclusive dates of the period for which the employee is paid, (7) the name of the
24 employee and only the last four digits of his or her social security number or an employee
25 identification number other than a social security number, (8) the name and address of the
26 legal entity that is the employer... and (9) all applicable hourly rates in effect during the
27 pay period and the corresponding number of hours worked at each hourly rate by the
28 employee. The deductions made from payments of wages shall be recorded in ink or

1 other indelible form, properly dated, showing the month, day, and year, and a copy of the
2 statement or a record of the deductions shall be kept on file by the employer for at least
3 three years at the place of employment or at a central location within the State of
4 California.

5

6 (e) An employee suffering injury as a result of a knowing and intentional failure by an
7 employer to comply with subdivision (a) is entitled to recover the greater of all actual
8 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
9 one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
10 not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
11 award of costs and reasonable attorney's fees.

12

13 (g) An employee may also bring an action for injunctive relief to ensure compliance with this
14 section, and is entitled to an award of costs and reasonable attorney's fees.

15 29. In particular, and as set forth *supra*, at all times herein relevant, section 226 of the
16 California Labor Code and 8 California Code of Regulations section 11050 required that employers
17 provide employees with itemized wage statements showing, without limitation, (1) all wages earned
18 on account of actual hours worked, as well as wages earned for missed meal and rest breaks, (2) all
19 applicable hourly rates for hours worked by the employee, (3) the name and address of the legal entity of
20 the employer, and (4) the inclusive dates for the period for which the employee is paid. Moreover,
21 Labor Code section 226(e) provided that, if an employer fails to provide all of this informaton, then
22 the employee is entitled to recover the greater of all actual damages or \$50 for the initial violation and
23 \$100 for each subsequent violation, up to a maximum of \$4,000. As a result of Defendant's failure to
24 provide the information required by Labor Code section 226, Defendant is liable to Plaintiff and
25 Class Members for damages for which provision is made by Labor Code section 226(e).

26 **CLASS-ACTION ALLEGATIONS**

27 30. The class represented by Plaintiff (hereafter referred to as the "Class") consists of all
28 individuals who were employed by Defendant in the State of California during the time period

1 beginning four years prior to the filing of the Complaint, which was filed on February 8, 2016 (such
2 persons are referred to herein as “Class Members,” and such period is referred to hereafter as the “Class
3 Period”). The Class will also consist of various subclasses, including without limitation, the following
4 four subclasses (Plaintiff reserves the right to modify the definition of these subclasses during the course
5 of discovery and when filing Plaintiff’s motion for class certification):

- 6 a. The paystub subclass consists of all individuals who were employed by Defendant in the
7 State of California during the time period beginning one year prior to the filing of the
8 Complaint and who received at least one paystub, as that term is defined in Cal. Lab.
9 Code section 226 et seq. (hereinafter the “Paystub Subclass”);
- 10 b. The non-exempt employee unpaid wage subclass consists of all individuals who were
11 non-exempt employees working for Defendant in the State of California during the time
12 period beginning four years prior to the filing of the Complaint and who were entitled to
13 receive minimum wage and overtime compensation (hereinafter the “Employee Unpaid
14 Wage Subclass”);
- 15 c. The non-exempt employee breaks subclass consists of all individuals who were non-
16 exempt employees working for Defendant in the State of California during the time
17 period beginning three years prior to the filing of the Complaint and who were entitled to
18 receive meal and rest breaks (hereinafter the “Employee Breaks Subclass”)and
- 19 d. The former employee subclass consists of all individuals who are former employees of
20 Defendant in the State of California during the time period beginning three years prior to
21 the filing of the Complaint and who were not paid all wages owed to them when they
22 were discharged or quit their employment with Defendant (hereinafter the “Former
23 Employee Subclass).

24 31. Defendant’s failure to pay Plaintiff and Class Members for all minimum wage and
25 overtime wages earned is violation of the California Labor Code and the applicable Wage Order and
26 entitles Plaintiff and Class Members to payment of their unpaid minimum wage and overtime
27 compensation, interest thereon, liquidated damages and attorneys’ fees.

28 32. Defendant’s failure to make payments within the time provided by sections 201 or 202 of

1 the California Labor Code has been and is “willful” within the meaning of section 203 of the California
2 Labor Code and that, accordingly, Plaintiff and each Class Member who quit or was discharged and was
3 not paid in accordance with the law is entitled to the continuing wages provided for by section 203 of
4 the California Labor Code.

5 33. Defendant’s failure to pay wages as provided by section 226.7 of the California Labor
6 Code and the applicable Wage Order entitles Plaintiff and each Class Member to payment of such
7 earned but unpaid wages owing on account of failing to provide proper meal periods and an additional
8 one-hour of pay at the employee’s regular rate of compensation for each work day that the proper meal
9 periods were not provided, as well as liquidated statutory damages. Additionally, Plaintiff and each
10 Class Member is entitled to an additional one-hour of pay at the employee’s regular rate of
11 compensation for each work day that the proper rest periods were not provided, as well as liquidated
12 statutory damages.

13 34. Defendant’s failure to provide proper wage statements to Plaintiff and Class Members,
14 which include all of the information required by section 226 of the California Labor Code, entitles
15 Plaintiff and Class Members to recover the greater of all actual damages or \$50 for the initial violation
16 and \$100 for each subsequent violation, up to a maximum of \$4,000.

17 35. In particular, and without limitation, in those instances (1) when an employee was
18 required to work through their lunch break, (2) when an employee was required to come back from
19 lunch before they were able to finish their entire 30-minute meal period, (3) when an employee did not
20 receive their lunch break within the first five hours of their workday, and/or (4) when Defendant
21 changed an employee’s time to make it appear as though they received a time meal period when in fact
22 no such meal period was provided, Defendant failed to provide their Plaintiff and Class Members with
23 one additional hour of pay at the employees’ regular rate of compensation for each work day that the
24 proper 30-minute meal period was not provided to the employee.

25 36. In those instances (1) when an employee was required to work through their 10-minute
26 rest break, or (2) did not receive their 10-minute rest break in a timely fashion, Defendant failed to
27 provide its employees with one additional hour of pay at the employee’s regular rate of compensation
28 for each work day that the proper 10-minute rest period was not provided to the employee.

1 37. The number of Class Members is great, believed to be excess of 150, but fewer than so
2 many as to make the class unmanageable. It therefore is impractical to join each Class Member as a
3 named plaintiff. Accordingly, utilization of a class action is the most economically feasible means of
4 determining the merits of this litigation.

5 38. Despite the size of the proposed Class, the Class Members are readily ascertainable
6 through an examination of the records that Defendant is required by law to keep, which includes, without
7 limitation, the specific times employees punched in and out during their work day (and any changes to
8 the employees punch data), as well as paystub information regarding the amounts paid to the employees
9 for the hours worked during the various pay periods. Likewise, the specific dollar amount owed to each
10 Class Member is readily ascertainable by an examination of those same records.

11 39. Common questions of fact and of law predominate in the Class Member's claims over
12 individual issues regarding the money owed to each Class Member. Common questions include, but are
13 not limited to, the following:

- 14 a. Whether Defendant failed to pay proper minimum wages and/or overtime wages.
- 15 b. Whether Defendant failed to provide employees with proper meal periods.
- 16 c. Whether Defendant and Class Members executed proper meal waivers.
- 17 d. Whether Defendant failed to provide proper and timely 30-minute meal periods
18 wherein employees were relieved of all duties.
- 19 e. Whether Defendant failed to provide a one-hour wage premium in those instances
20 when employees were not provided with a proper meal period.
- 21 f. Whether Defendant failed to provide employees with proper and timely rest periods.
- 22 g. Whether Defendant failed to provide a one-hour wage premium in those instances
23 when employees were not provided with a proper and timely rest period.
- 24 h. Whether Defendant failed to pay all wages in a timely fashion upon each and every
25 employee's discharge from, or resignation of, employment in violation of sections
26 201 and/or 202 of the California Labor Code.
- 27 i. Whether Defendant failed to pay overtime in a timely fashion under California Labor
28 Code section 204.

- 1 j. Whether Defendant failed to provide wage statements with the information required
2 by California Labor Code section 226.
- 3 k. Whether Defendant's conduct constitutes unlawful, unfair, or fraudulent business
4 practices.
- 5 l. Whether Defendant's conduct constitutes unfair competition.
- 6 m. Whether Plaintiffs and Class Members are entitled to equitable relief in the form of
7 restitution for Defendant's not providing employees with accurate itemized wage
8 statements.

9 40. There is a well-defined community of interest in the questions of law and fact common to
10 the Class Members.

11 41. Plaintiff's claims are typical of the claims of the Class Members, which claims all arise
12 from the same general operative facts, namely and without limitation, Defendant did not compensate its
13 employees as required by the California Labor Code and applicable Wage Order, Defendant did not
14 provide proper rest and meal breaks as by the California Labor Code and applicable Wage Order, and
15 that Defendant did not provide employees with a wage statements that contained all of the information
16 required by section 226 of the California Labor Code. Plaintiff has no conflict of interest with the other
17 Class Members and he is able to represent the Class Members' interests fairly and adequately.

18 42. A class action is a superior method for the fair and efficient adjudication of this
19 controversy. The persons within the Class are so numerous that joinder of all of them is impracticable.
20 The disposition of all claims of the members of the Class in a class action, rather than in individual
21 actions, benefits the parties and the Court. The interest of the Class Members in controlling the
22 prosecution of separate claims against Defendant is small when compared with the efficiency of a class
23 action.

24 **FIRST CLAIM FOR RELIEF**

25 **(Cal. Lab. Code §§ 510 and 1194, Failure to Pay Proper Minimum Wages and Overtime
Wages)**

26 **(On Behalf of Plaintiff and the Class Members)**

27 43. Plaintiff repleads, realleges, and incorporates by reference each and every allegation set
28 forth in the First Amended Complaint.

1 44. Defendant, by failing to pay Plaintiff and Class Members the proper minimum wages
2 and/or overtime wages for all of their hours worked, has violated sections 510 and 1194 of the California
3 Labor Code. Indeed, in those instances when overtime wages were paid by Defendant to Plaintiff and
4 Class Members, Defendant failed to pay the correct overtime rate of one and one-half times the
5 employees regular rate.

6 45. Plaintiff and Class Members, accordingly, are entitled to recovery of the unpaid balance
7 of the full amount of their unpaid minimum wage and/or overtime compensation, including interest
8 thereon, reasonable attorneys' fees and costs of suit, in accordance with section 1194(a) of the California
9 Labor Code.

10 46. Plaintiff and Class Members are also entitled to liquidated damages in accordance with
11 section 1194.2 of the California Labor Code.

12 **SECOND CLAIM FOR RELIEF**
13 **(Cal. Lab. Code section 203—Continuing Wages)**
14 **(On Behalf of Plaintiff and the Class Members)**

15 47. Plaintiff replead, reallege, and incorporate by reference each and every allegation set
16 forth in this First Amended Complaint.

17 48. Defendant's failure to compensate Plaintiffs and the Class Members within the time
18 provided by sections 201 and 202 of the California Labor Code, despite Defendant's knowledge of its
19 obligation to do so, was "willful" within the meaning of section 203 of the California Labor Code.
20 Plaintiffs and the Class Members are, therefore, entitled to continuing wages from the date on which his
21 or her wages were due until the date on which Defendant makes payment of the wages, not to exceed
22 thirty days, restitution and damages according to proof, interest thereon, civil penalties, attorney's fees,
23 and costs of suit.

24 **THIRD CLAIM FOR RELIEF**
25 **(Cal. Lab. Code sections 226.7, 512 and Wage Order 5—Meal Period Violations)**
26 **(On Behalf of Plaintiff and the Class Members)**

27 49. Plaintiffs repleads, realleges, and incorporates by reference each and every allegation set
28 forth in this First Amended Complaint.

50. The right to meal periods has been codified in sections 226.7 and 512 of the California
Labor Code.

1 51. Compensation for missed meal periods constitutes wages within the meaning of the
2 California Labor Code.

3 52. Plaintiff and Class Members were not provided with proper meal breaks in accordance
4 with California Labor Code sections 226.7 and 512, and IWC Wage Order number 5. For every day that
5 Plaintiffs and Class Members were not provided with a proper 30-minute meal period(s), Plaintiff and
6 Class Members are entitled to an additional one-hour wage premium. A review of Defendant's records
7 will demonstrate all instances when Plaintiff and Class Members are entitled to a one-hour wage
8 premium.

9 53. Plaintiff contends that Defendant's failure to comply with sections 226.7 and 512 of the
10 California Labor Code and with the applicable Wage Order subjects Defendant to civil penalties and
11 damages.

12 54. Accordingly, pursuant to the California Labor Code, Plaintiff and the Class Members are
13 entitled to damages according to proof, interest thereon, civil penalties, attorney's fees, and costs of suit.

14 **FOURTH CLAIM FOR RELIEF**
15 **(Cal. Lab. Code section 226.7 and Wage Order 5—Rest Period Violations)**
16 **(On Behalf of Plaintiff and the Class Members)**

17 55. Plaintiff pleads, realleges, and incorporates by reference each and every allegation set
18 forth in this First Amended Complaint.

19 56. Compensation for missed rest periods constitutes wages within the meaning of the
20 California Labor Code.

21 57. Plaintiff contends that Defendant failed to provide Class Members with proper rest
22 periods as required by section 226.7 of the California Labor Code and Wage Order 5. For every day that
23 Plaintiff and Class Members were not provided with a proper 10-minute paid rest break(s), Plaintiff and
24 Class Members are entitled to an additional one-hour wage premium.

25 58. Plaintiff contends that Defendant's failure to comply with section 226.7 and with the
26 applicable Wage Order subjects Defendant to civil penalties and damages.

27 59. Accordingly, pursuant to the California Labor Code, Plaintiff and the Class Members are
28 entitled to damages according to proof, interest thereon, civil penalties, attorney's fees, and costs of suit.

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1 **FIFTH CLAIM FOR RELIEF**

2 **(Cal. Lab. Code section 204—Late Payment of Overtime)**
3 **(On Behalf of Plaintiff and the Class Members)**

4 60. Plaintiff repleads, realleges, and incorporates by reference each and every allegation set
5 forth in this First Amended Complaint.

6 61. Plaintiff alleges that Plaintiff and Class Members were not paid their overtime by the next
7 regular payroll period required by California Labor Code section 204(b)(1). Plaintiffs and Class
8 Members are therefore entitled to damages and civil penalties under the California Labor Code.

9 **SIXTH CLAIM FOR RELIEF**

10 **(Cal. Lab. Code § 226, Failure to Provide Accurate Pay Stubs)**
11 **(On Behalf of Plaintiff and the Class Members)**

12 62. Plaintiff repleads, realleges, and incorporates by reference each and every allegation set
13 forth in the First Amended Complaint.

14 63. Defendant employed Plaintiff and Class Members but failed to provide them with the
15 data required by section 226(a) of the California Labor Code. See Cal. Lab. Code § 226(a)(8).

16 64. Accordingly, as a result of Defendant’s failure to provide the information required
17 by Labor Code section 226, Defendant is liable to Plaintiff and Class Members for the liquidated
18 damages for which provision is made by Labor Code section 226(e).

19 **SEVENTH CLAIM FOR RELIEF**

20 **(Cal. Bus. & Prof. Code section 17200 *et seq.*—Restitution and Injunction)**
21 **(On Behalf of Plaintiff and the Class Members)**

22 65. Plaintiff repleads, realleges, and incorporates by reference each and every allegation set
23 forth in this First Amended Complaint.

24 66. Defendant is a “person” within the meaning of section 17201 of the California Business
25 and Professions Code. Plaintiff is suing both in her individual capacity and on behalf of the general
26 public, and she is a proper representative because she has suffered direct harm from the illegal business
27 practices herein alleged.

28 67. Beginning at an exact date unknown to Plaintiff, Defendant has committed acts of unfair
business practice or act as defined in California Business and Professions Code section 17200 *et seq.* by
engaging in the following acts and practices: (1) failing to provide minimum wages and/or overtime
compensation to its employees in accordance with the California Labor Code; and (2) failing to pay its

1 discharged employees in accordance with sections 201, 202, and 203 of the California Labor Code.

2 68. Under section 17200 *et seq.* of the Business and Professions Code, this Court is
3 authorized to enter such judgment or order as may be necessary to restore to any person in interest the
4 money or property acquired by Defendant through its unlawful and unfair business practices.

5 69. Plaintiff and the Class Members are, therefore, entitled to a judgment of this Court
6 requiring Defendant to pay to Plaintiff and each identifiable Class Member the unpaid wages and
7 withheld wages, to which such individuals were and are entitled but which have been denied them by
8 reason of Defendant's conduct alleged herein.

9 70. In other words, Plaintiff and the Class Members are entitled to restitution of their unpaid
10 minimum and/or overtime wages, as such funds should be distributed to the individuals who are
11 rightfully entitled to such monies.

12 71. The named Plaintiff is a proper persons to bring this litigation as a "representative action"
13 to compel restitution. The named Plaintiff is an individual who has suffered damage as a result of the
14 unlawful actions of Defendant herein alleged. The actions of Defendant herein alleged are in violation
15 of various statutes and in contravention of established public policy, and, accordingly, a court order
16 compelling it to cease and desist from such actions and to make restitution is a vindication of an
17 important public right. The extent to which Defendant has been unjustly enriched as a result of its
18 unlawful and unfair business practices is a matter that can be ascertained by examination of the payroll
19 and accounting records that Defendant is required by law to keep and maintain and that Defendant has
20 kept and maintained.

21 72. The identity of the persons to whom restitution should be made is a matter that can be
22 ascertained from those records that Defendant is required by law to keep and maintain and that it has
23 kept and maintained.

24 73. Plaintiff's efforts in securing the requested relief will result "in the enforcement of an
25 important right affecting the public interest," as "a significant benefit, whether pecuniary or
26 nonpecuniary, [will] be[] conferred on . . . a large class of persons." [Cal. Civ. Proc. Code § 1021.5.]
27 Moreover, because "the necessity and financial burden of private enforcement . . . are such as to make
28 [an attorney's fee] award appropriate, and [because attorney's] fees should not in the interest of justice

1 be paid out of the recovery, if any,” *id.*, Plaintiffs request that the Court also award reasonable attorney’s
2 fees pursuant to the provisions of section 1021.5 of the California Code of Civil Procedure.

3 74. Plaintiff and the Class Members have no plain, speedy, or adequate remedy at law,
4 inasmuch as Defendant, unless enjoined by an order of this Court, will continue to violate systematically
5 the provisions of sections 201, 202, 203, 204 and 221 of the California Labor Code and the applicable
6 Wage Order.

7 75. Accordingly, injunctive relief is proper and necessary pursuant to section 17203 of the
8 California Business and Professions Code.

9 76. Pursuant to section 17205, the remedies and penalties provided by section 17200 *et seq.*
10 are cumulative to the remedies and penalties available under all other laws of this state.

11 77. Plaintiff and the Class Members request relief as described below

12 **EIGHTH CLAIM FOR RELIEF**
13 **(Cal. Lab. Code § 2698 *et seq.*, Private Attorneys General Act)**
14 **(On Behalf of Plaintiff, the Class Members and the State of California against Defendant)**

15 78. Plaintiff repleads, realleges, and incorporates by reference each and every allegation set
16 forth in this First Amended Complaint.

17 79. Pursuant to section 2699.3(a)(1) of the Labor Code, on approximately February 10, 2016,
18 Plaintiff gave written notice by certified mail to the California Labor and Workforce Development
19 Agency (“LWDA”) of the specific provisions of the Labor Code alleged to have been violated by
20 Defendant, including the facts and theories set forth in the original Complaint filed on February 8, 2016.
21 Also on February 10, 2016, Plaintiff gave written notice by certified mail to Defendant of the specific
22 provisions of the Labor Code alleged to have been violated by Defendant. A true and correct copy of
23 the letter sent to Defendant and the LWDA is attached hereto as Exhibit 1.

24 80. At all relevant times herein, California Labor Code section 2699.3(a)(2)(A) provided:

25 The agency shall notify the employer and the aggrieved employee or representative by certified
26 mail that it does not intend to investigate the alleged violation within 30 calendar days of the postmark
27 date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is
28 provided within 33 calendar days of the postmark date of the notice given pursuant to paragraph (1), the
aggrieved employee may commence a civil action pursuant to Section 2699.

1 Cal. Lab. Code § 2699.3(a)(2)(A).

2 81. On March 15, 2016, thirty-four days passed since Plaintiff mailed the February 10, 2016,
3 letter to the LWDA and Defendant. As of the filing of this First Amended Complaint, no notice has been
4 provided by the LWDA. Accordingly, Plaintiff may commence a civil action pursuant to section 2699
5 as a matter of right. See Cal. Lab. Code 2699.3(a)(2)(C).

6 82. PAGA establishes civil penalties for violations of the California Labor Code, including
7 the violations alleged in this First Amended Complaint. Section 226.3 of the California Labor Code
8 provides for civil penalties for each violation of section 226 (a). Section 2699(f) of the California Labor
9 Code provides for civil penalties for violations of the California Labor Code, for which a specific civil
10 penalty is not provided. Section 2699(a) provides that civil penalties may be “recovered through a civil
11 action brought by an aggrieved employee on behalf of himself or herself and other current or former
12 employees.” Cal. Lab. Code § 2699(a). Section 2699(g) provides that an employee who prevails in a
13 civil action under section 2699 shall be entitled to an award of reasonable attorneys’ fees and costs.

14 83. The State of California LWDA, Plaintiff and Class Members are, therefore, entitled to
15 collect civil penalties, attorneys’ fees, and costs according to proof.

16 **PRAYER FOR RELIEF**

- 17 1. That this Court certify the Class described in this First Amended Complaint.
- 18 2. With respect to the First Claim for Relief, this Court enter judgment in favor of Plaintiff and
19 Class Members for compensatory damages in an amount according to proof at time of trial
20 representing the amount of unpaid minimum wages and/or overtime compensation owed to
21 Plaintiff and Class Members, liquidated damages, interest, reasonable attorneys’ fees and costs
22 of suit pursuant to California Labor Code sections 1194 and 1194.2.
- 23 3. That, with respect to the Second Claim for Relief, it be adjudged that the failure of Defendant to
24 make payment of wages within the time prescribed by sections 201 and/or 202 of the California
25 Labor Code was “willful” within the meaning of section 203 of the California Labor Code and
26 that this Court award Plaintiff and Class Members continuing wages according to proof and
27 against Defendant.
- 28 4. With respect to the Third Claim for Relief, this Court enter judgment in favor of Plaintiff and

1 Class Members for compensatory damages in an amount according to proof at time of trial
2 representing the amount of unpaid compensation owed to Plaintiff and Class Members for
3 improper meal periods, including a one-hour wage premium in every instance Plaintiffs and
4 Class Members did not receive a proper meal break, for interest calculated according to law on
5 any compensation due from the day such amounts were due for improper meal periods, and for
6 reasonable attorney's fees and the costs of bringing this suit.

7 5. With respect to the Fourth Claim for Relief, this Court enter judgment in favor of Plaintiff and
8 Class Members for compensatory damages in an amount according to proof at time of trial
9 representing the amount of unpaid compensation owed to Plaintiffs and Class Members for
10 improper rest periods, including a one-hour wage premium in every instance Plaintiffs and Class
11 Members did not receive a proper rest break, for interest calculated according to law on any
12 compensation due from the day such amounts were due for improper rest periods, and for
13 reasonable attorney's fees and the costs of bringing this suit.

14 6. That, with respect to the Fifth Claim for Relief, Plaintiff and Class Members be awarded
15 judgment, interest, and costs, according to proof and against Defendant.

16 7. That, with respect to the Sixth Claim for Relief, this Court enter judgment in favor of Plaintiff
17 and Class Members for damages in an amount according to proof at time of trial for not
18 providing accurate itemized wage statements to Plaintiff and Class Members; for reasonable
19 attorney's fees and the costs of bringing this suit pursuant to section 226(e) of the California
20 Labor Code.

21 8. That, with respect to the Seventh Claim for Relief, it be adjudged that Defendant's violations of
22 the the applicable Wage Order, and sections 201, 202, 203, 204, 221, 510, 1194 and 1198 of the
23 California Labor Code, violated section 17200 *et seq.* of the California Business and Professions
24 Code. Accordingly, Plaintiffs request that the Court order Defendant to pay restitution to
25 Members of the Class in the form of restitution of their unpaid state overtime wages and
26 continuing wages, with interest. Furthermore, Plaintiff requests that the Court issue an order or
27 decree pursuant to section 17203 of the California Business and Professions Code that
28 permanently enjoins Defendant from pursuing its practice of violating the law. Finally, Plaintiff

1 requests that the Court award Plaintiff reasonable attorneys' fees and costs incurred in the
2 prosecution of the Seventh Claim for Relief pursuant to section 1021.5 of the California Code of
3 Civil Procedure.

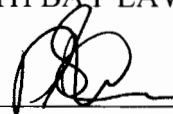
4 9. That, with respect to the Eighth Cause of Action, it be adjudged that Defendant's violations of
5 the California Labor Code and applicable Wage Order entitles Plaintiff, the State of California
6 LWDA and Defendant's current and former aggrieved employees to civil penalties, reasonable
7 attorney's fees, and costs of suit, each according to proof, against Defendant in accordance with
8 section 2698 *et seq.*

9 10. For such further relief as the Court may order.

10
11 **Plaintiff demands a trial by jury as to all counts.**

12
13 DATED: June 20, 2016

NORTH BAY LAW GROUP



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