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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 JAMIELYNN COTA, SUSANA DAVILA, and
13 PATTY CHA, on behalf of themselves and all
others similarly situated,

14 Plaintiffs,

15 v.

16 WELLS FARGO BANK, N.A.,

17 Defendant.
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Case No. 3:16-cv-5543

COMPLAINT FOR DAMAGES

FLSA COLLECTIVE ACTION
RULE 23 CLASS ACTION

(1) FAIR LABOR STANDARDS ACT (29 U.S.C. §§ 207; 211(c), 215(a), 216(b), 255(a)); 29 C.F.R. § 516 *et seq.*);
(2) CALIFORNIA OVERTIME (Cal. Lab. Code §§ 510, 558, 1194, 1194.2; IWC Wage Order(s));
(3) MEAL AND REST PERIODS (Cal. Lab. Code §226.7);
(4) WAITING TIME PENALTIES (Cal. Lab. Code §§ 201, 202, 203);
(5) UCL RESTITUTION (CA Bus. & Prof. Code §§ 17200 *et seq.*);
(6) ITEMIZED WAGE STATEMENT PENALTIES (Cal. Lab. Code §§ 226(a), 226(e), 226.3).

DEMAND FOR JURY TRIAL

1 Payroll Sales Representatives to cull through lists of businesses which already utilize Wells Fargo
2 products and identify businesses which might also purchase Wells Fargo payroll products and
3 services. Like the banking employees at the heart of the L.A. City Attorney’s Office and CFPB
4 investigation, Payroll Sales Representatives experience significant pressure to meet Wells Fargo’s
5 cross-selling quotas. This causes Payroll Sales Representatives to frequently work over 8 hours per
6 day or 40 hours per week. However, they are not compensated for any of the substantial overtime
7 they work because Wells Fargo has misclassified them as exempt employees.

8 8. Plaintiffs, who worked for Wells Fargo as Payroll Sales Representatives, bring
9 claims for payment of overtime, liquidated damages, interest, and attorneys’ fees and costs under
10 the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”) on behalf of similarly situated
11 individuals who have worked for Defendant as Payroll Sales Representatives (collectively, “FLSA
12 Collective Action Members”). These claims are brought on behalf of Plaintiffs and all FLSA
13 Collective Action Members during the period commencing three years prior to the filing of their
14 respective consents to be included in this collective action (the “Collective Action Period”).

15 9. Plaintiffs also bring claims under California law for unpaid overtime compensation,
16 restitution, statutory penalties, civil penalties, liquidated damages, meal and rest break premium
17 payments, interest, and attorneys’ fees and costs. Plaintiffs assert these California claims pursuant
18 to Federal Rule of Civil Procedure 23 on behalf of themselves and all other persons who worked
19 for Defendant as Payroll Sales Representatives in California (collectively, “California Class
20 Members”) at any time during the period commencing four years prior to the filing of this action
21 (the “Class Period”).

22 10. The California Class Members and FLSA Collective Action Members shall
23 hereinafter be collectively referred to as “Class and Collective Action Members.”

24 **IV. PARTIES**

25 **A. Plaintiffs**

26 1. Plaintiff Jamielynn Cota is a citizen of California residing in Bakersfield, California.
27 Ms. Cota was employed by and performed work for Defendant as a Payroll Sales Representative
28 from April 2014 to April 2016 in Bakersfield and Lancaster, California.

1 cross-selling multiple products to the same customer, Payroll Sales Representatives are expected to
2 conduct daily meetings with Wells Fargo bankers to review lists of existing Wells Fargo customers
3 and identify current customers who do not already utilize Wells Fargo's payroll products and
4 services. Payroll Sales Representatives also spend a significant amount of time giving presentations
5 to other Wells Fargo employees about Wells Fargo's payroll products and services. Once a Payroll
6 Sales Representative has identified potential leads, he or she is expected to set up a meeting with
7 each lead to discuss Wells Fargo's payroll products. Payroll Sales Representatives are encouraged
8 or required to conduct those meetings in Wells Fargo branches. Rather than identifying new
9 potential customers that might be interested in Wells Fargo's payroll products, Wells Fargo expects
10 Payroll Sales Representatives to cross-sell to existing customers, which requires Payroll Sales
11 Representatives to spend most of their time in Wells Fargo branches reviewing lists of customers
12 and working alongside Wells Fargo bankers.

13 8. Payroll Sales Representatives perform all key functions of the job in Defendant's
14 branches and stores. Wells Fargo expects each Payroll Sales Representative to make at least 20
15 visits per month to Wells Fargo stores, contact Wells Fargo bankers at least 80 times per month,
16 attend 8 internal Wells Fargo bank partner meetings per month, hold at least one meeting with a
17 Wells Fargo area manager per month, and provide regular reports to key Wells Fargo managers.
18 These minimum performance expectations are monitored weekly by each Payroll Sales
19 Representative's direct manager.

20 9. Defendant also expects Payroll Sales Representatives to devote considerable time
21 and energy to clerical tasks associated with setting up and processing payroll on behalf of Wells
22 Fargo customers, as well as customer service tasks such as responding to customer complaints or
23 assisting customers with payroll products.

24 10. As a result of these uniform job duties, performance expectations, and Wells Fargo
25 policies, Payroll Sales Representatives spend the vast majority of their time in Wells Fargo
26 branches and offices.

27 11. Defendant has paid all Payroll Sales Representatives under a common compensation
28 plan and policy. At all times during the period covered by this action, Payroll Sales Representatives

1 have been paid on a salary basis and eligible for commissions based on revenue. All Payroll Sales
2 Representatives are classified by Wells Fargo as “exempt” from the overtime requirements of the
3 FLSA.

4 12. Payroll Sales Representatives are not required to keep track of the hours they work,
5 and Wells Fargo has not maintained time records reflecting how many hours per week Payroll
6 Sales Representatives work.

7 13. Wells Fargo has no policy prohibiting overtime or limiting the number of hours
8 Payroll Sales Representatives work. Payroll Sales Representatives commonly work well in excess
9 of 40 hours per week, but Wells Fargo does not compensate Payroll Sales Representatives for any
10 of the overtime hours they work.

11 14. Plaintiffs and other Payroll Sales Representatives are pressured to meet their job
12 requirements through Defendant’s policy of disciplining and/or terminating Payroll Sales
13 Representatives who do not meet Defendant’s quotas. Payroll Sales Representatives receive daily
14 emails from their managers containing performance and productivity metrics for themselves and
15 other Payroll Sales Representatives, which creates additional pressure to meet Defendant’s job
16 requirements and work more than 8 hours per day or 40 hours per week.

17 15. Defendant also has a policy of not providing Payroll Sales Representatives with
18 meal and rest breaks. Payroll Sales Representatives are not provided with any written meal and rest
19 break policy or otherwise informed of their right to take a meal period relieved fully from duty or
20 of their right to rest breaks. Plaintiffs and other Payroll Sales Representatives routinely work
21 through their meal and rest breaks.

22 16. Plaintiffs and Payroll Sales Representatives are also not issued premium payments
23 for missed meal or rest breaks. Defendant does not require or allow Payroll Sales Representatives
24 to record their time worked or meal breaks, nor does Defendant provide any mechanism by which
25 Payroll Sales Representatives can record missed meal or rest breaks.

26 17. Defendant knows or should know that Payroll Sales Representatives work through
27 their meal and rest breaks and more than 8 hours per day or 40 hours per week. For example,
28 Plaintiffs’ managers are often present in Wells Fargo branches with Plaintiffs and other Payroll

1 Sales Representatives, such that they can see when Plaintiffs and other Payroll Sales
2 Representatives work through their lunch periods. Further, Plaintiffs' managers require Plaintiffs
3 and other Payroll Sales Representatives to submit detailed reports regarding the activities they do
4 each day, including the number of calls made to prospective customers, the number of Wells Fargo
5 branches visited, and the number of sales leads generated.

6 18. During the time period covered by this action, Plaintiffs and other Payroll Sales
7 Representatives have regularly worked more than forty (40) hours in a workweek and/or more than
8 eight (8) hours in a workday. Plaintiffs worked overtime, observed other Payroll Sales
9 Representatives working overtime, and also learned of other Payroll Sales Representatives working
10 overtime through conversations with Payroll Sales Representatives. However, Defendant has not
11 compensated Plaintiffs or other Payroll Sales Representatives for the overtime they have worked.

12 19. As described above, Defendant has had actual or constructive knowledge that
13 Payroll Sales Representatives have been working overtime.

14 20. Defendant has not kept accurate records of Payroll Sales Representatives' work
15 hours. The itemized statements that Defendant has furnished to Plaintiffs and other Payroll Sales
16 Representatives at the time they are paid their wages do not accurately reflect their total hours
17 worked, their missed meal breaks, or their overtime hours.

18 VI. COLLECTIVE ACTION ALLEGATIONS

19 21. Plaintiffs bring the First Cause of Action for violations of the FLSA as a collective
20 action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b), on behalf of the FLSA
21 Collective Action Members, who include all persons who have worked for Defendant as Payroll
22 Sales Representatives in the United States at any time within the applicable statutory time period
23 and have been classified as exempt and paid on a salary basis.

24 22. Plaintiffs and FLSA Collective Action Members performed the same or
25 substantially similar duties for Defendant, were subject to Defendant's common policy and practice
26 of failing to pay overtime wages for all hours worked over forty in one workweek, have otherwise
27 been subject to common compensation plans, policies, and practices, and are otherwise similarly
28 situated employees within the meaning of the FLSA.

1 presumed that California Class Members' residences are dispersed throughout California and that
2 some California Class Members no longer reside in the state. The names and addresses of the
3 California Class Members are available to Defendant. Notice can be provided to the California
4 Class Members via first class mail using techniques and a form of notice similar to those
5 customarily used in class action lawsuits of this nature.

6 b. Commonality and Predominance of Common Questions: There are questions of law
7 and fact common to Plaintiffs and California Class Members that predominate over any questions
8 affecting only individual members of the Class. These common questions of law and fact include,
9 but are not limited to, the following:

- 10 i. Whether Defendant misclassified Plaintiffs and California Class Members as
11 exempt employees in violation of California law;
- 12 ii. Whether Defendant failed to pay California Class Members overtime wages
13 for time worked in excess of forty (40) hours per week and/or eight (8) hours
14 per day;
- 15 iii. Whether Defendant violated sections 510 of the California Labor Code and
16 IWC Wage Order No. 4, § 3, by failing to pay California Class Members
17 overtime compensation;
- 18 iv. Whether Defendant violated California Labor Code §§226.7 and 512 by
19 failing to consistently provide meal and rest periods;
- 20 v. Whether Defendant's failure to pay overtime compensation to California
21 Class Members constitutes an unlawful, unfair, and/or fraudulent business
22 practice under California Business & Professions Code §§ 17200 *et seq.*;
- 23 vi. Whether Defendant violated California Labor Code §§ 201-203 by failing,
24 upon termination, to timely pay California Class Members all wages owed,
25 and whether such failure was willful;
- 26 vii. Whether Defendant's failure to pay all compensation owed to California
27 Class Members at time of termination of employment constituted an
28

1 unlawful, unfair, and/or fraudulent business practice under California
2 Business & Professions Code § 17200 *et seq.*;

3 viii. Whether Defendant knowingly and intentionally violated California Labor
4 Code § 226(a) by failing to furnish California Class Members with accurate
5 written itemized statements at the time of the payment of their wages
6 showing their total hours worked; and,

7 ix. The proper measure of damages, restitution, interest, and penalties owed to
8 Plaintiffs and California Class Members.

9 c. Typicality: Plaintiffs' claims are typical of the claims of other California Class
10 Members. Defendant's common course of unlawful conduct has caused Plaintiffs and California
11 Class Members to sustain the same or similar injuries and damages caused by the same common
12 policies, practices, and decisions of Defendant. Plaintiffs' claims are thereby representative of and
13 co-extensive with the claims of the other California Class Members.

14 d. Adequacy of Representation: Plaintiffs are members of the Rule 23 Class defined
15 herein, do not have any conflicts of interest with other California Class Members, and will
16 prosecute the case vigorously on behalf of the class. Plaintiffs will fairly and adequately protect the
17 interests of the California Class Members. Plaintiffs have retained attorneys who are competent and
18 experienced in litigating employment class actions, including wage and hour class actions.

19 e. Superiority: The expense and burden of individual litigation by each member make
20 it impractical for California Class Members to seek redress individually for the wrongful conduct
21 alleged herein. Should separate actions be brought, or be required to be brought, by each individual
22 Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for
23 the Court and the litigants. The prosecution of separate actions would also create a risk of
24 inconsistent rulings which might be dispositive of the interests of other Class Members who are
25 parties to the adjudication and/or may substantially impede their ability to adequately protect their
26 interests.

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DAMAGES

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2 27. As a direct, foreseeable, and proximate result of Defendant’s conduct, Plaintiffs and
3 similarly situated Class and Collective Action Members are owed overtime compensation, interest,
4 liquidated damages, restitution, and available statutory penalties, the precise amounts of which will
5 be proven at trial.

6 **FIRST CAUSE OF ACTION**
7 **UNPAID OVERTIME IN VIOLATION OF THE FLSA, 29 U.S.C. § 201, ET SEQ.**
8 **(ON BEHALF OF PLAINTIFFS AND FLSA COLLECTIVE ACTION MEMBERS)**

9 28. The allegations of each of the preceding paragraphs are re-alleged and incorporated
10 herein by reference, and Plaintiffs allege as follows a claim of relief on behalf of themselves and all
11 FLSA Collective Action Members.

12 29. At all relevant times, Defendant has been, and continue to be, an “employer”
13 engaged in interstate “commerce” and/or in the production of “goods” for “commerce,” within the
14 meaning of the FLSA, 29 U.S.C. § 203. At all relevant times, Defendant has employed, and
15 continues to employ, as “employee[s],” Plaintiffs and each of the FLSA Collective Action
16 Members. At all relevant times, Defendant has had gross operating revenues in excess of \$500,000.

17 30. Plaintiffs consent to sue in this action pursuant to Section 16(b) of the FLSA, 29
18 U.S.C. § 216(b). Copies of Plaintiffs’ consent forms are attached hereto as Exhibit A.

19 31. The FLSA, 29 U.S.C. § 207, requires each covered employer, such as Defendant, to
20 compensate all non-exempt employees at the rate of not less than one and one-half times the
21 regular rate of pay for work performed in excess of forty (40) hours in a workweek.

22 32. Defendant improperly designated the position of Payroll Sales Representative as
23 exempt from the requirement to be paid overtime wages in violation of the FLSA.

24 33. During the course of employment for Wells Fargo, FLSA Collective Action
25 Members regularly worked more than 40 hours per week. Defendant required or permitted FLSA
26 Collective Action Members to work in excess of 40 hours per week.

27 34. At all relevant times, Defendant had a policy and practice of not paying FLSA
28 Collective Action Members at a rate of one and one-half times their respective regular rates of pay
for all hours worked in excess of forty hours per week.

1 35. By failing to compensate Plaintiffs and FLSA Collective Action Members at a rate
2 of not less than one and one-half times the regular rate of pay for work performed in excess of forty
3 (40) hours in a workweek, Defendant violated, and continues to violate, the FLSA, 29 U.S.C. §§
4 201, *et seq.*, including 29 U.S.C. §§ 207(a)(1).

5 36. The FLSA also imposes a record-keeping requirement on employers, including the
6 obligation to keep accurate records of all hours worked by employees. Defendant knowingly and
7 willfully failed and continues to willfully fail to record, report, and/or preserve accurate records of
8 all hours worked by Plaintiffs and FLSA Collective Action Members. By failing to record, report,
9 and/or preserve records of all hours worked by Plaintiffs and FLSA Collective Action Members,
10 Defendant violated, and continue to violate the FLSA, 29 U.S.C. §§ 201, *et seq.*, including 29
11 U.S.C. §§ 211(c), 215(a), and 29 C.F.R. § 516, *et seq.*

12 37. Defendant's violations have at all relevant times been willful because, among other
13 reasons, Defendant has had actual and/or constructive knowledge of Plaintiffs and FLSA
14 Collective Action Members working overtime hours for which they have not been compensated at
15 the rate of no less than one and one-half times their regular rate of pay.

16 38. As a direct and proximate result of Defendant's unlawful acts, Plaintiffs and FLSA
17 Collective Action Members have been deprived of overtime compensation in an amount to be
18 determined at trial, and are entitled to recover damages in the amount of unpaid overtime
19 compensation, interest, liquidated damages, and attorneys' fees and costs, as provided by the
20 FLSA, 29 U.S.C. §§ 216(b) and 255, and such other legal and equitable relief as the Court deems
21 just and proper.

22 **SECOND CAUSE OF ACTION**
23 **FAILURE TO PAY CALIFORNIA OVERTIME COMPENSATION**
24 **(CAL. LAB. CODE §§ 510, 1194, 1198; IWC WAGE ORDER NO. 4.)**
25 **(ON BEHALF OF PLAINTIFFS AND CALIFORNIA CLASS MEMBERS)**

26 39. The allegations of each of the preceding paragraphs are re-alleged and incorporated
27 herein by reference, and Plaintiffs allege as follows a claim of relief on behalf of themselves and all
28 California Class Members.

1 40. During the California Class Period, Plaintiffs and the California Class Members
2 worked, on many occasions, in excess of 8 hours in a workday and/or 40 hours in a workweek.
3 The precise number of overtime hours will be proven at trial. Despite the hours worked by
4 Plaintiffs and the California Class Members, Defendant willfully, in bad faith, and in knowing
5 violation of the California Labor Code, failed and refused to compensate Plaintiffs and California
6 Class Members for all of the overtime wages earned.

7 41. At all relevant times, Defendant was aware of, and were under a duty to comply
8 with, the overtime provisions of the California Labor Code including, but not limited to, California
9 Labor Code §§ 510, 1194, and 1198.

10 42. California Labor Code § 510, in pertinent part, provides:

11 “Any work in excess of eight hours in one workday and any work in excess of 40
12 hours in any one workweek and the first eight hours worked on the seventh day of
13 work in any one workweek shall be compensated at the rate of no less than one and
14 one-half times the regular rate of pay for an employee.”

15 43. California Labor Code § 1194, in pertinent part, provides:

16 “Notwithstanding any agreement to work for a lesser wage, any employee receiving
17 less than the legal minimum wage or the legal overtime compensation applicable to
18 the employee is entitled to recover in a civil action the unpaid balance of the full
19 amount of this minimum wage or overtime compensation, including interest
20 thereon, reasonable attorneys’ fees, and costs of suit.”

21 44. California Labor Code § 1198, in pertinent part, provides:

22 “[t]he maximum hours of work and the standard conditions of labor fixed by the
23 commission shall be the maximum hours of work and the standard conditions of
24 labor for employees. The employment of any employee for longer hours than those
25 fixed by the order or under conditions of labor prohibited by the order is unlawful.”

26 45. IWC Wage Order No. 4 applies (or applied) to Plaintiffs and all other California
27 Class Members. At all times relevant herein, IWC Wage Order No. 4 has provided in pertinent
28 part:

 “(a) an employee who works more than forty hours in a week must receive overtime
 compensation at the rate of one and one-half times his or her regular hourly rate for
 each overtime hour worked; and (b) an employee who works more than eight hours
 in a day must receive overtime compensation at the rate of one and one-half times
 his or her regular hourly rate for hours worked in excess of eight hours per day and
 at a rate of two times his or her hourly rate for hours worked in excess of twelve
 hours per day.”

 46. During the California Class Period, in violation of the applicable IWC Wage Order
and provisions of the California Labor Code, Defendant misclassified Plaintiffs and California

1 Class Members as exempt and refused to compensate Plaintiffs and California Class Members for
2 the overtime wages they earned. Specifically, Defendant failed and refused to pay Plaintiffs and
3 California Class Members one and one-half times their regular rate of pay for all hours worked in
4 excess of eight hours up to and including 12 hours in any workday, and for the first eight hours
5 worked on the seventh consecutive day of work in a workweek. Defendant also failed and refused
6 to pay Plaintiffs and California Class Members double their regular rate of pay for all hours worked
7 in excess of 12 hours in any workday and for all hours worked in excess of eight on the seventh
8 consecutive day of work in a workweek.

9 47. By refusing to compensate Plaintiffs and California Class Members for overtime
10 wages earned, Defendant violated those California Labor Code provisions cited herein as well as
11 the applicable IWC Wage Order.

12 48. As a direct and proximate result of Defendant's unlawful conduct, as set forth
13 herein, Plaintiffs and California Class Members have sustained damages, including loss of earnings
14 for hours of overtime worked on behalf of Defendant, in an amount to be established at trial, and
15 are entitled to recover their unpaid overtime and double time compensation, including interest
16 thereon, pursuant to California Labor Code § 1194(a). Plaintiffs and California Class Members are
17 also entitled to recover reasonable attorneys' fees and costs, pursuant to California Labor Code §
18 1194(a).

19 **THIRD CAUSE OF ACTION**

20 **FAILURE TO PROVIDE MEAL PERIODS**

21 **(In Violation of IWC Wage Order 4-2001, CAL. LAB. CODE §§ 226.7, 512)**

22 **(ON BEHALF OF PLAINTIFFS AND CALIFORNIA CLASS MEMBERS)**

23 49. The allegations of each of the preceding paragraphs are re-alleged and incorporated
24 herein by reference, and Plaintiffs allege as follows a claim of relief on behalf of themselves and all
25 California Class Members.

26 50. At all relevant times, Defendant was aware of, and under a duty to comply with,
27 California Labor Code §§ 226.7 and 512.

28 51. California Labor Code § 226.7 provides:

“(a) No employer shall require any employee to work during any meal or rest period
mandated by an applicable order of the Industrial Welfare Commission.

1 (b) If an employer fails to provide an employee a meal period or rest period in
2 accordance with an applicable order of the Industrial Welfare Commission, the
3 employer shall pay the employee one additional hour of pay at the employee's
4 regular rate of compensation for each work day that the meal or rest period is not
5 provided."

6 52. Moreover, California Labor Code § 512 provides:

7 An employer may not employ an employee for a work period of more than five
8 hours per day without providing the employee with a meal period of not less than 30
9 minutes, except that if the total work period per day of the employee is no more than
10 six hours, the meal period may be waived by mutual consent of both the employer
11 and employee. An employer may not employ an employee for a work period of
12 more than 10 hours per day without providing the employee with a
13 second meal period of not less than 30 minutes, except that if the total hours worked
14 is no more than 12 hours, the second meal period may be waived by mutual consent
15 of the employer and the employee only if the first meal period was not waived.

16 53. Sections 11 and 12 of IWC Wage Order 4 mandate that the employer provide all
17 applicable meal periods to non-exempt employees.

18 54. Section 11 of the applicable IWC Wage Order provides in pertinent part:

19 No employer shall employ any person for a work period of more than five (5) hours
20 without a meal period of not less than 30 minutes ... Unless the employee is
21 relieved of all duty during a 30 minute meal period, the meal period shall be
22 considered an "on duty" meal period and counted as time worked.

23 If an employer fails to provide an employee a meal period in accordance with the
24 applicable provisions of this order, the employer shall the employee one (1) hour of
25 pay at the employee's regular rate of compensation for each workday that the meal
26 period is not provided.

27 55. As described above, Defendant had a policy of not providing Plaintiffs and
28 California Class Members with lawful meal breaks. Defendant did not provide Plaintiffs and
California Class Members with a written meal period policy or otherwise inform them of their
entitlement to an uninterrupted, thirty-minute meal period within the first five hours of each work
day.

56. Plaintiffs and California Class Members consistently worked eight hours or more
per day but were not provided an uninterrupted, thirty-minute meal period within the first five
hours of work each day.

1 57. By failing to consistently provide Plaintiffs and California Class Members an
2 uninterrupted, thirty-minute meal period within the first five hours of work each day, Defendant
3 violated the California Labor Code and applicable IWC Wage Order provisions.

4 58. As a direct and proximate result of Defendant’s unlawful conduct, as set forth
5 herein, Plaintiffs and California Class Members have sustained damages, including loss of
6 compensation resulting from missed meal periods, in an amount to be established at trial.

7
8 **FOURTH CAUSE OF ACTION**
9 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**
10 **(In Violation of IWC Wage Order 4-2001, CAL. LAB. CODE § 226.7)**
11 **(ON BEHALF OF PLAINTIFFS AND CALIFORNIA CLASS MEMBERS)**

12 59. The allegations of each of the preceding paragraphs are re-alleged and incorporated
13 herein by reference, and Plaintiffs allege as follows a claim of relief on behalf of themselves and all
14 California Class Members.

15 60. At all relevant times, Defendant was aware of, and under a duty to comply with,
16 California Labor Code § 226.7 and Section 12 of Wage Order 4-2001.

17 61. At all times herein relevant, California Labor Code § 226.7 has applied and
18 continues to apply to Plaintiffs’ and California Class Members’ employment with Defendant.
19 California Labor Code § 226.7 states “no employer shall require any employee to work during any
20 meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

21 62. Section 12 of Wage Order No. 4-2001 provides in relevant part that:

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

29 63. If an employer fails to provide an employee a rest period in accordance with the
30 applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
31 employee’s regular rate of compensation for each work day that the rest period is not provided.

32 64. As described above, Defendant had a policy of not providing Plaintiffs and
33 California Class Members with lawful rest breaks. Defendant did not provide Plaintiffs and

1 California Class Members with a written rest period policy or otherwise inform them of their
2 entitlement to a rest period every four hours or major fraction thereof.

3 65. Plaintiffs and California Class Members regularly worked a full work day but were
4 denied a rest period every four hours or major fraction thereof.

5 66. Defendant failed to authorize and permit Plaintiffs and California Class Members to
6 take adequate rest periods as required by law. Plaintiffs and California Class Members are
7 therefore entitled to payment of additional wages as provided by law.

8 **FIFTH CAUSE OF ACTION**
9 **FAILURE TO PAY ALL WAGES DUE AT TERMINATION**
10 **(CAL. LAB. CODE §§ 201, 202, 203)**
11 **(ON BEHALF OF PLAINTIFFS COTA AND CHA AND CALIFORNIA CLASS**
12 **MEMBERS)**

13 67. The allegations of each of the preceding paragraphs are re-alleged and incorporated
14 herein by reference, and Plaintiffs Cha and Cota allege as follows a claim of relief on behalf of
15 themselves and all former employee California Class Members.

16 68. California Labor Code § 201 provides that an employer is required to provide an
17 employee who is terminated all accrued wages and compensation at the time of termination.
18 California Labor Code § 202 provides that an employer is required to provide an employee who
19 resigns all unpaid wages within 72 hours of their resignation, or upon resignation if the employee
20 has provided at least 72 hours' notice. Under California Labor Code § 203, if an employer
21 willfully fails to pay such wages, for every day that final wages or any part of the final wages
22 remain unpaid, the employer is liable for a penalty equivalent to the employee's daily wage, for a
23 maximum of 30 days.

24 69. Plaintiffs Cha and Cota and members of the California Class were employed by
25 Defendant during the California Class Period and were thereafter terminated or resigned from their
26 positions, yet they were not paid all wages due upon termination or within 72 hours of resignation.
27 Defendant willfully failed and refused to pay these persons either at the time of termination or
28 within 72 hours of their resignation as required under California law.

69. As a direct and proximate result of Defendant's willful conduct in failing to pay
Plaintiffs Cha and Cota and former employee California Class Members for all hours worked,

1 Plaintiffs Cha and Cota and affected members of the California Class are entitled to recover
2 “waiting time” penalties of up to thirty (30) days’ wages pursuant to California Labor Code § 203,
3 in an amount to be established at trial, together, with interest thereon, and attorneys’ fees and costs.

4
5 **SIXTH CAUSE OF ACTION**
6 **VIOLATIONS OF THE UNFAIR COMPETITION LAW (UCL)**
7 **(CAL. BUSINESS & PROFESSIONS CODE §§ 17200 *ET SEQ.*)**
8 **(ON BEHALF OF PLAINTIFFS AND CALIFORNIA CLASS MEMBERS)**

9
10 71. The allegations of each of the preceding paragraphs are re-alleged and incorporated
11 herein by reference, and Plaintiffs allege as follows a claim of relief on behalf of themselves and all
12 California Class Members.

13 72. California Business & Professions Code § 17200, *et seq.* (“UCL”) prohibits “unfair
14 competition” in the form of any unlawful, unfair, or fraudulent business act or practice.

15 73. Beginning at an exact date unknown to Plaintiffs, but at least four years prior to the
16 filing of this action, Defendant has engaged in unfair competition as defined by the UCL by, and as
17 further described above: (1) failing to pay overtime compensation to Plaintiffs and similarly
18 situated California Class Members in violation of California Labor Code §§ 510, 1198 and IWC
19 Wage Order No. 4, § 3; (2) failing to provide Plaintiffs and California Class Members with meal
20 and rest periods or pay them proper compensation in violation of California Labor Code §§ 226.7
21 and 512(a); (3) failing to maintain a system for paying meal and rest period premium wages to
22 Plaintiffs and California Class members; (4) failing to pay Plaintiffs Cha and Cota and similarly
23 situated former employee California Class Members all due and unpaid overtime wages upon
24 termination in violation of California Labor Code § 203; (5) misclassifying Plaintiffs and Class
25 Members as exempt from overtime under the FLSA; (6) failing to pay overtime compensation to
26 Plaintiffs and similarly-situated California Class Members in violation of the FLSA, 29 U.S.C. §
27 207(a)(1); and (7) failing to provide complete and accurate itemized wage statements in violation
28 of California Labor Code § 226.

74. Defendant’s knowing failure to adopt policies in accordance with and/or to adhere
to these laws all of which are binding upon and burdensome to its competitors, engenders an unfair

1 competitive advantage to Defendant, thereby constituting an unfair business practice under
2 California Business & Professions Code §§ 17200-17208.

3 75. Plaintiffs and similarly situated California Class Members have suffered injury in
4 fact and have lost money as a direct and proximate result of Defendant's unfair competition,
5 including, but not limited to, money due to them as overtime compensation, which money has been
6 acquired by Defendant by means of its unfair competition within the meaning of the UCL.

7 76. Pursuant to California Business & Professions Code §§ 17200 *et seq.*, Plaintiffs and
8 California Class Members are entitled to (i) restitution of all wages and compensation alleged
9 herein that Defendant withheld and retained during the period commencing four years prior to the
10 filing of this action, (ii) a permanent injunction requiring prohibiting further violations of the type
11 alleged herein for the period commencing four years, (iii) an award of reasonable attorneys' fees
12 pursuant to Cal. Civ. Proc. Code § 1021.5 and other applicable law, and (iv) costs. All remedies
13 are cumulative pursuant to California Business & Professions Code § 17205.

14 **SEVENTH CAUSE OF ACTION**
15 **CALIFORNIA WAGE STATEMENT VIOLATIONS**
16 **(CAL. LAB. CODE § 226, 226.3, 21174)**
17 **(ON BEHALF OF PLAINTIFFS AND CALIFORNIA CLASS MEMBERS)**

18 77. The allegations of each of the preceding paragraphs are re-alleged and incorporated
19 herein by reference, and Plaintiffs allege as follows a claim of relief on behalf of themselves and all
20 California Class Members.

21 78. Pursuant to California Labor Code § 226(a), Defendant has at all relevant times
22 been required, semimonthly or at the time of each payment of wages, to furnish Plaintiffs and
23 California Class Members accurate itemized written statements containing all the information
24 described in that statute, including, but not limited to, the total hours worked by the employee.

25 79. Defendant has knowingly and intentionally failed to comply with California Labor
26 Code § 226(a) by, among other things, knowingly and intentionally failing to furnish Plaintiffs and
27 California Class Members with accurate itemized written statements showing their total hours
28 worked.

1 action, and providing them with notice of their right to assert timely FLSA claims in this action by
2 filing individual consent forms pursuant to 29 U.S.C. § 216(b);

3 B. Designation of Plaintiffs as Representatives of the FLSA Collective Action
4 Members;

5 C. A declaratory judgment that the practices complained of herein are unlawful under
6 the FLSA;

7 D. An award of damages, according to proof, including liquidated damages, to be paid
8 by Defendant;

9 E. Costs of action incurred herein, including expert fees;

10 F. Attorneys' fees, including fees pursuant to 29 U.S.C. § 216;

11 G. Pre-judgment and post-judgment interest, as provided by law; and

12 H. Such other relief as this Court deems necessary, just, and proper.

13 85. WHEREFORE, Plaintiffs, on behalf of themselves and the above-described Rule 23
14 Class of similarly situated California Class Members, requests relief as follows:

15 A. Certification of the above-described Rule 23 Class as a class action, pursuant to
16 Rule 23 of the Federal Rules of Civil Procedure;

17 B. Appointment of Plaintiffs as California Class Representatives;

18 C. Appointment of Plaintiffs' Counsel as California Class Counsel;

19 D. Provision of class notice to all California Class Members;

20 E. A declaratory judgment that Defendant have knowingly and intentionally violated
21 the following provisions of law, among others:

22 1. Cal. Labor Code §§ 510, 1194 *et seq.*, 1198, and IWC wage order No. 4, by
23 failure to pay overtime compensation to California Class Members;

24 2. Cal. Labor Code §§ 203, by willful failure to pay all wages owed at the time
25 of termination of employment;

26 3. Cal. Business and Professions Code §§ 17200 *et seq.*, by failure to pay
27 overtime compensation due to California Class Members under California law, by willfully failing
28 to pay all compensation owed to California Class Members upon termination of employment; by

1 willfully failing to provide legally compliant wage statements; and by failing to provide California
2 Class Members with lawful meal and rest periods or proper compensation; and

3 4. Cal. Labor Code § 226(a), by failure to provide itemized written statements
4 semimonthly or at the time of payment of wages accurately showing all the information required
5 by California law, including but not limited to total hours worked;

6 F. A declaratory judgment that Defendant's violations as described above were willful
7 and/or knowing and intentional;

8 G. An equitable accounting to identify, locate, and restore to all current and former
9 California Class Members the overtime wages due;

10 H. An award to Plaintiffs and the California Class Members of damages in the amount
11 of unpaid overtime compensation, including interest thereon pursuant to Cal. Labor Code §§ 218.6
12 and 1194, Cal. Civ. Code §§ 3287, 3288, and 3289 and/or other applicable law, subject to proof at
13 trial;

14 I. An award of penalties owed, pursuant to Labor Code § 203, to all California Class
15 Members who separated from Defendant's employ without receiving all overtime compensation
16 owed at the time of separation;

17 J. An order requiring Defendant to pay restitution of all amounts owed to Plaintiffs
18 and similarly situated California Class Members for Defendant's failure to pay legally required
19 overtime pay (under state and federal law), and interest thereon, in an amount according to proof,
20 pursuant to California Business & Professions Code § 17203 and other applicable law;

21 K. An award to Plaintiffs and the California Class Members of damages and/or
22 penalties as set forth in California Labor Code § 226(e);

23 L. An award to Plaintiffs and the California Class Members of premium wages for
24 meal and rest periods, according to proof;

25 M. An award to Plaintiffs and the California Class Members of reasonable attorneys'
26 fees and costs, pursuant to California Code of Civil Procedure § 1021.5, California Labor Code §§
27 218.5, 226(e), 1194, and/or other applicable law.

28 N. For civil penalties individually and on behalf of all aggrieved employees pursuant to

