

Superior Court of California County of Orange



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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF ORANGE**

11 HITOMI MARUKAWA, an individual; on
12 behalf of themselves and all others similarly
situated,

13 Plaintiffs,

14 v.

15 ZODIAC CABIN & STRUCTURES
16 SUPPORT, LLC, a Limited Liability
Company; C&D ZODIAC, INC., a
17 Corporation; and DOES 1 through 50,
inclusive,

18 Defendants.
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Case No.

CLASS ACTION COMPLAINT FOR:

- (1) **FAILURE TO PROVIDE MEAL PERIODS;**
- (2) **FAILURE TO PROVIDE REST BREAKS;**
- (3) **FAILURE TO PAY OVERTIME WAGES;**
- (4) **FAILURE TO PAY MINIMUM WAGES;**
- (5) **FAILURE TO PAY ALL WAGES UPON SEPARATION;**
- (6) **FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS;**
- (7) **FAILURE TO PAY ALL WAGES OWED EVERY PAY PERIOD; AND**
- (8) **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION ACT ("UCL"), Bus. & Prof. Code § 17200 et seq.**
- (9) **PRIVATE ATTORNEY GENERAL ACTION ("PAGA") PENALTIES, Cal. Lab. Code § 2699 et seq.**

DEMAND FOR JURY TRIAL

1 Plaintiff Hitomi Marukawa (“Plaintiff”), by and through her undersigned attorneys, for
2 this Class Action Complaint against Defendants Zodiac Cabin & Structures Support, LLC,
3 C&D Zodiac, Inc., and DOES 1 through 50 (collectively, “Defendants”) respectfully alleges the
4 following:

5 **NATURE OF THE ACTION**

6 1. This is a class action for wage and labor violations arising out of, among other
7 things, Defendants’ misclassification of employees, failure to pay wages, pay overtime, and
8 provide meal and rest breaks to its planners.

9 2. As more fully set forth herein, Defendants intentionally misclassified employees
10 as exempt employees; failed to pay for all time worked every pay period, specifically including
11 required minimum wages and daily overtime; failed to provide off-duty meal and rest periods to
12 its California planners in accordance with the California Labor Code § 226.7; failed to pay its
13 employees one hour of pay at their regular rate of compensation for each instance that
14 Defendants failed to provide statutorily mandated rest periods and off-duty meal periods; and for
15 penalties arising from Defendants’ issuing to its planners inaccurate wage statements.

16 3. Plaintiffs seek to represent the following Class:

17 All current and former California employees of Defendants, employed in
18 California, at any time beginning four (4) years prior to the filing of the
19 Complaint through the date notice is mailed to the Class (the “Class
20 period”), and who worked as a “planner” for Defendant.

21 **JURISDICTION AND VENUE**

22 4. This Court has jurisdiction over the entire action because this is a civil action
23 wherein the matter in controversy, exclusive of interest and costs, exceeds the jurisdictional
24 minimum of the Court. The acts and omissions complained of in this action took place in the
25 State of California, and Defendants have multiple offices in California. Venue is proper because
26 this is a class action, the acts and/or omissions complained of took place, in whole or in part
27 within the venue of this Court, and Defendants have one or more offices within the venue of this
28 court.

1
2 **PARTIES**

3 5. Plaintiff Hitomi Marukawa was, at all relevant times, a citizen of the State of
4 California. Ms. Marukawa was employed by Defendants as a planner during the liability period
5 as alleged herein.

6 6. Defendant Zodiac Cabin & Structures Support LLC, is a limited liability company
7 licensed to do, and is doing, business in the State of California. At all times relevant during the
8 liability period, Defendant Zodiac Cabin & Structures Support LLC's main office is located at
9 5701 Bolsa Ave., Huntington Beach, CA 92647.

10 7. Defendant C&D Zodiac, Inc., is a corporation licensed to do, and is doing,
11 business in the State of California. At all times relevant during the liability period, Defendant
12 C&D Zodiac, Inc.'s main office is located at 5701 Bolsa Ave., Huntington Beach, CA 92647.

13 8. Plaintiff is currently ignorant of the true names and capacities, whether individual,
14 corporate, associate, or otherwise, of the defendants sued herein under the fictitious names Does
15 1 through 50, inclusive, and therefore sue such defendants by such fictitious names. Plaintiff
16 will seek leave to amend this complaint to allege the true names and capacities of said fictitiously
17 named defendants when their true names and capacities have been ascertained. Plaintiff is
18 informed and believes and thereon alleges that each of the fictitiously named defendants is
19 legally responsible in some manner for the events and occurrences alleged herein, and for the
20 damages suffered by the Class.

21 9. Plaintiff is informed and believe and thereon allege that all defendants, including
22 the fictitious Doe defendants, were at all relevant times acting as actual agents, conspirators,
23 ostensible agents, partners and/or joint venturers and/or employees of all other defendants, and
24 that all acts alleged herein occurred within the course and scope of said agency, employment,
25 partnership, and joint venture, conspiracy or enterprise, and with the express and/or implied
26 permission, knowledge, consent authorization and ratification of their co-defendants; however,
27 each of these allegations are deemed "alternative" theories whenever not doing so would result in
28 a contradiction with other allegations.

1 **FACTS COMMON TO ALL CAUSES OF ACTION**

2 10. Defendants make interiors for certain airplanes.

3 11. At all times during the liability period, Defendants employed Plaintiff and Class
4 members as “planners” responsible for overseeing all the planning activities to assure a
5 successful production and delivery of the products.

6 12. At all times during the liability period, Defendants employed Plaintiff as an
7 exempt “planner” even though the work performed and conditions of employment were that of
8 an non-exempt, hourly employee. The conditions and requirement of employment with
9 Defendants, include but are not limited to:

10 i. More than 75% of work Plaintiffs does as a “planner” was ministerial in
11 nature, and during these times Plaintiff was exercising no supervisory control
12 over any other employee.

13 ii. Defendants direct and control the way the Plaintiff performs her work.

14 13. Defendants exercised that same dominion and control over every planner during
15 the class period.

16 14. At all times during the liability period, Plaintiff and Class members were assigned
17 to and required to work shifts lasting over four (4) hours, and were not provided nor allowed to
18 take a ten (10) minute, uninterrupted rest break during each such shift or four (4) hour work
19 period.

20 15. At all times during the liability period, Plaintiff and Class members worked in
21 excess of eight (8) hours per work day or forty (40) hours per work week. Defendants failed to
22 pay for hours worked in excess of eight (8) hours per day. Defendants failed to pay current and
23 former planners one-and-one-half times their regular rate of pay for hours worked in excess of
24 eight (8) hours per day or forty (40) hours per workweek. Defendants also failed to pay their
25 employees at a rate no less than twice the regular rate of pay for work in excess of twelve (12)
26 hours in one day or for all hours worked in excess of eight (8) hours on the seventh consecutive
27 day of work in a workweek.

28 16. At all times during the liability period, Plaintiff and the Class members were

1 assigned to and required to work for periods lasting in excess of five (5) hours and were not
2 provided or allowed to take a thirty (30) minute, uninterrupted, off-duty meal break. Moreover,
3 Plaintiff and the Class members often worked and in excess of ten (10) hours without a second
4 thirty (30) minute meal break.

5 17. At all times during the liability period, Defendants failed to authorize and permit
6 rest breaks during the Class period. Plaintiff and members of the Class were routinely required to
7 work through rest periods at the direction of Defendants and/or with Defendants' knowledge and
8 acquiescence.

9 18. At all times during the liability period, Defendants failed to pay Class members
10 for all hours worked. Thus, Defendants did not pay Plaintiff and the Class members minimum
11 wages in accordance with law and, because Class members worked shifts over eight (8) hours in
12 duration, Defendants does not pay them overtime wages in accordance with law.

13 19. Defendants' conduct, as alleged herein, has caused Plaintiff and Class members
14 damages including, but not limited to, loss of wages and compensation. Defendants are liable to
15 Plaintiff and the Class for failing to pay minimum wages, failing to pay overtime wages, failing
16 to pay all wages owed on each pay period, failure to provide timely and accurate wage
17 statements, failure to pay all wages owed upon termination, and unfair competition.

18 20. Plaintiff is a member of and seek to be the representative for the Class of similarly
19 situated employees who all have been exposed to, have suffered, and/or were permitted to work
20 under, Defendants' unlawful employment practices as alleged herein.

21 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

22 21. Plaintiff brings this action on behalf of themselves, and on behalf of all others
23 similarly situated, and as a member of the Class defined as follows:

24 All current and former California employees of Defendants, employed
25 in California, at any time beginning four (4) years prior to the filing of
26 the Complaint through the date notice is mailed to the Class (the
27 "Class period"), and who worked as a "planner" for Defendants.

28 22. Plaintiff reserves the right to amend or otherwise alter the class definitions

1 presented to the Court at the appropriate time, or to propose or eliminate sub-classes, in response
2 to facts learned through discovery, legal arguments advanced by Defendants or otherwise.

3 23. This action has been brought and may be properly maintained as a class action
4 pursuant to the provisions of Code of Civil Procedure § 382 (hereinafter “§ 382”) and other
5 applicable law.

6 24. **Numerosity of the Class:** Pursuant to § 382, members of the Class are so
7 numerous that their individual joinder is impracticable. Plaintiff estimates, on information and
8 belief, that there are over fifty (50) current and former aggrieved employees of Defendants
9 employed as planners in California during the Class period. The precise number of Class
10 members and their addresses are known to Plaintiff or will be known to Plaintiff through
11 discovery. Class members may be notified of the pendency of this action by mail, electronic
12 mail, the Internet, or published notice.

13 25. **Existence of Predominance of Common Questions of Fact and Law:** Pursuant
14 to § 382, common questions of law and fact exist as to all members of the Class. These questions
15 predominate over any questions affecting only individual Class members. These common legal
16 and factual questions include:

- 17 a. Whether Defendants intentionally misclassified Plaintiff and members of the class as
18 exempt employees;
- 19 b. Whether Plaintiff and each member of the Class were not paid minimum wage for
20 each hour worked or part thereof during which they were required to perform acts at
21 the direction and for the benefit of Defendants;
- 22 c. Whether Defendants engaged in a pattern or practice of failing to pay Plaintiff and
23 the members of the Class who worked in California for the total hours worked during
24 the Class period;
- 25 d. Whether Defendants violated Labor Code § 226.7 and/or § 512 and engaged in a
26 pattern or practice of failing to provide timely, off-duty thirty (30) minute meal
27 periods to Plaintiffs and members of the Class who worked as planners in California
28 during the Class period;

- 1 e. Whether Defendants engaged in a pattern or practice of impeding Plaintiff and the
2 members of the Class who worked as planners in California during the Class period
3 from taking statutory off-duty thirty (30) minute meal periods on a timely basis;
- 4 f. Whether Defendant engaged in a pattern or practice of failing to properly
5 compensate Plaintiffs and the members of the Class who worked as planners in
6 California during the Class period for missed, untimely or on-duty meal periods as
7 required by California law;
- 8 g. Whether Defendants violated California Industrial Welfare Commission (“IWC”)
9 Order No. 1, § 11 by failing to provide Plaintiff and the members of the Class who
10 worked as planners in California during the Class period with timely off-duty thirty
11 (30) minute meal periods;
- 12 h. Whether Defendants engaged in unfair practice and violated California Business and
13 Professions Code § 17200 by failing to provide Plaintiff and the members of the
14 Class who worked as planners in California during the Class period with their
15 statutory off-duty meal periods on a timely basis;
- 16 i. Whether Defendants maintained accurate time records of off-duty thirty (30) minute
17 meal breaks taken by Plaintiff and members of the Class during the Class period in
18 accordance with § 7 of IWC Wage Order No. 1-2001;
- 19 j. Whether Defendants violated Labor Code § 226(a) by issuing inaccurate itemized
20 wage statements to Plaintiff and members of the Class that failed to include
21 payments for missed, untimely, and/or on-duty meal periods among wages earned
22 throughout the Class period;
- 23 k. Whether Defendants violated Labor Code § 226 by issuing inaccurate itemized wage
24 statements to Plaintiff and members of the Class that failed to accurately state the
25 total hours worked, to the detriment of Plaintiff and the Class;
- 26 l. Whether Defendants failed to compensate, and therefore violated IWC Wage Order
27 No. 1-2001 and Labor Code § 226.7 by failing to provide ten (10) minute,
28 uninterrupted rest periods as contemplated by California law for work periods in

1 excess of four (4) hours;

- 2 m. Whether Defendants engaged in a pattern or practice of failing to properly
3 compensate Plaintiff and the members of the Class who worked as planners in
4 California during the Class period for failing to provide ten (10) minute,
5 uninterrupted rest periods as contemplated by California law for work periods in
6 excess of four (4) hours;
- 7 n. Whether Defendants engaged in a pattern or practice of failing to pay appropriate
8 amounts of overtime pay to Plaintiff and the Class for hours worked in excess of
9 eight (8) hours in a day;
- 10 o. Whether Defendants violated § 510 of the Labor Code by failing to pay overtime pay
11 to Plaintiff and the Class for hours worked in excess of eight (8) hours in a day;
- 12 p. Whether Defendants violated § 3 of Wage Order No. 1-2001 of the IWC by failing to
13 pay overtime to Plaintiff and the Class for hours worked in excess of eight (8) hours
14 in a day;
- 15 q. Whether Defendants violated Labor Code §§ 218.5, 204, 1197, and 1198 due to
16 failure to compensate Plaintiff and the Class for those acts Defendants required
17 Plaintiff and members of the Class to perform for the benefit of Defendants.
- 18 r. The nature and extent of class-wide injury and the measure of damages for the
19 injury.

20 26. **Typicality:** Plaintiff's claims are typical of the claims of the members of the
21 subclasses they represent because Plaintiff, as employee planners of Defendants were exposed
22 and subjected to the same unlawful business practices as other planners employed by Defendants
23 during the liability period. Plaintiff and the members of the class they represent sustained the
24 same types of damages and losses.

25 27. **Adequacy:** Plaintiff is an adequate representative of the Class she seeks to
26 represent because her interests do not conflict with the interests of the members of the classes
27 Plaintiff seeks to represent. Plaintiff has retained counsel competent and experienced in complex
28 class action litigation and Plaintiff intends to prosecute this action vigorously. The interests of

1 members of each Class will be fairly and adequately protected by Plaintiff and their counsel.

2 28. **Superiority and Substantial Benefit:** The class action is superior to other
3 available means for the fair and efficient adjudication of Plaintiff and the Class members' claims.
4 The damages suffered by each individual Class member may be limited. Damages of such
5 magnitude are small given the burden and expense of individual prosecution of the complex and
6 extensive litigation necessitated by Defendants' conduct. Further, it would be virtually
7 impossible for the Class members to redress the wrongs done to them on an individual basis.
8 Even if members of the Class themselves could afford such individual litigation, the court system
9 could not. Individualized litigation increases the delay and expense to all parties and the court
10 system, due to the complex legal and factual issues of the case. By contrast, the class action
11 device presents far fewer management difficulties, and provides the benefits of single
12 adjudication, economy of scale, and comprehensive supervision by a single court.

13 29. The Class should also be certified because:

14 a. The prosecution of separate actions by individual members of the Class would
15 create a risk of inconsistent or varying adjudications with respect to individual Class members
16 which would establish incompatible standards of conduct for Defendants;

17 b. The prosecution of separate actions by individual members of the Class would
18 create a risk of adjudication with respect to them, which would, as a practical matter, be
19 dispositive of the interests of the other Class members not parties to the adjudications, or
20 substantially impair or impede their ability to protect their interests; and

21 c. Defendants has acted or refused to act on grounds generally applicable to the
22 Class, and/or the general public, thereby making appropriate final and injunctive relief with
23 respect to the Classes as a whole.

24 **PRIVATE ATTORNEY GENERAL ACT OF 2004 (LABOR CODE SECTION 2698, ET**
25 **SEQ.)**

26 30. In 2003, California's Legislature declared that, "staffing levels for state labor law
27 enforcement agencies have, in general, declined over the last decade and are likely to fail to keep
28 up with the growth of the labor market in the future. It is therefore in the public interest to

1 provide that civil penalties for violations of the Labor Code may also be assessed and collected
2 by aggrieved employees acting as private attorneys general, while also ensuring that state labor
3 law enforcement agencies' enforcement actions have primacy over any private enforcement
4 efforts undertaken pursuant to this act.” *Dunlap v. Superior Court* (2006) 142 Cal.App.4th330,
5 337- 338 citing Stats. 2003, ch. 906, § 1.

6 31. In response, California's Legislature passed the Private Attorney General Act of
7 2004 (“PAGA”), which “was adopted to empower aggrieved employees, acting as private
8 attorneys general, to seek civil penalties for Labor Code violations, penalties which previously
9 could be assessed only by state agencies.” *Dunlap v. Superior Court* (2006) 142 Cal.App.4th 330,
10 336. “ Thus, PAGA empowers or deputizes an aggrieved employee to sue for civil penalties ‘on
11 behalf of himself or herself and other current or former employees' as an alternative to
12 enforcement by the LWDA.” *Id.* at 337 citing to Cal. Lab. Code 2699(a). Class action
13 requirements do not apply to representative actions brought by one employee on behalf of other
14 current or former employees under the PAGA. *Arias v. Superior Court* (2009) 46 Cal.4th 969,
15 984.

16 32. Prior to bringing the action, the aggrieved employee shall give written notice by
17 certified mail to the Labor and Workforce Development Agency and the employer of the specific
18 provisions of this code alleged to have been violated, including the facts and theories to support
19 the alleged violation. *Cal. Lab. Code 2699.3* (c)(1). The employer has the right to cure the
20 violations within 33 days. *Id.* subsection (c)(2)(A). If the alleged violation is not cured within the
21 33-day period, the employee may commence a civil action pursuant to Section 2699. *Id.*

22 33. The aggrieved employee is entitled to keep 25% of the civil penalties recovered in
23 the PAGA action and the remaining 75% goes to the Labor and Workforce Development
24 Agency. *Cal. Lab. Code 2699(i)*.

25 **FIRST CAUSE OF ACTION**
26 **UNLAWFUL FAILURE TO PROVIDE MEAL PERIODS**
27 **(Violation of Labor Code §§ 512 and 226.7; IWC Wage Order No. 1-2001, § 11)**
28 **(Against All Defendants)**

34. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth

1 herein.

2 35. California Labor Code § 226.7(a) provides, “No employer shall require any
3 employee to work during any meal or rest period mandated by an applicable order of the
4 Industrial Welfare Commission.”

5 36. IWC Order No. 1-2001(11)(A) provides, in relevant part: “No employer shall
6 employ any person for a work period of more than five (5) hours without a meal period of not
7 less than 30 minutes, except that when a work period of not more than six (6) hours will
8 complete the day’s work the meal period may be waived by mutual consent of the employer and
9 the employee.”

10 37. Section 512(a) of the California Labor Code provides, in relevant part, that: “An
11 employer may not employ an employee for a work period of more than five hours per day
12 without providing the employee with a meal period of not less than 30 minutes, except that if
13 the total work period per day of the employee is no more than six hours, the meal period may be
14 waived by mutual consent of both the employer and employee. An employer may not employ an
15 employee for a work period of more than 10 hours per day without providing the employee with
16 a second meal period of not less than 30 minutes, except that if the total hours worked is no
17 more than 12 hours, the second meal period may be waived by mutual consent of the employer
18 and the employee only if the first meal period was not waived.”

19 38. As alleged herein, Defendants failed to authorize and permit uninterrupted meal
20 breaks during the Class period. Plaintiffs and members of the Class were routinely required to
21 work without an uninterrupted meal break at the direction of Defendants and/or with
22 Defendants’ knowledge and acquiescence.

23 39. By its actions in requiring its employees to work through meal periods and/or its
24 failure to relieve planners of their duties for their off-duty meal periods, Defendants has violated
25 California Labor Code § 226.7 and § 11 of IWC Wage Order No. 1-2001, and is liable to
26 Plaintiffs and the Class.

27 40. As a result of the unlawful acts of Defendants, Plaintiffs and the Class have been
28 deprived of timely off-duty meal periods, and are entitled to recovery under Labor Code

1 § 226.7(b) and § 11 of IWC Wage Order No. 1-2001, in the amount of one additional hour of
2 pay at the employee's regular rate of compensation for each work period during each day in
3 which Defendants failed to provide its planners with timely statutory off-duty meal periods.

4 **SECOND CAUSE OF ACTION**

5 **UNLAWFUL FAILURE TO PROVIDE REST PERIODS**

6 **(Violation of Labor Code §§ 226.7, 512, and 1194; IWC Wage Order No. 1-2001, § 12)**
7 **(Against All Defendants)**

8 41. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
9 herein.

10 42. California Labor Code § 226.7(a) provides, "No employer shall require any
11 employee to work during any meal or rest period mandated by an applicable order of the
12 Industrial Welfare Commission."

13 43. IWC Order No. 1-2001(12)(A) provides, in relevant part: "Every employer shall
14 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
15 the middle of each work period. The authorized rest period time shall be based on the total
16 hours worked daily at the rate of ten (10) minutes net rest time per four hours or major fraction
17 thereof. However, a rest period need not be authorized for employees whose total daily work
18 time is less than three and one-half hours. Authorized rest period time shall be counted as hours
19 worked for which there shall be no deduction from wages."

20 44. IWC Order No. 1-2001 (12)(B) further provides, "If an employer fails to provide
21 an employee with a rest period in accordance with the applicable provisions of this order, the
22 employer shall pay the employee one (1) hour of pay at the employee's regular rate of
23 compensation for each workday that the rest period is not provided."

24 45. As alleged herein, Defendants failed to authorize and permit rest breaks during
25 the Class period. Plaintiffs and members of the Class were routinely required to work through
26 rest periods at the direction of Defendants and/or with Defendants' knowledge and
27 acquiescence.

28 46. By their actions in requiring their employees during the Class period to work
through rest periods, Defendants violated § 12 of IWC Wage Order No. 1-2001 and California

1 Labor Code § 226.7, and are liable to Plaintiffs and the Class.

2 47. Defendants' unlawful conduct alleged herein occurred in the course of
3 employment of Plaintiffs and all others similarly situated and such conduct has continued
4 through the filing of this complaint.

5 48. As a direct and proximate result of Defendants' unlawful action, Plaintiffs and the
6 Class have been deprived of timely rest periods and/or were not paid for rest periods taking
7 during the Class period, and are entitled to recovery under Labor Code § 226.7(b) in the
8 amount of one additional hour of pay at the employee's regular rate of compensation for each
9 work period during each day in which Defendants failed to provide employees with timely
10 and/or paid rest periods.

11 **THIRD CAUSE OF ACTION**

12 **UNLAWFUL FAILURE TO PAY ALL OVERTIME AND DOUBLE TIME WAGES**
13 **(Violation of Labor Code §§ 510 and 1194; Wage Order No. 1-2001, § 3)**
(Against All Defendants)

14 49. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
15 herein.

16 50. Section 510 of the Labor Code provides that, "Any work in excess of eight hours
17 in one workday and any work in excess of 40 hours in any one workweek and the first eight
18 hours worked on the seventh day of work in any one workweek shall be compensated at the rate
19 of no less than one and one-half times the regular rate of pay for an employee. Any work in
20 excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular
21 rate of pay for an employee...."

22 51. Section 3(a)(1) of Wage Order No. 1-2001 also mandates that employers pay one
23 and one-half times the employees' regular rate of pay for employees who work more than eight
24 (8) hours in a day or forty (40) hours in a week, and two times their regular rate of pay for any
25 work in excess of twelve (12) hours in one day.

26 52. At all times relevant hereto, Plaintiffs and members of the Class were non-exempt
27 for purposes of the overtime and double pay requirements set forth in the Labor Code and Wage
28 Order No. 1-2001. In addition, during the Class period, Plaintiffs and other members of the

1 Class consistently worked three to five (5) days per week for nine (9) hours or more.

2 53. Plaintiffs seek to recover unpaid overtime and double-time compensation in an
3 amount to be determined at trial.

4 **FOURTH CAUSE OF ACTION**
5 **UNLAWFUL FAILURE TO PAY MINIMUM WAGES**
6 **(Violation of Labor Code §§ 510, 1194, 1194.2, and 1197; Wage Order No. 1-2001, § 4)**
7 **(Against All Defendants)**

8 54. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
9 herein.

10 55. Labor Code § 510 provides in relevant part: “[e]ight hours of labor constitutes a
11 day’s work. Any work in excess of eight hours in one work day and any work in excess of 40
12 hours in any one workweek and the first eight hours worked on the seventh day of work in any
13 one workweek shall be compensated at the rate of no less than one and one-half times the
14 regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be
15 compensated at the rate of no less than twice the regular rate of pay for an employee. In
16 addition, any work in excess of eight hours on any seventh day of a workweek shall be
17 compensated at the rate of no less than twice the regular rate of pay of an employee.”

18 56. Labor Code § 1197 provides: “The minimum wage for employees fixed by the
19 commission is the minimum wage to be paid to employees, and the payment of a less wage than
20 the minimum so fixed is unlawful.”

21 57. Labor Code § 1194, subdivision (a) provides: “Notwithstanding any agreement to
22 work for a lesser wage, an employee receiving less than the legal minimum wage or the legal
23 overtime compensation applicable to the employee is entitled to recover in a civil action the
24 unpaid balance of the full amount of this minimum wage or overtime compensation, including
25 interest thereon, reasonable attorney’s fees, and costs of suit.”

26 58. Labor Code § 1194.2 provides in relevant part: “In any action under Section
27 1193.6 or Section 1194 to recover wages because of the payment of a wage less than the
28 minimum wage fixed by an order of the commission, an employee shall be entitled to recover
liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

1 59. Pursuant to IWC Wage Order No. 1-2001, at all times material hereto, “hours
2 worked” includes “the time during which an employee is subject to the control of an employer,
3 and includes all the time the employee is suffered or permitted to work, where or not required to
4 do so.”

5 60. Pursuant to § 4 of IWC Wage Order No. 1-2001, Plaintiffs and members of each
6 Class were entitled to receive not less than \$8.00 per hour for all hours worked.

7 61. At all times relevant during the liability period, under the provisions of Wage
8 Order No. 1-2001, Plaintiffs and each Class member should have received not less than the
9 minimum wage in a sum according to proof for the time worked, but not compensated.

10 62. For all hours that Plaintiffs and the Class members worked, they are entitled to
11 not less than the California minimum wage and, pursuant to Labor Code § 1194.2(a) liquidated
12 damages in an amount equal to the unpaid minimum wages and interest thereon. Pursuant to
13 Labor Code § 1194, Plaintiffs and the Class members are also entitled to their attorneys’ fees,
14 costs and interest according to proof.

15 63. At all times relevant during the liability period, Defendants willfully failed and
16 refused, and continues to willfully fail and refuse, to pay Plaintiffs and Class members the
17 amounts owed.

18 64. Defendants’ unlawful conduct alleged herein occurred in the course of
19 employment of Plaintiffs and all other similarly situated planners, and Defendants has done so
20 continuously throughout the filing of this complaint.

21 65. As a direct and proximate result of Defendants’ violation of Labor Code §§ 510
22 and 1197, Plaintiffs and other Class members have suffered irreparable harm and money
23 damages entitling them to damages, injunctive relief or restitution. Plaintiffs, on behalf of
24 themselves and on behalf of the Class, seeks damages and all other relief allowable including all
25 wages due while working as Defendants’ planners, attorneys’ fees, liquidated damages,
26 prejudgment interest, and as to those employees no longer employed by Defendants, waiting
27 time penalties pursuant to Labor Code § 200 *et seq.*

28 66. Plaintiffs and the Class members are entitled to back pay, pre-judgment interest,

1 liquidated damages, statutory penalties, attorneys' fees and costs, and for Plaintiffs and the
2 Class of members no longer employed, waiting time penalties pursuant to Labor Code § 1194.

3 **FIFTH CAUSE OF ACTION**
4 **FAILURE TO PAY ALL WAGES DUE AT SEPARATION**
5 **(Violation of Labor Code § 203)**
6 **(Against All Defendants)**

7 67. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
8 herein.

9 68. California Labor Code §§ 201 and 202 requires Defendants to pay all
10 compensation due and owing to former planners at or around the time employment is
11 terminated. Section 203 of the California Labor Code provides that if an employer willfully
12 fails to pay compensation promptly upon discharge or resignation, as required by §§ 201 and
13 202, then the employer is liable for penalties in the form of continued compensation up to thirty
14 (30) work days.

15 69. At all times relevant during the liability period, Plaintiffs and the other members
16 of the Class were employees of Defendants covered by Labor Code § 203.

17 70. Plaintiffs and the Class were not paid for their work performed in excess of eight
18 (8) hours per day.

19 71. Defendants willfully failed to pay Plaintiffs and other members of the Class who
20 are no longer employed by Defendants for their uncompensated hours, uncompensated
21 overtime, and missed, untimely or on-duty meal and rest periods upon their termination or
22 separation from employment with Defendants as required by California Labor Code §§ 201 and
23 202. As a result, Defendants are liable to Plaintiffs and other members of the Class who are no
24 longer employed by Defendants for waiting time penalties amounting to thirty days wages for
25 Plaintiffs and each such Class member pursuant to California Labor Code § 203.

26 **SIXTH CAUSE OF ACTION**
27 **FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS**
28 **(Violation of Labor Code §§ 226 and 226.3)**
(Against All Defendants)

72. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth

1 herein.

2 73. California Labor Code § 226(a) provides: “Every employer shall, semimonthly or
3 at the time of each payment of wages, furnish each of his or her employees, either as a
4 detachable part of the check, draft, or voucher paying the employee's wages, or separately when
5 wages are paid by personal check or cash, an accurate itemized statement in writing showing (1)
6 gross wages earned, (2) total hours worked by the employee..., (3) the number of piece-rate
7 units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
8 deductions, provided that all deductions made on written orders of the employee may be
9 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
10 which the employee is paid, (7) the name of the employee and his or her social security number,
11 except that by January 1, 2008, only the last four digits of his or her social security number or
12 an employee identification number other than a social security number may be shown on the
13 itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all
14 applicable hourly rates in effect during the pay period and the corresponding number of hours
15 worked at each hourly rate by the employee.”

16 74. Labor Code § 226(e) provides that an employee is entitled to recover \$50 for the
17 initial pay period in which a violation of § 226 occurs and \$100 for each subsequent pay period,
18 as well as an award of costs and reasonable attorneys' fees, for all pay periods in which the
19 employer knowingly and intentionally failed to provide accurate itemized statements to the
20 employee causing the employee to suffer injury.

21 75. Plaintiffs are informed, believe and thereon allege that at all times relevant,
22 Defendants knowingly and intentionally failed to furnish and continues to knowingly and
23 intentionally fail to furnish Plaintiffs and each Class member with timely and accurate itemized
24 statements showing the gross wages earned by each of them, as required by Labor Code § 226
25 (a), in that the payments owed to Plaintiffs and the members of the Class for unpaid minimum
26 wages, unpaid overtime, and missed meal and rest periods, were not included in gross wages
27 earned by Plaintiffs and the Class.

28 76. Defendants' failure to provide Plaintiffs and members of the Class with accurate

1 itemized wage statements during the Class period has caused Plaintiffs and members of the
2 Class to incur economic damages in that they were not aware that they were owed and not paid
3 compensation for missed rest periods and on-duty meal periods, for hours worked without pay,
4 and for overtime worked without pay. In addition, as set forth in Plaintiffs' third cause of action,
5 Defendants provided inaccurate information regarding hours worked, which masked their
6 underpayment of wages to Plaintiffs and the Class.

7 77. As a result of Defendants' issuance of inaccurate itemized wage statements to
8 Plaintiffs and members of the Class in violation of Labor Code § 226(a), Plaintiffs and the
9 members of the Class are each entitled to recover penalties pursuant to § 226(e) of the Labor
10 Code.

11 **SEVENTH CAUSE OF ACTION**
12 **FAILURE TO PAY ALL WAGES OWED EVERY PAY PERIOD**
13 **(Violation of Labor Code § 204)**
14 **(Against All Defendants)**

15 78. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
16 herein.

17 79. California Labor Code § 204 establishes the fundamental right of all employees in
18 the State of California to be paid wages in a timely fashion for their work.

19 80. At all times relevant during the liability period, Defendants failed to pay Plaintiffs
20 and the Class the full amount of all owed wages when due as required by California Labor Code
21 § 204.

22 81. Defendants failed to pay Plaintiffs and other similarly situated employees all
23 wages earned each pay period. Plaintiffs are informed, believe, and thereon allege, that at all
24 times relevant during the liability period, Defendants maintained a policy or practice of not
25 paying Plaintiffs and other similarly situated employees: (i) minimum wages for all hours
26 worked; (ii) overtime wages for all overtime hours worked; and (iii) premium wages for all
27 missed meal and rest periods.

28 82. As a result of Defendants' unlawful conduct, Plaintiffs and members of the each
Class have suffered damages in an amount, subject to proof, to the extent they were not paid all

1 wages each pay period. The precise amount of unpaid wages is not presently known to Plaintiffs
2 but can be determined directly from Defendants' records or indirectly based on information
3 from Defendants' records.

4 **EIGHTH CAUSE OF ACTION**
5 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION ACT**
6 **(Violation of California's Unfair Competition Law, Bus. & Prof. Code §§ 17200 *et seq.*)**
7 **(Against All Defendants)**

8 83. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
9 herein.

10 84. Section 17200 of the California Business and Professions Code (the "UCL")
11 prohibits any unlawful, unfair, or fraudulent business practices.

12 85. Through its action alleged herein, Defendants has engaged in unfair competition
13 within the meaning of the UCL. Defendants' conduct, as alleged herein, constitutes unlawful,
14 unfair, and/or fraudulent business practices under the UCL.

15 86. Defendants' unlawful conduct under the UCL includes, but is not limited to,
16 violating the statutes alleged herein. Defendants' unfair conduct under the UCL includes, but is
17 not limited to, failure to pay Class members wages and compensation they earned through labor
18 provided, and failing to otherwise compensate Class members, as alleged herein. Defendants'
19 fraudulent conduct includes, but is not limited to, issuing wage statements containing false
20 and/or misleading information about the time the Class members worked and the amount of
21 wages or compensation due.

22 87. Plaintiff has standing to assert this claim because she has suffered injury in fact
23 and has lost money as a result of Defendants' conduct.

24 88. Plaintiffs and the Class seek restitutionary disgorgement from Defendants, and an
25 injunction prohibiting them from engaging in the unlawful, unfair, and/or fraudulent conduct
26 alleged herein.

27 **NINTH CAUSE OF ACTION**
28 **(PRIVATE ATTORNEY GENERAL ACTION ("PAGA") PENALTIES, Lab. Code §**
29 **2699, *et seq.*)**
30 **(Against All Defendants)**

31 89. Plaintiffs incorporate all preceding paragraphs as if fully set forth herein.

1 90. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code
2 §§ 2968 *et seq* (including Labor Code sections 2699, 2699.3, and 2699.5) because of
3 Defendants' violation of Labor Code sections alleged in this complaint, including Labor Code
4 sections 201-204, 226, 226.7, 510, 512, and 1198, which call for civil penalties.

5 91. For each violation, Plaintiffs and the proposed class are entitled to penalties in an
6 amount to be shown at the time of trial, subject to the following formula:

7 a. For \$100 for the initial violation per employee per pay period;

8 b. For \$200 for each subsequent violation per employee per pay period.

9 92. These penalties shall be allocated 75% to the Labor and Workforce Development
10 Agency and 25% to the affected employees.

11 93. Plaintiffs sent a certified letter to the LWDA and Defendants as prescribed by the
12 Code on May 21, 2015, which is attached hereto as Exhibit "A," and which satisfies all
13 prerequisites to serve as representative of the general public to enforce California labor laws,
14 including, without limitation, the penalty provisions identified in Labor Code section 2699.5.
15 Plaintiffs, by virtue of Exhibit "A," have satisfied all prerequisites to serve as representative of
16 the general public to enforce California labor laws, including, without limitation, the penalty
17 provisions identified in Labor Code section 2699 *et seq*.

18 PRAYER

19 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated and
20 also on behalf of the general public, pray for judgment against Defendants as follows:

21 A. An order that this action may proceed and be maintained as a class action;

22 B. For all unpaid minimum wages and liquidated damages due to Plaintiffs and each
23 Class member on their minimum wage claim;

24 C. For all unpaid overtime wages due to Plaintiffs and each Class member;

25 D. For one hour of wages due to Plaintiffs and each Class member for each work
26 period of more than four (4) hours when they did not receive an uninterrupted ten
27 (10) minute rest period;

28 E. For one hour of wages due to Plaintiffs and each Class member for each work


1 period of more than five (5) hours when they did not receive an uninterrupted
2 thirty (30) minute meal period;

- 3 F. For continuation wages under Labor Code § 203;
- 4 G. For statutory penalties under Labor Code § 226(e);
- 5 H. An order requiring Defendants to comply with Labor Code § 226(a) with respect
6 to all currently employed members of the Class;
- 7 I. For restitutionary disgorgement pursuant to the UCL;
- 8 J. An order enjoining Defendants from further unfair and unlawful business
9 practices in violation of Business & Professions Code §§ 17200 *et seq.*;
- 10 K. Prejudgment interest at the maximum legal rate;
- 11 L. Reasonable attorneys' fees;
- 12 M. Accounting of Defendants' records for the liability period;
- 13 N. General, special and consequential damages, to the extent allowed by law;
- 14 O. Costs of suit; and
- 15 P. Such other relief as the Court may deem just and proper.

16 DATED: July 14, 2015

KABATECK BROWN KELLNER LLP

17
18 By:



19 Joshua H. Haffner
20 Tsolik Kazandjian
21 Attorneys for Plaintiffs and others
22 Similarly situated
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DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury for themselves and the Class members on all claims so triable.

DATED: July 14, 2015

KABATECK BROWN KELLNER LLP

By:



Joshua H. Haffner
Tsolik Kazandjian
Attorney for Plaintiffs and others
Similarly situated

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