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9 KYLE FRENCHER, on behalf of herself
10 and others similarly situated.

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES – CENTRAL**

13 KYLE FRENCHER, on behalf of herself and
14 others similarly situated.

15 PLAINTIFF,

16 vs.

17 PACIFICA OF THE VALLEY
18 CORPORATION dba PACIFICA HOSPITAL
19 OF THE VALLEY; and DOES 1 to 100,
20 Inclusive.

21 DEFENDANTS.

Case No.:

BC 5 5 9 0 5 6

CLASS ACTION

**PLAINTIFF KYLE FRENCHER'S
COMPLAINT FOR DAMAGES AND
RESTITUTION AND FOR:**

1. **FAILURE TO PAY WAGES FOR ALL TIME WORKED AT MINIMUM WAGE IN VIOLATION OF LABOR CODE SECTIONS 1194 AND 1197**
2. **FAILURE TO PROVIDE MEAL PERIODS IN VIOLATION OF LABOR CODE SECTIONS 512, 226.7**
3. **FAILURE TO AUTHORIZE OR PERMIT REST PERIODS IN VIOLATION OF LABOR CODE SECTION 226.7**
4. **FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS IN VIOLATION OF LABOR CODE SECTION 226**

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- 5. **FAILURE TO TIMELY PAY ALL EARNED WAGES AND FINAL PAYCHECKS DUE AT TIME OF SEPARATION OF EMPLOYMENT IN VIOLATION OF LABOR CODE SECTIONS 201, 202 AND 203**
- 6. **UNFAIR BUSINESS PRACTICES, IN VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200, et seq.**

DEMAND FOR JURY TRIAL

NOW COMES plaintiff KYLE FRENCHER ("Plaintiff"), who alleges and complains against defendant PACIFICA OF THE VALLEY CORPORATION dba PACIFICA HOSPITAL OF THE VALLEY, and DOES 1 to 100, inclusive, (collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a class action lawsuit seeking unpaid wages and interest thereon for unpaid wages for all hours worked at minimum wage, including rounded or "shaved" time; failure to provide required meal periods; failure to authorize or permit required rest periods; statutory penalties for failure to provide accurate wage statements; waiting time penalties in the form of continuation wages for failure to timely pay employees all wages due upon separation of employment;; injunctive relief and other equitable relief; reasonable attorney's fees pursuant to California Labor Code sections 226(e) and 1194; costs; and interest brought on behalf of Plaintiff and others similarly situated.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over Plaintiff's and the Class Members' claims for unpaid wages for all time worked at minimum wage, including rounded or "shaved" time; unpaid meal period premium wages; unpaid rest period premium wages; statutory penalties for failure to provide accurate wage statements; waiting time penalties in the form of continuation wages for failure to timely pay employees all wages due upon separation of employment; and claims for injunctive relief and restitution under California Business & Professions Code section 17200 *et seq.* for the following reasons: Defendants operate throughout California; Defendants employed Plaintiff in Los

1 Angeles County; Defendants operate at 9449 San Fernando Road, Sun Valley, California 91352; at
2 all relevant times, Defendants' principal place of business was located at 9449 San Fernando Road,
3 Sun Valley, California 91352; more than two-thirds of the putative class members are California
4 citizens; the principal violations of California law occurred in California; no other class actions have
5 been filed against Defendants in the last three years alleging wage and hour violations; the conduct
6 of Defendants forms a significant basis for Plaintiff's and the Class Members' claims; and Plaintiff
7 and the Class Members seek significant relief from Defendants.

8 **III. PARTIES**

9 3. Plaintiff brings this action on behalf of herself and other members of the general
10 public similarly-situated. The named Plaintiff and the class of persons on whose behalf this action
11 is filed are current, former and/or future employees of Defendants who work as hourly employees.
12 At all times mentioned herein, the currently named Plaintiff is and was a resident of California and
13 was employed by Defendants as a licensed vocation nurse ("LVN"), within the four years prior to
14 the filing of the complaint, at 9449 San Fernando Road, Sun Valley, California 91352.

15 4. Defendants employed Plaintiff as an hourly employee from approximately October
16 17, 2012, through on or about November 21, 2013.

17 5. Plaintiff is informed and believes and on that basis alleges that Defendants employed
18 Plaintiff and other hourly employees throughout the State of California and therefore its conduct
19 forms a significant basis of the claims asserted in this matter.

20 6. Plaintiff is informed and believes and thereon alleges that Defendant PACIFICA OF
21 THE VALLEY CORPORATION dba PACIFICA HOSPITAL OF THE VALLEY is authorized to
22 do business within the State of California and is doing business in the State of California and/or that
23 Defendants DOES 1 - 50 are, and at all times relevant hereto were persons acting on behalf of
24 PACIFICA OF THE VALLEY CORPORATION dba PACIFICA HOSPITAL OF THE VALLEY.
25 in the establishment of, or ratification of, the aforementioned illegal wage and hour practices or
26 policies. Defendant PACIFICA OF THE VALLEY CORPORATION dba PACIFICA HOSPITAL
27 OF THE VALLEY operates in Los Angeles County and employed Plaintiff and other putative class
28 members in Los Angeles County at its business located at 9535 9449 San Fernando Road, Sun

1 Valley, California 91352.

2 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51 -
3 100 are individuals unknown to Plaintiff. Each of the individual Defendants is sued individually in
4 his or her capacity as an agent, shareholder, owner, representative, manager, supervisor, independent
5 contractor and/or employee of each Defendant and participated in the establishment of, or
6 ratification of, the aforementioned illegal wage and hour practices or policies.

7 8. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
8 sues said defendants by said fictitious names, and will amend this complaint when the true names
9 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
10 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
11 named Defendants is in some manner responsible for the events and allegations set forth in this
12 complaint.

13 9. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each
14 defendant was an employer, was the principal, agent, partner, joint venturer, officer, director,
15 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
16 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
17 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
18 of the other defendants so as to be liable for their conduct with respect to the matters alleged in this
19 complaint. Plaintiff is further informed and believes and thereon alleges that each defendant acted
20 pursuant to and within the scope of the relationships alleged above, and that at all relevant times,
21 each defendant knew or should have known about, authorized, ratified, adopted, approved,
22 controlled, aided and abetted the conduct of all other defendants. As used in this complaint,
23 "Defendant" means "Defendants and each of them," and refers to the Defendants named in the
24 particular cause of action in which the word appears and includes PACIFICA OF THE VALLEY
25 CORPORATION dba PACIFICA HOSPITAL OF THE VALLEY; and DOES 1 to 100, inclusive.

26 10. At all times mentioned herein, each Defendant was the co-conspirator, agent, servant,
27 employee, and/or joint venturer of each of the other defendants and was acting within the course and
28 scope of said conspiracy, agency, employment, and/or joint venture and with the permission and

1 consent of each of the other Defendants.

2 11. Plaintiff makes the allegations in this complaint without any admission that, as to any
3 particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff
4 reserves all of Plaintiff rights to plead in the alternative.

5 **IV. DESCRIPTION OF ILLEGAL PAY PRACTICES**

6 12. Pursuant to the applicable Industrial Welfare Commission (“IWC”) Wage Order
7 (“Wage Order”), codified at California Code of Regulations title 8, section 11050, Defendants are
8 employers of Plaintiff within the meaning of the applicable Wage Order and applicable California
9 Labor Code sections. Therefore, each of these Defendants is jointly and severally liable for the
10 wrongs complained of herein in violation of the Wage Order and the California Labor Code.

11 13. **Failure to pay wages for all hours worked at the legal minimum wage:**
12 Defendants employed many of their employees, including Plaintiff, as non-exempt employees. In
13 California, an employer is required to pay hourly non-exempt employees for all “hours worked,”
14 which includes all time that an employee is under control of the employer and all time the employee
15 is suffered and permitted to work. This includes the time an employee spends, either directly or
16 indirectly, performing services which inure to the benefit of the employer.

17 14. Defendants “rounded” down or “shaved” its employees’ meal period time by
18 automatically deducting 30 minutes from the employees’ total time worked and attributing that to a
19 meal period, even though Defendants routinely provided the employees less than the full required 30
20 minutes for their meal periods.

21 15. California Labor Code sections 1194 and 1197 require an employer to compensate
22 employees for all “hours worked” at least at a minimum wage rate of pay as established by the
23 Industrial Welfare Commission (“IWC”) and the Wage Orders.

24 16. Despite the fact that California law requires employers to pay employees for all hours
25 worked at least at a minimum wage rate, Defendants suffered, permitted and required hourly
26 employees to be subject to Defendants’ control without paying wages for that time. This resulted in
27 hourly employees working time for which they were not compensated any wages, in violation of
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1 California Labor Code sections 1194, 1197, and the Wage Orders.

2 17. **Failure to pay hourly employees wages to compensate them for workdays**
3 **Defendants failed to provide required meal periods:** Defendants often employed hourly
4 employees, including the named Plaintiff and all others similarly-situated, for shifts longer than 10
5 hours in length.

6 18. California law requires an employer to provide an employee an uninterrupted meal
7 period of no less than 30-minutes in which the employee is relieved of all duties and the employer
8 relinquishes control over the employee's activities prior to the employee's sixth hour of work. Cal.
9 Lab. Code §§ 226.7, 512; Wage Order §11; *Brinker Rest. Corp. v. Super Ct.(Hohnbaum)* (2012) 53
10 Cal.4th 1004. An employer may not employ an employee for a work period of more than 10 hours
11 per day without providing the employee with a second such meal period of not less than 30 minutes
12 prior to the start of the eleventh hour of work. *Id.* If the employee is not relieved of all duty during
13 a meal period, the meal period shall be considered an "on duty" meal period and counted as time
14 worked. A paid "on duty" meal period is only permitted when: (1) the nature of the work prevents
15 an employee from being relieved of all duty; and (2) the parties have a written agreement agreeing
16 to on duty meal periods.

17 19. If the employee is not free to leave the work premises or worksite during the meal
18 period, even if the employee is relieved of all other duty during the meal period, the employee still is
19 subject to the employer's control and the meal period is counted as time worked.

20 20. If an employer fails to provide an employee a meal period in accordance with the
21 law, the employer must pay the employee one hour of pay at the employee's regular rate of pay for
22 each work day that a legally required meal period was not provided or was not duty-free. *Id.*

23 21. Plaintiff and similarly situated employees would work on workdays in shifts long
24 enough to entitle them to both first and second meal periods under California law. Despite the fact
25 that California law requires employers to provide employees with a duty free meal period when an
26 employee's work shift is a minimum of five hours, Defendants employed a policy and procedure
27 that did not provide for a full 30-minute first meal period for each five hours of work and instead
28 "rounded" or "shaved" that time by automatically deducting 30 minutes from the employees' time

1 worked for the first meal period.

2 22. Plaintiff and similarly situated employees also would work on workdays in shifts
3 long enough to entitle them to second meal periods under California law. Defendants employed a
4 policy and procedure that did not provide at all for a second 30-minute meal period when the
5 employees worked shifts of more than ten hours.

6 23. Defendants failed to pay premium wages to Plaintiff and similarly situated
7 employees to compensate them for each workday the employees did not receive all legally required
8 duty-free meal periods. Defendants employed policies and procedures which ensured employees did
9 not receive any premium wages to compensate them for the workdays in which they did not receive
10 all legally required meal periods.

11 24. This practice resulted in Plaintiff and all other similarly situated employees not
12 receiving premium wages to compensate them for workdays which Defendants did not provide them
13 with either first or second duty free meal periods, or both, in compliance with California law.

14 25. **Failure to pay hourly employees wages to compensate them for workdays**
15 **Defendants failed to provide required rest periods:** Defendants often employed hourly
16 employees, including the named Plaintiff and all others similarly-situated, for shifts at least three
17 and one-half (3.5) hours in length.

18 26. California law requires an employer to provide an employee a rest period of ten (10)
19 net minutes for every four hours worked, "which insofar as practicable shall be in the middle of
20 each work period." Cal. Lab. Code §226.7; Wage Order §12. Thus, employees are entitled to 10
21 minutes rest for shifts from three and one-half to six hours in length, 20 minutes for shifts between
22 six and ten hours in length, 30 minutes for shifts between 10 and 14 hours in length, and so on. *See*
23 *Brinker, supra.*

24 27. If the employer fails to provide a required rest period, the employer must pay the
25 employee one hour of pay at the employee's regular rate of compensation for each work day the
26 employer did not provide all legally required rest periods. *Id.*

27 28. Defendants employed policies and procedures which ensured Plaintiff and similarly
28 situated employees would not receive all legally required rest periods. Specifically, if the employees

1 worked shifts between 10 and 14 hours in length, Defendants did not authorize or permit and
2 therefore failed to provide a third rest period of ten net minutes.

3 29. Defendants also employed policies and procedures which ensured Plaintiff and
4 similarly situated employees did not receive any premium wages to compensate them for workdays
5 that they did not receive all legally required rest periods.

6 30. These practices resulted in Plaintiff and all other similarly situated employees not
7 receiving wages to compensate them for workdays which Defendants did not provide them with all
8 rest periods required by California law.

9 31. **Pay Stub Violations:** California Labor Code section 226(a) provides, *inter alia*, that,
10 upon paying an employee his or her wages, the employer must “furnish each of his or her employees
11 ... an itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
12 employee, except for any employee whose compensation is solely based on a salary and who is
13 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
14 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
15 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
16 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
17 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
18 name of the employee and his or her social security number, (8) the name and address of the legal
19 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the
20 corresponding number of hours worked at each hourly rate by the employee.”

21 32. Defendants failed to provide accurate wage and hour statements to Plaintiff and
22 similarly situated employees who were subject to Defendants’ control for uncompensated time, and
23 who did not receive the wages they earned (at least minimum wage as well as failure to pay
24 premium wages for missed meal and rest periods).

25 33. **Failure to Pay California Employees All Wages Due at Time of**
26 **Termination/Resignation:** An employer is required to pay all unpaid wages timely after an
27 employee’s employment ends. The wages are due immediately upon termination (California Labor
28 Code section 201) or within 72 hours of resignation (California Labor Code section 202).

1 34. Because Defendants failed to pay Plaintiff and other similarly situated employees all
2 their earned wages (including unpaid work and unpaid meal and rest period premium wages),
3 Defendants failed to pay those employees timely after each employee's termination and/or
4 resignation.

5 **V. CLASS DEFINITIONS AND CLASS ALLEGATIONS**

6 35. Plaintiff brings this action on behalf of herself, on behalf of all others similarly
7 situated, and on behalf of the General Public, and as a member of a Class defined as follows:

8 A. **Minimum Wage Class:** All current and former hourly employees employed
9 by Defendants in California at any time within the four years prior to the filing of the initial
10 complaint in this action and through the date notice is mailed to a certified class who were not paid
11 at least at minimum wage for all time they were subject to Defendants' control.

12 B. **Meal Period Class:** All current and former hourly employees employed by
13 Defendants in California at any time within the four years prior to the filing of the initial complaint
14 in this action and through the date notice is mailed to a certified class who worked shifts of at least
15 six hours yet Defendants did not provide required duty-free meal periods of not less than 30 minutes
16 prior to the start of their sixth hour of work, and/or who worked shifts more than ten hours yet
17 Defendants did not provide required duty-free meal periods of not less than 30 minutes prior to the
18 start of their eleventh hour of work.

19 C. **Rest Period Class:** All current and former hourly employees employed by
20 Defendants in California at any time within the four years prior to the filing of the initial complaint
21 in this action and through the date notice is mailed to a certified class who worked at least three and
22 one-half (3.5) or more hours in day who did not receive required rest periods of ten net minutes rest
23 time for every four hours worked between three and one-half and six hours, six and ten hours, or ten
24 and fourteen hours.

25 D. **Wage Statement Class:** All current and former hourly employees employed
26 by Defendants in California at any time within the one year prior to the filing of the initial complaint
27 in this action and through the date notice is mailed to a certified class who received inaccurate or
28 incomplete wage and hour statements.

1 E. **Waiting Time Class:** All current and former hourly employees employed by
2 Defendants in California at any time within the three years prior to the filing of the initial complaint
3 in this action and through the date notice is mailed to a certified class who did not receive payment
4 of all unpaid wages upon separation of employment within the statutory time period.

5 F. **California Class:** All aforementioned classes are here collectively referred to
6 as the "California Class."

7 36. There is a well defined community of interest in the litigation and the classes are
8 ascertainable:

9 A. **Numerosity:** While the exact number of class members in each class is
10 unknown to plaintiff at this time, the Plaintiff classes are so numerous that the individual joinder of
11 all members is impractical under the circumstances of this case.

12 B. **Common Questions Predominate:** Common questions of law and fact exist
13 as to all members of the Plaintiff classes and predominate over any questions that affect only
14 individual members of each class. The common questions of law and fact include, but are not
15 limited to:

16 i. Whether Defendants violated California Labor Code sections 1194
17 and 1197 by not paying employees' wages at a minimum wage rate for all time that the Minimum
18 Wage Class Members were subject to Defendants' control but were not paid;

19 ii. Whether Defendants violated California Labor Code sections 512 and
20 226.7, as well as the applicable Wage Order, by employing Meal Period Class Members without
21 providing all their required meal periods or paying meal period premium wages;

22 iii. Whether Defendants violated the Wage Order and California Labor
23 Code section 226.7 and the applicable Wage Order by employing Rest Period Class Members
24 without providing all their required rest periods or paying rest period premium wages;

25 iv. Whether Defendants failed to provide the Wage Statement Class
26 Members with accurate itemized statement at the time they received their itemized statements;

27 v. Whether Defendants failed to provide the Waiting Time Class
28 Members with all of their earned wages upon separation of employment within the statutory time

1 period;

2 vi. Whether Defendants committed unlawful business acts or practice
3 within the meaning of Business and Professions Code section 17200 *et seq.*;

4 vii. Whether Class Members are entitled to unpaid wages, penalties and
5 other relief pursuant to their claims;

6 viii. Whether, as a consequence of Defendant's unlawful conduct, the Class
7 Members are entitled to restitution, and/or equitable relief; and

8 ix. Whether Defendant's affirmative defenses, if any, raise any common
9 issues of law or fact as to Plaintiff and as to the Class Members as a whole.

10 C. **Typicality:** Plaintiff's claims are typical of the claims of the class members
11 in each of the classes. Plaintiff and the members of the Minimum Wage Class sustained damages
12 arising out of Defendants' failure to pay wages at least at minimum wage for all time the employees
13 were subject to Defendants' control. Plaintiff and the members of the Meal Period Class sustained
14 damages arising out of Defendants' failure to provide employees all legally required meal periods
15 and failure to pay meal period premium wages as compensation. Plaintiff and the members of the
16 Rest Period Class sustained damages arising out of Defendants' failure to provide employees all
17 legally required rest periods and failure to pay rest period premium wages as compensation.
18 Plaintiff and the members of the Wage Statement Class sustained damages arising out of
19 Defendants' failure to furnish them with accurate itemized wage statements in compliance with
20 California Labor Code section 226. Plaintiff and the members of the Waiting Time Class sustained
21 damages arising out of Defendants' failure to provide all unpaid yet earned wages due upon
22 separation of employment within the statutory time limit.

23 D. **Adequacy of Representation:** Plaintiff will fairly and adequately protect the
24 interests of the members of each class. Plaintiff has no interest that is adverse to the interests of the
25 other class members.

26 E. **Superiority:** A class action is superior to other available means for the fair
27 and efficient adjudication of this controversy. Because individual joinder of all members of each
28 class is impractical, class action treatment will permit a large number of similarly situated persons to

1 prosecute their common claims in a single forum simultaneously, efficiently, and without the
2 unnecessary duplication of effort and expense that numerous individual actions would engender.
3 The expenses and burdens of individual litigation would make it difficult or impossible for
4 individual members of each class to redress the wrongs done to them, while important public
5 interests will be served by addressing the matter as a class action. The cost to and burden on the
6 court system of adjudication of individualized litigation would be substantial, and substantially
7 more than the costs and burdens of a class action. Individualized litigation would also present the
8 potential for inconsistent or contradictory judgments.

9 F. **Public Policy Consideration:** Employers throughout the state violate wage
10 and hour laws. Current employees often are afraid to assert their rights out of fear of direct or
11 indirect retaliation. Former employees fear bringing actions because they perceive their former
12 employers can blacklist them in their future endeavors with negative references and by other means.
13 Class actions provide the class members who are not named in the complaint with a type of
14 anonymity that allows for vindication of their rights.

15 FIRST CAUSE OF ACTION

16 **FAILURE TO PAY WAGES FOR ALL HOURS OF WORK AT THE LEGAL MINIMUM**

17 **WAGE RATE IN VIOLATION OF LABOR CODE SECTIONS 1194 AND 1197**

18 **(As Against all Defendants and DOE Defendants by the Minimum Wage Class)**

19 37. Plaintiff hereby incorporates by reference paragraphs 1-36 above, as if fully set
20 herein by reference.

21 38. At all times relevant to this Complaint, Plaintiff and the members of the Minimum
22 Wage Class were hourly employees of Defendants.

23 39. Pursuant to Labor Code sections 1194, 1197, and Wage Orders, Plaintiff and the
24 Minimum Wage Class are entitled to receive wages for all hours worked, i.e., all time subject to
25 Defendants' control, and those wages must be paid at least at the minimum wage rate in effect
26 during the time the employees earned the wages.

27 40. Defendants' payroll policies and procedures required employees of the Minimum
28 Wage Class to be engaged, suffered, or permitted to work without being paid wages for all of the

1 time in which they were subject to Defendants' control.

2 41. Specifically, Defendants "rounded" down or "shaved" its employees' meal period
3 time by automatically deducting 30 minutes from the employees' total time worked and attributing
4 that to a meal period, even though Defendants routinely provided the employees less than the full
5 required 30 minutes for their meal periods.

6 42. As a result of Defendants' unlawful conduct, Plaintiff and members of the Minimum
7 Wage Class have suffered damages in an amount subject to proof, to the extent that they were not
8 paid wages at a minimum wage rate for all hours worked.

9 43. Pursuant to California Labor Code Sections 1194 and 1194.2, Plaintiff and the
10 Minimum Wage Class members are entitled to recover unpaid minimum wage, interest thereon,
11 liquidated damages in the amount of their unpaid minimum wage, and attorneys' fees and costs.

12 **SECOND CAUSE OF ACTION**

13 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF**
14 **CALIFORNIA LABOR CODE SECTIONS 512 AND 226.7 AND THE WAGE ORDER**

15 **(As Against all Defendants and DOE Defendants by the Meal Period Class)**

16 44. Plaintiff incorporates paragraphs 1 through 43 above as though fully set forth herein.

17 45. At all times relevant to this Complaint, Plaintiff and the members of the Meal Period
18 Class were hourly employees of Defendants, covered by California Labor Code sections 512 and
19 226.7 and the Wage Order.

20 46. California law requires an employer to provide an employee an uninterrupted meal
21 period of no less than 30-minutes in which the employee is relieved of all duties and the employer
22 relinquishes control over the employee's activities no later than the employee's sixth hour of work.
23 Cal. Lab. Code §§ 226.7, 512; Wage Order §11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)*
24 (2012) 53 Cal.4th 1004. An employer may not employ an employee for a work period of more than
25 10 hours per day without providing the employee with a second such meal period of not less than 30
26 minutes by no later than the start of the eleventh hour of work. *Id.* If the employee is not relieved
27 of all duty during a meal period, the meal period shall be considered an "on duty" meal period and
28 counted as time worked. A paid "on duty" meal period is only permitted when: (1) the nature of the

1 work prevents an employee from being relieved of all duty; and (2) the parties have a written
2 agreement agreeing to on duty meal periods.

3 47. Plaintiff and similarly situated employees worked in shifts long enough to entitle
4 them to first and second meal periods under California law. Defendants failed to provide employees
5 a full 30-minute meal period for each five hour period of work as required by law.

6 48. Specifically, Defendants employed a policy and procedure that did not provide for a
7 full 30-minute first meal period for each five hours of work and instead "rounded" or "shaved" that
8 time by automatically deducting 30 minutes from the employees' time worked for the first meal
9 period.

10 49. Plaintiff and similarly situated employees also would work on workdays in shifts
11 long enough to entitle them to second meal periods under California law. Defendants employed a
12 policy and procedure that did not provide at all for a second 30-minute meal period when the
13 employees worked shifts of more than ten hours.

14 50. Defendants also failed to provide premium wages to Plaintiff and similarly situated
15 employees to compensate them for workdays they did not receive their legally required duty free
16 meal period. Defendants employed policies and procedures which ensured employees would not
17 receive full 30-minute legally required meal periods. Defendants employed policies and procedures
18 which ensured employees did not receive premium wages to compensate them for workdays that
19 they did not receive either a first or a second full meal period, or both. This practice resulted in
20 Plaintiff and all other similarly situated employees not receiving premium wages to compensate
21 them for workdays which Defendants did not provide them with all required meal periods, in
22 compliance with California law.

23 51. Defendants' policies and procedures prevented Plaintiff and other Meal Period Class
24 members from receiving all legally required meal periods or Defendants from providing such meal
25 periods to Plaintiff and other Meal Period Class Members during workdays the employees worked
26 more than six hours and/or more than ten hours in one shift.

27 52. Defendants employed policies and procedures which ensured Plaintiff and similarly
28 situated employees did not receive any wages to compensate them for workdays that they did not

1 receive all legally required meal periods.

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

5 54. Because Defendants failed to provide proper meal periods, they are liable to Plaintiff
6 and the Meal Period Class Members for one hour of additional pay at the regular rate of
7 compensation for each workday that the proper meal period was not provided, pursuant to California
8 Labor Code section 226.7 and the Wage Order.

9 55. Plaintiff, on behalf of herself and the Meal Period Class, seeks damages and all
10 other relief allowable, including a meal period premium wage for each workday Defendants failed
11 to provide all required 30-minute uninterrupted meal periods, plus pre-judgment interest.

12 56. Thus, Plaintiff and Meal Period Class Members are entitled to one hour of pay for
13 each workday Defendants did not provide them all required meal periods, plus pre-judgment
14 interest.

15 **THIRD CAUSE OF ACTION**

16 **FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CALIFORNIA**

17 **LABOR CODE SECTION 226.7 AND THE WAGE ORDER**

18 **(As Against all Defendants and DOE Defendants by the Rest Period Class)**

19 57. Plaintiff incorporates paragraphs 1 through 56 above as though fully set forth herein.

20 58. At all times relevant to this Complaint, Plaintiff and the members of the Rest Period
21 Class were employees of Defendants, covered by California Labor Code section 226.7 and the
22 Wage Order.

23 59. California law requires an employer to authorize or permit an employee to take a rest
24 period of ten (10) net minutes for every four hours worked. Cal. Lab. Code §226.7; Wage Order
25 §12. Such rest periods must be in the middle of the four-hour period "insofar as practicable." *Id.* If
26 the employer fails to provide any required rest period, the employer must pay the employee one hour
27 of pay at the employee's regular rate of compensation for each work day the employer did not
28 provide at least one legally required rest period. *Id.*

1 other members of the class were entitled to receive, semimonthly or at the time of each payment of
2 wages, an itemized wage statement accurately stating the following:

3 (1) gross wages earned, (2) total hours worked by the employee,
4 except for any employee whose compensation is solely based on a
5 salary and who is exempt from payment of overtime under
6 subdivision (a) of Section 515 or any applicable order of the Industrial
7 Welfare Commission, (3) the number of piece-rate units earned and
8 any applicable piece rate if the employee is paid on a piece-rate basis,
9 (4) all deductions, provided that all deductions made on written orders
10 of the employee may be aggregated and shown as one item, (5) net
11 wages earned, (6) the inclusive dates of the period for which the
12 employee is paid, (7) the name of the employee and his or her social
13 security number, except that by January 1, 2008, only the last four
14 digits of his or her social security number or an employee
15 identification number other than a social security number may be
16 shown on the itemized statement, (8) the name and address of the
17 legal entity that is the employer, and (9) all applicable hourly rates in
18 effect during the pay period and the corresponding number of hours
19 worked at each hourly rate by the employee.

20 68. Defendants' illegal wage practices, including but not limited to Defendants' failure to
21 pay at least minimum wage for all time worked and failure to pay meal and rest period premium
22 wages resulted in Defendant providing its hourly employees with inaccurate itemized wage
23 statements in violation of California Labor Code section 226.

24 69. Defendants provided Plaintiff and members of the Class with itemized statements
25 which stated inaccurate information including, but not limited to, the gross and net pay, and all
26 applicable hourly rates and earnings at each rate.

27 70. Defendants' failure to provide Plaintiff and members of the Wage Statement Class
28 with accurate wage statements was knowing and intentional. Defendants had the ability to provide
Plaintiff and members of the Class with accurate wage statements but intentionally provided wage
statements it knew were not accurate. Defendants knowingly and intentionally put in place practices
which deprived employees of wages and resulted in Defendants' knowing and intentional providing
of inaccurate wage statements. These practices included Defendants' failure to include all hours
worked and all wages due.

71. As a result of Defendants' unlawful conduct, Plaintiff and members of the Class have

1 suffered injury. The absence of accurate information on their wage statements has prevented earlier
2 challenges to Defendants' unlawful pay practices, will require discovery and mathematical
3 computations to determine the amount of wages owed, and will cause difficulty and expense in
4 attempting to reconstruct time and pay records. Defendants' conduct led to the submission of
5 inaccurate information about wages and amounts deducted from wages to state and federal
6 government agencies. As a result, Plaintiff and similarly situated employees are required to
7 participate in this lawsuit and create more difficulty and expense for Plaintiff and similarly situated
8 employees from having to reconstruct time and pay records than if Defendants had complied with
9 their legal obligations.

10 72. Pursuant to California Labor Code section 226(e), Plaintiff and members of the
11 Wage Statement Class are entitled to recover fifty dollars per employee for the initial pay period in
12 which a Section 226 violation occurred and one hundred dollars per employee per violation for each
13 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars per employee.

14 73. Pursuant to California Labor Code Section 226(h), Plaintiff and members of the
15 Wage Statement Class are entitled to bring an action for injunctive relief to ensure Defendants'
16 compliance with California Labor Code section 226(a). Injunctive relief is warranted because
17 Defendants continue to provide currently employed members of the Class with inaccurate wage
18 statements in violation of California Labor Code section 226(a) and currently employed members of
19 the Class have no adequate legal remedy for the continuing injuries that will be suffered as a result
20 of Defendants' ongoing unlawful conduct. Injunctive relief is the only remedy available for ensuring
21 Defendants' compliance with California Labor Code section 226(a).

22 74. Pursuant to California Labor Code sections 226(e) and 226(h), Plaintiff and members
23 of the Wage Statement Class are entitled to recover the full amount of penalties due under Section
24 226(e), reasonable attorneys' fees, and costs of suit.

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FIFTH CAUSE OF ACTION

**FAILURE TO PAY ALL WAGES TIMELY UPON SEPARATION OF EMPLOYMENT, IN
VIOLATION OF LABOR CODE SECTIONS 201 OR 202**

(As Against all Defendants and DOE Defendants by the Waiting Time Class)

75. Plaintiff incorporates paragraphs 1 through 74 of this complaint as if fully alleged herein.

76. At all times relevant to this Complaint, Plaintiff and the other members of the Waiting Time Class were employees of Defendants, covered by California Labor Code sections 201 or 202.

77. Pursuant to California Labor Code sections 201 and 202, Plaintiff and members of the Waiting Time Class were entitled upon termination to timely payment of all wages earned and unpaid prior to termination. Discharged employees were entitled to payment of all wages earned and unpaid prior to discharge immediately upon termination. Employees who resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and unpaid prior to resignation at the time of resignation.

78. Defendants failed to pay Plaintiff and members of the Waiting Time Class all wages earned and unpaid prior to separation of employment, in accordance with either California Labor Code section 201 or 202. Plaintiff is informed and believes and thereon alleges that at all relevant times within the limitations period applicable to this cause of action Defendants maintained a policy or practice of not paying hourly employees all earned wages timely upon separation of employment.

79. Defendants' failure to pay Plaintiff and members of the Waiting Time Class all wages earned prior to separation of employment timely in accordance with California Labor Code sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by hourly workers prior to separation of employment in accordance with California Labor Code sections 201 and 202, but intentionally adopted policies or practices incompatible with the requirements of California Labor Code sections 201 and 202. Defendants' practices include failing to pay at least minimum wage for all time worked, failing to pay premium wages for workdays Defendants did not

1 provide employees all meal periods in compliance with California law, and failing to pay premium
2 wages for workdays Defendants did not provide employees all rest periods in compliance with
3 California law. When Defendants failed to pay its hourly workers all earned wages timely upon
4 separation of employment, it knew what they were doing and intended to do what it did.

5 80. Pursuant to either California Labor Code section 201 or 202, Plaintiff and members
6 of the Waiting Time Class are entitled to all wages earned prior to separation of employment that
7 Defendants did not pay them.

8 81. Pursuant to California Labor Code section 203, Plaintiff and members of the Waiting
9 Time Class are entitled to continuation of their wages, from the day their earned and unpaid wages
10 were due upon separation until paid, up to a maximum of 30 days.

11 82. As a result of Defendants' conduct, Plaintiff and members of the Waiting Time Class
12 have suffered damages in an amount, subject to proof, to the extent they were not paid for all wages
13 earned prior to separation.

14 83. As a result of Defendants' conduct, Plaintiff and members of the Waiting Time Class
15 have suffered damages in an amount, subject to proof, to the extent they were not paid all
16 continuation wages owed under California Labor Code section 203.

17 84. Plaintiff and members of the Waiting Time Class are entitled to recover the full
18 amount of their unpaid wages, continuation wages under Section 203, and interest thereon.

19 **SIXTH CAUSE OF ACTION**

20 **UNFAIR COMPETITION**

21 **(Against All Defendants and Doe Defendants by the California Class)**

22 85. Plaintiff incorporates paragraphs 1 through 84 of this complaint as if fully alleged
23 herein.

24 86. The unlawful conduct of Defendants alleged herein constitutes unfair competition
25 within the meaning of California Business and Professions Code Section 17200. This unfair conduct
26 includes Defendants' use of policies and procedures which resulted in: failing to pay employees at
27 least at the minimum wage rate for all hours which they worked; failure to provide all required meal
28 periods or pay meal period premium wages; failure to authorize or permit, or provide, all required

1 rest periods or pay rest period premium wages; failure to provide accurate wage and hour
2 statements; and failure to pay timely all wages due upon separation of employment. Due to their
3 unfair and unlawful business practices in violation of the California Labor Code, Defendants have
4 gained a competitive advantage over other comparable companies doing business in the State of
5 California that comply with their obligations to pay employees for all hours worked, to provide meal
6 periods or pay meal period premium wages, to authorize or permit rest periods or pay rest period
7 premium wages, to provide accurate wage and hour statements, and to timely pay all wages due
8 upon separation of employment.

9 87. As a result of Defendants' unfair competition as alleged herein, Plaintiff and
10 members of the Minimum Wage Class, Meal Period Class, Rest Period Class, Wage Statement
11 Class, and Waiting Time Class have suffered injury in fact and lost money or property, as described
12 in more detail above.

13 88. Pursuant to California Business and Professions Code Section 17203, Plaintiff and
14 members of the Minimum Wage Class, Meal Period Class, Rest Period Class, Wage Statement
15 Class, and Waiting Time Class are entitled to restitution of all wages and other monies rightfully
16 belonging to them that Defendants failed to pay and wrongfully retained by means of their unlawful
17 and unfair business practices. Plaintiff also seeks an injunction against Defendants on behalf of the
18 California Class enjoining Defendants, and any and all persons acting in concert with them, from
19 engaging in each of the unlawful practices, policies and patterns set forth herein.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE, PLAINTIFF, ON HER BEHALF AND ON BEHALF OF THOSE**
22 **SIMILARLY-SITUATED, PRAYS AS FOLLOWS:**

23 **ON THE FIRST, SECOND, THIRD, FOURTH, FIFTH, AND SIXTH CAUSES OF**
24 **ACTION:**

25 1. That the Court determine that this action may be maintained as a class action (for the
26 entire California Class and/or any and all of the specified sub-classes) pursuant to California Code
27 of Civil Procedure section 382 and any other applicable law;

28 2. That the named Plaintiff be designated as class representative for the California Class

1 (and all sub-classes thereof);

2 3. A declaratory judgment that the practices complained herein are unlawful; and,

3 4. An injunction against Defendants enjoining them, and any and all persons acting in
4 concert with them, from engaging in each of the unlawful practices, policies and patterns set forth
5 herein.

6 **ON THE FIRST CAUSE OF ACTION:**

7 1. That Defendants be found to have violated the minimum wage provisions of the
8 California Labor Code and the IWC Wage Order as to Plaintiff and the Minimum Wage Class;

9 2. For damages, according to proof, including but not necessarily limited to unpaid
10 wages;

11 3. For any and all legally applicable penalties;

12 4. For liquidated damages pursuant to California Labor Code section 1194.2;

13 5. For pre-judgment interest, including but not limited to that recoverable under
14 California Labor Code section 1194, and post-judgment interest;

15 6. For attorneys' fees and costs of suit, including but not limited to that recoverable
16 under California Labor Code section 1194;

17 7. For pre-judgment interest, including but not limited to that recoverable under
18 California Labor Code section 218.6, and post-judgment interest; and,

19 8. For such and other further relief, in law and/or equity, as the Court deems just or
20 appropriate.

21 **ON THE SECOND CAUSE OF ACTION:**

22 1. That Defendants be found to have violated the meal period provisions of the
23 California Labor Code and the Wage Order as to Plaintiff and the Meal Period Class;

24 2. For damages, according to proof, including unpaid premium wages;

25 3. For any and all legally applicable penalties;

26 4. For pre-judgment interest, including but not limited to that recoverable under
27 California Labor Code section 218.6, and post-judgment interest; and

28 5. For such and other further relief, in law and/or equity, as the Court deems just or

1 appropriate.

2 **ON THE THIRD CAUSE OF ACTION:**

- 3 1. That Defendants be found to have violated the rest period provisions of the
4 California Labor Code and the Wage Order as to Plaintiff and the Rest Period Class;
- 5 2. For damages, according to proof, including unpaid premium wages;
- 6 3. For any and all legally applicable penalties;
- 7 4. For pre-judgment interest, including but not limited to that recoverable under
8 California Labor Code section 218.6, and post-judgment interest; and
- 9 5. For such and other further relief, in law and/or equity, as the Court deems just or
10 appropriate.

11 **ON THE FOURTH CAUSE OF ACTION:**

- 12 1. That Defendants be found to have violated the provisions of the California Labor
13 Code regarding accurate itemized paystubs as to the Wage Statement Class;
- 14 2. For damages and/or penalties, according to proof, including damages and/or statutory
15 penalties under California Labor Code section 226(e) and any other legally applicable damages or
16 penalties;
- 17 3. For pre-judgment interest and post-judgment interest;
- 18 4. For an injunction against Defendants enjoining them, and any and all persons acting
19 in concert with them, from engaging in violations of California Labor Code section 226(a);
- 20 5. For attorneys' fees and costs of suit, including but not limited to that recoverable
21 under California Labor Code section 226(e); and,
- 22 6. For such and other further relief, in law and/or equity, as the Court deems just or
23 appropriate.

24 **ON THE FIFTH CAUSE OF ACTION:**

- 25 1. That Defendants be found to have violated the provisions of the California Labor
26 Code regarding payment of all unpaid wages due upon resignation or termination as to the Waiting
27 Time Class;
- 28 2. For damages and/or penalties, according to proof, including damages and/or statutory

1 penalties under California Labor Code section 203 and any other legally applicable damages or
2 penalties;

3 3. For pre-judgment interest, including under California Labor Code section 218.6, and
4 post-judgment interest; and,

5 4. For such and other further relief, in law and/or equity, as the Court deems just or
6 appropriate.

7 **ON THE SIXTH CAUSE OF ACTION:**

8 1. That Defendants be found to have violated California Business and Professions Code
9 section 17200, et seq., for the conduct alleged herein as to all Classes;

10 2. A declaratory judgment that the practices complained herein are unlawful;

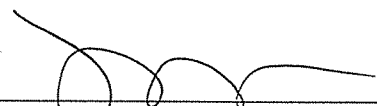
11 3. An injunction against Defendants enjoining them, and any and all persons acting in
12 concert with them, from engaging in each of the unlawful practices, policies and patterns set forth
13 herein;

14 4. For restitution to the full extent permitted by law; and,

15 5. For such and other further relief, in law and/or equity, as the Court deems just or
16 appropriate.

17 Dated: September 26, 2014

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

19 By: 
20 Joseph Lavi, Esq.
21 Vincent C. Granberry, Esq.
22 Attorneys for PLAINTIFF
23 KYLE FRENCHER
24 and Other Class Members

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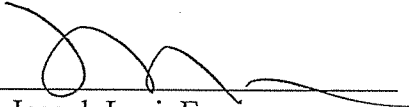
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DEMAND FOR JURY TRIAL

PLAINTIFF KYLE FRENCHER demands a trial by jury for herself and the California Class on all claims so triable.

Dated: September 26, 2014

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By: 
Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Attorneys for PLAINTIFF
KYLE FRENCHER
and Other Class Members