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*Attorney for Plaintiff Yolanda Sanchez,
Pablo Sanchez, Monica Tejada and the
Putative Class*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

YOLANDA SANCHEZ, PABLO SANCHEZ,
MONICA TEJADA, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

HEARST COMMUNICATIONS, INC., and
DOES 1–10, inclusive,

Defendants.

Case No.: TBD

**FIRST CLASS ACTION
& REPRESENTATIVE ACTION
COMPLAINT FOR DAMAGES,
RESTITUTION AND OTHER RELIEF**

1. Failure to Compensate Piece Rate Employees for Rest and Recovery Periods and Other Non-Productive Time (Cal. Lab. Code §§ 226.2);
2. Failure To Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512 & 1198);
3. Failure To Provide Rest Periods (Cal. Lab. Code §§ 226.7, 512 & 1198);
4. Failure To Pay Minimum and Overtime Wages (Cal. Lab. Code §§ 510, 1194, 1194.2 & 1198);
5. Failure to Maintain Accurate and Complete Employment Records (Cal. Labor Code §§ 1174.5);
6. Failure To Provide Accurate, Itemized Wage Statements (Cal. Lab. Code § 226);
7. Waiting Time Penalties (Cal. Labor Code §§ 201-203)
8. Failure to Reimburse Business Expenses (Cal. Labor Code § 2802)

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9. Unfair Competition (Cal. Bus. & Prof.
Code §17200 *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff Yolanda Sanchez, Pablo Sanchez, and Monica Tejada, individually and on behalf
2 of all others similarly situated (collectively, “Plaintiffs” or “Class Members”), complain and allege
3 upon personal knowledge and information and belief as follows:

4 **INTRODUCTION**

5 1. Plaintiffs bring this class action against Defendant Hearst Communications, Inc.
6 (“Hearst”) and DOES 1–10 (collectively “Defendants”), and on behalf of other persons similarly
7 situated in California (collectively referred to as the “Class Members”) from the date four years
8 prior to the filing of the Complaint through the date of trial in the action.

9 2. Defendant violated California law by maintaining policies and practices that
10 systematically fail to provide employees with the protections of California’s Labor Code. Due to
11 Defendant’s policies and practices, Defendant has violated numerous provisions of the California
12 Labor Code, including but not limited to, failing to compensate Class Members for all hours
13 worked, failing to compensate piece rate employees for rest and recovery periods and other non-
14 productive time, failure to provide Class Members with meal periods and rest periods, failure to
15 provide Class Members with minimum and overtime wages, failing to maintain accurate and
16 complete employment records, failure to provide Class Members with accurate, itemized wage
17 statements, failure to reimburse Class Members for business expenses, and failure to timely pay all
18 wage earned. Plaintiff also alleges that these acts, which violate the California Labor Code,
19 constitute unlawful and unfair business practices in violation of the California Unfair Competition
20 Laws.

21 **PARTIES**

22 3. Plaintiff Yolanda Sanchez is an adult individual residing in Belmont, CA in San
23 Mateo County, California. Plaintiff was employed by Hearst as a newspaper dealer in and around
24 Burlingame, Hillsborough, and San Mateo, California, from 2012 until October 21, 2018. At all
25 relevant times, Plaintiff met the definition of an “employee” of Hearst under all applicable statutes,
26 despite Hearst’s misclassification of Ms. Sanchez as an independent contractor. At all relevant
27 times Plaintiff’s employment with Hearst was governed by Title VIII of the California Code of
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1 Regulations, § 11010, and related Industrial Welfare Commission (“IWC”) Wage Order No. 1-
2 2001.

3 4. Plaintiff Pablo Sanchez is an adult individual who was employed by Hearst as a
4 newspaper dealer in and around San Mateo, California. Plaintiff Pablo Sanchez was employed by
5 Hearst from the end of August 2009 to September 2019. At all relevant times, Plaintiff met the
6 definition of an “employee” of Hearst under all applicable statutes, despite Hearst’s
7 misclassification of Mr. Sanchez as an independent contractor. At all relevant times Plaintiff Pablo
8 Sanchez’s employment with Hearst was governed by Title VIII of the California Code of
9 Regulations, § 11010, and related Industrial Welfare Commission (“IWC”) Wage Order No. 1-
10 2001.

11 5. Plaintiff Monica Tejada is an adult individual who was employed by Hearst as a
12 newspaper carrier from around 2015 to 2017 in and around Cupertino, California. At all relevant
13 times, Plaintiff met the definition of an “employee” of Hearst under all applicable statutes, despite
14 Hearst’s misclassification of Ms. Tejada as an independent contractor. At all relevant times
15 Plaintiff Tejada’s employment with Hearst was governed by Title VIII of the California Code of
16 Regulations, § 11010, and related Industrial Welfare Commission (“IWC”) Wage Order No. 1-
17 2001.

18 6. On information and belief, Defendant Hearst Communications, Inc. is incorporated
19 under the laws of the State of Delaware with a principal place of business in the state of New York,
20 New York County, located at 300 West 57th Street, New York, NY 10019, as well as a principal
21 office in California in San Francisco County located at 10 5th Street, San Francisco, CA 94103.

22 7. Hearst Communications Inc. is a media company distributing online and print media
23 throughout the United States, including in the San Francisco Bay Area. At all relevant times herein,
24 Hearst met the definition of “employer” under all applicable statutes.

25 8. On information and belief, Hearst is engaged in the ownership, management, and
26 operation of the *San Francisco Chronicle* newspaper.

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1 9. On information and belief, during the liability period Hearst employed Plaintiffs
2 (and the Class Members) as “Newspaper Dealers” and/or “Newspaper Carriers” but classified them
3 as independent contractors rather than employees.

4 10. On information and belief, Hearst directly or indirectly exercised control over the
5 wages, hours and working conditions of Plaintiffs and the Class Members.

6 11. On information and belief, Hearst is by far the largest distributor of print news
7 subscription products in the greater Bay Area and Northern California, including in Alameda,
8 Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma Counties.
9 Hearst, through the workers it hires as independent contractors, distributes the San Francisco
10 Chronicle, as well as the New York Times, the Wall Street Journal, the East Bay Times, the San
11 Jose Mercury News, the Sing Tao Daily, the World Journal, the Korea Times Daily, Barron’s, and
12 the Financial Times.

13 12. The true names and capacities, whether individual, corporate, associate, or
14 otherwise, of Defendants sued herein as Does 1 through 10, inclusive, are currently unknown to
15 Plaintiffs who therefore sue Defendants by such fictitious names. When the true names and
16 capacities of Does 1-10 are ascertained, Plaintiffs will amend their Complaint to insert their true
17 names and capacities. Plaintiff is informed and believes and thereon alleges that each of the
18 fictitiously-named Defendants is responsible in some manner for the occurrences herein alleged,
19 and that the damages of Plaintiff and the Class Members herein alleged were proximately caused
20 by such Defendants.

21 13. Plaintiffs are informed, believe, and thereon allege that each of the Defendants
22 herein was, at all times relevant to the action, the agent, employee, representing partner, and/or
23 joint venture of the remaining Defendants and was acting within the course and scope of the
24 relationship. Plaintiffs are further informed, believes, and thereon alleges that each of the
25 Defendants herein gave consent to, ratified and authorized the acts alleged herein to the remaining
26 Defendants.

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JURISDICTION & VENUE

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2 14. This Court has jurisdiction over this action pursuant to the Class Action Fairness
3 Act of 2005, 28 U.S.C. § 1332(d)(2), because this is a class action where “any member of a class
4 of plaintiffs is a citizen of a state different from any defendant and the aggregated amount in
5 controversy exceeds \$5,000,000, exclusive of interest and costs.”

6 15. In addition, this is a class action brought in diversity between Plaintiffs and the Class
7 Members and Defendant Hearst, wherein jurisdiction lies under 28 U.S.C. § 1332.

8 16. This Court has personal jurisdiction over Defendant Hearst, because Hearst has
9 sufficient minimum contacts with the Northern District of California so as to render the exercise of
10 jurisdiction over it by this Court consistent with traditional notions of fair play and substantial
11 justice.

12 17. Venue is proper in this District under 28 U.S.C. § 1391, because: a substantial part
13 of the events or omissions giving rise to Plaintiffs and the Class Member’s claims occurred within
14 this district; Hearst transacts business, committed an act alleged to be unconstitutional, illegal or
15 tortious, and/or is found within this district.

16 **GENERAL FACTUAL ALLEGATIONS**

17 **A. Defendant’s Operation**

18 18. Defendant Hearst publishes and distributes a newspaper of general circulation,
19 operating in the San Francisco Bay Area. Most of Hearst’s customers receive home delivery of
20 newspapers on a daily basis which are printed and distributed under the auspices of the Defendant
21 doing business as the San Francisco Chronicle newspaper (hereinafter “the Chronicle”).

22 19. Defendant organizes the distribution of the Chronicle by maintaining distribution
23 facilities in Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, and
24 Sonoma Counties which are owned and controlled by Hearst.

25 20. Newspaper delivery is an integral part of the business enterprise of Hearst. Plaintiffs
26 and the Class Members perform an integral part of Hearst’s operations, which include distributing
27 newspapers.
28

1 21. Hearst has, at all relevant times, had the right to control Plaintiffs and the Class
2 Members' performance of their work as Newspaper Carriers and/or Newspaper Dealers.

3 **B. Defendant's Control over Plaintiffs and the Class Members and Their Work**

4 22. The work performed by Plaintiffs and the Class Members for Hearst did and does
5 not involve any variable scope of independence or choice. Rather, Hearst controlled and controls
6 the duties Plaintiffs and the Class Members perform and the hours Plaintiffs and the Class Members
7 work.

8 23. Defendant required Plaintiffs to pick up and deliver newspapers by certain specified
9 hours, such as by 6:00 a.m. Monday through Saturday and 7:30 a.m. on Sunday.

10 24. Upon information and belief, Plaintiffs were paid piece rates for delivering different
11 newspapers that did not vary based on their hours worked. For example, Plaintiff Yolanda Sanchez
12 was paid \$.16 for each delivery of the *NY Times*, *San Francisco Chronicle* and *Financial Times*,
13 and \$.10 for each delivery of *USA Today*. Further, Plaintiff Pablo Sanchez was paid \$.22 for each
14 delivery of the *NY Times*, *San Francisco Chronicle*, *USA Today*, *Financial Times*, and his piece
15 rates ranged from \$.10 to \$.38.

16 25. Plaintiff Yolanda Sanchez worked approximately ninety-one (91) hours per week
17 and, upon information and belief, received less than the applicable minimum wage. For example,
18 Plaintiff Yolanda Sanchez received a 1099 from Defendant in 2017 for \$24,064.75, in 2018 for
19 \$41,623.52.

20 26. Plaintiff Pablo Sanchez worked approximately seventy-five (75) hours per week
21 and, upon information and belief, received less than the applicable minimum wage. For example,
22 Plaintiff Pablo Sanchez received about \$1,000 to \$2,000 every two weeks, net of expenses.

23 27. Plaintiff Monica Tejada worked approximately forty-four (44) to fifty (50) hours
24 per week and, upon information and belief, received less than the applicable minimum wage.

25 28. Upon information and belief, Defendant also paid newspaper dealers a bonus if they
26 did not receive a certain amount of complaints, which bonus was not properly factored into
27 newspaper dealers' overtime compensation.

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1 29. On information and belief, Class members were and are subjected by Defendant
2 Hearst to substantially the same contractual terms with respect to the condition and timing of their
3 delivery of newspapers to Defendant's customers.

4 30. Plaintiffs were required to work with other delivery drivers to assist in executing
5 their job duties. Plaintiffs had a regular schedule or required to pick up newspapers by a certain
6 hour, which was determined by Defendant. On information and belief, Plaintiffs' contracts
7 stipulate certain hours they were expected to work and how much they would be compensated for
8 said work.

9 31. Defendant instructed Plaintiffs on exactly how, when, and where to deliver
10 newspapers. In addition to contractually designating the geographic scope of Plaintiffs' delivery
11 routes, Defendant generated and controlled Plaintiffs' route lists on a daily basis.

12 32. On information and belief, the Class Members were and are likewise subject to
13 Defendant's control as described in the previous paragraph. Class Members were and are required
14 to work with other drivers, and had regular schedules set by Hearst. Upon information and belief,
15 Class Members had contracts stipulating their schedules and compensation, all dictated by Hearst.

16 33. On a typical workday, Plaintiffs drove to Defendant's warehouse in their own
17 vehicles. Upon arriving at the warehouse, Plaintiffs ensured newspapers were properly folded
18 and/or sorted. Plaintiffs then loaded their personal vehicles and drove to stops on the route assigned
19 to them by Defendant. They then distributed newspapers, house to house. Newspaper dealers
20 received communications about redeliveries from Hearst, and then communicated that information
21 to newspaper carriers.

22 34. Upon information and belief, aside from the duties expressly included in Plaintiffs'
23 contracts, Hearst demanded additional services outside of the contracts and outside of the delivery
24 hours specified in the contracts for which Plaintiffs were required to remain on-call and subject to
25 Hearst's control. Upon information and belief, for example, Hearst required re-delivery of missing,
26 damaged, or stolen products. Plaintiff Pablo Sanchez, for instance, performed re-deliveries from
27 around 6:30 a.m. or 7:00 a.m. to 10:30 a.m. from Monday to Saturday and from around 7 a.m. to
28 11 a.m. on Sunday. These demands were communicated to Plaintiff Yolanda Sanchez and Pablo

1 Sanchez, as newspaper dealers, through Hearst's online portals, and Plaintiff Yolanda Sanchez and
2 Pablo Sanchez subsequently communicated the demands to newspaper carriers. Plaintiff Yolanda
3 Sanchez and Pablo Sanchez, as newspaper dealers, were required to actively monitor and refresh
4 these online portals each day and respond accordingly to re-delivery requests and other demands
5 for service from Hearst's customers, and communicate the re-delivery requests and other demands
6 for service to newspaper carriers. These other services require accessing an online portal, and
7 include directives from Hearst to establish customer contact, perform on-site inspections for
8 property damages, or to address product placement issues and other services required by Hearst to
9 be satisfied by Plaintiffs.

10 35. On information and belief, the Class Members were similarly required by Hearst to
11 engage in the additional extra-contractual duties specified in the previous paragraph and were
12 subject to Hearst's control for hours beyond those specified in their contracts as described in the
13 previous paragraph.

14 36. In performing these duties for Hearst, Plaintiffs drove their own cars, paid for their
15 own gas, paid for their own vehicle maintenance, used their own cell phones, and paid for their
16 own liability insurance.

17 37. On information and belief, Class Members likewise drove their own vehicles, paid
18 for their own gas, paid for their own vehicle maintenance, used their own cell phones, and paid for
19 their own liability insurance while working for Hearst.

20 38. Other than as described above, Plaintiffs and the Class Members did and do not
21 invest in equipment with respect to their work for Hearst, and a relatively low degree of skill is
22 required to perform the duties required by Hearst of Plaintiff and the Class Members.

23 **C. Misclassification**

24 39. Plaintiffs reallege each and every fact in all preceding paragraphs, as alleged herein.

25 40. Hearst has always classified Plaintiffs and the Class Members as independent
26 contractors.

27 41. Despite Hearst's classification of Plaintiffs and the Class Members as independent
28 contractors, Plaintiffs and the Class Members have been under the control and direction of Hearst

1 in connection with the work they performed, both under their contracts, and for extra-contractual
2 work performed.

3 42. Hearst controlled and controls Plaintiffs and the Class Members' hours of work and
4 supervised Plaintiffs and the Class Members.

5 43. Hearst enjoyed and enjoys the right to terminate, at will and without cause, its
6 employment relationship with Plaintiffs and the Class Members.

7 44. Plaintiffs (and on information and belief the Class Members) did not perform other
8 work outside of Hearst's line of business.

9 45. Plaintiffs (and, on information and belief the Class Members) were not customarily
10 engaged in any independently established trade, occupation, or business of the same nature as the
11 work they performed for Hearst.

12 46. Plaintiffs (and on information and belief the Class Members) generally had to work
13 more than forty (40) hours per week, without proper compensation for overtime.

14 47. Under conventional legal, and economic tests, Plaintiffs' and the Class Members'
15 relationship with Hearst was that of an employee and not of an independent contractor. Because
16 Plaintiffs and the Class Members were and/or are employees and not independent contractors,
17 numerous California Labor Code violations have occurred and/or are occurring. Accordingly,
18 Hearst is in violation of the laws of the State of California.

19 **CLASS ALLEGATIONS**

20 48. Pursuant to Federal Rules of Civil Procedure 23(a) and (b), Plaintiffs bring this
21 action on behalf of themselves and the following defined group:

22 All persons who are or have been contracted or otherwise engaged for work by Defendants
23 in the State of California within the four years prior to the filing of this Complaint to the
24 final disposition of this case to provide for distribution and delivery of print media products,
25 including the San Francisco Chronicle, to Hearst's customers in the State of California,
26 including, but not limited to individuals referred to as "Newspaper Carriers" and/or as
27 "Newspaper Dealers."

28 49. **Reservation of Rights:** This action is brought as a class action and may properly be
so maintained pursuant to the provisions of Federal Rule of Civil Procedure 23. Plaintiffs reserve
the right to amend or modify the class definition and or the class period pursuant to discovery that
is conducted hereafter.

1 50. **Numerosity**: The Proposed Class is so numerous that joinder of all members is
2 impracticable. The precise identities, numbers and addresses of members of the Class are unknown
3 to the Plaintiffs but may and should be known with proper and full discovery of Defendant, third
4 parties, and their respective records.

5 51. **Typicality**: Plaintiffs' claims are typical of all other Class Members as
6 demonstrated herein. Plaintiffs will fairly and adequately protect the interests of the other Class
7 Members with whom he has a well-defined community of interest.

8 52. **Adequacy**: Plaintiffs will fairly and adequately protect the interests of each class
9 member, with whom she has a well-defined community of interest and typicality of claims, as
10 demonstrated herein. Plaintiffs have no interest that is antagonistic to the other Class Members.
11 Plaintiffs' attorneys, the proposed class counsel, are versed in the rules governing class action
12 discovery, certification, and settlement. Plaintiffs have incurred, and during the pendency of the
13 action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily
14 expended for the prosecution of the action for the substantial benefit of each class member.
15 Plaintiffs have retained counsel experienced in wage and hour class action litigation.

16 53. **Predominant Common Questions**: This action may be maintained as a class
17 action under Federal Rule of Civil Procedure 23(b)(3) because questions of fact and law common
18 to the Class predominate over questions affecting only individual class members, and a class action
19 is superior to other available means for the fair and efficient adjudication of this dispute. Common
20 questions of law and fact exist to all members of the Proposed Class and predominate over any
21 questions solely affecting individual members of the Proposed Class, including but not limited to:

- 22 a. Whether Defendants, as matters of policy or practice, have misclassified Class
23 Members as independent contractors rather than employees.
- 24 b. Whether Defendants, as a matter of policy or practice, have failed to relieve Class
25 Members of all duty for first meal periods before the end of the fifth hour of their
26 shifts?

- 1 c. Whether Defendants, as matters of policy or practice, have failed to relieve Class
- 2 Members of all duty for second meal periods before the end of the tenth hour of
- 3 their shifts?
- 4 d. Whether Defendants have failed to maintain a policy or practice that reasonably
- 5 permits Class Members to take net rest periods of ten minutes for each four-hour
- 6 work period, or major portion thereof?
- 7 e. Whether Defendants have, as matters of policy or practice, failed to make good
- 8 faith efforts to provide Class Members with rest periods of during the middle of
- 9 each four-hour work period?
- 10 f. Whether Defendants lack any mechanism for paying premium wages to Class
- 11 Members when they are not provided with timely meal and/or rest periods?
- 12 g. Whether Defendants are liable to Class Members for restitution of overtime and
- 13 premium wages?
- 14 h. Whether, by failing to pay premium wages to Class Members, Defendants have
- 15 failed to provide them with written wage statements that accurately reflect their
- 16 gross and net wages earned?
- 17 i. Whether Defendants had a corporate policy and practice of failing to pay their
- 18 hourly-paid or non-exempt employees within the State of California for all missed
- 19 meal periods and rest breaks in violation of California law?
- 20 j. Whether Defendants required Plaintiff and the other Class Members to work over
- 21 eight (8) hours per day and/or over forty (40) hours per week and failed to pay the
- 22 legally required overtime compensation to Plaintiff and the other Class Members?
- 23 k. Whether Defendant required Plaintiff and the other Class Members to work seven
- 24 (7) consecutive days failed to pay the legally required overtime compensation to
- 25 Plaintiff and the other Class Members for such work?
- 26 l. Whether Defendants complied with wage reporting as required by the California
- 27 Labor Code, including, *inter alia*, section 226?
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- 1 m. Whether Defendants failed to pay timely and complete wages to former employees
2 at termination in violation of California Labor Code, sections 201, 202, and 203?
3 n. Whether Defendants kept complete and accurate payroll records as required by the
4 California Labor Code, including *inter alia*, section 1174(d)?
5 o. Whether Defendants' conduct was willful or reckless?
6 p. Whether Defendants engaged in unfair business practices in violation of California
7 Business & Professions Code section 17200, *et seq.*?
8 q. The appropriate amount of damages, restitution, and/or monetary penalties resulting
9 from Defendants' violation of California law?
10 r. Whether Plaintiff and the other Class Members are entitled to compensatory
11 damages pursuant to the California Labor Code?
12 s. Whether Defendant failed to reimburse Plaintiff and the other Class Members for
13 necessary business-related expenses and costs?
14 and;
15 t. Whether Plaintiff and others are entitled to civil penalties under California Labor
16 Code section 2699 *et seq.*?

17 54. **Superiority:** A class action is superior to other available methods for the fair and
18 efficient adjudication of the controversy, particularly in the context of wage and hour litigation
19 where individual plaintiffs lack the financial resources to vigorously prosecute separate lawsuits
20 against a corporate Defendant. A class action is superior to other available means for fair and
21 efficient adjudication of class members' claims and offers significant benefits to the parties and the
22 court. A class action will allow a number of similarly situated persons to simultaneously and
23 efficiently prosecute their common claims in a single forum without the unnecessary duplication
24 of effort and expense that numerous individual actions would entail. The monetary amounts due
25 to many class members are likely to be relatively small, thus making it difficult, if not impossible,
26 for individual class members to seek and obtain relief. Moreover, a class action will serve important
27 public interests by enabling the non-waivable statutory rights of class members to be effectively
28 asserted, and fundamental public policies to be vindicated, in one proceeding. A class action will

1 also provide a means for vindicating the rights of current employees who are less likely to come
2 forward to assert those rights based on fears of employer reprisal. Finally, a class action will
3 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation
4 and address the problems inherent in random and fragmentary enforcement.

5
6 **FIRST CAUSE OF ACTION**

7 ***Failure to Compensate Piece Rate Employees for Rest and Recovery Periods and Other Non-***
8 ***Productive Time***
9 **(Lab. Code §§ 226.2)**

10 55. Plaintiffs incorporates each of the preceding paragraphs of the Complaint by
11 reference as if fully set forth herein.

12 56. As alleged herein, Defendant has maintained a policy and/or practice whereby
13 Plaintiff and Class Members have not been compensated for rest and recovery periods and other
14 non-productive time in accordance with Cal. Lab. Code § 226.2.

15 57. Defendant Hearst, Inc. did not avail itself to the California Labor Code § 226.2
16 Safe Harbor Provision and is required to compensate Plaintiff and Class Members for meal and
17 rest breaks not included in their Piece Rates, and nonproductive time based on their average
18 hourly rate, along with interest.

19 **SECOND CAUSE OF ACTION**

20 ***Failure to Provide Meal Periods***
21 **(Lab. Code §§ 226.7, 512, and 1198)**

22 58. Plaintiffs incorporate all of the preceding paragraphs of the Complaint as if fully
23 set forth herein.

24 59. As alleged herein, Defendant has maintained a policy and/or practice whereby
25 Plaintiffs and Class Members were misclassified as independent contractors. As such, Defendant
26 has systematically failed and/or refused to provide Plaintiff and Class Members with
27 uninterrupted, off-duty meal breaks of at least 30 consecutive minutes in duration for all shifts in
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1 excess of 5 hours, as guaranteed to Plaintiff and Class Members as employees under Cal. Labor
2 Code § 226.7 and 512, and Wage Order 1-2001.

3 60. Labor Code § 226.7(b) and Paragraph 11 of Wage Order 2001-01 require
4 employers to pay non-exempt employees an additional hour of premium wages at the employee's
5 regular rate of compensation on each workday that the employee is not provided with a meal
6 period.

7 61. Labor Code § 1198 makes it unlawful for an employer to employ any person under
8 conditions of employment that violate the Wage Order.

9 62. At relevant times during their employment, Defendants failed to relieve Plaintiffs
10 and Class Members of all duty for a first uninterrupted meal period of at least thirty minutes before
11 the end of their fifth hour of work and/or for a second uninterrupted meal period of at least thirty
12 minutes before the end of their tenth hour of work and failed to pay their premium wages on those
13 workdays.

14 63. Plaintiffs are informed, believe, and thereon allege that, at all relevant times,
15 Defendants have maintained policies and practices with respect to employee scheduling and meal
16 periods that have prevented Plaintiffs and Class Members from being relieved of all duty for a first
17 uninterrupted meal period of at least thirty minutes before the end of their fifth hour of work and/or
18 for a second uninterrupted meal period of at least thirty minutes before the end of their tenth hour
19 of work, and have failed to pay them premium wages on those workdays.

20 64. Pursuant to Labor Code § 226.7, Plaintiffs, on behalf of themselves and Class
21 Members, seeks to recover premium wages in amounts subject to proof.

22 **THIRD CAUSE OF ACTION**

23 ***Failure to Provide Rest Periods***

24 **(Lab. Code §§ 226.7, 512, and 1198)**

25 65. Plaintiffs incorporate all of the preceding paragraphs of the Complaint as if fully
26 set forth herein.

27 66. As alleged herein, Defendant has maintained a policy and/or practice whereby
28 Plaintiffs and Class Members were misclassified as independent contractors. As such, Defendant

1 has systematically failed and/or refused to authorize or permit Plaintiffs and Class Members to
2 take an uninterrupted 10-minute rest break for every 4 hours worked or major fraction thereof, as
3 guaranteed to them as employees under Cal. Labor Code § 226.7 and Wage Order 1-2001.

4 67. Paragraph 12 of Wage Order 4-2001 imposes an affirmative obligation on
5 employers to permit and authorize employees to take required rest periods at a rate of no less
6 than ten minutes of net rest time for each four-hour work period, or major portion thereof, that
7 must be in the middle of each work period insofar as is practicable.

8 68. Labor Code § 226.7 and Section 12 of the Wage Order require employers to pay
9 non-exempt employees an additional hour of premium wages at the employee's regular rate of
10 compensation on each workday that the employee is not provided with a rest period.

11 69. Labor Code § 1198 makes it unlawful for an employer to employ any person
12 under conditions of employment that violate the Wage Order.

13 70. At relevant times during their employment, Defendants failed to authorize and
14 permit Plaintiffs and Class Members to take net rest periods of at least ten minutes for each four-
15 hour work period, or major portion thereof, and failed to pay their premium wages on those
16 workdays.

17 71. Plaintiffs are informed, believes, and thereon alleges that, at all relevant times,
18 Defendants have maintained policies and practices with respect to employee scheduling and rest
19 periods that have failed to authorize and/or reasonably permit Plaintiffs and Class Members to
20 take net rest periods for each four-hour work period, or major portion thereof.

21 72. Plaintiffs, on behalf of herself and Class Members, seek to recover premium
22 wages for missed rest periods, consisting of an additional hour of pay at the regular rate of pay
23 for each day a rest period was not provided, pursuant to Cal. Labor Code § 226.7 and Wage
24 Order 1-2001.

25 **FOURTH CAUSE OF ACTION**

26 ***Failure to Pay Minimum and Overtime Wages***

27 **(Lab. Code § 510, 1194, 1194.2, and 1198)**

1 73. Plaintiffs incorporate all of the preceding paragraphs of the Complaint as if fully
2 set forth herein.

3 74. At all relevant times, Plaintiffs and Class Members have been non-exempt
4 employees of Defendant entitled to the full protections of the California Labor Code and Wage
5 Order 1-2001.

6 75. Cal. Labor Code § 1198 makes it unlawful for an employer to employ any person
7 under conditions of employment that violate Wage Order 1-2001.

8 76. Section 2(K) of Wage Order 1-2001 defines “hours worked” as “the time during
9 which an employee is subject to the control of the employer, [which] includes all the time the
10 employee is suffered or permitted to work, whether or not required to do so.”

11 77. Cal. Labor Code §§ 510 and 1194, and Section 3 of Wage Order 1-2001, require
12 employers to pay overtime wages to their non-exempt employees at no less than one and one-half
13 times their regular rates of pay for all hours worked in excess of eight hours in one workday, all
14 hours worked in excess of forty hours in one workweek, and for the first eight hours worked on a
15 seventh consecutive day.

16 78. Cal. Labor Code §§ 510 and 1194, and Section 3 of Wage Ordre 1-2001, also
17 require employers to pay overtime wages to their non-exempt employees at no less than two times
18 their regular rates of pay for all hours worked in excess of twelve hours in one workday, and for
19 all hours worked in excess of eight hours on a seventh consecutive workday.

20 79. During the entirety of the employment period, Defendant had a consistent policy
21 of requiring Plaintiff and Class Members to work on average 10-hour work days every day of the
22 week, 52 weeks a year without compensating Plaintiff and Class Members at a rate of one and
23 one-half of their regular rate of pay for overtime work performed, in violation of Cal. Lab. Code
24 §1194.

25 80. Pursuant to Cal. Labor Code §§ 1194 (a) and 1194.2 (a), Plaintiffs, on behalf of
26 herself and Class Members, seeks to recover earned and unpaid overtime wages, interest thereon,
27 awards of reasonable attorneys’ fees and costs, and liquidated damages, all in amounts subject to
28 proof.

FIFTH CAUSE OF ACTION

Failure to Maintain Accurate and Complete Employment Records

(Cal. Labor Code §§ 1174.5)

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2
3
4 81. Plaintiffs incorporate all of the preceding paragraphs of the Complaint as if fully
5 set forth herein.

6 82. Cal. Labor Code § 1174 (d) requires an employer to keep at a central location in
7 California or at the plant or establishment at which employees are employed, payroll records
8 showing the hours worked daily by, and the wages paid to, each employee, and the number of
9 piece-rate units earned by and any applicable piece rate paid to each employee. Plaintiff is
10 informed and believes that Defendant willfully failed to make and keep such records for Plaintiff
11 and Class Members.

12 83. IWC Wage Order No. 1-2001, paragraph (7)(A) requires that every employer keep
13 accurate employee information, including time records showing when each employee begins and
14 ends each work period, and applicable rates of pay. Plaintiffs are informed and believe that
15 Defendant failed to make and keep such records for Plaintiffs and Class Members.

16 84. Plaintiffs are informed and believe that Defendant's failure to keep payroll records
17 and accurate employee information, as described above, violated Cal. Lab. Code § 1174 (d) and
18 IWC Wage Order No. 1-2001 (7)(A). Plaintiffs and Class Members are entitled to penalties of
19 \$100 for the initial violation and \$200 for each subsequent violation for every pay period during
20 which these records and information were not kept by Defendant.

21 85. Plaintiffs, on behalf of herself and Class Members, are informed and believe that
22 Defendant's failure to keep and maintain records and information, as described above, was willful,
23 and Plaintiff and Class Members are entitled to a civil penalty of \$500, pursuant to Cal. Lab. Code
24 § 1174.5.

SIXTH CAUSE OF ACTION

Failure to Provide Accurate, Itemized Wage Statements

(Cal. Labor Code § 226)

1 and Class Members for the expenses and losses incurred during the performance of their job duties.
2 The purpose of this statute is to prevent employers from passing their operating expenses onto
3 their employees. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal. 4th 554, 562.

4 101. In violation of Cal. Labor Code § 2802, Defendant required Plaintiffs and Class
5 Members to incur the following operational and necessary business expenses; (i) the cost of
6 purchasing equipment for use by Defendant's clients; (ii) the cost of using personal computers and
7 cell phones Defendant required Plaintiffs and Class Members to use for their work; (iii) the cost
8 of cellular and internet service; (iv) the costs of cloud computing services; (v) the cost of parking
9 when conducting site visits for Defendant's customers; (vi) mileage and vehicle maintenance
10 expenses; (vii) and liability insurance. On information and belief, Plaintiff and Class Members
11 were not reimbursed for these necessary business expenses.

12 102. Plaintiffs, on behalf of herself and Class Members, seeks to recover monies for
13 these necessary business expenses for which she and the Class Members were not reimbursed,
14 plus interest thereon, reasonable attorneys' fees and costs, in an amount to be proven at trial.

15 **NINTH CAUSE OF ACTION**

16 ***Unfair Competition***

17 **(Cal. Labor Code § 17200 *et seq.*)**

18 103. Plaintiffs incorporate each of the preceding paragraphs of this Complaint by
19 references as if fully set forth herein.

20 104. A violation of Cal. Bus. & Prof. Code §§ 17200 *et seq.* may be predicated on the
21 violation of any state or federal law. Defendant's activities, as alleged herein, are violations of
22 California law, and constitute unlawful business acts and practices in violation of Cal. Bus. & Prof.
23 Code §§ 17200 *et seq.* California has an important public policy of protection the welfare of
24 employees, and thus provides for necessary meal and rest periods and that statutorily-guaranteed
25 wages be paid for all hours worked and for missed meal and rest periods. Defendant's willful
26 misclassification scheme has denied Plaintiffs and Class Members mandated meal and rest periods,
27 premium wages for missed meal and rest periods, and the legally-mandated minimum wages for
28 all hours worked, has been, and continues to be, unfair, unlawful, and harmful to Plaintiffs, Class

1 Members, and the general public. Over and above these violations, Defendant has failed to provide
2 accurate, itemized wage statements, and failed to reimburse Plaintiffs and Class Members for costs
3 associated with performing their jobs. Plaintiffs, on behalf of herself and Class Members, seek to
4 enforce important rights affecting the public interest within the meaning of Cal. Civ. Proc. Code
5 § 1021.5.

6 105. Defendant's misclassification scheme allows Defendant to strip Plaintiffs and Class
7 Members of their fundamental employment rights, such as the rights to minimum and overtime
8 wages, mandated meal and rest periods, premium wages for missed meal and rest periods, itemized
9 wage statements, and the prompt payment of full wages within time limits set by law, as provided
10 under various provisions of the California Labor Code and Wage Order 1-2001.

11 106. Within its unlawful scheme, Defendant is able to unjustly keep and appropriate for
12 itself significant amounts of money that otherwise should have been paid to Plaintiffs and Class
13 Members. Defendant is also able to illegally pass on business operational costs like the cost of
14 purchasing equipment for use by Defendant's clients, the cost of using his personal computer and
15 cell phone, the cost of cellular and internet service, the cost of cloud computing services, parking,
16 mileage and vehicle maintenance expense, and liability insurance, thereby reducing wages due, in
17 violation of Cal. Labor Code § 2802. To the extent that Defendant requires to waive the benefits
18 of said statute, Defendant also violated Cal. Labor Code § 2804. Defendant's actions, left
19 unrectified, will aggregate to the impunity employers thereby enjoy and which California's labor
20 laws are meant to redress, undermining the rights of workers and the desired balance in labor
21 relations in this state.

22
23 **PRAYER FOR RELIEF**

24 **WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly-situated,**
25 **pray for relief and judgment against Defendants as follows:**

- 26 A. A declaratory judgment that the actions, conduct, and practices of Defendant
27 complained of herein violated the laws of the United States and the State of California;
28 B. An injunction and order permanently restraining Defendants from engaging in such

1 unlawful conduct;

2 C. An order that the action be certified as a class action;

3 D. An order that the named Plaintiff herein be appointed class representative;

4 E. An order that counsel for Plaintiff be appointed class counsel;

5 F. An award of damages in an amount to be determined at trial, plus prejudgment
6 interest, to compensate Plaintiffs for all monetary and/or economic hardship, including, but not
7 limited to, the loss of past and future income, wages, compensation, and other benefits of
8 employment;

9 G. An award of damages in an amount to be determined at trial, plus prejudgment
10 interest, to compensate Plaintiffs for all non-monetary and compensatory harm;

11 H. An award of damages for any and all other monetary and/or non-monetary losses
12 suffered by Plaintiffs in an amount to be determined at trial, plus prejudgment interest;

13 I. An award of penalties, according to proof;

14 J. For reimbursement of work-related expenses (Cal. Lab. Code §2802);

15 K. That Defendant be found to have engaged in unfair competition in violation of Cal.
16 Bus. & Prof. Code § 17200, *et seq.*;

17 L. That Defendant be ordered and enjoined to make restitution of all losses incurred
18 by the Plaintiff and Class Members, including disgorgement of wrongfully-withheld
19 wages and unreimbursed expenses pursuant to Cal. Bus. & Prof. Code §§ 17203 and
20 17204.

21 M. For punitive damages, as allowed by law;

22 N. For reasonable attorneys' fees, interests and costs of suit, including expert witness
23 fees;

24 O. For such other and further relief as the Court deems just and proper.

25
26 **JURY DEMAND**

27 Plaintiffs, on behalf of themselves and all other similarly situated, hereby demand a trial by
28 jury on all issues of fact and damages stated herein.

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Respectfully submitted,

Dated: July 27, 2020
San Francisco, California

THE OTTINGER FIRM, P.C.

BY: 

ROBERT OTTINGER, ESQ.

*Attorney for Plaintiff
Yolanda Sanchez and the Putative Class*