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LAW OFFICES OF THOMAS W. FALVEY

Thomas W. Falvey (State Bar No. 65744)
Michael H. Boyamian (State Bar No. 256107)
Armand R. Kizirian (State Bar No. 293992)
550 North Brand Boulevard, Suite 1500
Glendale, California 91203
T: (818) 547-5200
F: (818) 500-9307
E: thomaswfalvey@gmail.com,
mike.falveylaw@gmail.com,
armand.falveylaw@gmail.com

ALEXANDER KRAKOW + GLICK LLP

Michael S. Morrison (State Bar No. 205320)
401 Wilshire Boulevard, Suite 1000
Santa Monica, California 90401
T: 310 394 0888 | F: 310 394 0811
E: mmorrison@akgllp.com

JML LAW, A PROFESSIONAL LAW CORPORATION

Joseph M. Lovretovich (State Bar No. 73403)
David F. Tibor (State Bar No. 230563)
21052 Oxnard Street
Woodland Hills, California 913567
T: (818) 610-8800
F: (818) 610-3030
E: jml@jmllaw.com, david@jmllaw.com

Attorneys for Plaintiff VIVIAN PHILLIPS individually,
on behalf of all others similarly situated, and the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

VIVIAN PHILLIPS, as an individual, on
behalf of herself, all others similarly
situated, and the general public,

Plaintiff,

v.

ACCENTCARE, INC., a corporation,
ACCENTCARE HOME HEALTH OF
CALIFORNIA, INC., a corporation,
ACCENTCARE HOME HEALTH, INC., a
corporation, and DOES 1-100,

Case No. CIVDS 1620673

**CLASS ACTION COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF**

1. **FAILURE TO PAY
COMPENSATION FOR ALL
HOURS WORKED AND MINIMUM
WAGE VIOLATIONS (CAL. LABOR
CODE §§ 216, 1194, 1194.2, 1197)**
2. **FAILURE TO PAY OVERTIME
COMPENSATION (CAL. LABOR
CODE §§ 510, 1194)**

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

NOV 28 2016

BY 
VIVIANA OLIVARES, DEPUTY

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Defendants.

- 3. **FAILURE TO PAY MEAL AND REST PERIOD COMPENSATION (CAL. LABOR CODE §§ 226.7, 512)**
- 4. **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS (CAL. LABOR CODE § 226)**
- 5. **WAITING TIME PENALTIES (CAL. LABOR CODE § 203)**
- 6. **FAILURE TO PAY ALL WAGES BY THE APPROPRIATE PAY PERIOD (CAL. LABOR CODE § 204)**
- 7. **UNFAIR BUSINESS PRACTICES (CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200, ET SEQ.)**
- 8. **PRIVATE ATTORNEYS GENERAL ACT OF 2004 (CAL. LABOR CODE § 2698, ET SEQ.)**

DEMAND FOR JURY TRIAL

Plaintiff VIVIAN PHILLIPS (“PLAINTIFF”), as an individual and on behalf of herself, all others similarly situated, and the general public, complains and alleges on information and belief the following against ACCENTCARE, INC., a corporation, ACCENTCARE HOME HEALTH OF CALIFORNIA, INC., a corporation, and ACCENTCARE HOME HEALTH, INC., a corporation, and DOES 1-100 (collectively “DEFENDANTS”):

INTRODUCTION

1. This case arises out of DEFENDANTS’ systematic, company-wide unlawful treatment of PLAINTIFF and hundreds of similarly situated employees in violation of numerous provisions of the California Labor Code and California’s Unfair Compensation Law (Business and Professions Code Section 17200 et seq. [“UCL”]).

1 2. DEFENDANTS operate one of the largest home healthcare providers in the
2 country. DEFENDANTS provide a wide range of post-acute healthcare services ranging from
3 personal, non-medical care to skilled nursing, rehabilitation, hospice care, and care management.
4 PLAINTIFF and all other similarly situated employees were/are employed by DEFENDANTS as
5 home health care nurses in California that provide various healthcare services at patients' homes
6 for DEFENDANTS in California.

7 3. PLAINTIFF alleges in this lawsuit that she and other home health care nurses were
8 not paid the minimum wage for all work for all hours worked, were not paid for all the overtime
9 pay to which they are entitled, were not provided with lawful meal and rest periods as required by
10 California state law, and were provided inaccurate wage statements , among other claims.
11 PLAINTIFF alleges that she and other similarly situated home health care nurses working in
12 California were not paid the minimum wage for all time work based on DEFENDANTS' use of
13 an unlawful piece-rate compensation plan that does not separately compensate home health care
14 nurses for non-piece rate work, including rest periods, and pre-and post-visit work that arises
15 outside of home visits, such as travelling to patients' homes, ordering supplies, and completing
16 paperwork.

17 4. In this case, DEFENDANTS know they have an unlawful piece rate program,
18 which is why they elected under Cal. Labor Code section 226.2 to pay 4% of gross wages.
19 DEFENDANTS do not credit home health nurses with any overtime pay when the total hours
20 worked through the assigned patient visits results in work over eight hours in a day or forty hours
21 in a week. Furthermore, travel time from the home office to the first patient of the day is not
22 compensated pursuant to policy. The travel time from employee's home to the first patient – even
23 when this time would exceed the time it would take to drive to the home office – is also not
24 compensated. In addition, for all the incidental work not subsumed by DEFENDANTS' unlawful
25 piece-rate scheme, DEFENDANTS compensate home health nurses for additional non-visit
26 activity at an hourly rate of pay. However, DEFENDANTS fostered a work culture where Class
27 Members were ridiculed, criticized, and discouraged by upper-level management from submitting
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1 requests for overtime pay. DEFENDANTS' expectation was that all work - patient visits and the
2 attendant work included - would amount to eight hours of work and compensation.

3 5. PLAINTIFF further alleges that none of the earning statements reveal a separate
4 payment for mandated rest breaks as proscribed by Labor Code Section 226.2.

5 6. This action further alleges that DEFENDANTS have violated California Business
6 and Professions Code Section 17200, et seq., based on their violations of California's Labor laws
7 pertaining to the payment of wages.

8 7. The violations described in this lawsuit entitle PLAINTIFF and the PLAINTIFF
9 CLASS to unpaid wages, including minimum wage, all applicable statutory and civil penalties,
10 attorneys' fees, costs, and interest as well as injunctive relief. PLAINTIFF seeks certification
11 under Rule 23 of the federal Rules of Civil Procedure as to the PLAINTIFF CLASS (defined
12 below).

13 JURISDICTION AND VENUE

14 8. Venue is proper in this Judicial District and the County of San Bernardino because
15 work was performed by Plaintiff and other members of the Class for Defendant in the County of
16 San Bernardino, California, and Defendant's obligations under the Employment Laws and
17 Regulations to pay overtime wages, to provide meal and rest periods and accurate wage
18 statements to Plaintiff and other members of the Class arose and were breached in the County of
19 San Bernardino.

20 9. The California Superior Court has jurisdiction in this matter because PLAINTIFF
21 is a resident of California, DEFENDANTS are qualified to do business in California and regularly
22 conducts business in California. Further, no federal question is at issue as the claims are based
23 solely on California law.

24 PARTIES

25 10. Plaintiff VIVIAN PHILLIPS is a resident of Los Angeles County, California.
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1 PLAINTIFF was formerly employed by DEFENDANTS as a home health care nurse (“Nurse”)
2 working out of DEFENDANTS’ Lancaster location in California from approximately January
3 2010 to April 2015.

4 11. PLAINTIFF is informed, believes, and alleges that DEFENDANTS have been
5 doing business in California at all relevant times. Defendant ACCENTCARE, INC. is a
6 Delaware corporation which has been doing business in California at all relevant times.
7 Defendant ACCENTCARE HOME HEALTH OF CALIFORNIA, INC. is a California
8 corporation which has been doing business in California at all relevant times. Defendant
9 ACCENTCARE HOME HEALTH, INC. is a Delaware corporation which has been doing
10 business in California at all relevant times.

11 12. Section 2(G) of Industrial Wage Commission (“IWC”) Order Number 15-2004
12 defines an “employer” as any “person as defined in Section 18 of the [California] Labor Code,
13 who directly or indirectly, or through an agent or any other person, employs or exercises control
14 over the wages, hours, or working conditions of any person.” PLAINTIFF is informed, believes,
15 and alleges that DEFENDANTS directly, indirectly, or acting through the agency of each other,
16 employ or exercise control over the wages, hours, or working conditions of PLAINTIFF and the
17 rest of the class. Furthermore, on information and belief, a centralized payroll and accounting
18 system is used to pay the wages of PLAINTIFF and all members of the class at all
19 DEFENDANTS’ locations in California. Specifically, DEFENDANTS pay the wages and other
20 benefits of all PLAINTIFF CLASS members and direct and control, with the assistance of or
21 through the other named DEFENDANTS, the terms and conditions of all class members’
22 employment. Accordingly, DEFENDANTS are deemed joint employers of PLAINTIFF and the
23 rest of the PLAINTIFF CLASS.

24 13. DEFENDANTS are additionally deemed joint employers of PLAINTIFF and
25 members of the PLAINTIFF CLASS because ACCENTCARE, INC. and ACCENTCARE
26 HOME HEALTH OF CALIFORNIA, INC. are the entities listed as employers on PLAINTIFF’s
27 and members’ of the PLAINTIFF CLASS wage statements.
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1 **All persons who worked as home health care nurses at any of**
2 **DEFENDANTS' locations in California at any time within four (4) years prior to the filing**
3 **of this Complaint until the final judgment (hereinafter "the Class Period").**

4 22. **Numerosity and Ascertainability:** The members of the PLAINTIFF CLASS are
5 so numerous that joinder of all members would be unfeasible and impracticable. The
6 membership of the entire class is greater than 50 individuals, but the identity of such membership
7 is readily ascertainable via inspection of the personnel records and other documents maintained
8 by DEFENDANTS.

9 23. **Common Questions of Law and Fact:** There are common questions of law and
10 fact as to members of the class which predominate over questions affecting only individual
11 members, including, without limitation:

12 A. Whether DEFENDANTS denied PLAINTIFF and the PLAINTIFF CLASS
13 all of the wages to which they are entitled pursuant to the California Labor Code, the California
14 Industrial Welfare Commission's ("IWC") Wage Orders, and all other applicable Employment
15 Laws and Regulations.

16 B. Whether DEFENDANTS failed to make meal and rest periods available to
17 PLAINTIFF and members of the PLAINTIFF CLASS as required by law and / or paid
18 compensation in lieu thereof;

19 C. Whether DEFENDANTS failed to pay the required state minimum wage to
20 PLAINTIFF and members of the PLAINTIFF CLASS for every hour where work was performed;

21 D. Whether DEFENDANTS failed to pay the required premium overtime rate
22 of pay to PLAINTIFF and members of the PLAINTIFF CLASS for work performed in excess of
23 eight hours a day or forty hours a week;

24 E. Whether DEFENDANTS violated California Labor Code Section 204 by
25 failing to pay all wages earned in a timely manner;

26 F. Whether DEFENDANTS failed to provide PLAINTIFF and members of
27 the PLAINTIFF CLASS with accurate itemized statements;
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1 G. Whether DEFENDANTS owe PLAINTIFF and members of the
2 PLAINTIFF CLASS waiting time penalties pursuant to California Labor Code Section 203;

3 H. Whether DEFENDANTS engaged in unfair business practices under
4 Section 17200, et. seq. of the California Business and Professions Code;

5 I. The effect upon and the extent of damages suffered by members of the
6 PLAINTIFF CLASS and the appropriate amount of compensation.

7 24. **Typicality and Adequacy of Representation:** The claims PLAINTIFF pleads as
8 class action claims are typical of the claims of all members of the PLAINTIFF CLASS as they
9 arise out of the same course of conduct and are predicated on the same violation(s) of the law.
10 PLAINTIFF, as a representative party, will fairly and adequately protect the interests of the class
11 by vigorously pursuing this suit through his attorneys who are skilled and experienced in handling
12 matters of this type.

13 25. The nature of this action and the nature of the laws available to the PLAINTIFF
14 CLASS make use of the class action format, a particularly efficient and appropriate procedure to
15 afford relief to members of the PLAINTIFF CLASS. Further, this case involves a corporate
16 employer and a large number of individual employees possessing claims with common issues of
17 law and fact. If each employee were required to file an individual lawsuit, the corporate
18 Defendants would necessarily gain an unconscionable advantage since they would be able to
19 exploit and overwhelm the limited resources of each individual Plaintiff with their vastly superior
20 financial and legal resources. Requiring each class member to pursue an individual remedy
21 would also discourage the assertion of lawful claims by employees who would be disinclined to
22 pursue an action against their present and/or former employer for an appreciable and justifiable
23 fear of retaliation and permanent damage to their careers at present and/or subsequent
24 employment. Proof of a common business practice or factual pattern, of which the named
25 PLAINTIFF experienced, is representative of the PLAINTIFF CLASS and will establish the right
26 of each of the members of the PLAINTIFF CLASS to recovery on these alleged claims.
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1 26. The prosecution of separate actions by the individual members of the PLAINTIFF
2 CLASS, even if possible, would create: (a) a substantial risk of inconvenient or varying verdicts
3 or adjudications with respect to the individual members of the PLAINTIFF CLASS against the
4 DEFENDANTS; and/or (b) legal determinations with respect to the individual members of the
5 PLAINTIFF CLASS which would, as a practical matter, be dispositive of the other class
6 members' claims who are not parties to the adjudications and / or would substantially impair or
7 impede the ability of class members to protect their interests. Further, the claims of the individual
8 members of the PLAINTIFF CLASS are not sufficiently large to warrant vigorous individual
9 prosecution considering all of the associated concomitant costs and expenses. PLAINTIFF is
10 unaware of any difficulties that are likely to be encountered in the management of this action that
11 would preclude its maintenance as a class action.

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

13 27. Plaintiff VIVIAN PHILLIPS was hired by DEFENDANTS in January 2010 as a
14 home health care nurse working out of DEFENDANTS' Lancaster location. PLAINTIFF's main
15 job duties were to provide nursing services to patients in their homes, which included evaluating
16 patients who were discharged from the hospital, administering intravenous medication, and
17 providing wound care.

18 28. Members of the PLAINTIFF CLASS are current and former employees of
19 DEFENDANTS who were employed as per diem registered nurses, licensed practical nurses,
20 physical therapists, occupational therapists, speech language pathologists, home health aides, and
21 medical social workers at DEFENDANTS' California locations. Members of the PLAINTIFF
22 CLASS perform the same basic job duties as PLAINTIFF.

23 29. DEFENDANTS force home health care nurses, including PLAINTIFF and the
24 PLAINTIFF CLASS, to complete certain work without being compensated. In California, by
25 law, any time which is not compensated automatically constitutes a minimum wage violation.
26 *See Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. DEFENDANTS fail to pay home
27 health care nurses the required minimum wage for all hours worked. In particular,
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1 DEFENDANTS compensate PLAINTIFF and members of the PLAINTIFF CLASS through use
2 of a piece-rate pay system which is based on each home health visit they make and the type of
3 service they perform, as opposed to an hourly wage method. For example, home health care
4 nurses receive one flat fee for new admissions, another flat amount for IV's, etc. The piece-rate
5 system only compensates for the time worked during the home health visits. Nurses are not
6 compensated for most other work that arises outside the actual home visits, or non-piece-rate
7 work. Home health care nurses are not paid for other time during which they are under the
8 employer's control and are performing tasks that benefit the employer, including time spent
9 traveling to patients' homes, ordering supplies, filling out paperwork, charting, documenting
10 conferences, rest periods, and delays.

11 30. DEFENDANTS also fail to pay PLAINTIFF and members of the PLAINTIFF
12 CLASS all the overtime pay to which they are entitled. DEFENDANTS' piece-rate compensation
13 plan presumes that all work is completed in shifts of eight (8) hours or less and that no overtime
14 will be worked for the week. This is because DEFENDANTS allot insufficient time to complete
15 each of the various home health visits that Nurses make. Nurses must regularly work far in excess
16 of eight (8) hours a day or forty (40) hours a week to complete their home health visits. Even
17 though Nurses submit time cards indicating they worked overtime, DEFENDANTS pay them
18 only as if they worked forty (40) hours in a week and less than eight (8) hours each day. Further,
19 DEFENDANTS do not pay Nurses for the non-piece-rate hours they work. To the extent these
20 unpaid hours constitute overtime hours, the overtime premium must be paid for this time.

21 31. Throughout PLAINTIFF's and PLAINTIFF CLASS members' employment with
22 DEFENDANTS, DEFENDANTS routinely failed to provide PLAINTIFF and members of the
23 PLAINTIFF CLASS with meal or rest periods or compensation in lieu thereof as required by
24 California law. Specifically, DEFENDANTS fail to provide a meal period where home health
25 care nurses are relieved of their duty for a thirty (30) minute period within the first five (5) hours
26 of their shift or pay the premium compensation for the missed meal period. In addition, home
27 health care nurses never receive a second meal period for shifts in excess of ten (10) hours and
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1 also do not receive the premium compensation for the missed second meal period. There is no
2 evidence that PLAINTIFF or PLAINTIFF CLASS members agreed to waive their right to a
3 second meal period with respect to shifts lasting more than ten (10) hours but less than twelve
4 (12) hours. Defendants do not have a policy authorizing meal periods. In addition, they dissuade
5 and discourage meal periods by overloading the schedules of home health nurses and not paying
6 for work beyond 8 hours in a day. Furthermore, PLAINTIFF and members of the PLAINTIFF
7 CLASS do not indicate on their hand-written time sheets called Records of Daily Activity that
8 they took or were provided with statutory-mandated meal periods.

9 32. Moreover, DEFENDANTS fail to provide rest periods or compensate PLAINTIFF
10 and members of the PLAINTIFF CLASS for missed rest periods despite their knowledge that
11 such periods are not made available to them. Specifically, pursuant to established policies and
12 procedures applicable to PLAINTIFF and all members of the PLAINTIFF CLASS,
13 DEFENDANTS fail to provide home health nurses with a ten (10) minute, work-free rest period
14 for shifts lasting between two (2) and six (6) hours. They are also not provided a second rest
15 period for shifts lasting six (6) to ten (10) hours or a third rest period for shifts in excess of ten
16 (10) hours. DEFENDANTS did not pay PLAINTIFF or members of the PLAINTIFF CLASS the
17 premium compensation for these missed rest periods. The law is clear that employees paid on a
18 piece-rate system must be separately compensated for rest periods. *See Bluford v. Safeway Stores,*
19 *Inc.* (2013) 216 Cal.App.4th 864, 872; *Cardenas v. McLane Food Services, Inc.* (C.D. Cal. 2011)
20 796 F.Supp.2d 1246, 1252 .

21 33. DEFENDANTS also provided inaccurate wage statements to PLAINTIFF and
22 members of the PLAINTIFF CLASS. The wage statements also do not show the correct gross
23 pay earned and the correct net wages earned, among other deficiencies. This causes injury
24 because it makes it more difficult for PLAINTIFF and members of the PLAINTIFF CLASS to
25 determine what compensation they are owed but were not paid. Moreover, DEFENDANTS
26 failed to comply with California Labor Code Section 226.2 mandating that wage statements
27 reveal rest periods being taken and paid. California enacted Assembly Bill 1513 to address
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1 claims for recovery of wages, damages, and penalties with respect to piece-rate employees. AB
2 1513 added California Labor Code Section 226.2 of which subdivision (a) establishes certain
3 wage statement requirements as well as a methodology for calculating wages for these
4 employees. DEFENDANTS were well aware of this new statute but nevertheless failed to follow
5 the letter of the law by not disclosing the pertinent information required by Section 226.2.

6 34. PLAINTIFF and members of the PLAINTIFF CLASS were also not provided with
7 all wages due upon termination or resignation. This is prohibited practice in California.

8 35. Overall, DEFENDANTS' violations of the law were willful and done according to
9 DEFENDANTS' established policies and procedures, as applicable to PLAINTIFF and all
10 members of the PLAINTIFF CLASS.

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO PAY COMPENSATION FOR ALL HOURS WORKED AND MINIMUM**
13 **WAGE VIOLATIONS**

14 (Cal. Lab. Code §§ 216, 1194, 1194.2, 1197)

15 By PLAINTIFF in her individual capacity and in her capacity as representative of all similarly
16 situated members of the PLAINTIFF CLASS against DEFENDANTS.

17 36. PLAINTIFF realleges and incorporates, by reference, as though fully set forth, the
18 allegations contained in paragraphs 1 to 35.

19 37. PLAINTIFF brings this action to recover unpaid compensation for all hours
20 worked, defined by the IWC as the time during which an employee is subject to the control of an
21 employer, including all the time the employee suffers or is permitted to work, whether or not
22 required to do so.

23 38. DEFENDANTS' conduct described in this Complaint violates California Labor
24 Code Sections 216, 1194, 1194.2, and 1197, among other things.

25 39. DEFENDANTS failed to pay PLAINTIFF and members of the PLAINTIFF
26 CLASS for all of the actual hours worked even though PLAINTIFF and members of the
27 PLAINTIFF CLASS were providing services to DEFENDANTS and were under
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1 DEFENDANTS' control. DEFENDANTS knew or should have known that PLAINTIFF and
2 members of the PLAINTIFF CLASS were working these hours for which they were not paid.

3 40. PLAINTIFF and members of the PLAINTIFF CLASS are entitled to recover the
4 unpaid balance of compensation DEFENDANTS owe PLAINTIFF and members of the
5 PLAINTIFF CLASS, plus interest on that amount, liquidated damages pursuant to California
6 Labor Code Section 1194.2, reasonable attorney fees, and costs of this suit pursuant to California
7 Labor Code Section 1194.

8 41. PLAINTIFF and members of the PLAINTIFF CLASS are also entitled to
9 additional penalties and / or liquidated damages pursuant to statute.

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PAY OVERTIME COMPENSATION**

12 (Cal. Lab. Code §§ 510 and 1194)

13 By PLAINTIFF in her individual capacity and in her capacity as representative of all similarly
14 situated members of the PLAINTIFF CLASS against DEFENDANTS.

15 42. As a separate and distinct cause of action, PLAINTIFF complains and realleges all
16 the allegations contained in this complaint, and incorporates them by reference into this cause of
17 action as though fully set forth herein, excepting those allegations which are inconsistent with this
18 cause of action.

19 43. During the Class Period, DEFENDANTS have routinely required members of the
20 PLAINTIFF CLASS, including PLAINTIFF, to work over eight hours in a day and over forty
21 hours in a workweek. However, DEFENDANTS have failed and refused to pay the Members of
22 the PLAINTIFF CLASS, including PLAINTIFF, the overtime compensation required by the
23 Employment Laws and Regulations.

24 44. The PLAINTIFF CLASS, including PLAINTIFF, have been deprived of their
25 rightfully earned overtime compensation as a direct and proximate result of Defendant's policies
26 and practices and Defendant's failure and refusal to pay that compensation. The PLAINTIFF
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1 CLASS, including PLAINTIFF, are entitled to recover such amounts, plus interest, attorney's
2 fees, and costs.

3 **THIRD CAUSE OF ACTION**

4 **FAILURE TO PAY MEAL AND REST PERIOD COMPENSATION**

5 (Cal. Lab. Code §§ 226.7, 512)

6 By PLAINTIFF in her individual capacity and in her capacity as representative of all similarly
7 situated members of the PLAINTIFF CLASS against DEFENDANTS.

8 45. PLAINTIFF realleges and incorporates, by reference, as though fully set forth, the
9 allegations contained in paragraphs 1 to 44.

10 45. Throughout PLAINTIFF's employment with DEFENDANTS, DEFENDANTS
11 failed to make available to PLAINTIFF and members of the PLAINTIFF CLASS uninterrupted,
12 work-free thirty (30) minute meal periods in accordance with the requirements of California law.
13 DEFENDANTS failed to provide a meal period or timely meal period for shifts in excess of five
14 (5) hours worked, failed to provide a second meal period for shifts in excess of ten (10) hours,
15 and failed to compensate employees for these missed or late meal periods, as required by law.

16 46. Throughout PLAINTIFF's employment with DEFENDANTS, DEFENDANTS
17 failed to make available to PLAINTIFF and members of the PLAINTIFF CLASS any rest period
18 for shifts lasting four (4) hours or a major fraction thereof, as required by law, and failed to
19 compensate them for missed rest periods.

20 47. PLAINTIFF is informed, believes, and, thereon, alleges, that the failure of
21 DEFENDANTS to make available meal and rest periods and to compensate PLAINTIFF and
22 members of the PLAINTIFF CLASS for these missed meal and rest periods was willful,
23 purposeful, and unlawful and done in accordance with the policies and practices of
24 DEFENDANTS' operations.

25 48. As a proximate cause of these violations, PLAINTIFF and members of the
26 PLAINTIFF CLASS have been damaged in an amount according to proof at the time of trial, but
27 in an amount in excess of the jurisdiction of this Court. PLAINTIFF and members of the
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1 PLAINTIFF CLASS are entitled to recover the unpaid balance of wages owed, penalties,
2 including penalties available pursuant to California Labor Code Sections 226, 226.7, and 558,
3 interest, reasonable attorney fees, and costs of suit pursuant to California Labor Code Sections
4 218.5 and 1194, et seq.

5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

7 (Cal. Lab. Code § 226)

8 By PLAINTIFF in her individual capacity and in her capacity as representative of all similarly
9 situated members of the PLAINTIFF CLASS against DEFENDANTS.

10 49. PLAINTIFF realleges and incorporates, by reference, as though fully set forth, the
11 allegations contained in paragraphs 1 to 48.

12 50. DEFENDANTS failed to provide PLAINTIFF and members of the PLAINTIFF
13 CLASS with accurate itemized statements as required by California Labor Code Section 226.

14 51. PLAINTIFF is informed, believes, and alleges that the failure of DEFENDANTS
15 to provide accurate itemized wage statements was knowing and intentional. PLAINTIFF and
16 members of the PLAINTIFF CLASS have suffered injury as a result of DEFENDANTS' actions
17 in this regard in that they must expend additional time and incur expenses that otherwise would
18 not have been expended or incurred in order to determine the amount of wages they are owed but
19 were never paid. As a result, PLAINTIFF and members of the PLAINTIFF CLASS are entitled
20 to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in
21 which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
22 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) and
23 are entitled to an award of costs and reasonable attorney fees.

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FIFTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Cal. Lab. Code § 203)

By PLAINTIFF in her individual capacity and in her capacity as representative of all similarly situated members of the PLAINTIFF CLASS against DEFENDANTS.

52. PLAINTIFF realleges and incorporates, by reference, as though fully set forth, the allegations contained in paragraphs 1 to 51.

53. Pursuant to California Labor Code Section 201, if an employer discharges an employee, the wages earned and unpaid at the time of the discharge are due and payable immediately. Pursuant to California Labor Code Section 202, if an employee quits his or her employment, the wages earned and unpaid at the time of the discharge are due and payable within seventy-two (72) hours of resignation.

54. PLAINTIFF and members of the PLAINTIFF CLASS were either terminated by DEFENDANTS or have resigned from their employment with DEFENDANTS. To this day, PLAINTIFF and members of the PLAINTIFF CLASS have not received all of the wages and other compensation they rightfully earned.

55. DEFENDANTS, and each of them, willfully refused and continue to refuse to pay PLAINTIFF and members of the PLAINTIFF CLASS all wages earned, including overtime compensation, in a timely manner, as required by California Labor Code Section 203. PLAINTIFF therefore requests restitution and penalties pursuant to California Labor Code Section 203.

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SIXTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES BY THE APPROPRIATE PAY PERIOD

(Cal. Lab. Code § 204)

By PLAINTIFF in her individual capacity and in her capacity as representative of all similarly situated members of the PLAINTIFF CLASS against DEFENDANTS.

1 65. DEFENDANTS, at all times relevant to this complaint, were employers or persons
2 acting on behalf of an employer who violated PLAINTIFF'S rights by violating the Employment
3 Laws and Regulations and are subject to civil penalties.

4 66. DEFENDANTS committed the following violations of the Labor Code against
5 PLAINTIFF, and, on information and belief, against other current or former employees while
6 they were employed by Defendants:

7 (a) DEFENDANTS violated Labor Code §§ 201-203 by failing to pay
8 all wages due on the date of the employee's involuntary termination or within 72 hours of the
9 employee's voluntary termination.

10 (b) DEFENDANTS violated Labor Code § 204 by failing to pay all
11 wages due at least twice during each calendar month, in compliance with those provisions.

12 (c) DEFENDANTS violated Labor Code § 216 by, having the ability
13 to pay, willfully refusing to pay wages due and payable after demand has been made.

14 (d) DEFENDANTS violated Labor Code § 226 by failing to provide
15 accurate itemized wage statements.

16 (e) DEFENDANTS violated Labor Code § 510, 1194 and provisions of
17 the applicable IWC Wage Order by failing to compensate the members of the PLAINTIFF
18 CLASS, including PLAINTIFF, at one and one-half times the regular rate of pay for any work in
19 excess of eight hours in a day and 40 hours in a week.

20 (f) DEFENDANTS violated Labor Code §§ 226.7 and 512 by failing
21 to provide meal and rest periods compliant with California law.

22 (g) DEFENDANTS violated Labor Code § 1174 by failing to maintain
23 payroll records showing the daily hours worked.

24 (h) DEFENDANTS violated Labor Code §§ 1194 and 1197 and
25 provisions of the applicable IWC Wage Order by failing to pay the legal minimum wage.

26 (i) DEFENDANTS violated Labor Code § 1199 by requiring or
27 causing members of the PLAINTIFF CLASS, including PLAINTIFF, to work for longer hours
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1 than those fixed, or under conditions of labor prohibited by the applicable IWC Wage Order, by
2 paying the members of the PLAINTIFF CLASS, including PLAINTIFF, a wage less than the
3 minimum fixed by the applicable Wage Order, or by violating or refusing or neglecting to comply
4 with the provisions of Labor Code Division 2, Part 4, Chapter 1 or the applicable IWC Wage
5 Order.

6 67. Pursuant to PAGA, PLAINTIFF should be awarded twenty-five percent (25%) of
7 all penalties due under California law, including attorneys' fees and costs.

8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, PLAINTIFF prays for relief as follows:

- 10 1. That the court determine Causes of Action 1-7 may be maintained as a class
11 action;
- 12 2. For injunctive relief to stop DEFENDANTS' illegal practices described above,
13 including, but not limited to, the payment of wages, including overtime wages,
14 inaccurate itemized statements, etc.;
- 15 3. For general and compensatory damages, according to proof;
- 16 4. For restitution of all monies due to PLAINTIFF and PLAINTIFF CLASS from the
17 unlawful business practices;
- 18 5. For waiting time penalties pursuant to California Labor Code § 203;
- 19 6. For penalties pursuant to California Labor Code §§ 226, 558 and all other
20 applicable Labor Code and/or Employment Laws and Regulations;
- 21 7. For interest accrued to date;
- 22 8. For costs of the suit incurred;
- 23 9. For attorney fees and costs pursuant to California Labor code Sections 218.5, 226,
24 1021.5, 1194 and all other applicable law; and

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10. For such other and further relief that the Court may deem just and proper.

Dated: November 23, 2016

LAW OFFICES OF THOMAS W. FALVEY
ALEXANDER KRAKOW + GLICK, LLP
JML LAW, APLC

By: 

Michael H. Boyamian
Attorney for Plaintiff
VIVIAN PHILLIPS, individually and on behalf of
all others similarly situated

DEMAND FOR JURY TRIAL

PLAINTIFF and members of the PLAINTIFF CLASS further request a trial by jury on all issues so triable.

Dated: November 23, 2016

LAW OFFICES OF THOMAS W. FALVEY
ALEXANDER KRAKOW + GLICK, LLP
JML LAW, APLC

By: 

Michael H. Boyamian
Attorney for Plaintiff
VIVIAN PHILLIPS, individually and on behalf of
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