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14 SUPERIOR COURT OF CALIFORNIA
15 IN AND FOR THE COUNTY OF SACRAMENTO

16 AURIA THAOHO, on behalf of herself and
17 all others similarly situated, aggrieved
employees, and the State of California,

18 Plaintiff,

19 vs.

20 CAPITOL CASINO, INC., and DOES 1
21 through 25, inclusive,

22 Defendants.

Case No. 34-2018-00228073-CU-OE-
GDS

CLASS AND REPRESENTATIVE
ACTION

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Provide Meal Periods
2. Unpaid Wages
3. Failure to Pay Overtime
4. Failure to Provide Accurate,
Itemized Wage Statements
5. Waiting Time Penalties
6. Gratuity Violations
7. Unfair and Unlawful Business
Practices
8. Private Attorneys General Act
of 2004 ("PAGA")

DEMAND FOR JURY TRIAL

1 Pursuant to the parties' stipulation, and the Court's corresponding Order thereon,
2 Plaintiff AURIA THAOHO ("Thaoho" or "Plaintiff"), on behalf of herself and all others similarly
3 situated, all aggrieved employees, and the State of California, brings submits this Second
4 Amended Complaint against Defendants CAPITOL CASINO, INC. ("Capitol Casino") and
5 DOES 1 through 25 (collectively, "Defendants") seeking to recover for Defendants' violations
6 of the California Labor Code, applicable Industrial Welfare Commission ("IWC") Wage
7 Orders, and the Unfair Business Practices Act, California Business and Professions Code
8 §§17200, *et seq.* ("UCL"). Plaintiff reserves the right to amend this complaint to add additional
9 class representatives if and when their identities are ascertained. Plaintiff alleges as follows:

10 **INTRODUCTION**

11 1. This is a representative, collective, and class action complaint against Capitol Casino
12 to challenge its policies and practices of: (1) failing to provide, authorize, permit, and/or make
13 available to its non-exempt hourly employees who work as Cardroom Dealers at its casino
14 the meal periods to which they are entitled by law and failing to pay premium wages or these
15 missed breaks; (2) failing to provide such employees with accurate, itemized wage
16 statements; (3) failing to remit all gratuities to such employees as due under the law; (4)
17 failing to pay all wages after these employees voluntarily or involuntarily terminated their
18 employment with Defendant; and (5) other associated violations of the Labor Code. Plaintiff
19 and the proposed collective and class are current and former non-exempt hourly employees
20 who work as Cardroom Dealers at Capitol Casino at any time during the applicable period.
21 Plaintiff seeks to represent these employees in this collective and class action. Plaintiff
22 alleges that Defendants have engaged in unlawful patterns and practices of failing to meet
23 the requirements of both the California Labor Code and the California Business and
24 Professions Code.

25 2. Plaintiff Auria Thaoho worked as a Poker Dealer in Capitol Casino's cardroom for three
26 years.

27 3. Throughout her employment, Plaintiff and those similarly situated were not provided
28 with legally compliant meal periods.

1 4. Oftentimes, management would force Plaintiff and other employees to clock out as
2 though they were taking meal periods, when, in fact, they continued to perform their job duties
3 as a dealer at the poker or other gaming table in the casino.

4 5. When Plaintiff and other employees did receive meal periods, they almost never
5 received the entire 30 minutes required by law.

6 6. Defendants were well aware that employees were not receiving compliant meal
7 periods.

8 7. Defendants never paid Plaintiff or others similarly situated any compensation for
9 missed or non-compliant meal periods.

10 8. Defendants also have a policy and practice of taking twenty percent (20%) of each
11 Dealer's tips. This occurs on a daily basis.

12 9. Defendants failed to keep accurate records of all gratuities received.

13 10. Plaintiff and the class seek full compensation for all denied timely and compliant meal
14 periods, gratuities violations, waiting time penalties, and premium pay, and penalties on
15 behalf of the State of California pursuant to the Private Attorneys General Act of 2004 (Labor
16 Code §§2698, *et seq.*; "PAGA") as described and alleged herein. Plaintiff also seeks
17 declaratory and injunctive relief, including restitution. Finally, Plaintiff seeks reasonable
18 attorney's fees and costs under the California Labor Code §218.5 and the California Code of
19 Civil Procedure §1021.5.

20 **PARTIES, JURISDICTION, AND VENUE**

21 11. Plaintiff Thaoho is an individual who was employed by Defendants in the City and
22 County of Sacramento. At all times mentioned herein, Thaoho has also been a resident of
23 Sacramento.

24 12. Defendant Capitol Casino, Inc. operates a casino in Sacramento, California in
25 Sacramento County.

26 13. Plaintiff is ignorant of the true names or capacities of the defendants sued herein under
27 the fictitious names Does 1 through 25, inclusive.

1 14. Defendants sued herein as Does 1 through 25, inclusive, were at all times Plaintiff's
2 supervisors, managers, and managing agents acting on behalf of Defendant. Does 1 through
3 25 are in some manner responsible for occurrences and Plaintiff's injuries and damages as
4 set forth below.

5 15. Plaintiff alleges that all Defendants, including Does 1 through 25, inclusive, were the
6 employees, agents, partners, or joint ventures of the other Defendants and in doing the things
7 hereafter alleged were acting within the course and scope of said relationship.

8 16. Plaintiff is informed and believes, and on that basis alleges that at all times relevant
9 all Defendants ratified the conduct of all the other Defendants. Plaintiff alleges Capitol Casino
10 ratified the conduct of its agents and employees herein alleged, including the conduct of Does
11 1 through 25.

12 17. Venue is proper in this Court pursuant to Code of Civil Procedure §395.5 because
13 Defendants' liability arose in Sacramento County.

14 **FACTUAL ALLEGATIONS**

15 18. Plaintiff Auria Thaoho worked for Defendants from about November 2014 through
16 February 2017 as a Poker Dealer at the Capitol Casino in Sacramento.

17 19. As Dealers in Defendants' Casino, Plaintiff and other PCMs were required to remain
18 on duty at their designated tables on the floor until they were permitted to rotate out of their
19 position. Table rotations were supposed to occur every 30 minutes, but there was often a
20 delay of at least fifteen minutes when dealers switched to new tables, as people were
21 finishing up games. Capitol Casino's meal period policy was that all employees must take a
22 meal period within the first five hours of employment; however, when there was a delay,
23 Defendants did not permit employees to take off-duty meal periods on time before the end of
24 their fifth hour of work. The thirty minutes allotted in the rotation for a meal period regularly
25 ended up being less than the legally required half hour due to delays in the rotation.

26 20. Instead, management would force employees to clock out as if they were taking a
27 meal period, while the employees continued to work. Employees were often not provided any
28

1 meal period until hours later, though their timesheets always inaccurately reflected meal
2 periods being taken prior to the fifth hour of work.

3 21. If employees did not clock out for their meal periods on time, they would be disciplined,
4 regardless of when or if they were actually permitted to take a meal period. Employees
5 complied with management's requirements as they were afraid of losing their job and not
6 being able to support their families.

7 22. Plaintiff asked for timely meal periods on multiple occasions, but was told to "keep
8 pushing" and that management would "mark it off for her." Management was well aware that
9 employees were not receiving compliant off-duty meal periods.

10 23. Employees were allowed to leave the premises when they finally received a meal
11 period, but had to let managers know in case they were needed back on the floor. Being on
12 call, the employees were not truly off-duty.

13 24. Plaintiff often ate at the casino restaurant or heated up food in the garage and ate
14 there. When she and other employees did receive meal periods, they were often only twenty
15 to twenty-five minutes long.

16 25. Defendants never paid Plaintiff or others similarly situated any compensation for
17 missed or non-compliant meal periods.

18 26. Plaintiff and PCMs were required to clock in and out of work in an electronic
19 timekeeping system. Defendants have a practice of manipulating employees' time records
20 by clocking in and out for employees for at least thirty minutes, regardless of whether they
21 are actually taking a break at the proper time as required by law or whether the actual meal
22 period provided was less than thirty minutes. Defendants are required by law to preserve all
23 time records relating to PCMs' hours worked and meal periods.

24 27. Defendants wilfully omitted Plaintiff's and PCMs' missed breaks and owed premium
25 wages from their wage statements.

26 28. Defendants wilfully refused to pay Plaintiff and PCMs their missed-break premium
27 wages upon their termination.

1 29. Defendants also have a policy and practice of taking twenty percent (20%) of each
2 Dealer's tips and unlawfully providing some of the tips to the Defendants' agents, including
3 employees who supervised, directed and/or controlled the acts of employees including
4 Plaintiff and the other dealers.

5 30. Cardroom dealers went into the "cage" to note activities that occurred throughout the
6 day. The cage is a bank where all cash and chip transactions take place, and where computer
7 logs are kept that detail how many tables are dealt, how many hands are dealt on each
8 rotation, and how much dealers make after each rotation. Every hand that the Dealers dealt
9 cost \$5. Play chips were considered \$5 and were dropped into a collection box. After each
10 table, dealers went into the cage to take down how many hands were dealt at the table. For
11 instance, if a dealer dealt fifty hands, at \$5 per chip, the total was \$250. Dealers then put the
12 play chips back into the collection box, and whatever was left over was their tip.

13 31. Supervisors, however, required each dealer to put his or her individual tips into the
14 collection box and took twenty percent of the dealer's tips to put into the cage. The dealers'
15 tips were never pooled, but twenty percent was taken from each dealer individually by their
16 supervisors.

17 32. Plaintiff was told that the money went to the floor supervisors.

18 33. This illegal practice occurred every day.

19 34. Defendants unlawfully took gratuities from their employees and failed to keep accurate
20 records of all gratuities received.

21 35. On February 28, 2018, Plaintiff provided notice by U.S. Certified Mail to the Labor
22 Workforce and Development Agency and also to Defendants of her intent to seek penalties
23 pursuant to the Private Attorney's General Act ("PAGA;" Labor Code § 2698, *et seq.*). Sixty-
24 five (65) days have passed since Plaintiff provided that notice and the LWDA has not notified
25 Plaintiff of any intent to investigate the allegations itself.

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1 **CLASS ACTION ALLEGATIONS**

2 36. Plaintiff brings this class action pursuant to Code Civ. Proc. §382 and Bus. & Prof.
3 Code §17200 *et seq.* for violations of California’s wage and hour laws, on behalf of herself
4 and all others similarly situated (“the Putative Class” or “PCMs”):

5 All persons who worked for Defendants as non-exempt, hourly-wage
6 Dealers of any game (including but not limited to Poker, Blackjack,
7 Baccarat, Pai Gow, or any other game) at Capitol Casino at any time during
the four years prior to the filing of this lawsuit and until final judgment is
entered.

8 37. Common questions of law and fact exist with regard to PCMs which include, without
9 limitation, the following:

10 a. Whether Defendants failed to provide at least one thirty-minute off-duty meal
11 period to PCMs for every five hours they worked in a day, before the end of their fifth
12 hour of work.

13 b. Whether Defendants failed to pay PCMs compensation for missed and/or non-
14 compliant meal periods based on their policy and practice of manipulating PCMs’
15 timecards.

16 c. Whether Defendants failed to provide accurate, itemized wage statements to
17 PCMs.

18 d. With regard to any PCMs whose employment with Defendants was terminated,
19 whether Defendants wilfully failed to pay such PCMs, at the time of their termination,
20 all wages owed as a consequence for failing to provide the required meal periods and
21 provide accurate wage statements.

22 e. Whether Defendants violated applicable law by taking twenty percent (20%) of
23 employees’ tips on a daily basis and giving them to the employee’s supervisors.

24 f. Whether Defendants engaged in unfair competition proscribed by Bus. & Prof.
25 Code §17200 *et seq.* by engaging in unlawful conduct as alleged herein.

26 g. Whether Defendants violated applicable provisions of the Labor Code,
27 including, without limitation, sections 201, 226, 226.7, 2698 *et seq.*, and the applicable
28 Industrial Welfare Commission (“IWC”) Wage Order.

1 h. Whether Defendants should be enjoined from their unlawful practices as
2 alleged herein.

3 38. The foregoing issues can be resolved with common methods of proof, including the
4 following:

5 a. Defendants' employee handbook and other written policies and procedures, or
6 the lack thereof;

7 b. Defendants' time-keeping records;

8 c. Defendants' wage statements;

9 d. Defendants' person-most-knowledgeable testimony regarding its break
10 practices;

11 e. Statistical data gathered through an adequate sampling of declaration and
12 deposition testimony.

13 39. Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent.
14 Defendants' common policies, practices, and course of conduct in violation of law as alleged
15 herein have caused Plaintiff to sustain the same or similar injuries and damages. Plaintiff's
16 claims are thereby representative of and co-extensive with the claims of the Class.

17 40. PCMs are so numerous that joinder of all members would be unfeasible and
18 impractical. The disposition of the claims through the class action procedure will benefit both
19 the parties and the Court. The exact number of PCMs is unknown to Plaintiff at this time.
20 However, at present, it is estimated that there are more than 100 PCMs. In any case, the
21 number and identity of PCMs are readily ascertainable through the inspection of Defendants'
22 records.

23 41. Plaintiff will fairly and adequately represent and protect the interests of PCMs. Plaintiff
24 has retained and is represented by counsel competent and experienced in complex class
25 action litigation, including wage and hour class actions of this type.

26 42. Plaintiff knows of no difficulty that will be encountered in the management of this
27 litigation that would preclude its maintenance as a class action. The nature of this action and
28

1 the nature of laws available to Plaintiff renders use of the class action procedure the superior
2 and appropriate procedure to afford relief for the wrongs herein alleged.

3 **FIRST CAUSE OF ACTION**
4 **Failure to Provide Meal Periods**

5 43. Plaintiff incorporates by reference paragraphs 1-42 as though they were fully
6 incorporated below.

7 44. Defendants' conduct, as alleged herein, constitutes a violation of Cal. Lab. Code
8 §512(a), which requires employers to provide one thirty-minute meal period for every five
9 hours of work.

10 45. Defendants' conduct, as alleged herein, also constitutes a violation of Cal. Lab. Code
11 §226.7, which prohibits an employer from requiring employees to work during any meal
12 period mandated by the Industrial Welfare Commission ("IWC"). The applicable IWC Wage
13 Order requires that employers authorize and permit their employees to take one thirty-minute
14 meal break for every five hours of work. Cal. Lab. Code §226.7(b) and the applicable Wage
15 Order require employers to pay employees who are not provided with compliant and legally
16 required off-duty meal periods one hour of premium wages at the employee's regular rate of
17 compensation for each day that a compliant meal period is not provided.

18 46. Defendants knowingly and intentionally failed to provide Plaintiff and PCMs with the
19 legally required off-duty meal periods and failed to pay Plaintiff and PCMs the resulting
20 premium wages owed.

21 47. As a direct result of Defendants' unlawful employment practices, as alleged herein,
22 Plaintiff and PCMs have been injured and are entitled to unpaid premium wages and interest
23 thereon.

24 **SECOND CAUSE OF ACTION**
25 **Unpaid Wages**

26 48. Plaintiff incorporates by reference paragraphs 1-47 as though they were fully
27 incorporated below.

28 49. California law requires an employer to pay its employees for all hours worked.

1 50. Defendants maintained a practice of paying employees without regard to the number
2 of hours actually worked by requiring them to clock out for a break when they were in fact on
3 duty performing their jobs. In doing so, Defendants inaccurately and wilfully under-reported
4 the amount of time that Plaintiff and PCMs actually worked, and Defendants underpaid the
5 actual amount of hours worked. Indeed, when Plaintiff and PCMs were not provided with an
6 off-duty meal period of at least thirty minutes, meaning the entirety of the short and non-
7 compliant meal period must be paid, their timekeeping records were nevertheless required
8 to reflect that a thirty-minute meal period was taken.

9 51. Because of Defendants' failures as alleged herein, Plaintiff and PCMs did not receive
10 compensation for all hours actually worked for Defendants.

11 52. Defendants' failure to pay the correct amount of straight-time hourly wages permits a
12 civil suit to recover wages due to Plaintiff and PCMs under Labor Code §204 and 510, plus
13 recovery of interest.

14 53. By violating Labor Code §§204 and 510, and the applicable IWC Wage Order,
15 Defendants are also liable for reasonable attorneys' fees and costs pursuant to Labor Code
16 §1194.

17 54. As a direct result of Defendants' unlawful employment practices, as alleged herein,
18 Plaintiff and PCMs have been injured and are entitled to unpaid wages and interest.

19 **THIRD CAUSE OF ACTION**
20 **Failure to Pay Overtime**

21 55. Plaintiff incorporates by reference paragraphs 1-54 as though they were fully
22 incorporated below.

23 56. Defendants' conduct, as alleged herein, constitutes a violation of Cal. Lab. Code §510
24 and the applicable IWC Wage Order, which require employers to pay overtime to their
25 employees for hours worked over eight per day and forty per week.

26 57. Defendants knowingly and intentionally refused to pay Plaintiff and PCMs overtime
27 compensation for hours worked over eight per day and forty per week.

1 58. As a direct result of Defendants' unlawful employment practices, as alleged herein,
2 Plaintiff and PCMs have been injured and are entitled to unpaid overtime wages and interest.

3 **FOURTH CAUSE OF ACTION**
4 **Failure to Provide Accurate, Itemized Wage Statements**

5 59. Plaintiff incorporates by reference paragraphs 1-58 as though they were fully
6 incorporated below.

7 60. Defendants' conduct, as alleged herein, constitutes a violation of Cal. Lab. Code
8 §226(a), which requires employers to provide its employees with accurate itemized wage
9 statements for each pay period. Defendants knowingly and intentionally failed to provide
10 Plaintiff and PCMs with accurate, itemized wage statements showing the total hours worked
11 during the pay period, the applicable hourly rate or rates in effect during the pay period, and
12 Defendants' legal name and address.

13 61. As a direct result of Defendants' unlawful employment practices, as alleged herein,
14 Plaintiff and PCMs have been injured because they could not promptly and easily determine
15 from their wage statements the total hours worked during the pay period, the applicable
16 hourly rate or rates in effect during the pay period, and Defendants' legal name and address.
17 Plaintiff and PCMs are therefore entitled to penalties and attorney's fees under Lab. Code
18 §226(e).

19 **FIFTH CAUSE OF ACTION**
20 **Waiting Time Penalties**

21 62. Plaintiff incorporates by reference paragraphs 1-61 as though they were fully
22 incorporated below.

23 63. Labor Code §201 provides:

24 If an employer discharges an employee, the wages earned and unpaid at
the time of discharge are due and payable immediately.

25 64. Labor Code §202 provides:

26 If an employee not having a written contract for a definite period quits his or
27 her employment, his or her wages shall become due and payable not later
28 than 72 hours thereafter, unless the employee has given 72 hours previous
notice of his or her intention to quit, in which case the employee is entitled
to his or her wages at the time of quitting.

1 65. Labor Code §203 provides, in relevant part:

2 If an employer willfully fails to pay, without abatement or reduction, in
3 accordance with Sections 201, 201.5, and 205.5, any wages of an
4 employee who is discharged or who quits, the wages of the employee shall
5 continue as a penalty from the due date thereof at the same rate until paid
6 or until an action therefor is commenced; but wages shall not continue for
7 more than 30 days.

8 66. Plaintiff and the Putative Class Members left their employment with Defendants during
9 the statutory period, at which time Defendants owed them unpaid wages. These earned, but
10 unpaid, wages derive from time spent working through their meal breaks.

11 67. Defendants willfully refused, and continued to refuse, to provide Plaintiff and the Class
12 with meal period premium pay. Defendants were well aware that Plaintiff and the Class did
13 not receive compliant meal periods, and forced them to clock out as though they were taking
14 a meal or rest period, while they continued to work.

15 68. As a direct result of Defendants' unlawful employment practices, as alleged herein,
16 Plaintiff and PCMs are entitled to penalties under Lab. Code §203(a).

17 **SIXTH CAUSE OF ACTION**
18 **Gratuities Violations**

19 69. Plaintiff incorporate by reference paragraphs 1- 68 as though they were fully
20 incorporated below.

21 70. Defendants' conduct, as alleged herein, constitutes a violation of Lab. Code §351,
22 which prohibits an employer from taking any gratuity or part thereof that is paid, given to, or
23 left for an employee. This violation is enforceable pursuant to UCL §17200, *et seq.*

24 71. Defendants collected, took, and received gratuities that were paid, given to, or left for
25 the dealer by the customer and provided those tips to the dealers' supervisors who directed
26 and controlled the acts of the dealers.

27 72. Plaintiff and the customers were in an economic relationship that would have resulted
28 in an economic benefit to Plaintiff and PCMs.

73. Defendants knew of the economic relationship between the Plaintiff and customers.

74. Defendants intended to disrupt this relationship.

1 75. Defendants did not remit all tips to Plaintiff and PCMs in violation of Cal. Lab. Code
2 §351 and the UCL.

3 76. The relationship between Plaintiff and PCMs and Defendants' customers was
4 disrupted.

5 77. Plaintiff and PCMs were harmed.

6 78. Defendants wrongful conduct caused Plaintiff and PCMs' harm.

7 79. As a direct result of Defendants' unlawful employment practices, as alleged herein,
8 Plaintiff and PCMs have been injured and seek relief as described herein.

9 **SEVENTH CAUSE OF ACTION**
10 **Unfair and Unlawful Business Practices**

11 80. Plaintiff incorporates by reference paragraphs 1- 79 as though they were fully set out
12 below.

13 81. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
14 Bus. & Prof. Code §17200 *et seq.*, which prohibits unfair business acts and/or practices.

15 82. Beginning at a date unknown to Plaintiff and the Class, but at least since the date four
16 years prior to the filing of this suit, Defendants have committed acts of unfair competition as
17 defined by the Unfair Business Practices Act by engaging in the unlawful, unfair, and
18 fraudulent business practices described in this Complaint, including, but not limited to:

- 19 a. violations of Labor Code §§ 210. 226.7, 512(a), 558 and the applicable IWC
20 Wage Order pertaining to meal and rest breaks and unpaid wages;
- 21 b. violations of Labor Code §§ 226 and 226.3 pertaining to wage statements;
- 22 c. violations of Labor Code §§ 201(a) and 203(a) related to waiting time penalties;
- 23 d. violations of Labor Code §510 relating to overtime; and
- 24 e. violations of Labor Code §§ 558, 1174, and 1174.5 related to recordkeeping
25 and unpaid wages.

26 83. The violations of these laws and regulations, as well as of the fundamental California
27 public policies protecting wages and the rights of employees, serve as unlawful predicate acts
28 and practices for purposes of Business and Professions Code §§ 17200, *et seq.*

1 84. The acts and practices described above constitute unfair, unlawful, and fraudulent
2 business practices, and unfair competition, within the meaning of Business and Professions
3 Code §§ 17200, *et seq.* Among other things, the acts and practices have taken from Plaintiff
4 and the Class's wages rightfully earned by them, while enabling the Defendants to gain an
5 unfair competitive advantage over law-abiding employers and competitors.

6 85. As a direct result of Defendants' unfair and unlawful business practices, Plaintiff has
7 been injured as alleged herein and are entitled to unpaid premium wages, interest, and
8 attorney's fees.

9 **EIGHTH CAUSE OF ACTION**
10 **Private Attorneys General Act of 2004 ("PAGA")**

11 86. Plaintiff incorporates by reference paragraphs 1-84 as though fully set out below.

12 87. On February 28, 2018, Plaintiff provided notice to the Labor Workforce and
13 Development Agency ("LWDA") and also to Defendant of her intent to seek penalties
14 pursuant to PAGA as required by that statute. If the LWDA intended to investigate Plaintiff's
15 allegations, it had to provide Plaintiff notice of that intent. More than sixty-five (65) days have
16 passed since Plaintiff provided the LWDA notice on February 28, 2018, but Plaintiff did not
17 receive any notice that the LWDA intended to investigate his allegations. Hence, pursuant to
18 Cal. Labor Code § 2699.3(a)(2)(a-c), Plaintiff now has the right to bring a claim for PAGA
19 penalties.

20 88. As described herein, during the Period one year prior to the filing of this action,
21 Defendants' wage and hour practices with respect to Plaintiffs and other Aggrieved
22 Employees violated Labor Code §§ 201(a), 203(a), 204, 210, 226, 226.3, 226.7, 351-354,
23 512(a), 558, 558(a), 1174(d), 1174.5, and 2699(f).

24 89. Labor Code §§ 2699(a) and (g) authorize an Aggrieved Employee to bring a civil action
25 to recover civil penalties pursuant to the procedures specified in Labor Code § 2699.3.
26 Pursuant to those sections Plaintiffs are entitled to recover civil penalties for Defendant's
27 violations of the Labor Code as described hereinabove.

1 90. Pursuant to Labor Code § 2699(g), Plaintiffs are entitled to an award of reasonable
2 attorneys' fees and costs in connection with their claim for civil penalties.

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for judgment as follows:

- 6 1. Certification of this action as a class action;
- 7 2. Appointment of Plaintiff as class representatives;
- 8 3. Appointment of Richard A. Hoyer, Ryan L. Hicks, the law firm of Hoyer & Hicks, Walter
9 Haines, and the law firm of United Employees Law Group, P.C. as class counsel;
- 10 4. Damages and restitution according to proof at trial for all unpaid wages and other
11 injuries, as provided by the Labor Code and the Business & Professions Code;
- 12 5. For a declaratory judgment that Defendants have violated the California Labor Code
13 as alleged herein;
- 14 6. For a declaratory judgment that Defendants have violated Business and Professions
15 Code §17200, *et seq.*, as a result of the aforementioned violations of the Labor Code;
- 16 7. For an equitable accounting to identify, locate, and restore to all PCMS the wages they
17 are due, with interest thereon;
- 18 8. For an order awarding Plaintiff and the Class liquidated and compensatory damages,
19 including lost wages, earnings, and other employee benefits, restitution, and all other sums
20 of money owed to Plaintiff and the Class, together with interest on these amounts, according
21 to proof;
- 22 9. For an order awarding Plaintiff and the Class civil penalties pursuant to the Labor Code
23 provisions cited herein, including PAGA, with interest thereon;
- 24 10. That the Court order Defendants to pay Plaintiff's attorney's fees and costs as alleged
25 herein and also pursuant to Code Civ. Proc. §1021.5, Lab. Code §§ 218.5 and 1194 and any
26 other applicable law providing for attorneys' fees;
- 27 11. For all costs of suit;
- 28 12. For interest on any damages and/or penalties awarded, as provided by applicable law;

1 13. Such other relief as the Court deems just and proper.

2 **DEMAND FOR JURY TRIAL**

3 Plaintiff hereby demands a jury trial on all causes of action and claims with respect to
4 which she has a right to a jury trial.

5 Date: March 6, 2019

HOYER & HICKS

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8
9 Richard A. Hoyer
Ryan L. Hicks
Nicole B. Gage
Attorneys for Plaintiff
AURIA THAOHO

PROOF OF SERVICE BY E-MAIL

I declare that I am employed in the City and County of San Francisco, State of California. I am over eighteen years of age and not a party to the within entitled cause. My business address is 4 Embarcadero Center, Suite 1400, San Francisco, California 94111.

Pursuant to the parties' agreement for e-service of this document, I served the within:

SECOND AMENDED CLASS ACTION COMPLAINT

to:

Dave McNamara
Dave.mcnamara@mccormickbarstow.com
Christine Tillman
Christina.tillman@mccormickbarstow.com
McCormick Barstow LLP
7647 North Fresno Street
Fresno, CA 93720

on:

March 6, 2019

by sending a true and correct copy of this document to the email addresses listed above. I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at San Francisco, California, on the date above.



Nicole Gage