



FILED
ALAMEDA COUNTY

DEC 29 2017

CLERK OF THE SUPERIOR COURT
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ALAMEDA

11 GREG HOFER, individually, and on behalf
12 of other members of the general public
13 similarly situated, and as aggrieved
14 employees pursuant to the Private Attorneys
15 General Act ("PAGA"),

16 Plaintiff,

17 vs.

18 SOUTHWEST AIRLINES, CO., a Texas
19 corporation; and DOES 1 through 100,
20 inclusive,

21 Defendants.

Case No.: Rly **17887504**

**CLASS ACTION COMPLAINT &
ENFORCEMENT UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698 ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (4) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (5) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Violation of Labor Code §§ 2698, et seq. ("PAGA"); and
- (8) Violation of California Business & Professions Code §§ 17200, et seq.

Jury Trial Demanded

1 Plaintiff, individually and on behalf of all other members of the public similarly
2 situated, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This class action is brought pursuant to California Code of Civil Procedure
5 section 382. The monetary damages and restitution sought by Plaintiff exceed the minimal
6 jurisdiction limits of the Superior Court and will be established according to proof at trial.

7 2. This Court has jurisdiction over this action pursuant to the California
8 Constitution, Article VI, section 10. The statutes under which this action is brought do not
9 specify any other basis for jurisdiction.

10 3. This Court has jurisdiction over all Defendants because, upon information and
11 belief, Defendants are either citizens of California, have sufficient minimum contacts in
12 California, or otherwise intentionally avail themselves of the California market so as to render
13 the exercise of jurisdiction over them by the California courts consistent with traditional
14 notions of fair play and substantial justice.

15 4. Venue is proper in this Court because Defendants transact business in this
16 county and the acts and omissions alleged herein took place in this county.

17 5. California Labor Code sections 2699 et seq., PAGA, authorizes aggrieved
18 employees to sue directly for various civil penalties under the California Labor Code.

19 6. Plaintiff timely provided notice on October 11, 2017 to the California Labor
20 and Workforce Development Agency ("LWDA") and to Defendants, pursuant to California
21 Labor Code section 2699.3.

22 THE PARTIES

23 7. Plaintiff Greg Hofer is a resident of San Anselmo, California, in Marin County.

24 8. Defendant Southwest Airlines Co. ("Southwest") was and is, upon information
25 and belief, a Texas corporation and, at all times hereinafter mentioned, an employer whose
26 employees are engaged throughout this county, the State of California, or the various states of
27 the United States of America.

28 9. Plaintiff is unaware of the true names or capacities of the Defendants sued

1 herein under the fictitious names DOES 1 through 100 but will seek leave of this Court to
2 amend the complaint and serve such fictitiously named Defendants once their names and
3 capacities become known.

4 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through
5 100 are the partners, agents, owners, shareholders, managers or employees of Southwest at all
6 relevant times.

7 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
8 acts and omissions alleged herein were performed by, or are attributable to, Southwest, and/or
9 DOES 1 through 100 (collectively "Defendants"), each acting as the agent, employee, alter
10 ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and
11 was acting within the course and scope of such agency, employment, joint venture, or
12 concerted activity with legal authority to act on the others' behalf. The acts of any and all
13 Defendants represent and were in accordance with Defendants' official policy.

14 12. At all relevant times, Defendants, and each of them, ratified each and every act
15 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
16 and abetted the acts and omissions of each and all the other Defendants in proximately causing
17 the damages herein alleged.

18 13. Plaintiff is informed and believes, and thereon alleges, that each of said
19 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
20 omissions, occurrences, and transactions alleged herein.

21 CLASS ACTION ALLEGATIONS

22 14. Plaintiff brings this action on her own behalf, as well as on behalf of each and
23 all other persons similarly situated, and thus, seeks class certification under California Code of
24 Civil Procedure section 382.

25 15. All claims alleged herein arise under California law for which Plaintiff seeks
26 relief authorized by California law.

27 16. Plaintiff's proposed class consists of and is defined as follows:

28 All individuals who worked for Defendants as Flight Attendants,

1 or individuals holding similar job positions, on any flight routes
2 which either 1) caused the Flight Attendant to remain within the
3 state of California for a period of 3.5 or more hours after
4 commencing the Flight Attendant's work day or 2) originated in
California and did not land in another state until over 3.5 hours
after the Flight Attendant commenced their work day, at any
time during the period from four years prior to the filing of this
Complaint until the date of certification ("Class").

5 17. Members of the Class will hereinafter be referred to as "class members."

6 18. Plaintiff reserves the right to redefine the Class and to add additional subclasses
7 as appropriate based on further investigation, discovery, and specific theories of liability.

8 19. There are common questions of law and fact as to the class members that
9 predominate over questions affecting only individual members, including, but not limited to:

10 (a) Whether Defendants required Plaintiffs and class members to
11 work off-the-clock without payment;

12 (b) Whether Defendants required Plaintiffs and class members to
13 work over eight (8) hours per day, over twelve (12) hours per day,
14 and/or over forty (40) hours per week and failed to pay legally
15 required overtime compensation to Plaintiffs and class members;

16 (c) Whether Defendants failed to pay at least minimum wages for all
17 hours worked by Plaintiffs and class members;

18 (d) Whether Defendants deprived Plaintiff and class members of
19 meal periods or required Plaintiff and class members to work during
20 meal periods without compensation;

21 (e) Whether Defendants deprived Plaintiff and class members of rest
22 periods or required Plaintiff and class members to work during rest
23 periods without compensation;

24 (f) Whether Defendants complied with wage reporting as required
25 by California Labor Code section 226(a);

26 (g) Whether Defendants failed to timely pay wages due to Plaintiff
27 and class members during their employment, including meal and rest
28 period premium wages;

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(h) Whether Defendants failed to timely pay wages due to class members upon their discharge, including meal and rest period premium wages;

(i) Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful or reckless;

(j) Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and

(k) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

20. There is a well-defined community of interest in the litigation and the class is readily ascertainable:

(a) Numerosity: The members of the class are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be over forty and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

(b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all Class Members' as demonstrated herein.

(c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in

1 the rules governing class action discovery, certification, and settlement.
2 Plaintiff has incurred, and throughout the duration of this action, will
3 continue to incur costs and attorneys' fees that have been, are and will
4 be necessarily expended for the prosecution of this action for the
5 substantial benefit of each class member.

6 (d) Superiority: The nature of this action makes the use of class action
7 adjudication superior to other methods. A class action will achieve
8 economies of time, effort, and expense as compared with separate
9 lawsuits, and will avoid inconsistent outcomes because the same issues
10 can be adjudicated in the same manner and at the same time for the
11 entire class.

12 (e) Public Policy Considerations: Employers in the State of California
13 violate employment and labor laws every day. Current employees are
14 often afraid to assert their rights out of fear of direct or indirect
15 retaliation. Former employees are fearful of bringing actions because
16 they believe their former employers might damage their future
17 endeavors through negative references and/or other means. Class
18 actions provide the class members who are not named in the complaint
19 with a type of anonymity that allows for the vindication of their rights at
20 the same time as their privacy is protected.

21 GENERAL ALLEGATIONS

22 21. Defendants provide retail air transportation both throughout the State of
23 California and on a national and international basis and is purported to be the world's largest
24 low-cost air travel carrier.

25 22. Defendants employed Plaintiff as a Flight Attendant within the State of
26 California from approximately 1994 through the present.

27 23. Defendants continue to employ Flight Attendants at multiple airport locations
28 throughout California.

1 24. Plaintiff is informed and believes, and thereon alleges, that at all times herein
2 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
3 and advisors knowledgeable about California labor and wage law, employment and personnel
4 practices, and about the requirements of California law.

5 25. Plaintiff is informed and believes, and thereon alleges, that employees were not
6 paid for all hours worked because all hours worked were not recorded.

7 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to receive certain wages for
9 overtime compensation and that they were not receiving certain wages for overtime
10 compensation.

11 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and class members were entitled to receive at least minimum
13 wages for compensation and that, in violation of the California Labor Code, they were not
14 receiving at least minimum wages for work done off-the-clock.

15 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and other class members were entitled to receive all meal
17 periods or payment of one (1) additional hour of pay at Plaintiff and other class members'
18 regular rate of pay when they did not receive a timely, uninterrupted meal period, and that
19 they did not receive all meal periods or payment of one (1) additional hour of pay at Plaintiff
20 and other class members' regular rate of pay when they did not receive a timely, uninterrupted
21 meal period.

22 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and other class members were entitled to receive all rest
24 periods or payment of one (1) additional hour of pay at Plaintiff and other class members'
25 regular rate of pay when a rest period was missed, and that they did not receive all rest periods
26 or payment of one (1) additional hour of pay at Plaintiff and other class members' regular rate
27 of pay when a rest period was missed.

28 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and other class members were entitled to receive complete
2 and accurate wage statements in accordance with California law. In violation of the California
3 Labor Code, Plaintiff and other class members were not provided with complete and accurate
4 wage statements.

5 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and other class members were entitled to timely payment of
7 wages during their employment. In violation of the California Labor Code, Plaintiff and other
8 class members did not receive payment of all wages, including, but not limited to meal and
9 rest period premium wages, within permissible time periods.

10 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that terminated class members were entitled to timely payment of wages
12 upon termination. In violation of the California Labor Code, terminated class members did
13 not receive payment of all wages, including, but not limited to meal and rest period premium
14 wages, within permissible time periods.

15 33. Plaintiff is informed and believes, and thereon alleges, that at all times herein
16 mentioned, Defendants knew or should have known that they had a duty to compensate
17 Plaintiff and other members of the class, and that Defendants had the financial ability to pay
18 such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
19 represented to Plaintiff and other class members that they were properly denied wages, all in
20 order to increase Defendants' profits.

21 34. At all times herein set forth, PAGA was applicable to Plaintiff's employment
22 by Defendants.

23 35. At all times herein set forth, PAGA provides that any provision of law under
24 the California Labor Code that provides for a civil penalty to be assessed and collected by the
25 LWDA for violations of the California Labor Code may, as an alternative, be recovered
26 through a civil action brought by an aggrieved employee on behalf of himself and other
27 current or former employees pursuant to procedures outlined in California Labor Code section
28 2699.3.

1 36. Pursuant to PAGA, a civil action under PAGA may be brought by an
2 “aggrieved employee,” who is any person that was employed by the alleged violator and
3 against whom one or more of the alleged violations was committed.

4 37. Plaintiff was employed by Defendants and the alleged violations were
5 committed against him during his time of employment and he is, therefore, an aggrieved
6 employee. Plaintiff and other employees are “aggrieved employees” as defined by California
7 Labor Code section 2699(c) in that they are all current or former employees of Defendants,
8 and one or more of the alleged violations were committed against them.

9 38. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
10 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
11 following requirements have been met:

12 (a) The aggrieved employee shall give written notice by certified
13 mail (hereinafter “Employee’s Notice”) to the LWDA and the
14 employer of the specific provisions of the California Labor Code
15 alleged to have been violated, including the facts and theories to
16 support the alleged violations.

17 (b) The LWDA shall provide notice (hereinafter “LWDA Notice”) to
18 the employer and the aggrieved employee by certified mail that it
19 does not intend to investigate the alleged violation within sixty (60)
20 calendar days of the postmark date of the Employee’s Notice. Upon
21 receipt of the LWDA Notice, or if the LWDA Notice is not provided
22 within sixty-five (65) calendar days of the postmark date of the
23 Employee’s Notice, the aggrieved employee may commence a civil
24 action pursuant to California Labor Code section 2699 to recover
25 civil penalties in addition to any other penalties to which the
26 employee may be entitled.

27 39. On October 11, 2017 Plaintiff provided written notice by certified mail to the
28 LWDA and to Defendants of the specific provisions of the California Labor Code alleged to

1 have been violated, including the facts and theories to support the alleged violations, pursuant
2 to California Labor Code section 2699.3. Defendants have failed to cure any of the alleged
3 violations.

4 40. Therefore, as December 15, 2017, the administrative prerequisites under
5 California Labor Code section 2699.3(a) are satisfied and Plaintiff has authorization to
6 recover civil penalties and unpaid wages against Defendants, in addition to other remedies, for
7 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512,
8 1194, 1197, 1197.1, and 1198.

9 **FIRST CAUSE OF ACTION**

10 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

11 **(Against All Defendants)**

12 41. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
13 and every allegation set forth above.

14 42. California Labor Code section 1198 makes it illegal to employ an employee
15 under conditions of labor that are prohibited by the applicable wage order. California Labor
16 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
17 shall be the . . . standard conditions of labor for employees. The employment of any employee
18 . . . under conditions of labor prohibited by the order is unlawful.”

19 43. California Labor Code section 1198 and the applicable Industrial Welfare
20 Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without
21 compensating them at a rate of pay either time-and-one-half or two-times that person’s regular
22 rate of pay, depending on the number of hours worked by the person on a daily or weekly
23 basis.

24 44. Specifically, the applicable IWC Wage Order provides that Defendants are and
25 were required to pay Plaintiff and class members employed by Defendants, and working more
26 than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-
27 and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40)
28 hours in a workweek.

1 45. The applicable IWC Wage Order further provides that Defendants are and were
2 required to pay Plaintiff and class members employed by Defendants, and working more than
3 twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate
4 of pay.

5 46. California Labor Code section 510 codifies the right to overtime compensation
6 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours
7 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day
8 of work, and to overtime compensation at twice the regular hourly rate for hours worked in
9 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
10 of work.

11 47. During the relevant time period, Plaintiff and class members worked in excess
12 of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty
13 (40) hours in a week without receiving overtime compensation therefor. For one example,
14 during the relevant time period, Defendants had a policy and/or practice of employing
15 compensation schemes, including, but not limited to, "Trip for Pay" and "Rig" structures,
16 which did not compensate Flight Attendants for all work activities performed, such as time
17 spent on the ground during flight changes. Because Plaintiff and class members worked shifts
18 of eight (8) hours a day and/or forty (40) hours in a week, some of this uncompensated work
19 time qualified for overtime premium.

20 48. Defendants' failure to pay Plaintiff and class members the unpaid balance of
21 overtime compensation, as required by California law, violates the provisions of California
22 Labor Code sections 510 and 1198, and is therefore unlawful.

23 49. Pursuant to California Labor Code section 1194, Plaintiff and class members
24 are entitled to recover their unpaid overtime compensation, as well as interest, costs, and
25 attorneys' fees.
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1 **SECOND CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 1194, 1197, 1197.1—Unpaid Minimum Wages**
3 **(Against All Defendants)**

4 50. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
5 and every allegation set forth above.

6 51. At all relevant times, California Labor Code sections 1194, 1197 and 1197.1
7 provide that the minimum wage for employees fixed by the Industrial Welfare Commission is
8 the minimum wage to be paid to employees, and the payment of a wage less than the
9 minimum so fixed is unlawful. As set forth above, Defendants regularly required Plaintiff and
10 class members to work off-the-clock without compensation. Defendants did not pay at least
11 minimum wages for all of these off-the-clock hours. Also, to the extent that these off-the-
12 clock hours did not qualify for overtime premium payment, Defendants did not pay minimum
13 wages for those hours worked off-the-clock in violation of California Labor Code sections
14 1194, 1197, and 1197.1.

15 52. Defendants' failure to pay Plaintiff and class members the minimum wage as
16 required violates California Labor Code sections 1194, 1197 and 1197.1. Pursuant to those
17 sections, Plaintiff and class members are entitled to recover the unpaid balance of their
18 minimum wage compensation, as well as interest, costs, and attorney's fees.

19 53. Pursuant to California Labor Code section 1194.2, Plaintiff and class members
20 are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid
21 and interest thereon.

22 **THIRD CAUSE OF ACTION**

23 **Violations of California Labor Code §§ 226.7 and 512(a)—Unpaid Meal Period**
24 **Premiums**
25 **(Against All Defendants)**

26 54. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
27 and every allegation set forth above.

28 55. At all relevant times herein set forth, the applicable California Industrial

1 Welfare Commission (IWC) Wage Order(s) and California Labor Code sections 226.7 and
2 512(a) were applicable to Plaintiff's and the other class members' employment by Defendants
3 and each of them.

4 56. At all relevant times herein set forth, California Labor Code section 226.7
5 provides that no employer shall require an employee to work during any meal period
6 mandated by an applicable order of the California Industrial Welfare Commission (IWC).

7 57. At all relevant times herein set forth, California Labor Code section 512(a)
8 provides that an employer may not require, cause, or permit an employee to work for a period
9 of more than five (5) hours per day without providing the employee with a meal period of not
10 less than thirty (30) minutes, except that if the total work period per day of the employee is
11 not more than six (6) hours, the meal period may be waived by mutual consent of both the
12 employer and the employee.

13 58. During the relevant time period, Plaintiff and other class members scheduled to
14 work for a period of time no longer than six (6) hours, and who did not waive their legally
15 mandated meal periods by mutual consent, were required to work for periods longer than five
16 (5) hours without a meal period of not less than thirty (30) minutes.

17 59. During the relevant time period, Defendants willfully required Plaintiff and
18 other class members to work during meal periods and then failed to pay Plaintiff and other
19 class members all meal period premiums due pursuant to California Labor Code section 226.7.

20 60. Defendants' conduct violates applicable Industrial Welfare Commission (IWC)
21 Wage Order(s), and California Labor Code sections 226.7 and 512(a).

22 61. Pursuant to the applicable Industrial Welfare Commission (IWC) Wage
23 Order(s) and California Labor Code section 226.7(b), Plaintiff and other class members are
24 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
25 hourly rate of compensation for each work day that the meal period was not provided.
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1 **FOURTH CAUSE OF ACTION**

2 **Violation of California Labor Code § 226.7—Unpaid Rest Period Premiums**

3 **(Against All Defendants)**

4 62. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
5 and every allegation set forth above.

6 63. At all relevant times herein set forth, the applicable IWC Wage Order and
7 California Labor Code section 226.7 were applicable to Plaintiff's and class members'
8 employment by Defendants.

9 64. At all relevant times, California Labor Code section 226.7 provides that no
10 employer shall require an employee to work during any rest period mandated by an applicable
11 order of the California IWC.

12 65. At all relevant times, the applicable IWC Wage Order provides that "[e]very
13 employer shall authorize and permit all employees to take rest periods, which insofar as
14 practicable shall be in the middle of each work period" and that the "rest period time shall be
15 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
16 hours or major fraction thereof" unless the total daily work time is less than three and one-half
17 (3½) hours.

18 66. During the relevant time period, Defendants required Plaintiff and class
19 members to work four (4) or more hours without authorizing or permitting a ten (10) minute
20 rest period per each four (4) hour period worked. As with meal periods, Defendants failure to
21 properly staff and coordinate employees' schedules lead to their being unable to take
22 compliant rest breaks, even where they had knowledge about their rest break rights.
23 Defendants then failed to pay Plaintiff and class members the full rest period premium due
24 pursuant to California Labor Code section 226.7. As a result, Defendants failed to pay
25 Plaintiff and other class members rest period premiums in violation of California Labor Code
26 section 226.7.

27 67. During the relevant time period, Defendants failed to pay Plaintiff and class
28 members the full rest period premium due pursuant to California Labor Code section 226.7.

1 68. Defendants' conduct violates the applicable IWC Wage Orders and California
2 Labor Code section 226.7.

3 69. Pursuant to the applicable IWC Wage Order and California Labor Code section
4 226.7(b), Plaintiff and class members are entitled to recover from Defendants one (1)
5 additional hour of pay at the employee's regular hourly rate of compensation for each work
6 day that the rest period was not provided.

7 **FIFTH CAUSE OF ACTION**

8 **Violation of California Labor Code §§ 201 and 202 – Wages Not Timely Paid Upon**

9 **Termination**

10 **(Against All Defendants)**

11 70. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
12 and every allegation set forth above.

13 71. This cause of action is wholly derivative of and dependent upon the unpaid
14 wage claims set forth for unpaid overtime wages, unpaid minimum wages, and unpaid meal
15 and rest period premium wages, which remained unpaid upon termination of class members'
16 employment.

17 72. At all times herein set forth, California Labor Code sections 201 and 202
18 provide that if an employer discharges an employee, the wages earned and unpaid at the time
19 of discharge are due and payable immediately, and that if an employee voluntarily leaves his
20 or her employment, his or her wages shall become due and payable not later than seventy-two
21 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
22 his or her intention to quit, in which case the employee is entitled to his or her wages at the
23 time of quitting.

24 73. During the relevant time period, Defendants willfully failed to pay class
25 members who are no longer employed by Defendants the earned and unpaid wages set forth
26 above, including but not limited to, overtime wages, minimum wages, and meal and rest
27 period premium wages, either at the time of discharge, or within seventy-two (72) hours of
28 their leaving Defendants' employ.

1 wages earned for all hours worked and not recorded, total hours worked by the employee as a
2 result of working off the clock and not recording those hours, the inclusive dates of the period
3 for which the employee is paid, the name and address of the legal entity that is the employer,
4 and all applicable hourly rates in effect during the pay period and the corresponding number
5 of hours worked at each hourly rate by the employee as required by California Labor Code
6 section 226(a).

7 80. As a result of Defendants' violation of California Labor Code section 226(a),
8 Plaintiff and class members have suffered injury and damage to their statutorily protected
9 rights.

10 81. Specifically, Plaintiff and class members have been injured by Defendants'
11 intentional violation of California Labor Code section 226(a) because they were denied both
12 their legal right to receive, and their protected interest in receiving, accurate, itemized wage
13 statements under California Labor Code section 226(a). In addition, because Defendants
14 failed to provide the accurate number of total hours worked on wage statements, Plaintiff has
15 been prevented by Defendants from determining if all hours worked were paid and the extent
16 of the underpayment. Plaintiff has had to file this lawsuit, conduct discovery, reconstruct time
17 records, and perform computations in order to analyze whether in fact Plaintiff was paid
18 correctly and the extent of the underpayment, thereby causing Plaintiff to incur expenses and
19 lost time. Plaintiff would not have had to engage in these efforts and incur these costs had
20 Defendants provided the accurate number of total hours worked. This has also delayed
21 Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

22 82. Plaintiff and class members are entitled to recover from Defendants the greater
23 of their actual damages caused by Defendants' failure to comply with California Labor Code
24 section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
25 employee.

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SEVENTH CAUSE OF ACTION

Violation of California Labor Code §§ 2698, *et seq.*

(Against All Defendants)

83. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

84. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5.

85. PAGA provides as follows, "[n]otwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within 60 days of the time periods specified in this part."

86. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- a. Violation of Labor Code sections 510 and 1198 for Defendants' failure to compensate Plaintiff and other aggrieved employees for all overtime hours at the applicable overtime rate as herein alleged;
- b. Violation of Labor Code sections 1194, 1197, and 1197.1 for Defendants' failure to compensate Plaintiff and other aggrieved employees for all hours worked with at least minimum wages as herein alleged;
- c. Violation of Labor Code Sections 512 and 226.7 for Defendants' failure to provide Plaintiff and other aggrieved employees with legally mandated meal periods and failing to compensate Plaintiff and other aggrieved employees with one hours of premium pay for unprovided meal periods as alleged herein;
- d. Violation of Labor Code Section 226.7 for Defendants' failure to provide Plaintiff and other aggrieved employees with legally mandated rest periods and failing to compensate Plaintiff and other aggrieved employees with one hours of premium pay for unprovided rest periods as alleged herein;

- 1 e. Violation of Labor Code section 226(a) for failure to provide compliant
2 wage statements to Plaintiff and other aggrieved employees, as herein
3 alleged;
- 4 f. Violation of Labor Code sections 201, 202, and 203 for failure to timely
5 pay all earned wages to aggrieved employees upon discharge as herein
6 alleged;
- 7 g. Violation of Labor Code section 204 for failure to pay all earned wages
8 owed to Plaintiff and other aggrieved employees during employment as set
9 forth more fully below; and

10 87. California Labor Code section 1198 makes it illegal to employ an employee
11 under conditions of labor that are prohibited by the applicable wage order. California Labor
12 Code section 1198 requires that "... the standard conditions of labor fixed by the commission
13 shall be the ... standard conditions of labor for employees. The employment of any employee
14 ... under conditions of labor prohibited by the order is unlawful."

15 88. California Labor Code section 204 requires that all wages earned by any person
16 in any employment between the 1st and the 15th days, inclusive, of any calendar month, other
17 than those wages due upon termination of an employee, are due and payable between the 16th
18 and the 26th day of the month during which the labor was performed, and that all wages
19 earned by any person in any employment between the 16th and the last day, inclusive, of any
20 calendar month, other than those wages due upon termination of an employee, are due and
21 payable between the 1st and the 10th day of the following month. California Labor Code
22 section 204 also requires that all wages earned for labor in excess of the normal work period
23 shall be paid no later than the payday for the next regular payroll period. During the relevant
24 time period, Defendants failed to pay Plaintiff and other aggrieved employees all wages due to
25 them, including, but not limited to, minimum wages and reporting time pay within any time
26 period specified by California Labor Code section 204.

27 89. Defendants, at all times relevant to this complaint, were employers or persons
28 acting on behalf of an employer(s) who violated Plaintiff and aggrieved employees' rights by

1 violating various sections of the California Labor Code as set forth above.

2 90. As set forth above, Defendants have violated numerous provisions of both the
3 Labor Code sections regulating hours and days of work as well as the applicable order of the
4 Industrial Welfare Commission and are subject to civil penalties, in addition to those provided
5 by Labor Code sections 2698 and 2699.

6 91. Pursuant to PAGA, and in particular California Labor Code sections 2699,
7 2699.3 and 2699.5, Plaintiff, acting in the public interest as a private attorney general, seeks
8 assessment and collection of unpaid wages and civil penalties for Plaintiff, all other aggrieved
9 employees, and the State of California against Defendants, in addition to other remedies, for
10 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512,
11 1194, 1197, 1197.1, and 1198.

12 EIGHTH CAUSE OF ACTION

13 Violation of California Business & Professions Code §§ 17200, *et seq.*

14 (Against All Defendants)

15 92. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
16 and every allegation set forth above.

17 93. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
18 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff seeks to
19 enforce important rights affecting the public interest within the meaning of Code of Civil
20 Procedure section 1021.5.

21 94. Defendants' activities, as alleged herein, are violations of California law, and
22 constitute unlawful business acts and practices in violation of California Business &
23 Professions Code sections 17200, *et seq.*

24 95. A violation of California Business & Professions Code sections 17200, *et seq.*
25 may be predicated on the violation of any state or federal law. In the instant case, Defendants'
26 policies and practices have violated state law in at least the following respects:

- 27 (c) Requiring non-exempt employees, including Plaintiff and class
28 members, to work overtime without paying them proper compensation

1 in violation of California Labor Code sections 510 and 1198 and the
2 applicable Industrial Welfare Commission Order;

3 (d) Failing to pay at least minimum wage to Plaintiff and class members in
4 violation of California Labor Code sections 1194, 1197 and 1197.1 and
5 the applicable Industrial Welfare Commission Order;

6 (e) Failing to provide meal and rest periods or to pay premium wages for
7 missed meal and rest periods to Plaintiff and class members in violation
8 of California Labor Code sections 226.7 and 512 and the applicable
9 Industrial Welfare Commission Order;

10 (f) Failing to provide Plaintiff and class members with accurate wage
11 statements in violation of California Labor Code section 226(a) and the
12 applicable Industrial Welfare Commission Order; and

13 (g) Failing to timely pay all earned wages to Plaintiff and class members in
14 violation of California Labor Code sections 210, 202, 203 and 204 and
15 the applicable Industrial Welfare Commission Order as set forth below.

16 96. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
17 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
18 Defendants during a period that commences four years prior to the filing of this complaint; a
19 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
20 class members; an award of attorneys' fees pursuant to California Code of Civil Procedure
21 section 1021.5 and other applicable laws; and an award of costs.

22 **REQUEST FOR JURY TRIAL**

23 Plaintiff requests a trial by jury.

24 **PRAYER FOR RELIEF**

25 Plaintiff, on behalf of all others similarly situated, pray for relief and judgment against
26 Defendants, jointly and severally, as follows:

27 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
28 excess of twenty-five thousand dollars (\$25,000).

1 **Class Certification**

- 2 2. That this case be certified as a class action;
- 3 3. That Plaintiff be appointed as the representative of the Class;
- 4 4. That counsel for Plaintiff be appointed as Class Counsel.

5 **As to the First Cause of Action**

6 5. That the Court declare, adjudge, and decree that Defendants violated California

7 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to

8 pay all overtime wages due to Plaintiff and class members;

9 6. For general unpaid wages at overtime wage rates and such general and special

10 damages as may be appropriate;

11 7. For pre-judgment interest on any unpaid overtime compensation commencing

12 from the date such amounts were due;

13 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to

14 California Labor Code section 1194(a); and

15 9. For such other and further relief as the Court may deem equitable and

16 appropriate.

17 **As to the Second Cause of Action**

18 10. That the Court declare, adjudge and decree that Defendants violated California

19 Labor Code sections 1194, 1197 and 1197.1 by willfully failing to pay minimum wages to

20 Plaintiff and class members;

21 11. For general unpaid wages and such general and special damages as may be

22 appropriate;

23 12. For pre-judgment interest on any unpaid compensation from the date such

24 amounts were due;

25 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to

26 California Labor Code section 1194(a);

27 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

28 15. For such other and further relief as the Court may deem equitable and

1 appropriate.

2 **As to the Third Cause of Action**

3 16. That the Court declare, adjudge, and decree that Defendants violated California
4 Labor Code sections 226.7 and 512(a) and applicable Industrial Welfare Commission (IWC)
5 Wage Order(s) by willfully failing to provide all meal periods to Plaintiff and class members;

6 17. That the Court make an award to the Plaintiff and class members of one (1)
7 hour of pay at each employee's regular rate of compensation for each workday that a meal
8 period was not provided;

9 18. For all actual, consequential, and incidental losses and damages, according to
10 proof;

11 19. For premiums pursuant to California Labor Code section 226.7(b);

12 20. For pre-judgment interest on any unpaid meal period premiums from the date
13 such amounts were due; and

14 21. For such other and further relief as the Court may deem equitable and
15 appropriate.

16 **As to the Fourth Cause of Action**

17 22. That the Court declare, adjudge and decree that Defendants violated California
18 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all
19 rest periods to Plaintiff and class members;

20 23. That the Court make an award to the Plaintiff and class members of one (1) hour
21 of pay at each employee's regular rate of compensation for each workday that a rest period
22 was not provided;

23 24. For all actual, consequential, and incidental losses and damages, according to
24 proof;

25 25. For premiums pursuant to California Labor Code section 226.7(b);

26 26. For pre-judgment interest on any unpaid rest period premiums from the date
27 such amounts were due; and

28 27. For such other and further relief as the Court may deem equitable and

1 appropriate.

2 **As to the Fifth Cause of Action**

3 28. That the Court declare, adjudge and decree that Defendants violated California
4 Labor Code sections 201, 202, and 203 by willfully failing to pay all overtime wages,
5 minimum wages, and meal and rest period premium wages owed at the time of termination of
6 the employment of class members no longer employed by Defendants.

7 29. For all actual, consequential and incidental losses and damages, according to
8 proof;

9 30. For statutory wage penalties pursuant to California Labor Code section 203 for
10 all class members who have left Defendants' employ;

11 31. For pre-judgment interest on any unpaid wages from the date such amounts
12 were due; and

13 32. For such other and further relief as the Court may deem equitable and
14 appropriate.

15 **As to the Sixth Cause of Action**

16 33. That the Court declare, adjudge and decree that Defendants violated the
17 recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage
18 Orders as to Plaintiff and class members, and willfully failed to provide accurate itemized
19 wage statements thereto;

20 34. For all actual, consequential and incidental losses and damages, according to
21 proof;

22 35. For statutory penalties and injunctive relief pursuant to California Labor Code
23 section 226(e) and (h); and

24 36. For such other and further relief as the Court may deem equitable and
25 appropriate.

26 **As to the Seventh Cause of Action**

27 37. That the Court declare, adjudge and decree that Defendants violated the
28 following California Labor Code sections as to Plaintiff and/or other Aggrieved Employees:

1 510 and 1198 (by failing to pay all overtime wages); 1194, 1197, and 1197.1 (by failing to pay
2 at least minimum wages for all hours worked); 226.7 (by failing to provide meal or rest
3 periods or the required compensation in lieu thereof); 226(a) (by failing to provide accurate
4 and complete wage statements); 201, 202, 203 (by failing timely to pay all unpaid wages upon
5 termination); and 204 (by failing timely to pay all earned wages during employment);

6 38. For civil penalties pursuant to California Labor Code sections 210, 226.3, 558,
7 1174.5, 1197.1, 2699(a) and/or 2699(f) and (g), for violations of California Labor Code
8 sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1194, 1197, 1197.1 and 1198;

9 **As to the Eighth Cause of Action**

10 39. That the Court declare, adjudge and decree that Defendants violated California
11 Business and Professions Code sections 17200, *et seq.* by failing to pay overtime
12 compensation due, failing to pay at least minimum wages for all hours worked, failing to
13 provide meal and rest periods or premium wages in lieu thereof, failing to provide accurate
14 wage statements, and failing timely to pay all earned wages during employment and upon
15 termination;

16 40. For restitution of unpaid wages to Plaintiff and all class members and
17 prejudgment interest from the day such amounts were due and payable;

18 41. For the appointment of a receiver to receive, manage and distribute any and all
19 funds disgorged from Defendants and determined to have been wrongfully acquired by
20 Defendants as a result of violations of California Business & Professions Code sections 17200
21 *et seq.*;

22 42. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
23 California Code of Civil Procedure section 1021.5; and

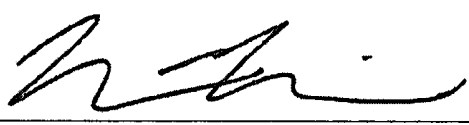
24 43. For such other and further relief as the Court may deem equitable and
25 appropriate.
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Dated: December 29, 2017

Respectfully submitted,

The Bainer Law Firm

By: 

Matthew R. Bainer, Esq.

Attorneys for Plaintiff Greg Hofer