

1 Carolyn Hunt Cottrell (SBN 166977)
2 Ori Edelstein (SBN 268145)
3 SCHNEIDER WALLACE COTTRELL
4 KONECKY WOTKYNS LLP
5 2000 Powell Street, Suite 1400
6 Emeryville, California 94608
7 Tel: (415) 421-7100
8 Fax: (415) 421-7105

9 Attorneys for Plaintiff and the Putative Class
10 and Collective

11 **UNITED STATES DISTRICT COURT FOR THE**
12 **EASTERN DISTRICT OF CALIFORNIA**

13 JOSHUA WRIGHT on behalf of himself and all
14 others similarly situated,

15 Plaintiffs,

16 vs.

17 FRONTIER MANAGEMENT LLC, FRONTIER
18 SENIOR LIVING, LLC, and GH SENIOR
19 LIVING, LLC dba GREENHAVEN ESTATES
20 ASSISTED LIVING,

21 Defendants

Case No. _____

**CLASS AND COLLECTIVE ACTION
COMPLAINT FOR DAMAGES AND
DECLARATORY RELIEF AND DEMAND
FOR JURY TRIAL**

22
23
24
25
26
27
28

1 **CLASS AND COLLECTIVE ACTION COMPLAINT**

2 Plaintiff Joshua Wright (“Plaintiff”), on behalf of himself and all others similarly situated,
3 complains and alleges as follows:

4 **SUBJECT MATTER JURISDICTION AND VENUE**

5 1. This court has federal question jurisdiction over the subject matter of this action
6 pursuant to 28 U.S.C. § 1331 as this case is brought under the laws of the United States,
7 specifically the FLSA, 29 U.S.C. § 201, *et seq.* This Court has supplemental jurisdiction over
8 Plaintiff’s state-law claims pursuant to 28 U.S.C. § 1367.

9 2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391. Defendants
10 employ numerous hourly, non-exempt employees who reside in this district, and a substantial part
11 of the events giving rise to Plaintiff’s claims occurred within this judicial district. Defendants are
12 subject to personal jurisdiction here. Defendant Frontier Management, according to its website,
13 operates multiple residential memory care and senior living facilities, and employs Class and
14 Collective members, in California, including in this judicial district. Defendant Frontier Senior
15 living, according to its filings with the California Secretary of State, is the corporate entity through
16 which Defendant Frontier Management manages its California operations, including those in this
17 judicial district.

18 **INTRODUCTION**

19 3. Plaintiff brings this class and collective action on behalf of himself and other
20 similarly situated individuals who have worked for Frontier Management LLC (“Frontier
21 Management”), Frontier Senior Living, LLC (“Frontier Senior Living”), and GH Senior Living,
22 LLC dba Greenhaven Estates Assisted Living (“Greenhaven”) (collectively, “Defendants”) as
23 hourly, non-exempt employees.

24 4. Defendants maintain a longstanding policy and practice of failing to properly
25 compensate non-exempt employees for work performed during meal periods, for work performed
26 while “off-the-clock,” and for missed rest and meal periods. These policies denied Plaintiff and
27

1 other hourly, non-exempt employees payment for all hours worked, including overtime, and deny
2 Plaintiff and Class members meal and rest periods that comply with California law.

3 5. Defendants violate the FLSA and California law by knowingly and willfully requiring
4 Plaintiff and Class and Collective members to perform work and/or remain on duty during meal
5 and rest breaks, subjecting them to interruptions during those times. While Defendants require
6 Class and Collective members to clock in and out for meal periods, these employees remain on
7 duty and are continuously subject to interruption during that time.

8 6. Defendants received value from the work performed by Plaintiff and Class and
9 Collective members during their meal periods and while “off-the-clock” without compensating
10 them for their services. Defendants willfully, deliberately, and voluntarily failed to pay Plaintiff and
11 Class and Collective members for work performed.

12 7. Defendant’s conduct violated and continues to violate the FLSA because of the
13 mandate that non-exempt employees, such as Plaintiff and the Collective members, be paid at one
14 and one-half times their regular rate of pay for all hours worked in excess of forty within a single
15 workweek. *See* 29 U.S.C. § 207(a).

16 8. Plaintiff also pursues claims under California Labor Code to challenge Defendants’
17 policies and practices of: (1) failing to pay Plaintiff and Class members minimum wage (§ 1194);
18 (2) failing to pay Plaintiff and Class members overtime wages (§ 510); (3) failing to authorize and
19 permit Plaintiff and Class members to take meal and rest breaks to which they are entitled by law
20 (§§ 226.7 and 512); (4) failing to compensate Plaintiff and Class members for all hours worked (§
21 204); (5) failing to provide Plaintiff and Class members accurate, itemized wage statements (§ 226);
22 (6) failing to timely pay Plaintiff and Class members full wages upon termination or resignation (§§
23 201-203); (7) failing to reimburse Plaintiff and Class members for necessary business expenses (§
24 2802), and engaging in unfair and unlawful business practices (California Business and Professions
25 Code § 17200, et seq.).

26 9. Plaintiff files this action to recover on behalf of himself and Class and Collective
27

1 members all unpaid wages, compensation, penalties, and other damages owed to them under the
2 FLSA and state law individually, as a 29 U.S.C. § 216(b) collective action, and as a class action
3 under Federal Rule of Civil Procedure 23, in order to remedy the sweeping practices which
4 Defendants have integrated into their time tracking and payroll policies and which have deprived
5 Plaintiff and Class and Collective members of their lawfully-earned wages.

6 **PARTIES**

7 10. Plaintiff Joshua Wright is an individual over the age of eighteen, and at all times
8 relevant to this Complaint was a resident of the State of California, County of Sacramento. Mr.
9 Wright was employed as a Medication Technician by Defendants at their Greenhaven facility from
10 April 12, 2018 until March 15, 2019.

11 11. The Collective members are people who are or who have been employed by
12 Defendants as hourly, non-exempt employees in the United States at any time within the three years
13 preceding the filing of this Complaint.

14 12. The Class members are all people who are or who have been employed by
15 Defendants as hourly, non-exempt employees in California within the four years preceding the
16 filing of this Complaint.

17 13. Plaintiff is informed, believes, and thereon alleges that Defendant Frontier
18 Management is an Oregon limited liability corporation that maintains its principal office in
19 Portland, Oregon.

20 14. Plaintiff is informed, believes, and thereon alleges that Defendant Frontier Senior
21 Living is an Oregon limited liability corporation that maintains its principal office in Portland,
22 Oregon.

23 15. Plaintiff is informed, believes, and thereon alleges that that Defendant Greenhaven is
24 a California limited liability company that maintains its headquarters in Sacramento, California.
25 Defendant Greenhaven is registered to do business in the state of California.

26 16. Plaintiff is informed, believes, and thereon alleges that Defendant Frontier
27

1 Management owns Frontier Senior Living, that Defendant Frontier Senior Living is a member of
2 Defendant Greenhaven, and that Defendants Frontier Management, Frontier Senior Living, and
3 Greenhaven all share at least one member or manager and all share the same primary place of
4 business.

5 17. Plaintiff is informed, believes, and thereon alleges that at all times mentioned in this
6 Complaint, Defendants were the agents and employees of their co-defendants and in doing the
7 things alleged in this Complaint were acting within the course and scope of such agency and
8 employment.

9 18. Plaintiff is informed, believes, and thereon alleges that Defendants maintain a chain
10 of retirement and assisted living communities throughout the United States, including in California.
11 Plaintiff is informed, believes, and thereon alleges that Defendants employ hourly, non-exempt
12 employees throughout the United States, including in California.

13 19. Plaintiff is informed and believes that each and every one of the acts and omissions
14 alleged herein were performed by, and/or attributable to, Defendants Frontier Management, Frontier
15 Senior Living, and Greenhaven, each acting as agents and/or employees, and/or under the direction
16 and control of each of the other, and that said acts and failures to act were within the course and
17 scope of said agency, employment and/or direction and control.

18 20. Plaintiff is informed, believes, and thereon alleges that Defendant Frontier
19 Management directly controls the operations of its agents, Defendants Frontier Senior Living and
20 Greenhaven. Plaintiff is informed, believes, and thereon alleges that Defendants Frontier
21 Management, Frontier Senior Living, and Greenhaven jointly exercised control over Plaintiff and
22 Class and Collective members with respect to their employment.

23 21. As employers of Plaintiff and the Class and Collective members throughout the
24 relevant time periods, Defendants, and each of them, are solely, jointly, and severally liable for
25 back pay, penalties, and other economic damages owed to Plaintiff and the Class and Collective
26 members.

1 conditions.

2 **FACTUAL ALLEGATIONS**

3 30. Defendants operate a chain of retirement and assisted living communities throughout
4 the United States and California, including Greenhaven, which is located in Sacramento,
5 California. Defendants employ hundreds of hourly non-exempt workers similarly situated to
6 Plaintiff across these facilities.

7 31. Plaintiff Wright worked at Greenhaven as a Medication Technician from April 12,
8 2018 until March 15, 2019. He was paid at an hourly rate of \$14.50 and regularly worked in
9 excess of eight hours a day and forty hours per week, usually working approximately 44 to 46
10 hours per week.

11 32. As a matter of policy, Defendants require Plaintiff, Class, and Collective members to
12 remain on duty during their scheduled shifts, including during rest breaks and while clocked out for
13 meal periods. Defendants do not compensate these employees for work performed while clocked
14 out for meal periods.

15 33. Specifically, Defendants require Plaintiff, Class, and Collective members to carry
16 communication devices with them at all times. Defendants require them to carry these devices so
17 that Plaintiff and Class and Collective members can be reached at all times throughout the day to
18 handle issues concerning their patients and facility personnel. Defendants have a policy and/or
19 practice that Class and Collective members must keep these communication devices, namely
20 walkie-talkies, on during meal and rest breaks, in order to be continuously available. Defendants
21 require these employees to respond to calls during this time, regardless of whether they are taking a
22 meal or rest break. As a result of Defendants' policies and practices, Class and Collective members
23 are routinely denied the opportunity to take legally-compliant meal and rest breaks. Plaintiff is
24 informed, believes, and thereon alleges that this policy and practice applies to all hourly-paid, non-
25 exempt staff.

26 34. As a result of these policies, Defendants deny Plaintiff and Class and Collective
27

1 members meal and rest periods to which they are statutorily entitled, as well as the overtime
2 premiums resulting from the additional off-the-clock work performed during meal breaks.

3 35. Despite these recurring violations, Defendants do not provide Plaintiff and Class and
4 Collective members premium pay for missed breaks and meal periods.

5 36. Plaintiff and Class and Collective members are also regularly required to work off-
6 the-clock, time which Defendants neither record nor compensate them for. Defendants require
7 Plaintiff and Class and Collective members to use a timeclock that encounters technical difficulties
8 2 to 3 times per pay period. These technical difficulties prevent employees from logging their work
9 hours. Defendants do not account for this off-the-clock work when compensating Plaintiff and
10 Class and Collective members, resulting in widespread under-compensation. As a result,
11 Defendants failed to record or compensate each Class and Collective member for approximately 8
12 to 12 hours of off-the-clock work for each pay period. Although Defendants' management staff is
13 aware of the timeclock issues, which Plaintiff Wright reported multiple times, Defendants refuse to
14 remedy this issue. Plaintiff is informed, believes, and thereon alleges that this same timekeeping
15 system is used across all Defendants' facilities, including in California and nationwide.

16 37. Defendants' common course of wage-and-hour abuse includes routinely failing to
17 maintain true and accurate records of the hours worked by Collective and Class members. In
18 particular, Defendants have failed to record hours that Plaintiff and Collective and Class members
19 worked during missed meal breaks as well as hours worked off the clock.

20 38. Defendants' failure to record all hours worked also results in a failure to provide
21 Class members, including Plaintiff, accurate itemized wage statements as required by California
22 law. The wage statements Defendant provides are not accurate because they do not reflect the
23 actual hours worked by Plaintiff and Class members. The wage statements do not contain off-the-
24 clock work or time that should be compensable during interruptible meal breaks. Further, the wage
25 statements are inaccurate because they do not include premium pay for missed breaks, overtime,
26 and work that was performed while the timeclock was out of service.

1 39. Further, Defendants do not provide Class members, including Plaintiff, with full
2 payment of all wages owed at the end of employment. As these workers are owed for off-the-clock
3 work, unpaid overtime, and premium pay when their employment ends, and these amounts remain
4 unpaid under Defendants' policies and practices, Defendants fail to pay all wages due upon
5 termination. As a consequence, Defendants are subject to waiting time penalties.

6 40. Finally, Defendants do not reimburse or compensate Plaintiff and Class members for
7 business expenses incurred for Defendants benefit. Plaintiff and Class members are required to use
8 their personal cell phones, in addition to their radios, in order to stay in constant communication
9 with managers via phone calls and texts, especially once managers are no longer on the premises.
10 Defendants do not reimburse or compensate Plaintiff and Class members for these business
11 expenses.

12 **COLLECTIVE ALLEGATIONS UNDER THE FLSA**

13 41. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set
14 forth herein.

15 42. Plaintiff brings this Complaint as a collective action pursuant to 29 U.S.C. § 216(b)
16 on behalf of the following collective of individuals:

17 All current and former hourly, non-exempt employees of Frontier Management
18 LLC, Frontier Senior Living, LLC, and GH Senior Living, LLC dba Greenhaven
19 Estates Assisted Living, in the United States during the time period three years prior
to the filing of this Complaint until the resolution of this action.

20 43. Defendants have not compensated these employees for all hours worked, including
21 minimum wage and overtime compensation for all hours worked over 40 hours per week.

22 44. Plaintiff's claims for violations of the FLSA may be brought and maintained as an
23 "opt-in" collective action pursuant to Section 216(b) of the FLSA because Plaintiff's FLSA claims
24 are similar to the claims of the Collective members.

1 45. Plaintiff is informed, believes, and thereon alleges that that Collective members have
2 been denied compensation, including overtime compensation for time worked “off-the-clock,”
3 and would therefore likely join this collective action if provided a notice of their rights to do so.

4 46. Plaintiff and the Collective members are similarly situated. Like Plaintiff, Defendants
5 subjected Collective members to Defendants’ common practices, policies, or plans of refusing to
6 pay overtime for all work performed in clear violation of the FLSA. Other hourly, non-exempt
7 employees work, or have worked, for Defendants but were not paid overtime at the rate of one and
8 one-half times their regular hourly rate when those hours exceeded forty per workweek. Other
9 hourly, non-exempt employees also performed compensable work while “off-the-clock” which,
10 when included with their recorded hours, results in additional overtime hours worked that were not
11 compensated at the rate of one and one-half times their regular hourly in violation of the FLSA.

12 47. Although Defendants permitted and/or required Collective members to work in
13 excess of forty hours per workweek, Defendants have denied them full compensation for their
14 hours worked over forty as a result of meal breaks that were interrupted due to work demands and
15 “off-the-clock” work.

16 48. Collective members perform or have performed the same or similar work as Plaintiff.

17 49. Collective members regularly work or have worked in excess of forty hours during a
18 workweek.

19 50. Collective members are not exempt from receiving overtime compensation under the
20 FLSA.

21 51. Defendants’ failure to pay overtime compensation as required by the FLSA resulted
22 from generally applicable policies and practices and did not depend on the personal circumstances
23 of FLSA Collective members.

24 52. This action may be properly maintained as a collective action on behalf of the defined
25 Collective because, throughout the relevant time period:
26
27

- 1 a. Defendants maintained common scheduling systems and policies with respect to
2 Plaintiff and Collective members, controlled the scheduling systems and policies
3 implemented throughout their facilities and retained authority to review and revise
4 or approve the schedules assigned to Plaintiff and Collective members;
- 5 b. Defendants maintained common timekeeping systems and policies with respect to
6 Plaintiff and Collective members; and
- 7 c. Defendants maintained common payroll systems and policies with respect to
8 Plaintiff and Collective members, controlled the payroll systems and policies
9 applied to Plaintiff and Collective members, and set the pay rates assigned to
10 Plaintiff and Collective members.

11 53. Collective members, irrespective of their particular job requirements, are entitled to
12 overtime compensation for hours worked in excess of forty during a workweek.

13 54. Plaintiff and Collective members' claims arise from a common nucleus of operative
14 facts; namely, the continued and willful failure of Defendants to comply with their obligation to
15 legally compensate their employees. Liability is based on a systematic course of wrongful conduct
16 by Defendants that caused harm to all Collective members. Defendants had a plan, policy or
17 practice of not recording or paying Plaintiff and Collective members for interrupted, interruptible,
18 or missed meal and rest breaks, as well as work performed "off-the-clock." These unpaid hours are
19 typically worked in excess of 40 hours per week, and therefore the failure to track these hours
20 results in a violation of the FLSA.

21 55. Plaintiff estimates the Collective, including both current and former employees over
22 the relevant time period, will include upwards of 500 people or more. The precise number of
23 Collective members should be readily available from Defendants' personnel, scheduling, time and
24 payroll records, and from input received from Collective members as part of the notice and "opt-
25 in" process provided by 29 U.S.C. § 216(b). The names and addresses of the Collective members
26 are discoverable from Defendants' records.

27 **RULE 23 CLASS ALLEGATIONS**

1 56. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
2 herein.

3 57. Plaintiff brings this case as a class action on behalf of himself and all others similarly
4 situated pursuant to Federal Rule of Civil Procedure 23. The Class that Plaintiff seeks to represent
5 is defined as follows:

6 All current and former non-exempt employees, employed by Frontier
7 Management LLC, Frontier Senior Living, LLC, and GH Senior Living,
8 LLC dba Greenhaven Estates Assisted Living in California during the time
9 period four years prior to the filing of original complaint until the resolution
10 of this action.

11 58. This action has been brought and may properly be maintained as a class action under
12 Federal Rule of Civil Procedure 23 because there is a well-defined community of interest in the
13 litigation and the Class is easily ascertainable.

14 a. **Numerosity:** The potential members of the Class as defined are so numerous that
15 joinder of all the members of the Class is impracticable. Plaintiff is informed and believes
16 that the number of Class members exceeds 500. This volume makes bringing the claims of
17 each individual member of the class before this Court impracticable. Likewise, joining each
18 individual member of the Class as a plaintiff in this action is impracticable. Furthermore, the
19 identities of the Class will be determined from Defendants' records, as will the compensation
20 paid to each of them. As such, a class action is a reasonable and practical means of resolving
21 these claims. To require individual actions would prejudice the Class and Defendants.

22 b. **Commonality:** There are questions of law and fact common to Plaintiff and the
23 Class that predominate over any questions affecting only individual members of the Class.
24 These common questions of law and fact include, but are not limited to:

- 25 i. Whether Defendants fail to compensate putative Class members for all
26 hours worked in violation of the California Labor Code, Wage Orders, and
27 Business and Professions Code §§ 17200 et seq.;
- 28 ii. Whether Defendants fail to compensate putative Class members with at

1 least minimum wage for all compensable work time in violation of the
2 California Labor Code, Wage Orders, and Business and Professions Code
3 §§ 17200 et seq.;

- 4 iii. Whether Defendants fail to compensate putative Class members with
5 overtime wages for work performed in excess of eight hours in a day in
6 violation of the California Labor Code, Wage Orders, and Business and
7 Professions Code §§ 17200 et seq.;
- 8 iv. Whether Defendants fail to authorize, permit, make available, and/or
9 provide putative Class members with compliant meal periods to which
10 they are entitled in violation of the California Labor Code, Wage Orders,
11 and Business and Professions Code §§ 17200 et seq.;
- 12 v. Whether Defendants fail to authorize, permit, make available, and/or
13 provide putative Class members with compliant rest periods to which they
14 are entitled in violation of the California Labor Code, Wage Orders, and
15 Business and Professions Code §§ 17200 et seq.;
- 16 vi. Whether Defendants fail to reimburse putative Class members for
17 reasonable business expenses that they incur in violation of the California
18 Labor Code, Wage Orders, and Business and Professions Code §§ 17200
19 et seq.;
- 20 vii. Whether Defendants fail to provide putative Class members with timely,
21 accurate itemized wage statements in violation of the California Labor
22 Code, Wage Orders, and Business and Professions Code §§ 17200 et seq.;
- 23 viii. Whether Defendants fail to timely pay Class members for all wages owing
24 upon termination of employment in violation of the California Labor
25 Code, Wage Orders, and Business and Professions Code § 17200 et seq.;
- 26 and
- 27

1 ix. The proper formula for calculating restitution, damages and penalties
2 owed to Plaintiff and the putative Class alleged herein.

3 c. **Typicality:** Plaintiff's claims are typical of the claims of the Class. Defendants'
4 common course of conduct in violation of law as alleged herein has caused Plaintiff and
5 Putative Class members to sustain the same or similar injuries and damages. Plaintiff's
6 claims are thereby representative of and co-extensive with the claims of the Class.

7 d. **Adequacy of Representation:** Plaintiff is a member of the Class, he does not
8 have any conflicts of interest with other Class members and will prosecute the case
9 vigorously on behalf of the Class. Counsel representing Plaintiff is competent and
10 experienced in litigating large employment class actions, including misclassification and
11 wage and hour class actions. Plaintiff will fairly and adequately represent and protect the
12 interests of the Class members.

13 e. **Superiority of Class Action:** A class action is superior to other available means
14 for the fair and efficient adjudication of this controversy. Individual joinder of all Class
15 members is not practicable, and questions of law and fact common to the Class predominate
16 over any questions affecting only individual members of the Class. Each Class member has
17 been damaged and is entitled to recovery by reason of Defendants' illegal policies and/or
18 practices. Class action treatment will allow those similarly situated persons to litigate their
19 claims in the manner that is most efficient and economical for the parties and the judicial
20 system. The injury suffered by each Class member, while meaningful on an individual basis,
21 is not of such magnitude as to make the prosecution of individual actions against Defendants
22 economically feasible. Individualized litigation increases the delay and expense to all Parties
23 and the Court. By contrast, class action treatment will allow those similarly situated persons
24 to litigate their claims in the manner that is most efficient and economical for the parties and
25 the judicial system.

1 59. In the alternative, the Class may be certified because the prosecution of separate
2 actions by the individual members of the Class would create a risk of inconsistent or varying
3 adjudication with respect to individual members of the Class, and, in turn, would establish
4 incompatible standards of conduct for Defendant.

5 60. If each individual Class member were required to file an individual lawsuit,
6 Defendants would necessarily gain an unconscionable advantage because Defendants would be
7 able to exploit and overwhelm the limited resources of each member of the Class with Defendants'
8 vastly superior financial legal resources.

9 61. Requiring each individual Class member to pursue an individual remedy would also
10 discourage the assertion of lawful claims by the Class members who would be disinclined to
11 pursue these claims against Defendants because of an appreciable and justifiable fear of retaliation
12 and permanent damage to their lives, careers and well-being.

13
14 **FIRST CAUSE OF ACTION**
15 **Violation of the Fair Labor Standards Act**
16 **Pursuant to 29 U.S.C. §§ 201, et seq.**
17 **(Against Defendants – on Behalf of the Collective)**

18 62. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set
19 forth herein.

20 63. The FLSA requires that covered employees receive compensation for all hours
21 worked and overtime compensation of not less than one and one-half times the regular rate of pay
22 for all hours worked in excess of forty hours in a workweek. 29 U.S.C. §§ 206(a)(1), 207(a)(1).

23 64. At all times material herein, Plaintiff and the Collective are covered employees
24 entitled to the rights, protections, and benefits provided under the FLSA. 29 U.S.C. §§ 203(e) and
25 207(a).

26 65. Defendants are covered employers required to comply with the FLSA's mandates.

27 66. Defendants have violated the FLSA with respect to Plaintiff and the Collective, by,
28 *inter alia*, failing to compensate Plaintiff and the Collective for all hours worked and, with respect

1 to such hours, failing to pay the legally mandated overtime premium for such work and/or
2 minimum wage. Defendants have also violated the FLSA by failing to keep required, accurate
3 records of all hours worked by Plaintiff and the Collective. 29 U.S.C. § 211(c).

4 67. Plaintiff and the Collective are victims of a uniform and company-wide
5 compensation policy that has been applied to current and former non-exempt, hourly employees of
6 Defendants, working throughout the United States.

7 68. Plaintiff and the Collective are entitled to damages equal to the mandated pay,
8 including minimum wage, straight time, and overtime premium pay within the three years
9 preceding the filing of the complaint, plus periods of equitable tolling, because Defendants have
10 acted willfully and knew or showed reckless disregard for whether the alleged conduct was
11 prohibited by the FLSA.

12 69. Defendants have acted neither in good faith nor with reasonable grounds to believe
13 that their actions and omissions were not a violation of the FLSA, and as a result thereof, Plaintiff
14 and the Collective are entitled to recover an award of liquidated damages in an amount equal to
15 the amount of unpaid overtime pay and/or prejudgment interest at the applicable rate. 29 U.S.C. §
16 216(b).

17 70. Pay, including minimum wage, straight time, and overtime compensation, has been
18 unlawfully withheld by Defendants from Plaintiff and the Collective as a result of the Defendants'
19 violations of the FLSA. Accordingly, Defendants are liable for unpaid wages, together with an
20 amount equal as liquidated damages, attorneys' fees, and costs of this action.

21 71. Wherefore, Plaintiff and the Collective request relief as hereinafter provided.

22 **SECOND CAUSE OF ACTION**
23 **Failure to Pay Minimum Wages**
24 **Pursuant to California Labor Code § 1194**
25 **(Against All Defendants – on Behalf of the Class)**

26 72. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
27 herein.

28 73. Defendants fail to compensate Plaintiff and putative Class members with at least the

1 minimum wage for all hours worked or spent in Defendant's control because Plaintiff and the
2 putative Class members are paid at rates at or just above the applicable California minimum, and
3 when the required premium payments for missed breaks, wages for off-the-clock work, and
4 overtime wages are factored in, the actual rate of pay often drops below the applicable California
5 minimum.

6 74. Defendants have maintained policies and procedures which created a working
7 environment where Plaintiff and Class members are routinely compensated at a rate that is less
8 than the statutory minimum wage.

9 75. During the applicable statutory period, Labor Code §§1182.11, 1182.12 and 1197,
10 and the Minimum Wage Order were in full force and effect and required that Defendant's
11 employees receive the minimum wage for all hours worked irrespective of whether nominally paid
12 on a piece rate, or any other bases, at the rate of ten dollars (\$10.00) per hour commencing January
13 1, 2016.

14 76. IWC Wage Order 4-2001(2)(K) defines hours worked as "the time during which an
15 employee is subject to the control of an employer, and includes all the time the employee is
16 suffered or permitted to work, whether or not required to do so."

17 77. Labor Code § 1194(a) provides as follows:

18 Notwithstanding any agreement to work for a lesser wage, any employee
19 receiving less than the legal minimum wage or the legal overtime
20 compensation applicable to the employee is entitled to recover in a civil
21 action the unpaid balance of the full amount of this minimum wage or
22 overtime compensation, including interest thereon, reasonable attorneys'
23 fees, and costs of suit.

24 78. Because of Defendant's policies and practices with regard to compensating Plaintiff
25 and Class members, Defendants have failed to pay minimum wages as required by law. Plaintiff
26 and Class members frequently perform work for which they are compensated below the statutory
27 minimum, as determined by the IWC.

1 excess of 12 hours in one day shall be compensated at the rate of no less
2 than twice the regular rate of pay for an employee. In addition, any work
3 in excess of eight hours on any seventh day of a workweek shall be
4 compensated at the rate of no less than twice the regular rate of pay of an
5 employee.

6 87. The IWC Wage Order 4-2001(3)(A)(1) states:

7 [E]mployees shall not be employed more than eight (8) hours in any
8 workday or more than 40 hours in any workweek unless the employee
9 receives one and one-half (1 ½) times such employee's regular rate of pay
10 for all hours worked over 40 hours in the workweek. Eight (8) hours of
11 labor constitutes a day's work. Employment beyond eight (8) hours in any
12 workday or more than six (6) days in any workweek is permissible
13 provided the employee is compensated for such overtime at not less than:
14 . . . One and one-half (1 ½) times the employee's regular rate of pay for all
15 hours worked in excess of eight (8) hours up to and including 12 hours in
16 any workday, and for the first eight (8) hours worked on the seventh (7th)
17 consecutive day of work in a workweek; and . . . Double the employee's
18 regular rate of pay for all hours worked in excess of 12 hours in any
19 workday and for all hours worked in excess of eight (8) hours on the
20 seventh (7th) consecutive day of work in a workweek[.] . . .

21 88. Labor Code § 1194(a) provides as follows:

22 Notwithstanding any agreement to work for a lesser wage, any employee
23 receiving less than the legal minimum wage or the legal overtime
24 compensation applicable to the employee is entitled to recover in a civil
25 action the unpaid balance of the full amount of this minimum wage or
26 overtime compensation, including interest thereon, reasonable attorney's
27 fees, and costs of suit.

28 89. Labor Code § 200 defines wages as "all amounts for labor performed by employees
of every description, whether the amount is fixed or ascertained by the standard of time, task,
piece, commission basis or other method of calculation." All such wages are subject to
California's overtime requirements, including those set forth above.

90. Defendants often require Plaintiff and Class members to work in excess of eight
hours per day. Defendants do not compensate Plaintiff and Class members at an overtime rate for
hours in excess of eight hours each day or in excess of forty in each week, nor does Defendants

1 compensate Plaintiff and Class members at a double time rate for hours in excess of twelve each
2 day or in excess of eight on the seventh consecutive day.

3 91. Plaintiff and Class members have worked overtime hours for Defendants without
4 being paid overtime premiums in violation of the Labor Code, the applicable IWC Wage Order,
5 and other applicable law.

6 92. Defendants have knowingly and willfully refused to properly compensate Plaintiff
7 and the Class for overtime work. As a proximate result of the aforementioned violations,
8 Defendants have damaged Plaintiff and the Class in amounts to be determined according to proof
9 at time of trial, but in an amount in excess of the jurisdictional requirements of this Court.

10 93. Defendants are liable to Plaintiff and the Class alleged herein for the unpaid overtime
11 and civil penalties, with interest thereon. Furthermore, Plaintiff is entitled to an award of
12 attorneys' fees and costs as set forth below.

13 94. Wherefore, Plaintiff and the Class request relief as hereinafter provided.
14

15 **FOURTH CAUSE OF ACTION**
16 **Failure to Authorize and Permit, Provide and/or Make Available Meal and Rest Periods**
17 **Pursuant to California Labor Code §§ 226.7 and 512**
18 **(Against All Defendants – on Behalf of the Class)**

19 95. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
20 herein.

21 96. Defendants require Plaintiff and Class members to respond to calls at all times during
22 their shifts, even if this means cutting breaks short or not being relieved for breaks at all.

23 97. Defendants do not pay Plaintiff and Class members one hour of premium pay for the
24 missed meal and rest breaks.

25 98. Labor Code §§ 226.7 and 512 and the applicable Wage Order requires Defendants to
26 authorize and permit meal and rest periods to its employees. Labor Code §§ 226.7 and 512 and the
27 Wage Order prohibit employers from employing an employee for more than five hours without a
28 meal period of not less than thirty minutes, and from employing an employee more than ten hours

1 per day without providing the employee with a second meal period of not less than thirty minutes.
2 Section 226.7 and the applicable Wage Order also require employers to authorize and permit
3 employees to take ten minutes of net rest time per four hours or major fraction thereof of work, and
4 to pay employees their full wages during those rest periods. Unless the employee is relieved of all
5 duty during the thirty-minute meal period and ten-minute rest period, the employee is considered
6 “on duty” and the meal or rest period is counted as time worked under the applicable wage orders.

7 99. Under § 226.7(b) and the applicable Wage Order, an employer who fails to authorize,
8 permit, and/or make available a required meal period must, as compensation, pay the employee one
9 hour of pay at the employee’s regular rate of compensation for each workday that the meal period
10 was not authorized and permitted. Similarly, an employer must pay an employee denied a required
11 rest period one hour of pay at the employee’s regular rate of compensation for each workday that
12 the rest period was not authorized and permitted and/or not made available

13 100. Despite these requirements, Defendants knowingly and willfully refuse to perform
14 their obligations to authorize and permit and/or make available to Plaintiff and the Class the ability
15 to take the off-duty meal and rest periods to which they are entitled. Defendants also fail to pay
16 Plaintiff and the Class one hour of pay for each off-duty meal and/or rest periods that they are
17 denied. Defendants’ conduct described herein violates Labor Code §§ 226.7 and 512. Therefore,
18 pursuant to Labor Code § 226.7(b), Plaintiff and the Class are entitled to compensation for the
19 failure to authorize and permit and/or make available meal and rest periods, plus interest, attorneys’
20 fees, expenses and costs of suit.

21 101. As a proximate result of the aforementioned violations, Plaintiff and the Class have
22 been damaged in an amount according to proof at time of trial.

23 102. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

24 **FIFTH CAUSE OF ACTION**
25 **Failure to Pay for All Hours Worked**
26 **Pursuant to California Labor Code §§ 200, 204, 1194, and 1198**
27 **(Against All Defendants – on Behalf of the Class)**

28 103. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth

1 herein.

2 104. Plaintiff alleges that Defendants willfully engaged and continue to engage in a policy
3 and practice of not compensating Plaintiff and putative Class members for all hours worked or
4 spent in Defendants' control.

5 105. Defendants regularly require Plaintiff and putative Class members to perform
6 uncompensated off-the-clock work. Detailed above, Defendants require Plaintiff and putative Class
7 members to clock out for meal breaks but then require, suffer, and/or permit them to work through
8 these meal breaks.

9 106. Labor Code § 200 defines wages as "all amounts for labor performed by employees
10 of every description, whether the amount is fixed or ascertained by the standard of time, task,
11 piece, commission basis or method of calculation."

12 107. Labor Code § 204(a) provides that "[a]ll wages ... earned by any person in any
13 employment are due and payable twice during each calendar month...."

14 108. Labor Code § 1194(a) provides as follows:

15 Notwithstanding any agreement to work for a lesser wage, any employee receiving
16 less than the legal minimum wage or the legal overtime compensation applicable to
17 the employee is entitled to recover in a civil action the unpaid balance of the full
18 amount of this minimum wage or overtime compensation, including interest thereon,
19 reasonable attorneys' fees, and costs of suit.

20 109. Labor Code § 1198 makes it unlawful for employers to employ employees under
21 conditions that violate the Wage Order.

22 110. IWC Wage Order 4-2001(2)(K) defines hours worked as "the time during which an
23 employee is subject to the control of an employer, and includes all the time the employee is
24 suffered or permitted to work, whether or not required to do so...."

25 111. In violation of California law, Defendants knowingly and willfully refuse to perform
26 its obligation to provide Plaintiff and putative Class members with compensation for all time
27 worked. Therefore, Defendants committed, and continue to commit, the acts alleged herein
28 knowingly and willfully, and in conscious disregard of Plaintiff's and putative Class members'

1 rights. Plaintiff and putative Class members are thus entitled to recover nominal, actual, and
2 compensatory damages, plus interest, attorneys' fees, expenses and costs of suit.

3 112. As a proximate result of the aforementioned violations, Plaintiff and the putative
4 Class have been damaged in an amount according to proof at time of trial.

5 113. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

6 **SIXTH CAUSE OF ACTION**
7 **Failure to Provide Accurate Itemized Wage Statements**
8 **Pursuant to California Labor Code § 226**
9 **(Against All Defendants – on Behalf of the Class)**

10 114. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
11 herein.

12 115. Defendants do not provide Plaintiff and Class members with accurate itemized wage
13 statements as required by California law.

14 116. Labor Code § 226(a) provides:

15 An employer, semimonthly or at the time of each payment of wages, shall furnish to
16 his or her employee, either as a detachable part of the check, draft, or voucher paying
17 the employee's wages, or separately if wages are paid by personal check or cash, an
18 accurate itemized statement in writing showing (1) gross wages earned, (2) total
19 hours worked by the employee, except as provided in subdivision (i), (3) the number
20 of piece-rate units earned and any applicable piece rate if the employee is paid on a
21 piece-rate basis, (4) all deductions, provided that all deductions made on written
22 orders of the employee may be aggregated and shown as one item, (5) net wages
23 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
24 name of the employee and only the last four digits of his or her social security number
25 or an employee identification number other than a social security number, (8) the
26 name and address of the legal entity that is the employer and, if the employer is a
27 farm labor contractor, as defined in subdivision (b) of Section 1682, the name and
28 address of the legal entity that secured the services of the employer, and (9) all
applicable hourly rates in effect during the pay period and the corresponding number
of hours worked at each hourly rate by the employee...

117. The IWC Wage Order also establishes this requirement. (See IWC Wage Order 4-
2001(7)).

118. Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of a knowing and intentional failure
by an employer to comply with subdivision (a) is entitled to recover the greater

1 of all actual damages or fifty dollars (\$50) for the initial pay period in which a
2 violation occurs and one hundred dollars (\$100) per employee for each violation
3 in a subsequent pay period, not exceeding an aggregate penalty of four thousand
4 dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

5 119. Plaintiff seeks to recover actual damages, costs and attorneys' fees under this section.

6 120. Defendants have failed to provide timely, accurate itemized wage statements to
7 Plaintiff and Class members in accordance with Labor Code § 226(a) and the IWC Wage Order.
8 The wage statements Defendants provide their employees, including Plaintiff and Class members,
9 do not reflect the actual hours worked, actual gross wages earned, or actual net wages earned. The
10 wage statements are simply a record of shifts worked, and the amount earned per shift.

11 121. Defendants are liable to Plaintiff and the Class alleged herein for the amounts
12 described above in addition to the civil penalties set forth below, with interest thereon.
13 Furthermore, Plaintiff is entitled to an award of attorneys' fees and costs as set forth below.

14 122. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

15 **SEVENTH CAUSE OF ACTION**
16 **Waiting Time Penalties**
17 **Pursuant to California Labor Code §§ 201-203**
18 **(Against All Defendants – on Behalf of the Class)**

19 123. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
20 herein.

21 124. Defendants do not provide Class members whose employment with Defendants has
22 ended, including Plaintiff, with their wages due at the time their employment ends as required
23 under California law.

24 125. Labor Code § 201 provides:

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

27 126. Labor Code § 202 provides:

28 If an employee not having a written contract for a definite period quits his
or her employment, his or her wages shall become due and payable not later
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.

1 127. 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, 202, and 205.5, any wages of an employee
4 who is discharged or who quits, the wages of the employee shall continue as
a penalty from the due date thereof at the same rate until paid or until an action
therefor is commenced; but the wages shall not continue for more than 30 days.

5 128. Class members have left their employment with Defendants during the statutory
6 period, at which time Defendants owed them unpaid wages, including overtime and double time
7 wages.

8 129. Defendants willfully refuse and continue to refuse to pay former Class members all
9 the wages that are due and owing them, in the form of, *inter alia*, overtime and double time pay
10 and meal and rest period premium pay, upon the end of their employment. As a result of
11 Defendants' actions, Plaintiff and Class members have suffered and continue to suffer substantial
12 losses, including lost earnings, and interest.

13 130. Defendants' willful failure to pay Class members the wages due and owing them
14 constitutes a violation of Labor Code §§ 201-202. As a result, Defendants are liable to Class
15 members for all penalties owing pursuant to Labor Code §§ 201-203.

16 131. In addition, § 203 provides that an employee's wages will continue as a penalty up to
17 thirty days from the time the wages were due. Therefore, Plaintiff and Class members are entitled
18 to penalties pursuant to Labor Code § 203, plus interest.

19 132. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

20 **EIGHTH CAUSE OF ACTION**
21 **Failure to Reimburse for Necessary Business Expenses**
22 **Pursuant to California Labor Code § 2802**
23 **(Against All Defendants – on Behalf of the Class)**

24 133. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
herein.

25 134. Defendants do not reimburse Plaintiff and Class members for necessary business
26 expenses.

27 135. Labor Code § 2802(a) provides as follows:

1 An employer shall indemnify his or her employee for all necessary
2 expenditures or losses incurred by the employee in direct consequence
3 of the discharge of his or her duties, or of his or her obedience to the
4 directions of the employer, even though unlawful, unless the employee,
5 at the time of obeying the direction, believed them to be lawful.

6 136. Defendants require Plaintiff and Class members to use their personal mobile devices
7 for Defendants' benefit. Defendants does not reimburse Plaintiff or Class members for these
8 expenses that are necessary to perform their daily work assignments.

9 137. Defendants are liable to Plaintiff and Class members for the unreimbursed expenses
10 and civil penalties, with interest thereon. Furthermore, Plaintiff is entitled to an award of attorneys'
11 fees and costs as set forth below.

12 138. As a direct and proximate result of the aforementioned violations, Plaintiff and Class
13 members have been damaged in an amount according to proof at time of trial.

14 139. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

15 **NINTH CAUSE OF ACTION**

16 **Unfair Business Practices**

17 **Pursuant to California Business and Professions Code §§ 17200, *et seq.***
18 **(Against All Defendants – on Behalf of the Class)**

19 140. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
20 herein.

21 141. Business and Professions Code §§17200 *et seq.* prohibits unfair competition in the
22 form of any unlawful, unfair or fraudulent business acts or practices.

23 142. Business and Professions Code § 17204 allows a person injured by the unfair
24 business acts or practices to prosecute a civil action for violation of the UCL.

25 143. Labor Code § 90.5(a) states it is the public policy of California to vigorously enforce
26 minimum labor standards in order to ensure employees are not required to work under substandard
27 and unlawful conditions, and to protect employers who comply with the law from those who
28 attempt to gain competitive advantage at the expense of their workers by failing to comply with
minimum labor standards.

144. Beginning at an exact date unknown to Plaintiff, but at least since the date four years

1 prior to the filing of this suit, Defendants have committed acts of unfair competition as defined by
2 the Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent business acts
3 and practices described in this Complaint, including, but not limited to:

- 4 a. violations of Labor Code § 1194 and IWC Wage Order pertaining to the payment
5 of wages;
- 6 b. violations of Labor Code § 510 and applicable IWC Wage Orders pertaining to
7 overtime;
- 8 c. violations of Labor Code §§ 1182.11, 1182.12, and 1197 and IWC wage orders
9 pertaining to minimum wage;
- 10 d. violations of Labor Code §§ 226.7 and 512 and IWC wage orders pertaining to
11 meal and rest breaks;
- 12 e. violations of Labor Code § 226 regarding accurate, timely itemized wage
13 statements; and
- 14 f. violations of Labor Code §§ 201-203.
- 15 g. violations of Labor Code § 2802

16 145. The violations of these laws and regulations, as well as of the fundamental California
17 public policies protecting wages and discouraging overtime labor underlying them, serve as
18 unlawful predicate acts and practices for purposes of Business and Professions Code §§ 17200 *et*
19 *seq.*

20 146. The acts and practices described above constitute unfair, unlawful and fraudulent
21 business practices, and unfair competition, within the meaning of Business and Professions Code
22 §§ 17200, *et seq.* Among other things, the acts and practices have taken from Plaintiff and the
23 Class wages rightfully earned by them, while enabling Defendants to gain an unfair competitive
24 advantage over law-abiding employers and competitors.

25 147. Business and Professions Code § 17203 provides that a court may make such orders
26 or judgments as may be necessary to prevent the use or employment by any person of any practice
27

1 which constitutes unfair competition. Injunctive relief is necessary and appropriate to prevent
2 Defendants from repeating their unlawful, unfair, and fraudulent business acts and practices alleged
3 above.

4 148. As a direct and proximate result of the aforementioned acts and practices, Plaintiff
5 and the Class members have suffered a loss of money and property, in the form of unpaid wages
6 which are due and payable to them.

7 149. Business and Professions Code §17203 provides that the Court may restore to any
8 person in interest any money or property which may have been acquired by means of such unfair
9 competition. Plaintiff and the Class are entitled to restitution pursuant to Business and Professions
10 Code §17203 for all wages and payments unlawfully withheld from employees during the four-
11 year period prior to the filing of this Complaint. Plaintiff's success in this action will enforce
12 important rights affecting the public interest and in that regard Plaintiff sues on behalf of himself as
13 well as others similarly situated. Plaintiff and Class members seek and are entitled to unpaid
14 wages, declaratory and injunctive relief, and all other equitable remedies owing to them.

15 150. Plaintiff herein takes upon himself enforcement of these laws and lawful claims.
16 There is a financial burden involved in pursuing this action, the action is seeking to vindicate a
17 public right, and it would be against the interests of justice to penalize Plaintiff by forcing them to
18 pay attorneys' fees from the recovery in this action. Attorneys' fees are appropriate pursuant to
19 Code of Civil Procedure §1021.5 and otherwise.

20 151. Wherefore, Plaintiff and the Class request relief as hereinafter provided.

21 **PRAAYER FOR RELIEF**

22 WHEREFORE, Plaintiff, on behalf of herself and the putative Class and Collective she seeks
23 to represent in this action, requests the following relief:

- 24 1. For an order certifying that the First Cause of Action in this Complaint may be
25 maintained as a collective action pursuant to 29 U.S.C. § 216(b) and that prompt
26

1 notice of this action be issued to potential members of the Collective, apprising them
2 of the pendency of this action, and permitting them to assert their FLSA claims;

3 2. For an order equitably tolling the statute of limitations for the potential members of
4 the Collective;

5 3. Damages and restitution according to proof at trial for all unpaid wages and other
6 injuries, as provided by the FLSA, California Labor Code, and California Business
7 and Professions Code;

8 4. For a declaratory judgment that Defendants have violated the FLSA, California Labor
9 Code, and public policy as alleged herein;

10 5. For a declaratory judgment that Defendants have violated California Business and
11 Professions Code §§ 17200 et seq., as a result of the aforementioned violations of the
12 California Labor Code and of California public policy protecting wages;

13 6. For preliminary, permanent, and mandatory injunctive relief prohibiting Defendants,
14 its officers, agents, and all those acting in concert with them from committing in the
15 future those violations of law herein alleged;

16 7. For an equitable accounting to identify, locate, and restore to all current and former
17 employees the wages they are due, with interest thereon;

18 8. For an order awarding Plaintiff and the Class members compensatory damages,
19 including lost wages, earnings, liquidated damages, and other employee benefits,
20 restitution, recovery of all money, actual damages, and all other sums of money owed
21 to Plaintiff and Class members, together with interest on these amounts, according to
22 proof;

23 9. For an order awarding Plaintiff and Class and Collective members civil penalties
24 pursuant to the FLSA, California Labor Code, and the laws of the State of California,
25 with interest thereon;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 10. For an award of reasonable attorneys’ fees as provided by the California Labor Code, California Code of Civil Procedure § 1021.5, the laws of the State of California, the FLSA, and/or other applicable law;
- 11. For all costs of suit;
- 12. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

Date: September 6, 2019

/s/ Carolyn H. Cottrell
Carolyn H. Cottrell
Ori Edelstein
SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYNYS LLP

Attorneys for Plaintiff and the Putative Class and
Collective

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to a jury.

Respectfully submitted,

Date: September 6, 2019

/s/ Carolyn H. Cottrell
Carolyn H. Cottrell
Ori Edelstein
SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYNs LLP

Attorneys for Plaintiff and the Putative Class and Collective