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Kern County Superior Court
By Layton Johnson, Deputy

Attorneys for Plaintiff and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN

ELIZABETH FENLEY, individually, and
on behalf all persons similarly situated;

Plaintiff,

v.

REALOGY FRANCHISE GROUP LLC;
SOTHEBY'S INTERNATIONAL
REALTY, INC.; WISH PROPERTIES,
INC.; and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: BCV-19-101151

CLASS ACTION COMPLAINT, CCP §382:

- 1) Failure to Reimburse for Necessary Expenses and Losses in Violation of Labor Code § 2802;
- 2) Failure to Provide Accurate Wage Statements in Violation of Labor Code § 226;
- 3) Failure to Timely Pay All Wages Due and Owing in Violation of Labor Code § 203; and
- 4) Unfair Business Practices in Violation of Business and Professions Code § 17200.

JURY TRIAL DEMAND

1 Comes now Plaintiff ELIZABETH FENLEY, on behalf of herself and all others similarly
2 situated (hereinafter “Plaintiffs”) and hereby complains and alleges against the Defendants
3 REALOGY FRANCHISE GROUP LLC; SOTHEBY’S INTERNATIONAL REALTY, INC.; and
4 WISH PROPERTIES, INC. (collectively “Defendants”) as follows:

5 **I.**

6 **JURISDICTION AND VENUE**

7 1. The Superior Court of the State of California, for the County of Kern, has original
8 jurisdiction over the state law claims alleged herein pursuant to the California Constitution.

9 2. Venue is proper in this Court because Defendant REALOGY FRANCHISE
10 GROUP LLC has designated with the California Secretary of State that it is a foreign corporation
11 with its principle place of business in California at 1430 Truxton Ave., 5th Floor, Bakersfield, CA,
12 93301, and many of the alleged violations of the Labor Code and the violations of B&PC §§17200
13 et seq. occurred in whole or in part in Kern County; and Defendants REALOGY FRANCHISE
14 GROUP LLC and SOTHEBY’S INTERNATIONAL REALTY, INC regularly conduct business
15 in Kern County. *Easton v. Sup.Ct. (Schneider Bros., Inc.)* (1970) 12 CA3d 243, 246-247, 90 CR
16 642, 644.

17 **II.**

18 **PARTIES**

19 3. Representative Plaintiff, ELIZABETH FENLEY, is a resident of California and
20 worked for Defendants as a sales associate during the applicable statute of limitations period.

21 4. Defendant REALOGY FRANCHISE GROUP LLC (“Realogy”) is a Delaware
22 limited liability company, with a principal place of business at 1430 Truxton Ave., 5th Floor,
23 Bakersfield, CA, 93301.

24 5. Defendant SOTHEBY’S INTERNATIONAL REALTY, INC. (“Sotheby’s”) is a
25 foreign corporation incorporated in the state of Michigan, with a principal place of business at 175
26 Park Avenue, Madison, New Jersey 07940.

27 6. Defendant WISH PROPERTIES, INC. (“Wish”) is a California corporation, with a
28 principal place of business at 13501 Ventura Blvd., Sherman Oaks, California 91423.

1 7. At all times relevant, Defendants, and each of them, acted as Plaintiff’s “employer,”
2 as defined by the Cal.Code Regs., tit. 8, § 11140, subd. 2(C) and interpreted in *Martinez v. Combs*,
3 49 Cal. 4th 35, 231 P.3d 259 (2010), as modified (June 9, 2010), and were actively engaged in the
4 conduct described herein. Throughout the relevant period, Defendants employed Plaintiff and
5 similarly-situated employees within the meaning of the California Labor Code.

6 8. At all relevant times, each Defendant was an agent, employee, joint-venturer,
7 shareholder, director, member, co-conspirator, alter ego, master, or partner of each of the other
8 Defendants, and at all times mentioned herein was acting within the scope and course and in
9 pursuance of his, her, or its agency, joint venture, partnership, employment, common enterprise, or
10 actual or apparent authority in concert with each other and the other Defendants.

11 9. At all relevant times, the acts and omissions of Defendants concurred and
12 contributed to the various acts and omissions of each and every one of the other Defendants in
13 proximately causing the complaints, injuries, and damages alleged herein. At all relevant times
14 herein, Defendants approved of, condoned and/or otherwise ratified each and every one of the acts
15 or omissions complained of herein. At all relevant times herein, Defendants aided and abetted the
16 acts and omissions of each and every one of the other Defendants thereby proximately causing the
17 damages as herein alleged.

18 10. Plaintiff is ignorant of the true names and capacities, whether individual, corporate
19 or otherwise, of the fictitiously named defendants designated as DOES 1 - 10, inclusive. Plaintiff
20 is informed and believes, and thereon alleges, that each fictitiously named defendant was in some
21 way responsible for, participated in, or contributed to the matters and things complained of
22 herein, and is legally responsible for the damages complained of herein.

23 **III.**

24 **FACTS**

25 **Realogy, Sotheby’s, and Wish are Joint Employers of Plaintiff**

26 11. Realogy operates as a franchisor of residential and commercial real estate
27 brokerage offices in the United States and internationally. The company’s brands include Better
28 Homes and Gardens Real Estate, CENTURY 21, Coldwell Banker, Coldwell Banker Commercial,
ERA, Sotheby’s International Realty, Corcoran, and Climb Real Estate. As it explains on its

1 website, “The Realogy Franchise Group delivers value to sales agents and brokers by providing
2 powerful marketing, mentorship and training, general sales support systems, services and tools.
3 [¶] Realogy-affiliated brands have over 16,300 offices and approximately 300,000 independent
4 sales associates doing business in 113 countries and territories around the world, including over
5 760 company offices owned and operated by NRT LLC, a Realogy subsidiary. *See*
6 <https://www.realogy.com/about/franchising> (last visited January 29, 2019).

7 12. Realogy’s parent company summarizes the Realogy Franchise Group’s business
8 model as follows: “Our franchisees pay us fees for the right to operate under one of our trademarks
9 and to enjoy the benefits of the systems and business enhancing tools provided by our real estate
10 franchise operations. In addition to highly competitive brands that provide unique offerings to our
11 franchisees, we support our franchisees with dedicated national marketing and servicing programs,
12 technology including the Zap® technology platform described below, training and education to
13 facilitate our franchisees in growing their business and increasing their revenue and profitability.”
14 *See* Realogy Holdings Corp. SEC Form 10-K, for the fiscal year ended December 31, 2016
15 (“Realogy 10-K”), available at <https://ir.realogy.com/node/11046/html> (last visited January 29,
16 2019).

17 13. Realogy’s parent company, Realogy Holdings Corp., owns all of the above brands
18 except for the Sotheby's International Realty and Better Homes and Gardens Real Estate brands.

19 14. Sotheby’s International Realty is a luxury real estate brand owned by the Sotheby’s
20 Auction House. Sotheby’s International Realty operates as a franchise focusing on brokering and
21 marketing of residential luxury real estate. In February 2004, Realogy entered into a long-term
22 strategic alliance with Sotheby’s Auction House. The agreement provided for the licensing of the
23 Sotheby’s International Realty name and the development of a full franchise system. Affiliations
24 in the system are granted to brokerages and individuals meeting Realogy's qualifications.

25 15. Defendants hire sales associates to rent, buy, and sell real estate for clients. Sales
26 associates work closely with clients to develop and implement a renting, buying, or selling plan
27 for the client. Sales associate then assist the client through the many legal and contractual aspects
28 of the purchase or sale.

1 16. Through its company owned and affiliated real estate brands, such as Sotheby’s,
2 Realogy exercises control over the wages, hours, and working conditions of sales associates
3 employed by franchisee brokerages, such as Wish. For example, Realogy controls the hiring of
4 sales associates by dictating the legal relationship that its franchisees must have with their sales
5 associates. Specifically, Realogy requires that franchisees contract with their sales associates to
6 provide work as independent contractors, not as employees. Realogy does not allow franchisees
7 to hire sales associates as employees. Further, Realogy exerts additional control over who a
8 franchisee may hire, and only allows franchisees to hire “individuals meeting [Realogy’s] strict
9 qualifications.” See <https://www.sothebysrealty.com/eng/become-an-affiliate-international> (last
10 visited January 29, 2019). Once hired, Realogy directly controls how sales associates must perform
11 their jobs, including among other things, how sales associates may market themselves to the
12 public. In other words, Realogy directly controls the type, nature, and identity of the legal
13 relationships that its franchisees are allowed to have with their sales associates.

14 **Defendants Uniformly Misclassified Sales Associates as Independent Contractors**

15 17. Realogy’s control over the legal relationships between its franchisees and affiliated
16 sales associates is particularly significant in the context of California’s test for determining
17 whether workers in California should be classified as employees or as independent contractors for
18 purposes of the wage orders adopted by California’s Industrial Welfare Commission (“IWC”).
19 While Realogy dictates that its company-owned and franchisee brokerages must hire sales
20 associates on an independent contractor basis, and all sales associates affiliated with Defendants
21 were hired on that basis, California’s real estate licensing laws preclude sales associates from
22 qualifying as independent contractors as a matter of law.

23 18. To establish that a worker is an independent contractor who was not intended to be
24 included within the applicable wage order’s coverage, a hiring entity must establish each of the
25 following three factors, commonly known as the “ABC test”: (A) that the worker is free from the
26 control and direction of the hiring entity in connection with the performance of the work, both
27 under the contract for the performance of the work and in fact; and (B) that the worker performs
28 work that is outside the usual course of the hiring entity’s business; and (C) that the worker is
customarily engaged in an independently established trade, occupation, or business of the same

1 nature as the work performed. *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal.5th 903
2 (2018).

3 19. Under California law, real estate sales associates are licensed to a specific broker,
4 who is responsible for supervising their work. Licensed sales associates are not allowed to perform
5 work for any other broker. *See, e.g.*, 10 CCR § 2752 (governing process for change of responsible
6 broker and mandating that sales associates must terminate relationship with predecessor
7 responsible broker before beginning work with new responsible broker); 10 CCR § 2753
8 (responsible broker must physically retain a sales associate’s license certificate “at the main
9 business office of the real estate broker to whom the salesperson is licensed”).

10 20. Given these restrictions, it is impossible for a sales associate to be “customarily
11 engaged [or for that matter, engaged at all] in an independently established trade, occupation, or
12 business of the same nature as the work performed” for the responsible broker in compliance with
13 *Dynamex’s* third prong. Based on this fact alone, licensed real estate sales associates cannot be
14 hired as independent contractors in California.

15 21. Similarly, a responsible broker is required by California law to control and direct
16 the work performed by a licensed sales associate under their supervision. *See* 10 CCR § 2725
17 (summarizing requirements). Accordingly, it is likewise impossible for a sales associate to be
18 employed as an independent contractor in California in compliance with *Dynamex’s* first prong.
19 Defendants in fact controlled and directed the work performed by their licensed sales associates
20 through numerous restrictions and requirements governing the performance of their work.

21 22. And finally, sales associates do not perform work that “is outside the usual course
22 of the hiring entity’s business.” Sales associates are hired to perform work related to the renting,
23 buying, and selling real estate, which also constitutes the core of the Defendants’ business.

24 23. As demonstrated above, Defendants’ sales associates cannot be considered
25 independent contractors under *Dynamex*. While the *Dynamex* court declined to expressly state
26 whether the opinion applies retroactively, “the Supreme Court denied later requests to modify the
27 opinion to apply the ABC test only prospectively” and subsequent courts have recognized probable
28 retroactive application. *See, e.g., Garcia v. Border Transportation Grp., LLC*, 28 Cal. App. 5th
558, 572, (Ct. App. 2018), as modified on denial of reh’g (Nov. 13, 2018).

1 24. However, even if Defendants incorrectly contend that Dynamex does not determine
2 the employment relationship alleged herein, the conclusion would not be any different under prior
3 standards. The professional restrictions and facts alleged above also weigh in favor of finding an
4 employment relationship under the multifactor standard set forth in *S. G. Borello & Sons, Inc. v.*
5 *Dep't of Indus. Relations*, 48 Cal. 3d 341, 351, 769 P.2d 399, 404 (1989). Specifically, Defendants
6 held and exercised the “the right to control the manner and means of accomplishing the result
7 desired,” and, (a) sales associates were not engaged in a distinct occupation or business; (b) the
8 occupation of sales associates in California is required to be performed under the direction and
9 supervision of a responsible broker; (c) the skill required does not exceed that of a typical
10 employee; (d) Defendants controlled the instrumentalities, tools, and the place of work for the
11 person doing the work; (e) Plaintiff was employed to perform services over an indefinite rather
12 than limited length of time; and the work is a part of the regular business of Defendant, among
13 other considerations.

14 **Defendants Failed to Reimburse Sales Associates for Necessary Expenditures and**
15 **Losses**

16 25. As employees, Plaintiff and putative class members are entitled to reimbursement
17 for “all necessary expenditures or losses incurred by the employee in direct consequence of the
18 discharge of his or her duties, or of his or her obedience to the directions of the employer, even
19 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
20 unlawful.” Labor Code § 2802.

21 26. Plaintiff and putative class members incurred numerous expenses in the discharge
22 of their duties for Defendants, including without limitation, licensing fees, administrative fees, real
23 estate services expense, office supply expenses, marketing expenses, continuing education
24 expenses, meal expenses, motor vehicle expenses, cell phone expenses, and other expenses.

25 27. Plaintiff and putative class members were not and have not been reimbursed by
26 Defendants for these expenses.

27 **Defendants Willfully Violated the California Labor Code**

28 28. Defendants knew, and were aware at all times, of the above-mentioned violations.

1 29. Defendants had no legitimate basis to treat Plaintiff and other sales associates as
2 independent contractors, and their failure to compensate sales associates as employees was both
3 knowing and willful. Indeed, in recent 10-K filings with the SEC, Realogy has repeatedly
4 acknowledged that California and other states are increasingly concluding that sales associates
5 must be treated as employees. *See, e.g.*, Realogy Holdings Corp. SEC Form 10-K, for the fiscal
6 year ended December 31, 2016, p. 25, available at <https://ir.realogy.com/node/11046/html> (last
7 visited January 29, 2019); Realogy Holdings Corp. SEC Form 10-K, for the fiscal year ended
8 December 31, 2017 (“Realogy 10-K”), p. 20, available at <https://ir.realogy.com/node/12381/html>
9 (last visited January 29, 2019) (“Under state law, our company owned real estate brokers have
10 certain duties to supervise and are responsible for the conduct of their brokerage businesses.
11 Although real estate sales associates historically have been classified as independent contractors,
12 newer rules and interpretations of state and federal employment laws and regulations, including
13 those governing employee classification and wage and hour regulations, may impact industry
14 practices and our company owned brokerage operations.”). Nonetheless, Defendants have
15 continued to classify their sales associates as independent contractors.

16 30. The conduct alleged above reduced Defendants’ labor and payroll costs. As
17 Realogy has acknowledged in SEC filings, “[s]ignificant reclassification determinations in the
18 absence of available exemptions from minimum wage or overtime laws, including damages and
19 penalties for prior periods, could be disruptive to our business, constrain our operations in certain
20 jurisdictions and have a material adverse effect on the operational and financial performance of
21 the Company. In addition, real estate agent reclassification could have a material adverse effect on
22 the operational and financial performance of our franchisees.” Realogy Holdings Corp. SEC Form
23 10-K, for the fiscal year ended December 31, 2016, p. 25, available at
<https://ir.realogy.com/node/11046/html> (last visited January 29, 2019).

24 31. Plaintiff and other similarly-situated sales associates were subject to Defendants’
25 uniform policies and practices and were victims of Defendants’ scheme to deprive them of
26 required reimbursement. As a result of Defendants’ improper and willful failure to pay Plaintiff
27 and other similarly-situated sales associates in accordance with the requirements of the California
28 Labor Code, Plaintiff and putative class members suffered lost wages and other related damages.

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IV.

CLASS ACTION ALLEGATIONS

32. Pursuant to California Code of Civil Procedure (“CCP”) §382 and the common law related thereto, a case should be treated as a class action when a court finds: (a) that the predominant issues raised in the case are of a common interest; (b) that the parties are so numerous that it is impracticable to bring them all before this Court; (c) that the proposed Class and Subclass are clearly and easily ascertainable; (d) that the named representatives’ claims are typical of the claims of the proposed classes; (e) that the Class representatives will adequately represent the interests of the classes; and (e) that a class action is superior to other methods of adjudicating the claims alleged herein. Plaintiff herein allege that each and every one of the foregoing can and will be demonstrated at the time for hearing on Plaintiff’ motion for class certification.

33. Plaintiff brings this suit as a class action pursuant to CCP §382, on behalf of the Class of individuals:

All individuals who currently work, or have worked, for Defendants as a sales associate in the state of California at any time within the preceding four years from the date of the filing of this complaint.

34. Plaintiff further seeks Certification of the following Subclasses: (a) **Wage Statement Subclass:** All members of the Class who were employed at any time within the preceding 1-year from the date of filing the complaint; and (b) **Waiting Time Penalty Subclass:** All members of the Class who are former employees and who were employed at any time within the preceding 3-years from the date of filing the complaint.¹

35. Members of the Class and Subclasses will hereinafter be referred to as “class members.”

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

¹ The Itemized Wage Statement and Waiting Time Penalty Subclasses are comprised of the same persons as the Class but are limited in time (a 3-year statute of limitations for Waiting Time Penalty claims and a 1-year statute of limitations for an Itemized Wage Statement claim) and employee classification (Waiting Time Penalty claims are only available to former employees).

1 37. **Numerosity:** Plaintiff is informed and believes and based on such information and
2 belief, allege that, in conformity with CCP § 382, the potential membership in the Class and each
3 subclass is so numerous that joinder of all members is impractical. While the exact number of
4 members in each of the classes is presently unknown to Plaintiff, she estimates membership in the
5 Class to exceed 100. The exact number and specific identities of the members of the Class and the
6 subclasses may be readily ascertained through inspection of Defendants’ business records.
7 Moreover, the disposition of class members’ claims by way of a class action will provide substantial
8 benefits to the parties and the Court.

9 38. **Commonality:** Plaintiff is informed and believes and based on such information
10 and belief alleges that numerous questions of law and/or fact are common to all members of the
11 class, including, without limitation:

- 12 a. Whether Defendants should be treated as joint employers of Plaintiff and the
13 Class members;
- 14 b. Whether Defendants uniformly misclassified Plaintiff and the Class members as
15 independent contractors;
- 16 c. Whether Plaintiff and the Class members incurred necessary expenditures and
17 losses for which they were not reimbursed by Defendants;
- 18 d. Whether Defendants complied with the wage reporting requirements of Labor
19 Code § 226 (a)(9);
- 20 e. Whether Defendants failed to timely pay Plaintiff and putative Class members
21 the wages due them during their employment;
- 22 f. Whether Defendants failed to timely pay wages due to Plaintiff and Class
23 members upon their discharge;
- 24 g. Whether Defendants’ failure to pay all wages due in accordance with the
25 California Labor Code was willful or reckless;
- 26 h. Whether Defendants engaged in unfair business practices in violation of
27 California Business & Professions Code §§ 17200, et seq.;
- 28 i. Whether Defendants failed to pay Representative Plaintiff and Class members
all compensation rightfully owed; and

1 j. The appropriate amount of damages, restitution, or monetary penalties resulting
2 from Defendants' violations of law.

3 39. **Typicality**: Representative Plaintiff's claims are typical of those of the class
4 members, because Representative Plaintiff suffered the violations set forth in this Complaint.

5 40. **Adequacy**: Representative Plaintiff will adequately protect the interests of class
6 members. Representative Plaintiff has no interests that are adverse to or in conflict with class
7 members and she is committed to the vigorous prosecution of this lawsuit. To that end,
8 Representative Plaintiff has retained counsel who are competent and experienced in handling class
9 actions on behalf of employees.

10 41. **Predominance/Superiority**: The numerous common questions of law and fact set
11 forth in the commonality discussion above predominate over individual questions because
12 Defendants' alleged underlying activities and the impact of their policies and practices affected
13 Class members in the same manner: they were uniformly misclassified as indecent contractors and
14 were subjected to a uniform policy of non-reimbursement for necessary expenses and losses. A
15 class action is superior to all other available methods for the fair and efficient adjudication of this
16 controversy, since joinder of all members is impracticable. Furthermore, as the amount suffered by
17 individual class members may be relatively small, the expense and burden of individual litigation
18 would likely make it impossible for members of the Class to individually redress the wrongs done
19 to them. There will be no inordinate difficulty in the management of this case as a class action. The
20 class is geographically disbursed throughout California but Defendants' policies and decisions
21 affecting the class applied statewide.

22 42. Representative Plaintiff is informed and believes and based on such information and
23 belief alleges that this action is properly brought as a class action, not only because the prerequisites
24 of CCP §382 and common law related thereto are satisfied (as outlined above), but also because of
25 the following:

- 26 a. The prosecution of separate actions by or against individual members of the Class
27 would create risk of inconsistent or varying adjudications with respect to individual
28 members of the Class which would establish incompatible standards of conduct for
the party opposing the Class;

- 1 b. Adjudications with respect to individual members of the Class would, as a practical
2 matter, be dispositive of the interests of the other members not parties to the
3 adjudications or substantially impair or impede their ability to protect their
4 interests;
- 5 c. Defendants have acted or refused to act on grounds generally applicable to all
6 members of the Class, making declaratory relief appropriate with respect to all of
7 the Class;
- 8 d. Questions of law or fact common to the members of the Class predominate over
9 any questions affecting only individual members, and Class action treatment is
10 superior to other available methods for the fair and efficient adjudication of the
11 controversy.

12 V.

13 **FIRST CAUSE OF ACTION**

14 **Failure to Reimburse for Necessary Expenses and Losses in Violation of Labor Code §**
15 **2802**

16 (On Behalf of Plaintiff and the Class Against Defendants)

17 43. Plaintiff realleges and incorporates by this reference all the paragraphs above in
18 this Complaint as though fully set forth herein.

19 44. Labor Code § 2802(a) provides that “[a]n employer shall indemnify his or her
20 employee for all necessary expenditures or losses incurred by the employee in direct consequence
21 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
22 even though unlawful, unless the employee, at the time of obeying the directions, believed them
to be unlawful.”

23 45. As a pattern and practice, Defendants regularly failed to reimburse and indemnify
24 Plaintiff and Class members for numerous necessary expenses and losses, including without
25 limitation, licensing fees, administrative fees, real estate services expense, office supply expenses,
26 marketing expenses, continuing education expenses, meal expenses, motor vehicle expenses, cell
27 phone expenses, and other expenses.

1 52. Because Defendants’ conduct described immediately above is an act of unfair
2 competition and a business practice in violation of California Business & Professions Code
3 Section 17200, Plaintiff further demands the Defendants be enjoined from continuing to provide
4 inaccurate pay statements that fail to include necessary reimbursement information.

5 **VII.**

6 **THIRD CAUSE OF ACTION**

7 **Failure to Timely Pay All Wages Due and Owing in Violation of Labor Code § 203**

8 (On Behalf of Plaintiff and the Waiting Time Penalties Subclass Against Defendants)

9 53. Plaintiff realleges and incorporates by this reference all the paragraphs above in
10 this Complaint as though fully set forth herein.

11 54. Labor Code §§ 201 and 202 require an employer to pay its employees all wages
12 due within the time specified by law. Labor Code § 203 provides that if an employer willfully
13 fails to timely pay such wages, the employer must continue to pay the subject employees’ wages
14 until the back wages are paid in full or an action is commenced, up to a maximum of thirty (30)
15 days of wages.

16 55. Class members who ceased employment with Defendants are entitled to unpaid
17 compensation for unpaid reimbursement expenses and losses, as alleged above, but to date have
18 not received such compensation. Defendants’ failure to pay such wages and compensation, as
19 alleged above, was knowing and “willful” within the meaning of Labor Code § 203.

20 56. As a consequence of Defendants’ willful conduct in not paying reimbursement for
21 necessary expenses and losses, Class members whose employment ended within the last three
22 years from the filing of this complaint are entitled to up to thirty days’ wages under Labor Code
23 § 203, together with interest thereon and attorneys’ fees and costs.

24 **VIII.**

25 **FOURTH CAUSE OF ACTION**

26 **Unfair Business Practices in Violation of Business and Professions Code § 17200**

27 (On Behalf of Plaintiff and the Class Against Defendants)

28 57. Plaintiff realleges and incorporates by this reference all the paragraphs above in
this Complaint as though fully set forth herein.

1 58. By the conduct described throughout this Complaint, Defendants have violated the
2 provisions of the California Labor Code as specified and have engaged in unlawful, deceptive,
3 and unfair business practices prohibited by California Business & Professions Code § 17200, *et*
4 *seq.* Defendants’ use of such practices resulted in greatly decreased labor costs and constitutes an
5 unfair business practice, unfair competition, and provides an unfair advantage over Defendants’
6 competitors.

7 59. The unlawful and unfair business practices complained of herein are ongoing and
8 present a threat and likelihood of continuing against Defendants’ current employees as well as
9 other members of the general public. Plaintiff and Class members are therefore entitled to
10 injunctive and other equitable relief against such unlawful practices in order to prevent future
11 damage and to avoid a multiplicity of lawsuits. Accordingly, Plaintiff and the Class members
12 request a preliminary and permanent injunction prohibiting Defendants from the unfair practices
13 complained of herein.

14 60. Defendants generated income as a direct result of the above-mentioned unlawful
15 and unfair business practices. Plaintiff and the Class members are therefore entitled to restitution
16 of any and all monies withheld, acquired, and/or converted by Defendants by means of the unfair
17 and unlawful practices complained of herein.

18 61. As a result, Plaintiff and Class members seek restitution, reimbursement of their
19 unpaid expenses and losses, itemized wage statement penalties, and waiting time penalties, in
20 addition to interest, attorneys’ fees, and costs, as necessary and according to proof. Plaintiff seeks
21 the appointment of a receiver, as necessary, to establish the total monetary relief sought from
22 Defendants.

23 **JURY DEMAND**

24 Plaintiff hereby respectfully demands a trial by jury on all issues so triable.

25 **PRAYER FOR RELIEF**

26 Wherefore Plaintiff, individually and on behalf of all Class members and all others
27 similarly situated, prays for relief as follows relating to her class and representative action
28 allegations:

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1. For an order certifying this action as a class action on behalf of the proposed Classes;
2. For an order appointing Plaintiff as the Representative of the Class and her counsel as Class Counsel;
3. For damages according to proof for reimbursement of necessary expenses and losses under California law;
4. For liquidated damages;
5. For waiting time penalties;
6. For civil penalties;
7. For interest as provided by law at the maximum legal rate;
8. For restitution for all unlawfully retained monies by Defendants;
9. For an injunction against future violations of the California Labor Code;
10. For reasonable attorneys' fees authorized by statute;
11. For costs of suit incurred herein;
12. For pre-judgment and post-judgment interest, as provided by law, and
13. For such other and further relief as the Court may deem just and proper.

DATED: April 24, 2019

THIERMAN BUCK LLP

/s/Joshua D. Buck
Mark R. Thierman
Joshua D. Buck
Leah L. Jones

Attorneys for Plaintiff