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8 ATTORNEYS FOR PLAINTIFFS  
AND THE PUTATIVE CLASSES

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF KERN**

12 CHARLOTTE LEE, on behalf of herself  
13 and all other similarly situated individuals,

14 Plaintiff,

15 vs.

16  
17 BANK OF AMERICA CORPORATION, a  
Delaware Corporation doing business in  
18 California; BANK OF AMERICA,  
19 NATIONAL ASSOCIATION, a national  
association bank doing business in  
20 California; and DOES 1 through 50,  
21 inclusive,

22 Defendant(s).

Case No. BCV-21-100770

**CLASS ACTION, CCP §382**

**CLASS AND REPRESENTATIVE  
ACTION COMPLAINT**

- 1) Failure to Pay Rest Breaks in Violation of the Labor Code §§ 226.7, 512, and 1194; IWC Order No. 4-2001, §12;
- 2) Failure to Timely Pay All Wages Due and Owing Under California Law Failure to Pay Rest Breaks;
- 3) Failure to Pay Rest Breaks in Violation of Labor Code Private Attorneys General Act, Cal. Labor Code §§ 2698 et seq.; and
- 4) Failure to Pay Rest Breaks Constitute Unfair Business Practices in Violation of California Business & Professions Code § 17200.

**JURY TRIAL DEMANDED**

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25 Plaintiff CHARLOTTE LEE, on behalf of herself and all other similarly situated and  
26 typical persons, alleges the following:

27 All allegations in this Complaint are based upon information and belief except for those  
28 allegations that pertain to the Plaintiff named herein and her counsel. Each allegation in this

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1 Complaint either has evidentiary support or is likely to have evidentiary support after a reasonable  
2 opportunity for further investigation and discovery.

3 **JURISDICTION AND VENUE**

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

6 2. Venue is proper in this Court because Defendants have failed to designate a  
7 principal office in California and has conducted business in the state of California. *Easton v.*  
8 *Sup.Ct. (Schneider Bros., Inc.)* (1970) 12 CA3d 243, 246-247, 90 CR 642, 644.

9 **PARTIES**

10 3. Plaintiff CHARLOTTE LEE is natural person who has been employed by  
11 Defendants as a non-exempt hourly paid employee in Los Angeles, California, during the  
12 relevant time period alleged herein.

13 4. Defendant BANK OF AMERICA CORPORATION is a Delaware corporation  
14 with its principal place of business in North Carolina and doing business as a bank, mortgage  
15 lender and financial institution nationwide and within the State of California. Defendant BANK  
16 OF AMERICA, NATIONAL ASSOCIATION, a national association bank doing business in  
17 California. Collectively, Defendants BANK OF AMERICA CORPORATION and BANK OF  
18 AMERICA, NATIONAL ASSOCIATION are referred to throughout this complaint as either  
19 “Defendants”, “Bank of America”, or “BofA”.

20 5. The identity of DOES 1-50 is unknown at this time, and this Complaint will be  
21 amended at such time when the identities are known to Plaintiffs. Plaintiffs are informed and  
22 believe that each of the Defendants sued herein as DOE is responsible in some manner for the  
23 acts, omissions, or representations alleged herein and any reference to “Defendant,”  
24 “Defendants,” “Bank of America”, and/or “BofA” herein shall mean “Defendants and each of  
25 them.”

26 **FACTUAL ALLEGATIONS**

27 6. Plaintiff was a class member in substantially similar actions against Defendant.  
28 *See Flanagan, et al. v. Bank of America*, Case No. 613647/2018 (Supreme Court of New York,

1 County of Suffolk) (including the claims alleged in *Boswell v. Bank of America*, Case No. 2:17-  
2 cv-06120-GW-RAO and *Fernandez v. Bank of America*, Case No. 2:17-cv-06104-MWF-JC  
3 (C.D. Cal.) (Prior Litigation). As a participating class member, Plaintiff released and resolved  
4 all of the wage claims covered in the Prior Litigation up to and including January 31, 2019.  
5 Accordingly, Plaintiff only brings the claims alleged herein on her behalf and behalf of all other  
6 similarly situated employees from February 2, 2019 to the date of judgment (hereinafter  
7 “Putative Class Period”).

8 7. Plaintiff has held the title of a non-exempt Financial Center Lending Officer (FC  
9 Lending Officer) during her employment with Defendant. The primary duty of a FC Lending  
10 Officer is the origination of mortgages and other loan products.

11 8. Plaintiff worked under two Incentive Plan Agreements during the Putative Class  
12 Period. One Incentive Plan Agreement that was effective from January 1, 2019 until March 31,  
13 2020. The other Incentive Plan Agreement that was in effect from April 1, 2020 until the present  
14 date. The Incentive Plan Agreements are indistinguishable for the purposes of this action against  
15 Defendants. Both Incentive Plan Agreements established the compensation plan for Plaintiff  
16 and all other Loan Officers (LOs) who were employed by Defendant.<sup>1</sup>

17 9. The Incentive Plan Agreements provided that LOs are paid a draw against future  
18 commissions:

19 The specific compensation structure for LOs consists of the  
20 following components:

21 **Draw**

22 Each LO will receive a monthly draw. A draw is defined as a fixed  
23 and regularly recurring wage advance against future adjusted  
24 commissions and other performance-based compensation. *The*

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26 <sup>1</sup> The following job titles and job codes are referred to as LOs: Sr WM Lending Officer-  
27 Covered (SM603), Sr WM Lending Officer (SM604), WM Lending Officer (SM605), Sr  
28 Lending Officer (SM172), Sr FC Lending Officer – E (SM610); FC Lending Officer (SM611),  
Sr FC Lending Officer – NE (SM614), Lending Associate (SM171), and Lending Consultant  
(SM612).

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*draw is reconciled against future adjusted commissions and other compensation.* Please refer to the calculation examples below. For overtime eligible LOs, the hourly rate for the overtime hours paid will be reconciled, but the additional pay, above and beyond the base hourly rate, will not be reconciled. **There are two types of draws: Non-recoverable and Recoverable. For both types of draws, calculated monthly earnings, if earned, that exceed the advances, are paid at the end of the month following the funding month.** For example; the draw paid in January will be recovered from the calculated adjusted commissions for January performance eligible for payment in February, along with any unrecovered draw or offsets from previous months. If the calculated monthly earnings do not exceed the advances, then the shortfall is managed for each draw type as follows:

*Non-recoverable Draw* - When initially hired or transferred into the LO position or while on a paid Leave of Absence[fn], a LO may be given a non-recoverable draw for a specific period of time.[fn] During this period, Adjusted Commissions in excess of the monthly draw will be paid to the eligible LO. However, calculated monthly shortfalls {Adjusted Commissions less the monthly draw) will not be carried over to future months during this limited period.

*Recoverable Draw* - After the period of non-recoverable draw, LOs will receive a recoverable draw. Adjusted Commissions in excess of the monthly draw will be paid to the eligible LO. If Adjusted Commissions do not exceed the monthly Draw, a deficit is created which is carried forward, unless prohibited by applicable state law. All advances and deficits are fully recoverable each month before any commission or other compensation is earned. The cumulative deficit is recovered through future compensation before any additional compensation is paid {with the exception of the draw). LOs who demonstrate any recurring pattern of deficits or poor performance are subject to disciplinary action up to, and including, immediate termination.[fn]

10. As explained above, LOs’ wages are entirely dependent on their sales activity; they are only compensated for their commission generating activities.

11. California law requires that employees paid on a commission basis must be separately compensated for their rest breaks. *See Vaquero v. Stoneledge Furniture LLC*, 9 Cal. App. 5th 98, 115–16, 214 Cal. Rptr. 3d 661, 674 (Ct. App. 2017), as modified (Mar. 20, 2017), review denied (June 21, 2017); *Barreras, et al. v. Wells Fargo Bank, N.A., et al.*, Case No. 2:17-

1 cv-04344-PA-AS (Jan. 19, 2018); *Ibarra v. Wells Fargo Bank, N.A.*, No. CV 17-4344 PA (ASx)  
2 (C.D. Cal. May 8, 2018)

3 12. In *Vaquero*, the California Court stated:

4 The advances or draws against future commissions were not  
5 compensation for rest periods because they were not compensation  
6 at all. At best they were interest-free loans. Stoneledge cites no  
7 authority for the proposition that a loan for time spent resting is  
8 compensation for a rest period. To the contrary, taking back money  
9 paid to the employee effectively reduces either rest period  
10 compensation or the contractual commission rate, both of which  
11 violate California law. (See § 221 [prohibiting employers from  
12 collecting or receiving from an employee “any part of wages  
13 theretofore paid by said employer”]; § 222 [prohibiting employers  
14 from withholding any part of a wage agreed upon]; § 223  
15 [prohibiting employers from “secretly pay[ing] a lower wage while  
16 purporting to pay the wage designated by statute or by contract”];  
17 cf. Armenta, supra, 135 Cal.App.4th at p. 323, 37 Cal.Rptr.3d 460  
[averaging wages across pay periods to satisfy minimum wage  
requirements “effectively reduces [employees'] contractual hourly  
rate”].) [ ¶ ] Thus, when Stoneledge paid an employee only a  
commission, that commission did not account for rest periods. When  
Stoneledge compensated an employee on an hourly basis (including  
for rest periods), the company took back that compensation in later  
pay periods. In neither situation was the employee separately  
compensated for rest periods.

18 13. Defendant did not pay LOs separately for rest periods. Instead, Defendant’s  
19 compensation plan only compensated Plaintiff and all other similarly situated employees for their  
20 sales activities.

21 14. Based upon the Prior Litigation, Defendant knew its Incentive Pay Plans did not  
22 comply with California’s rest break laws. See *Boswell v. Bank of America*, Case No. 2:17-cv-  
23 06120-GW-RAO; *Fernandez v. Bank of America*, Case No. 2:17-cv-06104-MWF-JC (C.D. Cal.).  
24 Rather than change its Incentive Pay Plans to comply with California law, Defendant has willfully  
25 and intentionally continued to violate California’s rest break laws by failing to separately  
26 compensate Plaintiff and all other similarly situated employees for their rest periods.

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**CLASS AND REPRESENTATIVE ACTION ALLEGATIONS**

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

16. Plaintiff brings this action on behalf of herself, and on behalf of all others similarly situated, and as a member of the Class defined as follows:

All non-exempt Loan Officers of Defendant who held a job title of Sr WM Lending Officer-Covered (SM603), Sr WM Lending Officer (SM604), WM Lending Officer (SM605), Sr Lending Officer (SM172), Sr FC Lending Officer – E (SM610); FC Lending Officer (SM611), Sr FC Lending Officer – NE (SM614), Lending Associate (SM171), and/or Lending Consultant (SM612), and who were employed by Defendant at any time from February 1, 2019 through the date notice is mailed to the Class.

17. Plaintiff reserves the right to amend or otherwise alter the class definition presented to the Court at the appropriate time, or to propose or eliminate sub-classes, in response to facts learned through discovery, legal arguments advanced by Defendant or otherwise.

18. This action has been brought and may be properly maintained as a class action pursuant to Federal Rules of Civil Procedure, Rule 23 and other applicable law, as follows:

**A. Numerosity of the Class:** Members of the Class are so numerous that their individual joinder is impracticable. The precise number of Class members and their addresses are known to Plaintiffs or will be known to Plaintiffs through discovery. Class members may be notified of the pendency of this action by mail, electronic mail, the Internet, or published notice.

**B. Existence of Predominance of Common Questions of Fact and Law:** Common questions of law and fact exist as to all members of the Class. These questions predominate over any questions affecting only individual Class members. These common legal and factual questions include: (i) Whether Defendant violated IWC Wage Order No. 4-2001 and Labor Code § 226.7 by engaging in a pattern or practice of failing to properly compensate Plaintiff and the members of the Class for rest periods by paying based on a commission, without separately paying

1 Plaintiff and Class members for rest breaks; (ii) Whether Defendant engaged in  
2 unfair practice and violated California Business and Professions Code § 17200 by  
3 failing to compensate Plaintiffs and the members of the Class their statutory  
4 minimum and overtime wages and rest breaks; (iii) Whether Defendant violated  
5 Labor Code §203 by failing to pay all wages due upon separation; (The nature and  
6 extent of class-wide injury and measure of damages for the injury.

7 C. **Typicality:** Plaintiff’s claims are typical of the claims of the  
8 members of the Class they represent because Plaintiff was exposed and subjected  
9 to the same unlawful business practices employed by Defendant during the liability  
10 period. Plaintiff and the members of the class they represent sustained the same  
11 types of damages and losses.

12 D. **Adequacy:** Plaintiff is an adequate representatives of the Class she  
13 seeks to represent because her interests do not conflict with the interests of the  
14 members of the Class Plaintiff seeks to represent. Plaintiff has retained counsel  
15 competent and experienced in complex class action litigation and Plaintiff intends  
16 to prosecute this action vigorously. The interests of members of each Class will be  
17 fairly and adequately protected by Plaintiff and her counsel.

18 E. **Superiority and Substantial Benefit:** The class action is superior  
19 to other available means for the fair and efficient adjudication of Plaintiff and the  
20 Class members’ claims. The violations of law were committed by Defendant in a  
21 uniform manner and class members were exposed to the same unlawful practices.  
22 The damages suffered by each individual Class member may be limited. Damages  
23 of such magnitude are small given the burden and expense of individual prosecution  
24 of the complex and extensive litigation necessitated by Defendant’s conduct.  
25 Further, it would be virtually impossible for the Class members to redress the  
26 wrongs done to them on an individual basis. Even if members of the Class  
27 themselves could afford such individual litigation, the court system could not.  
28 Individualized litigation increases the delay and expense to all parties and the court

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system, due to the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

19. The Class should also be certified because: (i) The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual Class members which would establish incompatible standards of conduct for Defendant; (ii) The prosecution of separate actions by individual members of the Class would create a risk of adjudication with respect to them, which would, as a practical matter, be dispositive of the interests of the other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and (iii) Defendant has acted or refused to act on grounds generally applicable to the Class, and/or the general public, thereby making appropriate final and injunctive relief with respect to the Classes as a whole.

**FIRST CAUSE OF ACTION**

**Failure to Pay Rest Breaks in Violation of the Labor Code §§ 226.7, 512, and 1194; IWC  
Order No. 4-2001, §12**

(On Behalf of Plaintiff and all members of the Class Against Defendant)

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

21. Section 226.7 provides: “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or ... order of the [IWC].” (§ 226.7, subd. (b).) “If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an ... order of the [IWC], ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.” (§ 226.7, subd. (c).)



1           22. Wage Order No. 7 applies “to all persons employed in the mercantile industry  
2 whether paid on a time, piece rate, commission, or other basis.” (Cal. Code Regs. tit. 8, § 11070,  
3 subd. 1.). Wage Order No. 7 provides: “Every employer shall authorize and permit all employees  
4 to take rest periods, which insofar as practicable shall be in the middle of each work period. The  
5 authorized rest period time shall be based on the total hours worked daily at the rate of ten (10)  
6 minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need  
7 not be authorized for employees whose total daily work time is less than three and one-half (3  
8 1/2) hours. *Authorized rest period time shall be counted as hours worked for which there shall*  
9 *be no deduction from wages.*” (Cal. Code Regs. tit. 8, § 11070, subd. 12(A), italics added.)  
10 Like section 226.7, subdivision (c), Wage Order No. 7 further requires an employer who fails to  
11 provide an employee a rest period in accordance with the wage order's provisions to pay the  
12 employee one hour of pay at the employee's regular rate of compensation for each work day the  
13 employer did not provide the employee with the rest period. (*Id.*, § 11070, subd. 12(B).)

14           23. The plain language of Wage Order No. 7 requires employers to count “rest period  
15 time” as “hours worked *for which there shall be no deduction from wages.*” (Cal. Code Regs. tit.  
16 8, § 11070, subd. 12(A), italics added.)

17           24. As outlined above, Defendant Incentive Plan Agreements did not compensate  
18 Plaintiff and other Class members for rest periods.

19           25. The appellate court in *Vaquero v. Stoneledge Furniture LLC*, 9 Cal. App. 5th 98,  
20 115, 214 Cal. Rptr. 3d 661, 674 (Ct. App. 2017), as modified (Mar. 20, 2017), review  
21 denied (June 21, 2017) held that this type of pay scheme does not properly compensate  
22 employees for their rest periods.

23           26. This case is no different than the *Stoneledge*. Accordingly, Plaintiff and other  
24 Class members are entitled to recover, and hereby demand, (1) their wages at the applicable  
25 regular rate of pay for each unpaid rest period for each and every shift worked and (2) a penalty  
26 for each and every unpaid rest period pursuant to Labor Code 226.7, in addition to attorneys'  
27 fees, costs, and interest.

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**SECOND CAUSE OF ACTION**

**Failure to Timely Pay All Wages Due and Owing Under California Law**

(On Behalf of Plaintiff and the Class Against Defendant)

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

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

29. Class Members who ceased employment with Defendant are entitled to unpaid compensation for unpaid minimum, regular, and overtime wages, as alleged above, but to date have not received such compensation. Defendant’s failure to pay such wages and compensation, as alleged above, was knowing and “willful” within the meaning of Labor Code § 203.

30. As a consequence of Defendant’s willful conduct in not paying compensation for rest breaks, Plaintiff and Class Members whose employment ended within the last three years from the filing of this complaint are entitled to up to thirty days’ wages under Labor Code § 203, together with interest thereon and attorneys’ fees and costs.

**THIRD CAUSE OF ACTION**

**Failure to Pay Rest Breaks in Violation of Labor Code Private Attorneys General Act, Cal.**

**Labor Code §§ 2698 Et Seq.**

(On Behalf of Plaintiff and all Aggrieved Employees Against Defendants)

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

32. Plaintiff on behalf of herself, all aggrieved employees, and/or on behalf of the putative classes herein, as well as the general public of the State of California alleges that Defendant here has violated the following provisions of the California Labor Code in the

1 following provisions of the applicable IWC Wage Order in which violations are actionable  
2 through the PAGA, as previously alleged herein: California Labor Code §§ 201, 202, 203, 204,  
3 204a, 204b, 221, 223, 225.5, 226.7, 510, 558 1194 and 1197 as well as the orders of the Industrial  
4 Wage Commission.

5           33. Each of these violations entitles Plaintiff, as a private attorney general, to recover  
6 the applicable statutory civil penalties on her own behalf, on behalf of all aggrieved employees,  
7 and on behalf of the general public.

8           34. California Labor Code §2699 (a), which is part of PAGA, provides in pertinent  
9 part:  
10                   notwithstanding any other provision of law, any provision of this  
11                   code that provides for a civil penalty to be assessed and collected by  
12                   the Labor and Workforce Development Agency or any of its  
13                   departments, divisions, commissions, boards, agencies, or  
14                   employees, for a violation of this code, may, as an alternative, be  
15                   recovered through a civil action brought by an aggrieved employee  
16                   on behalf of himself or herself and other current or former  
17                   employees pursuant to the procedures specified in Section 2699.3.

18           35. California Labor Code § 2699 (F), which is part of PAGA, provides in pertinent  
19 part:  
20                   for all provisions of this code except for those for which a civil  
21                   penalty is specifically provided, there is established a civil penalty  
22                   for a violation of these provisions, as follows: ...  
23                   (2) If, at the time of the alleged violation, the person employs  
24                   one or more employees, the civil penalty is one hundred dollars  
25                   (\$100) for each aggrieved employee per pay period for the initial  
26                   violation and two hundred (\$200) for each for each aggrieved  
27                   employee per pay period for each subsequent violation.

28           36. Plaintiff and the class members are entitled to civil penalties, to be paid by  
Defendant and allocated as PAGA requires, pursuant to California Labor Code § 2699(a) for  
Defendant’s violations of the California Labor Code and IWC Wage Orders for which violations  
a civil penalty is already specifically provided by law; and Plaintiff is entitled to civil penalties,  
to be paid by Defendant and allocated as PAGA requires, pursuant to California Labor Code

1 §2699 for Defendant’s violations of the California Labor Code and IWC Wage Orders for which  
2 violations a civil penalty is not already specifically provided.

3 **FOURTH CAUSE OF ACTION**

4 **Failure to Pay Rest Breaks Constitute Unfair Business Practices in Violation of California**  
5 **Business & Professions Code § 17200**

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

7 37. Plaintiff realleges and incorporates by reference all the paragraphs above in the  
8 Complaint as though fully set forth herein.

9 38. As described above, Bank of America has engaged in unfair business practices in  
10 California by utilizing and engaging in an unlawful pattern and practice of failing to properly  
11 pay employee rest breaks in violation of California Business & Professions Code § 17200, *et*  
12 *seq.*

13 39. Bank of America’s use of such practices constitutes an unfair business practice,  
14 unfair competition, and provides an unfair advantage over Bank of America’s competitors.  
15 Plaintiff and other similarly situated members of the general public seek full restitution on  
16 account of the economic injuries they have suffered along with disgorgement of ill-gotten gains  
17 from Bank of America as necessary and according to proof, to restore any and all monies  
18 withheld, acquired and/or converted by Bank of America’s by means of the unfair business  
19 practices complained of herein.  
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21 40. Plaintiff seeks on her own behalf and on behalf of the general public, the  
22 appointment of a receiver, as necessary, to oversee said restitution, including all wages earned  
23 and unpaid, including interest thereon.

24 41. The acts complained of herein, occurred, at least in part, within the last four (4)  
25 years preceding the Complaint for damages originally filed in this action.

26 42. Further, if Bank of America is not enjoined from the unlawful conduct described  
27 above, Bank of America will continue unabated in their unlawful conduct, which will continue  
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1 to result in irreparable injury to members of the general public, including, but not limited to all  
2 members of the Class who are current employees of Bank of America, and for which there is no  
3 adequate remedy at law. Thus, Plaintiff requests that the Court issue a preliminary and  
4 permanent injunction prohibiting Bank of America from engaging in the foregoing conduct.

5 43. Plaintiff, on behalf of the general public and members of the Class, seek full  
6 restitution from Bank of America's, as necessary and according to proof, to restore all monies  
7 withheld, acquired and/or converted by Bank of America by means of the unfair practices  
8 complained of herein.

9 **JURY DEMAND**

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

11 **PRAYER FOR RELIEF**

12 Wherefore Plaintiff, individually and on behalf of all Class Members and all others  
13 similarly situated, prays for relief as follows relating to her class and representative action  
14 allegations:

- 15 1. For an order certifying this action as a class action on behalf of the proposed
- 16 Classes and any potential subclasses;
- 17 2. For an order appointing Plaintiff as the Representative of the Class and for an order
- 18 appointing their counsel as Class Counsel;
- 19 3. For damages according to proof for rest break wages at the applicable regular rate
- 20 of pay;
- 21 4. For statutory penalties;
- 22 5. For waiting time penalties;
- 23 6. For civil penalties;
- 24 7. For interest as provided by law at the maximum legal rate;
- 25 8. For reasonable attorneys' fees authorized by statute;
- 26 9. For costs of suit incurred herein;
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- 10. For pre-judgment and post-judgment interest, as provided by law, and
- 11. For such other and further relief as the Court may deem just and proper.

DATED: April 2, 2021

THIERMAN BUCK LLP

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

*Attorneys for Plaintiff*