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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 IN AND FOR THE COUNTY OF SONOMA

13 REBECCA CALL, on behalf of
14 herself and all others similarly
15 situated,

16 Plaintiff,

17 vs.

18 SHUTTERSTOCK, INC., and DOES 1
19 through 10 inclusive,

20 Defendants.

CASE NO.: _____

**CLASS ACTION COMPLAINT FOR
DAMAGES, RESTITUTION AND
INJUNCTIVE RELIEF**

UNLIMITED CIVIL

- 21 (1) **Failure to Pay Overtime in Violation of
California Labor Code Sections 510, 558,
1194 et seq., 1197.1, 1198 and IWC Wage
Orders;**
- 22 (2) **Failure to Reimburse Business Expenses in
Violation of California Labor Code Section
2802;**
- 23 (3) **Failure to Provide and/or Authorize Meal
and Rest Periods/ Unpaid Wages in
Violation of California Labor Code Sections
226.7, 512, and 558, and IWC Wage Orders**
- 24 (4) **Failure to Provide Timely, Accurate,
Itemized Wage Statements in Violation of
California Labor Code Sections 226, 226.3,
1174 and IWC Wage Orders;**
- 25 (5) **Failure to Pay Earned Wages Upon
Discharge, Waiting Time Penalties in
Violation of Labor Code Sections 201-204;**
- 26 (6) **Unlawful and/or Unfair Business Practices
in Violation of California Business and
Professions Code Section 17200, et seq.**

27 **DEMAND FOR JURY TRIAL**

1 Plaintiff Rebecca Call on behalf of herself and on behalf of all others similarly situated,
2 alleges against Defendant Shutterstock, Inc. (“Defendant” or “Shutterstock”), as well as DOES
3 1 through 10, inclusive, as follows:

4 **PRELIMINARY STATEMENT**

5 1. This class action seeks relief from Shutterstock’s misclassification of content
6 review workforce. Shutterstock is an e-commerce platform for high-quality digital content, tools
7 and services to creative professionals.

8 2. Plaintiff seeks to represent Shutterstock’s Image Reviewers, Vector and Illustration
9 Reviewers, Footage Reviewers, and similar content review workers (collectively, “Reviewers”),
10 the workers who comb through content daily to check them against Shutterstock’s detailed
11 guidelines.

12 3. Shutterstock classifies Reviewers as independent contractors.

13 4. Shutterstock’s classification of Reviewers as independent contractors is unlawful.

14 5. Shutterstock fails to pay appropriate compensation to each Class Member as
15 required by state law. Plaintiff seeks relief for the Class Members pursuant to applicable state
16 law, rules, regulations, and Wage Orders of the Industrial Welfare Commission (“IWC”). The
17 relief sought is to remedy Defendants’ failure to pay appropriate overtime compensation, provide
18 or authorize meal and rest breaks or pay premiums for missed breaks, separately pay for rest
19 periods, and maintain accurate time records, in addition to restitution, interest, penalties, and
20 injunctive relief.

21 6. On information and belief, Shutterstock’s misclassification of its workforce as
22 “independent contractors” is willful.

23 7. The class claims in this action are brought pursuant to California Code of Civil
24 Procedure (“CCP”) § 382 on behalf of Reviewers in California (“Class Members”) during the
25 period commencing four years prior to this action’s filing date through the date of final disposition
26 of this action (the “Class Period”).

27 **THE PARTIES**

1 8. Plaintiff Rebecca Call was classified as an “independent contractor” by
2 Shutterstock from approximately October 2015 until August 27, 2017. She worked for
3 Shutterstock as both an Image Reviewer and a Vector/Illustration Reviewer. She performed
4 review services for Shutterstock in several locations within California including Sonoma,
5 California.

6 9. Defendant Shutterstock, Inc. is a limited liability company that is headquartered in
7 New York, New York, and that does business throughout the United States, and maintains offices
8 in San Francisco and Los Angeles, California. Shutterstock sells royalty-free, non-exclusive
9 licenses for various forms of content, including photographs, illustrations, vector art, video clips
10 and music tracks.

11 10. Defendants Does 1-10, inclusive, are sued herein under fictitious names. Their true
12 names and capacities are unknown to Plaintiff. When their true names and capacities are
13 ascertained, Plaintiff will amend this complaint by inserting their true names and capacities
14 herein. Plaintiff is informed and believes and thereupon alleges that each of the fictitiously-named
15 Defendants is responsible in some manner for the occurrences herein alleged, and that the
16 damages of Plaintiff and the putative Class herein alleged were proximately caused by such
17 Defendants.

18 11. Plaintiff is informed, believes, and thereon alleges that each of the Defendants
19 herein was at all times relevant to this action the agent, employee, representative partner, and/or
20 joint venture of the remaining Defendants and was acting within the course and scope of the
21 relationship. Plaintiff is further informed, believes, and thereon alleges that each of the
22 Defendants herein gave consent to, ratified and authorized the acts alleged herein to the remaining
23 Defendants.

24 **VENUE**

25 12. Venue in the County of Sonoma is proper under California Code of Civil
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1 Procedure sections 395(a) and 395.5, because Plaintiff performed work for Defendants in Sonoma
2 county and the employment relationship arose in Sonoma County, and Shutterstock does not
3 reside in the state.

4 GENERAL ALLEGATIONS

5 13. On a typical day, Plaintiff would review approximately 2,000 images according to
6 detailed guidelines specifying, for example, the number of characteristics a piece of content may
7 share with protected intellectual property before Shutterstock deems a particular piece of content
8 as posing to high of a risk of intellectual property infringement.

9 14. Shutterstock also directed Plaintiff and other Reviewers to review the company's
10 internal detailed content guidelines on a daily basis – without compensation – to ensure all
11 Reviewers stayed up to date on Shutterstock's content standards.

12 15. Throughout the day, Plaintiff and other Reviewers would receive communications
13 from Shutterstock supervisors regarding their work through a digital communications platform.

14 16. Plaintiff and other Reviewers were not and are not free from the control and
15 direction of Shutterstock in connection with their performance of content review work. Plaintiff's
16 two Shutterstock supervisors would spot check her work to ensure compliance with
17 Shutterstock's detailed content guidelines.

18 17. Defendants expected Reviewers to follow Shutterstock's detailed written standards
19 regarding the performance of the content review work, required Reviewers to escalate issues to
20 supervisors via a proprietary Shutterstock system in the event Defendants' detailed written
21 guidelines do not address particular issues, and provided Shutterstock resources to Reviewers to
22 perform tasks specific to Defendants' business.

23 18. Reviewers work or worked over eight hours a day, and were not paid overtime, by
24 virtue of their being considered independent contractors.

25 19. According to Shutterstock's February 22, 2018 10-K Form, "[g]enerally, we
26 provide our content under a royalty-free non-exclusive license and **each piece of content**
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1 **available for license has been vetted by a team of reviewers to ensure that it meets our**
2 **standards of quality and can be appropriately licensed for commercial or editorial use.”**

3 20. As such, Reviewers are performing work that is well within the usual course of
4 Shutterstock’s business.

5 21. Plaintiff is not customarily engaged in an independently established trade,
6 occupation, or business of the same nature as the work performed for Shutterstock. She does not
7 have a private image review business to serve an ecommerce marketplace for media content.

8 22. Plaintiff and similarly-situated employees were paid solely on a piece-rate basis,
9 did not manage others, did not set policy for Defendants, nor otherwise direct Defendants’
10 business operations.

11 23. Upon information and belief, Defendants have never properly paid reimbursements
12 to Plaintiff and similarly situated Class Members for job-related expenses, such as internet and
13 phone charges and computer software and hardware.

14 24. Defendants implemented no policy to provide an uninterrupted, thirty-minute meal
15 period to Plaintiff and similarly situated Class Members who worked more than five hours.

16 25. As a result of Defendants’ misclassifying the Class Members as “independent
17 contractors” or exempt employees, Defendants implemented no policy to provide a second thirty-
18 minute meal period to Plaintiff and similarly situated Class Members who worked more than ten
19 hours in a day. At times, Plaintiff and similarly situated Class Members were expected to respond
20 to review needs and were thus deprived of duty-free second meal periods.

21 26. As a result of Defendants’ misclassifying Class Members as “independent
22 contractors,” Defendants implemented no policy to make available a ten-minute rest period to
23 Plaintiff and Class Members who worked more than 3.5 hours, or a second ten-minute break after
24 six hours.

25 27. As a result of Defendants’ misclassifying Class Members as “independent
26 contractors,” Defendants failed to separately pay Plaintiff and Class Members for ten-minute rest
27 periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98 (2017).

1 28. Upon information and belief, Defendants have never paid a single meal or rest
2 period premium for missed meal or rest periods to Plaintiff and Class Members, as required under
3 California Labor Code § 226.7 and IWC Wage Orders.

4 29. Upon information and belief, Plaintiff and similarly-situated Class Members never
5 signed valid meal period waivers.

6 30. As a result of Defendants’ misclassifying their Class Members as “independent
7 contractors,” and the long hours Class Members sometimes worked, Defendants have willfully
8 and knowingly failed to pay premium overtime compensation to Plaintiff and similarly-situated
9 Class Members for hours worked in excess of eight hours per day.

10 31. As a result of Defendants’ misclassifying their Class Members as “independent
11 contractors,” Defendants have failed to itemize the total hours worked, overtime hours, and
12 missed meal and rest periods on wage statements furnished to Plaintiff and similarly-situated
13 Class Members.

14 32. As a result of Defendants misclassifying their Class Members as “independent
15 contractors,” Defendants have willfully and knowingly failed to pay Plaintiff, and similarly
16 situated Class Members, upon termination or resignation of employment, all accrued
17 compensation, including repayment of all unlawful deductions from wages, payment of missed
18 meal/rest period compensation, separate compensation for ten-minute paid rest periods, and
19 payment of overtime compensation.

20 **CLASS ACTION ALLEGATIONS**

21 33. Plaintiff bring all claims alleged herein under California law as a class action on
22 behalf of all Reviewers who worked in California during the Class Period. Plaintiff seeks to
23 pursue her claims on behalf of the following class (“Proposed Class”),

24 All individuals employed by Defendants in the State of California in the last four years
25 through the final disposition of this action who Defendant classified as independent
26 contractors with the following job positions: Image Reviewers, Vector and Illustration
27 Reviewers, Footage Reviewers, and similar or related content review positions.

1 34. Plaintiff seeks to pursue claims on behalf of the following defined Proposed
2 Waiting Time Penalties Subclass:

3 All Proposed Class Members who are no longer employed by Defendants and have not
4 been employed by Defendants for more than 72 hours within three years prior to this
5 action's filing date through the final disposition of this action.

6 35. Plaintiff seeks to pursue claims on behalf of the following defined Proposed
7 Itemized Wage Statement Penalties Subclass:

8 All Proposed Class Members who are currently employed by Defendants or were
9 employed by Defendants at some point within the year preceding the filing of the initial
10 Complaint in this action.

11 36. The class claims herein have been brought and may properly be maintained as a
12 class action under California Code of Civil Procedure section 382 because there is a well-defined
13 community of interest among Class Members with respect to the claims asserted herein and the
14 Proposed Class is easily ascertainable.

15 37. Numerosity: The Proposed Class and Subclasses are so numerous that joinder of
16 all members is impracticable. Plaintiff is informed and believes, and on that basis alleges, that
17 during the relevant time period, Defendants employed a substantial number of individuals who
18 are geographically dispersed and who satisfy the definition of the Class Members and Subclass
19 Members. The name and addresses of the Class Members and Subclass Members are available to
20 the Defendants. Notice can be provided to Class Members and Subclass Members via first-class
21 mail, email, and text message using techniques and a form of notice similar to those customarily
22 used in class action lawsuits of this nature.

23 38. Typicality: Plaintiff's claims are typical of the Class Members and Subclass
24 Members. Plaintiff, like other Class Members, was subjected to Defendants' common, unlawful
25 policies, practices, and procedures. The claims of Plaintiff are typical of the claims of the Class
26 Members and Subclass Members who were employed as Reviewers during the Class Period.
27 Defendants' common course of unlawful conduct has caused Plaintiff and similarly situated Class
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1 Members and Subclass Members to sustain the same or similar injuries and damages caused by
2 the same practices of Defendants. Plaintiff's claims are thereby representative of and co-extensive
3 with the claims of the Class Members and the Subclass Members.

4 39. Adequacy: Plaintiff is a member of the Class and Subclasses, does not have any
5 conflicts of interest with other Class Members and Subclass Members, and will prosecute the
6 case vigorously on behalf of the Class. Plaintiff will fairly and adequately protect the interests of
7 the Class Members and Subclass Members. Plaintiff has retained counsel competent and
8 experienced in complex class actions, and California wage and hour employment litigation.

9 40. Commonality: There are questions of law and fact common to Plaintiff and the
10 Class Members and Subclass Members which predominate over any questions affecting only
11 individual members of the Class or Subclasses. These common questions of law and fact include,
12 without limitation:

- 13 (a) Whether Defendants maintained a policy or practice of classifying
14 its Reviewers as independent contractors;
- 15 (b) Whether Class Members served Defendants as employees rather
16 than independent contractors under California law;
- 17 (c) Whether Defendants have employed Class Members in a position
18 subject to, and not exempt from, California's overtime pay and other
19 wage and hour requirements;
- 20 (d) Whether the Class Members have necessarily incurred
21 employment-related expenses and losses in carrying out their duties for
22 Defendants;
- 23 (e) Whether Defendants have failed to properly indemnify Class
24 Members for their necessary employment-related expenses and losses in
25 violation of California Labor Code § 2802;
- 26 (f) Whether Defendants' failure to properly indemnify Class Members
27 for their necessary employment-related expenses and losses constitutes
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1 an unlawful, unfair, and/or fraudulent business practice under California
2 Business & Professions Code § 17200 et seq.;

3 (g) Whether Defendants have failed to authorize and permit
4 Class Members with adequate off-duty meal periods and compensation
5 for missed meal periods in violation of California Labor Code §§ 226.7
6 and 512 and IWC Wage Orders;

7 (h) Whether Defendants' failure to authorize and permit Class
8 Members with adequate off-duty meal periods and meal period
9 compensation constitutes an unlawful, unfair, and/or fraudulent business
10 practice under California Business & Professions Code § 17200 *et seq.*;

11 (i) Whether Defendants unlawfully failed to authorize and permit
12 timely ten-minute rest breaks to Plaintiff and Class Members in violation
13 of California Labor Code § 226.7, and IWC Wage Orders, and pay
14 premiums when such breaks were missed;

15 (j) Whether Defendants' failure to separately compensate Class
16 Members for paid rest periods violates California Labor Code § 226.7,
17 and the IWC Wage Orders;

18 (k) Whether Defendants' failure to authorize and permit Class
19 Members with adequate rest periods constitutes an unlawful, unfair,
20 and/or fraudulent business practice under California Business &
21 Professions Code § 17200 *et seq.*;

22 (l) Whether Defendants have required, encouraged, or permitted Class
23 Members to work in excess of eight hours per day;

24 (m) Whether Defendants have failed to pay its Class Members
25 overtime wages for time worked in excess of eight hours per day;

26 (n) Whether Defendants have violated IWC Wage Orders
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and California Labor Code §§ 510 and 1194 by their failure to pay Class Members overtime compensation;

(o) Whether Defendants’ failure to pay overtime compensation to Class Members constitutes and unlawful, unfair, and/or fraudulent business practice under California Business & Professions Code § 17200 *et seq.*;

(p) Whether Defendants have knowingly and intentionally failed to provide Class Members with an itemized statement showing total hours worked with each payment of wages, as required by California Labor Code § 226 and IWC Wage Orders;

(q) Whether Defendants’ failure to provide an itemized statement showing total hours worked with each payment of wages constitutes an unlawful, unfair, and/or fraudulent business practice under California Business & Professions Code § 17200 *et seq.*;

(r) Whether Defendants have violated California Labor Code § 1174 and IWC Wage Orders by failing to maintain documentation of the actual hours worked each day by Class Members;

(s) Whether Defendants’ failure to maintain documentation of the actual hours worked each day by Class Members constitutes an unlawful, unfair, and/or fraudulent business practice under California Business & Professions Code § 17200 *et seq.*;

(t) Whether Defendants have violated Labor Code §§ 201-204 by failing, upon termination, to timely pay Class Members wages that were due for overtime, and missed meal and rest periods;

(u) Whether Defendants’ failure to pay all compensation owed to

1 Class Members at time of termination of employment constituted an
2 unlawful, unfair, and/or fraudulent business practice under Business &
3 Professions Code § 17200 *et seq.*;

4 (v) Whether Defendants' actions were willful;

5 (w) Whether Defendants engaged in a pattern and practice of
6 misclassifying employees;

7 (x) The proper formula for calculating restitution, damages, and
8 waiting time and other statutory penalties owed to Plaintiff and the Class
9 alleged herein.

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PAY OVERTIME COMPENSATION**

12 **(California Labor Code §§ 510, 558, 1194 *et seq.*, 1198; California IWC Wage Orders)**

13 41. Plaintiff incorporates by reference in this cause of action each allegation of the
14 preceding paragraphs as though fully set forth herein.

15 42. Plaintiff worked over eight hours a day on occasions.

16 43. Plaintiff was misclassified as an independent contractor and Defendant therefore
17 considered her exempt from overtime.

18 44. Plaintiff's position involved rote review of thousands of images a day, using
19 Defendant's policies, and she was required to meet Defendant's production standards.

20 45. By failing to pay overtime compensation to Plaintiff and similarly situated Class
21 Members for this non-exempt review work, which was part of Defendant's core business, as
22 alleged above, Defendants have violated California Labor Code § 510 and IWC Wage Orders,
23 which require overtime compensation for non-exempt employees who work over eight hours a
24 day.

25 46. By failing to maintain adequate time records as required by California Labor Code
26 § 1174(d) and IWC Wage Orders, Defendants have made it difficult to calculate the overtime due
27 to Plaintiff and similarly situated Class Members.

1 47. As a result of Defendants' unlawful acts; Plaintiff and similarly situated Class
2 Members have been deprived of overtime compensation in an amount to be determined at trial,
3 and are entitled to recovery of such amounts, plus interest thereon, and attorneys' fees and costs,
4 under California Labor Code § 1194.

5 48. By violating California Labor Code §§ 510 and 1198, Defendants are liable for
6 attorneys' fees and costs under California Labor Code §§ 218.5, 558, 1194, and 1197.1, and Code
7 of Civil Procedure § 1021.5.

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PROVIDE REIMBURSEMENT OF BUSINESS EXPENSES**

10 **(California Labor Code § 2802)**

11 49. Plaintiff incorporates by reference in this cause of action each allegation of the
12 preceding paragraphs as though fully set forth herein.

13 50. While acting on the direct instruction of Defendants and discharging their duties
14 for them, Plaintiff and similarly situated Class Members have incurred work-related expenses.
15 Such expenses include, but are not limited to work-related expenses such as internet plans, phone
16 charges, and use of computer software and hardware. Plaintiff and Class Members incurred these
17 substantial expenses and losses as a direct result of performing their job duties for Defendants.

18 51. Defendants have failed to properly indemnify Plaintiff and similarly situated Class
19 Members for these expenditures and losses. By requiring those employees to pay expenses and
20 cover losses that they incurred in direct consequence of the discharge of their duties for
21 Defendants and/or in obedience of Defendants' direction without properly indemnifying for these
22 losses, Defendants have violated California Labor Code § 2802.

23 52. By unlawfully failing to properly indemnify Plaintiff and other similarly situated
24 Class Members for these expenditures and losses, Defendants are also liable for reasonable
25 attorneys' fees and costs under Labor Code § 2802(c).

26 53. As a direct and proximate result of Defendants' conduct, Plaintiff and similarly
27 situated Class Members have suffered substantial losses according to proof, as well as pre-
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1 judgment interest, costs, and attorneys' fees for the prosecution of this action under California
2 Code of Civil Procedure §1021.5, *inter alia*.

3 **THIRD CAUSE OF ACTION**

4 **FAILURE TO PROVIDE MEAL PERIODS AND REST BREAKS**

5 **(California Labor Code §§ 226.7, 512, 558; California IWC Wage Orders)**

6 54. Plaintiff incorporates by reference in this cause of action each allegation of the
7 preceding paragraphs as though fully set forth herein.

8 55. Plaintiff and Class Members regularly worked in excess of five (5) hours a day
9 without being afforded at least a half-hour uninterrupted meal period in which they were relieved
10 of all duties, as required by California Labor Code §§ 226.7 and 512 and IWC Wage Orders.

11 56. Plaintiff and Class Members have worked in excess of ten (10) hours a day without
12 being afforded a second half-hour uninterrupted meal period in which they were relieved of all
13 duties, as required by California Labor Code §§ 226.7 and 512 and IWC Wage Orders.

14 57. Because Defendants failed to afford proper meal periods, they are liable to Plaintiff
15 and Class Members for one hour of additional pay at the regular rate of compensation for each
16 workday that the proper meal periods were not made available, pursuant to California Labor Code
17 § 226.7 and IWC Wage Orders.

18 58. Plaintiff and Class Members regularly worked more than three and one-half hours
19 in a day without being authorized and permitted to take a 10-minute rest period in which they
20 were relieved of all duties, and regularly worked more than six hours in a day without being
21 authorized and permitted to take two, 10-minute rest periods in which they were relieved of all
22 duties per four hours or major fraction thereof, as required under California Labor Code § 226.7
23 and IWC Wage Orders. Plaintiff and Class Members have worked in excess of 10 hours without
24 being authorized and permitted to take additional 10-minute rest periods in which they were
25 relieved of all duties,

26 59. Because Defendants failed to afford proper rest periods, they are liable to Plaintiff
27 and Class Members for one hour of additional pay at the regular rate of compensation for each
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1 workday that the proper rest periods were not provided, pursuant to California Labor Code §
2 226.7(b) and IWC Wage Orders.

3 60. In addition, because Defendants failed to separately pay Plaintiff and Class
4 Members separately for their paid ten-minute rest periods, Defendants owe Plaintiff and Class
5 Members payment for each such unpaid rest period. *See Vaquero v. Stoneledge Furniture, LLC*,
6 9 Cal. App. 5th 98 (2017).

7 61. Defendants' failure to pay meal and rest period premiums was done willfully, in
8 bad faith, in knowing violation of the California Labor Code and the IWC Wage Order.

9 62. By violating California Labor Code §§ 226.7 and 512, and IWC Wage Orders,
10 Defendants are also liable for reasonable attorneys' fees and costs for enforcing the public interest
11 underpinning the aforementioned Labor Code provisions, under California Code of Civil
12 Procedure §1021.5.

13 **FOURTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

15 **(California Labor Code §§ 226, 226.3, and 1174; California IWC Wage Orders)**

16 63. Plaintiff incorporates by reference in this cause of action each allegation of the
17 preceding paragraphs as though fully set forth herein.

18 64. California Labor Code § 226(a) and IWC Wage Orders require employers semi-
19 monthly or at the time of each payment of wages to furnish each California employee with a
20 statement itemizing, among other things, the total hours worked by the employee. California
21 Labor Code § 226(b) provides that if an employer knowingly and intentionally fails to provide a
22 statement itemizing, among other things, the total hours worked by the employee, then the
23 employee is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the
24 initial violation and one hundred dollars (\$100) for each subsequent violation, up to four thousand
25 dollars (\$4,000).

26 65. Defendants knowingly and intentionally failed to furnish Plaintiff and similarly
27 situated Class Members with timely, itemized statements showing the total hours worked, as
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1 required by California Labor Code § 226(a) and IWC Wage Orders. As a result, Defendants are
2 liable to Plaintiff and similarly situated Class Members for the amounts provided by California
3 Labor Code § 226(b).

4 66. Defendants violated California Labor Code § 1174 and IWC Wage Orders by
5 willfully failing to keep required payroll records showing the actual hours worked each day by
6 Plaintiff and similarly situated Class Members. As a direct and proximate result of Defendants'
7 failure to maintain payroll records, Plaintiff and similarly situated Class Members have suffered
8 actual economic harm as they have been precluded from accurately monitoring the number of
9 hours worked and thus seeking all accrued overtime pay.

10 67. Plaintiff, on behalf of herself and similarly situated Class Members, requests relief
11 for the amounts provided by California Labor Code § 226(b).

12 68. By violating California Labor Code §§ 226 and 1174, and IWC Wage Orders,
13 Defendants are also liable for reasonable attorneys' fees and costs for enforcing the public interest
14 underpinning the aforementioned Labor Code provisions, under California Code of Civil
15 Procedure §1021.5.

16 **FIFTH CAUSE OF ACTION**

17 **LATE PAY AND WAITING TIME PENALTIES**

18 **(California Labor Code §§ 201-204)**

19 69. Plaintiff incorporates by reference in this cause of action each allegation of the
20 preceding paragraphs as though fully set forth herein.

21 70. California Labor Code §§ 201 and 202 require an employer to pay its employees
22 all wages due within the time specified by law. Labor Code § 203 provides that if an employer
23 willfully fails to pay such wages, the employer must continue to pay the subject employees'
24 wages until the back wages are paid in full or an action is commenced, up to a maximum of thirty
25 days of wages.

1 71. Plaintiff and Class Members who ceased employment with Defendants are entitled
2 to unpaid compensation, but to date have not received such compensation, more than 72 hours
3 after the cessation of their employment.

4 72. Defendants failed to pay the earned and unpaid wages of Plaintiff and Class
5 Members within 30 days from the time such wages should have been paid under Labor Code §§
6 201 and 202.

7 73. Defendants failed to pay timely wages in accordance with Labor Code § 204.

8 74. Defendants' willfully failed to timely compensate Plaintiff and Class Members for
9 all hours worked. As a result, Defendants are liable to Plaintiff and Class Members whose
10 employment ended during the Class Period for waiting time penalties, together with interest
11 thereon and reasonable attorneys' fees and costs, under California Labor Code § 203.

12 **SIXTH CAUSE OF ACTION**

13 **VIOLATIONS OF THE UNFAIR COMPETITION LAW ("UCL")**

14 **(California Business & Professions Code §§ 17200-17209)**

15 75. Plaintiff incorporates by reference in this cause of action each allegation of the
16 preceding paragraphs as though fully set forth herein.

17 76. Defendants improperly, fraudulently, and unlawfully classified Class Members as
18 "independent contractors" and have thereby committed unlawful, unfair and/or fraudulent
19 business acts and practices as defined by California Business & Professions Code § 17200, by
20 engaging in the following:

- 21 for Class Members who work for periods of five or more consecutive hours, failing to
- 22 make available at least a one half-hour, off-duty break for meals;
- 23 failing to properly indemnify Plaintiff and similarly situated Class Members for
- 24 employment-related business expenses and losses;
- 25 failing to pay Plaintiff and Class Members their premium wages earned while working
- 26 without the legally mandated meal and rest breaks;

1 failing to separately compensate Plaintiff and Class Members for their paid ten-minute
2 rest periods.
3 failing to pay overtime compensation to Plaintiff and similarly situated Class Members;
4 failing to provide accurate itemized wage statements to Plaintiff and similarly situated
5 Class Members;
6 failing to maintain accurate payroll records showing the actual hours worked each day by
7 Plaintiff and similarly situated Class Members; and
8 failing to pay all accrued overtime, and meal and rest period compensation to Plaintiff and
9 the Class Members upon termination of their employment.

10 77. Plaintiff and Class Members lost money and property as a result of Defendants'
11 unlawful business practices described above.

12 78. Pursuant to the UCL, Plaintiff and Class Members are entitled to restitution of
13 money or property acquired by Defendants by means of such unlawful business practices, in
14 amounts not yet known, but to be ascertained at trial.

15 79. Pursuant to the UCL, Plaintiff and Class Members are entitled to injunctive relief
16 against Defendants' ongoing unlawful business practices. If an injunction does not issue enjoining
17 Defendants from engaging in the unlawful business practices described above, Plaintiff, Class
18 Members, and the general public will be irreparably injured.

19 80. Plaintiff and Class Members have no plain, speedy, and adequate remedy at law.
20 Defendants, if not enjoined by this Court, will continue to engage in the unlawful business
21 practices described above in violation of the UCL, in derogation of the rights of Plaintiff and
22 Class Members and of the general public.

23 81. Plaintiff and Class Members' success in this action will result in the enforcement
24 of important rights affecting the public interest by conferring a significant benefit upon the
25 general public.

1 82. Defendants' numerous violations of local and California law, as well as the other
2 statutory and regulatory violations alleged herein, constitute unlawful business actions and
3 practices in violation of Business and Professions Code § 17200, *et seq.*

4 83. Pursuant to Business and Professions Code § 17200, *et seq.*, Plaintiff and the Class
5 Members are entitled to restitution for all unpaid business expenses, overtime, meal period
6 compensation, rest period compensation, and interest that were withheld and retained by
7 Defendants during a period that commences four years prior to the filing of this action and a
8 declaration that Defendants' business practices are unfair within the meaning of the statute, in
9 addition to an award of attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5
10 and other applicable law, and costs.

11 **PRAYER FOR RELIEF**

12 84. WHEREFORE, Plaintiff, on behalf of herself and the Proposed Class and
13 Subclasses, requests judgment and the following specific relief against Defendants as follows:

14 A. That the Court determine that this action may be maintained as a class action under
15 Code of Civil Procedure § 382;

16 B. A declaratory judgment that Defendants have knowingly and intentionally
17 violated the following provisions of the Labor Code and IWC Wage Orders 4-2001 as to Plaintiff
18 and Class Members:

19 1. California Labor Code § 2802 by failing to indemnify Plaintiff and Class
20 Members for all necessary business expenses and losses;

21 2. California Labor Code §§ 226.7 and 512, and IWC Wage Orders by failing
22 to provide 30-minute, off-duty meal periods to Plaintiff and Class Members;

23 3. California Labor Code § 226.7 and IWC Wage Orders by failing to provide
24 10-minute, paid, duty-free rest periods to Plaintiff and Class Members;

25 4. California Labor Code § 226.7 and IWC Wage Orders by failing to
26 separately compensate Plaintiff and Class Members for 10-minute, paid, duty-free rest periods;

1 5. California Labor Code §§ 510, 558, 1194 *et seq.*, 1197.1, 1198 and IWC
2 Wage Orders by failing to pay overtime compensation to Class Members;

3 6. California Labor Code §§ 226, 226.3, 1174 and IWC Wage Orders, by
4 failing to provide Class Members with itemized statements of total hours worked with each
5 payment of wages and failing to maintain payroll records of the actual hours worked by Class
6 Members;

7 7. California Labor Code §§ 201-204, for willful failure to pay overtime and
8 meal/rest period compensation at the time of termination of employment, resulting in unpaid
9 waiting time penalties;

10 8. California Business & Professions Code §§ 17200-17209, by failing to
11 reimburse Class Members for necessary business expenses, by failing to provide off-duty meal
12 periods and/or pay meal/rest period compensation to Class Members, by failing to pay Class
13 Members overtime compensation, by failing to provide Class Members with itemized wage
14 statements showing all hours worked, by failing to maintain payroll records that document all
15 hours worked by Class Members, and by willfully failing to pay all compensation owed to Class
16 Members upon termination of employment;

17 C. That Defendants' actions are found to be willful and/or in bad faith to the extent
18 necessary under §§ 201, 202 and 203 of the California Labor Code for willful failure to pay all
19 compensation owed at the time of separation to Plaintiff and the Class Members no longer
20 employed by Defendants, as to § 226 of the California Labor Code for willful failure to provide
21 the required accurate and itemized wage statements to Plaintiff and Class Members;

22 D. An award to Plaintiff and Class Members of damages in the amount of necessary
23 business expenses, unpaid overtime, and meal/rest period compensation, including interest
24 thereon, subject to proof at trial;

25 E. An award to Plaintiff and Class Members of statutory penalties because of
26 Defendants' failure to provide Plaintiff and Class Members with itemized wage statements that
27 comply with the requirements of California Labor Code § 226, subject to proof at trial;

1 F. An award of payments due to them as waiting time penalties as to those Class
2 Members who have left Defendants' employ, pursuant to Labor Code § 203;

3 G. That Defendants be ordered to pay restitution to Plaintiff and Class Members for
4 amounts acquired through Defendants' unlawful activities pursuant to Business and Professions
5 Code §§ 17200-05 and enjoined to cease and desist from unlawful and unfair activities in
6 violation of California Business and Professions Code § 17200 *et. seq.*;

7 H. That the Court issue declaratory relief that Defendants' challenged policies are
8 unlawful;

9 I. An award to Plaintiff and the Class Members of reasonable attorneys' fees and
10 costs, pursuant to California Code of Civil Procedure § 1021.5 and California Labor Code §§
11 226, 218.5, 1194, and 2802, and/or other applicable law; and

12 J. An award to Plaintiff and Class Members of such other and further relief, in law
13 or equity, as this Court deems appropriate and just.

14
15 **DEMAND FOR JURY TRIAL**

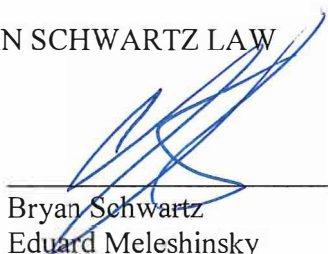
16 Plaintiff hereby demands a jury trial on all issues.

17
18 Dated: July 20, 2018

Respectfully submitted,

19 BRYAN SCHWARTZ LAW

20
21 By:



22 Bryan Schwartz
23 Eduard Meleshinsky
24 ATTORNEYS FOR PLAINTIFF AND
25 THE PUTATIVE CLASS
26
27
28

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Shutterstock Misclassifies Content Reviewers, Owes Unpaid Wages](#)
