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10 and all others similarly situated

11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 ANA GARCIA, on behalf of herself and
14 all others similarly situated,

15 Plaintiff,

16 v.

17 STG INTERNATIONAL, INC., a
18 Virginia Corporation,

19 Defendant.

Case No. '20CV1701 AJB LL

**CLASS AND COLLECTIVE
ACTION COMPLAINT**

1. Failure to Pay All Wages Owed (Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*)
2. Failure to Pay All Wages Owed (Lab. Code §§ 1194 and 1194.2)
3. Failure to Pay Overtime Wages (Lab. Code §§ 510 and 1194)
4. Failure to Timely Pay Wages at Separation (Lab. Code §§ 201-203)
5. Failure to Provide Accurate Itemized Wage Statements (Lab. Code §§ 226(a) and (b))
6. Failure to Permit Meal Periods or Pay All Premiums Owed (Lab. Code §§ 226.7, 512)
7. Failure to Permit Rest Periods or Pay All Premiums Owed (Lab. Code §§ 226.7, 512)
8. Violation of Unfair Business Practices Act (Bus. & Prof. Code §§ 17200-17208)

1 Plaintiff ANA GARCIA (“Plaintiff”), on behalf of herself, and all others
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. This is a class and collective action against Defendant STG
5 INTERNATIONAL, INC (collectively “Defendant” or “STG”). Plaintiff brings
6 this action on behalf of herself and all other non-exempt employees of Defendant
7 who worked in California (“Class Members”) at any time during the four years
8 preceding the filing of this action through the time the time of trial (“Class
9 Period”), and in the United States (“Covered Employees”) at any time in the three
10 years preceding the filing of this action (“FLSA Class Period”).

11 2. During the Class and FLSA Class Period, Defendant had a consistent
12 payroll administration practice whereby Defendant did not accurately calculate the
13 “regular rate of pay” for non-exempt employees because Defendant failed to
14 include all remuneration earned—including bonuses, cash health and welfare
15 benefits, shift differentials, among other sums—in the lawful overtime hourly rate
16 in violation of California and federal wage and hour laws.

17 3. Defendant also failed to provide meal and rest periods (or pay the
18 applicable premiums) and failed to provide notice of paid sick leave to the Class.

19 4. These issues are apparent based on the face of records STG maintains
20 and is required to maintain, including wage statements and time records, and are
21 amenable for adjudication on a class and collective action bases on the claims set
22 forth in this Complaint.

23 **JURISDICTION AND VENUE**

24 5. This Court has original federal question jurisdiction under 28 U.S.C.
25 § 1331 because this case is brought under the Fair Labor Standards Act (“FLSA”),
26 29 U.S.C. §§ 201, et seq. Diversity subject matter jurisdiction exists pursuant 28
27 U.S.C. § 1332(d)(2) as amended by the Class Action Fairness Act of 2005,
28 because at least some members of the proposed class have different citizenship

1 from Defendant, and the claims of the proposed class members exceed five
2 million dollars (\$5,000,000) in the aggregate.

3 6. Diversity of citizenship exists between Plaintiff ANA GARCIA, a
4 citizen of California, and STG, a Virginia corporation.

5 7. The exact damages of Plaintiff and the Class are unknown, but
6 Plaintiff reasonably believes they exceed \$5,000,000 in the aggregate.

7 8. This Court has personal jurisdiction over STG because STG
8 purposefully availed itself of the privilege of conducting business in the State of
9 California, in this judicial district.

10 9. Venue is proper in this district because a substantial part of the events
11 and omissions giving rise to the claims occurred in this district and because
12 Plaintiff seeks claims on behalf of a Class of California current and former
13 employees. Venue is proper in this district also because there is personal
14 jurisdiction in this district over STG. Presently and at all relevant times, STG has
15 conducted substantial, continuous and systematic commercial activities in this
16 district.

17 **PARTIES**

18 **A. The Plaintiff**

19 10. Plaintiff ANA GARCIA is over the age of 18 and a California
20 citizen.

21 **B. The Defendant**

22 11. Plaintiff is informed, believes, and alleges: Defendant STG
23 INTERNATIONAL, INC. is a Virginia corporation, which conducts business in
24 the County of San Diego, was the employer of Plaintiff and Class Members during
25 the Class Period; and, also employed Covered Employees during the FLSA Class
26 Period.

27 12. Plaintiff is informed, believes, and alleges that Defendant employed
28 Class Members in California during the Class Period and employed Covered

1 Employees during the FLSA Class Period in the following states: Virginia,
2 Arizona, Texas, Florida, Missouri, Maryland, North Dakota, South Dakota,
3 Pennsylvania, Oklahoma, Tennessee, Kentucky, Massachusetts, Illinois,
4 Louisiana, Idaho, Georgia, Arkansas, Washington, New Jersey, New York, and
5 Washington, D.C.

6 **GENERAL ALLEGATIONS**

7 13. At all times during the Class Period, Defendant conducted business
8 and employed Plaintiff and Class Members in San Diego County, California.

9 14. Plaintiff and Class members were non-exempt employees, covered by
10 Defendant's policies and Industrial Welfare Commission (IWC) Wage Orders,
11 including 4-2001, Labor Code § 1194, the FLSA, and/or other orders, regulations
12 and statutes, throughout the Class Period.

13 **PLAINTIFF'S EXPERIENCE**

14 15. Plaintiff was employed by STG INTERNATIONAL, INC. as a
15 Registered Nurse from December 2018 through July 2020. For part of her
16 employment, Plaintiff worked in El Paso, Texas. During the last three months of
17 her employment, Plaintiff worked at the Otay Mesa Detention Facility in San
18 Diego County, California.

19 16. Plaintiff was classified as a non-exempt employee by Defendant
20 throughout her employment and paid various forms remuneration, including shift
21 differentials, bonuses, and cash benefits.

22 17. Each pay period, STG paid Plaintiff bonuses and multiple types of
23 remuneration, in addition to her regular hourly wage, which were identified as
24 follows on her wage statements as "bonus," "Sd/Oc 3.00," "Shift Diff/Page," "Shift
25 Diff 1.00," "Shift Diff 1.50," "Shift Diff 1.75," "Shift Diff 3.50," "Shift Diff
26 4.00."

27 18. Plaintiff alleges that Defendant paid the same or similar non-
28 discretionary bonuses and shift differentials to other non-exempt employees.

1 19. Some of the bonuses paid to Plaintiff, Covered Employees, and Class
2 Members were flat sum bonuses that were earned by showing up for a particular
3 shift.

4 20. Plaintiff is informed, believes and alleges that she and other Covered
5 Employees and Class Members received other forms of remuneration during their
6 employment and during the relevant time periods that were required to be
7 included in the regular rate of pay for purposes of calculation and payment of the
8 lawful overtime rate, but which were excluded from the calculation without a
9 legal basis and in violation of California and federal wage and hour laws.

10 21. Throughout her employment, Plaintiff received cash health and
11 welfare payments that fluctuated based on the number of hours that she worked
12 each pay period.

13 22. These payments appear on Plaintiff's wage statements as "Cash 4.13"
14 and "Cash 4.18" and may appear on the wage statements or records of Class
15 Members and Covered Employees with the same or similar designations, without
16 limitation.

17 23. The cash payments were paid directly by Defendant to Plaintiff and
18 not by a third party or trustee and are not excluded from the regular rate of pay
19 calculation under California or federal law. *See Bonner v. Metropolitan Security*
20 *Services, Inc.* (W.D. Tex. Mar. 15, 2011) Case No. SA-10-CV-937-XR (holding
21 that cash health and welfare payments made directly by an employer to an
22 employee under a contract governed by the Service Contract Act are not are not
23 excludable from the "regular rate of pay").

24 24. Plaintiff is informed and believes the Covered Employees and Class
25 Members also received the same or similar cash health and welfare payments
26 which may bear the same or different description on each employee's wage
27 statement.

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1 25. In pay periods when Plaintiff earned overtime or meal and rest period
2 premiums, Defendant calculated and paid Plaintiff and Class Members based only
3 on their straight time hourly rate, not their respective regular rate of pay, which
4 includes the cash payments, shift differentials, and bonuses, among other sums.

5 26. Defendant underpaid Plaintiff, Covered Employees, and Class
6 Members by not including all forms of remuneration, including the cash
7 payments, shift differentials, bonuses, and other forms of remuneration in the
8 regular rate of pay for purposes of overtime during the respective statutory
9 periods.

10 27. By way of example, on Plaintiff's June 10, 2020 wage statement, she
11 was paid overtime at a rate of \$78.19, which was one and one-half times her
12 *straight time* hourly rate of \$52.13 (i.e., $\$52.13 * 1.5 = \78.19).

13 28. However, in addition to her hourly wages, Plaintiff was also paid
14 shift differentials, cash health and welfare benefits, a bonus, and other
15 remuneration in the total amount of \$866.40.

16 29. Although this amount is required to be included in the "regular rate
17 of pay" Defendant failed to include the \$866.40 (or any additional amount) in the
18 regular rate of pay for Plaintiff or Covered Employees and Class Members as a
19 matter of common practice, as the overtime rate is a straight time 1.5x multiple of
20 the hourly rate, facially demonstrating Defendant's failure to pay all overtime at
21 the proper hourly rate (i.e., the regular rate of pay multiple).

22 30. Additionally, Defendant issued wage statements to Plaintiff and, on
23 information and belief, other Class Members, which contain at least six distinct
24 types of violations.

25 31. First, in each wage statement furnished to Plaintiff and on
26 information and belief the Class Members, Defendant failed to identify the "total
27 hours worked" on the wage statement.

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1 32. Second, Defendant’s wage statements inaccurately state the gross
2 wages, total hours worked, net wages earned, applicable hourly rates in effect and
3 the number of hours worked at each hourly rate.

4 33. These wage statement defects are the result of Defendant’s failure to
5 pay overtime at the “regular rate of pay,” thus rendering the wage statement total
6 amounts inaccurate.

7 34. Third, Defendant failed to pay meal and rest period premiums at the
8 lawful regular rate of compensation rendering the wage statements an inaccurate
9 reflection of the wages and hours of Plaintiff and the Class Members.

10 35. Because of the failure to pay meal and rest premiums, Defendant
11 thus listed the incorrect gross wages earned, total hours worked, net wages earned,
12 and all applicable hourly rates in effect during the pay period with the number of
13 hours worked at each hourly rate by the employee.

14 36. Fourth, irrespective of the “regular rate of pay” issue, when Plaintiff
15 was paid for double time, the double time rate on the wage statement was
16 inaccurate because it is stated as being the same as Plaintiff’s straight time hourly
17 rates instead of a 2x multiple of the straight hourly rate. As a result, Defendant
18 failed to list the correct hourly rate of pay for double time compensation for
19 Plaintiff and the Class Members.

20 37. Fifth, Defendant did not list the corresponding number of hours
21 worked for all forms of hourly-based remuneration earned by Plaintiff and the
22 Class Members.

23 38. Specifically, Defendant’s wage statements for Plaintiff did not list the
24 corresponding number of hours worked for earnings listed as “Cash,” “Sd/Oc,”
25 “Shift Diff 3.50,” Shift Diff/Page,” among other forms of pay.

26 39. When Plaintiff and Class Members were paid these forms of
27 remuneration, such as shift differentials, their wage statements failed to specify
28 the number of hours worked for the particular earning category.

1 40. An example of this practice appears on Plaintiff's wage statement
2 with the pay date 05/22/2020.

3 41. Sixth, Defendant also failed to include paid sick leave accruals and
4 balance on Plaintiff and the Class Members' wage statements in violation of
5 California Labor Code section 246.

6 42. Defendant's wage statement issues described above rendered the
7 wage statements inaccurate and confusing to Plaintiff and Class Members.

8 43. Plaintiff and Class Members suffered injury in the form of confusion
9 regarding amounts paid for hours worked, and in the form of concealment of the
10 common payroll practices causing the violations and underpayment of wages and
11 wage statement deficiencies as addressed in this Complaint.

12 44. Defendant's wage statement violations were knowing and intentional
13 as a matter of law with respect to Plaintiff and Class Members given that the legal
14 obligation was not disputed, the wage statement and overtime laws are clear and
15 unambiguous as written, and because Defendant nevertheless failed to comply
16 despite the means and ability to do so.

17 45. Plaintiff is informed and believes, and alleges, that Defendant knew
18 or should have known Plaintiff and Class Members were entitled to receive all
19 meal periods or payment of one additional hour of pay at their respective regular
20 rate of compensation when they did not receive a compliant meal period.

21 46. Plaintiff is informed and believes that Defendant maintained a
22 company-wide practice in which it automatically deducted a 30-minute
23 uncompensated meal period per workday regardless of whether Plaintiff and the
24 Class Members actually took a duty-free 30-minute meal period. Because of this
25 practice, Defendant did not maintain any records of the actual times that Plaintiff
26 and Class Members took meal periods (if any).

27 47. Plaintiff's actual meal periods were often late, short, interrupted, or
28 missed entirely due to Defendant's policies and practices which did not provide

1 enough coverage for employees to take meal periods and which effectively
2 required employees to skip, work through, or cut short meal periods on certain
3 occasions.

4 48. Despite being on notice of its employees being deprived of the
5 opportunity to take compliant meal periods or any meal period at all, Defendant
6 nonetheless automatically deducted 30 minutes of time from Plaintiff and the
7 Class Members each workday. These automatic deductions are reflected on
8 Plaintiff's time records for each workday as .50 "non-work hours."

9 49. As a result of Defendant's practice, Plaintiff and the Class Members
10 often worked multiple hours per workweek for which they received no
11 compensation whatsoever, whether straight time or overtime pay.

12 50. In violation of the Labor Code and IWC Wage Orders, Plaintiff and
13 Class Members did not receive all meal periods or payment of one additional hour
14 of pay at their "regular rate of compensation" when they did not receive a
15 compliant meal period (i.e., untimely, short or interrupted).

16 51. Plaintiff is informed and believes, and alleges, Defendant knew or
17 should have known Plaintiff and Class Members were entitled to receive all rest
18 periods or payment of one additional hour of pay at their respective regular rate of
19 compensation when they did not receive a compliant rest period.

20 52. In violation of the Labor Code and IWC Wage Orders, Plaintiff and
21 Class Members did not receive all rest breaks or payment of one additional hour
22 of pay at their respective regular rate of pay when they did not receive a compliant
23 rest period (i.e., short or interrupted).

24 **FLSA COLLECTIVE ACTION**

25 53. Plaintiff brings the First Cause of Action for violations of FLSA
26 Section 16(b), 29 U.S.C. § 216(b), on behalf of all Covered Employees during the
27 FLSA Class Period.

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1 54. At all relevant times, Plaintiff and Covered Employees have been
2 similarly situated, had substantially similar job requirements and pay provisions,
3 and been subject to Defendant’s common practices, policies and procedures of
4 willfully failing to pay them for all straight and overtime hours due to Defendant’s
5 practice of automatically deducting 30 minutes of pay each shift for a meal period
6 regardless of whether a meal period was actually taken. Defendant also failed to
7 pay Plaintiff and the Covered Employees them at the legally required time-and-a-
8 half rates for work in excess of forty (40) hours per workweek, including by
9 failing to include all remuneration to correctly calculate the “regular rate of pay.”
10 Plaintiff’s claims are similar to those of the other Covered Employees.

11 55. The First Cause of Action is properly brought and maintained as an
12 opt-in collective action. FLSA, 29 U.S.C. 216(b). Covered Employees names and
13 addresses are readily available from Defendant. Covered Employees can be
14 provided notice by first class mail to the last address known to their employer.

15 56. Plaintiff ANA GARCIA’S signed consent is attached to this
16 Complaint Exhibit “A.” Plaintiff is informed, believes and alleges many other
17 Covered Employees will sign and file consents to join this lawsuit if given the
18 opportunity to do so.

19 **CALIFORNIA CLASS ACTION**

20 57. Plaintiff brings this action on behalf of herself and all similarly-
21 situated persons in California pursuant to FRCP 23 on behalf of all Class
22 Members. The class Plaintiff seeks to represent is defined as:

23 All Defendant’s non-exempt California employees
24 employed at any time during the period four (4) years before
the filing of the Complaint to the time of trial.

25 58. Plaintiff seeks to certify a subclass of employees defined as:

26 **California Unpaid Wage Subclass**

27 All Class Members who were not paid regular or overtime
28 wages for all hours worked as a result of Defendant’s policy

1 of automatically deducting 30 minutes of pay each workday
2 for a meal period regardless of whether a compliant meal
3 period was actually taken.

4 59. Plaintiff seeks to certify a subclass of employees defined as:

5 **California Overtime Subclass**

6 All Class Members who were not paid all overtime wages at
7 the correct regular rate of pay for hours worked over eight
(8) hours per day or forty (40) hours per week.

8 60. Plaintiff seeks to certify a subclass of employees defined as:

9 **Waiting Time Subclass**

10 All Class Members to whom Defendant failed to pay all
11 wages due to them upon termination or resignation.

12 61. Plaintiff seeks to certify a subclass of employees defined as:

13 **Wage Statement Subclass**

14 All Class Members whom Defendant improperly failed to
15 provide accurate itemized wage statements under Labor
Code § 226(b).

16 62. Plaintiff seeks to certify a subclass of employees defined as:

17 **Premium Wage Subclass**

18 All Class Members who were not paid premium wages for a
19 meal period not provided or a rest period not permitted or
20 authorized.

21 63. Plaintiff seeks to certify a subclass of employees defined as:

22 **UCL Subclass**

23 All members of the California Overtime Subclass and
24 Premium Wage Subclass.

25 64. This action has been brought and may be maintained as a class action
26 pursuant to FRCP 23 because there is a well-defined common interest of many
27 persons and it is impractical to bring them all before the court. Plaintiff reserves
28

1 the right to modify the Class description or further divide it into subclasses or
2 limit it to particular issues.

3 65. **Ascertainability**: The proposed Class and Subclasses are
4 ascertainable because they can be identified and located using Defendant's payroll
5 and personnel records.

6 66. **Numerosity**: The potential members of the Class and Subclasses as
7 defined is so numerous that joinder of all members would be infeasible and
8 impractical. The disposition of their claims through this class action will benefit
9 both the parties and this Court. The number of members of the Class and
10 Subclasses is unknown to Plaintiff, but is estimated to be in excess of 100
11 individuals. The number and identity of members can be readily ascertained using
12 Defendant's records.

13 67. **Typicality**: Plaintiff's claims are typical of Class and Subclass
14 Member's because all sustained similar injuries and damages arising out of
15 Defendant's common course of conduct in violation of law and the injuries and
16 damages of all members of the Class and Subclasses were caused by Defendant's
17 wrongful conduct in violation of law, as alleged.

18 68. **Adequacy**: Plaintiff is an adequate representative of the Class and
19 Subclasses, will fairly protect the interests of Class and Subclass members, has no
20 interests antagonistic to Class and Subclass members, and will vigorously pursue
21 this lawsuit. Plaintiff's attorneys are competent, skilled and experienced in
22 litigating large wage and hour class actions.

23 69. **Superiority**: A class action is superior to other available means for
24 the fair and efficient adjudication of this controversy. Each Class Member has
25 been damaged, and is entitled to recovery, by Defendant's unlawful policies. A
26 Class action will allow litigation of claims in the most efficient and economical
27 manner for the parties and judicial system. Plaintiff is unaware of any likely
28 difficulties in managing this action that precludes a class action.

1 70. Nearly all factual, legal, statutory, declaratory, and injunctive relief
2 issues that are raised in this Complaint are common to the Class Members and will
3 apply uniformly to every Class Member. The predominating common questions
4 of law and fact include:

- 5 a. Whether Defendant violated California law by failing to properly
6 compensate Plaintiff Class Members when it automatically deducted
7 30 minutes for a meal period each workday on days when a 30-
8 minute uninterrupted meal period was not actually taken.
- 9 b. Whether Defendant violated federal law by failing to properly
10 compensate Plaintiff Class Members when it automatically deducted
11 30 minutes for a meal period each workday on days when a 30-
12 minute uninterrupted meal period was not actually taken.
- 13 c. Whether Defendant violated the law by failing to properly calculate
14 Plaintiff Class Members' regular rate of pay;
- 15 d. Whether Defendant violated California law by failing to properly
16 compensate Plaintiff Class Members for all overtime hours;
- 17 e. Whether Defendant violated federal law by failing to properly
18 compensate Covered Employees for all overtime hours;
- 19 f. Whether Defendant violated California law by failing to properly
20 compensate Plaintiff Class Members for all compensation based on
21 the regular rate of pay;
- 22 g. Whether Defendant violated California law by failing to properly
23 compensate Plaintiff Class Members for all meal and rest period
24 premium payments at the regular rate of compensation;
- 25 h. Whether Defendant violated California Labor Code section §§ 226
26 and 246 by failing to provide Plaintiff Class Members with accurate
27 itemized wage statements;

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- 1 i. Whether the Plaintiff Class is entitled to waiting time penalties under
2 § 203;
- 3 j. Whether Defendant violated Labor Code §§ 201, 202, 203, 204, 226,
4 510, 1182.12, 1194, 1194.2, 1197, 1198, ; IWC Wage Order 4-2001,
5 and other applicable IWC Wage Orders, and whether that establishes
6 a violation of fundamental public policy;
- 7 g. Whether Plaintiff Class and Subclasses are entitled to equitable relief
8 pursuant to Business and Professions Code, §§ 17200, *et seq.*

9 **CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**

11 **Failure to Pay All Wages Owed [FLSA - 29 USC §§ 206, 207]**

12 **(Plaintiff and Covered Employees Against Defendant)**

13 71. Plaintiff incorporates the preceding paragraphs of this Complaint.

14 72. At all relevant times, Defendant has been, and continues to be, an
15 “employer” engaged in “interstate commerce” within the meaning of FLSA, 29
16 U.S.C. § 203, and Defendant has employed, and continues to employ the Covered
17 Employees as “employee[s]” within the meaning of the FLSA.

18 73. Defendant knowingly, willfully, and intentionally, failed to
19 compensate Plaintiff and the FLSA Covered Employees all wages due under the
20 FLSA, including agreed upon wages and the applicable minimum wage, as
21 mandated by 29 U.S.C. § 206(a), and for overtime hours, as mandated by 29
22 U.S.C. § 207(a).

23 74. Defendant failed to pay Plaintiff and the Covered Employees for all
24 hours worked as a result of its policy of automatically deducting 30 minutes for
25 each work day for an unpaid meal period even when employees did not actually
26 take a full 30-minute, uninterrupted meal period. This practice resulted in Plaintiff
27 and the Covered Employees being deprived of their regular and overtime wages.

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1 75. Defendant employed Plaintiff and the FLSA Covered Employees to
2 work, and they did work, in excess of forty (40) hours per week.

3 76. Further, Defendant paid Plaintiff and the FLSA Covered Employees
4 non-discretionary bonuses, cash health and welfare benefits, shift differentials,
5 and other forms of remuneration that were not subject to exclusion from the
6 regular rate of pay under the FLSA.

7 77. Defendant failed to pay Plaintiff and the FLSA Covered Employees
8 for work in excess of forty (40) hours per week at one-and-one half times the
9 regular rate of pay for each Employee.

10 78. Plaintiff seeks judgment against Defendant on her own behalf, and on
11 behalf of each FLSA Covered Employee, for all unpaid wages, including
12 minimum and overtime wages owed by Defendant, together with an award of an
13 additional equal amount as liquidated damages, and costs, interest, and reasonable
14 attorneys' fees.

15 **SECOND CAUSE OF ACTION**

16 **Failure to Pay All Wages [Labor Code §§ 1194 and 1194.2]**

17 **(Plaintiff and the Unpaid Wage Subclass Against Defendant)**

18 79. Plaintiff incorporates the preceding paragraphs of this Complaint.

19 80. At all times herein relevant, Defendant had a duty to comply with
20 Labor Code sections 204, 1182.12, 1194, 1194.2, 1197, 1198, the applicable IWC
21 Wage Orders, and all applicable local minimum wage ordinances in effect
22 throughout California.

23 81. Labor Code section 204 and the IWC Wage Orders require timely
24 payment of all wages owed on regularly scheduled paydays at least twice during
25 each calendar month, on days designated in advance by the employer as the
26 regular paydays. All wages in earned in excess of the normal work period must be
27 paid no later than the payday for the next regular payroll period.

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1 82. Labor Code section 1182.12 sets forth the minimum hourly wage that
2 must be paid to all employees in California for all hours worked. Labor Code
3 section 1197 affirms that it is unlawful to pay less than the state or local minimum
4 wage, whichever is higher, for any hour of work.

5 83. Labor Code section 1194 requires that employers pay employees at
6 least the legal minimum wage rate for all hours worked, notwithstanding any
7 agreement to work for a lesser wage. Labor Code section 1194 further authorizes
8 any employee receiving less than the legal minimum wage applicable to the
9 employee to recover in a civil action the unpaid balance of the full amount of
10 wages, along with interest thereon, reasonable attorneys' fees and costs of suit.

11 84. Labor Code section 1194.2 authorizes the recovery of liquidated
12 damages in an amount equal to the wages unlawfully unpaid and interest thereon
13 for unpaid wage violations.

14 85. Labor Code section 1198 prohibits employers from employing for
15 longer hours or less favorable conditions than those set forth in the Labor Code,
16 IWC Wage Orders, or as otherwise set by the Labor Commissioner.

17 86. Defendant failed to pay Plaintiff and the Class Members for all hours
18 worked as a result of its policy of automatically deducting 30 minutes for each
19 workday for an unpaid meal period even when employees did not actually take a
20 full 30-minute, uninterrupted meal period. This practice resulted in Plaintiff and
21 the Class Members being deprived of compensation for all hours that they
22 worked.

23 87. As a direct and proximate result of Defendant's failure to pay
24 Plaintiff and Class Members in accordance with Labor Code sections 204,
25 1182.12, 1194, 1194.2, 1197, 1198, the applicable IWC Wage Orders, and all
26 applicable local minimum wage ordinances in effect throughout California,
27 Plaintiff and Class Members are entitled to recover the full amount of unpaid
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1 wages, liquidated damages, prejudgment interest, and statutory penalties, along
2 with attorneys' fees and costs in amounts that will be established at trial.

3 **THIRD CAUSE OF ACTION**

4 **Failure to Pay Overtime Wages [Labor Code §§ 510 and 1194]**

5 **(Plaintiff and the Unpaid Wage Subclass and California Overtime Subclass**
6 **Against Defendant)**

7 88. Plaintiff incorporates the preceding paragraphs of this Complaint.

8 89. Defendant employed Plaintiff and Class Members to work, and they
9 did work, in excess of eight hours per day and forty hours per week.

10 90. Defendant paid Plaintiff and the Class Members non-discretionary
11 bonuses, cash health and welfare benefits, shift differentials, and other forms of
12 remuneration that were not subject to exclusion from the regular rate of pay.

13 91. Defendant failed to pay Plaintiff and Class Members for work in
14 excess of eight hours per day and forty hours per week at one-and-one half times
15 the regular rate of pay in violation of Labor Code §§ 510 and 1194. Instead,
16 Defendant paid Plaintiff and Class Members overtime based on a 1.5x or 2.0x
17 multiple of their straight time hourly rate, notwithstanding the well known
18 obligation and requirement for employers in California (and the United States) to
19 include all other forms of remuneration in the "regular rate of pay" for purposes of
20 overtime, with the exception of the well-defined and narrowly construed
21 exclusions.

22 92. Defendant also failed to pay Plaintiff and the Class Members for all
23 hours worked, which included overtime hours, as a result of its policy of
24 automatically deducting 30 minutes for each work day for an unpaid meal period
25 even when employees did not actually take a full 30-minute, uninterrupted meal
26 period. This practice resulted in Plaintiff and the Class Members being deprived
27 of their overtime wages.

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1 93. Defendant’s unlawful acts deprived Plaintiff and Class Members of
2 overtime wages in amounts to be determined at trial, and they are entitled to
3 recover these amounts, along with interest, attorneys’ fees, and costs.

4 **FOURTH CAUSE OF ACTION**

5 **Failure to Pay Wages Due at Termination [Labor Code §§ 201 through 203]**
6 **(Plaintiff and the Waiting Time Subclass Against Defendant)**

7 94. Plaintiff incorporates the preceding paragraphs of this Complaint.

8 95. Defendant had a consistent and uniform policy, practice and
9 procedure of willfully failing to pay their employees all final wages due within the
10 time required by law, in violation of Labor Code §§ 201, 202, and 203. This is a
11 result of Defendant’s overtime violations that occurred systemically throughout
12 the Class Period as a result of the regular rate violations.

13 96. An employer that willfully fails to timely pay such wages must, as a
14 penalty, continue to pay an employee’s wages until the back wages are paid in full
15 or an action is commenced. Cal. Lab Code § 203. The penalty cannot exceed 30
16 days of wages.

17 97. The Waiting Time Subclass Members no longer work for Defendant.

18 98. Defendant knew wages were due them, but willfully failed to pay
19 Waiting Time Subclass Members all wages due at termination or within seventy-
20 two (72) hours of resignation, in violation of Labor Code §§ 201, 202, and 203.

21 **FIFTH CAUSE OF ACTION**

22 **Failure to Provide Itemized Wage Statements [Labor Code § 226(a)]**
23 **(Plaintiff and the Wage Statement Subclass Against Defendant)**

24 99. Plaintiff incorporates all preceding paragraphs of this Complaint.

25 100. Labor Code section 226(a) requires an employer to furnish wage
26 statements to employees semimonthly or at the time of each payment of wages,
27 “an accurate itemized statement in writing showing:” (1) gross wages earned,
28 (2) total hours worked, (3) the number of piece rate units earned and applicable

1 piece rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates
2 of the pay period, (7) the name of the employee and last four digits of SSN or an
3 EIN, (8) the name and address of the legal name of the employer, and (9) all
4 applicable hourly rates in effect during the pay period and the number of hours
5 worked at each hourly rate by the employee.

6 101. Defendant knowingly and intentionally failed to comply with this
7 provision by, among other things, providing wage statements to Plaintiff and
8 Class Members which failed to accurately set forth all gross wages earned, total
9 hours worked, net wages earned, and all applicable hourly rates in effect during
10 the pay period with the number of hours worked at each hourly rate by the
11 employee.

12 102. As described herein, Defendant's wage statement violations caused
13 injury to Plaintiff and Class Members in the form of confusion about wages paid
14 and amounts owed, misleading and incorrect rates of pay listed on wage
15 statements (causing Plaintiff and Class Members to not vindicate their rights or
16 inquire about the miscalculation of wages due to the misrepresentation on the
17 wage statement), among other reasons.

18 103. Based on Defendant's knowing and intentional failure to provide
19 accurate itemized wage statements, Wage Statement Subclass members are
20 entitled to penalties not to exceed \$4,000 for each employee together with interest
21 and attorneys' fees and costs.

22 **SIXTH CAUSE OF ACTION**

23 **Failure to Provide Meal Periods or Pay All Meal Period Premiums Owed**

24 **[Labor Code §§ 226.7, 512]**

25 **(Plaintiff and the Premium Wage Subclass Against Defendant)**

26 104. Plaintiff incorporates all preceding paragraphs of this Complaint.

27 105. Defendant violated Labor Code §§ 226.7 and 512 and the IWC Wage
28 Orders by failing to provide compliant meal periods or pay meal period premiums

1 at the regular rate of compensation in lieu thereof.

2 106. Defendant did not maintain a lawful meal period waiver that allowed
3 for Defendant and the Class Members to waive meal periods for shifts of less than
4 six hours in length. During such times, Defendant required Plaintiff and other
5 Class Members to work shifts of five hours or more, but did not provide a timely,
6 uninterrupted 30-minute meal period or a payment of a meal period premium in
7 lieu thereof for those shifts in excess of five hours (with no meal period waiver in
8 effect).

9 107. On days in which Plaintiff and Class Members did not receive an
10 uninterrupted 30-minute meal period within the first five hours of their shift,
11 Defendant failed to pay a corresponding meal period premium at one hour their
12 regular rate of compensation. Plaintiff alleges, on information and belief, that this
13 practice extends to second meal periods for shifts in excess of 10 hours in a
14 workday, as Defendant had a policy and frequent practice of not paying meal
15 period premiums when due to the Class Members.

16 108. As a result of this common practice, Defendant failed to provide
17 Plaintiff and the Class Members and Premium Wage Subclass all meal periods
18 owed and all premiums due at the lawful regular rate of compensation in violation
19 of Labor Code §§ 226.7 and 512 and the IWC Wage Orders.

20 **SEVENTH CAUSE OF ACTION**

21 **Failure to Permit Rest Periods or Pay All Rest Period Premiums Owed**

22 **[Labor Code §§ 226.7, 512]**

23 **(Plaintiff and the Premium Wage Subclass Against Defendant)**

24 109. Plaintiff incorporates all preceding paragraphs of this Complaint.

25 110. Defendant violated Labor Code § 226.7 and the IWC Wage Orders
26 by failing to authorize and permit compliant rest periods for every 4 hours worked
27 or major fraction thereof or pay rest period premiums in lieu thereof.

28 ///

1 111. On days in which Plaintiff and Class Members did not receive at least
2 one 10-minute rest period for each four-hour period worked (or major fraction
3 thereof), Defendant failed to pay a corresponding rest period premium at one hour
4 their regular rate of compensation.

5 112. As a result of this common practice, Defendant failed to provide
6 Plaintiff and the Class Members and Premium Wage Subclass all meal periods
7 owed and all premiums due at the lawful rate in violation of Labor Code §§ 226.7
8 and 512 and the IWC Wage Orders

9 **EIGHTH CAUSE OF ACTION**

10 **Violations of the Unfair Competition Law**

11 **[Business and Professions Code §§ 17200 et seq.]**

12 **(Plaintiff and the Class Members Defendant)**

13 113. Plaintiff incorporates all preceding paragraphs of this Complaint.

14 114. Defendant's failure to pay Plaintiff and Class Members for all hours
15 worked, as required by Wage Orders and the Labor Code, constitutes unlawful
16 activity prohibited by Business and Professions Code §§ 17200, et seq.

17 115. Defendant's actions constitute false, unfair, fraudulent and deceptive
18 practices, within the meaning of Business and Professions Code, §§ 17200, et seq.

19 116. Plaintiff is entitled to an injunction, specific performance under
20 Business and Professions Code, § 17202, and other equitable relief against such
21 unlawful practices in order to prevent future loss, for which there is no adequate
22 remedy at law, and to avoid a multiplicity of lawsuits. Plaintiff brings this cause
23 individually and as a member of the general public as a representative of all others
24 subject to Defendant's unlawful acts and practices.

25 117. This cause of action is brought as a cumulative remedy and is
26 intended as an alternative remedy for restitution for Plaintiff, and each Plaintiff
27 Class Member, for the four (4) year period before the filing of this Complaint, and
28

1 as the primary remedy during the fourth year before the filing of this Complaint.
2 Business and Professions Code § 17205.

3 118. As a result of Defendant's unlawful and unfair business practice of
4 failing to pay earned wages, each Plaintiff Class Member has suffered damages
5 and is entitled to restitution in an amount according to proof.

6 119. The illegal conduct alleged is continuing and there is no indication
7 Defendant will discontinue such activity. Plaintiff alleges if Defendant is not
8 enjoined from the conduct set forth in this Complaint, it will continue to fail to
9 pay all overtime, premium, and final wages as required by law.

10 120. Plaintiff further requests the court issue a preliminary and permanent
11 injunction prohibiting Defendant from continuing to fail to pay overtime wages at
12 the lawful regular rate.

13 **PRAYER FOR RELIEF**

14 Plaintiff prays for judgment as follows:

15 A. Determine this action may be maintained as a class action with
16 Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel;

17 B. Determine this action may be maintained as a collective action, with
18 Plaintiff serving as Class Representative and her counsel serving as Class
19 Counsel;

20 C. For Facilitated Notice under 29 USC § 216(b);

21 D. For recovery of all unpaid wages owed, including all overtime wages,
22 and interest, and an equal amount as liquidated damages pursuant to the FLSA, 29
23 U.S.C. § 207, et seq;

24 E. Attorneys' fees and costs pursuant to statute, including, but not
25 limited to, 29 USC § 216;

26 F. Determine Defendant's failure to pay overtime and premium wages
27 to Plaintiff and Class members violates IWC Wage Orders, regulations and
28 statutes;

1 G. Defendant be ordered to pay and judgment entered for overtime and
2 premium wages for Plaintiff and Plaintiff Subclass members, according to proof;

3 H. Defendant be ordered to pay and judgment entered for Labor Code
4 § 226 penalties to Plaintiff and Plaintiff Subclass member, according to proof;

5 I. Defendant be ordered to pay and judgment entered for Labor Code
6 § 203 penalties to Plaintiff and each Plaintiff Subclass member, according to
7 proof;

8 J. Defendant be ordered to pay liquidated damages under Labor Code
9 § 1194.2;

10 K. Defendant be found to have engaged in unfair competition in
11 violation of Business and Professions Code § 17200 and be ordered to pay
12 restitution to Plaintiff, and each Plaintiff Class member, due to Defendant's
13 unlawful and unfair competition, including disgorgement of wrongfully obtained
14 profits, and wrongfully withheld wages, according to proof, and interest, under
15 Business and Professions Code §§ 17203 and 17204;

16 L. Defendant be enjoined from further acts of unfair competition and
17 specifically from failing to pay Class Members overtime wages;

18 M. Plaintiff, Plaintiff Class members, and Subclass members be awarded
19 attorneys' fees and costs pursuant to statute, including, but not limited to, Labor
20 Code §§ 226, 1194, and Code of Civil Procedure § 1021.5;

21 N. Determine the appropriate remedy to compensate Plaintiff, Class and
22 Subclass members, as required to promote fairness and justice, including but not
23 limited procedures for compensation, and fluid recovery if appropriate;

24 O. Prejudgment Interest; and

25 P. Any other relief the court deems proper.

1 Dated: August 31, 2020

FERRARO EMPLOYMENT LAW, INC.

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4 NICHOLAS J. FERRARO

5 Attorneys for Plaintiff Ana Garcia, on behalf of
6 herself and all others similarly situated

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Former Employee Claims STG International Owes Workers for Underpaid Overtime, Missed Breaks](#)
