1 John A. McGuinn, Esq. (State Bar No. 036047) jamcguinn@mhpsf.com Jeannette A. Vaccaro, Esq. (State Bar No. 287129) 2 jvaccaro@mhpsf.com McGUINN, HILLSMAN & PALEFSKY 3 535 Pacific Avenue 4 San Francisco, California 94133 Telephone: (415) 421-9292 5 Facsimile: (415) 403-0202 6 Attorneys for Plaintiff DANIELLE KESTERSON 7 WELTER LAW FIRM, P.C. 8 Eric A. Welter, Bar No. 270591 eaw@wetlerlaw.com 9 1141 Elden Street, Suite 220 Herndon, VA 20170 10 Telephone: (703) 435-8500 Facsimile: (703) 435-8851 11 Laura B. Thomasian, Bar No. 251502 12 lbt@welterlaw.com Sean F. Daley, Bar No. 272493 13 sfd@wetlerlaw.com 2600 West Olive Avenue, Suite 527 14 Burbank, CA 91505 15 Telephone: (818) 333-5016 Facsimile: (818) 333-5017 16 Attorneys for Defendant 17 **GUARANTEED RATE, INC.** 18 UNITED STATES DISTRICT COURT 19 NORTHERN DISTRICT OF CALIFORNIA 20 SAN FRANCISCO DIVISION 21 22 Case No. 15-cv-05430-EMC DANIELLE KESTERSON, e-filing case 23 Plaintiff, **CORRECTED STIPULATION AND** 24 [PROPOSED] ORDER GRANTING **V**., 25 **PLAINTIFF LEAVE TO FILE** SECOND AMENDED COMPLAINT **GUARANTEED RATE, INC.,** 26 FOR DAMAGES (ADDING McGuinn, Hillsman & Palefsky 535 Pacific Avenue San Francisco, CA 94133 **RETALIATION CLAIM UNDER** 27 Defendant. CAL. LABOR CODE § 1102.5) (415) 421-9292 28 CORRECTED STIPULATION AND [PROPOSED] ORDER GRANTING PLAINTIFF LEAVE 1

TO FILE SECOND AMENDED COMPLAINT FOR DAMAGES

1	Plaintiff, Danielle Kesterson ("Plaintiff") and Defendant Guaranteed Rate, Inc.		
2	("Defendant") (collectively "the parties"), by and through their respective attorneys of record,		
3	hereby stipulate to the following:		
4	1. Plaintiff	should be granted leave to file her Second Amend	ed Complaint for
5	Damage	to add a claim for retaliation under Cal. Labor Co	de §1102.5, attached
6	hereto as	Exhibit A.	
7	2. Defenda	t's responsive pleading shall be due twenty-one (2	21) days after the
8	Second 2	mended Complaint for Damages is deemed filed.	
9	3. This stip	ulation should not be construed as any admission l	by Defendant and/or
10	prejudice	Defendant's ability to challenge the sufficiency of	f the Second Amended
11	Complai	nt for Damages.	
12			
13	DATED: March 24, 20	16 WELTER LAW FIRM, P.C.	
14		Attorneys for Defendant GUARAN	TEED RATE, INC.
15		By: <u>/s/ Laura B. Thomasian</u>	
16		LAURA B. THOMASIAN	
17			
18	DATED: March 24, 20	16 McGUINN, HILLSMAN & PALEF Attorneys for Plaintiff DANIELLE	
19			
20		By: <u>/s/ Jeannette A. Vaccaro</u>	
21		JEANNETTE A. VACCA	KU
22			
23			
24			
25			
26			
McGuinn, Hillsman & Palefsky 535 Pacific Avenue San Francisco, CA 94133			
(415) 421-9292 28			
	CORRECTED STIPULATI TO FILE SECOND AMEN	ON AND [PROPOSED] ORDER GRANTING PLAINTIFI DED COMPLAINT FOR DAMAGES	LEAVE 2

1	<u>ORDER</u>
2	
3	Pursuant to the stipulation of the parties and good cause being shown, IT IS HEREBY
4	ORDERED THAT Plaintiff, DANIELLE KESTERSON is granted leave to file her Second
5	Amended Complaint for Damages adding a claim for retaliation under Cal. Labor Code §1102.5,
6	attached hereto as Exhibit A.
7	IT IS ALSO ORDERED that Defendant's responsive pleading shall be due twenty-one
8	(21) days after the Second Amended Complaint for Damages is deemed filed.
9	IT IS FURTHER ORDERED that the Second Amended Complaint for Damages is deemed
10	filed as of the date this signed Order is transmitted via the CM/ECF system.
11	IT IS SO ORDERED. Plaintiff shall file the amended complaint as a separate document.
12	ES DISTRICE
13	Dated:, 2016, 2016MAGISTRATES DOGE EDWARD M. CHEN
14	UNITED STATES DISTRICT COURT
15	NORTHERN DISTRICT IT IS SO ORDERED IN IT IS SO ORDERED
16	- Contraction
17	Z Judge Edward M. Chen
18	
19	VDISTRICT OF
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25	
26 McGuinn, Hillsman	
& Palefsky 535 Pacific Avenue San Francisco, CA 94133 (415) 421-9292	
28	
	CORRECTED STIPULATION AND [PROPOSED] ORDER GRANTING PLAINTIFF LEAVE TO FILE SECOND AMENDED COMPLAINT FOR DAMAGES3

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EXHIBIT A

1 2 3 4 5	John A. McGuinn, Esq. (State Bar No. 036047) jamcguinn@mhpsf.com Jeannette A. Vaccaro, Esq. (State Bar No. 287129) jvaccaro@mhpsf.com McGUINN, HILLSMAN & PALEFSKY 535 Pacific Avenue, Suite 100 San Francisco, California 94133 Telephone: (415) 421-9292 Facsimile: (415) 403-0202		
6 7	Attorneys for Plaintiff DANIELLE KESTERSON		
8 9	UNITED STATES DIS NORTHERN DISTRICT		
10 11	SAN FRANCISCO		
12 13 14	DANIELLE KESTERSON, Plaintiff, v.	CASE NO.: 15-CV-05430-EMC e-filing case SECOND AMENDED COMPLAINT FOR UNLAWFUL FAILURE TO PAY WAGES; FAILURE TO PAY	
15 16 17	GUARANTEED RATE, INC., Defendants.	WAGES, FAILURE TO TAT OVERTIME COMPENSATION; FAILURE TO PAY MEAL AND REST PERIOD COMPENSATION; FAILURE TO FURNISH ACCURATE WAGE STATEMENTS; FAILURE TO MAINTAIN PAYROLL	
18 19 20		RECORDS; FAILURE TO PAY WAGES UPON TERMINATION; WAITING TIME PENALTIES; RETALIATION; AND UNFAIR COMPETITION	
21 22	1	JURY TRIAL DEMANDED	
23 24	PLAINTIFF DANIELLE KESTERSON COMPLAI	NS AND ALLEGES AS FOLLOWS:	
25 26		<u>N AND VENUE</u> the Fair Labor Standards Act ("FLSA") – 29	
McGuinn, Hillsman 27 & Palefsky 535 Pacific Avenue San Francisco, CA 94133 (415) 421-9292 28	U.S.C. §§ 207, 216, the California Labor Code, and t This court has jurisdiction of the action pursuant to 2	he California Business and Professions Code.	

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1	pursuant to its supplemental jurisdiction under 28 U.S.C. § 1367.		
2	2. The acts and omissions alleged herein were committed in the Northern District of		
3	California.		
4	II. <u>THE PARTIES</u>		
5	3. At all times herein mentioned Plaintiff Danielle Kesterson ("Kesterson" or		
6	"Plaintiff") was a resident of the County of Sonoma, California.		
7	4. Defendant Guaranteed Rate, Inc. ("GRI" or "Defendant") is a Delaware corporation		
8	doing business in California. GRI's principal place of business is in Chicago, Illinois.		
9	III. <u>ADMINISTRATIVE EXHAUSTION</u>		
10	5. Plaintiff timely filed this action after receiving a right to sue letter from the		
11	appropriate administrative agencies.		
12	IV. <u>FACTUAL ALLEGATIONS</u>		
13	6. On or about July 28, 2012, Plaintiff began working for Defendant as a Sales		
14	Assistant in GRI's Petaluma office. In her position, she assisted loan officer Jeremy Forcier. Her		
15	duties included assisting with marketing support, pre-application and post-closing client		
16	interactions and loan data entry. Her compensation included a base salary of \$60,000 plus		
17	bonuses.		
18	7. Kesterson was classified as a non-exempt salaried employee for purposes of		
19	California overtime and other wage and hour requirements.		
20	8. Kesterson reported to Cory Carroll, Vice President and Area Manager for GRI.		
21	9. During the first few months of Kesterson's employment, she was not provided any		
22	method to track the hours she worked. Instead, Carroll would manually submit each employee's		
23	hours. Although she often worked in excess of 8 hours per day and 40 hours per week, she was		
24	only paid for 40 hours of work.		
25	10. In approximately Fall 2012, Carroll requested a telephone meeting with the San		
26	Rafael and Petaluma offices. During that meeting, Carroll advised the team that GRI's corporate		
McGuinn, Hillsman 27 & Palefsky	office was "on him" about timecards and that everyone needed to start tracking their time in		
535 Pacific Avenue San Francisco, CA 94133 (415) 421-9292 28	ADP's electronic timecard software. Carroll told the group that they needed to clock-in and clock-		

out eight times a day to reflect that they had taken a 10-minute break in the morning, a 60-minute
 lunch break, and a 10-minute break in the afternoon, regardless of whether those breaks were
 actually taken.

4 11. Throughout Kesterson's employment she was not afforded the legally required rest
5 or meal breaks.

6 12. After the meeting with Carroll, Kesterson did her best to clock-in and clock-out as
7 instructed, but she was often too busy to even clock-in and clock-out. Kesterson, as well as others
8 in the office, began setting alarms to advise them of when to clock-in and clock-out to give the
9 appearance that they were afforded rest and meal breaks.

10 13. In late-Fall, Kesterson objected to and stopped falsely registering break periods and
simply clocked-in when she arrived in the morning and clocked-out when she left the office in the
evening. Kesterson rarely logged the hours of work she did from home in the evenings.

14. Thereafter, Carroll began manually changing Kesterson's timecard to reflect that
breaks were taken and that she was only working 40 hours per week. Carroll also began retaliating
against Kesterson for her complaints by changing the terms and conditions of her employment and
subjecting her to specious discipline.

17 15. Kesterson rarely received overtime compensation, although Defendant was aware
18 that Kesterson worked overtime on a daily basis. As such, GRI willfully and knowingly failed to
19 pay premium overtime compensation to Kesterson for hours worked over eight in a day and 40 in
20 a week.

21 16. Defendant did not provide Kesterson with accurate itemized statements with her
22 payment of wages that showed, among other things, total hours worked.

23 17. On or about September 20, 2013, Kesterson's employment was involuntarily
24 terminated.

FIRST CAUSE OF ACTION Failure To Pay Earned Wages (Cal. Labor Code §§ 204, 206, 216, 218.5, 218.6)

McGuinn, Hillsman & Palefsky 535 Pacific Avenue San Francisco, CA 94133 (415) 421-9292 28

25

26

18. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 17 above, asthough fully set forth herein.

SECOND AMENDED COMPLAINT FOR DAMAGES

1	19. Throughout Kesterson's employment Defendant failed and refused to pay her for
2 all the	wages that she earned as required by the Cal. Labor Code and other applicable laws and
3 regula	tions.
4	20. At all times, Defendant had the ability to pay Plaintiff all wages due but willfully
5 6 refused	d to pay Plaintiff her wages due.
7	21. Plaintiff has been deprived of her rightfully earned wages as a direct and proximate
	of Defendant's failure and refusal to pay said compensation. Plaintiff is entitled to recover
9 such a	mounts, plus interest thereon, attorneys' fees and costs and applicable civil and statutory
10 penalti	ies.
11	WHEREFORE, Plaintiff prays for relief as set forth below.
12	SECOND CAUSE OF ACTION
13	Failure To Pay Overtime Compensation (Cal. Labor Code §§ 510, 1194; I.W.C. Wage Order No. 4-2001)
14	(Can Labor Code 33 510, 11) i, in the rage of doi 100 1 2001)
15	22. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 21 above, as
Ū Ū	n fully set forth herein.
17	23. Defendant routinely required Plaintiff to work more than eight hours per day.
18 19	dant routinely required Plaintiff to work six days per week. Defendant failed and refused to
	aintiff the overtime compensation required by the Cal. Labor Code and other applicable
	nd regulations.
22	24. By its failure to pay overtime compensation to Plaintiff as alleged above,
23 Defend	dant violated Cal. Labor Code § 510 and the provisions of the I.W.C. Wage Order No. 4-
24 2001,	which require payment of overtime compensation to non-exempt employees.
25	25. By failing to keep adequate time records as required by Cal. Labor Code § 1174(d)
26	e applicable Wage Order, Defendant made it difficult to calculate precisely the overtime
and the	e applicable wage Order, Derendant made it difficult to calculate precisely the overtime
McGuinn, Hillsman 27 & Palefsky	ensation due to Plaintiff.

1	26. Plaintiff has been deprived of her rightfully earned and legally required overtime	
2	compensation as a direct and proximate result of Defendant's failure and refusal to pay said	
3	compensation. Plaintiff is entitled to recover such amounts, plus interest thereon, attorneys' fees	
4	and costs.	
5	27. Based on Defendant's conduct as alleged herein, Defendant is liable for civil	
6		
7	penalties pursuant to Cal. Labor Code § 558 and other applicable provisions of the Cal. Labor	
8	Code and other applicable laws and regulations.	
9	28. As a result of Defendant's unlawful acts, Plaintiff has been deprived of overtime	
10	compensation in an amount to be determined at trial, and is entitled to recovery of such amounts,	
11	plus interest thereon, under Cal. Labor Code § 1194.	
12	29. By violating Cal. Labor Code § 510, Defendant is liable for attorneys' fees and	
13	costs under Cal. Labor Code § 1194.	
14	WHEREFORE, Plaintiff prays for relief as set forth below.	
15		
16	<u>THIRD CAUSE OF ACTION</u> Failure To Pay Overtime Compensation	
17	(Fair Labor Standards Act ("FLSA") – 29 U.S.C. §§ 207, 216)	
18	30. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 29 above, as	
19 20		
20 21	though fully set forth herein.	
21	31. At all relevant times, Plaintiff was "engaged in commerce" and/or "employed by an	
22	enterprise engaged in commerce" within the meaning of the FLSA. At all times relevant to this	
23	cause of action, Defendant was acting as Plaintiff's employer within the meaning of FLSA - 29	
25	U.S.C. § 203(d).	
25	32. Defendant routinely required Plaintiff to work more than eight hours per day.	
McGuinn, Hillsman 27	Defendant routinely required Plaintiff to work six days per week. Defendant willfully failed and	
& Palefsky 535 Pacific Avenue San Francisco, CA 94133 (415) 421-9292 28	refused to pay Plaintiff the overtime compensation required by the FLSA and other applicable	
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1		laws	and	regulations.
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-	and regulations.		
2	33. By its failure to pay overtime compensation to Plaintiff as alleged above,		
3	Defendant violated 29 U.S.C. § 207 and applicable regulations which require payment of overtime		
4	compensation to non-exempt employees.		
5	34. By failing to keep adequate time records as required by the FLSA, Defendant made		
6	it difficult to calculate precisely the overtime compensation due to Plaintiff.		
7			
8	35. Plaintiff has been deprived of her rightfully earned and legally required overtime		
9	compensation as a direct and proximate result of Defendant's failure and refusal to pay said		
10	compensation. Plaintiff is entitled to recover such amounts, plus interest thereon, attorneys' fees		
11	and costs.		
12	36. Based on Defendant's conduct as alleged herein, Defendant is liable for liquidated		
13 14	damages pursuant to 29 U.S.C. § 216(b) and other applicable laws and regulations.		
14	37. As a result of Defendant's unlawful acts, Plaintiff has been deprived of overtime		
16	compensation in an amount to be determined at trial, and is entitled to recovery of such amounts,		
17			
18	plus interest thereon.		
19	38. By violating 29 U.S.C. § 207, Defendant is liable for attorneys' fees and costs		
20	under 29 U.S.C. §216(b).		
21	WHEREFORE, Plaintiff prays for relief as set forth below.		
22	FOURTH CAUSE OF ACTION Failure To Pay Meal And Rest Period Compensation		
23	(Cal. Labor Code § 226.7)		
24			
25	39. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 38 above, as		
26	though fully set forth herein.		
McGuinn, Hillsman 27 & Palefsky	40. Defendant routinely failed and refused to provide Plaintiff with meal and rest		
535 Pacific Avenue San Francisco, CA 94133 (415) 421-9292 28	periods during her work shifts, and failed and refused to compensate Plaintiff when she did work		

1	during said meal and rest periods, as required by Cal. Labor Code § 226.7 and the other applicable
2	laws and regulations.
3	41. Plaintiff has been deprived of her rightfully earned compensation for meal and rest
4	periods as a direct and proximate result of Defendant's failure and refusal to pay said
5	compensation. Plaintiff is entitled to recover such amounts, plus interest thereon, attorneys' fees
6 7	and costs, plus statutory and civil penalties pursuant to Cal. Labor Code § 558 and the other
8	applicable laws and regulations.
9	WHEREFORE, Plaintiff prays for relief as set forth below.
10	FIFTH CAUSE OF ACTION
11	Failure To Furnish Accurate Wage Statements (Cal. Labor Code §§ 226 & 226.3)
12	(Cal. Labor Code §§ 220 & 220.3)
13	42. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 41 above, as
14	though fully set forth herein.
15	43. California Labor Code § 226(a) requires employers semi-monthly or at the time of
16	each payment of wages to furnish each employee with a statement itemizing, among other things,
17 18	the total hours worked by the employee. California Labor Code § 226(b) provides that if an
18	employer knowingly and intentionally fails to provide a statement itemizing, among other things,
20	the total hours worked by the employee, then the employee is entitled to recover the greater of all
21	actual damages or \$50 for the initial violation and \$100 for each subsequent violation, up to
22	\$4,000.
23	44. Defendant knowingly and intentionally failed to furnish Plaintiff with timely,
24	
25	itemized statements showing the total hours worked, as required by Cal. Labor Code § 226(a). As
26	a result, Plaintiff incurred injury, including but not limited to the ability to accurately calculate
ue 4133	overtime owed. Therefore, Defendant is liable to Plaintiff for her actual damages or the amounts
^{ue} 2 ⁴¹³³ 28	provided by Cal. Labor Code § 226(b).

1	45. By violating Cal. Labor Code § 226, Defendant is also liable for civil penalties and		
2	attorneys' fees and costs under Cal. Labor Code §§ 226(e) and 226.3.		
3	WHEREFORE, Plaintiff prays for relief as set forth below.		
4	SIXTH CAUSE OF ACTION		
5	Failure To Maintain Payroll Records (Cal. Labor Code §§ 226, 1174 and 1174.5)		
6	(Cal. Labor Code 88 220, 11/4 and 11/4.5)		
7	46. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 45 above, as		
8	though fully set forth herein.		
9	47. Defendant failed to maintain complete and accurate payroll records for Plaintiff,		
10	showing gross wages earned, total hours worked, all deductions made, net wages earned, the name		
11	and address of the legal entity employing her, all applicable hourly rates in effect during each pay		
12	period, and the corresponding number of hours worked by Plaintiff at each hourly rate.		
13	48. Defendant is liable for statutory and civil penalties pursuant to Cal. Labor Code §§		
14	1174.5, 558 and other applicable laws and regulations.		
15	GEVENTLL CALISE OF A CTION		
15			
16	Failure To Pay Wages On Termination		
16 17	Failure To Pay Wages On Termination (Cal. Labor Code § 201)		
16 17 18	Failure To Pay Wages On Termination (Cal. Labor Code § 201) 49. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 48 above, as		
16 17 18	Failure To Pay Wages On Termination (Cal. Labor Code § 201) 49. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 48 above, as though fully set forth herein.		
16 17 18	 Failure To Pay Wages On Termination (Cal. Labor Code § 201) 49. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 48 above, as though fully set forth herein. 50. Pursuant to Cal. Labor Code § 201, Defendant was required to promptly pay 		
16 17 18 19	Failure To Pay Wages On Termination (Cal. Labor Code § 201) 49. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 48 above, as though fully set forth herein. 50. Solution Fursuant to Cal. Labor Code § 201, Defendant was required to promptly pay Plaintiff all wages due and owing to her upon her termination. As set forth above, Defendant		
16 17 18 19 20	Failure To Pay Wages On Termination (Cal. Labor Code § 201) 49. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 48 above, as though fully set forth herein. 50. 50. Pursuant to Cal. Labor Code § 201, Defendant was required to promptly pay Plaintiff all wages due and owing to her upon her termination. As set forth above, Defendant willfully refused to pay Plaintiff all of the compensation that was due to her following the		
16 17 18 19 20 21	 Failure To Pay Wages On Termination (Cal. Labor Code § 201) 49. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 48 above, as though fully set forth herein. 50. Pursuant to Cal. Labor Code § 201, Defendant was required to promptly pay Plaintiff all wages due and owing to her upon her termination. As set forth above, Defendant willfully refused to pay Plaintiff all of the compensation that was due to her following the termination of her employment. Defendant thereby violated Cal. Labor Code § 201. 		
16 17 18 19 20 21 22	 Failure To Pay Wages On Termination (Cal. Labor Code § 201) 49. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 48 above, as though fully set forth herein. 50. Pursuant to Cal. Labor Code § 201, Defendant was required to promptly pay Plaintiff all wages due and owing to her upon her termination. As set forth above, Defendant willfully refused to pay Plaintiff all of the compensation that was due to her following the termination of her employment. Defendant thereby violated Cal. Labor Code § 201. 51. By violating Cal. Labor Code § 201, Defendant is liable in full for all wages due 		
16 17 18 19 20 21 22 23	Failure To Pay Wages On Termination (Cal. Labor Code § 201) 49. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 48 above, as though fully set forth herein. 50. 50. Pursuant to Cal. Labor Code § 201, Defendant was required to promptly pay Plaintiff all wages due and owing to her upon her termination. As set forth above, Defendant willfully refused to pay Plaintiff all of the compensation that was due to her following the termination of her employment. Defendant thereby violated Cal. Labor Code § 201. 51. By violating Cal. Labor Code § 201, Defendant is liable in full for all wages due and owing to Plaintiff, plus interest thereon, and for attorneys' fees and costs under Cal. Labor		
16 17 18 19 20 21 22 23 24 25 26	Failure To Pay Wages On Termination (Cal. Labor Code § 201) 49. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 48 above, as though fully set forth herein. 50. 50. Pursuant to Cal. Labor Code § 201, Defendant was required to promptly pay Plaintiff all wages due and owing to her upon her termination. As set forth above, Defendant willfully refused to pay Plaintiff all of the compensation that was due to her following the termination of her employment. Defendant thereby violated Cal. Labor Code § 201. 51. By violating Cal. Labor Code § 201, Defendant is liable in full for all wages due and owing to Plaintiff, plus interest thereon, and for attorneys' fees and costs under Cal. Labor Code § 218.5.		
16 17 18 19 20 21 22 23 24 25 26 26 МсGuinn, Hillsman & Palefsky	Failure To Pay Wages On Termination (Cal. Labor Code § 201) 49. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 48 above, as though fully set forth herein. 50. 50. Pursuant to Cal. Labor Code § 201, Defendant was required to promptly pay Plaintiff all wages due and owing to her upon her termination. As set forth above, Defendant willfully refused to pay Plaintiff all of the compensation that was due to her following the termination of her employment. Defendant thereby violated Cal. Labor Code § 201. 51. By violating Cal. Labor Code § 201, Defendant is liable in full for all wages due and owing to Plaintiff, plus interest thereon, and for attorneys' fees and costs under Cal. Labor Code § 218.5. WHEREFORE, Plaintiff prays for relief as set forth below.		
16 17 18 19 20 21 22 23 24 25 26 МсGuin, Hillsman & Palefsky 27	Failure To Pay Wages On Termination (Cal. Labor Code § 201) 49. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 48 above, as though fully set forth herein. 50. 50. Pursuant to Cal. Labor Code § 201, Defendant was required to promptly pay Plaintiff all wages due and owing to her upon her termination. As set forth above, Defendant willfully refused to pay Plaintiff all of the compensation that was due to her following the termination of her employment. Defendant thereby violated Cal. Labor Code § 201. 51. By violating Cal. Labor Code § 201, Defendant is liable in full for all wages due and owing to Plaintiff, plus interest thereon, and for attorneys' fees and costs under Cal. Labor Code § 218.5. WHEREFORE, Plaintiff prays for relief as set forth below.		

1 2 3	EIGHTH CAUSE OF ACTION Waiting Time Penalties (Cal. Labor Code §§ 201 & 203)	
4	52. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 51 above, as	
5	though fully set forth herein.	
6	53. California Labor Code § 201 requires an employer who discharges an employee to	
7	pay all compensation due and owing to that employee immediately upon discharge.	
8	54. California Labor Code § 203 provides that if an employer willfully fails to pay	
9	compensation promptly upon discharge, as required by § 201, then the employer is liable for	
10	waiting time penalties in the form of continued compensation for up to 30 work days.	
11	55. Defendant willfully failed and refused to timely pay commissions to Plaintiff	
12	following her termination. As a result, Defendant is liable to Plaintiff for waiting time penalties,	
13	together with attorneys' fees and costs, under Cal. Labor Code § 203.	
14	WHEREFORE, Plaintiff prays for judgment as set forth below.	
15	NINTH CAUSE OF ACTION Retaliation	
16	(Cal. Labor Code § 1102.5)	
17	56. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 55 above, as	
18	though fully set forth herein.	
19	57. California Labor Code § 1102.5 prohibits employers from discharging,	
20	constructively discharging, retaliating or in any manner discriminating against any employee for	
21	disclosing information to a person with authority over the employee, or to another employee who	
22	has authority to investigate, discover, or correct the violation or noncompliance, where the	
23	employee has reasonable cause to believe that the information discloses a violation of state or	
24	federal statute, or a violation or noncompliance with a state or federal rule or regulation.	
25	58. Defendant's conduct as alleged above in paragraphs 14 and 17 constituted unlawful	
26	retaliation in violation of California Labor Code § 1102.5. Defendant retaliated against Plaintiff	
McGuinn, Hillsman 27 & Palefsky 535 Pacific Avenue	on account of her objections to being required to falsely register meal and rest breaks and work	
535 Pacific Avenue San Francisco, CA 94133 (415) 421-9292 28	unpaid overtime.	

1	59. As a direct and proximate result of Defendant's wrongful conduct, Plaintiff has		
2	suffered damages including, but not limited to, a loss of income, health benefits and other benefits.		
3	Further, Plaintiff has suffered emotional distress and other general damages.		
4	60. In doing the things alleged herein, Defendant's conduct was despicable, and		
5	Defendant acted toward Plaintiff with malice, oppression, fraud, and with a willful and conscious		
6	disregard of Plaintiff's rights, entitling Plaintiff to an award of punitive damages.		
7	WHEREFORE, Plaintiff prays for judgment as set forth below.		
8	TENTH CAUSE OF ACTION Unfair Competition		
9	(Cal. Bus. & Prof. Code §§ 17200-17209)		
10			
11	61. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 60 above, as		
12	though fully set forth herein.		
13	62. Defendant's failure to pay accrued vacation and wages, as alleged above, constitute		
14	unlawful activities prohibited by California Business & Professions Code § 17200.		
15	63. As a result of its unlawful acts, Defendant has reaped and continue to reap unfair		
16	benefits and illegal profits at the expense of Plaintiff.		
17	64. Plaintiff seeks and is entitled to, as restitution, wages and vacation pay that she		
18	earned during the four years prior to the filing of this action, but which Defendant failed to pay.		
19	She is entitled to restitution of all unused vacation and other PTO that was accrued while		
20	employed in California but was not paid at time of termination.		
21	65. Plaintiff is also entitled to enforce all applicable penalty provisions of the Cal.		
22	Labor Code pursuant to Business & Professions Code § 17202.		
23	66. Plaintiff has assumed the responsibility of enforcement of the laws and lawful		
24	claims specified herein. There is a financial burden incurred in pursuing this action that is in the		
25	public interest. Therefore, attorneys' fees are appropriate under Code of Civil Procedure § 1021.5.		
26	WHEREFORE, Plaintiff prays for relief as set forth below.		
McGuinn, Hillsman 27 & Palefsky 535 Pacific Avenue	PRAYER FOR RELIEF		
535 Pacific Avenue San Francisco, CA 94133 (415) 421-9292 28	WHEREFORE, Plaintiff requests relief as follows:		

1	1.	For compensatory dam	ages;		
2	2,	For back pay-including overtime compensation, and interest thereon, according to			
3		proof;			
4	3.	For liquidated damages	s under 29 U.S.C. § 216;		
5	4.	4. For wage statement violation penalties under Cal. Labor Code §§ 226 and 226.3;			
6	5.	5. For waiting time penalties under Cal. Labor Code § 203;			
7	6.	For restitution pursuant to Cal. Business and Professions Code §§ 17200-17205;			
8	7.	7. For penalties pursuant to Cal. Business & Professions Code § 17202;			
9	8. For emotional distress damages;				
10	9. For punitive damages;				
11	10. For an award of interest, including prejudgment interest, at the legal rate;				
12	11. For an award of attorneys' fees;				
13	12.	For costs of suit incurre	ed;		
14	13. For such other and further relief as the Court may deem just and proper.				
15	PLAINTIFF DEMANDS A JURY TRIAL				
16					
17	DATED: March 24, 2016		MCGUINN, HILLSMAN & PALEFSKY Attorneys for Plaintiff DANIELLE KESTERSON		
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19			By: /s/ Jeannette A. Vaccaro		
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	SECOND AMENDED COMPLAINT FOR DAMAGES 11				